
SUBSTITUTE HOUSE BILL 2556

State of Washington

55th Legislature

1998 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Cooke, Tokuda and O'Brien; by request of Department of Social and Health Services)

Read first time 02/05/98. Referred to Committee on .

1 AN ACT Relating to amendments concerning the child abuse prevention
2 and treatment act and the adoption and safe families act; amending RCW
3 13.34.020, 13.34.130, 13.34.180, 13.34.190, 74.15.130, and 26.44.100;
4 reenacting and amending RCW 13.34.145, 26.44.020, and 74.13.031; adding
5 a new section to chapter 26.44 RCW; and providing an effective date.

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

7 **Sec. 1.** RCW 13.34.020 and 1990 c 284 s 31 are each amended to read
8 as follows:

9 The legislature declares that the family unit is a fundamental
10 resource of American life which should be nurtured. Toward the
11 continuance of this principle, the legislature declares that the family
12 unit should remain intact unless a child's right to conditions of basic
13 nurture, health, or safety is jeopardized. When the rights of basic
14 nurture, physical and mental health, and safety of the child and the
15 legal rights of the parents are in conflict, the rights and safety of
16 the child should prevail. In making reasonable efforts under this
17 chapter, the child's health and safety shall be the paramount concern.
18 The right of a child to basic nurturing includes the right to a safe,

1 stable, and permanent home and a speedy resolution of any proceeding
2 under this chapter.

3 **Sec. 2.** RCW 13.34.130 and 1997 c 280 s 1 are each amended to read
4 as follows:

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

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

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

20 (b) Order that the child be removed from his or her home and
21 ordered into the custody, control, and care of a relative or the
22 department of social and health services or a licensed child placing
23 agency for placement in a foster family home or group care facility
24 licensed pursuant to chapter 74.15 RCW or in a home not required to be
25 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
26 cause to believe that the safety or welfare of the child would be
27 jeopardized or that efforts to reunite the parent and child will be
28 hindered, such child shall be placed with a person who is related to
29 the child as defined in RCW 74.15.020(4)(a) and with whom the child has
30 a relationship and is comfortable, and who is willing and available to
31 care for the child. Placement of the child with a relative under this
32 subsection shall be given preference by the court. An order for out-
33 of-home placement may be made only if the court finds that reasonable
34 efforts have been made to prevent or eliminate the need for removal of
35 the child from the child's home and to make it possible for the child
36 to return home, specifying the services that have been provided to the
37 child and the child's parent, guardian, or legal custodian, and that
38 preventive services have been offered or provided and have failed to

1 prevent the need for out-of-home placement, unless the health, safety,
2 and welfare of the child cannot be protected adequately in the home,
3 and that:

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

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

8 (iii) The court finds, by clear, cogent, and convincing evidence,
9 a manifest danger exists that the child will suffer serious abuse or
10 neglect if the child is not removed from the home and an order under
11 RCW 26.44.063 would not protect the child from danger; or

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

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

29 ~~((a))~~ (i) Conviction of the parent of rape of the child in the
30 first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076,
31 and 9A.44.079;

32 ~~((b))~~ (ii) Conviction of the parent of criminal mistreatment of
33 the child in the first or second degree as defined in RCW 9A.42.020 and
34 9A.42.030;

35 ~~((c))~~ (iii) Conviction of the parent of one of the following
36 assault crimes, when the child is the victim: Assault in the first or
37 second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of
38 a child in the first or second degree as defined in RCW 9A.36.120 or
39 9A.36.130;

1 ~~((d))~~ (iv) Conviction of the parent of murder, manslaughter, or
2 homicide by abuse of the child's other parent, sibling, or another
3 child;

4 ~~((e))~~ (v) Conviction of the parent of attempting, soliciting, or
5 conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of
6 this subsection;

7 (vi) A finding by a court that a parent is a sexually violent
8 predator as defined in RCW 71.09.020;

9 ~~((f))~~ (vii) Failure of the parent to complete available treatment
10 ordered under this chapter or the equivalent laws of another state,
11 where such failure has resulted in a prior termination of parental
12 rights to another child and the parent has failed to effect significant
13 change in the interim;

14 (viii) An infant under three years of age has been abandoned as
15 defined in RCW 13.34.030(4)(a).

