
HOUSE BILL 1110

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By Representatives Vance, Leonard, Cooke, Sheldon, Basich, Foreman, Brough, Long, Karahalios, Miller, Brumsickle and Kremen

Read first time 01/15/93. Referred to Committee on Human Services.

1 AN ACT Relating to sexually aggressive youth; amending RCW
2 26.44.020, 74.13.075, 13.34.030, and 13.34.130; adding a new section to
3 chapter 26.44 RCW; and adding a new section to chapter 13.34 RCW.

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

5 **Sec. 1.** RCW 26.44.020 and 1988 c 142 s 1 are each amended to read
6 as follows:

7 For the purpose of and as used in this chapter:

8 (1) "Court" means the superior court of the state of Washington,
9 juvenile department.

10 (2) "Law enforcement agency" means the police department, the
11 prosecuting attorney, the state patrol, the director of public safety,
12 or the office of the sheriff.

13 (3) "Practitioner of the healing arts" or "practitioner" means a
14 person licensed by this state to practice (~~podiatry~~) podiatric
15 medicine and surgery, optometry, chiropractic, nursing, dentistry,
16 osteopathy and surgery, or medicine and surgery or to provide other
17 health services. The term "practitioner" shall include a duly
18 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
19 person who is being furnished Christian Science treatment by a duly

1 accredited Christian Science practitioner shall not be considered, for
2 that reason alone, a neglected person for the purposes of this chapter.

3 (4) "Institution" means a private or public hospital or any other
4 facility providing medical diagnosis, treatment or care.

5 (5) "Department" means the state department of social and health
6 services.

7 (6) "Child" or "children" means any person under the age of
8 eighteen years of age.

9 (7) "Professional school personnel" shall include, but not be
10 limited to, teachers, counselors, administrators, child care facility
11 personnel, and school nurses.

12 (8) "Social service counselor" shall mean anyone engaged in a
13 professional capacity during the regular course of employment in
14 encouraging or promoting the health, welfare, support or education of
15 children, or providing social services to adults or families, including
16 mental health, drug and alcohol treatment, and domestic violence
17 programs, whether in an individual capacity, or as an employee or agent
18 of any public or private organization or institution.

19 (9) "Psychologist" shall mean any person licensed to practice
20 psychology under chapter 18.83 RCW, whether acting in an individual
21 capacity or as an employee or agent of any public or private
22 organization or institution.

23 (10) "Pharmacist" shall mean any registered pharmacist under the
24 provisions of chapter 18.64 RCW, whether acting in an individual
25 capacity or as an employee or agent of any public or private
26 organization or institution.

27 (11) "Clergy" shall mean any regularly licensed or ordained
28 minister, priest or rabbi of any church or religious denomination,
29 whether acting in an individual capacity or as an employee or agent of
30 any public or private organization or institution.

31 (12) "Child abuse or neglect" shall mean the injury, sexual abuse,
32 sexual exploitation, or negligent treatment or maltreatment of a child
33 by any person under circumstances which indicate that the child's
34 health, welfare, and safety is harmed thereby. An abused child is a
35 child who has been subjected to child abuse or neglect as defined
36 herein: PROVIDED, That this subsection shall not be construed to
37 authorize interference with child-raising practices, including
38 reasonable parental discipline, which are not proved to be injurious to
39 the child's health, welfare, and safety: AND PROVIDED FURTHER, That

1 nothing in this section shall be used to prohibit the reasonable use of
2 corporal punishment as a means of discipline. No parent or guardian
3 shall be deemed abusive or neglectful solely by reason of the parent's
4 or child's blindness, deafness, developmental disability, or other
5 handicap.

6 (13) "Child protective services section" shall mean the child
7 protective services section of the department.

8 (14) "Adult dependent persons not able to provide for their own
9 protection through the criminal justice system" shall be defined as
10 those persons over the age of eighteen years who have been found
11 legally incompetent pursuant to chapter 11.88 RCW or found disabled to
12 such a degree pursuant to said chapter, that such protection is
13 indicated: PROVIDED, That no persons reporting injury, abuse, or
14 neglect to an adult dependent person as defined herein shall suffer
15 negative consequences if such a judicial determination of incompetency
16 or disability has not taken place and the person reporting believes in
17 good faith that the adult dependent person has been found legally
18 incompetent pursuant to chapter 11.88 RCW.

19 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
20 encouraging a child to engage in prostitution by any person; or (b)
21 allowing, permitting, encouraging, or engaging in the obscene or
22 pornographic photographing, filming, or depicting of a child for
23 commercial purposes as those acts are defined by state law by any
24 person.

25 (16) "Negligent treatment or maltreatment" means an act or omission
26 which evidences a serious disregard of consequences of such magnitude
27 as to constitute a clear and present danger to the child's health,
28 welfare, and safety.

29 (17) "Developmentally disabled person" means a person who has a
30 disability defined in RCW (~~(71.20.016)~~) 71A.10.020.

