
SENATE BILL 5231

State of Washington 61st Legislature 2009 Regular Session

By Senators Regala, Kline, Stevens, Hargrove, and Brandland

Read first time 01/16/09. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to parenting plans and residential schedules in
2 dependency proceedings; amending RCW 13.34.155; and reenacting and
3 amending RCW 13.04.030 and 13.34.062.

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

5 **Sec. 1.** RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are
6 each reenacted and amended to read as follows:

7 (1) Except as provided in this section, the juvenile courts in this
8 state shall have exclusive original jurisdiction over all proceedings:

9 (a) Under the interstate compact on placement of children as
10 provided in chapter 26.34 RCW;

11 (b) Relating to children alleged or found to be dependent as
12 provided in chapter 26.44 RCW and in RCW 13.34.030 through
13 ~~((13.34.170))~~ 13.34.161;

14 (c) Relating to the termination of a parent and child relationship
15 as provided in RCW 13.34.180 through 13.34.210;

16 (d) To approve or disapprove out-of-home placement as provided in
17 RCW 13.32A.170;

18 (e) Relating to juveniles alleged or found to have committed

1 offenses, traffic or civil infractions, or violations as provided in
2 RCW 13.40.020 through 13.40.230, unless:

3 (i) The juvenile court transfers jurisdiction of a particular
4 juvenile to adult criminal court pursuant to RCW 13.40.110;

5 (ii) The statute of limitations applicable to adult prosecution for
6 the offense, traffic or civil infraction, or violation has expired;

7 (iii) The alleged offense or infraction is a traffic, fish,
8 boating, or game offense, or traffic or civil infraction committed by
9 a juvenile sixteen years of age or older and would, if committed by an
10 adult, be tried or heard in a court of limited jurisdiction, in which
11 instance the appropriate court of limited jurisdiction shall have
12 jurisdiction over the alleged offense or infraction, and no guardian ad
13 litem is required in any such proceeding due to the juvenile's age:
14 PROVIDED, That if such an alleged offense or infraction and an alleged
15 offense or infraction subject to juvenile court jurisdiction arise out
16 of the same event or incident, the juvenile court may have jurisdiction
17 of both matters: PROVIDED FURTHER, That the jurisdiction under this
18 subsection does not constitute "transfer" or a "decline" for purposes
19 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,
20 That courts of limited jurisdiction which confine juveniles for an
21 alleged offense or infraction may place juveniles in juvenile detention
22 facilities under an agreement with the officials responsible for the
23 administration of the juvenile detention facility in RCW 13.04.035 and
24 13.20.060;

25 (iv) The alleged offense is a traffic or civil infraction, a
26 violation of compulsory school attendance provisions under chapter
27 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
28 assumed concurrent jurisdiction over those offenses as provided in RCW
29 13.04.0301; or

30 (v) The juvenile is sixteen or seventeen years old on the date the
31 alleged offense is committed and the alleged offense is:

32 (A) A serious violent offense as defined in RCW 9.94A.030;

33 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
34 has a criminal history consisting of: (I) One or more prior serious
35 violent offenses; (II) two or more prior violent offenses; or (III)
36 three or more of any combination of the following offenses: Any class
37 A felony, any class B felony, vehicular assault, or manslaughter in the

1 second degree, all of which must have been committed after the
2 juvenile's thirteenth birthday and prosecuted separately;

3 (C) Robbery in the first degree, rape of a child in the first
4 degree, or drive-by shooting, committed on or after July 1, 1997;

5 (D) Burglary in the first degree committed on or after July 1,
6 1997, and the juvenile has a criminal history consisting of one or more
7 prior felony or misdemeanor offenses; or

8 (E) Any violent offense as defined in RCW 9.94A.030 committed on or
9 after July 1, 1997, and the juvenile is alleged to have been armed with
10 a firearm.

11 (I) In such a case the adult criminal court shall have exclusive
12 original jurisdiction, except as provided in (e)(v)(E)(II) of this
13 subsection.

14 (II) The juvenile court shall have exclusive jurisdiction over the
15 disposition of any remaining charges in any case in which the juvenile
16 is found not guilty in the adult criminal court of the charge or
17 charges for which he or she was transferred, or is convicted in the
18 adult criminal court of a lesser included offense that is not also an
19 offense listed in (e)(v) of this subsection. The juvenile court shall
20 enter an order extending juvenile court jurisdiction if the juvenile
21 has turned eighteen years of age during the adult criminal court
22 proceedings pursuant to RCW 13.40.300. However, once the case is
23 returned to juvenile court, the court may hold a decline hearing
24 pursuant to RCW 13.40.110 to determine whether to retain the case in
25 juvenile court for the purpose of disposition or return the case to
26 adult criminal court for sentencing.