16 (3) If reasonable efforts are not ordered under this subsection (3)
17 a permanency plan hearing shall be held within thirty days. Reasonable
18 efforts shall be made to place the child in a timely manner in
19 accordance with the permanency plan, and to complete whatever steps are
20 necessary to finalize the permanent placement of the child;

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

23 (a) A permanency plan of care that shall identify one of the
24 following outcomes as a primary goal and may identify additional
25 outcomes as alternative goals: Return of the child to the home of the
26 child's parent, guardian, or legal custodian; adoption; guardianship;
27 or long-term relative or foster care, until the child is age eighteen,
28 with a written agreement between the parties and the care provider; and
29 independent living, if appropriate and if the child is age sixteen or
30 older. Whenever a permanency plan identifies independent living as a
31 goal, the plan shall also specifically identify the services that will
32 be provided to assist the child to make a successful transition from
33 foster care to independent living. Before the court approves
34 independent living as a permanency plan of care, the court shall make
35 a finding that the provision of services to assist the child in making
36 a transition from foster care to independent living will allow the
37 child to manage his or her financial affairs and to manage his or her
38 personal, social, educational, and nonfinancial affairs. The
39 department shall not discharge a child to an independent living

1 situation before the child is eighteen years of age unless the child
2 becomes emancipated pursuant to chapter 13.64 RCW.

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

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

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

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

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

28 (c) If the court has ordered, pursuant to subsection (2) of this
29 section, that a termination petition be filed, a specific plan as to
30 where the child will be placed, what steps will be taken to achieve
31 permanency for the child, services to be offered or provided to the
32 child, and, if visitation would be in the best interests of the child,
33 a recommendation to the court regarding visitation between parent and
34 child pending a fact-finding hearing on the termination petition. The
35 agency shall not be required to develop a plan of services for the
36 parents or provide services to the parents.

37 ~~((+4))~~ (5) If the court determines that the continuation of
38 reasonable efforts to prevent or eliminate the need to remove the child
39 from his or her home or to safely return the child home is inconsistent

1 with the permanency plan of care for the child, reasonable efforts
2 shall be made to place the child in a timely manner in accordance with
3 the permanency plan of care and to complete whatever steps are
4 necessary to finalize the permanent placement of the child.

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

22 ((+5)) (7) Except for children whose cases are reviewed by a
23 citizen review board under chapter 13.70 RCW, the status of all
24 children found to be dependent shall be reviewed by the court at least
25 every six months from the beginning date of the placement episode or
26 the date dependency is established, whichever is first, at a hearing in
27 which it shall be determined whether court supervision should continue.
28 The review shall include findings regarding the agency and parental
29 completion of disposition plan requirements, and if necessary, revised
30 permanency time limits. The supervising agency shall provide a foster
31 parent, preadoptive parent, or relative with notice of and an
32 opportunity to be heard in a review hearing pertaining to the child,
33 but only if that person is currently providing care to that child at
34 the time of the hearing. This section shall not be construed to grant
35 party status to any person who has been provided an opportunity to be
36 heard.

37 (a) A child shall not be returned home at the review hearing unless
38 the court finds that a reason for removal as set forth in this section
39 no longer exists. The parents, guardian, or legal custodian shall

1 report to the court the efforts they have made to correct the
2 conditions which led to removal. If a child is returned, casework
3 supervision shall continue for a period of six months, at which time
4 there shall be a hearing on the need for continued intervention.

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

7 (i) Whether reasonable services have been provided to or offered to
8 the parties to facilitate reunion, specifying the services provided or
9 offered;

10 (ii) Whether the child has been placed in the least-restrictive
11 setting appropriate to the child's needs, including whether
12 consideration and preference has been given to placement with the
13 child's relatives;

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

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

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

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

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

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

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

29 **Sec. 3.** RCW 13.34.145 and 1995 c 311 s 20 and 1995 c 53 s 2 are
30 each reenacted and amended to read as follows:

31 (1) A permanency plan shall be developed no later than sixty days
32 from the time the supervising agency assumes responsibility for
33 providing services, including placing the child, or at the time of a
34 hearing under RCW 13.34.130, whichever occurs first. The permanency
35 planning process continues until a permanency planning goal is achieved
36 or dependency is dismissed. The planning process shall include
37 reasonable efforts to return the child to the parent's home.

