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SENATE BILL 5665

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators L. Smith, Stratton and Craswell.

Read first time February 13, 1991. Referred to Committee on Children & Family Services.

1            AN ACT Relating to dependent children; amending RCW 13.34.020,  
2 13.34.120, 13.34.145, and 13.34.190; reenacting and amending RCW  
3 13.34.130; and adding a new section to chapter 74.13 RCW.

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

5            **Sec. 1.** RCW 13.34.020 and 1990 c 284 s 31 are each amended to read  
6 as follows:

7            The legislature declares that the family unit is a fundamental  
8 resource of American life which should be nurtured. Toward the  
9 continuance of this principle, the legislature declares that the family  
10 unit should remain intact unless a child's right to conditions of basic  
11 nurture, health, or safety is jeopardized. When the rights of basic  
12 nurture, physical and mental health, and safety of the child and the  
13 legal rights of the parents are in conflict, the rights and safety of  
14 the child should prevail. The right of a child to basic nurturing

1 includes the right to a safe, stable, and permanent home and a speedy  
2 resolution of any proceeding under this chapter.

3 Permanent placement with the biological or adoptive family should  
4 be achieved as soon as possible for every child in foster care and no  
5 child should remain in foster care longer than one year from the date  
6 of disposition. It is the intent of the legislature that a child be  
7 reunited with the child's natural family whenever possible and, when  
8 not possible, that the child be permanently placed for adoption or,  
9 when neither option is achievable, that the child be prepared for  
10 alternative permanency goals or placements to include, but not limited  
11 to, long-term foster care, independent living, custody to a relative on  
12 a permanent basis with or without legal guardianship, or custody to a  
13 foster parent on a permanent basis with or without legal guardianship.

14 **Sec. 2.** RCW 13.34.120 and 1987 c 524 s 5 are each amended to read  
15 as follows:

16 (1) To aid the court in its decision on disposition, a social  
17 study, consisting of a written evaluation of matters relevant to the  
18 disposition of the case, shall be made by the person or agency filing  
19 the petition. The study shall include all social records and may also  
20 include facts relating to the child's cultural heritage, and shall be  
21 made available to the court. The court shall consider the social file  
22 and social study at the disposition hearing in addition to evidence  
23 produced at the fact-finding hearing. At least ten working days before  
24 the disposition hearing, the department shall mail to the parent and  
25 his or her attorney a copy of the agency's social study and proposed  
26 service plan, which shall be in writing or in a form understandable to  
27 the parents or custodians. In addition, the department shall provide  
28 an opportunity for parents to review and comment on the plan at the  
29 community service office. If possible, the department shall make a

1 documented effort to have a face-to-face conference with the parties  
2 regarding the plan. If the parents disagree with the agency's plan or  
3 any part thereof, the parents shall submit to the court at least  
4 twenty-four hours before the hearing, in writing, or signed oral  
5 statement, an alternative plan to correct the problems which led to the  
6 finding of dependency. This section shall not interfere with the right  
7 of the parents or custodians to submit oral arguments regarding the  
8 disposition plan at the hearing.

9 (2) In addition to the requirements set forth in subsection (1) of  
10 this section, a predisposition study to the court in cases of  
11 dependency alleged pursuant to RCW 13.34.030(2) (b) or (c) shall  
12 contain the following information:

13 (a) A statement of the specific harm or harms to the child that  
14 intervention is designed to alleviate;

15 (b) A description of the specific programs, for both the parents  
16 and child, that are needed in order to prevent serious harm to the  
17 child; the reasons why such programs are likely to be useful; the  
18 availability of any proposed services; and the agency's overall plan  
19 for ensuring that the services will be delivered;

20 (c) If removal is recommended, a full description of the reasons  
21 why the child cannot be protected adequately in the home, including a  
22 description of any previous efforts to work with the parents and the  
23 child in the home; the in-home treatment programs which have been  
24 considered and rejected; and the parents' attitude toward placement of  
25 the child;

26 (d) A statement of the likely harms the child will suffer as a  
27 result of removal. This section should include an exploration of the  
28 nature of the parent-child attachment and the meaning of separation and  
29 loss to both the parents and the child;

1 (e) A description of the steps that will be taken to minimize harm  
2 to the child that may result if separation occurs; and

3 (f) Behavior that will be expected before determination that  
4 supervision of the family or placement is no longer necessary.

