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**SUBSTITUTE HOUSE BILL 2557**

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**State of Washington**

**54th Legislature**

**1996 Regular Session**

**By** House Committee on Children & Family Services (originally sponsored by Representatives Veloria, Cooke and Ogden)

Read first time 02/01/96.

1 AN ACT Relating to legal custody of children; amending RCW  
2 13.34.030; and reenacting and amending RCW 13.34.130 and 13.34.145.

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

4 **Sec. 1.** RCW 13.34.030 and 1995 c 311 s 23 are each amended to read  
5 as follows:

6 For purposes of this chapter:

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

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

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

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

6 (a) Who has been abandoned; that is, where the child's parent,  
7 guardian, or other custodian has expressed either by statement or  
8 conduct, an intent to forego, for an extended period, parental rights  
9 or parental responsibilities despite an ability to do so. If the court  
10 finds that the petitioner has exercised due diligence in attempting to  
11 locate the parent, no contact between the child and the child's parent,  
12 guardian, or other custodian for a period of three months creates a  
13 rebuttable presumption of abandonment, even if there is no expressed  
14 intent to abandon;

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

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

21 (d) Who has a developmental disability, as defined in RCW  
22 71A.10.020 and whose parent, guardian, or legal custodian together with  
23 the department determines that services appropriate to the child's  
24 needs can not be provided in the home. However, (a), (b), and (c) of  
25 this subsection may still be applied if other reasons for removal of  
26 the child from the home exist.

27 (5) "Guardian" means the person or agency that: (a) Has been  
28 appointed as the guardian of a child in a legal proceeding other than  
29 a proceeding under this chapter; and (b) has the legal right to custody  
30 of the child pursuant to such appointment. The term "guardian" shall  
31 not include a "dependency guardian" appointed pursuant to a proceeding  
32 under this chapter.

33 (6) "Guardian ad litem" means a person, appointed by the court to  
34 represent the best interest of a child in a proceeding under this  
35 chapter, or in any matter which may be consolidated with a proceeding  
36 under this chapter. A "court-appointed special advocate" appointed by  
37 the court to be the guardian ad litem for the child, or to perform  
38 substantially the same duties and functions as a guardian ad litem,

1 shall be deemed to be guardian ad litem for all purposes and uses of  
2 this chapter.

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

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

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

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

20 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has  
21 been proven by a preponderance of the evidence that the child is  
22 dependent within the meaning of RCW 13.34.030; after consideration of  
23 the predisposition report prepared pursuant to RCW 13.34.110 and after  
24 a disposition hearing has been held pursuant to RCW 13.34.110, the  
25 court shall enter an order of disposition pursuant to this section.

26 (1) The court shall order one of the following dispositions of the  
27 case:

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

35 (b) Order that the child be removed from his or her home and  
36 ordered into the custody, control, and care of a relative or the  
37 department of social and health services or a licensed child placing  
38 agency for placement in a foster family home or group care facility

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

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

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

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

26 (iv) The extent of the child's disability is such that the parent,  
27 guardian, or legal custodian is unable to provide the necessary care  
28 for the child and the parent, guardian, or legal custodian has  
29 determined that the child would benefit from placement outside of the  
30 home.

31 (2) If the court has ordered a child removed from his or her home  
32 pursuant to subsection (1)(b) of this section, the court may order that  
33 a petition seeking termination of the parent and child relationship be  
34 filed if the court finds it is recommended by the supervising agency,  
35 that it is in the best interests of the child and that it is not  
36 reasonable to provide further services to reunify the family because  
37 the existence of aggravated circumstances make it unlikely that  
38 services will effectuate the return of the child to the child's parents

1 in the near future. In determining whether aggravated circumstances  
2 exist, the court shall consider one or more of the following:

3 (a) Conviction of the parent of rape of the child in the first,  
4 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
5 9A.44.079;

6 (b) Conviction of the parent of criminal mistreatment of the child  
7 in the first or second degree as defined in RCW 9A.42.020 and  
8 9A.42.030;

