

ESSB 5922 - H AMD 591

By Representative Dickerson

ADOPTED 04/21/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 26.44.100 and 1998 c 314 s 8 are each amended to read
4 as follows:

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

17 (2) The department shall notify the ~~((alleged perpetrator of the))~~
18 parent, guardian, or legal custodian of a child of any allegations of
19 child abuse ~~((and))~~ or neglect ~~((at the earliest possible point in the~~
20 ~~investigation that will not jeopardize the safety and protection of the~~
21 ~~child or the investigation process))~~ made against such person at the
22 initial point of contact with such person, in a manner consistent with
23 the laws maintaining the confidentiality of the persons making the
24 complaints or allegations. Investigations of child abuse and neglect
25 should be conducted in a manner that will not jeopardize the safety or
26 protection of the child or the integrity of the investigation process.

27 Whenever the department completes an investigation of a child abuse
28 or neglect report under chapter 26.44 RCW, the department shall notify
29 the ~~((alleged perpetrator))~~ subject of the report ~~((and))~~ of the

1 department's investigative findings. The notice shall also advise the
2 ((alleged perpetrator)) subject of the report that:

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

6 (b) Information in the department's record may be considered in
7 subsequent investigations or proceedings related to child protection or
8 child custody;

9 (c) Founded reports of child abuse and neglect may be considered in
10 determining whether the person is disqualified from being licensed to
11 provide child care, employed by a licensed child care agency, or
12 authorized by the department to care for children; and

13 (d) ((An alleged perpetrator)) A subject named in a founded report
14 of child abuse or neglect has the right to seek review of the finding
15 as provided in this chapter.

16 (3) The notification required by this section shall be made by
17 certified mail, return receipt requested, to the person's last known
18 address.

19 (4) The duty of notification created by this section is subject to
20 the ability of the department to ascertain the location of the person
21 to be notified. The department shall exercise reasonable, good-faith
22 efforts to ascertain the location of persons entitled to notification
23 under this section.

24 (5) The department shall provide training to all department
25 personnel who conduct investigations under this section that shall
26 include, but is not limited to, training regarding the legal duties of
27 the department from the initial time of contact during investigation
28 through treatment in order to protect children and families.

29 NEW SECTION. Sec. 2. The legislature finds that whenever
30 possible, children should remain in the home of their parents. It is
31 only when the safety of the child is in jeopardy that the child should
32 be removed from the home.

33 It is the intent of the legislature that the department of social
34 and health services be permitted to intervene in cases of chronic
35 neglect where the health, welfare, or safety of the child is at risk.
36 One incident of neglect may not rise to the level requiring state

1 intervention; however, a pattern of neglect has been shown to cause
2 damage to the health and well-being of the child subject to the
3 neglect.

4 It is the intent of the legislature that, when chronic neglect has
5 been found to exist in a family, the legal system reinforce the need
6 for the parent's early engagement in services that will decrease the
7 likelihood of future neglect. However, if the parents fail to comply
8 with the offered necessary and available services, the state has the
9 authority to intervene to protect the children who are at risk. If a
10 parent fails to engage in available substance abuse or mental health
11 services necessary to maintain the safety of a child or a parent fails
12 to correct substance abuse deficiencies that jeopardize the safety of
13 a child, the state has the authority to intervene to protect a child.

14 **Sec. 3.** RCW 13.34.138 and 2003 c 227 s 5 are each amended to read
15 as follows:

16 (1) Except for children whose cases are reviewed by a citizen
17 review board under chapter 13.70 RCW, the status of all children found
18 to be dependent shall be reviewed by the court at least every six
19 months from the beginning date of the placement episode or the date
20 dependency is established, whichever is first, at a hearing in which it
21 shall be determined whether court supervision should continue. The
22 initial review hearing shall be an in-court review and shall be set six
23 months from the beginning date of the placement episode or no more than
24 ninety days from the entry of the disposition order, whichever comes
25 first. The initial review hearing may be a permanency planning hearing
26 when necessary to meet the time frames set forth in RCW 13.34.145(3) or
27 13.34.134. The review shall include findings regarding the agency and
28 parental completion of disposition plan requirements, and if necessary,
29 revised permanency time limits. This review shall consider both the
30 agency's and parent's efforts that demonstrate consistent measurable
31 progress over time in meeting the disposition plan requirements. The
32 requirements for the initial review hearing, including the in-court
33 requirement, shall be accomplished within existing resources. The
34 supervising agency shall provide a foster parent, preadoptive parent,
35 or relative with notice of, and their right to an opportunity to be
36 heard in, a review hearing pertaining to the child, but only if that

1 person is currently providing care to that child at the time of the
2 hearing. This section shall not be construed to grant party status to
3 any person who has been provided an opportunity to be heard.