1 (a) Whenever a child is placed in out-of-home care pursuant to RCW
2 13.34.130, the agency that has custody of the child shall provide the
3 court with a written permanency plan of care directed towards securing
4 a safe, stable, and permanent home for the child as soon as possible.
5 The plan shall identify one of the following outcomes as the primary
6 goal and may also identify additional outcomes as alternative goals:
7 Return of the child to the home of the child's parent, guardian, or
8 legal custodian; adoption; guardianship; or long-term relative or
9 foster care, until the child is age eighteen, with a written agreement
10 between the parties and the care provider; and independent living, if
11 appropriate and if the child is age sixteen or older and the provisions
12 of subsection (2) of this section are met.

13 (b) The identified outcomes and goals of the permanency plan may
14 change over time based upon the circumstances of the particular case.

15 (c) Permanency planning goals should be achieved at the earliest
16 possible date, preferably before the child has been in out-of-home care
17 for fifteen months. In cases where parental rights have been
18 terminated, the child is legally free for adoption, and adoption has
19 been identified as the primary permanency planning goal, it shall be a
20 goal to complete the adoption within six months following entry of the
21 termination order.

22 (2) Whenever a permanency plan identifies independent living as a
23 goal, the plan shall also specifically identify the services that will
24 be provided to assist the child to make a successful transition from
25 foster care to independent living. Before the court approves
26 independent living as a permanency plan of care, the court shall make
27 a finding that the provision of services to assist the child in making
28 a transition from foster care to independent living will allow the
29 child to manage his or her financial affairs and to manage his or her
30 personal, social, educational, and nonfinancial affairs. The
31 department shall not discharge a child to an independent living
32 situation before the child is eighteen years of age unless the child
33 becomes emancipated pursuant to chapter 13.64 RCW.

34 (3)~~((a) For children ten and under,~~) A permanency planning
35 hearing shall be held in all cases where the child has remained in out-
36 of-home care for at least nine months and an adoption decree or
37 guardianship order has not previously been entered. The hearing shall
38 take place no later than twelve months following commencement of the
39 current placement episode.

1 (~~(b) For children over ten, a permanency planning hearing shall be~~
2 ~~held in all cases where the child has remained in out-of-home care for~~
3 ~~at least fifteen months and an adoption decree or guardianship order~~
4 ~~has not previously been entered. The hearing shall take place no later~~
5 ~~than eighteen months following commencement of the current placement~~
6 ~~episode.))~~)

7 (4) Whenever a child is removed from the home of a dependency
8 guardian or long-term relative or foster care provider, and the child
9 is not returned to the home of the parent, guardian, or legal custodian
10 but is placed in out-of-home care, a permanency planning hearing shall
11 take place no later than twelve (~~or eighteen~~) months, as provided in
12 subsection (3) of this section, following the date of removal unless,
13 prior to the hearing, the child returns to the home of the dependency
14 guardian or long-term care provider, the child is placed in the home of
15 the parent, guardian, or legal custodian, an adoption decree or
16 guardianship order is entered, or the dependency is dismissed.

17 (5) No later than ten working days prior to the permanency planning
18 hearing, the agency having custody of the child shall submit a written
19 permanency plan to the court and shall mail a copy of the plan to all
20 parties and their legal counsel, if any.

21 (6) At the permanency planning hearing, the court shall enter
22 findings as required by RCW 13.34.130(~~(+5)~~) (7) and shall review the
23 permanency plan prepared by the agency. If the child has resided in
24 the home of a foster parent or relative for more than six months prior
25 to the permanency planning hearing, the court shall also enter a
26 finding regarding whether the foster parent or relative was informed of
27 the hearing as required in RCW 74.13.280 and 13.34.130(7). If a goal
28 of long-term foster or relative care has been achieved prior to the
29 permanency planning hearing, the court shall review the child's status
30 to determine whether the placement and the plan for the child's care
31 remain appropriate. In cases where the primary permanency planning
32 goal has not yet been achieved, the court shall inquire regarding the
33 reasons why the primary goal has not been achieved and determine what
34 needs to be done to make it possible to achieve the primary goal. In
35 all cases, the court shall:

36 (a)(i) Order the permanency plan prepared by the agency to be
37 implemented; or

38 (ii) Modify the permanency plan, and order implementation of the
39 modified plan; and

1 (b)(i) Order the child returned home only if the court finds that
2 a reason for removal as set forth in RCW 13.34.130 no longer exists; or

3 (ii) Order the child to remain in out-of-home care for a limited
4 specified time period while efforts are made to implement the
5 permanency plan.

