

2 EHB 1110 - S COMM AMD

3 By Committee on Law & Justice

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5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 26.44.020 and 1988 c 142 s 1 are each amended to read
8 as follows:

9 For the purpose of and as used in this chapter:

10 (1) "Court" means the superior court of the state of Washington,
11 juvenile department.

12 (2) "Law enforcement agency" means the police department, the
13 prosecuting attorney, the state patrol, the director of public safety,
14 or the office of the sheriff.

15 (3) "Practitioner of the healing arts" or "practitioner" means a
16 person licensed by this state to practice (~~(podiatry))~~ podiatric
17 medicine and surgery, optometry, chiropractic, nursing, dentistry,
18 osteopathy and surgery, or medicine and surgery or to provide other
19 health services. The term "practitioner" shall include a duly
20 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
21 person who is being furnished Christian Science treatment by a duly
22 accredited Christian Science practitioner shall not be considered, for
23 that reason alone, a neglected person for the purposes of this chapter.

24 (4) "Institution" means a private or public hospital or any other
25 facility providing medical diagnosis, treatment or care.

26 (5) "Department" means the state department of social and health
27 services.

28 (6) "Child" or "children" means any person under the age of
29 eighteen years of age.

30 (7) "Professional school personnel" shall include, but not be
31 limited to, teachers, counselors, administrators, child care facility
32 personnel, and school nurses.

33 (8) "Social service counselor" shall mean anyone engaged in a
34 professional capacity during the regular course of employment in
35 encouraging or promoting the health, welfare, support or education of
36 children, or providing social services to adults or families, including

1 mental health, drug and alcohol treatment, and domestic violence
2 programs, whether in an individual capacity, or as an employee or agent
3 of any public or private organization or institution.

4 (9) "Psychologist" shall mean any person licensed to practice
5 psychology under chapter 18.83 RCW, whether acting in an individual
6 capacity or as an employee or agent of any public or private
7 organization or institution.

8 (10) "Pharmacist" shall mean any registered pharmacist under the
9 provisions of chapter 18.64 RCW, whether acting in an individual
10 capacity or as an employee or agent of any public or private
11 organization or institution.

12 (11) "Clergy" shall mean any regularly licensed or ordained
13 minister, priest or rabbi of any church or religious denomination,
14 whether acting in an individual capacity or as an employee or agent of
15 any public or private organization or institution.

16 (12) "Child abuse or neglect" shall mean the injury, sexual abuse,
17 sexual exploitation, or negligent treatment or maltreatment of a child
18 by any person under circumstances which indicate that the child's
19 health, welfare, and safety is harmed thereby. An abused child is a
20 child who has been subjected to child abuse or neglect as defined
21 herein: PROVIDED, That this subsection shall not be construed to
22 authorize interference with child-raising practices, including
23 reasonable parental discipline, which are not proved to be injurious to
24 the child's health, welfare, and safety: AND PROVIDED FURTHER, That
25 nothing in this section shall be used to prohibit the reasonable use of
26 corporal punishment as a means of discipline. No parent or guardian
27 shall be deemed abusive or neglectful solely by reason of the parent's
28 or child's blindness, deafness, developmental disability, or other
29 handicap.

30 (13) "Child protective services section" shall mean the child
31 protective services section of the department.

32 (14) "Adult dependent persons not able to provide for their own
33 protection through the criminal justice system" shall be defined as
34 those persons over the age of eighteen years who have been found
35 legally incompetent pursuant to chapter 11.88 RCW or found disabled to
36 such a degree pursuant to said chapter, that such protection is
37 indicated: PROVIDED, That no persons reporting injury, abuse, or
38 neglect to an adult dependent person as defined herein shall suffer
39 negative consequences if such a judicial determination of incompetency

1 or disability has not taken place and the person reporting believes in
2 good faith that the adult dependent person has been found legally
3 incompetent pursuant to chapter 11.88 RCW.

4 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
5 encouraging a child to engage in prostitution by any person; or (b)
6 allowing, permitting, encouraging, or engaging in the obscene or
7 pornographic photographing, filming, or depicting of a child for
8 commercial purposes as those acts are defined by state law by any
9 person.

