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To: [LR Comments](#)
Subject: AGO SHS SEA Division Comments to the proposed rule change to LJuCR 2.5 Modification of Shelter Care order
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Attachments: [LJuCR 2.5 Proposed Emer AmendmentAAG Comment.docx](#)
[LJuCR 2.5 Proposed Emer Amendment AGO \(003\).docx](#)

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Please see the two attached comments by the SHS SEA Division of the Attorney General's office. Please let me know if you have any questions.

Thank you!

Zach

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For proper service, documents must be sent to SHSSEAEF@atg.wa.gov

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LJuCR 2.5 MODIFICATION OF SHELTER CARE ORDER

Emergency & Permanent Rule Change to align rule with
In re Dependency of Baby Boy B., 554 P.3d 1196 (Wash. S. Ct. Aug. 29, 2024)

(a) 30-Day Hearings.

(1) **Scheduling.** The initial 30-day shelter care hearing must be scheduled by the petitioner by filing a Note for Calendar upon filing the action. If the child remains out of home and has not yet been found dependent as to a known parent, each 30-day shelter care hearing order must set an additional 30-day shelter care hearing.

(2) **Report.** The deadline for any report filed pursuant to RCW 13.34.065(7)(a)(ii) is noon three days before the 30-day shelter care hearing.

(3) **Hearing.** The parties may waive or continue a 30-day shelter care hearing by submitting an agreed proposed order. Absent such agreement, the 30-day shelter care hearing will be held in open court.

(b) **Modification of Shelter Care Order.** A shelter care hearing order also may be modified upon motion filed in accordance with LJuCR 1.8.

Proposed New language

(a) 30-Day Hearings.

(1) **Scheduling.** The initial 30-day shelter care hearing must be scheduled by the petitioner by filing a Note for Calendar upon filing the action. If the child remains out of home and *dependency has not yet been established as to a known parent and* ~~has not yet been found dependent as to a known parent,~~ *then* each 30-day shelter care hearing order must set an additional 30-day shelter care hearing *until dependency is established to one known parent.*

(2) **Report.** The deadline for any report filed pursuant to RCW 13.34.065(7)(a)(ii) is noon three days before the 30-day shelter care hearing.

(3) **Hearing.** The parties may waive or continue a 30-day shelter care hearing by submitting an agreed proposed order. Absent such agreement, the 30-day shelter care hearing will be held in open court.

(b) **Modification of Shelter Care Order.** A shelter care hearing order also may be modified upon motion filed in accordance with LJuCR 1.8.

Attorney General's Office Comment

The Attorney General's Office submits the following comment to the highlighted portion above. The Attorney General's Office and the Department's position is that once a child has been declared dependent as to at least one known parent that the child is no longer in shelter care and the need for additional 30-day hearings no longer exists.

"Shelter care" means temporary physical care of the child. RCW 13.34.030(25). A shelter care order is an extraordinary measure and is intended to be an interim solution in place for a short time. *In the Matter of Dependency of BBB*, 3 Wn.3d 569, 577, 554 P.3d 1196 (2024). The purpose of thirty-day shelter care hearings is to ensure that there is court oversight of the child until a more certain dispositional order is entered whereupon there is a statutory framework of six-month review hearings. "[J]udicial review and a new shelter care order is required every 30 days to continue out of home placement **before** dependency is determined." (emphasis added).

BBB at 578. Thirty-day hearings are not meant to be regular check-ins on the parent who has not yet established dependency for whatever reason may be occurring.

Once a fact-finding hearing has been held pursuant to RCW 13.34.110, and a child has been declared dependent then the Court shall enter an order of disposition which includes placement either: 1) in-home; 2) with a relative or suitable adult; or 3) in foster care. Whatever placement is decided it is no longer “temporary” physical care of the child as contemplated by RCW 13.34.030(25). The placement status of the child is a dispositional placement, therefore, not requiring thirty-day status review of the placement. The placement is instead reviewed at permanency planning hearings and dependency review hearings every six months.

In *BBB*, the Supreme Court decided that shelter care review hearings must be held every 30 days if a child is in “shelter care”. A plain reading of the definition of shelter care demonstrates that a child cannot be in a “temporary placement” and a dispositional placement at the same time. “The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home **while the adjudication of the dependency is pending.**” [RCW 13.34.065\(1\)\(a\)](#). *BBB* at 572.

The Court in *BBB* opined that the purpose of a 30-day hearing is to ensure the court doesn’t “order continued shelter care into perpetuity without performing any meaningful review.” Once dependency has been established as to one parent, the case is put on track for regular review at least every six months, providing an opportunity for meaningful judicial review of the child’s placement at each review hearing.

The status of the child determines if the child is either dependent or in shelter care, not the status of each known parent. A child cannot be both dependent and not dependent just because each parent has not entered a dependency order. To view this otherwise would result in illogical and absurd results in many areas of the dependency practice.

For example, when a child is in shelter care the timing of motions pursuant to LJuCR 1.8 differs on the timing once a child is declared dependent. Motions for the parent who has entered a dependency order must file with 14 days’ notice, but if the child is also considered to be in shelter care to the other parent, then there is only a six-day notice period. For motions to authorize a medical procedure or travel, can the Department then selectively choose which period it wants to apply six days or fourteen days? Or if visitation is going to be modified, is it only a six-day motion as to the “shelter care” parent, but fourteen days as to the “dependent” parent?

Additionally, the due process rights of the fully adjudicated parent could also be adversely impacted by additional thirty-day hearings if a court who, without having been part of the full dependency trial, is making decisions on placement and visitation at a subsequent thirty-day hearing. Those subsequent decisions could end up being made based on hearsay or other informal evidence when the earlier rulings were made pursuant to the rules of evidence.

If the child has been declared dependent to a known parent and an alleged parent comes along two years later and becomes a known parent, does the case then resort back to shelter care regarding this delayed parent and thirty-day hearings must resume two years later? That path does not seem logical.

The court inquired about the AG’s office seeking shelter care as to one parent but returning the child to another parent during a shelter care hearing. Such a description does not accurately

apply 13.34.065. If a child is returned to either parent, then by definition the child is not in shelter care as there is no temporary physical custody of the child outside of the home.

Additionally, whatever outcome occurs at the shelter care hearing does not have bearing on the continuance of thirty-day hearings once the child has been declared dependent to at least one known parent and a dispositional order is entered since there is no longer a temporary placement.