6 (7) If the court orders the child returned home, casework
7 supervision shall continue for at least six months, at which time a
8 review hearing shall be held pursuant to RCW 13.34.130(~~(+5)~~) (7), and
9 the court shall determine the need for continued intervention.

10 (8) Following the first permanency planning hearing, the court
11 shall hold a further permanency planning hearing in accordance with
12 this section at least once every twelve months until a permanency
13 planning goal is achieved or the dependency is dismissed, whichever
14 occurs first.

15 (9) Except as otherwise provided in RCW 13.34.235, the status of
16 all dependent children shall continue to be reviewed by the court at
17 least once every six months, in accordance with RCW 13.34.130(~~(+5)~~)
18 (7), until the dependency is dismissed. Prior to the second permanency
19 planning hearing, the agency that has custody of the child shall
20 consider whether to file a petition for termination of parental rights.

21 (10) Nothing in this chapter may be construed to limit the ability
22 of the agency that has custody of the child to file a petition for
23 termination of parental rights or a guardianship petition at any time
24 following the establishment of dependency. Upon the filing of such a
25 petition, a fact-finding hearing shall be scheduled and held in
26 accordance with this chapter unless the agency requests dismissal of
27 the petition prior to the hearing or unless the parties enter an agreed
28 order terminating parental rights, establishing guardianship, or
29 otherwise resolving the matter.

30 (11) The approval of a permanency plan that does not contemplate
31 return of the child to the parent does not relieve the supervising
32 agency of its obligation to provide reasonable services, under this
33 chapter, intended to effectuate the return of the child to the parent,
34 including but not limited to, visitation rights.

35 (12) Nothing in this chapter may be construed to limit the
36 procedural due process rights of any party in a termination or
37 guardianship proceeding filed under this chapter.

1 **Sec. 4.** RCW 13.34.180 and 1997 c 280 s 2 are each amended to read
2 as follows:

3 A petition seeking termination of a parent and child relationship
4 may be filed in juvenile court by any party to the dependency
5 proceedings concerning that child. Such petition shall conform to the
6 requirements of RCW 13.34.040, shall be served upon the parties as
7 provided in RCW 13.34.070(8), and shall allege:

8 (1) That the child has been found to be a dependent child under RCW
9 13.34.030(4); and

10 (2) That the court has entered a dispositional order pursuant to
11 RCW 13.34.130; and

12 (3) That the child has been removed or will, at the time of the
13 hearing, have been removed from the custody of the parent for a period
14 of at least six months pursuant to a finding of dependency under RCW
15 13.34.030(4); and

16 (4) That the services ordered under RCW 13.34.130 have been clearly
17 offered or provided and all necessary services, reasonably available,
18 capable of correcting the parental deficiencies within the foreseeable
19 future have been clearly offered or provided; and

20 (5) That there is little likelihood that conditions will be
21 remedied so that the child can be returned to the parent in the near
22 future. A parent's failure to substantially improve parental
23 deficiencies within twelve months following entry of the dispositional
24 order shall give rise to a rebuttable presumption that there is little
25 likelihood that conditions will be remedied so that the child can be
26 returned to the parent in the near future. The presumption shall not
27 arise unless the petitioner makes a showing that all necessary services
28 reasonably capable of correcting the parental deficiencies within the
29 foreseeable future have been clearly offered or provided. In
30 determining whether the conditions will be remedied the court may
31 consider, but is not limited to, the following factors:

32 (a) Use of intoxicating or controlled substances so as to render
33 the parent incapable of providing proper care for the child for
34 extended periods of time and documented unwillingness of the parent to
35 receive and complete treatment or documented multiple failed treatment
36 attempts; or

37 (b) Psychological incapacity or mental deficiency of the parent
38 that is so severe and chronic as to render the parent incapable of
39 providing proper care for the child for extended periods of time, and

1 documented unwillingness of the parent to receive and complete
2 treatment or documentation that there is no treatment that can render
3 the parent capable of providing proper care for the child in the near
4 future; and

5 (6) That continuation of the parent and child relationship clearly
6 diminishes the child's prospects for early integration into a stable
7 and permanent home; or

8 (7) In lieu of the allegations in subsections (1) through (6) of
9 this section, the petition may allege that the child was found under
10 such circumstances that the whereabouts of the child's parent are
11 unknown and no person has acknowledged paternity or maternity and
12 requested custody of the child within two months after the child was
13 found; or