10 (16) "Negligent treatment or maltreatment" means an act or omission
11 which evidences a serious disregard of consequences of such magnitude
12 as to constitute a clear and present danger to the child's health,
13 welfare, and safety.

14 (17) "Developmentally disabled person" means a person who has a
15 disability defined in RCW ((71.20.016)) 71A.10.020.

16 (18) "Child protective services" means those services provided by
17 the department designed to protect children from child abuse and
18 neglect and safeguard the general welfare of such children and shall
19 include investigations of child abuse and neglect reports, including
20 reports regarding child care centers and family child care homes, and
21 the development, management, and provision of or referral to services
22 to ameliorate conditions which endanger the welfare of children, the
23 coordination of necessary programs and services relevant to the
24 prevention, intervention, and treatment of child abuse and neglect, and
25 services to children to ensure that each child has a permanent home.
26 In determining whether protective services should be provided, the
27 department shall not decline to provide such services solely because of
28 the child's unwillingness or developmental inability to describe the
29 nature and severity of the abuse or neglect.

30 (19) "Malice" or "maliciously" means an evil intent, wish, or
31 design to vex, annoy, or injure another person. Such malice may be
32 inferred from an act done in wilful disregard of the rights of another,
33 or an act wrongfully done without just cause or excuse, or an act or
34 omission of duty betraying a wilful disregard of social duty.

35 (20) "Sexually aggressive youth" means a child who is defined in
36 RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

37 NEW SECTION. Sec. 2. A new section is added to chapter 26.44 RCW
38 to read as follows:

1 (1) If a law enforcement agency receives a complaint that alleges
2 that a child under age twelve has committed a sex offense as defined in
3 RCW 9.94A.030, the agency shall investigate the complaint. If the
4 investigation reveals that probable cause exists to believe that the
5 youth may have committed a sex offense and the child is at least eight
6 years of age, the agency shall refer the case to the proper county
7 prosecuting attorney for appropriate action to determine whether the
8 child may be prosecuted or is a sexually aggressive youth. If the
9 child is less than eight years old, the law enforcement agency shall
10 refer the case to the department.

11 (2) If the prosecutor or a judge determines the child cannot be
12 prosecuted for the alleged sex offense because the child is incapable
13 of committing a crime as provided in RCW 9A.04.050 and the prosecutor
14 believes that probable cause exists to believe that the child engaged
15 in acts that would constitute a sex offense, the prosecutor shall refer
16 the child as a sexually aggressive youth to the department. The
17 prosecutor shall provide the department with an affidavit stating that
18 the prosecutor has determined that probable cause exists to believe
19 that the juvenile has committed acts that could be prosecuted as a sex
20 offense but the case is not being prosecuted because the juvenile is
21 incapable of committing a crime as provided in RCW 9A.04.050.

22 (3) The department shall investigate any referrals that allege that
23 a child is a sexually aggressive youth. The department may offer
24 appropriate available services and treatment to a sexually aggressive
25 youth and his or her parents or legal guardians as provided in RCW
26 74.13.075. If the parents refuse to accept or fail to obtain
27 appropriate treatment or services, the department may pursue a
28 dependency action as provided in chapter 13.34 RCW.

29 **Sec. 3.** RCW 74.13.075 and 1990 c 3 s 305 are each amended to read
30 as follows:

31 (1) For the purposes of funds appropriated for the treatment of
32 (~~at risk juvenile sex offenders, "at risk juvenile sex offenders"~~)
33 sexually aggressive youth, the term "sexually aggressive youth" means
34 those juveniles who:

- 35 (a) Are in the care and custody of the state (~~who~~) and:
36 ~~((a))~~ (i) Have been abused; and
37 ~~((b))~~ (ii) Have committed a sexually aggressive or other violent
38 act that is sexual in nature; or

1 (~~(e)~~) (b) Cannot be detained under the juvenile justice system
2 due to being under age twelve and incompetent to stand trial for acts
3 that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if
4 the juvenile was over twelve years of age, or competent to stand trial
5 if under twelve years of age.

