
SUBSTITUTE SENATE BILL 6238

State of Washington

55th Legislature

1998 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Stevens and Swecker)

Read first time 02/05/98.

1 AN ACT Relating to dependent children; and amending RCW 13.34.050,
2 13.34.060, 13.34.090, and 13.34.120.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 13.34.050 and 1979 c 155 s 38 are each amended to read
5 as follows:

6 (1) The court may enter an order directing a law enforcement
7 officer, probation counselor, or child protective services official to
8 take a child into custody if: (a) A petition is filed with the
9 juvenile court alleging that the child is dependent and that the
10 child's health, safety, and welfare will be seriously endangered if not
11 taken into custody; (b) an affidavit or declaration is filed in support
12 of the petition setting forth specific factual information evidencing
13 reasonable grounds that the child's health, safety, and welfare will be
14 seriously endangered if not taken into custody and at least one of the
15 grounds set forth demonstrates a risk of imminent physical harm to the
16 child. "Imminent physical harm" for purposes of this section shall
17 include circumstances of sexual abuse, or sexual exploitation as
18 defined in RCW 26.44.020; and (c) the court finds reasonable grounds to

1 believe the child is dependent and that the child's health, safety, and
2 welfare will be seriously endangered if not taken into custody.

3 (2) Any petition filed that relies upon "negligent treatment or
4 maltreatment" as defined in RCW 26.44.020 as a basis of proof that the
5 child is "dependent" requires a finding of a risk of imminent physical
6 harm to the child.

7 Any petition that does not have the necessary affidavit or
8 declaration demonstrating a risk of imminent physical harm requires
9 notice and an opportunity to be heard by the parents.

10 (3) The petition and supporting documentation must be served on the
11 parent and the entity with whom the child is in custody at the time the
12 child is removed. Failure to effect service does not invalidate the
13 petition if service was attempted and the parent could not be found.

14 **Sec. 2.** RCW 13.34.060 and 1990 c 246 s 1 are each amended to read
15 as follows:

16 (1) A child taken into custody pursuant to RCW 13.34.050 or
17 26.44.050 shall be immediately placed in shelter care. A child taken
18 by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070
19 shall be placed in shelter care only when permitted under RCW
20 13.34.055. "Shelter care" means temporary physical care in a facility
21 licensed pursuant to RCW 74.15.030 or in a home not required to be
22 licensed pursuant to that section. Whenever a child is taken into such
23 custody pursuant to this section, the supervising agency may authorize
24 evaluations of the child's physical or emotional condition, routine
25 medical and dental examination and care, and all necessary emergency
26 care. In no case may a child who is taken into custody pursuant to RCW
27 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention
28 facility. No child may be held longer than seventy-two hours,
29 excluding Saturdays, Sundays and holidays, after such child is taken
30 into custody unless a court order has been entered for continued
31 shelter care. The child and his or her parent, guardian, or custodian
32 shall be informed that they have a right to a shelter care hearing.
33 The court shall hold a shelter care hearing within seventy-two hours
34 after the child is taken into custody, excluding Saturdays, Sundays,
35 and holidays. If a parent, guardian, or legal custodian desires to
36 waive the shelter care hearing, the court shall determine, on the
37 record and with the parties present, that such waiver is knowing and
38 voluntary.

1 (2) Whenever a child is taken into custody by child protective
2 services pursuant to a court order issued under RCW 13.34.050 or when
3 child protective services is notified that a child has been taken into
4 custody pursuant to RCW 26.44.050 or 26.44.056, child protective
5 services shall make reasonable efforts to inform the parents, guardian,
6 or legal custodian of the fact that the child has been taken into
7 custody, the reasons why the child was taken into custody, and their
8 legal rights under this title as soon as possible and in no event
9 longer than twenty-four hours after the child has been taken into
10 custody or twenty-four hours after child protective services has been
11 notified that the child has been taken into custody. The notice of
12 custody and rights may be given by any means reasonably certain of
13 notifying the parents including, but not limited to, written,
14 telephone, or in person oral notification. If the initial notification
15 is provided by a means other than writing, child protective services
16 shall make reasonable efforts to also provide written notification.

