



JUDICIAL ROLE AND LAW FOR SHELTER CARE HEARINGS

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King County Superior Court

OVERVIEW

What is a Shelter Care?

What is decided at a Shelter Care Hearing?

What happens after the initial Shelter Care Hearing?

What are some systems the court can adopt to ensure Due Process Rights are safeguarded?

WHAT IS SHELTER CARE?

Shelter Care Definition

- The temporary physical care of a child in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030. RCW 13.34.030 (19).
- I.E. when the child is removed from the home and placed in outside care

Three ways a child can be removed from the home pending a shelter care hearing.

- Court order or “Pick up Order”
- Administrative Hold (most often a hospital hold)
- Protective Custody (law enforcement action)

COURT ORDER TO REMOVE CHILD

Motions for Pick Up Order submitted ex parte

Department must file:

- Dependency petition; and
- Motion for Removal with supporting declaration of the social worker.

These are filed without attorney review or signature in King County

RCW 13.44.050

COURT ORDER TO REMOVE CHILD

To grant the motion, the Court must find:

- There is “reasonable cause” to believe the child is both dependent and that the child’s health, safety, and welfare will be seriously endangered if not taken into custody; and
- The risk of harm is imminent. RCW 13.44.050(1)(a),(b),(c)
 - "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, sexual exploitation as defined in RCW 26.44.020, and a parent's failure to perform basic parental functions, obligations, and duties as the result of substance abuse[.] (Emphasis added)

If facts **do not** support finding of imminent harm, the parents are entitled to notice and a hearing before the child is removed and the order must be denied.

SHELTER CARE HEARING (GENERALLY)

Purpose:

- Determine whether child can immediately and safely be returned home while the adjudication of the dependency petition is pending.

Generally

- Shelter care hearing is a preliminary event to a dependency proceeding.
- Rules of evidence do NOT necessarily apply at this hearing, but hearsay must be supported by sworn testimony, affidavit, or declaration from person offering. In re Dependency of H.W., 70 Wn. App. 552, 556, 854 P.2d 1100 (1993); In re Welfare of Brown, 29 Wn. App. 744, 747-48, 631 P.2d 1 (1981). See also ER 1101.
- The court reviews evidence at the shelter care hearing under a “reasonable cause” standard. Reasonable cause is not defined in the statute. Some cases, however, have used “probable cause” as an equivalent standard.

See CITA online *Juvenile Non-Offender Benchbook: Shelter Care*, <http://www.uwcita.org/benchbook/chapter-16-shelter-care/>

SHELTER CARE HEARING (TIMELINESS)

The court must hold a Shelter Care Hearing within 72 hours of the child being removed, regardless of the method

- 72 hours excludes Saturdays, Sundays, and holidays.

72 hour requirement mandated by law under RCW 13.34.060(1).

JuCR 2.2 provides that a juvenile taken into shelter care “shall be released” if an order for continued shelter care is not entered within the statutory 72 hour time frame

WILL THE HEARING GO FORWARD?

Potential reasons that a the hearing may not go forward.

Are all parties present?

- If a parent is not present, Department must show required notice was given
 - Notice may be given in writing, by phone, or in person; however, if not in writing, reasonable efforts must have been made to give notice in writing as well
 - Counsel will asked to be excused
 - If notice was proper, brief default testimony should be taken from the Department

Is there an agreed Shelter Care Order?

- Many cases resolve with agreed orders as to shelter care, placement, and/or visitation.
- If shelter care is agreed, but other issues are not, a brief hearing is held just on those issues.
- Be sure to put agreement and parents' waiver of contested hearing on the record. The waiver must be knowing, voluntary, and intelligent waiver.
- What is the judge's role in scrutinizing agreements offered by the parties?

If hearing cannot proceed, obtain a waiver from parties to continue beyond statutory deadline. Or make a good cause finding to support continuance.

SHELTER CARE HEARING - ANALYSIS

The court must answer this primary question based upon the evidence and testimony presented by the parties:

- **Should the child remain in shelter care or be returned home? To keep the child in shelter care, the court must find:**

RCW 13.34.065 (5)

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

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

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

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

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

WHAT IS A PARENT?

