

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1512

Chapter 412, Laws of 1993

53rd Legislature
1993 Regular Session

DEPENDENT CHILDREN--CONDITIONS WARRANTING TERMINATION OF
PARENTAL RIGHTS REVISED

EFFECTIVE DATE: 7/25/93

Passed by the House April 25, 1993
Yeas 98 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 25, 1993
Yeas 47 Nays 0

R. LORRAINE WOJAHN
President of the Senate

Approved May 15, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1512** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 15, 1993 - 1:27 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1512

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 1993 Regular Session

State of Washington

53rd Legislature

1993 Regular Session

By House Committee on Human Services (originally sponsored by Representatives Brough, Leonard, Chappell, Romero, Veloria, Riley, Karahalios, Horn, Wolfe, Ballasiotes, Talcott, G. Cole, Flemming and J. Kohl)

Read first time 03/03/93.

1 AN ACT Relating to dependent children; amending RCW 13.34.145,
2 13.34.180, 13.34.190, 13.34.232, 13.34.110, 13.34.120, 13.34.150,
3 13.34.162, 26.44.020, 26.44.030, 26.44.040, 26.44.063, 26.44.067, and
4 26.44.100; adding new sections to chapter 13.34 RCW; adding new
5 sections to chapter 26.44 RCW; and prescribing penalties.

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

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

9 (1) In all cases where a child has been placed in substitute care
10 for at least fifteen months, the agency having custody of the child
11 shall prepare a permanency ((planning)) plan and present it in a
12 hearing ((shall-be)) held before the court no later than eighteen
13 months following commencement of the placement episode.

14 (2) At the permanency planning hearing, the court shall enter
15 findings as required by RCW 13.34.130((+4))(5). In addition the court
16 shall: (a) Approve a ((permanent plan of care)) permanency plan which
17 ((can)) shall include one of the following: Adoption, guardianship,
18 ((or)) placement of the child in the home of the child's parent,
19 relative placement with written permanency plan, or family foster care

1 with written permanency agreement; (b) require filing of a petition for
2 termination of parental rights; or (c) dismiss the dependency, unless
3 the court finds, based on clear, cogent, and convincing evidence, that
4 it is in the best interest of the child to continue the dependency
5 beyond eighteen months, based on (~~a permanent plan of care~~) the
6 permanency plan. Extensions may only be granted in increments of
7 twelve months or less.

8 **Sec. 2.** RCW 13.34.180 and 1990 c 246 s 7 are each amended to read
9 as follows:

10 A petition seeking termination of a parent and child relationship
11 may be filed in juvenile court by any party to the dependency
12 proceedings concerning that child. Such petition shall conform to the
13 requirements of RCW 13.34.040, shall be served upon the parties as
14 provided in RCW 13.34.070(7), and shall allege:

15 (1) That the child has been found to be a dependent child under RCW
16 13.34.030(2); and

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

19 (3) That the child has been removed or will, at the time of the
20 hearing, have been removed from the custody of the parent for a period
21 of at least six months pursuant to a finding of dependency under RCW
22 13.34.030(2); and

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

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

31 (a) Use of intoxicating or controlled substances so as to render
32 the parent incapable of providing proper care for the child for
33 extended periods of time and documented unwillingness of the parent to
34 receive and complete treatment or documented multiple failed treatment
35 attempts; or

36 (b) Psychological incapacity or mental deficiency of the parent
37 that is so severe and chronic as to render the parent incapable of
38 providing proper care for the child for extended periods of time, and

1 documented unwillingness of the parent to receive and complete
2 treatment or documentation that there is no treatment that can render
3 the parent capable of providing proper care for the child in the near
4 future; and

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

8 (7) In lieu of the allegations in subsections (1) through (6) of
9 this section, the petition may allege that the child was found under
10 such circumstances that the whereabouts of the child's parent are
11 unknown and no person has acknowledged paternity or maternity and
12 requested custody of the child within two months after the child was
13 found.

14 A parent's failure to substantially improve parental deficiencies
15 within twelve months following entry of the dispositional order shall
16 give rise to a rebuttable presumption that there is little likelihood
17 that conditions will be remedied so that the child can be returned to
18 the parent in the near future. The presumption shall not arise unless
19 the petitioner makes a showing that all necessary services reasonably
20 capable of correcting the parental deficiencies within the foreseeable
21 future have been offered or provided.

22 Notice of rights shall be served upon the parent, guardian, or
23 legal custodian with the petition and shall be in substantially the
24 following form:

25 "NOTICE

26 A petition for termination of parental rights has been filed
27 against you. You have important legal rights and you must take
28 steps to protect your interests. This petition could result in
29 permanent loss of your parental rights.

30 1. You have the right to a fact-finding hearing before
31 a judge.

32 2. You have the right to have a lawyer represent you at
33 the hearing. A lawyer can look at the files in your case, talk
34 to the department of social and health services and other
35 agencies, tell you about the law, help you understand your
36 rights, and help you at hearings. If you cannot afford a
37 lawyer, the court will appoint one to represent you. To get a

1 court-appointed lawyer you must contact: (explain local
2 procedure) .

3 3. At the hearing, you have the right to speak on your
4 own behalf, to introduce evidence, to examine witnesses, and to
5 receive a decision based solely on the evidence presented to
6 the judge.