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

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

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

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

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

24 (a) A permanency plan of care that shall identify one of the  
25 following outcomes as a primary goal and may identify additional  
26 outcomes as alternative goals: Return of the child to the home of the  
27 child's parent, guardian, or legal custodian; adoption; guardianship;  
28 permanent legal custody; or long-term relative or foster care, until  
29 the child is age eighteen, with a written agreement between the parties  
30 and the care provider; and independent living, if appropriate and if  
31 the child is age sixteen or older. Whenever a permanency plan  
32 identifies independent living as a goal, the plan shall also  
33 specifically identify the services that will be provided to assist the  
34 child to make a successful transition from foster care to independent  
35 living. Before the court approves independent living as a permanency  
36 plan of care, the court shall make a finding that the provision of  
37 services to assist the child in making a transition from foster care to  
38 independent living will allow the child to manage his or her financial  
39 affairs and to manage his or her personal, social, educational, and

1 nonfinancial affairs. The department shall not discharge a child to an  
2 independent living situation before the child is eighteen years of age  
3 unless the child becomes emancipated pursuant to chapter 13.64 RCW.

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

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

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

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

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

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

38 (4) If there is insufficient information at the time of the  
39 disposition hearing upon which to base a determination regarding the

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

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

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

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

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

37 (ii) Whether the child has been placed in the least-restrictive  
38 setting appropriate to the child's needs, including whether

1 consideration and preference has been given to placement with the  
2 child's relatives;

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

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

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

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

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

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

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

18 **Sec. 3.** RCW 13.34.145 and 1995 c 311 s 20 and 1995 c 53 s 2 are  
19 each reenacted and amended to read as follows:

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

27 (a) Whenever a child is placed in out-of-home care pursuant to RCW  
28 13.34.130, the agency that has custody of the child shall provide the  
29 court with a written permanency plan of care directed towards securing  
30 a safe, stable, and permanent home for the child as soon as possible.  
31 The plan shall identify one of the following outcomes as the primary  
32 goal and may also identify additional outcomes as alternative goals:  
33 Return of the child to the home of the child's parent, guardian, or  
34 legal custodian; adoption; guardianship; permanent legal custody; or  
35 long-term relative or foster care, until the child is age eighteen,  
36 with a written agreement between the parties and the care provider; and  
37 independent living, if appropriate and if the child is age sixteen or  
38 older and the provisions of subsection (2) of this section are met.

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

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

10 (d) For purposes related to permanency planning:

11 (i) "Guardianship" means a dependency guardianship pursuant to this  
12 chapter, a legal guardianship pursuant to chapter 11.88 RCW, or  
13 equivalent laws of another state or a federally recognized Indian  
14 tribe.

15 (ii) "Permanent legal custody" means legal custody pursuant to  
16 chapter 26.10 RCW or equivalent laws of another state or of a federally  
17 recognized Indian tribe.

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

30 (3)(a) For children ten and under, a permanency planning hearing  
31 shall be held in all cases where the child has remained in out-of-home  
32 care for at least nine months and an adoption decree ~~((or))~~,  
33 guardianship order, or permanent custody order has not previously been  
34 entered. The hearing shall take place no later than twelve months  
35 following commencement of the current placement episode.

36 (b) For children over ten, a permanency planning hearing shall be  
37 held in all cases where the child has remained in out-of-home care for  
38 at least fifteen months and an adoption decree ~~((or))~~,  
39 guardianship order, or permanent custody order has not previously been entered. The

1 hearing shall take place no later than eighteen months following  
2 commencement of the current placement episode.

