
ENGROSSED SUBSTITUTE HOUSE BILL 1407

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Lambert, Benson, Dickerson, Sheahan, Tokuda, Hurst, G. Chandler, Mulliken, Boldt, Koster, Schindler, Ogden, Dunn and Kessler)

Read first time 03/02/1999.

1 AN ACT Relating to adoption; amending RCW 26.33.170; reenacting and
2 amending RCW 13.34.130; and adding a new section to chapter 13.34 RCW.

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

4 **Sec. 1.** RCW 26.33.170 and 1988 c 203 s 1 are each amended to read
5 as follows:

6 (1) An agency's, the department's, or a legal guardian's consent to
7 adoption may be dispensed with if the court determines by clear, cogent
8 and convincing evidence that the proposed adoption is in the best
9 interests of the adoptee.

10 (2) The consent to adoption of an alleged father, a birth parent,
11 or a parent may be dispensed with if the court finds that the proposed
12 adoption is in the best interests of the adoptee and:

13 (a) The alleged father, birth parent, or parent has been found
14 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,
15 where the adoptee was the victim of the rape or incest; or

16 (b) The alleged father, birth parent, or parent has been found
17 guilty of rape under chapter 9A.44 RCW or incest under RCW 9A.64.020,
18 where the other parent of the adoptee was the victim of the rape or
19 incest and the adoptee was conceived as a result of the rape or incest.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 13.34 RCW
2 to read as follows:

3 In those cases where the birth parents have indicated their
4 intention to make a voluntary adoption plan for the child and have
5 agreed to the termination of their parental rights, the department
6 shall follow the wishes of the birth parent or parents regarding the
7 proposed adoptive placement of the child, if the court determines that
8 the adoption is in the best interest of the child, and the prospective
9 adoptive parents chosen by the birth parents are properly qualified to
10 adopt in compliance with the standards in this chapter and chapter
11 26.33 RCW. This section shall not apply if a petition seeking
12 termination of a parent and child relationship has been filed against
13 the birth parents under this chapter.

14 **Sec. 3.** RCW 13.34.130 and 1998 c 314 s 2 and 1998 c 130 s 2 are
15 each reenacted and amended to read as follows:

16 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
17 been proven by a preponderance of the evidence that the child is
18 dependent within the meaning of RCW 13.34.030; after consideration of
19 the predisposition report prepared pursuant to RCW 13.34.110 and after
20 a disposition hearing has been held pursuant to RCW 13.34.110, the
21 court shall enter an order of disposition pursuant to this section.

22 (1) The court shall order one of the following dispositions of the
23 case:

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

31 (b) Order that the child be removed from his or her home and
32 ordered into the custody, control, and care of a relative or the
33 department of social and health services or a licensed child placing
34 agency for placement in a foster family home or group care facility
35 licensed pursuant to chapter 74.15 RCW or in a home not required to be
36 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
37 cause to believe that the safety or welfare of the child would be
38 jeopardized or that efforts to reunite the parent and child will be

1 hindered, such child shall be placed with a person who is related to
2 the child as defined in RCW 74.15.020(~~((4)(a))~~) (2)(a) and with whom
3 the child has a relationship and is comfortable, and who is willing and
4 available to care for the child. Placement of the child with a
5 relative under this subsection shall be given preference by the court.
6 An order for out-of-home placement may be made only if the court finds
7 that reasonable efforts have been made to prevent or eliminate the need
8 for removal of the child from the child's home and to make it possible
9 for the child to return home, specifying the services that have been
10 provided to the child and the child's parent, guardian, or legal
11 custodian, and that preventive services have been offered or provided
12 and have failed to prevent the need for out-of-home placement, unless
13 the health, safety, and welfare of the child cannot be protected
14 adequately in the home, and that:

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

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

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

23 (iv) The extent of the child's disability is such that the parent,
24 guardian, or legal custodian is unable to provide the necessary care
25 for the child and the parent, guardian, or legal custodian has
26 determined that the child would benefit from placement outside of the
27 home.

