

Shelter Care Hearings

A. Purpose of the Shelter Care Hearing

A shelter care hearing is a hearing that occurs after a child is removed from their parent/guardian under RCW 13.34.050, RCW 26.44.050 or RCW 26.44.056. At this hearing a judge decides whether it is safe for the child to remain in the home or whether the child should be placed in out-of-home care. The focus of the shelter care hearing is the protection the child and ways for the parent to address the issues that led to the state's involvement. At this hearing, the court decides an appropriate family time (visitation) schedule for children and parents. At shelter care the court must inquire about the child's Indian status.

RCW 13.38 and 25 U.S.C. §§1901-1963.

B. Timeline

The court must hold a shelter care hearing within 72 hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays.

C. Petitions

The Department shall notify the AAG no later than noon the day before the requested shelter care hearing. The AAG in turn shall provide the court the following information no later than 2:00 pm the day before the scheduled shelter care hearing*:

1. Names and dates of birth of child(ren) and parents
2. Date by which shelter care hearing is needed
3. Pick up time
4. Social worker name
5. AAG assigned to the case
6. Whether the Department expects shelter care to be contested
7. Contact information for youth 12 years or older
8. Whether youth will be at shelter care

The petition shall be brought to Court Administration no later than 4:00 pm the day before the scheduled shelter care hearing.

*In any case where these deadlines cannot be met, approval must be given by the Area Administrator and communicated to the AAG.

The reason this policy is in place is so the court has time to obtain youth attorneys and CASA, OPD has time to obtain attorneys for the parents, and the Clerk's office can open the court file.

D. Everyone must arrive to the Shelter Care hearing as scheduled on the notice.

All parties, attorneys, and CASA shall arrive at court at the time scheduled on the notice and shall check in with staff at Court Administration. The Judge will take the bench thirty minutes after the scheduled notice time.

E. What is expected to happen in the thirty minutes prior to the Shelter Care hearing.

Attorneys and parents are expected to meet to discuss and review the facts of the case together before the hearing begins. During this meeting, in addition to the above, the attorneys are trying to gain the parent's trust in a short period of time and also explain the process to parents. Ideally, this is not the first time an attorney has spoken to their client.

F. Recommendation for Length of Time and Scheduling

Understanding that all contested shelter care hearings are not the same, most hearings should be completed in two and a half hours including the ruling.

1. If the hearing is contested it will start that day even if it needs to be continued to another date certain. (Continuances will be limited to the times when there are multiple contested hearings or an exceptional situation when a hearing takes longer than two and a half hours) This will ensure the 72 hour timeline for a hearing is met.
2. Whenever possible the court will use Judges and judicial officers to conduct shelter care hearings. Judges and judicial officers have the most resources and up to date training regarding these types of hearings. If a pro tem is needed for a shelter care hearing, the court will provide the pro tem with relevant training and support to conduct a shelter care hearing.

G. Practice Expectations to ensure that Shelter Care Hearings are meaningful, and provide the Court with evidence needed for legally sound decisions.

1. Prehearing activities

- a. Discovery: the earlier the parties have information, the more prepared everyone can be for court and the more meaningful the hearings can be. AGO/DCYF will provide, to the best of their abilities, at a minimum the following information by the close of business the day prior to the shelter care hearing:
 - i. The petition,
 - ii. Contact information for the parents (and/or legal custodians) and youth, and
 - iii. Discovery.
- b. The Department shall provide the parents with it's recommendation for services they intend to offer, placement and family time (visitation), prior to the shelter

care hearing. This information shall be provided in writing. Ideally, this information should be provided at the time the petition is provided.

- c. The parent's and youth's attorneys shall make effort to contact the parents and youth prior to the shelter care hearing, when contact information is available.
- d. The Notice for the Shelter Care hearing
 - i. All parties shall appear at the time indicated on the notice. This will allow for the parties to meet with their attorneys thirty minutes prior to the actual start-time for the hearing.
 - ii. All parties and attorneys shall receive the notice including youth attorneys.
 - iii. The Court expects that all parties will appear in court at the scheduled time on the notice for the hearing otherwise the Court may impose sanctions.
- e. Whenever documents are filed, Judge's Copies shall be provided to Court Administration.

2. Contested Shelter Care Hearing

- a. The focus at the contested shelter care hearing is on immediate safety of the child(ren), reasonable efforts, and placement, along with family time (visitation), if shelter care is granted. The Court reviews evidence under a reasonable cause/probable cause standard.
- b. The parties and attorneys shall appear in court thirty minutes prior to the scheduled shelter care hearing to meet and discuss any resolutions.
- c. If issues are agreed to among the parties, counsel will notify the court at the beginning of the hearing.
- d. The Rules of Evidence do not apply at the shelter care hearing. To assure that the hearing is meaningful, trauma informed, and focused on immediate safety, reasonable efforts, placement and family time (visitation):
 - i. The State should consider entering the petition as an exhibit so that direct questioning of the social worker can be limited and the petition can speak for itself,
 - ii. Counsel for parents can provide an offer of proof as to the parents' testimony. The offer of proof may be presented in two ways: (1) oral presentation of the attorney, stating the client's proposed testimony and/or, (2) in writing, either by an attorney declaration, or parent declaration signed under oath. The Court would prefer when possible that parties utilize the written option.

H. Reasonable Efforts, RCW 13.34.065

The court must consider the specific services that have been provided by DCYF and determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and make it possible for the child to return home. Following this, the court shall release the 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 the following:

- (1) The child has no parent, guardian, or legal custodian to provide supervision and care for such child;
- (2) The release of the child would present a serious threat of substantial harm to the child; or
- (3) The parent, guardian or custodian to whom the child could be released is alleged to have committed custodial interference as defined by either RCW 9A.40.060 or 9A.40.070.

I. Placement

The preference for out of home placement, if ordered, is with relatives or suitable others. The Court has the authority to place a child a child without a completed background check by DCYF.

J. Family Time (Visitation)

At the shelter care hearing the court must also inquire about the terms and conditions for parental, sibling, and family time (visitation). Family time (visitation) is a right of the family.

Please review RCW 13.34.136(2)(b)(ii)(A) and (B) and (C) and DCYF's policy (attached) regarding family time (visitation).

K. Indian Child Welfare Act (ICWA)

Active efforts are not required prior to emergency removal (protective custody or pick-up order). Emergency placement must terminate if it is "no longer necessary to prevent imminent physical damage or harm". 25 CFR § 23.104

RCW 13.38 and 25 U.S.C. §§1901-1963

L. Shelter Care Pick Up Orders

Dependency petitions presented with a Motion to Pick Up Child and proposed Order must be presented to a Judge unless there is no Judge available, in which case it may be presented to a Court Commissioner. Any social worker or attorney presenting a pick up order must be able to answer the court's inquiries as to the need for a pick up order, placement, or other questions the Judicial officer may have. Social Workers shall present Motions for Pick Up Orders to Court Administration every day between 8:00-9:00 am or 1:00-1:30 pm, absent an emergency. If a pick up order is presented outside the listed

times above the social worker may have to wait until a Judge is out of court or otherwise available to review and sign the proposed order.

M. Termination Petitions

Termination petitions with a proposed case schedule order may be presented to any Judicial officer for signature. Typically, a Court Commissioner is available to sign Monday-Friday between 8:00-9:00 am or 1:00-1:30 pm in court administration. A Court Commissioner is always available to sign at Ex Parte (Check Daily Monitor for court room assignment): Monday-Friday, 8:55 am, 4:00 pm, or before the start of any calendar.