4 (a) A child shall not be returned home at the review hearing unless
5 the court finds that a reason for removal as set forth in RCW 13.34.130
6 no longer exists. The parents, guardian, or legal custodian shall
7 report to the court the efforts they have made to correct the
8 conditions which led to removal. If a child is returned, casework
9 supervision shall continue for a period of six months, at which time
10 there shall be a hearing on the need for continued intervention.

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

13 (i) Whether reasonable services have been provided to or offered to
14 the parties to facilitate reunion, specifying the services provided or
15 offered;

16 (ii) Whether the child has been placed in the least-restrictive
17 setting appropriate to the child's needs, including whether
18 consideration and preference has been given to placement with the
19 child's relatives;

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

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

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

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

28 (vii) Whether additional services, including housing assistance,
29 are needed to facilitate the return of the child to the child's
30 parents; if so, the court shall order that reasonable services be
31 offered specifying such services; and

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

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

36 (2)(a) In any case in which the court orders that a dependent child
37 may be returned to or remain in the child's home, the in-home placement
38 shall be contingent upon the following:

1 (i) The compliance of the parents with court orders related to the
2 care and supervision of the child, including compliance with an agency
3 case plan; and

4 (ii) The continued participation of the parents, if applicable, in
5 available substance abuse or mental health treatment if substance abuse
6 or mental illness was a contributing factor to the removal of the
7 child.

8 (b) The following may be grounds for removal of the child from the
9 home, subject to review by the court:

10 (i) Noncompliance by the parents with the agency case plan or court
11 order;

12 (ii) The parent's inability, unwillingness, or failure to
13 participate in available services or treatment for themselves or the
14 child, including substance abuse treatment if a parent's substance
15 abuse was a contributing factor to the abuse or neglect; or

16 (iii) The failure of the parents to successfully and substantially
17 complete available services or treatment for themselves or the child,
18 including substance abuse treatment if a parent's substance abuse was
19 a contributing factor to the abuse or neglect.

20 (3) The court's ability to order housing assistance under RCW
21 13.34.130 and this section is: (a) Limited to cases in which
22 homelessness or the lack of adequate and safe housing is the primary
23 reason for an out-of-home placement; and (b) subject to the
24 availability of funds appropriated for this specific purpose.

25 ((+3)) (4) The court shall consider the child's relationship with
26 siblings in accordance with RCW 13.34.130(3).

27 **Sec. 4.** RCW 26.44.015 and 1999 c 176 s 28 are each amended to read
28 as follows:

29 (1) This chapter shall not be construed to authorize interference
30 with child-raising practices, including reasonable parental discipline,
31 which are not injurious to the child's health, welfare, ~~((and))~~ or
32 safety.

33 (2) Nothing in this chapter may be used to prohibit the reasonable
34 use of corporal punishment as a means of discipline.

35 (3) No parent or guardian may be deemed abusive or neglectful
36 solely by reason of the parent's or child's blindness, deafness,
37 developmental disability, or other handicap.

1 **Sec. 5.** RCW 26.44.020 and 2000 c 162 s 19 are each amended to read
2 as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

10 (3) "Practitioner of the healing arts" or "practitioner" means a
11 person licensed by this state to practice podiatric medicine and
12 surgery, optometry, chiropractic, nursing, dentistry, osteopathic
13 medicine and surgery, or medicine and surgery or to provide other
14 health services. The term "practitioner" includes a duly accredited
15 Christian Science practitioner: PROVIDED, HOWEVER, That a person who
16 is being furnished Christian Science treatment by a duly accredited
17 Christian Science practitioner will not be considered, for that reason
18 alone, a neglected person for the purposes of this chapter.

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

21 (5) "Department" means the state department of social and health
22 services.

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

25 (7) "Professional school personnel" include, but are not limited
26 to, teachers, counselors, administrators, child care facility
27 personnel, and school nurses.

28 (8) "Social service counselor" means anyone engaged in a
29 professional capacity during the regular course of employment in
30 encouraging or promoting the health, welfare, support or education of
31 children, or providing social services to adults or families, including
32 mental health, drug and alcohol treatment, and domestic violence
33 programs, whether in an individual capacity, or as an employee or agent
34 of any public or private organization or institution.

