
HOUSE BILL 2156

State of Washington 59th Legislature 2005 Regular Session

By Representatives Hinkle, Kagi, Nixon, Pettigrew, McDonald,
Dickerson, Pearson, Springer and Rodne

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Family Services.

1 AN ACT Relating to dependency and termination of parental rights;
2 amending RCW 13.34.138, 13.34.145, 13.34.132, and 13.34.190; and
3 creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes the importance of
6 maintaining the family unit and the significance of the relationship
7 between a child and a parent. However, when a parent demonstrates an
8 inability to care for his or her child, the state must act to protect
9 the child. The legislature finds that when a child has been removed
10 from the care of a parent who has demonstrated his or her inability to
11 care for the child, it is not appropriate to return the child to the
12 parent unless there is sufficient evidence that the child will be cared
13 for and protected. Further, the legislature finds that if the parent
14 continues to demonstrate an inability or unwillingness to correct the
15 deficiencies which led to the removal of the child, the child must not
16 be placed in a situation in which he or she must live with uncertainty
17 in his or her future. Therefore, the legislature finds that there must
18 be limitations upon the time a parent may be given to correct his or

1 her parental deficiencies and that a parent must not be given repeated
2 opportunities to have the child returned home when it is at the expense
3 of the safety and stability of the child.

4 **Sec. 2.** RCW 13.34.138 and 2003 c 227 s 5 are each amended to read
5 as follows:

6 (1) Except for children whose cases are reviewed by a citizen
7 review board under chapter 13.70 RCW, the status of all children found
8 to be dependent shall be reviewed by the court at least every six
9 months from the beginning date of the placement episode or the date
10 dependency is established, whichever is first, at a hearing in which it
11 shall be determined whether court supervision should continue. The
12 initial review hearing shall be an in-court review and shall be set six
13 months from the beginning date of the placement episode or no more than
14 ninety days from the entry of the disposition order, whichever comes
15 first. The initial review hearing may be a permanency planning hearing
16 when necessary to meet the time frames set forth in RCW 13.34.145(3) or
17 13.34.134. The review shall include findings regarding the agency and
18 parental completion of disposition plan requirements, and if necessary,
19 revised permanency time limits. This review shall consider both the
20 agency's and parent's efforts that demonstrate consistent measurable
21 progress over time in meeting the disposition plan requirements. The
22 requirements for the initial review hearing, including the in-court
23 requirement, shall be accomplished within existing resources. The
24 supervising agency shall provide a foster parent, preadoptive parent,
25 or relative with notice of, and their right to an opportunity to be
26 heard in, a review hearing pertaining to the child, but only if that
27 person is currently providing care to that child at the time of the
28 hearing. This section shall not be construed to grant party status to
29 any person who has been provided an opportunity to be heard.

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

1 supervising agency shall report to the court the agency's plan to
2 ensure the safety of the child during the six-month period of the
3 continued court supervision.

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

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

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

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

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

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

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

21 (vii) Whether additional services, including housing assistance,
22 are needed to facilitate the return of the child to the child's
23 parents; if so, the court shall order that reasonable services be
24 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) If the child has been removed from the home pursuant to RCW
28 13.34.130 and returned home under this chapter, if the child is then
29 subsequently removed from the home due to parental deficiencies which
30 place the child at risk, the child shall not thereafter be returned to
31 the home of the parent unless the court finds by clear and convincing
32 evidence that the reasons for removal as set forth in RCW 13.34.130 no
33 longer exist.

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

36 (2) The court's ability to order housing assistance under RCW
37 13.34.130 and this section is: (a) Limited to cases in which

1 homelessness or the lack of adequate and safe housing is the primary
2 reason for an out-of-home placement; and (b) subject to the
3 availability of funds appropriated for this specific purpose.

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

6 **Sec. 3.** RCW 13.34.145 and 2003 c 227 s 6 are each amended to read
7 as follows:

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

15 (a) Whenever a child is placed in out-of-home care pursuant to RCW
16 13.34.130, the agency that has custody of the child shall provide the
17 court with a written permanency plan of care directed towards securing
18 a safe, stable, and permanent home for the child as soon as possible.
19 The plan shall identify one of the following outcomes as the primary
20 goal and may also identify additional outcomes as alternative goals:
21 Return of the child to the home of the child's parent, guardian, or
22 legal custodian; adoption; guardianship; permanent legal custody; long-
23 term relative or foster care, until the child is age eighteen, with a
24 written agreement between the parties and the care provider; a
25 responsible living skills program; and independent living, if
26 appropriate and if the child is age sixteen or older and the provisions
27 of subsection (2) of this section are met.

