
ENGROSSED HOUSE BILL 1110

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By Representatives Vance, Leonard, Cooke, Sheldon, Basich, Foreman, Brough, Long, Karahalios, Miller, Brumsickle and Kremen

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1 AN ACT Relating to sexually aggressive youth; amending RCW
2 26.44.020, 74.13.075, 13.34.030, and 13.34.130; adding a new section to
3 chapter 26.44 RCW; adding a new section to chapter 13.34 RCW; and
4 creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

14 (3) "Practitioner of the healing arts" or "practitioner" means a
15 person licensed by this state to practice (~~podiatry~~) podiatric
16 medicine and surgery, optometry, chiropractic, nursing, dentistry,
17 osteopathy and surgery, or medicine and surgery or to provide other
18 health services. The term "practitioner" shall include a duly
19 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a

1 person who is being furnished Christian Science treatment by a duly
2 accredited Christian Science practitioner shall not be considered, for
3 that reason alone, a neglected person for the purposes of this chapter.

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

6 (5) "Department" means the state department of social and health
7 services.

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

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

13 (8) "Social service counselor" shall mean anyone engaged in a
14 professional capacity during the regular course of employment in
15 encouraging or promoting the health, welfare, support or education of
16 children, or providing social services to adults or families, including
17 mental health, drug and alcohol treatment, and domestic violence
18 programs, whether in an individual capacity, or as an employee or agent
19 of any public or private organization or institution.

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

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

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

32 (12) "Child abuse or neglect" shall mean the injury, sexual abuse,
33 sexual exploitation, or negligent treatment or maltreatment of a child
34 by any person under circumstances which indicate that the child's
35 health, welfare, and safety is harmed thereby. An abused child is a
36 child who has been subjected to child abuse or neglect as defined
37 herein: PROVIDED, That this subsection shall not be construed to
38 authorize interference with child-raising practices, including
39 reasonable parental discipline, which are not proved to be injurious to

1 the child's health, welfare, and safety: AND PROVIDED FURTHER, That
2 nothing in this section shall be used to prohibit the reasonable use of
3 corporal punishment as a means of discipline. No parent or guardian
4 shall be deemed abusive or neglectful solely by reason of the parent's
5 or child's blindness, deafness, developmental disability, or other
6 handicap.

7 (13) "Child protective services section" shall mean the child
8 protective services section of the department.

9 (14) "Adult dependent persons not able to provide for their own
10 protection through the criminal justice system" shall be defined as
11 those persons over the age of eighteen years who have been found
12 legally incompetent pursuant to chapter 11.88 RCW or found disabled to
13 such a degree pursuant to said chapter, that such protection is
14 indicated: PROVIDED, That no persons reporting injury, abuse, or
15 neglect to an adult dependent person as defined herein shall suffer
16 negative consequences if such a judicial determination of incompetency
17 or disability has not taken place and the person reporting believes in
18 good faith that the adult dependent person has been found legally
19 incompetent pursuant to chapter 11.88 RCW.

20 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
21 encouraging a child to engage in prostitution by any person; or (b)
22 allowing, permitting, encouraging, or engaging in the obscene or
23 pornographic photographing, filming, or depicting of a child for
24 commercial purposes as those acts are defined by state law by any
25 person.

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

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

32 (18) "Child protective services" means those services provided by
33 the department designed to protect children from child abuse and
34 neglect and safeguard the general welfare of such children and shall
35 include investigations of child abuse and neglect reports, including
36 reports regarding child care centers and family child care homes, and
37 the development, management, and provision of or referral to services
38 to ameliorate conditions which endanger the welfare of children, the
39 coordination of necessary programs and services relevant to the

1 prevention, intervention, and treatment of child abuse and neglect, and
2 services to children to ensure that each child has a permanent home.
3 In determining whether protective services should be provided, the
4 department shall not decline to provide such services solely because of
5 the child's unwillingness or developmental inability to describe the
6 nature and severity of the abuse or neglect.

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

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

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

16 (1) If a law enforcement agency receives a complaint that alleges
17 that a child under age twelve has committed a sex offense as defined in
18 RCW 9.94A.030, the agency shall investigate the complaint. If the
19 investigation reveals that probable cause exists to believe that the
20 youth may have committed a sex offense and the child is at least eight
21 years of age, the agency shall refer the case to the proper county
22 prosecuting attorney for appropriate action to determine whether the
23 child may be prosecuted or is a sexually aggressive youth. If the
24 child is less than eight years old, the law enforcement agency shall
25 refer the case to the department.