5 **Sec. 3.** RCW 13.34.130 and 1990 c 284 s 32 and 1990 c 246 s 5 are  
6 each reenacted and amended to read as follows:

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

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

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

23 (b) Order that the child be removed from his or her home and  
24 ordered into the custody, control, and care of a relative or the  
25 department of social and health services or a licensed child placing  
26 agency for placement in a foster family home or group care facility  
27 licensed pursuant to chapter 74.15 RCW or in a home not required to be  
28 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
29 cause to believe that the safety or welfare of the child would be

1 jeopardized or that efforts to reunite the parent and child will be  
2 hindered, such child shall be placed with a grandparent, brother,  
3 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom  
4 the child has a relationship and is comfortable, and who is willing and  
5 available to care for the child. An order for out-of-home placement  
6 may be made only if the court finds that reasonable efforts have been  
7 made to prevent or eliminate the need for removal of the child from the  
8 child's home and to make it possible for the child to return home,  
9 specifying the services that have been provided to the child and the  
10 child's parent, guardian, or legal custodian, and that:

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

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

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

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

23 (2) If the court has ordered a child removed from his or her home  
24 pursuant to RCW 13.34.130(1)(b), the court may order that a petition  
25 seeking termination of the parent and child relationship be filed if  
26 the court finds it is recommended by the supervising agency, that it is  
27 in the best interests of the child and that it is not reasonable to  
28 provide further services to reunify the family because the existence of  
29 aggravated circumstances make it unlikely that services will effectuate  
30 the return of the child to the child's parents in the near future. In

1 determining whether aggravated circumstances exist, the court shall  
2 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 assault of the child in the first  
10 or second degree as defined in RCW 9A.36.011 and 9A.36.021;

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

13 (e) A finding by a court that a parent is a sexually violent  
14 predator as defined in RCW ((9A.88.010)) 71.09.020;

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

21 (g) Use of intoxicating liquors or controlled substances so as to  
22 render the parent incapable of providing proper care for the child for  
23 extended periods of time and documented unwillingness of the parent to  
24 receive and complete treatment or documented multiple failed treatment  
25 attempts;

26 (h) Psychological incapacity or mental deficiency of the parent  
27 that is so severe and chronic as to render the parent incapable of  
28 providing proper care for the child for extended periods of time, and  
29 there are no reasonably available services that are capable of  
30 correcting the parental deficiencies in the near future;

1        (i) Failure of the parent to participate regularly in any court-  
2 ordered treatment programs; or

3        (j) Failure of the parent to maintain regular visitation or other  
4 contact with the child contained in a plan designed to reunite the  
5 child with the parent.

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

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

12        (b) Unless the court has ordered, pursuant to RCW 13.34.130(2),  
13 that a termination petition be filed, a specific plan as to where the  
14 child will be placed, what steps will be taken to return the child  
15 home, and what actions the agency will take to maintain parent-child  
16 ties. All aspects of the plan shall include the goal of achieving  
17 permanence for the child.

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

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

28        (iii) A child shall be placed as close to the child's home as  
29 possible, preferably in the child's own neighborhood, unless the court

1 finds that placement at a greater distance is necessary to promote the  
2 child's or parents' well-being.

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

8 (c) If the court has ordered, pursuant to RCW 13.34.130(2), that a  
9 termination petition be filed, a specific plan as to where the child  
10 will be placed, what steps will be taken to achieve permanency for the  
11 child, services to be offered or provided to the child, and, if  
12 visitation would be in the best interests of the child, a  
13 recommendation to the court regarding visitation between parent and  
14 child pending a fact-finding hearing on the termination petition. The  
15 agency shall not be required to develop a plan of services for the  
16 parents or provide services to the parents.

17 (4) If there is insufficient information at the time of the  
18 disposition hearing upon which to base a determination regarding the  
19 suitability of a proposed placement with a relative, the child shall  
20 remain in foster care and the court shall direct the supervising agency  
21 to conduct necessary background investigations as provided in chapter  
22 74.15 RCW and report the results of such investigation to the court  
23 within thirty days. However, if such relative appears otherwise  
24 suitable and competent to provide care and treatment, the criminal  
25 history background check need not be completed before placement, but as  
26 soon as possible after placement. Any placements with relatives,  
27 pursuant to this section, shall be contingent upon cooperation by the  
28 relative with the agency case plan and compliance with court orders  
29 related to the care and supervision of the child including, but not  
30 limited to, court orders regarding parent-child contacts and any other



1 conditions imposed by the court. Noncompliance with the case plan or  
2 court order shall be grounds for removal of the child from the  
3 relative's home, subject to review by the court.