6 (2) In expending these funds, the department of social and health
7 services shall establish in each region a case review committee to
8 review all cases for which the funds are used. In determining whether
9 to use these funds in a particular case, the committee shall consider:

10 (a) The age of the juvenile;

11 (b) The extent and type of abuse to which the juvenile has been
12 subjected;

13 (c) The juvenile's past conduct;

14 (d) The benefits that can be expected from the treatment; ~~(and)~~

15 (e) The cost of the treatment; and

16 (f) The ability of the juvenile's parent or guardian to pay for the
17 treatment.

18 **Sec. 4.** RCW 13.34.030 and 1988 c 176 s 901 are each amended to
19 read as follows:

20 For purposes of this chapter:

21 (1) "Child" and "juvenile" means any individual under the age of
22 eighteen years;

23 (2) "Dependent child" means any child:

24 (a) Who has been abandoned; that is, where the child's parent,
25 guardian, or other custodian has evidenced either by statement or
26 conduct, a settled intent to forego, for an extended period, all
27 parental rights or all parental responsibilities despite an ability to
28 do so;

29 (b) Who is abused or neglected as defined in chapter 26.44 RCW by
30 a person legally responsible for the care of the child;

31 (c) Who has no parent, guardian, or custodian capable of adequately
32 caring for the child, such that the child is in circumstances which
33 constitute a danger of substantial damage to the child's psychological
34 or physical development; ~~(or)~~

35 (d) Who has a developmental disability, as defined in RCW
36 71A.10.020 and whose parent, guardian, or legal custodian together with
37 the department determines that services appropriate to the child's
38 needs can not be provided in the home. However, (a), (b), and (c) of

1 this subsection may still be applied if other reasons for removal of
2 the child from the home exist; or

3 (e) Who is a "sexually aggressive youth," as defined in RCW
4 74.13.075(1)(b) and whose parent or guardian has failed to obtain or
5 refused to accept available appropriate treatment or services.

6 NEW SECTION. Sec. 5. A new section is added to chapter 13.34 RCW
7 to read as follows:

8 When the petition for dependency alleges that the child is a
9 sexually aggressive youth and the parent or guardian has failed to
10 obtain or has refused to accept available appropriate treatment, the
11 court may order that the child receive an evaluation to determine
12 whether the child needs treatment or other services. Prior to entry of
13 an order of dependency on the petition, the court must find by a
14 preponderance of the evidence at the fact-finding hearing held pursuant
15 to RCW 13.34.110 that the child has committed acts that could be
16 prosecuted as sex offenses as defined by RCW 9.94A.030, that the parent
17 or guardian has failed to obtain or has refused to accept available
18 appropriate treatment or services, and that treatment and services are
19 available. If the court orders the child receive an evaluation,
20 treatment, or services, the parent or legal guardian must pay for the
21 evaluation, treatment, and services based on the parent's or guardian's
22 ability to pay. The department shall develop a fair and equitable
23 payment schedule.

24 **Sec. 6.** RCW 13.34.130 and 1992 c 145 s 14 are each amended to read
25 as follows:

26 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now
27 or hereafter amended, it has been proven by a preponderance of the
28 evidence that the child is dependent within the meaning of RCW
29 13.34.030(2); after consideration of the predisposition report prepared
30 pursuant to RCW 13.34.110 and after a disposition hearing has been held
31 pursuant to RCW 13.34.110, the court shall enter an order of
32 disposition pursuant to this section.

33 (1) The court shall order one of the following dispositions of the
34 case:

35 (a) Order a disposition other than removal of the child from his or
36 her home, which shall provide a program designed to alleviate the
37 immediate danger to the child, to mitigate or cure any damage the child

1 has already suffered, and to aid the parents so that the child will not
2 be endangered in the future. In selecting a program, the court should
3 choose those services that least interfere with family autonomy,
4 provided that the services are adequate to protect the child.

