

ORIGINAL HOUSE
BILL NO. 0028

ENROLLED ACT NO. 27, HOUSE OF REPRESENTATIVES

SIXTY-FIRST LEGISLATURE OF THE STATE OF WYOMING
2011 GENERAL SESSION

AN ACT relating to children; amending provisions of the Child Protection Act relating to shelter care hearings and initial hearings; adding definitions; eliminating the opportunity to admit or deny allegations at a shelter care hearing unless an initial hearing is held in conjunction with a shelter care hearing; clarifying time to demand a jury trial; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 14-3-402(a) by creating new paragraphs (xxi) through (xxiii) and by renumbering (xxi) as (xxiv), 14-3-409(a), (c) and (d) (intro), 14-3-410(b), 14-3-422(a), 14-3-423(b) and 14-3-426(a) and by creating a new subsection (g) are amended to read:

14-3-402. Definitions.

(a) As used in this act:

(xxi) "Initial hearing" means a hearing held in accordance with W.S. 14-3-426;

(xxii) "Shelter care hearing" means a hearing held in accordance with W.S. 14-3-409;

(xxiii) "Transfer hearing" means a hearing held in accordance with W.S. 14-6-237;

~~(xxi)~~ (xxiv) "This act" means W.S. 14-3-401 through 14-3-440.

14-3-409. Taking of child into custody; shelter care hearing where no court order; conditional release; evidence; rehearing.

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(a) When a child is taken into temporary protective custody without a court order or under an ex parte emergency order, a petition as provided in W.S. 14-3-412 shall be promptly filed and presented to the court. ~~An informal~~^A shelter care hearing shall be held as soon as reasonably possible not later than forty-eight (48) hours, excluding weekends and legal holidays, after the child is taken into temporary protective custody to determine if further shelter care is required pending further court action. Written notice stating the time, place and purpose of the hearing shall be given to the child and to his parents, guardian or custodian.

(c) ~~The parents, guardian or custodian shall be given an opportunity to admit or deny the allegations in the petition. If the allegations are admitted, the court shall make the appropriate adjudication and may proceed immediately to a disposition of the case, provided the court has the predisposition report and multidisciplinary team recommendations, in accordance with the provisions of W.S. 14-3-429, except that a commissioner acting in the absence or incapacity of the judge may take testimony to establish a factual basis and accept an admission and perform all other requirements of the initial hearing but shall not proceed to disposition. If denied,~~ An initial hearing may be held in conjunction with a shelter care hearing, provided the requirements of W.S. 14-3-413, 14-3-414 and 14-3-426 have been met. The court shall set a time not to exceed sixty (60) days for an adjudicatory hearing, unless the court finds good cause to delay or postpone the hearing. In no case shall the court hold the adjudicatory hearing more than ninety (90) days after the date the petition is filed.

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(d) ~~Regardless of whether the allegations in the petition are admitted or denied,~~ The court shall determine whether or not the child's full-time shelter care is required to protect the child's welfare pending further proceedings. If the court determines that returning the child to the home is contrary to the welfare of the child, the court shall enter the finding on the record and order the child placed in the legal custody of the department of family services. If the court finds that full-time shelter care is not required, the court shall order the child released and may impose one (1) or more of the following conditions:

14-3-410. Shelter care hearing conducted by commissioner; authority and duty; review by court.

(b) The commissioner may make any order concerning the child's release or continued shelter care as authorized to the judge under W.S. 14-3-409. If the child is not released after the hearing, the commissioner shall promptly file with the court a complete written resume of the evidence adduced at the hearing and his reasons for not releasing the child. The commissioner shall conduct the hearing pursuant to W.S. 14-3-409, ~~except that if the parent who had been advised of his rights wishes to admit the allegations, the court may take testimony to establish a factual basis and accept the admission and perform all other requirements of the initial hearing but shall not enter the adjudication or proceed to disposition.~~ The hearing shall be conducted in the presence of counsel and guardian ad litem, if so appointed. The commissioner may also appoint counsel, appoint a guardian ad litem, order a predisposition report, appoint a multidisciplinary team, issue subpoenas or search warrants, order physical or medical examinations and authorize emergency medical, surgical or dental treatment all as provided in this act.

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The commissioner shall not make final orders of adjudication or disposition.

14-3-422. Advising of right to counsel required; appointment of counsel; verification of financial condition.

(a) At their first appearance before the court and at their initial hearing the child's parents, guardian or custodian shall be advised by the court of their right to be represented by counsel at every stage of the proceedings including appeal, and to employ counsel of their own choice.

14-3-423. Rights of parties generally; demand for and conduct of jury trial.

(b) A party against whom a petition has been filed or the district attorney may demand a trial by jury at an adjudicatory hearing. The jury shall be composed of jurors selected, qualified and compensated as provided by law for the trial of civil matters in the district court. The jury may be drawn from the jury panel of the district court or a special jury panel may be drawn from "jury box number three (3)" containing the names of persons residing within five (5) miles of the city or town where the trial is to be held, whichever the court directs. Demand for a jury trial must be made to the court not later than ten (10) days after the party making the demand is advised of his right to a jury trial at the initial hearing. No deposit for jury fees is required. Failure of a party to demand a jury is a waiver of this right.

14-3-426. Initial hearing; adjudicatory hearing; entry of decree and disposition; evidentiary matters; continuance of disposition hearing.

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(a) ~~At their~~ There shall be an initial hearing. The initial hearing, which may be held in conjunction with the shelter care hearing provided the requirements of W.S. 14-3-413, 14-3-414 and 14-3-426 have been met. The initial hearing may also be held after a shelter care hearing or a transfer hearing. At the initial hearing, the child and his parents, guardian or custodian shall be advised by the court of their rights under law and as provided in this act. They shall also be advised of the specific allegations in the petition and given an opportunity to admit or deny them. They shall also be advised of the possible liability for costs of treatment or services pursuant to this act. It is not necessary at the initial ~~appearance~~ hearing for the district attorney to establish probable cause to believe the allegations in the petition are true. ~~When a shelter care hearing is held in accordance with W.S. 14-3-409, a separate initial hearing is not required if the child and his parents, guardian or custodian were present at the shelter care hearing and advised by the court as provided in this subsection~~ If the allegations are admitted, the court shall make the appropriate adjudication and may proceed immediately to a disposition of the case, provided the court has the predisposition report and multidisciplinary team recommendations, in accordance with the provisions of W.S. 14-3-429, except that a commissioner acting in the absence or incapacity of the judge may take testimony to establish a factual basis and accept an admission and perform all other requirements of the initial hearing but shall not proceed to disposition.

(g) In the absence or incapacity of the judge, the initial hearing may be conducted by a district court commissioner.

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Section 2. This act is effective July 1, 2011.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk