
HOUSE BILL 1849

State of Washington

55th Legislature

1997 Regular Session

By Representative Delvin

Read first time 02/11/97. Referred to Committee on Children & Family Services.

1 AN ACT Relating to children with developmental disabilities;
2 amending RCW 13.34.030; reenacting and amending RCW 13.34.130; adding
3 new sections to chapter 71A.10 RCW; creating a new section; providing
4 an effective date; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** The legislature intends to consolidate all
7 services provided to children with developmental disabilities through
8 the department of social and health services in the division of
9 developmental disabilities. The legislature also intends to provide a
10 discrete, separate judicial process for children with developmental
11 disabilities who require home-based or out-of-home care that complies
12 with the federal requirements for receipt of federal funds for services
13 under Title IV-B and Title IV-E of the social security act. The
14 legislature intends by this act to minimize the embarrassment and
15 inconvenience of children with developmental disabilities and their
16 families caused by complying with these federal requirements.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 71A.10 RCW
18 to read as follows:

1 As used in this chapter, "developmentally disabled dependent child"
2 is a child who has a developmental disability as defined in RCW
3 71A.10.020 and whose parent, guardian, or legal custodian and with the
4 department mutually agree that services appropriate to the child's
5 needs can not be provided in the home.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 71A.10 RCW
7 to read as follows:

8 The department shall consolidate all services provided through the
9 department to children with developmental disabilities in the division
10 of developmental disabilities.

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

13 For purposes of this chapter:

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

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

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

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

31 (a) Who has been abandoned; that is, where the child's parent,
32 guardian, or other custodian has expressed either by statement or
33 conduct, an intent to forego, for an extended period, parental rights
34 or parental responsibilities despite an ability to do so. If the court
35 finds that the petitioner has exercised due diligence in attempting to
36 locate the parent, no contact between the child and the child's parent,
37 guardian, or other custodian for a period of three months creates a

1 rebuttable presumption of abandonment, even if there is no expressed
2 intent to abandon;

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

5 (c) Who has no parent, guardian, or custodian capable of adequately
6 caring for the child, such that the child is in circumstances which
7 constitute a danger of substantial damage to the child's psychological
8 or physical development(~~(or~~

9 ~~(d) Who has a developmental disability, as defined in RCW
10 71A.10.020 and whose parent, guardian, or legal custodian together with
11 the department determines that services appropriate to the child's
12 needs can not be provided in the home. However, (a), (b), and (c) of
13 this subsection may still be applied if other reasons for removal of
14 the child from the home exist)).~~

15 (5) "Guardian" means the person or agency that: (a) Has been
16 appointed as the guardian of a child in a legal proceeding other than
17 a proceeding under this chapter; and (b) has the legal right to custody
18 of the child pursuant to such appointment. The term "guardian" shall
19 not include a "dependency guardian" appointed pursuant to a proceeding
20 under this chapter.

21 (6) "Guardian ad litem" means a person, appointed by the court to
22 represent the best interest of a child in a proceeding under this
23 chapter, or in any matter which may be consolidated with a proceeding
24 under this chapter. A "court-appointed special advocate" appointed by
25 the court to be the guardian ad litem for the child, or to perform
26 substantially the same duties and functions as a guardian ad litem,
27 shall be deemed to be guardian ad litem for all purposes and uses of
28 this chapter.

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

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

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

5 **Sec. 5.** RCW 13.34.130 and 1995 c 313 s 2, 1995 c 311 s 19, and
6 1995 c 53 s 1 are each reenacted and amended to read as follows:

7 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
8 been proven by a preponderance of the evidence that the child is
9 dependent within the meaning of RCW 13.34.030 or a developmentally
10 disabled dependent child as defined in section 2 of this act; after
11 consideration of the predisposition report prepared pursuant to RCW
12 13.34.110 and after a disposition hearing has been held pursuant to RCW
13 13.34.110, the court shall enter an order of disposition pursuant to
14 this section.