27 If the juvenile challenges the state's determination of the
28 juvenile's criminal history under (e)(v) of this subsection, the state
29 may establish the offender's criminal history by a preponderance of the
30 evidence. If the criminal history consists of adjudications entered
31 upon a plea of guilty, the state shall not bear a burden of
32 establishing the knowing and voluntariness of the plea;

33 (f) Under the interstate compact on juveniles as provided in
34 chapter 13.24 RCW;

35 (g) Relating to termination of a diversion agreement under RCW
36 13.40.080, including a proceeding in which the divertee has attained
37 eighteen years of age;

1 (h) Relating to court validation of a voluntary consent to an out-
2 of-home placement under chapter 13.34 RCW, by the parent or Indian
3 custodian of an Indian child, except if the parent or Indian custodian
4 and child are residents of or domiciled within the boundaries of a
5 federally recognized Indian reservation over which the tribe exercises
6 exclusive jurisdiction;

7 (i) Relating to petitions to compel disclosure of information filed
8 by the department of social and health services pursuant to RCW
9 74.13.042; and

10 (j) Relating to judicial determinations and permanency planning
11 hearings involving developmentally disabled children who have been
12 placed in out-of-home care pursuant to a voluntary placement agreement
13 between the child's parent, guardian, or legal custodian and the
14 department of social and health services.

15 (2) The family court shall have concurrent original jurisdiction
16 with the juvenile court over all proceedings under this section if the
17 superior court judges of a county authorize concurrent jurisdiction as
18 provided in RCW 26.12.010.

19 (3) The juvenile court shall have concurrent original jurisdiction
20 with the family court over child custody proceedings under chapter
21 26.10 RCW and parenting plans or residential schedules under chapters
22 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

23 (4) A juvenile subject to adult superior court jurisdiction under
24 subsection (1)(e)(i) through (v) of this section, who is detained
25 pending trial, may be detained in a detention facility as defined in
26 RCW 13.40.020 pending sentencing or a dismissal.

27 **Sec. 2.** RCW 13.34.062 and 2007 c 413 s 4 and 2007 c 409 s 5 are
28 each reenacted and amended to read as follows:

29 (1)(a) Whenever a child is taken into custody by child protective
30 services pursuant to a court order issued under RCW 13.34.050 or when
31 child protective services is notified that a child has been taken into
32 custody pursuant to RCW 26.44.050 or 26.44.056, child protective
33 services shall make reasonable efforts to inform the parent, guardian,
34 or legal custodian of the fact that the child has been taken into
35 custody, the reasons why the child was taken into custody, and their
36 legal rights under this title, including the right to a shelter care
37 hearing, as soon as possible. Notice must be provided in an

1 understandable manner and take into consideration the parent's,
2 guardian's, or legal custodian's primary language, level of education,
3 and cultural issues.

4 (b) In no event shall the notice required by this section be
5 provided to the parent, guardian, or legal custodian more than twenty-
6 four hours after the child has been taken into custody or twenty-four
7 hours after child protective services has been notified that the child
8 has been taken into custody.

9 (2)(a) The notice of custody and rights may be given by any means
10 reasonably certain of notifying the parents including, but not limited
11 to, written, telephone, or in person oral notification. If the initial
12 notification is provided by a means other than writing, child
13 protective services shall make reasonable efforts to also provide
14 written notification.

15 (b) The written notice of custody and rights required by this
16 section shall be in substantially the following form:

17 "NOTICE

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

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

27 2. You have the right to have a lawyer represent you at the
28 hearing. Your right to representation continues after the shelter care
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 4. If your hearing occurs before a court commissioner, you have the
2 right to have the decision of the court commissioner reviewed by a
3 superior court judge. To obtain that review, you must, within ten days
4 after the entry of the decision of the court commissioner, file with
5 the court a motion for revision of the decision, as provided in RCW
6 2.24.050.

7 You should be present at any shelter care hearing. If you do not
8 come, the judge will not hear what you have to say.

9 You may call the Child Protective Services' caseworker for more
10 information about your child. The caseworker's name and telephone
11 number are: (insert name and telephone number).