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

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

37 (d) For purposes related to permanency planning:

1 (i) "Guardianship" means a dependency guardianship, a legal
2 guardianship pursuant to chapter 11.88 RCW, or equivalent laws of
3 another state or a federally recognized Indian tribe.

4 (ii) "Permanent custody order" means a custody order entered
5 pursuant to chapter 26.10 RCW.

6 (iii) "Permanent legal custody" means legal custody pursuant to
7 chapter 26.10 RCW or equivalent laws of another state or of a federally
8 recognized Indian tribe.

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

21 (3) A permanency planning hearing shall be held in all cases where
22 the child has remained in out-of-home care for at least (~~nine~~) six
23 months and an adoption decree, guardianship order, or permanent custody
24 order has not previously been entered. The hearing shall take place no
25 later than (~~twelve~~) six months following commencement of the current
26 placement episode. However, if the child has been returned home to a
27 parent and subsequently is removed due to parental deficiencies which
28 place the child at risk, the permanency planning hearing must take
29 place within two months of the time the child entered the current
30 placement.

31 (4) Whenever a child is removed from the home of a dependency
32 guardian or long-term relative or foster care provider, and the child
33 is not returned to the home of the parent, guardian, or legal custodian
34 but is placed in out-of-home care, a permanency planning hearing shall
35 take place no later than twelve months, as provided in subsection (3)
36 of this section, following the date of removal unless, prior to the
37 hearing, the child returns to the home of the dependency guardian or
38 long-term care provider, the child is placed in the home of the parent,

1 guardian, or legal custodian, an adoption decree, guardianship order,
2 or a permanent custody order is entered, or the dependency is
3 dismissed.

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

8 (6) At the permanency planning hearing, the court shall enter
9 findings as required by RCW 13.34.138 and shall review the permanency
10 plan prepared by the agency. If the child has resided in the home of
11 a foster parent or relative for more than six months prior to the
12 permanency planning hearing, the court shall also enter a finding
13 regarding whether the foster parent or relative was informed of the
14 hearing as required in RCW 74.13.280 and 13.34.138. If a goal of long-
15 term foster or relative care has been achieved prior to the permanency
16 planning hearing, the court shall review the child's status to
17 determine whether the placement and the plan for the child's care
18 remain appropriate. In cases where the primary permanency planning
19 goal has not been achieved, the court shall inquire regarding the
20 reasons why the primary goal has not been achieved and determine what
21 needs to be done to make it possible to achieve the primary goal. In
22 all cases, the court shall:

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

25 (ii) Modify the permanency plan, and order implementation of the
26 modified plan; and

27 (b)(i) Order the child returned home only if the court finds that
28 a reason for removal as set forth in RCW 13.34.130 no longer exists and
29 order the supervising agency to report to the court the agency's plan
30 to ensure the safety of the child; or

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

34 (7) If the court orders the child returned home, casework
35 supervision shall continue for at least six months, at which time a
36 review hearing shall be held pursuant to RCW 13.34.138, and the court
37 shall determine the need for continued intervention. During the six-

1 month period, the court may order continued contact with the foster
2 parent if the court determines it is appropriate.

3 (8) The juvenile court may hear a petition for permanent legal
4 custody when: (a) The court has ordered implementation of a permanency
5 plan that includes permanent legal custody; and (b) the party pursuing
6 the permanent legal custody is the party identified in the permanency
7 plan as the prospective legal custodian. During the pendency of such
8 proceeding, the court shall conduct review hearings and further
9 permanency planning hearings as provided in this chapter. At the
10 conclusion of the legal guardianship or permanent legal custody
11 proceeding, a juvenile court hearing shall be held for the purpose of
12 determining whether dependency should be dismissed. If a guardianship
13 or permanent custody order has been entered, the dependency shall be
14 dismissed.

15 (9) Continued juvenile court jurisdiction under this chapter shall
16 not be a barrier to the entry of an order establishing a legal
17 guardianship or permanent legal custody when the requirements of
18 subsection (8) of this section are met.

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

24 (11)(a) Except as provided in RCW 13.34.235, the status of all
25 dependent children shall continue to be reviewed by the court at least
26 once every six months, in accordance with RCW 13.34.138, until the
27 dependency is dismissed. Prior to the second permanency planning
28 hearing, the agency that has custody of the child shall consider
29 whether to file a petition for termination of parental rights.