15 (1) The court shall order one of the following dispositions of the
16 case:

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

24 (b) Order that the child be removed from his or her home and
25 ordered into the custody, control, and care of a relative or the
26 department of social and health services or a licensed child placing
27 agency for placement in a foster family home or group care facility
28 licensed pursuant to chapter 74.15 RCW or in a home not required to be
29 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
30 cause to believe that the safety or welfare of the child would be
31 jeopardized or that efforts to reunite the parent and child will be
32 hindered, such child shall be placed with a person who is related to
33 the child as defined in RCW 74.15.020(4)(a) and with whom the child has
34 a relationship and is comfortable, and who is willing and available to
35 care for the child. Placement of the child with a relative under this
36 subsection shall be given preference by the court. An order for out-
37 of-home placement may be made only if the court finds that reasonable
38 efforts have been made to prevent or eliminate the need for removal of

1 the child from the child's home and to make it possible for the child
2 to return home, specifying the services that have been provided to the
3 child and the child's parent, guardian, or legal custodian, and that
4 preventive services have been offered or provided and have failed to
5 prevent the need for out-of-home placement, unless the health, safety,
6 and welfare of the child cannot be protected adequately in the home,
7 and that:

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

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

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

15 (iv) The extent of the child's disability is such that the parent,
16 guardian, or legal custodian is unable to provide the necessary care
17 for the child and the parent, guardian, or legal custodian has
18 determined that the child would benefit from placement outside of the
19 home.

20 (2) If the court has ordered a child removed from his or her home
21 pursuant to subsection (1)(b) of this section, the court may order that
22 a petition seeking termination of the parent and child relationship be
23 filed if the court finds it is recommended by the supervising agency,
24 that it is in the best interests of the child and that it is not
25 reasonable to provide further services to reunify the family because
26 the existence of aggravated circumstances make it unlikely that
27 services will effectuate the return of the child to the child's parents
28 in the near future. In determining whether aggravated circumstances
29 exist, the court shall consider one or more of the following:

30 (a) Conviction of the parent of rape of the child in the first,
31 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
32 9A.44.079;

33 (b) Conviction of the parent of criminal mistreatment of the child
34 in the first or second degree as defined in RCW 9A.42.020 and
35 9A.42.030;

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

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

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

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

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

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

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

37 (i) The agency plan shall specify what services the parents will be
38 offered in order to enable them to resume custody, what requirements

1 the parents must meet in order to resume custody, and a time limit for
2 each service plan and parental requirement.

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

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

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

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

27 (4) If there is insufficient information at the time of the
28 disposition hearing upon which to base a determination regarding the
29 suitability of a proposed placement with a relative, the child shall
30 remain in foster care and the court shall direct the supervising agency
31 to conduct necessary background investigations as provided in chapter
32 74.15 RCW and report the results of such investigation to the court
33 within thirty days. However, if such relative appears otherwise
34 suitable and competent to provide care and treatment, the criminal
35 history background check need not be completed before placement, but as
36 soon as possible after placement. Any placements with relatives,
37 pursuant to this section, shall be contingent upon cooperation by the
38 relative with the agency case plan and compliance with court orders
39 related to the care and supervision of the child including, but not

1 limited to, court orders regarding parent-child contacts and any other
2 conditions imposed by the court. Noncompliance with the case plan or
3 court order shall be grounds for removal of the child from the
4 relative's home, subject to review by the court.

5 (5) Except for children whose cases are reviewed by a citizen
6 review board under chapter 13.70 RCW, the status of all children found
7 to be dependent shall be reviewed by the court at least every six
8 months from the beginning date of the placement episode or the date
9 dependency is established, whichever is first, at a hearing in which it
10 shall be determined whether court supervision should continue. The
11 review shall include findings regarding the agency and parental
12 completion of disposition plan requirements, and if necessary, revised
13 permanency time limits.

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

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

23 (i) Whether reasonable services have been provided to or offered to
24 the parties to facilitate reunion, specifying the services provided or
25 offered;

26 (ii) Whether the child has been placed in the least-restrictive
27 setting appropriate to the child's needs, including whether
28 consideration and preference has been given to placement with the
29 child's relatives;

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and takes effect
11 July 1, 1997.

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