12 5. You have a right to a case conference to develop a written
13 service agreement following the shelter care hearing. The service
14 agreement may not conflict with the court's order of shelter care. You
15 may request that a multidisciplinary team, family group conference, or
16 prognostic staffing be convened for your child's case. You may
17 participate in these processes with your counsel present.

18 6. If your child is placed in the custody of the department of
19 social and health services or other supervising agency, immediately
20 following the shelter care hearing, the court will enter an order
21 granting the department or other supervising agency the right to
22 inspect and copy all health, medical, mental health, and education
23 records of the child, directing health care providers to release such
24 information without your further consent, and granting the department
25 or supervising agency or its designee the authority and responsibility,
26 where applicable, to:

27 (1) Notify the child's school that the child is in out-of-home
28 placement;

29 (2) Enroll the child in school;

30 (3) Request the school transfer records;

31 (4) Request and authorize evaluation of special needs;

32 (5) Attend parent or teacher conferences;

33 (6) Excuse absences;

34 (7) Grant permission for extracurricular activities;

35 (8) Authorize medications which need to be administered during
36 school hours and sign for medical needs that arise during school hours;
37 and

38 (9) Complete or update school emergency records.

1 7. A dependency petition begins a judicial process which, if the
2 court finds the child dependent, could result in substantial
3 restrictions including, the entry or modification of a parenting plan
4 or residential schedule, nonparental custody order/decreed, guardianship
5 order, or permanent loss of your parental rights."

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 this section, the juvenile court counselor assigned to the matter
19 shall make all reasonable efforts to advise the parents, guardian, or
20 legal custodian of the time and place of any shelter care hearing,
21 request that they be present, and inform them of their basic rights as
22 provided in RCW 13.34.090.

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

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

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

34 **Sec. 3.** RCW 13.34.155 and 2000 c 135 s 1 are each amended to read
35 as follows:

36 (1) The court hearing the dependency petition may hear and
37 determine issues related to chapter 26.10 RCW in a dependency

1 proceeding as necessary to facilitate a permanency plan for the child
2 or children as part of the dependency disposition order or a dependency
3 review order or as otherwise necessary to implement a permanency plan
4 of care for a child. The parents, guardians, or legal custodian of the
5 child must agree, subject to court approval, to establish a permanent
6 custody order. This agreed order may have the concurrence of the other
7 parties to the dependency including the supervising agency, the
8 guardian ad litem of the child, and the child if age twelve or older,
9 and must also be in the best interests of the child. If the petitioner
10 for a custody order under chapter 26.10 RCW is not a party to the
11 dependency proceeding, he or she must agree on the record or by the
12 filing of a declaration to the entry of a custody order. Once an order
13 is entered under chapter 26.10 RCW, and the dependency petition
14 dismissed, the department shall not continue to supervise the
15 placement.

16 (2) The court hearing the dependency petition may hear and
17 determine issues related to establishing or modifying a parenting plan
18 under chapters 26.09 and 26.26 RCW. At any point in the dependency
19 proceeding, the juvenile court may enter or modify an existing
20 parenting plan or modify a residential schedule in order to resolve
21 issues of residential placement and/or visitation between the parents
22 of the child, and to implement a permanent plan of care for the child.
23 The parents must agree, subject to court approval, to establish the
24 parenting plan or modify an existing parenting plan. In any parenting
25 plan entered or modified in juvenile court under this section, all
26 issues pertaining to division of marital property shall be referred to
27 or retained by the family law department of the superior court. Issues
28 of child support should be referred to or retained by the family law
29 department of the superior court.

30 (3) Any court order determining issues under chapter 26.10 RCW is
31 subject to modification upon the same showing and standards as a court
32 order determining Title 26 RCW issues.

33 ~~((+3))~~ (4) Any order entered in the dependency court establishing
34 or modifying a permanent legal custody order or, parenting plan, or
35 residential schedule under chapter 26.09, 26.10, or 26.26 RCW shall
36 also be filed in the chapter 26.09, 26.10, or 26.26 RCW action by the
37 prevailing party. If the prevailing party has been found indigent and
38 appointed counsel at public expense in the dependency proceeding, no

1 filing fees shall be imposed by the clerk. Once filed, any order,
2 parenting plan, or residential schedule establishing or modifying
3 permanent legal custody shall survive dismissal of the dependency
4 proceeding.

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