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HOUSE BILL 2557

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State of Washington

55th Legislature

1998 Regular Session

By Representatives Tokuda, Cooke and O'Brien; by request of Department of Social and Health Services

Read first time 01/15/98. Referred to Committee on Children & Family Services.

1 AN ACT Relating to technical clarifying changes to developmentally  
2 disabled children's out-of-home placement; and amending RCW 13.34.130,  
3 74.13.350, 13.34.270, and 74.13.021.

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

5 **Sec. 1.** RCW 13.34.130 and 1997 c 280 s 1 are each amended to read  
6 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; or

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(~~(i~~ 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 74.13.350 and 1997 c 386 s 16 are each amended to read  
24 as follows:

25 It is the intent of the legislature that parents are responsible  
26 for the care and support of children with developmental disabilities.  
27 The legislature recognizes that, because of the intense support  
28 required to care for a child with developmental disabilities, the help  
29 of an out-of-home placement may be needed. It is the intent of the  
30 legislature that, when the sole reason for the out-of-home placement is  
31 the child's developmental disability, such services be offered by the  
32 department to these children and their families through a voluntary  
33 placement agreement. In these cases, the parents shall retain legal  
34 custody of the child.

35 As used in this section, "voluntary placement agreement" means a  
36 written agreement between the department and a child's parent or legal  
37 guardian authorizing the department to place the child in a licensed  
38 facility. Under the terms of this agreement, the parent or legal

1 guardian shall retain legal custody and the department shall be  
2 responsible for the child's placement and care. The agreement shall at  
3 a minimum specify the legal status of the child and the rights and  
4 obligations of the parent or legal guardian, the child, and the  
5 department while the child is in placement. The agreement must be  
6 signed by the child's parent or legal guardian and the department to be  
7 in effect, except that an agreement regarding an Indian child shall not  
8 be valid unless executed in writing before the court and filed with the  
9 court as provided in RCW 13.34.245. Any party to a voluntary placement  
10 agreement may terminate the agreement at any time. Upon termination of  
11 the agreement, the child shall be returned to the care of the child's  
12 parent or legal guardian unless the child has been taken into custody  
13 pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant  
14 to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

15 As used in this section, "out-of-home placement" and "out-of-home  
16 care" mean the placement of a child in a foster family home or group  
17 care facility licensed under chapter 74.15 RCW.

18 Whenever the department places a child in out-of-home care under a  
19 voluntary placement pursuant to this section, the department shall have  
20 the responsibility for the child's placement and care. The department  
21 shall develop a permanency plan of care for the child no later than  
22 sixty days from the date that the department assumes responsibility for  
23 the child's placement and care. Within the first one hundred eighty  
24 days of the placement, the department shall obtain a judicial  
25 determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the  
26 placement is in the best interests of the child. If the child's out-  
27 of-home placement ends before one hundred eighty days have elapsed, no  
28 judicial review is required. The permanency planning hearings shall  
29 review whether the child's best interests are served by continued out-  
30 of-home placement and determine the future legal status of the child.

31 The department shall provide for periodic administrative reviews as  
32 required by federal law. A review may be called at any time by either  
33 the department, the parent, or the legal guardian.

34 Nothing in this section shall prevent the department from filing a  
35 dependency petition if there is reason to believe that the child is a  
36 dependent child as defined in RCW 13.34.030.

37 The department shall adopt rules providing for the implementation  
38 of chapter 386, Laws of 1997 and the transfer of responsibility for

1 out-of-home placements from the dependency process under chapter 13.34  
2 RCW to the process under this chapter.

3 **Sec. 3.** RCW 13.34.270 and 1997 c 386 s 19 are each amended to read  
4 as follows:

5 (1) Whenever the department of social and health services places a  
6 developmentally disabled child in out-of-home care pursuant to RCW  
7 74.13.350, the department shall obtain a judicial determination within  
8 one hundred eighty days of the placement that continued placement is in  
9 the best interests of the child. If the child's out-of-home placement  
10 ends before one hundred eighty days have elapsed, no judicial review is  
11 required.