35 (9) "Psychologist" means any person licensed to practice psychology
36 under chapter 18.83 RCW, whether acting in an individual capacity or as
37 an employee or agent of any public or private organization or
38 institution.

1 (10) "Pharmacist" means any registered pharmacist under chapter
2 18.64 RCW, whether acting in an individual capacity or as an employee
3 or agent of any public or private organization or institution.

4 (11) "Clergy" means any regularly licensed or ordained minister,
5 priest, or rabbi of any church or religious denomination, whether
6 acting in an individual capacity or as an employee or agent of any
7 public or private organization or institution.

8 (12) "Abuse or neglect" means (~~(the injury,)~~) sexual abuse, sexual
9 exploitation, (~~(negligent treatment, or maltreatment)~~) or injury of a
10 child by any person under circumstances which (~~(indicate that)~~) cause
11 harm to the child's health, welfare, ((and)) or safety ((is harmed)),
12 excluding conduct permitted under RCW 9A.16.100; or the negligent
13 treatment or maltreatment of a child by a person responsible for or
14 providing care to the child. An abused child is a child who has been
15 subjected to child abuse or neglect as defined in this section.

16 (13) "Child protective services section" means the child protective
17 services section of the department.

18 (14) "Sexual exploitation" includes: (a) Allowing, permitting, or
19 encouraging a child to engage in prostitution by any person; or (b)
20 allowing, permitting, encouraging, or engaging in the obscene or
21 pornographic photographing, filming, or depicting of a child by any
22 person.

23 (15) "Negligent treatment or maltreatment" means an act or
24 (~~(omission)~~) a failure to act, or the cumulative effects of a pattern
25 of conduct, behavior, or inaction, that evidences a serious disregard
26 of consequences of such magnitude as to constitute a clear and present
27 danger to (~~(the))~~ a child's health, welfare, ((and)) or safety. When
28 considering whether a clear and present danger exists, evidence of a
29 parent's substance abuse as a contributing factor to negligent
30 treatment or maltreatment shall be given great weight. The fact that
31 siblings share a bedroom is not, in and of itself, negligent treatment
32 or maltreatment. Poverty, homelessness, or exposure to domestic
33 violence as defined in RCW 26.50.010 that is perpetrated against
34 someone other than the child do not constitute negligent treatment or
35 maltreatment in and of themselves.

36 (16) "Child protective services" means those services provided by
37 the department designed to protect children from child abuse and
38 neglect and safeguard such children from future abuse and neglect, and

1 conduct investigations of child abuse and neglect reports.
2 Investigations may be conducted regardless of the location of the
3 alleged abuse or neglect. Child protective services includes referral
4 to services to ameliorate conditions that endanger the welfare of
5 children, the coordination of necessary programs and services relevant
6 to the prevention, intervention, and treatment of child abuse and
7 neglect, and services to children to ensure that each child has a
8 permanent home. In determining whether protective services should be
9 provided, the department shall not decline to provide such services
10 solely because of the child's unwillingness or developmental inability
11 to describe the nature and severity of the abuse or neglect.

12 (17) "Malice" or "maliciously" means an evil intent, wish, or
13 design to vex, annoy, or injure another person. Such malice may be
14 inferred from an act done in willful disregard of the rights of
15 another, or an act wrongfully done without just cause or excuse, or an
16 act or omission of duty betraying a willful disregard of social duty.

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

19 (19) "Unfounded" means available information indicates that, more
20 likely than not, child abuse or neglect did not occur. No unfounded
21 allegation of child abuse or neglect may be disclosed to a child-
22 placing agency, private adoption agency, or any other provider licensed
23 under chapter 74.15 RCW.

24 NEW SECTION. **Sec. 6.** A new section is added to chapter 26.44 RCW
25 to read as follows:

26 (1) If the department, upon investigation of a report that a child
27 has been abused or neglected as defined in this chapter, determines
28 that the child has been subject to negligent treatment or maltreatment,
29 the department may offer services to the child's parents, guardians, or
30 legal custodians to: (a) Ameliorate the conditions that endangered the
31 welfare of the child; or (b) address or treat the effects of
32 mistreatment or neglect upon the child.

