
SENATE BILL 5892

State of Washington

66th Legislature

2019 Regular Session

By Senators Nguyen, Darneille, and Wilson, C.

1 AN ACT Relating to factors to be considered in a shelter care
2 hearing; and amending RCW 13.34.065.

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

4 **Sec. 1.** RCW 13.34.065 and 2018 c 284 s 4 are each amended to
5 read as follows:

6 (1)(a) When a child is taken into custody, the court shall hold a
7 shelter care hearing within seventy-two hours, excluding Saturdays,
8 Sundays, and holidays. The primary purpose of the shelter care
9 hearing is to determine whether the child can be immediately and
10 safely returned home while the adjudication of the dependency is
11 pending.

12 (b) Any parent, guardian, or legal custodian who for good cause
13 is unable to attend the shelter care hearing may request that a
14 subsequent shelter care hearing be scheduled. The request shall be
15 made to the clerk of the court where the petition is filed prior to
16 the initial shelter care hearing. Upon the request of the parent, the
17 court shall schedule the hearing within seventy-two hours of the
18 request, excluding Saturdays, Sundays, and holidays. The clerk shall
19 notify all other parties of the hearing by any reasonable means.

20 (2)(a) If it is likely that the child will remain in shelter care
21 longer than seventy-two hours, the department shall submit a

1 recommendation to the court as to the further need for shelter care
2 in all cases in which the child will remain in shelter care longer
3 than the seventy-two hour period. In all other cases, the
4 recommendation shall be submitted by the juvenile court probation
5 counselor.

6 (b) All parties have the right to present testimony to the court
7 regarding the need or lack of need for shelter care.

8 (c) Hearsay evidence before the court regarding the need or lack
9 of need for shelter care must be supported by sworn testimony,
10 affidavit, or declaration of the person offering such evidence.

11 (3) (a) At the commencement of the hearing, the court shall notify
12 the parent, guardian, or custodian of the following:

13 (i) The parent, guardian, or custodian has the right to a shelter
14 care hearing;

15 (ii) The nature of the shelter care hearing, the rights of the
16 parents, and the proceedings that will follow; and

17 (iii) If the parent, guardian, or custodian is not represented by
18 counsel, the right to be represented. If the parent, guardian, or
19 custodian is indigent, the court shall appoint counsel as provided in
20 RCW 13.34.090; and

21 (b) If a parent, guardian, or legal custodian desires to waive
22 the shelter care hearing, the court shall determine, on the record
23 and with the parties present, whether such waiver is knowing and
24 voluntary. A parent may not waive his or her right to the shelter
25 care hearing unless he or she appears in court and the court
26 determines that the waiver is knowing and voluntary. Regardless of
27 whether the court accepts the parental waiver of the shelter care
28 hearing, the court must provide notice to the parents of their rights
29 required under (a) of this subsection and make the finding required
30 under subsection (4) of this section.

31 (4) At the shelter care hearing the court shall examine the need
32 for shelter care and inquire into the status of the case. The
33 paramount consideration for the court shall be the health, welfare,
34 and safety of the child. At a minimum, the court shall inquire into
35 the following:

36 (a) Whether the notice required under RCW 13.34.062 was given to
37 all known parents, guardians, or legal custodians of the child. The
38 court shall make an express finding as to whether the notice required
39 under RCW 13.34.062 was given to the parent, guardian, or legal
40 custodian. If actual notice was not given to the parent, guardian, or

1 legal custodian and the whereabouts of such person is known or can be
2 ascertained, the court shall order the department to make reasonable
3 efforts to advise the parent, guardian, or legal custodian of the
4 status of the case, including the date and time of any subsequent
5 hearings, and their rights under RCW 13.34.090;

6 (b) Whether the child can be safely returned home while the
7 adjudication of the dependency is pending;

8 (c) What efforts have been made to place the child with a
9 relative. The court shall ask the parents whether the department
10 discussed with them the placement of the child with a relative or
11 other suitable person described in RCW 13.34.130(1)(b) and shall
12 determine what efforts have been made toward such a placement;

13 (d) What services were provided to the family to prevent or
14 eliminate the need for removal of the child from the child's home. If
15 the dependency petition or other information before the court alleges
16 that homelessness or the lack of suitable housing was a significant
17 factor contributing to the removal of the child, the court shall
18 inquire as to whether housing assistance was provided to the family
19 to prevent or eliminate the need for removal of the child or
20 children;

21 (e) Is the placement proposed by the department the least
22 disruptive and most family-like setting that meets the needs of the
23 child;