3 (4) Whenever a child is removed from the home of a dependency  
4 guardian or long-term relative or foster care provider, and the child  
5 is not returned to the home of the parent, guardian, or legal custodian  
6 but is placed in out-of-home care, a permanency planning hearing shall  
7 take place no later than twelve or eighteen months, as provided in  
8 subsection (3) of this section, following the date of removal unless,  
9 prior to the hearing, the child returns to the home of the dependency  
10 guardian or long-term care provider, the child is placed in the home of  
11 the parent, guardian, or legal custodian, an adoption decree ~~((or))~~,  
12 guardianship order, or permanent custody order is entered, or the  
13 dependency is dismissed.

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

18 (6) At the permanency planning hearing, the court shall enter  
19 findings as required by RCW 13.34.130(5) and shall review the  
20 permanency plan prepared by the agency. If the child has resided in  
21 the home of a foster parent or relative for more than six months prior  
22 to the permanency planning hearing, the court shall also enter a  
23 finding regarding whether the foster parent or relative was informed of  
24 the hearing as required in RCW 74.13.280. If a goal of long-term  
25 foster or relative care has been achieved prior to the permanency  
26 planning hearing, the court shall review the child's status to  
27 determine whether the placement and the plan for the child's care  
28 remain appropriate. In cases where the primary permanency planning  
29 goal has not yet been achieved, the court shall inquire regarding the  
30 reasons why the primary goal has not been achieved and determine what  
31 needs to be done to make it possible to achieve the primary goal. In  
32 all cases, the court shall:

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

35 (ii) Modify the permanency plan, and order implementation of the  
36 modified plan; and

37 (b)(i) Order the child returned home only if the court finds that  
38 a reason for removal as set forth in RCW 13.34.130 no longer exists; or

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

4 (7) If the court orders the child returned home, casework  
5 supervision shall continue for at least six months, at which time a  
6 review hearing shall be held pursuant to RCW 13.34.130(5), and the  
7 court shall determine the need for continued intervention.

8 (8) Continued juvenile court jurisdiction under this chapter shall  
9 not be a barrier to the entry of an order establishing a legal  
10 guardianship or permanent legal custody when, (a) the court has ordered  
11 implementation of a permanency plan that includes legal guardianship or  
12 permanent legal custody, and (b) the party pursuing the legal  
13 guardianship or permanent legal custody is the party identified in the  
14 permanency plan as the prospective legal guardian or custodian. During  
15 the pendency of such proceeding, juvenile court shall conduct review  
16 hearings and further permanency planning hearings as provided in this  
17 chapter. At the conclusion of the legal guardianship or permanent  
18 legal custody proceeding, a juvenile court hearing shall be held for  
19 the purpose of determining whether dependency should be dismissed. If  
20 a guardianship or permanent custody order has been entered, the  
21 dependency shall be dismissed.

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

27 ~~((+9))~~ (10) Except as otherwise provided in RCW 13.34.235, the  
28 status of all dependent children shall continue to be reviewed by the  
29 court at least once every six months, in accordance with RCW  
30 13.34.130(5), until the dependency is dismissed. Prior to the second  
31 permanency planning hearing, the agency that has custody of the child  
32 shall consider whether to file a petition for termination of parental  
33 rights.

34 ~~((+10))~~ (11) Nothing in this chapter may be construed to limit the  
35 ability of the agency that has custody of the child to file a petition  
36 for termination of parental rights or a guardianship petition at any  
37 time following the establishment of dependency. Upon the filing of  
38 such a petition, a fact-finding hearing shall be scheduled and held in  
39 accordance with this chapter unless the agency requests dismissal of

1 the petition prior to the hearing or unless the parties enter an agreed  
2 order terminating parental rights, establishing guardianship, or  
3 otherwise resolving the matter.

4 (~~(11)~~) (12) The approval of a permanency plan that does not  
5 contemplate return of the child to the parent does not relieve the  
6 supervising agency of its obligation to provide reasonable services,  
7 under this chapter, intended to effectuate the return of the child to  
8 the parent, including but not limited to, visitation rights.

9 (~~(12)~~) (13) Nothing in this chapter may be construed to limit the  
10 procedural due process rights of any party in a termination or  
11 guardianship proceeding filed under this chapter.

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