12 (2) To obtain the judicial determination, the department shall file  
13 a petition alleging that there is located or residing within the county  
14 a child who has a developmental disability, as defined in RCW  
15 71A.10.020, and that the child has been placed in out-of-home care  
16 pursuant to RCW 74.13.350. The petition shall request that the court  
17 review the child's placement, make a determination that continued  
18 placement is in the best interests of the child, and take other  
19 necessary action as provided in this section. The petition shall  
20 contain the name, date of birth, and residence of the child and the  
21 names and residences of the child's parent or legal guardian who has  
22 agreed to the child's placement in out-of-home care. Reasonable  
23 attempts shall be made by the department to ascertain and set forth in  
24 the petition the identity, location, and custodial status of any parent  
25 who is not a party to the placement agreement and why that parent  
26 cannot assume custody of the child.

27 (3) Upon filing of the petition, the clerk of the court shall  
28 schedule the petition for a hearing to be held no later than fourteen  
29 calendar days after the petition has been filed. The department shall  
30 provide notification of the time, date, and purpose of the hearing to  
31 the parent or legal guardian who has agreed to the child's placement in  
32 out-of-home care. The department shall also make reasonable attempts  
33 to notify any parent who is not a party to the placement agreement, if  
34 the parent's identity and location is known. Notification under this  
35 section may be given by the most expedient means, including but not  
36 limited to, mail, personal service, telephone, and telegraph.

1 (4) The court shall appoint a guardian ad litem for the child as  
2 provided in RCW 13.34.100, unless the court for good cause finds the  
3 appointment unnecessary.

4 (5) Permanency planning hearings shall be held as provided in this  
5 subsection. At the hearing, the court shall review whether the child's  
6 best interests are served by continued out-of-home placement and  
7 determine the future legal status of the child.

8 (a) For children age ten and under, a permanency planning hearing  
9 shall be held in all cases where the child has remained in out-of-home  
10 care for at least nine months and an adoption decree or guardianship  
11 order has not previously been entered. The hearing shall take place no  
12 later than twelve months following commencement of the child's current  
13 placement episode.

14 (b) For children over age ten, a permanency planning hearing shall  
15 be held in all cases where the child has remained in out-of-home care  
16 for at least fifteen months and an adoption decree or guardianship  
17 order has not previously been entered. The hearing shall take place no  
18 later than eighteen months following commencement of the current  
19 placement episode.

20 (c) No later than ten working days before the permanency planning  
21 hearing, the department shall submit a written permanency plan to the  
22 court and shall mail a copy of the plan to all parties. The plan shall  
23 be directed toward securing a safe, stable, and permanent home for the  
24 child as soon as possible. The plan shall identify one of the  
25 following outcomes as the primary goal and may also identify additional  
26 outcomes as alternative goals: Return of the child to the home of the  
27 child's parent or legal guardian; adoption; guardianship; or long-term  
28 out-of-home care, until the child is age eighteen, with a written  
29 agreement between the parties and the child's care provider.

30 (d) If a goal of long-term out-of-home care has been achieved  
31 before the permanency planning hearing, the court shall review the  
32 child's status to determine whether the placement and the plan for the  
33 child's care remains appropriate. In cases where the primary  
34 permanency planning goal has not ((be {been})) been achieved, the court  
35 shall inquire regarding the reasons why the primary goal has not been  
36 achieved and determine what needs to be done to make it possible to  
37 achieve the primary goal.

38 (e) Following the first permanency planning hearing, the court  
39 shall hold a further permanency planning hearing in accordance with

1 this section at least once every twelve months until a permanency  
2 planning goal is achieved or the voluntary placement agreement is  
3 terminated.

4 (6) Any party to the voluntary placement agreement may terminate  
5 the agreement at any time. Upon termination of the agreement, the  
6 child shall be returned to the care of the child's parent or legal  
7 guardian, unless the child has been taken into custody pursuant to RCW  
8 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW  
9 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The  
10 department shall notify the court upon termination of the voluntary  
11 placement agreement and return of the child to the care of the child's  
12 parent or legal guardian. Whenever a voluntary placement agreement is  
13 terminated, an action under this section shall be dismissed.

14 (7) This section does not prevent the department from filing a  
15 dependency petition if there is reason to believe that the child is a  
16 dependent child as defined in RCW 13.34.030. An action filed under  
17 this section shall be dismissed upon the filing of a dependency  
18 petition regarding a child who is the subject of the action under this  
19 section.

20 **Sec. 4.** RCW 74.13.021 and 1997 c 386 s 15 are each amended to read  
21 as follows:

22 As used in this chapter, "developmentally disabled (~~dependent~~)  
23 child" is a child who has a developmental disability as defined in RCW  
24 71A.10.020 and whose parent, guardian, or legal custodian and with the  
25 department mutually agree that services appropriate to the child's  
26 needs can not be provided in the home.

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