26 (2) If the prosecutor or a judge determines the child cannot be
27 prosecuted for the alleged sex offense because the child is incapable
28 of committing a crime as provided in RCW 9A.04.050 and the prosecutor
29 believes that probable cause exists to believe that the child engaged
30 in acts that would constitute a sex offense, the prosecutor shall refer
31 the child as a sexually aggressive youth to the department. The
32 prosecutor shall provide the department with an affidavit stating that
33 the prosecutor has determined that probable cause exists to believe
34 that the juvenile has committed acts that could be prosecuted as a sex
35 offense but the case is not being prosecuted because the juvenile is
36 incapable of committing a crime as provided in RCW 9A.04.050.

37 (3) The department shall investigate any referrals that allege that
38 a child is a sexually aggressive youth. The department may offer

1 appropriate available services and treatment to a sexually aggressive
2 youth and his or her parents or legal guardians as provided in RCW
3 74.13.075. If the parents refuse to accept or fail to obtain
4 appropriate treatment or services, the department may pursue a
5 dependency action as provided in chapter 13.34 RCW.

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

8 (1) For the purposes of funds appropriated for the treatment of
9 ~~((at risk juvenile sex offenders, "at risk juvenile sex offenders))~~
10 sexually aggressive youth, the term "sexually aggressive youth" means
11 those juveniles who:

12 (a) Are in the care and custody of the state ~~((who))~~ and:

13 ~~((a))~~ (i) Have been abused; and

14 ~~((b))~~ (ii) Have committed a sexually aggressive or other violent
15 act that is sexual in nature; or

16 ~~((c))~~ (b) Cannot be detained under the juvenile justice system
17 due to being under age twelve and incompetent to stand trial for acts
18 that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if
19 the juvenile was over twelve years of age, or competent to stand trial
20 if under twelve years of age.

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

25 (a) The age of the juvenile;

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

28 (c) The juvenile's past conduct;

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

30 (e) The cost of the treatment; and

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

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

35 For purposes of this chapter:

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

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

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

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

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

13 (d) Who has a developmental disability, as defined in RCW
14 71A.10.020 and whose parent, guardian, or legal custodian together with
15 the department determines that services appropriate to the child's
16 needs can not be provided in the home. However, (a), (b), and (c) of
17 this subsection may still be applied if other reasons for removal of
18 the child from the home exist; or

19 (e) Who is a "sexually aggressive youth," as defined in RCW
20 74.13.075(1)(b) and whose parent or guardian has failed to obtain or
21 refused to accept available appropriate treatment or services.

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

24 When the petition for dependency alleges that the child is a
25 sexually aggressive youth and the parent or guardian has failed to
26 obtain or has refused to accept available appropriate treatment, the
27 court may order that the child receive an evaluation to determine
28 whether the child needs treatment or other services. Prior to entry of
29 an order of dependency on the petition, the court must find by a
30 preponderance of the evidence at the fact-finding hearing held pursuant
31 to RCW 13.34.100 that the child has committed acts that could be
32 prosecuted as sex offenses as defined by RCW 9.94A.030, that the parent
33 or guardian has failed to obtain or has refused to accept available
34 appropriate treatment or services, and that treatment and services are
35 available. If the court orders the child receive an evaluation,
36 treatment, or services, the parent or legal guardian must pay for the
37 evaluation, treatment, and services based on the parent's or guardian's

1 ability to pay. The department shall develop a fair and equitable
2 payment schedule.

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

5 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now
6 or hereafter amended, it has been proven by a preponderance of the
7 evidence that the child is dependent within the meaning of RCW
8 13.34.030(2); after consideration of the predisposition report prepared
9 pursuant to RCW 13.34.110 and after a disposition hearing has been held
10 pursuant to RCW 13.34.110, the court shall enter an order of
11 disposition pursuant to this section.

12 (1) The court shall order one of the following dispositions of the
13 case:

14 (a) Order a disposition other than removal of the child from his or
15 her home, which shall provide a program designed to alleviate the
16 immediate danger to the child, to mitigate or cure any damage the child
17 has already suffered, and to aid the parents so that the child will not
18 be endangered in the future. In selecting a program, the court should
19 choose those services that least interfere with family autonomy,
20 provided that the services are adequate to protect the child.