5 (b) Order that the child be removed from his or her home and
6 ordered into the custody, control, and care of a relative or the
7 department of social and health services or a licensed child placing
8 agency for placement in a foster family home or group care facility
9 licensed pursuant to chapter 74.15 RCW or in a home not required to be
10 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
11 cause to believe that the safety or welfare of the child would be
12 jeopardized or that efforts to reunite the parent and child will be
13 hindered, such child shall be placed with a grandparent, brother,
14 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom
15 the child has a relationship and is comfortable, and who is willing and
16 available to care for the child. An order for out-of-home placement
17 may be made only if the court finds that reasonable efforts have been
18 made to prevent or eliminate the need for removal of the child from the
19 child's home and to make it possible for the child to return home,
20 specifying the services that have been provided to the child and the
21 child's parent, guardian, or legal custodian, and that:

22 (i) There is no parent or guardian available to care for such
23 child;

24 (ii) The parent, guardian, or legal custodian is not willing to
25 take custody of the child;

26 (iii) A manifest danger exists that the child will suffer serious
27 abuse or neglect if the child is not removed from the home and an order
28 under RCW 26.44.063 would not protect the child from danger; or

29 (iv) The extent of the child's disability is such that the parent,
30 guardian, or legal custodian is unable to provide the necessary care
31 for the child and the parent, guardian, or legal custodian has
32 determined that the child would benefit from placement outside of the
33 home.

34 (2) If the court has ordered a child removed from his or her home
35 pursuant to subsection (1)(b) of this section, the court may order that
36 a petition seeking termination of the parent and child relationship be
37 filed if the court finds it is recommended by the supervising agency,
38 that it is in the best interests of the child and that it is not
39 reasonable to provide further services to reunify the family because

1 the existence of aggravated circumstances make it unlikely that
2 services will effectuate the return of the child to the child's parents
3 in the near future. In determining whether aggravated circumstances
4 exist, the court shall consider one or more of the following:

5 (a) Conviction of the parent of rape of the child in the first,
6 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
7 9A.44.079;

8 (b) Conviction of the parent of criminal mistreatment of the child
9 in the first or second degree as defined in RCW 9A.42.020 and
10 9A.42.030;

11 (c) Conviction of the parent of one of the following assault
12 crimes, when the child is the victim: Assault in the first or second
13 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child
14 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

15 (d) Conviction of the parent of murder, manslaughter, or homicide
16 by abuse of the child's other parent, sibling, or another child;

17 (e) A finding by a court that a parent is a sexually violent
18 predator as defined in RCW 71.09.020;

19 (f) Failure of the parent to complete available treatment ordered
20 under this chapter or the equivalent laws of another state, where such
21 failure has resulted in a prior termination of parental rights to
22 another child and the parent has failed to effect significant change in
23 the interim.

24 (3) Whenever a child is ordered removed from the child's home, the
25 agency charged with his or her care shall provide the court with:

26 (a) A permanent plan of care that may include one of the following:
27 Return of the child to the home of the child's parent, adoption,
28 guardianship, or long-term placement with a relative or in foster care
29 with a written agreement.

30 (b) Unless the court has ordered, pursuant to subsection (2) of
31 this section, that a termination petition be filed, a specific plan as
32 to where the child will be placed, what steps will be taken to return
33 the child home, and what actions the agency will take to maintain
34 parent-child ties. All aspects of the plan shall include the goal of
35 achieving permanence for the child.

36 (i) The agency plan shall specify what services the parents will be
37 offered in order to enable them to resume custody, what requirements
38 the parents must meet in order to resume custody, and a time limit for
39 each service plan and parental requirement.

1 (ii) The agency shall be required to encourage the maximum parent-
2 child contact possible, including regular visitation and participation
3 by the parents in the care of the child while the child is in
4 placement. Visitation may be limited or denied only if the court
5 determines that such limitation or denial is necessary to protect the
6 child's health, safety, or welfare.

7 (iii) A child shall be placed as close to the child's home as
8 possible, preferably in the child's own neighborhood, unless the court
9 finds that placement at a greater distance is necessary to promote the
10 child's or parents' well-being.

11 (iv) The agency charged with supervising a child in placement shall
12 provide all reasonable services that are available within the agency,
13 or within the community, or those services which the department of
14 social and health services has existing contracts to purchase. It
15 shall report to the court if it is unable to provide such services.