33 (2) When evaluating whether the child has been subject to negligent
34 treatment or maltreatment, evidence of a parent's substance abuse as a
35 contributing factor to a parent's failure to provide for a child's
36 basic health, welfare, or safety shall be given great weight.

1 (3) If the child's parents, guardians, or legal custodians are
2 available and willing to participate on a voluntary basis in in-home
3 services, and the department determines that in-home services on a
4 voluntary basis are appropriate for the family, the department may
5 offer such services.

6 (4) In cases where the department has offered appropriate and
7 reasonable services under subsection (1) of this section, and the
8 parents, guardians, or legal custodians refuse to accept or fail to
9 obtain available and appropriate treatment or services, or are unable
10 or unwilling to participate in or successfully and substantially
11 complete the treatment or services identified by the department, the
12 department may initiate a dependency proceeding under chapter 13.34 RCW
13 on the basis that the negligent treatment or maltreatment by the
14 parent, guardian, or legal custodian constitutes neglect. When
15 evaluating whether to initiate a dependency proceeding on this basis,
16 the evidence of a parent's substance abuse as a contributing factor to
17 the negligent treatment or maltreatment shall be given great weight.

18 (5) Nothing in this section precludes the department from filing a
19 dependency petition as provided in chapter 13.34 RCW if it determines
20 that such action is necessary to protect the child from abuse or
21 neglect.

22 (6) Nothing in this section shall be construed to create in any
23 person an entitlement to services or financial assistance in paying for
24 services or to create judicial authority to order the provision of
25 services to any person or family if the services are unavailable or
26 unsuitable or if the child or family is not eligible for such services.

27 **Sec. 7.** RCW 74.13.031 and 2004 c 183 s 3 are each amended to read
28 as follows:

29 The department shall have the duty to provide child welfare
30 services and shall:

31 (1) Develop, administer, supervise, and monitor a coordinated and
32 comprehensive plan that establishes, aids, and strengthens services for
33 the protection and care of runaway, dependent, or neglected children.

34 (2) Within available resources, recruit an adequate number of
35 prospective adoptive and foster homes, both regular and specialized,
36 i.e. homes for children of ethnic minority, including Indian homes for
37 Indian children, sibling groups, handicapped and emotionally disturbed,

1 teens, pregnant and parenting teens, and annually report to the
2 governor and the legislature concerning the department's success in:
3 (a) Meeting the need for adoptive and foster home placements; (b)
4 reducing the foster parent turnover rate; (c) completing home studies
5 for legally free children; and (d) implementing and operating the
6 passport program required by RCW 74.13.285. The report shall include
7 a section entitled "Foster Home Turn-Over, Causes and Recommendations."

8 (3)(a) Investigate (~~complaints of any recent act or failure to~~
9 ~~act~~) any reports of child abuse or neglect, as defined in chapter
10 26.44 RCW, on the part of a parent, guardian, or legal custodian of the
11 child, member of the household of such persons, an agency providing
12 care to the child as defined in chapter 74.15 RCW, or other caretaker
13 (~~that~~) of the child who is serving in place of the parent if the
14 child abuse or neglect results in death, serious physical or emotional
15 harm, or sexual abuse or exploitation, or that presents an imminent
16 risk of serious harm(~~, and on the basis of the findings of such~~
17 investigation, offer)). Evidence of a parent's substance abuse as a
18 contributing factor to the alleged abuse or neglect shall be considered
19 to present an imminent risk of serious harm to the child.

20 (b) Offer child welfare services (~~in relation to the problem to~~
21 ~~such~~), where warranted, to parents, legal custodians, or persons
22 serving in (~~loco parentis~~) the place of the parent, (~~and/or~~) or
23 bring the situation to the attention of an appropriate court, or
24 another community agency(~~:- PROVIDED, That~~), including the
25 appropriate law enforcement agency if the investigation reveals that a
26 crime against a child may have been committed. However, an
27 investigation is not required of nonaccidental injuries which are
28 clearly not the result of a lack of care or supervision by the child's
29 parents, legal custodians, or persons serving in (~~loco parentis~~) the
30 place of the parent. (~~If the investigation reveals that a crime~~
31 against a child may have been committed, the department shall notify
32 the appropriate law enforcement agency.)

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

35 (5) Monitor out-of-home placements, on a timely and routine basis,
36 to assure the safety, well-being, and quality of care being provided is
37 within the scope of the intent of the legislature as defined in RCW

1 74.13.010 and 74.15.010, and annually submit a report measuring the
2 extent to which the department achieved the specified goals to the
3 governor and the legislature.

