
HOUSE BILL 2557

State of Washington

54th Legislature

1996 Regular Session

By Representatives Veloria, Cooke and Ogden

Read first time 01/12/96. Referred to Committee on Children & Family Services.

1 AN ACT Relating to legal custody of children; amending RCW
2 13.34.030; and reenacting and amending RCW 13.34.130 and 13.34.145.

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

4 **Sec. 1.** RCW 13.34.030 and 1995 c 311 s 23 are each amended to read
5 as follows:

6 For purposes of this chapter:

7 (1) "Child" and "juvenile" means any individual under the age of
8 eighteen years.

9 (2) "Current placement episode" means the period of time that
10 begins with the most recent date that the child was removed from the
11 home of the parent, guardian, or legal custodian for purposes of
12 placement in out-of-home care and continues until the child returns
13 home, an adoption decree, a permanent custody order, or guardianship
14 order is entered, or the dependency is dismissed, whichever occurs
15 soonest. If the most recent date of removal occurred prior to the
16 filing of a dependency petition under this chapter or after filing but
17 prior to entry of a disposition order, such time periods shall be
18 included when calculating the length of a child's current placement
19 episode.

1 (3) "Dependency guardian" means the person, nonprofit corporation,
2 or Indian tribe appointed by the court pursuant to RCW 13.34.232 for
3 the limited purpose of assisting the court in the supervision of the
4 dependency.

5 (4) "Dependent child" means any child:

6 (a) Who has been abandoned; that is, where the child's parent,
7 guardian, or other custodian has expressed either by statement or
8 conduct, an intent to forego, for an extended period, parental rights
9 or parental responsibilities despite an ability to do so. If the court
10 finds that the petitioner has exercised due diligence in attempting to
11 locate the parent, no contact between the child and the child's parent,
12 guardian, or other custodian for a period of three months creates a
13 rebuttable presumption of abandonment, even if there is no expressed
14 intent to abandon;

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

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

21 (d) Who has a developmental disability, as defined in RCW
22 71A.10.020 and whose parent, guardian, or legal custodian together with
23 the department determines that services appropriate to the child's
24 needs can not be provided in the home. However, (a), (b), and (c) of
25 this subsection may still be applied if other reasons for removal of
26 the child from the home exist.

27 (5) "Guardian" means the person or agency that: (a) Has been
28 appointed as the guardian of a child in a legal proceeding other than
29 a proceeding under this chapter; and (b) has the legal right to custody
30 of the child pursuant to such appointment. The term "guardian" shall
31 not include a "dependency guardian" appointed pursuant to a proceeding
32 under this chapter.

33 (6) "Guardian ad litem" means a person, appointed by the court to
34 represent the best interest of a child in a proceeding under this
35 chapter, or in any matter which may be consolidated with a proceeding
36 under this chapter. A "court-appointed special advocate" appointed by
37 the court to be the guardian ad litem for the child, or to perform
38 substantially the same duties and functions as a guardian ad litem,

1 shall be deemed to be guardian ad litem for all purposes and uses of
2 this chapter.

3 (7) "Guardian ad litem program" means a court-authorized volunteer
4 program, which is or may be established by the superior court of the
5 county in which such proceeding is filed, to manage all aspects of
6 volunteer guardian ad litem representation for children alleged or
7 found to be dependent. Such management shall include but is not
8 limited to: Recruitment, screening, training, supervision, assignment,
9 and discharge of volunteers.

10 (8) "Out-of-home care" means placement in a foster family home or
11 group care facility licensed pursuant to chapter 74.15 RCW or placement
12 in a home, other than that of the child's parent, guardian, or legal
13 custodian, not required to be licensed pursuant to chapter 74.15 RCW.

14 (9) "Preventive services" means preservation services, as defined
15 in chapter 74.14C RCW, and other reasonably available services capable
16 of preventing the need for out-of-home placement while protecting the
17 child.

18 **Sec. 2.** RCW 13.34.130 and 1995 c 313 s 2, 1995 c 311 s 19, and
19 1995 c 53 s 1 are each reenacted and amended to read as follows:

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

26 (1) The court shall order one of the following dispositions of the
27 case:

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

35 (b) Order that the child be removed from his or her home and
36 ordered into the custody, control, and care of a relative or the
37 department of social and health services or a licensed child placing
38 agency for placement in a foster family home or group care facility

1 licensed pursuant to chapter 74.15 RCW or in a home not required to be
2 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
3 cause to believe that the safety or welfare of the child would be
4 jeopardized or that efforts to reunite the parent and child will be
5 hindered, such child shall be placed with a person who is related to
6 the child as defined in RCW 74.15.020(4)(a) and with whom the child has
7 a relationship and is comfortable, and who is willing and available to
8 care for the child. Placement of the child with a relative under this
9 subsection shall be given preference by the court. An order for out-
10 of-home placement may be made only if the court finds that reasonable
11 efforts have been made to prevent or eliminate the need for removal of
12 the child from the child's home and to make it possible for the child
13 to return home, specifying the services that have been provided to the
14 child and the child's parent, guardian, or legal custodian, and that
15 preventive services have been offered or provided and have failed to
16 prevent the need for out-of-home placement, unless the health, safety,
17 and welfare of the child cannot be protected adequately in the home,
18 and that:

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

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

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

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

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

1 in the near future. In determining whether aggravated circumstances
2 exist, the court shall consider one or more of the following:

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

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

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

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

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

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

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

24 (a) A permanency plan of care that shall identify one of the
25 following outcomes as a primary goal and may identify additional
26 outcomes as alternative goals: Return of the child to the home of the
27 child's parent, guardian, or legal custodian; adoption; guardianship;
28 permanent legal custody; or long-term relative or foster care, until
29 the child is age eighteen, with a written agreement between the parties
30 and the care provider; and independent living, if appropriate and if
31 the child is age sixteen or older. Whenever a permanency plan
32 identifies independent living as a goal, the plan shall also
33 specifically identify the services that will be provided to assist the
34 child to make a successful transition from foster care to independent
35 living. Before the court approves independent living as a permanency
36 plan of care, the court shall make a finding that the provision of
37 services to assist the child in making a transition from foster care to
38 independent living will allow the child to manage his or her financial
39 affairs and to manage his or her personal, social, educational, and

1 nonfinancial affairs. The department shall not discharge a child to an
2 independent living situation before the child is eighteen years of age
3 unless the child becomes emancipated pursuant to chapter 13.64 RCW.

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

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

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

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

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

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

38 (4) If there is insufficient information at the time of the
39 disposition hearing upon which to base a determination regarding the

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

16 (5) 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 review shall include findings regarding the agency and parental
23 completion of disposition plan requirements, and if necessary, revised
24 permanency time limits.

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

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

34 (i) Whether reasonable services have been provided to or offered to
35 the parties to facilitate reunion, specifying the services provided or
36 offered;

37 (ii) Whether the child has been placed in the least-restrictive
38 setting appropriate to the child's needs, including whether

1 consideration and preference has been given to placement with the
2 child's relatives;

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

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

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

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

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

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

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

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

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

27 (a) Whenever a child is placed in out-of-home care pursuant to RCW
28 13.34.130, the agency that has custody of the child shall provide the
29 court with a written permanency plan of care directed towards securing
30 a safe, stable, and permanent home for the child as soon as possible.
31 The plan shall identify one of the following outcomes as the primary
32 goal and may also identify additional outcomes as alternative goals:
33 Return of the child to the home of the child's parent, guardian, or
34 legal custodian; adoption; guardianship; permanent legal custody; or
35 long-term relative or foster care, until the child is age eighteen,
36 with a written agreement between the parties and the care provider; and
37 independent living, if appropriate and if the child is age sixteen or
38 older and the provisions of subsection (2) of this section are met.

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

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

10 (d) For purposes related to permanency planning:

11 (i) "Guardianship" means a dependency guardianship pursuant to this
12 chapter, a legal guardianship pursuant to chapter 11.88 RCW, or
13 equivalent laws of another state or a federally recognized Indian
14 tribe.

15 (ii) "Permanent legal custody" means legal custody pursuant to
16 chapter 26.10 RCW or equivalent laws of another state or of a federally
17 recognized Indian tribe.

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

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

36 (b) For children over ten, a permanency planning hearing shall be
37 held in all cases where the child has remained in out-of-home care for
38 at least fifteen months and an adoption decree ~~((or))~~,
39 guardianship order, or permanent custody order has not previously been entered. The

1 hearing shall take place no later than eighteen months following
2 commencement of the current placement episode.

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

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

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

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

35 (ii) Modify the permanency plan, and order implementation of the
36 modified plan; and

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

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

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

8 (8) If the court orders implementation of a permanency plan that
9 includes legal guardianship or permanent legal custody, the court shall
10 determine whether a waiver of juvenile court jurisdiction is necessary
11 for implementation of the permanency plan. If so, the court shall
12 waive jurisdiction to the extent necessary for commencement of a court
13 proceeding in the appropriate judicial forum. During the pendency of
14 such proceeding, juvenile court shall conduct review hearings and
15 further permanency planning hearings as provided in this chapter. At
16 the conclusion of the legal guardianship or permanent legal custody
17 proceeding, a juvenile court hearing shall be held for the purpose of
18 determining whether dependency should be dismissed. If a guardianship
19 or permanent custody order has been entered, the dependency shall be
20 dismissed.

21 (9) Following the first permanency planning hearing, the court
22 shall hold a further permanency planning hearing in accordance with
23 this section at least once every twelve months until a permanency
24 planning goal is achieved or the dependency is dismissed, whichever
25 occurs first.

26 (~~(9)~~) (10) Except as otherwise provided in RCW 13.34.235, the
27 status of all dependent children shall continue to be reviewed by the
28 court at least once every six months, in accordance with RCW
29 13.34.130(5), until the dependency is dismissed. Prior to the second
30 permanency planning hearing, the agency that has custody of the child
31 shall consider whether to file a petition for termination of parental
32 rights.

33 (~~(10)~~) (11) Nothing in this chapter may be construed to limit the
34 ability of the agency that has custody of the child to file a petition
35 for termination of parental rights or a guardianship petition at any
36 time following the establishment of dependency. Upon the filing of
37 such a petition, a fact-finding hearing shall be scheduled and held in
38 accordance with this chapter unless the agency requests dismissal of
39 the petition prior to the hearing or unless the parties enter an agreed

1 order terminating parental rights, establishing guardianship, or
2 otherwise resolving the matter.

3 (~~(11)~~) (12) The approval of a permanency plan that does not
4 contemplate return of the child to the parent does not relieve the
5 supervising agency of its obligation to provide reasonable services,
6 under this chapter, intended to effectuate the return of the child to
7 the parent, including but not limited to, visitation rights.

8 (~~(12)~~) (13) Nothing in this chapter may be construed to limit the
9 procedural due process rights of any party in a termination or
10 guardianship proceeding filed under this chapter.

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