14 (8) In lieu of the allegations in subsections (2) through (6) of
15 this section, the petition may allege that the parent has been found by
16 a court of competent jurisdiction:

17 (a) To have committed, against another child of such parent, murder
18 in the first degree, murder in the second degree, or homicide by abuse
19 as defined in chapter 9A.32 RCW;

20 (b) To have committed, against another child of such parent,
21 manslaughter in the first degree or manslaughter in the second degree,
22 as defined in chapter 9A.32 RCW;

23 (c) To have attempted, conspired, or solicited to commit one or
24 more of the crimes listed in (a) or (b) of this subsection; or

25 (d) To have committed assault in the first or second degree, as
26 defined in chapter 9A.36 RCW, against the surviving child or another
27 child of the parent.

28 ~~((A parent's failure to substantially improve parental deficiencies~~
29 ~~within twelve months following entry of the dispositional order shall~~
30 ~~give rise to a rebuttable presumption that there is little likelihood~~
31 ~~that conditions will be remedied so that the child can be returned to~~
32 ~~the parent in the near future. The presumption shall not arise unless~~
33 ~~the petitioner makes a showing that all necessary services reasonably~~
34 ~~capable of correcting the parental deficiencies within the foreseeable~~
35 ~~future have been offered or provided.))~~

36 Notice of rights shall be served upon the parent, guardian, or
37 legal custodian with the petition and shall be in substantially the
38 following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure) .

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number) ."

Sec. 5. RCW 13.34.190 and 1993 c 412 s 3 are each amended to read as follows:

After hearings pursuant to RCW 13.34.110, the court may enter an order terminating all parental rights to a child if the court finds that:

(1)(a) The allegations contained in the petition as provided in RCW 13.34.180 (1) through (6) are established by clear, cogent, and convincing evidence; or

((+2)) (b) RCW 13.34.180 (3) and (4) may be waived because the allegations under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a reasonable doubt; or

((+3)) (c) The allegation under RCW 13.34.180(7) is established beyond a reasonable doubt. In determining whether RCW 13.34.180 (5) and (6) are established beyond a reasonable doubt, the court shall

1 consider whether one or more of the aggravated circumstances listed in
2 RCW 13.34.130(2) exist; or

3 (d) The allegation under RCW 13.34.180(8) is established beyond a
4 reasonable doubt; and

5 ~~((4))~~ (2) Such an order is in the best interests of the child.

6 **Sec. 6.** RCW 74.15.130 and 1995 c 302 s 5 are each amended to read
7 as follows:

8 (1) An agency may be denied a license, or any license issued
9 pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended,
10 revoked, modified, or not renewed by the secretary upon proof (a) that
11 the agency has failed or refused to comply with the provisions of
12 chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated
13 pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or
14 (b) that the conditions required for the issuance of a license under
15 chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect
16 to such licenses. RCW 43.20A.205 governs notice of a license denial,
17 revocation, suspension, or modification and provides the right to an
18 adjudicative proceeding.

19 (2) In any adjudicative proceeding regarding the denial,
20 modification, suspension, or revocation of a foster family home
21 license, the department's decision shall be upheld if there is
22 reasonable cause to believe that:

23 (a) The applicant or licensee lacks the character, suitability, or
24 competence to care for children placed in out-of-home care, however, no
25 unfounded report of child abuse or neglect may be used to deny
26 employment or a license;

27 (b) The applicant or licensee has failed or refused to comply with
28 any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements
29 adopted pursuant to such provisions; or

30 (c) The conditions required for issuance of a license under chapter
31 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such
32 licenses.

33 (3) In any adjudicative proceeding regarding the denial,
34 modification, suspension, or revocation of any license under this
35 chapter, other than a foster family home license, the department's
36 decision shall be upheld if it is supported by a preponderance of the
37 evidence.

