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ENGROSSED SUBSTITUTE SENATE BILL 5491

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State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Stevens, Swecker, Strannigan, Schow and Hochstatter)

Read first time 03/05/97.

1 AN ACT Relating to termination of the parent and child  
2 relationship; amending RCW 13.34.190; and reenacting and amending RCW  
3 13.34.130 and 13.34.180.

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

5 **Sec. 1.** 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; after consideration of  
10 the predisposition report prepared pursuant to RCW 13.34.110 and after  
11 a disposition hearing has been held pursuant to RCW 13.34.110, the  
12 court shall enter an order of disposition pursuant to this section.

13 (1) The court shall order one of the following dispositions of the  
14 case:

15 (a) Order a disposition other than removal of the child from his or  
16 her home, which shall provide a program designed to alleviate the  
17 immediate danger to the child, to mitigate or cure any damage the child  
18 has already suffered, and to aid the parents so that the child will not  
19 be endangered in the future. In selecting a program, the court should

1 choose those services that least interfere with family autonomy,  
2 provided that the services are adequate to protect the child.

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

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

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

29 (iii) The court finds, by clear, cogent, and convincing evidence,  
30 a manifest danger exists that the child will suffer serious abuse or  
31 neglect if the child is not removed from the home and an order under  
32 RCW 26.44.063 would not protect the child from danger; or

33 (iv) The extent of the child's disability is such that the parent,  
34 guardian, or legal custodian is unable to provide the necessary care  
35 for the child and the parent, guardian, or legal custodian has  
36 determined that the child would benefit from placement outside of the  
37 home.

38 (2) If the court has ordered a child removed from his or her home  
39 pursuant to subsection (1)(b) of this section, the court may order that

1 a petition seeking termination of the parent and child relationship be  
2 filed if the court finds it is recommended by the supervising agency,  
3 that it is in the best interests of the child and that it is not  
4 reasonable to provide further services to reunify the family because  
5 the existence of aggravated circumstances make it unlikely that  
6 services will effectuate the return of the child to the child's parents  
7 in the near future. In determining whether aggravated circumstances  
8 exist, the court shall consider one or more of the following:

9 (a) Conviction of the parent of rape of the child in the first,  
10 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
11 9A.44.079;

12 (b) Conviction of the parent of criminal mistreatment of the child  
13 in the first or second degree as defined in RCW 9A.42.020 and  
14 9A.42.030;

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

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

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

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

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

30 (a) A permanency plan of care that shall identify one of the  
31 following outcomes as a primary goal and may identify additional  
32 outcomes as alternative goals: Return of the child to the home of the  
33 child's parent, guardian, or legal custodian; adoption; guardianship;  
34 or long-term relative or foster care, until the child is age eighteen,  
35 with a written agreement between the parties and the care provider; and  
36 independent living, if appropriate and if the child is age sixteen or  
37 older. Whenever a permanency plan identifies independent living as a  
38 goal, the plan shall also specifically identify the services that will  
39 be provided to assist the child to make a successful transition from

1 foster care to independent living. Before the court approves  
2 independent living as a permanency plan of care, the court shall make  
3 a finding that the provision of services to assist the child in making  
4 a transition from foster care to independent living will allow the  
5 child to manage his or her financial affairs and to manage his or her  
6 personal, social, educational, and nonfinancial affairs. The  
7 department shall not discharge a child to an independent living  
8 situation before the child is eighteen years of age unless the child  
9 becomes emancipated pursuant to chapter 13.64 RCW.

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

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

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

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

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

35 (c) If the court has ordered, pursuant to subsection (2) of this  
36 section, that a termination petition be filed, a specific plan as to  
37 where the child will be placed, what steps will be taken to achieve  
38 permanency for the child, services to be offered or provided to the  
39 child, and, if visitation would be in the best interests of the child,

1 a recommendation to the court regarding visitation between parent and  
2 child pending a fact-finding hearing on the termination petition. The  
3 agency shall not be required to develop a plan of services for the  
4 parents or provide services to the parents.

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

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

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

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

1 (i) Whether reasonable services have been provided to or offered to  
2 the parties to facilitate reunion, specifying the services provided or  
3 offered;

4 (ii) Whether the child has been placed in the least-restrictive  
5 setting appropriate to the child's needs, including whether  
6 consideration and preference has been given to placement with the  
7 child's relatives;

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

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

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

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

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

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

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

23 **Sec. 2.** RCW 13.34.180 and 1993 c 412 s 2 and 1993 c 358 s 3 are  
24 each reenacted and amended to read as follows:

25 A petition seeking termination of a parent and child relationship  
26 may be filed in juvenile court by any party to the dependency  
27 proceedings concerning that child. Such petition shall conform to the  
28 requirements of RCW 13.34.040, shall be served upon the parties as  
29 provided in RCW 13.34.070(8), and shall allege:

30 (1) That the child has been found to be a dependent child under RCW  
31 13.34.030(~~((2))~~) (4); and

32 (2) That the court has entered a dispositional order pursuant to  
33 RCW 13.34.130; and

34 (3) That the child has been removed or will, at the time of the  
35 hearing, have been removed from the custody of the parent for a period  
36 of at least six months pursuant to a finding of dependency under RCW  
37 13.34.030(~~((2))~~) (4); and

1 (4) That the services ordered under RCW 13.34.130 have been offered  
2 or provided and all necessary services, reasonably available, capable  
3 of correcting the parental deficiencies within the foreseeable future  
4 have been offered or provided; and

5 (5) That there is little likelihood that conditions will be  
6 remedied so that the child can be returned to the parent in the near  
7 future. In determining whether the conditions will be remedied the  
8 court may consider, but is not limited to, the following factors:

9 (a) Use of intoxicating or controlled substances so as to render  
10 the parent incapable of providing proper care for the child for  
11 extended periods of time and documented unwillingness of the parent to  
12 receive and complete treatment or documented multiple failed treatment  
13 attempts; or

14 (b) Psychological incapacity or mental deficiency of the parent  
15 that is so severe and chronic as to render the parent incapable of  
16 providing proper care for the child for extended periods of time, and  
17 documented unwillingness of the parent to receive and complete  
18 treatment or documentation that there is no treatment that can render  
19 the parent capable of providing proper care for the child in the near  
20 future; ~~((and))~~

21 (6) That continuation of the parent and child relationship clearly  
22 diminishes the child's prospects for early integration into a stable  
23 and permanent home; and

24 (7) That the parent is currently unfit, notwithstanding any  
25 judicial findings entered in the dependency proceeding upon which this  
26 proceeding is based; or

27 ~~((+7))~~ (8) In lieu of the allegations in subsections (1) through  
28 ~~((+6))~~ (7) of this section, the petition may allege that the child was  
29 found under such circumstances that the whereabouts of the child's  
30 parent are unknown and no person has acknowledged paternity or  
31 maternity and requested custody of the child within two months after  
32 the child was found.

33 A parent's failure to substantially improve parental deficiencies  
34 within twelve months following entry of the dispositional order shall  
35 give rise to a rebuttable presumption that there is little likelihood  
36 that conditions will be remedied so that the child can be returned to  
37 the parent in the near future. The presumption shall not arise unless  
38 the petitioner makes a showing that all necessary services reasonably

1 capable of correcting the parental deficiencies within the foreseeable  
2 future have been offered or provided.

3 Notice of rights shall be served upon the parent, guardian, or  
4 legal custodian with the petition and shall be in substantially the  
5 following form:

6 "NOTICE

7 A petition for termination of parental rights has been filed  
8 against you. You have important legal rights and you must take  
9 steps to protect your interests. This petition could result in  
10 permanent loss of your parental rights.

11 1. You have the right to a fact-finding hearing before  
12 a judge.

13 2. You have the right to have a lawyer represent you at  
14 the hearing. A lawyer can look at the files in your case, talk  
15 to the department of social and health services and other  
16 agencies, tell you about the law, help you understand your  
17 rights, and help you at hearings. If you cannot afford a  
18 lawyer, the court will appoint one to represent you. To get a  
19 court-appointed lawyer you must contact:       (explain local  
20 procedure)      .

21 3. At the hearing, you have the right to speak on your  
22 own behalf, to introduce evidence, to examine witnesses, and to  
23 receive a decision based solely on the evidence presented to  
24 the judge.

25 You should be present at this hearing.

26 You may call       (insert agency)       for more information  
27 about your child. The agency's name and telephone number are  
28       (insert name and telephone number)      ."

29 **Sec. 3.** RCW 13.34.190 and 1993 c 412 s 3 are each amended to read  
30 as follows:

31 After hearings pursuant to RCW 13.34.110, the court may enter an  
32 order terminating all parental rights to a child if the court finds  
33 that:

34 (1) The allegations contained in the petition as provided in RCW  
35 13.34.180 (1) through ~~((+6))~~ (7) are established by clear, cogent, and  
36 convincing evidence; or

1           (2) RCW 13.34.180 (3) and (4) may be waived because the allegations  
2 under RCW 13.34.180 (1), (2), (5), (~~and~~) (6), and (7) are established  
3 beyond a reasonable doubt; or

4           (3) The allegation under RCW 13.34.180(~~(+7)~~) (8) is established  
5 beyond a reasonable doubt. In determining whether RCW 13.34.180 (5)  
6 and (6) are established beyond a reasonable doubt, the court shall  
7 consider whether one or more of the aggravated circumstances listed in  
8 RCW 13.34.130(2) exist; and

9           (4) Such an order is in the best interests of the child.

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