28 (2) If the court has ordered a child removed from his or her home
29 pursuant to subsection (1)(b) of this section, the court may order that
30 a petition seeking termination of the parent and child relationship be
31 filed if the court finds: (a) Termination is recommended by the
32 supervising agency; (b) termination is in the best interests of the
33 child; and (c) that because of the existence of aggravated
34 circumstances, reasonable efforts to unify the family are not required.
35 Notwithstanding the existence of aggravated circumstances, reasonable
36 efforts may be required if the court or department determines it is in
37 the best interest of the child. In determining whether aggravated
38 circumstances exist, the court shall consider one or more of the
39 following:

1 (i) Conviction of the parent of rape of the child in the first,
2 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
3 9A.44.079;

4 (ii) Conviction of the parent of criminal mistreatment of the child
5 in the first or second degree as defined in RCW 9A.42.020 and
6 9A.42.030;

7 (iii) Conviction of the parent of one of the following assault
8 crimes, when the child is the victim: Assault in the first or second
9 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child
10 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

11 (iv) Conviction of the parent of murder, manslaughter, or homicide
12 by abuse of the child's other parent, sibling, or another child;

13 (v) Conviction of the parent of attempting, soliciting, or
14 conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of
15 this subsection;

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

18 (vii) Failure of the parent to complete available treatment ordered
19 under this chapter or the equivalent laws of another state, where such
20 failure has resulted in a prior termination of parental rights to
21 another child and the parent has failed to effect significant change in
22 the interim. In the case of a parent of an Indian child, as defined in
23 the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. (~~{Sec.}~~) Sec.
24 1903), the court shall also consider tribal efforts to assist the
25 parent in completing treatment and make it possible for the child to
26 return home;

27 (viii) An infant under three years of age has been abandoned as
28 defined in RCW 13.34.030(4)(a);

29 (ix) The mother has given birth to three or more drug-affected
30 infants, resulting in the department filing a petition under section 23
31 of this act;

32 (x) Conviction of the parent of a sex offense under chapter 9A.44
33 RCW or incest under RCW 9A.64.020 when the child is born of the
34 offense.

35 (3) If reasonable efforts are not ordered under subsection (2) of
36 this section a permanency (~~{plan-planning}~~) planning hearing shall be
37 held within thirty days. Reasonable efforts shall be made to place the
38 child in a timely manner in accordance with the permanency plan, and to

1 complete whatever steps are necessary to finalize the permanent
2 placement of the child.

3 (4) 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 permanency plan of care that shall identify one of the
6 following outcomes as a primary goal and may identify additional
7 outcomes as alternative goals: Return of the child to the home of the
8 child's parent, guardian, or legal custodian; adoption; guardianship;
9 permanent legal custody; or long-term relative or foster care, until
10 the child is age eighteen, with a written agreement between the parties
11 and the care provider; and independent living, if appropriate and if
12 the child is age sixteen or older. Whenever a permanency plan
13 identifies independent living as a goal, the plan shall also
14 specifically identify the services that will be provided to assist the
15 child to make a successful transition from foster care to independent
16 living. Before the court approves independent living as a permanency
17 plan of care, the court shall make a finding that the provision of
18 services to assist the child in making a transition from foster care to
19 independent living will allow the child to manage his or her financial
20 affairs and to manage his or her personal, social, educational, and
21 nonfinancial affairs. The department shall not discharge a child to an
22 independent living situation before the child is eighteen years of age
23 unless the child becomes emancipated pursuant to chapter 13.64 RCW.

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

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

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

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

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

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

19 (5) If the court determines that the continuation of reasonable
20 efforts to prevent or eliminate the need to remove the child from his
21 or her home or to safely return the child home should not be part of
22 the permanency plan of care for the child, reasonable efforts shall be
23 made to place the child in a timely manner and to complete whatever
24 steps are necessary to finalize the permanent placement of the child.

25 (6) 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 (7) 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. The supervising agency shall provide a foster
12 parent, preadoptive parent, or relative with notice of, and their right
13 to an opportunity to be heard in, a review hearing pertaining to the
14 child, but only if that person is currently providing care to that
15 child at the time of the hearing. This section shall not be construed
16 to grant party status to any person who has been provided an
17 opportunity to be heard.

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

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

27 (i) Whether reasonable services have been provided to or offered to
28 the parties to facilitate reunion, specifying the services provided or
29 offered;

30 (ii) Whether the child has been placed in the least-restrictive
31 setting appropriate to the child's needs, including whether
32 consideration and preference has been given to placement with the
33 child's relatives;

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

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

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

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

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

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

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

10 NEW SECTION. **Sec. 4.** If any provision of this act or its
11 application to any person or circumstance is held invalid, the
12 remainder of the act or the application of the provision to other
13 persons or circumstances is not affected.

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