1 (4) The department may assess civil monetary penalties upon proof
2 that an agency has failed or refused to comply with the rules adopted
3 under the provisions of this chapter and RCW 74.13.031 or that an
4 agency subject to licensing under this chapter and RCW 74.13.031 is
5 operating without a license except that civil monetary penalties shall
6 not be levied against a licensed foster home. Monetary penalties
7 levied against unlicensed agencies that submit an application for
8 licensure within thirty days of notification and subsequently become
9 licensed will be forgiven. These penalties may be assessed in addition
10 to or in lieu of other disciplinary actions. Civil monetary penalties,
11 if imposed, may be assessed and collected, with interest, for each day
12 an agency is or was out of compliance. Civil monetary penalties shall
13 not exceed seventy-five dollars per violation for a family day-care
14 home and two hundred fifty dollars per violation for group homes, child
15 day-care centers, and child-placing agencies. Each day upon which the
16 same or substantially similar action occurs is a separate violation
17 subject to the assessment of a separate penalty. The department shall
18 provide a notification period before a monetary penalty is effective
19 and may forgive the penalty levied if the agency comes into compliance
20 during this period. The department may suspend, revoke, or not renew
21 a license for failure to pay a civil monetary penalty it has assessed
22 pursuant to this chapter within ten days after such assessment becomes
23 final. Chapter 43.20A RCW governs notice of a civil monetary penalty
24 and provides the right of an adjudicative proceeding. The
25 preponderance of evidence standard shall apply in adjudicative
26 proceedings related to assessment of civil monetary penalties.

27 **Sec. 7.** RCW 26.44.020 and 1997 c 386 s 45, 1997 c 386 s 24, 1997
28 c 282 s 4, and 1997 c 132 s 2 are each reenacted and amended to read as
29 follows:

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

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

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

36 (3) "Practitioner of the healing arts" or "practitioner" means a
37 person licensed by this state to practice podiatric medicine and
38 surgery, optometry, chiropractic, nursing, dentistry, osteopathic

1 medicine and surgery, or medicine and surgery or to provide other
2 health services. The term "practitioner" shall include a duly
3 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
4 person who is being furnished Christian Science treatment by a duly
5 accredited Christian Science practitioner shall not be considered, for
6 that reason alone, a neglected person for the purposes of this chapter.

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

9 (5) "Department" means the state department of social and health
10 services.

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

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

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

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

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

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

35 (12) "Abuse or neglect" shall mean the injury, sexual abuse, sexual
36 exploitation, negligent treatment, or maltreatment of a child, adult
37 dependent, or developmentally disabled person by any person under
38 circumstances which indicate that the child's or adult's health,
39 welfare, and safety is harmed, excluding conduct permitted under RCW

1 9A.16.100. An abused child is a child who has been subjected to child
2 abuse or neglect as defined herein.

3 (13) "Child protective services section" shall mean the child
4 protective services section of the department.

5 (14) "Adult dependent persons" shall be defined as those persons
6 over the age of eighteen years who have been found to be legally
7 incompetent or disabled pursuant to chapter 11.88 RCW.

8 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
9 encouraging a child to engage in prostitution by any person; or (b)
10 allowing, permitting, encouraging, or engaging in the obscene or
11 pornographic photographing, filming, or depicting of a child by any
12 person.

13 (16) "Negligent treatment or maltreatment" means an act or omission
14 which evidences a serious disregard of consequences of such magnitude
15 as to constitute a clear and present danger to the child's health,
16 welfare, and safety. The fact that siblings share a bedroom is not, in
17 and of itself, "negligent treatment or maltreatment."

18 (17) "Developmentally disabled person" means a person who has a
19 disability defined in RCW 71A.10.020.

20 (18) "Child protective services" means those services provided by
21 the department designed to protect children from child abuse and
22 neglect and safeguard such children from future abuse and neglect, and
23 conduct investigations of child abuse and neglect reports.
24 Investigations may be conducted regardless of the location of the
25 alleged abuse or neglect. Child protective services includes referral
26 to services to ameliorate conditions which endanger the welfare of
27 children, the coordination of necessary programs and services relevant
28 to the prevention, intervention, and treatment of child abuse and
29 neglect, and services to children to ensure that each child has a
30 permanent home. In determining whether protective services should be
31 provided, the department shall not decline to provide such services
32 solely because of the child's unwillingness or developmental inability
33 to describe the nature and severity of the abuse or neglect.

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

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

3 (21) "Unfounded" means available ((evidence)) information indicates
4 that, more likely than not, child abuse or neglect did not occur.