17 The written notice of custody and rights shall be in substantially
18 the following form:

19

"NOTICE

20 Your child has been placed in temporary custody under the
21 supervision of Child Protective Services (or other person or agency).
22 You have important legal rights and you must take steps to protect your
23 interests.

24 1. A court hearing will be held before a judge within 72 hours of
25 the time your child is taken into custody. You should call the court
26 at _____ (insert appropriate phone number here) _____ for specific
27 information about the date, time, and location of the court hearing.

28 2. You have the right to have a lawyer represent you at the
29 hearing. You have the right to records the department intends to rely
30 upon. A lawyer can look at the files in your case, talk to child
31 protective services and other agencies, tell you about the law, help
32 you understand your rights, and help you at hearings. If you cannot
33 afford a lawyer, the court will appoint one to represent you. To get
34 a court-appointed lawyer you must contact: _____ (explain local
35 procedure) _____.

36 3. At the hearing, you have the right to speak on your own behalf,
37 to introduce evidence, to examine witnesses, and to receive a decision
38 based solely on the evidence presented to the judge.

1 You should be present at this hearing. If you do not come, the
2 judge will not hear what you have to say.

3 You may call the Child Protective Services' caseworker for more
4 information about your child. The caseworker's name and telephone
5 number are: (insert name and telephone number) ."

6 Upon receipt of the written notice, the parent, guardian, or legal
7 custodian shall acknowledge such notice by signing a receipt prepared
8 by child protective services. If the parent, guardian, or legal
9 custodian does not sign the receipt, the reason for lack of a signature
10 shall be written on the receipt. The receipt shall be made a part of
11 the court's file in the dependency action.

12 If after making reasonable efforts to provide notification, child
13 protective services is unable to determine the whereabouts of the
14 parents, guardian, or legal custodian, the notice shall be delivered or
15 sent to the last known address of the parent, guardian, or legal
16 custodian.

17 (3) If child protective services is not required to give notice
18 under subsection (2) of this section, the juvenile court counselor
19 assigned to the matter shall make all reasonable efforts to advise the
20 parents, guardian, or legal custodian of the time and place of any
21 shelter care hearing, request that they be present, and inform them of
22 their basic rights as provided in RCW 13.34.090.

23 (4) Reasonable efforts to advise and to give notice, as required in
24 subsections (2) and (3) of this section, shall include, at a minimum,
25 investigation of the whereabouts of the parent, guardian, or legal
26 custodian. If such reasonable efforts are not successful, or the
27 parent, guardian, or legal custodian does not appear at the shelter
28 care hearing, the juvenile court counselor or caseworker shall testify
29 at the hearing or state in a declaration:

30 (a) The efforts made to investigate the whereabouts of, and to
31 advise, the parent, guardian, or legal custodian; and

32 (b) Whether actual advice of rights was made, to whom it was made,
33 and how it was made, including the substance of any oral communication
34 or copies of written materials used.

35 (5) At the commencement of the shelter care hearing the court shall
36 advise the parties of their basic rights as provided in RCW 13.34.090
37 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not
38 been retained by the parent or guardian and if the parent or guardian

1 is indigent, unless the court finds that the right to counsel has been
2 expressly and voluntarily waived in court.

3 (6) The court shall hear evidence regarding notice given to, and
4 efforts to notify, the parent, guardian, or legal custodian and shall
5 examine the need for shelter care. The court shall make an express
6 finding as to whether the notice required under subsections (2) and (3)
7 of this section was given to the parent, guardian, or legal custodian.
8 All parties have the right to present testimony to the court regarding
9 the need or lack of need for shelter care. Hearsay evidence before the
10 court regarding the need or lack of need for shelter care must be
11 supported by sworn testimony, affidavit, or declaration of the person
12 offering such evidence.

