

DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION

HOUSE BILL NO. _____

Shelter care hearings-admission or denial of allegations.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to children; amending provisions of the
2 Child Protection Act relating to shelter care hearings and
3 the opportunity to admit or deny allegations of neglect;
4 clarifying time to demand a jury trial; and providing for
5 an effective date.

6

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

8

9 **Section 1.** W.S. 14-3-409(c) and (d)(intro),
10 14-3-410(b), 14-3-423(b), and 14-3-426(a) are amended to
11 read:

12

1 14-3-409. Taking of child into custody; informal
2 hearing where no court order; conditional release;
3 evidence; rehearing.
4

5 (c) ~~The parents, guardian or custodian shall be given~~
6 ~~an opportunity to admit or deny the allegations in the~~
7 ~~petition. If the allegations are admitted, the court shall~~
8 ~~make the appropriate adjudication and may proceed~~
9 ~~immediately to a disposition of the case, provided the~~
10 ~~court has the predisposition report and multidisciplinary~~
11 ~~team recommendations, in accordance with the provisions of~~
12 ~~W.S. 14-3-429, except that a commissioner acting in the~~
13 ~~absence or incapacity of the judge may take testimony to~~
14 ~~establish a factual basis and accept an admission and~~
15 ~~perform all other requirements of the initial hearing but~~
16 ~~shall not proceed to disposition. If denied,~~ The court
17 shall set a time not to exceed sixty (60) days for an
18 adjudicatory hearing, unless the court finds good cause to
19 delay or postpone the hearing. In no case shall the court
20 hold the adjudicatory hearing more than ninety (90) days
21 after the date the petition is filed
22

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

13

14 **14-3-410. Hearing conducted by commissioner;**
15 **authority and duty; review by court.**

16

17 (b) The commissioner may make any order concerning
18 the child's release or continued shelter care as authorized
19 to the judge under W.S. 14-3-409. If the child is not
20 released after the hearing, the commissioner shall promptly
21 file with the court a complete written resume of the
22 evidence adduced at the hearing and his reasons for not
23 releasing the child. The commissioner shall conduct the

1 hearing pursuant to W.S. 14-3-409^{.7}, ~~except that if the~~
2 ~~parent who had been advised of his rights wishes to admit~~
3 ~~the allegations, the court may take testimony to establish~~
4 ~~a factual basis and accept the admission and perform all~~
5 ~~other requirements of the initial hearing but shall not~~
6 ~~enter the adjudication or proceed to disposition.~~ The
7 hearing shall be conducted in the presence of counsel and
8 guardian ad litem, if so appointed. The commissioner may
9 also appoint counsel, appoint a guardian ad litem, order a
10 predisposition report, appoint a multidisciplinary team,
11 issue subpoenas or search warrants, order physical or
12 medical examinations and authorize emergency medical,
13 surgical or dental treatment all as provided in this act.
14 The commissioner shall not make final orders of
15 adjudication or disposition.

16

17 **14-3-423. Rights of parties generally; demand for and**
18 **conduct of jury trial.**

19

20 (b) A party against whom a petition has been filed or
21 the district attorney may demand a trial by jury at an
22 adjudicatory hearing. The jury shall be composed of jurors
23 selected, qualified and compensated as provided by law for

1 the trial of civil matters in the district court. The jury
2 may be drawn from the jury panel of the district court or a
3 special jury panel may be drawn from "jury box number three
4 (3)" containing the names of persons residing within five
5 (5) miles of the city or town where the trial is to be
6 held, whichever the court directs. Demand for a jury trial
7 must be made to the court not later than ten (10) days
8 after the party making the demand is advised of his right
9 to a jury trial at the initial hearing. No deposit for jury
10 fees is required. Failure of a party to demand a jury is a
11 waiver of this right.

12

13 **14-3-426. Initial appearance hearing; adjudicatory**
14 **hearing; entry of decree and disposition; evidentiary**
15 **matters; continuance of disposition hearing.**

16

17 (a) At their initial hearing, which may be held after
18 a shelter care hearing or a transfer hearing, the child and
19 his parents, guardian or custodian shall be advised by the
20 court of their rights under law and as provided in this
21 act. They shall also be advised of the specific allegations
22 in the petition and given an opportunity to admit or deny
23 them. They shall also be advised of the possible liability

1 for costs of treatment or services pursuant to this act.
2 It is not necessary at the initial ~~appearance~~hearing for
3 the district attorney to establish probable cause to
4 believe the allegations in the petition are true. ~~When a~~
5 ~~shelter care hearing is held in accordance with W.S.~~
6 ~~14-3-409, a separate initial hearing is not required if the~~
7 ~~child and his parents, guardian or custodian were present~~
8 ~~at the shelter care hearing and advised by the court as~~
9 ~~provided in this subsection.~~

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*** STAFF COMMENTS ***

12 In reviewing the Child Protection Act (W.S. 14-3-101
13 through 140), it appears there are a number of ambiguities
14 and inconsistencies in the act. The act gives various
15 rights to a number of individuals, including the right to
16 an attorney at every stage of the proceedings, to notice,
17 to respond to an abuse and neglect petition, to an initial
18 appearance or initial hearing (not clearly stated), and to
19 appear at hearings. The language and time frames
20 throughout the act, however, are not consistent. The use
21 of the terms "initial hearing" interchangeably with
22 "initial appearance" and without defining the terms is just
23 one example of the inconsistencies. Making substantial
24 changes to the act will be fairly complex, because the
25 changes must take into consideration due process and follow
26 federal child protection laws. (The Department of Family
27 Services has advised that the changes in this bill draft do
28 not conflict with federal law.) The committee may want to
29 consider the Child Protection Act as an interim topic for
30 next year.

1 **Section 2.**

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3 This act is effective July 1, 2011.

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(END)