5 **Sec. 8.** RCW 26.44.100 and 1997 c 282 s 2 are each amended to read
6 as follows:

7 (1) The legislature finds parents and children often are not aware
8 of their due process rights when agencies are investigating allegations
9 of child abuse and neglect. The legislature reaffirms that all
10 citizens, including parents, shall be afforded due process, that
11 protection of children remains the priority of the legislature, and
12 that this protection includes protecting the family unit from
13 unnecessary disruption. To facilitate this goal, the legislature
14 wishes to ensure that parents and children be advised in writing and
15 orally, if feasible, of their basic rights and other specific
16 information as set forth in this chapter, provided that nothing
17 contained in this chapter shall cause any delay in protective custody
18 action.

19 (2) The department shall notify the alleged perpetrator of the
20 allegations of child abuse and neglect at the earliest possible point
21 in the investigation that will not jeopardize the safety and protection
22 of the child or the investigation process.

23 Whenever the department completes an investigation of a child abuse
24 or neglect report under chapter 26.44 RCW, the department shall notify
25 the alleged perpetrator of the report and the department's
26 investigative findings. The notice shall also advise the alleged
27 perpetrator that:

28 (a) A written response to the report may be provided to the
29 department and that such response will be filed in the record following
30 receipt by the department;

31 (b) Information in the department's record may be considered in
32 subsequent investigations or proceedings related to child protection or
33 child custody;

34 (c) ~~((There is currently information in the department's record
35 that may))~~ Founded reports of child abuse and neglect may be considered
36 in determining ~~((that))~~ whether the person is disqualified from being
37 licensed to provide child care, employed by a licensed child care
38 agency, or authorized by the department to care for children; and

1 (d) (~~(A person who has demonstrated a good faith desire to work in~~
2 ~~a licensed agency may request an informal meeting with the department~~
3 ~~to have an opportunity to discuss and contest the information currently~~
4 ~~in the record.)) An alleged perpetrator named in a founded report of
5 child abuse or neglect has the right to seek review of the finding as
6 provided in this chapter.~~

7 (3) The notification required by this section shall be made by
8 (~~regular~~) certified mail, return receipt requested, to the person's
9 last known address.

10 (4) The duty of notification created by this section is subject to
11 the ability of the department to ascertain the location of the person
12 to be notified. The department shall exercise reasonable, good-faith
13 efforts to ascertain the location of persons entitled to notification
14 under this section.

15 NEW SECTION. Sec. 9. A new section is added to chapter 26.44 RCW
16 to read as follows:

17 (1) A person who is named as an alleged perpetrator after October
18 1, 1998, in a founded report of child abuse or neglect has the right to
19 seek review and amendment of the finding as provided in this section.

20 (2) Within twenty calendar days after receiving written notice from
21 the department under RCW 26.44.100 that a person is named as an alleged
22 perpetrator in a founded report of child abuse or neglect, he or she
23 may request that the department review the finding. The request must
24 be made in writing. If a request for review is not made as provided in
25 this subsection, the alleged perpetrator may not further challenge the
26 finding and shall have no right to agency review or to an adjudicative
27 hearing or judicial review of the finding.

28 (3) Upon receipt of a written request for review, the department
29 shall review and, if appropriate, may amend the finding. Management
30 level staff within the children's administration designated by the
31 secretary shall be responsible for the review. The review must be
32 conducted in accordance with procedures the department establishes by
33 rule. Upon completion of the review, the department shall notify the
34 alleged perpetrator in writing of the agency's determination. The
35 notification must be sent by certified mail, return receipt requested,
36 to the person's last known address.

37 (4) If, following agency review, the report remains founded, the
38 person named as the alleged perpetrator in the report may request an

1 adjudicative hearing to contest the finding. The adjudicative
2 proceeding is governed by chapter 34.05 RCW and this section. The
3 request for an adjudicative proceeding must be filed within thirty
4 calendar days after receiving notice of the agency review
5 determination. If a request for an adjudicative proceeding is not made
6 as provided in this subsection, the alleged perpetrator may not further
7 challenge the finding and shall have no right to agency review or to an
8 adjudicative hearing or judicial review of the finding.

9 (5) Reviews and hearings conducted under this section are
10 confidential and shall not be open to the public. Information about
11 reports, reviews, and hearings may be disclosed only in accordance with
12 federal and state laws pertaining to child welfare records and child
13 protective services reports.

14 (6) The department may adopt rules to implement this section.