24 (f) Whether it is in the best interest of the child to remain
25 enrolled in the school, developmental program, or child care the
26 child was in prior to placement and what efforts have been made to
27 maintain the child in the school, program, or child care if it would
28 be in the best interest of the child to remain in the same school,
29 program, or child care;

30 (g) Appointment of a guardian ad litem or attorney;

31 (h) Whether the child is or may be an Indian child as defined in
32 RCW 13.38.040, whether the provisions of the federal Indian child
33 welfare act or chapter 13.38 RCW apply, and whether there is
34 compliance with the federal Indian child welfare act and chapter
35 13.38 RCW, including notice to the child's tribe;

36 (i) Whether, as provided in RCW 26.44.063, restraining orders, or
37 orders expelling an allegedly abusive household member from the home
38 of a nonabusive parent, guardian, or legal custodian, will allow the
39 child to safely remain in the home;

1 (j) Whether any orders for examinations, evaluations, or
2 immediate services are needed. The court may not order a parent to
3 undergo examinations, evaluation, or services at the shelter care
4 hearing unless the parent agrees to the examination, evaluation, or
5 service;

6 (k) The terms and conditions for parental, sibling, and family
7 visitation.

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

12 (i) After consideration of the specific services that have been
13 provided, reasonable efforts have been made to prevent or eliminate
14 the need for removal of the child from the child's home and to make
15 it possible for the child to return home; and

16 (ii) (A) The child has no parent, guardian, or legal custodian to
17 provide supervision and care for such child; or

18 (B) The release of such child would present a serious threat of
19 substantial harm to such child, notwithstanding an order entered
20 pursuant to RCW 26.44.063; or

21 (C) The parent, guardian, or custodian to whom the child could be
22 released has been charged with violating RCW 9A.40.060 or 9A.40.070.

23 (b) If the court does not release the child to his or her parent,
24 guardian, or legal custodian, the court shall order placement with a
25 relative or other suitable person as described in RCW
26 13.34.130(1)(b), unless there is reasonable cause to believe the
27 health, safety, or welfare of the child would be jeopardized or that
28 the efforts to reunite the parent and child will be hindered. If such
29 relative or other suitable person appears otherwise suitable and
30 competent to provide care and treatment, the fingerprint-based
31 background check need not be completed before placement, but as soon
32 as possible after placement. The court must also determine whether
33 placement with the relative or other suitable person is in the
34 child's best interests. The relative or other suitable person must be
35 willing and available to:

36 (i) Care for the child and be able to meet any special needs of
37 the child;

38 (ii) Facilitate the child's visitation with siblings, if such
39 visitation is part of the department's plan or is ordered by the
40 court; and

1 (iii) Cooperate with the department in providing necessary
2 background checks and home studies.

3 (c) If the child was not initially placed with a relative or
4 other suitable person, and the court does not release the child to
5 his or her parent, guardian, or legal custodian, the department shall
6 make reasonable efforts to locate a relative or other suitable person
7 pursuant to RCW 13.34.060(1). In determining placement, the court
8 shall weigh the child's length of stay and attachment to the current
9 provider in determining what is in the best interest of the child.

10 (d) If a relative or other suitable person is not available, the
11 court shall order continued shelter care and shall set forth its
12 reasons for the order. If the court orders placement of the child
13 with a person not related to the child and not licensed to provide
14 foster care, the placement is subject to all terms and conditions of
15 this section that apply to relative placements.

16 (e) Any placement with a relative, or other suitable person
17 approved by the court pursuant to this section, shall be contingent
18 upon cooperation with the department's or agency's case plan and
19 compliance with court orders related to the care and supervision of
20 the child including, but not limited to, court orders regarding
21 parent-child contacts, sibling contacts, and any other conditions
22 imposed by the court. Noncompliance with the case plan or court order
23 is grounds for removal of the child from the home of the relative or
24 other suitable person, subject to review by the court.

25 (f) Uncertainty by a parent, guardian, legal custodian, relative,
26 or other suitable person that the alleged abuser has in fact abused
27 the child shall not, alone, be the basis upon which a child is
28 removed from the care of a parent, guardian, or legal custodian under
29 (a) of this subsection, nor shall it be a basis, alone, to preclude
30 placement with a relative or other suitable person under (b) of this
31 subsection.

32 (6) (a) A shelter care order issued pursuant to this section shall
33 include the requirement for a case conference as provided in RCW
34 13.34.067. However, if the parent is not present at the shelter care
35 hearing, or does not agree to the case conference, the court shall
36 not include the requirement for the case conference in the shelter
37 care order.