13 (7) The juvenile court probation counselor shall submit a
14 recommendation to the court as to the further need for shelter care,
15 except that such recommendation shall be submitted by the department of
16 social and health services in cases where the petition alleging
17 dependency has been filed by the department of social and health
18 services, unless otherwise ordered by the court.

19 (8) The court shall release a child alleged to be dependent to the
20 care, custody, and control of the child's parent, guardian, or legal
21 custodian unless the court finds there is reasonable cause to believe
22 that:

23 (a) After consideration of the specific services that have been
24 provided, reasonable efforts have been made to prevent or eliminate the
25 need for removal of the child from the child's home and to make it
26 possible for the child to return home; and

27 (b)(i) The child has no parent, guardian, or legal custodian to
28 provide supervision and care for such child; or

29 (ii) The release of such child would present a serious threat of
30 substantial harm to such child; or

31 (iii) The parent, guardian, or custodian to whom the child could be
32 released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

33 If the court does not release the child to his or her parent,
34 guardian, or legal custodian, the court shall order continued shelter
35 care or order placement with another suitable person, and the court
36 shall set forth its reasons for the order. The court shall enter a
37 finding as to whether subsections (2) and (3) of this section have been
38 complied with. If actual notice was not given to the parent, guardian,
39 or legal custodian and the whereabouts of such person is known or can

1 be ascertained, the court shall order the supervising agency or the
2 department of social and health services to make reasonable efforts to
3 advise the parent, guardian, or legal custodian of the status of the
4 case, including the date and time of any subsequent hearings, and their
5 rights under RCW 13.34.090.

6 (9) An order releasing the child on any conditions specified in
7 this section may at any time be amended, with notice and hearing
8 thereon, so as to return the child to shelter care for failure of the
9 parties to conform to the conditions originally imposed.

10 The court shall consider whether nonconformance with any conditions
11 resulted from circumstances beyond the control of the parent and give
12 weight to that fact before ordering return of the child to shelter
13 care.

14 (10) A shelter care order issued pursuant to this section may be
15 amended at any time with notice and hearing thereon. The shelter care
16 decision of placement shall be modified only upon a showing of change
17 in circumstances. No child may be detained for longer than thirty days
18 without an order, signed by the judge, authorizing continued shelter
19 care.

20 (11) Any parent, guardian, or legal custodian who for good cause is
21 unable to attend the initial shelter care hearing may request that a
22 subsequent shelter care hearing be scheduled. The request shall be
23 made to the clerk of the court where the petition is filed prior to the
24 initial shelter care hearing. The hearing shall be held within
25 seventy-two hours of the request, excluding Saturdays, Sundays, and
26 holidays. The clerk shall notify all other parties of the hearing by
27 any reasonable means.

28 **Sec. 3.** RCW 13.34.090 and 1990 c 246 s 4 are each amended to read
29 as follows:

30 (1) Any party has a right to be represented by an attorney in all
31 proceedings under this chapter, to introduce evidence, to be heard in
32 his or her own behalf, to examine witnesses, to receive a decision
33 based solely on the evidence adduced at the hearing, and to an unbiased
34 fact-finder.

35 (2) At all stages of a proceeding in which a child is alleged to be
36 dependent (~~((pursuant to))~~) as defined in RCW 13.34.030~~((+2))~~ (4), the
37 child's parent, guardian, or legal custodian has the right to be
38 represented by counsel, and if indigent, to have counsel appointed for

1 him or her by the court. Unless waived in court, counsel shall be
2 provided to the child's parent, guardian, or legal custodian, if such
3 person (a) has appeared in the proceeding or requested the court to
4 appoint counsel and (b) is financially unable to obtain counsel because
5 of indigency as defined in chapter 10.101 RCW.