21 (b) Order that the child be removed from his or her home and
22 ordered into the custody, control, and care of a relative or the
23 department of social and health services or a licensed child placing
24 agency for placement in a foster family home or group care facility
25 licensed pursuant to chapter 74.15 RCW or in a home not required to be
26 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
27 cause to believe that the safety or welfare of the child would be
28 jeopardized or that efforts to reunite the parent and child will be
29 hindered, such child shall be placed with a grandparent, brother,
30 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom
31 the child has a relationship and is comfortable, and who is willing and
32 available to care for the child. An order for out-of-home placement
33 may be made only if the court finds that reasonable efforts have been
34 made to prevent or eliminate the need for removal of the child from the
35 child's home and to make it possible for the child to return home,
36 specifying the services that have been provided to the child and the
37 child's parent, guardian, or legal custodian, and that:

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

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

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

8 (iv) The extent of the child's disability is such that the parent,
9 guardian, or legal custodian is unable to provide the necessary care
10 for the child and the parent, guardian, or legal custodian has
11 determined that the child would benefit from placement outside of the
12 home.

13 (2) If the court has ordered a child removed from his or her home
14 pursuant to subsection (1)(b) of this section, the court may order that
15 a petition seeking termination of the parent and child relationship be
16 filed if the court finds it is recommended by the supervising agency,
17 that it is in the best interests of the child and that it is not
18 reasonable to provide further services to reunify the family because
19 the existence of aggravated circumstances make it unlikely that
20 services will effectuate the return of the child to the child's parents
21 in the near future. In determining whether aggravated circumstances
22 exist, the court shall consider one or more of the following:

23 (a) Conviction of the parent of rape of the child in the first,
24 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
25 9A.44.079;

26 (b) Conviction of the parent of criminal mistreatment of the child
27 in the first or second degree as defined in RCW 9A.42.020 and
28 9A.42.030;

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

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

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

37 (f) Failure of the parent to complete available treatment ordered
38 under this chapter or the equivalent laws of another state, where such
39 failure has resulted in a prior termination of parental rights to

1 another child and the parent has failed to effect significant change in
2 the interim.

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

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

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

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

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

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

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

34 (c) If the court has ordered, pursuant to subsection (2) of this
35 section, that a termination petition be filed, a specific plan as to
36 where the child will be placed, what steps will be taken to achieve
37 permanency for the child, services to be offered or provided to the
38 child, and, if visitation would be in the best interests of the child,
39 a recommendation to the court regarding visitation between parent and

1 child pending a fact-finding hearing on the termination petition. The
2 agency shall not be required to develop a plan of services for the
3 parents or provide services to the parents.

4 (4) If there is insufficient information at the time of the
5 disposition hearing upon which to base a determination regarding the
6 suitability of a proposed placement with a relative, the child shall
7 remain in foster care and the court shall direct the supervising agency
8 to conduct necessary background investigations as provided in chapter
9 74.15 RCW and report the results of such investigation to the court
10 within thirty days. However, if such relative appears otherwise
11 suitable and competent to provide care and treatment, the criminal
12 history background check need not be completed before placement, but as
13 soon as possible after placement. Any placements with relatives,
14 pursuant to this section, shall be contingent upon cooperation by the
15 relative with the agency case plan and compliance with court orders
16 related to the care and supervision of the child including, but not
17 limited to, court orders regarding parent-child contacts and any other
18 conditions imposed by the court. Noncompliance with the case plan or
19 court order shall be grounds for removal of the child from the
20 relative's home, subject to review by the court.

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

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

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

1 (i) Whether reasonable services have been provided to or offered to
2 the parties to facilitate reunion, specifying the services provided or
3 offered;

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

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

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

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

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

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

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

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

22 (6) If the sole basis for finding that the child is dependent is
23 the parent's failure to obtain or refusal to accept treatment for a
24 child that is a sexually aggressive youth, the court must limit the
25 department's scope of authority to the amount necessary to obtain
26 treatment and services for the child. The court may not order that the
27 child be removed from the home or expand the department's authority
28 unless the court finds that removing the child or expanding the
29 department's authority is necessary to treat the child or to provide
30 services.

31 NEW SECTION. Sec. 7. The secretary of the department of social
32 and health services is authorized to transfer surplus, unused treatment
33 funds from the civil commitment center operated under chapter 71.09 RCW
34 to the division of children and family services to provide treatment
35 services for sexually aggressive youth.

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