30 (b) The agency that has custody of the child shall file a petition
31 for termination proceedings if:

32 (i) The child has been removed from the parent's care pursuant to
33 RCW 13.34.130 and there have been two subsequent placements of the
34 child with the parent which have resulted in the child being removed
35 from the care of the parent due to parental deficiencies which place
36 the child at risk; or

37 (ii) The parents have failed to remedy the deficiencies which led

1 to the finding of dependency under RCW 13.34.130 and at least fifteen
2 months have elapsed since the finding of the dependency.

3 (12) Nothing in this chapter may be construed to limit the ability
4 of the agency that has custody of the child to file a petition for
5 termination of parental rights or a guardianship petition at any time
6 following the establishment of dependency. Upon the filing of such a
7 petition, a fact-finding hearing shall be scheduled and held in
8 accordance with this chapter unless the agency requests dismissal of
9 the petition prior to the hearing or unless the parties enter an agreed
10 order terminating parental rights, establishing guardianship, or
11 otherwise resolving the matter.

12 (13) The approval of a permanency plan that does not contemplate
13 return of the child to the parent does not relieve the supervising
14 agency of its obligation to provide reasonable services, under this
15 chapter, intended to effectuate the return of the child to the parent,
16 including but not limited to, visitation rights. The court shall
17 consider the child's relationships with siblings in accordance with RCW
18 13.34.130.

19 (14) Nothing in this chapter may be construed to limit the
20 procedural due process rights of any party in a termination or
21 guardianship proceeding filed under this chapter.

22 **Sec. 4.** RCW 13.34.132 and 2000 c 122 s 16 are each amended to read
23 as follows:

24 A court may order that a petition seeking termination of the parent
25 and child relationship be filed if the following requirements are met:

26 (1) The court has removed the child from his or her home pursuant
27 to RCW 13.34.130;

28 (2) Termination is recommended by the supervising agency;

29 (3) Termination is in the best interests of the child; and

30 (4) Because of the existence of aggravated circumstances,
31 reasonable efforts to unify the family are not required.
32 Notwithstanding the existence of aggravated circumstances, reasonable
33 efforts may be required if the court or department determines it is in
34 the best interests of the child. In determining whether aggravated
35 circumstances exist by clear, cogent, and convincing evidence, the
36 court shall consider one or more of the following:

1 (a) 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 (b) 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 (c) 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 (d) Conviction of the parent of murder, manslaughter, or homicide
12 by abuse of the child's other parent, sibling, or another child;

13 (e) Conviction of the parent of attempting, soliciting, or
14 conspiring to commit a crime listed in (a), (b), (c), or (d) of this
15 subsection;

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

18 (g) 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. 1903), the
24 court shall also consider tribal efforts to assist the parent in
25 completing treatment and make it possible for the child to return home;

26 (h) An infant under three years of age has been abandoned;

27 (i) Conviction of the parent, when a child has been born of the
28 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest
29 under RCW 9A.64.020;

30 (j) The failure of a parent to have any contact with his or her
31 child for at least one year.

32 **Sec. 5.** RCW 13.34.190 and 2000 c 122 s 26 are each amended to read
33 as follows:

34 After hearings pursuant to RCW 13.34.110 or 13.34.130, the court
35 may enter an order terminating all parental rights to a child only if
36 the court finds that:

1 (1)(a) The allegations contained in the petition as provided in RCW
2 13.34.180(1) are established by clear, cogent, and convincing evidence;
3 or

4 (b) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are
5 established beyond a reasonable doubt and if so, then RCW 13.34.180(1)
6 (c) and (d) may be waived. When an infant has been abandoned, as
7 defined in RCW 13.34.030, and the abandonment has been proved beyond a
8 reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

9 (c) The allegation under RCW 13.34.180(2) is established beyond a
10 reasonable doubt. In determining whether RCW 13.34.180(1) (e) and (f)
11 are established beyond a reasonable doubt, the court shall consider
12 whether one or more of the aggravated circumstances listed in RCW
13 13.34.132 exist; or

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

16 (2) Such an order is in the best interests of the child.

17 If the parent can demonstrate that he or she was unable to remedy
18 the parental deficiencies that led to the removal of the child pursuant
19 to RCW 13.34.130 due to extenuating circumstances beyond his or her
20 control, the court may continue the case for six months. If the parent
21 demonstrates that he or she has made substantial progress in remedying
22 the parental deficiencies that place the child at risk during the six-
23 month period, the court may dismiss the termination petition or may
24 continue the hearing for one additional six-month period for the parent
25 to demonstrate that the reasons for the removal of the child no longer
26 exist.

27 NEW SECTION. Sec. 6. This act may be known and cited as Sirta's
28 law.

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