

2 **SSB 5413** - S AMD 041

3 By Senators Hargrove, Stevens and Long

4 ADOPTED 03/10/01

5 Beginning on page 9, line 35, strike all of section 8 and insert
6 the following:

7 "**Sec. 8.** RCW 13.34.110 and 2000 c 122 s 11 are each amended to
8 read as follows:

9 (1) The court shall hold a fact-finding hearing on the petition
10 and, unless the court dismisses the petition, shall make written
11 findings of fact, stating the reasons therefor. The rules of evidence
12 shall apply at the fact-finding hearing and the parent, guardian, or
13 legal custodian of the child shall have all of the rights provided in
14 RCW 13.34.090(1). The petitioner shall have the burden of establishing
15 by a preponderance of the evidence that the child is dependent within
16 the meaning of RCW 13.34.030.

17 (2)(a) The parent, guardian, or legal custodian of the child may
18 waive his or her right to a fact-finding hearing by stipulating or
19 agreeing to the entry of an order of dependency establishing that the
20 child is dependent within the meaning of RCW 13.34.030. The parent,
21 guardian, or legal custodian may also stipulate or agree to an order of
22 disposition pursuant to RCW 13.34.130 at the same time. Any stipulated
23 or agreed order of dependency or disposition must be signed by the
24 parent, guardian, or legal custodian and his or her attorney, unless
25 the parent, guardian, or legal custodian has waived his or her right to
26 an attorney in open court, and by the petitioner and the attorney,
27 guardian ad litem, or court-appointed special advocate for the child,
28 if any. If the department of social and health services is not the
29 petitioner and is required by the order to supervise the placement of
30 the child or provide services to any party, the department must also
31 agree to and sign the order.

32 (b) Entry of any stipulated or agreed order of dependency or
33 disposition is subject to approval by the court. The court shall
34 receive and review a social study before entering a stipulated or
35 agreed order and shall consider whether the order is consistent with
36 the allegations of the dependency petition and the problems that

1 necessitated the child's placement in out-of-home care. No social file
2 or social study may be considered by the court in connection with the
3 fact-finding hearing or prior to factual determination, except as
4 otherwise admissible under the rules of evidence.

5 (c) Prior to the entry of any stipulated or agreed order of
6 dependency, the parent, guardian, or legal custodian of the child and
7 his or her attorney must appear before the court and the court must
8 inquire and establish on the record that:

9 (i) The parent, guardian, or legal custodian understands the terms
10 of the order or orders he or she has signed, including his or her
11 responsibility to participate in remedial services as provided in any
12 disposition order;

13 (ii) The parent, guardian, or legal custodian understands that
14 entry of the order starts a process that could result in the filing of
15 a petition to terminate his or her relationship with the child within
16 the time frames required by state and federal law if he or she fails to
17 comply with the terms of the dependency or disposition orders or fails
18 to substantially remedy the problems that necessitated the child's
19 placement in out-of-home care;

20 (iii) The parent, guardian, or legal custodian understands that the
21 entry of the stipulated or agreed order of dependency is an admission
22 that the child is dependent within the meaning of RCW 13.34.030 and
23 shall have the same legal effect as a finding by the court that the
24 child is dependent by at least a preponderance of the evidence, and
25 that the parent, guardian, or legal custodian shall not have the right
26 in any subsequent proceeding for termination of parental rights or
27 dependency guardianship pursuant to this chapter or nonparental custody
28 pursuant to chapter 26.10 RCW to challenge or dispute the fact that the
29 child was found to be dependent; and

30 (iv) The parent, guardian, or legal custodian knowingly and
31 willingly stipulated and agreed to and signed the order or orders,
32 without duress, and without misrepresentation or fraud by any other
33 party.

34 If a parent, guardian, or legal custodian fails to appear before
35 the court after stipulating or agreeing to entry of an order of
36 dependency, the court may enter the order upon a finding that the
37 parent, guardian, or legal custodian had actual notice of the right to
38 appear before the court and chose not to do so. The court may require
39 other parties to the order, including the attorney for the parent,

1 guardian, or legal custodian, to appear and advise the court of the
2 parent's, guardian's, or legal custodian's notice of the right to
3 appear and understanding of the factors specified in this subsection.

4 (3) Immediately after the entry of the findings of fact, the court
5 shall hold a disposition hearing, unless there is good cause for
6 continuing the matter for up to fourteen days. If good cause is shown,
7 the case may be continued for longer than fourteen days. Notice of the
8 time and place of the continued hearing may be given in open court. If
9 notice in open court is not given to a party, that party shall be
10 notified by certified mail of the time and place of any continued
11 hearing. Unless there is reasonable cause to believe the health,
12 safety, or welfare of the child would be jeopardized or efforts to
13 reunite the parent and child would be hindered, the court shall direct
14 the department to notify those adult persons who: ~~((+1))~~ (a) Are
15 related by blood or marriage to the child in the following degrees:
16 Parent, grandparent, brother, sister, stepparent, stepbrother,
17 stepsister, uncle, or aunt; ~~((+2))~~ (b) are known to the department as
18 having been in contact with the family or child within the past twelve
19 months; and ~~((+3))~~ (c) would be an appropriate placement for the
20 child. Reasonable cause to dispense with notification to a parent
21 under this section must be proved by clear, cogent, and convincing
22 evidence.

23 The parties need not appear at the ~~((fact-finding—or~~
24 ~~dispositional))~~ disposition hearing if the parties, their attorneys,
25 the guardian ad litem, and court-appointed special advocates, if any,
26 are all in agreement. ~~((The court shall receive and review a social~~
27 ~~study before entering an order based on agreement. No social file or~~
28 ~~social study may be considered by the court in connection with the~~
29 ~~fact-finding hearing or prior to factual determination, except as~~
30 ~~otherwise admissible under the rules of evidence.))"~~

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34 On page 1, beginning on line 2 of the title, after "13.34.180,"
35 strike "and 13.34.138" and insert "13.34.138, and 13.34.110"

EFFECT: Section 8 of the substitute is stricken, eliminating the requirement that the fact of dependency must be proven by clear, cogent, and convincing evidence at termination when the parent has stipulated to a finding of dependency earlier in the proceedings.

Section 8 is replaced with a provision that amends existing statute, placing parameters around and including due process protections in the process of entering stipulated findings of fact in a child dependency case. The added due process protections require that the court explain to parents the implications of entering an agreed order or stipulation. In particular, the parents must be advised that the agreement could result in a termination hearing where the agreement would be used as proof that the child is a dependent child. The agreements must be signed and in writing. The parties must be represented, unless that right has been waived in open court. The court must consider the underlying facts of the case and determine that they are consistent with the allegations that the child is dependent, meaning abused, neglected, or abandoned.

A default may be entered on the hearing to enter the stipulated order of dependency, if the parent has clearly chosen not to attend the hearing after being given the opportunity to attend.

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