15 **Sec. 10.** RCW 74.13.031 and 1997 c 386 s 32 and 1997 c 272 s 1 are
16 each reenacted and amended to read as follows:

17 The department shall have the duty to provide child welfare
18 services and shall:

19 (1) Develop, administer, supervise, and monitor a coordinated and
20 comprehensive plan that establishes, aids, and strengthens services for
21 the protection and care of homeless, runaway, dependent, or neglected
22 children.

23 (2) Within available resources, recruit an adequate number of
24 prospective adoptive and foster homes, both regular and specialized,
25 i.e. homes for children of ethnic minority, including Indian homes for
26 Indian children, sibling groups, handicapped and emotionally disturbed,
27 teens, pregnant and parenting teens, and annually report to the
28 governor and the legislature concerning the department's success in:
29 (a) Meeting the need for adoptive and foster home placements; (b)
30 reducing the foster parent turnover rate; (c) completing home studies
31 for legally free children; and (d) implementing and operating the
32 passport program required by RCW 74.13.285. The report shall include
33 a section entitled "Foster Home Turn-Over, Causes and Recommendations."

34 (3) Investigate complaints of (~~alleged neglect, abuse, or~~
35 ~~abandonment of children~~) any recent act or failure to act on the part
36 of a parent or caretaker that results in death, serious physical or
37 emotional harm, or sexual abuse or exploitation, or that presents an
38 imminent risk of serious harm, and on the basis of the findings of such

1 investigation, offer child welfare services in relation to the problem
2 to such parents, legal custodians, or persons serving in loco parentis,
3 and/or bring the situation to the attention of an appropriate court, or
4 another community agency: PROVIDED, That an investigation is not
5 required of nonaccidental injuries which are clearly not the result of
6 a lack of care or supervision by the child's parents, legal custodians,
7 or persons serving in loco parentis. If the investigation reveals that
8 a crime against a child may have been committed, the department shall
9 notify the appropriate law enforcement agency.

10 (4) Offer, on a voluntary basis, family reconciliation services to
11 families who are in conflict.

12 (5) Monitor out-of-home placements, on a timely and routine basis,
13 to assure the safety, well-being, and quality of care being provided is
14 within the scope of the intent of the legislature as defined in RCW
15 74.13.010 and 74.15.010, and annually submit a report measuring the
16 extent to which the department achieved the specified goals to the
17 governor and the legislature.

18 (6) Have authority to accept custody of children from parents and
19 to accept custody of children from juvenile courts, where authorized to
20 do so under law, to provide child welfare services including placement
21 for adoption, and to provide for the physical care of such children and
22 make payment of maintenance costs if needed. Except where required by
23 Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency
24 which receives children for adoption from the department shall
25 discriminate on the basis of race, creed, or color when considering
26 applications in their placement for adoption.

27 (7) Have authority to provide temporary shelter to children who
28 have run away from home and who are admitted to crisis residential
29 centers.

30 (8) Have authority to purchase care for children; and shall follow
31 in general the policy of using properly approved private agency
32 services for the actual care and supervision of such children insofar
33 as they are available, paying for care of such children as are accepted
34 by the department as eligible for support at reasonable rates
35 established by the department.

36 (9) Establish a children's services advisory committee which shall
37 assist the secretary in the development of a partnership plan for
38 utilizing resources of the public and private sectors, and advise on
39 all matters pertaining to child welfare, licensing of child care

1 agencies, adoption, and services related thereto. At least one member
2 shall represent the adoption community.

3 (10) Have authority to provide continued foster care or group care
4 for individuals from eighteen through twenty years of age to enable
5 them to complete their high school or vocational school program.

6 (11) Have authority within funds appropriated for foster care
7 services to purchase care for Indian children who are in the custody of
8 a federally recognized Indian tribe or tribally licensed child-placing
9 agency pursuant to parental consent, tribal court order, or state
10 juvenile court order; and the purchase of such care shall be subject to
11 the same eligibility standards and rates of support applicable to other
12 children for whom the department purchases care.

13 Notwithstanding any other provision of RCW 13.32A.170 through
14 13.32A.200 and 74.13.032 through 74.13.036, or of this section all
15 services to be provided by the department of social and health services
16 under subsections (4), (6), and (7) of this section, subject to the
17 limitations of these subsections, may be provided by any program
18 offering such services funded pursuant to Titles II and III of the
19 federal juvenile justice and delinquency prevention act of 1974.

20 NEW SECTION. **Sec. 11.** Section 9 of this act takes effect October
21 1, 1998.

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