When considering whether a child is dependent, the court must consider all individuals within the definition of “parent” under RCW 13.34.030, which includes;

- Biological parents
- Adoptive parents
- Individual who has established a parent-child relationship under RCW 26.26.101
 - Adjudication of parentage
 - Adoption
 - Woman who gave birth to the child
 - Unrebutted presumed parentage by marriage
 - Valid surrogate parentage contract where person asserting parentage is intended parent of the child
 - Person consenting to assisted reproduction by his/her spouse

PROCEEDING WITH THE HEARING

Your “to do” as judicial officer:

- Welcome parties and explain the shelter care and hearing process.
- Inform parties of their rights using as much plain language as possible.
- Appoint counsel for indigent parents (if not already appointed).
- Hear evidence regarding notice given to, and efforts to notify parents.
- Make the appropriate ICWA inquiries.
- Conduct a brief evidentiary hearing, re: shelter care allegations.

SHELTER CARE — CHILD REMAINS IN SHELTER CARE

Court must address the following:

Placement of child

Visitation with parents

Visitation with other dependent siblings (if not placed together)

- Cannot order visitation for nondependent siblings

Services for children

- Cannot order parents to engage in services w/out their agreement

GAL/CASA/Youth Attorney (if not already appointed)

Restraining orders

- To exclude someone from child's home and permit placement with parent

Paternity – order parents to cooperate in establishment

Mediation – set Mediation date and explain on record (King County Superior Court has a dependency mediation program)

Health and Education Order – gives Dept. authority to enroll child in school

SHELTER CARE — PLACEMENT CONSIDERATIONS

If the child is NOT returning home:

First priority is to place with relatives

- Inquire as to efforts to place with relatives
- Ask parents about suitable relative placement
- Can permit parent to live in same home with relatives and children, with conditions, without Department approval

Second placement priority is to place with a suitable adult

- Court must maintain that placement unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized

If no relative or suitable adult is available, then foster care/foster home is the last option

- Cannot order specific foster care placement or home
- Cannot place child in custody in secure detention facility

SHELTER CARE — PLACEMENT/SERVICES CONSIDERATIONS

Parent services

- The court cannot order the parents to complete services if the child is placed outside the home
- If the child is placed in the home, services and conditions can and should be ordered
 - No use/possession of drugs or alcohol
 - UAs
 - Public health nurse
 - In-home services

SHELTER CARE — WHAT'S NEXT?

Shelter Care denied

- Children return to parent/guardian, but dependency case continues on track

Shelter Care granted

- Another Shelter Care hearing (30-Day) set and a status quo order is entered unless a contested issue is noted 3 days in advance of the hearing date

BEST PRACTICES FOR SHELTER CARE

Court systems and requirements to ensure rights of parties are safeguarded and hearings proceed efficiently.

- **Judicial expectations**
 - Set expectations of the court for the stakeholders: timeliness, provision of discovery, penalties, and how hearings will be conducted.
 - Use plain language as much as possible for the benefit of all
 - Conducting timely and efficient hearings
- **Appointment of Counsel prior to hearing – RCW 13.34.090**
 - King County filing deadline for petitions is 1 p.m.
 - DSHS Court liaison sends copy of petitions to OPD to send out for conflict check and assignment
 - Court coordinators also receive a copy of the petition for a 72 hearing date assignment, so court is aware of what is out there
 - Process ensures that all parties are represented by counsel the very first time they appear before the court

BEST PRACTICES

- Discovery – LJuCR1.9
 - Department is expected to provide discovery in a timely fashion either before or day of the hearing
 - In King County, stakeholders are expected to appear at court 8 a.m. to exchange discovery, meet with their clients, identify any issues before the calendar call at 8:30
- Holding Hearings within 72 hours – RCW 13.34.065(1)(a); see also 13.34.060(1)
 - Court hears all 72 hearings on the days they are assigned, barring significant exigent circumstances (e.g. severe court congestion)
- Parent for Parent Program
 - In King County, the Parent for Parent mentors appear for all shelter care hearings
 - Meet with the parents to help explain the process and give them tips on demeanor and what to expect
 - All parent mentors are people who have gone through the dependency system themselves
 - Critical experienced person who is not part of the “system” who can provide support to bewildered parents



QUESTIONS?