31 (18) "Child protective services" means those services provided by
32 the department designed to protect children from child abuse and
33 neglect and safeguard the general welfare of such children and shall
34 include investigations of child abuse and neglect reports, including
35 reports regarding child care centers and family child care homes, and
36 the development, management, and provision of or referral to services
37 to ameliorate conditions which endanger the welfare of children, the
38 coordination of necessary programs and services relevant to the
39 prevention, intervention, and treatment of child abuse and neglect, and

1 services to children to ensure that each child has a permanent home.
2 In determining whether protective services should be provided, the
3 department shall not decline to provide such services solely because of
4 the child's unwillingness or developmental inability to describe the
5 nature and severity of the abuse or neglect.

6 (19) "Malice" or "maliciously" means an evil intent, wish, or
7 design to vex, annoy, or injure another person. Such malice may be
8 inferred from an act done in wilful disregard of the rights of another,
9 or an act wrongfully done without just cause or excuse, or an act or
10 omission of duty betraying a wilful disregard of social duty.

11 (20) "Sexually aggressive youth" means a child who is defined in
12 RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.44 RCW
14 to read as follows:

15 (1) If a law enforcement agency receives a complaint that alleges
16 that a child under age twelve has committed a sex offense as defined in
17 RCW 9.94A.030, the agency shall investigate the complaint. If the
18 investigation reveals that probable cause exists to believe that the
19 youth may have committed a sex offense and the child is at least eight
20 years of age, the agency shall refer the case to the proper county
21 prosecuting attorney for appropriate action to determine whether the
22 child may be prosecuted or is a sexually aggressive youth. If the
23 child is less than eight years old, the law enforcement agency shall
24 refer the case to the department.

25 (2) If the prosecutor or a judge determines the child cannot be
26 prosecuted for the alleged sex offense because the child is incapable
27 of committing a crime as provided in RCW 9A.04.050 and the prosecutor
28 believes that probable cause exists to believe that the child engaged
29 in acts that would constitute a sex offense, the prosecutor shall refer
30 the child as a sexually aggressive youth to the department. The
31 prosecutor shall provide the department with an affidavit stating that
32 the prosecutor has determined that probable cause exists to believe
33 that the juvenile has committed acts that could be prosecuted as a sex
34 offense but the case is not being prosecuted because the juvenile is
35 incapable of committing a crime as provided in RCW 9A.04.050.

36 (3) The department shall investigate any referrals that allege that
37 a child is a sexually aggressive youth. The department may offer
38 appropriate available services and treatment to a sexually aggressive

1 youth and his or her parents or legal guardians as provided in RCW
2 74.13.075. If the parents refuse to accept or fail to obtain
3 appropriate treatment or services, the department may pursue a
4 dependency action as provided in chapter 13.34 RCW.

5 **Sec. 3.** RCW 74.13.075 and 1990 c 3 s 305 are each amended to read
6 as follows:

7 (1) For the purposes of funds appropriated for the treatment of
8 (~~at risk juvenile sex offenders, "at risk juvenile sex offenders"~~)
9 sexually aggressive youth, the term "sexually aggressive youth" means
10 those juveniles who:

11 (a) Are in the care and custody of the state (~~(who)~~) and:

12 (~~(a)~~) (i) Have been abused; and

13 (~~(b)~~) (ii) Have committed a sexually aggressive or other violent
14 act that is sexual in nature; or

15 (~~(e)~~) (b) Cannot be detained under the juvenile justice system
16 due to being under age twelve and incompetent to stand trial for acts
17 that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if
18 the juvenile was over twelve years of age, or competent to stand trial
19 if under twelve years of age.

20 (2) In expending these funds, the department of social and health
21 services shall establish in each region a case review committee to
22 review all cases for which the funds are used. In determining whether
23 to use these funds in a particular case, the committee shall consider:

24 (a) The age of the juvenile;

25 (b) The extent and type of abuse to which the juvenile has been
26 subjected;

27 (c) The juvenile's past conduct;

28 (d) The benefits that can be expected from the treatment; (~~and~~)

29 (e) The cost of the treatment; and

30 (f) The ability of the juvenile's parent or guardian to pay for the
31 treatment.

32 **Sec. 4.** RCW 13.34.030 and 1988 c 176 s 901 are each amended to
33 read as follows:

34 For purposes of this chapter:

35 (1) "Child" and "juvenile" means any individual under the age of
36 eighteen years;

37 (2) "Dependent child" means any child:

1 (a) Who has been abandoned; that is, where the child's parent,
2 guardian, or other custodian has evidenced either by statement or
3 conduct, a settled intent to forego, for an extended period, all
4 parental rights or all parental responsibilities despite an ability to
5 do so;

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

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

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

18 (e) Who is a "sexually aggressive youth," as defined in RCW
19 74.13.075(1)(b) and whose parent or guardian has failed to obtain or
20 refused to accept available appropriate treatment or services.