16 (c) If the court has ordered, pursuant to subsection (2) of this
17 section, that a termination petition be filed, a specific plan as to
18 where the child will be placed, what steps will be taken to achieve
19 permanency for the child, services to be offered or provided to the
20 child, and, if visitation would be in the best interests of the child,
21 a recommendation to the court regarding visitation between parent and
22 child pending a fact-finding hearing on the termination petition. The
23 agency shall not be required to develop a plan of services for the
24 parents or provide services to the parents.

25 (4) If there is insufficient information at the time of the
26 disposition hearing upon which to base a determination regarding the
27 suitability of a proposed placement with a relative, the child shall
28 remain in foster care and the court shall direct the supervising agency
29 to conduct necessary background investigations as provided in chapter
30 74.15 RCW and report the results of such investigation to the court
31 within thirty days. However, if such relative appears otherwise
32 suitable and competent to provide care and treatment, the criminal
33 history background check need not be completed before placement, but as
34 soon as possible after placement. Any placements with relatives,
35 pursuant to this section, shall be contingent upon cooperation by the
36 relative with the agency case plan and compliance with court orders
37 related to the care and supervision of the child including, but not
38 limited to, court orders regarding parent-child contacts and any other
39 conditions imposed by the court. Noncompliance with the case plan or

1 court order shall be grounds for removal of the child from the
2 relative's home, subject to review by the court.

3 (5) Except for children whose cases are reviewed by a citizen
4 review board under chapter 13.70 RCW, the status of all children found
5 to be dependent shall be reviewed by the court at least every six
6 months from the beginning date of the placement episode or the date
7 dependency is established, whichever is first, at a hearing in which it
8 shall be determined whether court supervision should continue. The
9 review shall include findings regarding the agency and parental
10 completion of disposition plan requirements, and if necessary, revised
11 permanency time limits.

12 (a) A child shall not be returned home at the review hearing unless
13 the court finds that a reason for removal as set forth in this section
14 no longer exists. The parents, guardian, or legal custodian shall
15 report to the court the efforts they have made to correct the
16 conditions which led to removal. If a child is returned, casework
17 supervision shall continue for a period of six months, at which time
18 there shall be a hearing on the need for continued intervention.

19 (b) If the child is not returned home, the court shall establish in
20 writing:

21 (i) Whether reasonable services have been provided to or offered to
22 the parties to facilitate reunion, specifying the services provided or
23 offered;

24 (ii) Whether the child has been placed in the least-restrictive
25 setting appropriate to the child's needs, including whether
26 consideration has been given to placement with the child's relatives;

27 (iii) Whether there is a continuing need for placement and whether
28 the placement is appropriate;

29 (iv) Whether there has been compliance with the case plan by the
30 child, the child's parents, and the agency supervising the placement;

31 (v) Whether progress has been made toward correcting the problems
32 that necessitated the child's placement in out-of-home care;

33 (vi) Whether the parents have visited the child and any reasons why
34 visitation has not occurred or has been infrequent;

35 (vii) Whether additional services are needed to facilitate the
36 return of the child to the child's parents; if so, the court shall
37 order that reasonable services be offered specifying such services; and

38 (viii) The projected date by which the child will be returned home
39 or other permanent plan of care will be implemented.

1 (c) The court at the review hearing may order that a petition
2 seeking termination of the parent and child relationship be filed.

3 (6) If the sole basis for finding that the child is dependent is
4 the parent's failure to obtain or refusal to accept treatment for a
5 child that is a sexually aggressive youth, the court must limit the
6 department's scope of authority to the amount necessary to obtain
7 treatment and services for the child. The court may not order that the
8 child be removed from the home or expand the department's authority
9 unless the court finds that removing the child or expanding the
10 department's authority is necessary to treat the child or to provide
11 services.

12 NEW SECTION. Sec. 7. The secretary of the department of social
13 and health services is authorized to transfer surplus, unused treatment
14 funds from the civil commitment center operated under chapter 71.09 RCW
15 to the division of children and family services to provide treatment
16 services for sexually aggressive youth."

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20 On page 1, line 1 of the title, after "youth;" strike the remainder
21 of the title and insert "amending RCW 26.44.020, 74.13.075, 13.34.030,
22 and 13.34.130; adding a new section to chapter 26.44 RCW; adding a new
23 section to chapter 13.34 RCW; and creating a new section."

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