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

13 (7) Have authority to provide temporary shelter to children who
14 have run away from home and who are admitted to crisis residential
15 centers.

16 (8) Have authority to purchase care for children; and shall follow
17 in general the policy of using properly approved private agency
18 services for the actual care and supervision of such children insofar
19 as they are available, paying for care of such children as are accepted
20 by the department as eligible for support at reasonable rates
21 established by the department.

22 (9) Establish a children's services advisory committee which shall
23 assist the secretary in the development of a partnership plan for
24 utilizing resources of the public and private sectors, and advise on
25 all matters pertaining to child welfare, licensing of child care
26 agencies, adoption, and services related thereto. At least one member
27 shall represent the adoption community.

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

31 (11) Refer cases to the division of child support whenever state or
32 federal funds are expended for the care and maintenance of a child,
33 including a child with a developmental disability who is placed as a
34 result of an action under chapter 13.34 RCW, unless the department
35 finds that there is good cause not to pursue collection of child
36 support against the parent or parents of the child.

37 (12) Have authority within funds appropriated for foster care
38 services to purchase care for Indian children who are in the custody of

1 a federally recognized Indian tribe or tribally licensed child-placing
2 agency pursuant to parental consent, tribal court order, or state
3 juvenile court order; and the purchase of such care shall be subject to
4 the same eligibility standards and rates of support applicable to other
5 children for whom the department purchases care.

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

13 (13) Within amounts appropriated for this specific purpose, provide
14 preventive services to families with children that prevent or shorten
15 the duration of an out-of-home placement.

16 (14) Have authority to provide independent living services to
17 youths, including individuals eighteen through twenty years of age, who
18 are or have been in foster care.

19 NEW SECTION. **Sec. 8.** The legislature recognizes that the fiscal
20 and workload impact of this act may not be fully determined until after
21 it is implemented and that such impact may further be affected by the
22 funding or availability of community-based prevention and remedial
23 services. For that reason, the department of social and health
24 services shall report on the implementation of this act to the
25 appropriate legislative committees and the governor by December 1,
26 2006. The report shall include information regarding any change over
27 previous years in the number and type of child abuse and neglect
28 referrals received and investigations conducted, any change in in-home
29 and out-of-home dependency placements and/or filings, any increased
30 service costs, barriers to implementation, and an assessment of the
31 fiscal and workload impact on the department. Such information shall
32 be reviewed by the legislature for possible amendment of this act or
33 additional allocation of resources to the department for implementation
34 purposes.

35 **Sec. 9.** RCW 13.34.050 and 2000 c 122 s 3 are each amended to read
36 as follows:

1 (1) The court may enter an order directing a law enforcement
2 officer, probation counselor, or child protective services official to
3 take a child into custody if: (a) A petition is filed with the
4 juvenile court alleging that the child is dependent and that the
5 child's health, safety, and welfare will be seriously endangered if not
6 taken into custody; (b) an affidavit or declaration is filed by the
7 department in support of the petition setting forth specific factual
8 information evidencing reasonable grounds that the child's health,
9 safety, and welfare will be seriously endangered if not taken into
10 custody and at least one of the grounds set forth demonstrates a risk
11 of imminent harm to the child. "Imminent harm" for purposes of this
12 section shall include, but not be limited to, circumstances of sexual
13 abuse, ~~((or))~~ sexual exploitation as defined in RCW 26.44.020, and a
14 parent's failure to perform basic parental functions, obligations, and
15 duties as the result of substance abuse; and (c) the court finds
16 reasonable grounds to believe the child is dependent and that the
17 child's health, safety, and welfare will be seriously endangered if not
18 taken into custody.

19 (2) Any petition that does not have the necessary affidavit or
20 declaration demonstrating a risk of imminent harm requires that the
21 parents are provided notice and an opportunity to be heard before the
22 order may be entered.

23 (3) The petition and supporting documentation must be served on the
24 parent, and if the child is in custody at the time the child is
25 removed, on the entity with custody other than the parent. Failure to
26 effect service does not invalidate the petition if service was
27 attempted and the parent could not be found.

28 NEW SECTION. **Sec. 10.** This act takes effect July 1, 2006.

29 NEW SECTION. **Sec. 11.** This act may be known and cited as the
30 Justice and Raiden Act."

31 Correct the title.

--- END ---