21 NEW SECTION. Sec. 5. A new section is added to chapter 13.34 RCW
22 to read as follows:

23 When the petition for dependency alleges that the child is a
24 sexually aggressive youth and the parent or guardian has failed to
25 obtain or has refused to accept available appropriate treatment, the
26 court may order that the child receive an evaluation to determine
27 whether the child needs treatment or other services. Prior to entry of
28 an order of dependency on the petition, the court must find by a
29 preponderance of the evidence at the fact-finding hearing held pursuant
30 to RCW 13.34.100 that the child has committed acts that could be
31 prosecuted as sex offenses as defined by RCW 9.94A.030, that the parent
32 or guardian has failed to obtain or has refused to accept available
33 appropriate treatment or services, and that treatment and services are
34 available. If the court orders the child receive an evaluation,
35 treatment, or services, the parent or legal guardian must pay for the
36 evaluation, treatment, and services based on the parent's or guardian's
37 ability to pay. The department shall develop a fair and equitable
38 payment schedule.

1 **Sec. 6.** RCW 13.34.130 and 1992 c 145 s 14 are each amended to read
2 as follows:

3 If, after a fact-finding hearing pursuant to RCW 13.34.110, as now
4 or hereafter amended, it has been proven by a preponderance of the
5 evidence that the child is dependent within the meaning of RCW
6 13.34.030(2); after consideration of the predisposition report prepared
7 pursuant to RCW 13.34.110 and after a disposition hearing has been held
8 pursuant to RCW 13.34.110, the court shall enter an order of
9 disposition pursuant to this section.

10 (1) The court shall order one of the following dispositions of the
11 case:

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

19 (b) Order that the child be removed from his or her home and
20 ordered into the custody, control, and care of a relative or the
21 department of social and health services or a licensed child placing
22 agency for placement in a foster family home or group care facility
23 licensed pursuant to chapter 74.15 RCW or in a home not required to be
24 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
25 cause to believe that the safety or welfare of the child would be
26 jeopardized or that efforts to reunite the parent and child will be
27 hindered, such child shall be placed with a grandparent, brother,
28 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom
29 the child has a relationship and is comfortable, and who is willing and
30 available to care for the child. An order for out-of-home placement
31 may be made only if the court finds that reasonable efforts have been
32 made to prevent or eliminate the need for removal of the child from the
33 child's home and to make it possible for the child to return home,
34 specifying the services that have been provided to the child and the
35 child's parent, guardian, or legal custodian, and that:

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

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

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

4 (iv) The extent of the child's disability is such that the parent,
5 guardian, or legal custodian is unable to provide the necessary care
6 for the child and the parent, guardian, or legal custodian has
7 determined that the child would benefit from placement outside of the
8 home.

9 (2) If the court has ordered a child removed from his or her home
10 pursuant to subsection (1)(b) of this section, the court may order that
11 a petition seeking termination of the parent and child relationship be
12 filed if the court finds it is recommended by the supervising agency,
13 that it is in the best interests of the child and that it is not
14 reasonable to provide further services to reunify the family because
15 the existence of aggravated circumstances make it unlikely that
16 services will effectuate the return of the child to the child's parents
17 in the near future. In determining whether aggravated circumstances
18 exist, the court shall consider one or more of the following:

19 (a) Conviction of the parent of rape of the child in the first,
20 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
21 9A.44.079;

22 (b) Conviction of the parent of criminal mistreatment of the child
23 in the first or second degree as defined in RCW 9A.42.020 and
24 9A.42.030;

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

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

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

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

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

1 (a) A permanent plan of care that may include one of the following:
2 Return of the child to the home of the child's parent, adoption,
3 guardianship, or long-term placement with a relative or in foster care
4 with a written agreement.

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

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

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

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

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

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

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

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

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

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

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

1 (ii) Whether the child has been placed in the least-restrictive
2 setting appropriate to the child's needs, including whether
3 consideration has been given to placement with the child's relatives;
4 (iii) Whether there is a continuing need for placement and whether
5 the placement is appropriate;
6 (iv) Whether there has been compliance with the case plan by the
7 child, the child's parents, and the agency supervising the placement;
8 (v) Whether progress has been made toward correcting the problems
9 that necessitated the child's placement in out-of-home care;
10 (vi) Whether the parents have visited the child and any reasons why
11 visitation has not occurred or has been infrequent;
12 (vii) Whether additional services are needed to facilitate the
13 return of the child to the child's parents; if so, the court shall
14 order that reasonable services be offered specifying such services; and
15 (viii) The projected date by which the child will be returned home
16 or other permanent plan of care will be implemented.
17 (c) The court at the review hearing may order that a petition
18 seeking termination of the parent and child relationship be filed.
19 (6) If the sole basis for finding that the child is dependent is
20 the parent's failure to obtain or refusal to accept treatment for a
21 child that is a sexually aggressive youth, the court must limit the
22 department's scope of authority to the amount necessary to obtain
23 treatment and services for the child. The court may not order that the
24 child be removed from the home or expand the department's authority
25 unless the court finds that removing the child or expanding the
26 department's authority is necessary to treat the child or to provide
27 services.

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