38 (b) If the court orders a case conference, the shelter care order
39 shall include notice to all parties and establish the date, time, and

1 location of the case conference which shall be no later than thirty
2 days before the fact-finding hearing.

3 (c) The court may order another conference, case staffing, or
4 hearing as an alternative to the case conference required under RCW
5 13.34.067 so long as the conference, case staffing, or hearing
6 ordered by the court meets all requirements under RCW 13.34.067,
7 including the requirement of a written agreement specifying the
8 services to be provided to the parent.

9 (7) (a) (~~(A shelter care order issued pursuant to this section may
10 be amended at any time with notice and hearing thereon. The shelter
11 care decision of placement shall be modified only upon a showing of
12 change in circumstances.)~~) In order to better facilitate the timely
13 resolution of dependency cases, minimize further potential harm to
14 families, and to ensure that the child's best interests are at the
15 forefront, early identification of barriers is critical. No child may
16 be placed in shelter care for longer than thirty days without an
17 order, signed by the ((judge)) court, authorizing continued shelter
18 care, after considering the following:

19 (i) The names and current contact information for all parties and
20 their representatives, including parents, the assigned social worker,
21 the parents' attorneys, tribal representatives, and the guardian ad
22 litem or attorney for the child;

23 (ii) The status of notices to parents, guardians, or legal
24 custodians of the child pursuant to RCW 13.34.062;

25 (iii) The status and results of any paternity testing for any
26 alleged genetic parents of the child;

27 (iv) An update as to whether there is reason to know the child is
28 or may be an Indian child as defined in RCW 13.38.040 and whether the
29 provisions of the federal Indian child welfare act and chapter 13.38
30 RCW apply;

31 (v) A determination as to whether all safety threats to the child
32 can be managed or controlled and the child can be safely returned
33 home;

34 (vi) Providing the names and information regarding any additional
35 relatives or other suitable adults as described in RCW
36 13.34.130(1)(b)(ii). Information should include the type of
37 assistance they are willing to provide including, but not limited to,
38 serving as a placement, assistance with sibling or parental
39 visitation, respite support for current or future caregivers, and
40 transportation support;

1 (vii) The current status of any background checks or home studies
2 referred or conducted regarding relatives or other suitable persons
3 previously identified;

4 (viii) Any changes in placement since prior court orders; the
5 number of placements that have occurred since removal; a
6 determination of whether the current placement is the least
7 disruptive, most familiar and most family like setting that meets the
8 needs of the child; and any efforts of the child's current placement
9 to maintain the child's connection to his or her parents or community
10 of origin;

11 (ix) The current status of parental and sibling visitation,
12 including the number of visits that have occurred, any missed or
13 canceled visitations, and the reasons for the missed or canceled
14 visitations. The court may also consider entering an updated
15 visitation plan that includes visits in the least restrictive setting
16 based on risk factors, existing danger, safety threats, and
17 protective factors. Visitation plans must continue to be in the
18 child's best interests and consider any stated interests of the child
19 and identify what needs to be changed in order to increase visitation
20 and reduce any restrictions on visitation;

21 (x) The current educational or child care enrollment status of
22 the child, including whether there has been a change prior to coming
23 into care, and efforts to maintain educational continuity for the
24 child;

25 (xi) Any order for examination, evaluations, or immediate
26 services that are needed for the child, including, if available, the
27 results of the child's health and education tracking report or any
28 other examinations, or recommendation of any of the parties,
29 including any additional resources or supports for the proper care of
30 the child;

31 (xii) A list of services or assessments offered to the parents
32 and the status of referrals, as well as any voluntary services or
33 programs the parents have participated in or wish to be referred to,
34 including any specialty dependency court, court programs, or parent
35 ally programs; and

36 (xiii) Other orders by court.

37 (b) A shelter care order issued pursuant to this section may be
38 amended at any time with notice and hearing thereon. The shelter care
39 decision of placement shall be modified only upon a showing of a
40 change in circumstances.

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

5 (ii) The court shall consider whether nonconformance with any
6 conditions resulted from circumstances beyond the control of the
7 parent, guardian, or legal custodian and give weight to that fact
8 before ordering return of the child to shelter care.

9 (8)(a) If a child is returned home from shelter care a second
10 time in the case, or if the supervisor of the caseworker deems it
11 necessary, the multidisciplinary team may be reconvened.

12 (b) If a child is returned home from shelter care a second time
13 in the case a law enforcement officer must be present and file a
14 report to the department.

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