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

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

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

20 (i) Whether reasonable services have been provided to or offered to  
21 the parties to facilitate reunion, specifying the services provided or  
22 offered;

23 (ii) Whether the child has been placed in the least-restrictive  
24 setting appropriate to the child's needs, including whether  
25 consideration has been given to placement with the child's relatives;

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

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

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

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

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

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

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

12 **Sec. 4.** RCW 13.34.145 and 1989 1st ex.s. c 17 s 18 are each  
13 amended to read as follows:

14 (1) In all cases where a child has been placed in substitute care  
15 for at least fifteen months, a permanency planning hearing shall be  
16 held before the court no later than eighteen months following  
17 commencement of the placement episode.

18 (2) At the permanency planning hearing, the court shall enter  
19 findings as required by RCW (~~(13.34.130(4))~~) 13.34.130(5). In addition  
20 the court shall: (a) Approve a permanent plan of care which can  
21 include one of the following: Adoption, guardianship, or placement of  
22 the child in the home of the child's parent; (b) require filing of a  
23 petition for termination of parental rights; or (c) dismiss the  
24 dependency, unless the court finds, based on clear, cogent, and  
25 convincing evidence, that it is in the best interest of the child to  
26 continue the dependency beyond eighteen months, based on a permanent  
27 plan of care. Extensions may only be granted in increments of twelve  
28 months or less.

1       (3) The failure of a parent to participate in the court-ordered  
2 services or caseplan, to demonstrate substantial improvements in the  
3 circumstances that led to the child's removal, or to participate on a  
4 regular basis in court-ordered visitation with the child shall give  
5 rise to a presumption that there is little likelihood that conditions  
6 will be remedied so that the child can be returned to the parent in the  
7 near future. Unless the presumption is rebutted by persuasive  
8 evidence, the court shall direct the supervising agency to pursue a  
9 permanency plan that includes filing a petition for termination of  
10 parental rights.

11       **Sec. 5.** RCW 13.34.190 and 1990 c 284 s 33 are each amended to read  
12 as follows:

13       After hearings pursuant to RCW 13.34.110, the court may enter an  
14 order terminating all parental rights to a child if the court finds  
15 that:

16       (1) The allegations contained in the petition as provided in RCW  
17 13.34.180 (1) through (6) are established by clear, cogent, and  
18 convincing evidence; or

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

22       (~~(c) [(3)]~~) (3) The allegation under RCW 13.34.180(7) is  
23 established beyond a reasonable doubt. In determining whether RCW  
24 13.34.180 (5) and (6) are established beyond a reasonable doubt, the  
25 court shall consider one or more of the following:

26       (a) Conviction of the parent of rape of the child in the first,  
27 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
28 9A.44.079;

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

3 (c) Conviction of the parent of assault of the child in the first  
4 or second degree as defined in RCW 9A.36.011 and 9A.36.021;

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

7 (e) A finding by a court that a parent is a sexually violent  
8 predator as defined in RCW ((9A.88.010)) 71.09.020;

9 (~~(f) ((Failure of the parent to complete available treatment ordered  
10 under this chapter or the equivalent laws of another state, where such  
11 failure has resulted in a prior termination of parental rights to  
12 another child and the parent has failed to effect significant change in  
13 the interim))~~ Prior termination of parental rights to another child and  
14 failure of the parent to effect significant change in the interim;

15 (g) Use of intoxicating liquors or controlled substances so as to  
16 render the parent incapable of providing proper care for the child for  
17 extended periods of time and documented unwillingness of the parent to  
18 receive and complete treatment or documented multiple failed treatment  
19 attempts;

20 (h) Psychological incapacity or mental deficiency of the parent  
21 that is so severe and chronic as to render the parent incapable of  
22 providing proper care for the child for extended periods of time, and  
23 there are no reasonably available services that are capable of  
24 correcting the parental deficiencies in the near future;

25 (i) Failure of the parent to participate regularly in any court-  
26 ordered treatment programs; or

27 (j) Failure of the parent to maintain regular visitation or other  
28 contact with the child contained in a plan designed to reunite the  
29 child with the parent; and

1        (~~(3)~~-(4)) (4) Such an order is in the best interests of the  
2 child.

3        NEW SECTION.    **Sec. 6.** A new section is added to chapter 74.13 RCW  
4 to read as follows:

5        Foster parents have the right to notice of the dispositional  
6 hearing concerning the child in their foster family home and subsequent  
7 dependency hearings for that child. Foster parents also have the right  
8 to attend the dependency hearings and present testimony. The  
9 department shall give reasonable notice to the foster parents of the  
10 dispositional hearing date and subsequent dependency hearing dates.  
11 After a child has been in the home of a foster parent for six months,  
12 the foster parent may file a document with the court indicating the  
13 foster parent's desire to adopt the child and the document shall become  
14 part of the court record.