6 (3) If a party to an action under this chapter is represented by
7 counsel, no order shall be provided to that party for his or her
8 signature without prior notice and provision of the order to counsel.

9 (4) Copies of department of social and health services or
10 supervising agency records to which parents have legal access pursuant
11 to chapter 13.50 RCW shall be given to the child's parent, guardian,
12 legal custodian, or his or her legal counsel, prior to any shelter care
13 hearing and within ((twenty)) ten days after the department or
14 supervising agency receives a written request for such records from the
15 parent, guardian, legal custodian, or his or her legal counsel. These
16 records shall be provided to the child's parents, guardian, legal
17 custodian, or legal counsel a reasonable period of time prior to the
18 shelter care hearing in order to allow an opportunity to review the
19 records prior to the hearing. These records shall be legible and shall
20 be provided at no expense to the parents, guardian, legal custodian, or
21 his or her counsel. When the records are served on legal counsel,
22 legal counsel shall have the opportunity to review the records with the
23 parents and shall review the records with the parents prior to the
24 shelter care hearing.

25 **Sec. 4.** RCW 13.34.120 and 1996 c 249 s 14 are each amended to read
26 as follows:

27 (1) To aid the court in its decision on disposition, a social
28 study, consisting of a written evaluation of matters relevant to the
29 disposition of the case, shall be made by the person or agency filing
30 the petition. A parent may submit a counselor's or health care
31 provider's evaluation of the parent, which shall either be included in
32 the social study or considered in conjunction with the social study.
33 The study shall include all social records and may also include facts
34 relating to the child's cultural heritage, and shall be made available
35 to the court. The court shall consider the social file, social study,
36 guardian ad litem report, the court-appointed special advocate's
37 report, if any, and any reports filed by a party at the disposition
38 hearing in addition to evidence produced at the fact-finding hearing.

1 At least ten working days before the disposition hearing, the
2 department shall mail to the parent and his or her attorney a copy of
3 the agency's social study and proposed service plan, which shall be in
4 writing or in a form understandable to the parents or custodians. In
5 addition, the department shall provide an opportunity for parents to
6 review and comment on the plan at the community service office. If the
7 parents disagree with the agency's plan or any part thereof, the
8 parents shall submit to the court at least twenty-four hours before the
9 hearing, in writing, or signed oral statement, an alternative plan to
10 correct the problems which led to the finding of dependency. This
11 section shall not interfere with the right of the parents or custodians
12 to submit oral arguments regarding the disposition plan at the hearing.

13 (2) In addition to the requirements set forth in subsection (1) of
14 this section, a predisposition study to the court in cases of
15 dependency alleged pursuant to RCW 13.34.030(4) (b) or (c) shall
16 contain the following information:

17 (a) A statement of the specific harm or harms to the child that
18 intervention is designed to alleviate;

19 (b) A description of the specific programs, for both the parents
20 and child, that are needed in order to prevent serious harm to the
21 child; the reasons why such programs are likely to be useful; the
22 availability of any proposed services; and the agency's overall plan
23 for ensuring that the services will be delivered. The description
24 shall identify services chosen and approved by the parent;

25 (c) If removal is recommended, a full description of the reasons
26 why the child cannot be protected adequately in the home, including a
27 description of any previous efforts to work with the parents and the
28 child in the home; the in-home treatment programs which have been
29 considered and rejected; the preventive services that have been offered
30 or provided and have failed to prevent the need for out-of-home
31 placement, unless the health, safety, and welfare of the child cannot
32 be protected adequately in the home; and the parents' attitude toward
33 placement of the child;

34 (d) A statement of the likely harms the child will suffer as a
35 result of removal. This section should include an exploration of the
36 nature of the parent-child attachment and the meaning of separation and
37 loss to both the parents and the child;

38 (e) A description of the steps that will be taken to minimize harm
39 to the child that may result if separation occurs; and

1 (f) Behavior that will be expected before determination that
2 supervision of the family or placement is no longer necessary.

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