7 You should be present at this hearing.

8 You may call (insert agency) for more information
9 about your child. The agency's name and telephone number are
10 (insert name and telephone number) ."

11 **Sec. 3.** RCW 13.34.190 and 1992 c 145 s 15 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 (3) The allegation under RCW 13.34.180(7) is established beyond a
23 reasonable doubt. In determining whether RCW 13.34.180 (5) and (6) are
24 established beyond a reasonable doubt, the court shall consider whether
25 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;~~

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

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

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

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

1 ~~(f) Failure of the parent to complete available treatment ordered~~
2 ~~under this chapter or the equivalent laws of another state, where such~~
3 ~~failure has resulted in a prior termination of parental rights to~~
4 ~~another child and the parent has failed to effect significant change in~~
5 ~~the interim)) aggravated circumstances listed in RCW 13.34.130(2)~~
6 ~~exist; and~~

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

8 **Sec. 4.** RCW 13.34.232 and 1981 c 195 s 3 are each amended to read
9 as follows:

10 If the court has made a finding under RCW 13.34.231, it shall enter
11 an order establishing a guardianship for the child. The order shall:

12 (1) Appoint a person or agency to serve as guardian;

13 (2) Specify the guardian's rights and responsibilities concerning
14 the care, custody, and control of the child. A guardian shall not have
15 the authority to consent to the child's adoption;

16 (3) Specify an appropriate frequency of visitation between the
17 parent and the child; and

18 (4) Specify the need for any continued involvement of the
19 supervising agency and the nature of that involvement, if any.

20 The order shall not affect the child's status as a dependent child,
21 and the child shall remain dependent for the duration of the
22 guardianship.

23 NEW SECTION. **Sec. 5.** A new section is added to chapter 13.34 RCW
24 to read as follows:

25 (1) The provisions of this section shall apply when a court orders
26 a party to undergo an alcohol or substance abuse diagnostic
27 investigation and evaluation.

28 (2) The facility conducting the investigation and evaluation shall
29 make a written report to the court stating its findings and
30 recommendations including family-based services or treatment when
31 appropriate. If its findings and recommendations support treatment, it
32 shall also recommend a treatment plan setting out:

33 (a) Type of treatment;

34 (b) Nature of treatment;

35 (c) Length of treatment;

36 (d) A treatment time schedule; and

37 (e) Approximate cost of the treatment.

1 The affected person shall be included in developing the appropriate
2 plan of treatment. The plan of treatment must be signed by treatment
3 provider and the affected person. The initial written report based on
4 the treatment plan and response to treatment shall be sent to
5 appropriate persons six weeks after initiation of treatment, and after
6 three months, after six months, after twelve months, and thereafter
7 every six months if treatment exceeds twelve months. Reports are to be
8 filed in a timely manner. Close-out of the treatment record must
9 include summary of pretreatment and posttreatment, with final outcome
10 and disposition. The report shall also include recommendations for
11 ongoing stability and decrease in destructive behavior.

12 The report with the treatment plan shall be filed with the court
13 and a copy given to the person evaluated and the person's counsel. A
14 copy of the treatment plan shall also be given to the department's
15 caseworker and to the guardian ad litem. Any program for chemical
16 dependency shall meet the program requirements contained in chapter
17 70.96A RCW.

18 (3) If the court has ordered treatment pursuant to a dependency
19 proceeding it shall also require the treatment program to provide, in
20 the reports required by subsection (2) of this section, status reports
21 to the court, the department, the supervising child-placing agency if
22 any, and the person or person's counsel regarding: (a) The person's
23 cooperation with the treatment plan proposed; and (b) the person's
24 progress in treatment.

25 (4) In addition, if the party fails or neglects to carry out and
26 fulfill any term or condition of the treatment plan, the program or
27 agency administering the treatment shall report such breach to the
28 court, the department, the guardian ad litem, the supervising child-
29 placing agency if any, and the person or person's counsel, within
30 twenty-four hours, together with its recommendation. These reports
31 shall be made as a declaration by the person who is personally
32 responsible for providing the treatment.

33 (5) Nothing in this chapter may be construed as allowing the court
34 to require the department to pay for the cost of any alcohol or
35 substance abuse evaluation or treatment program.

36 NEW SECTION. **Sec. 6.** A new section is added to chapter 13.34 RCW
37 to read as follows:

1 (1) The court or the department, upon receiving a report under
2 section 5(4) of this act, may schedule a show cause hearing to
3 determine whether the person is in violation of the treatment
4 conditions. All parties shall be given notice of the hearing. The
5 court shall hold the hearing within ten days of the request for a
6 hearing. At the hearing, testimony, declarations, reports, or other
7 relevant information may be presented on the person's alleged failure
8 to comply with the treatment plan and the person shall have the right
9 to present similar information on his or her own behalf.

10 (2) If the court finds that there has been a violation of the
11 treatment conditions it shall modify the dependency order, as
12 necessary, to ensure the safety of the child. The modified order shall
13 remain in effect until the party is in full compliance with the
14 treatment requirements.

15 **Sec. 7.** RCW 13.34.110 and 1991 c 340 s 3 are each amended to read
16 as follows:

17 The court shall hold a fact-finding hearing on the petition and,
18 unless the court dismisses the petition, shall make written findings of
19 fact, stating the reasons therefor, and after it has announced its
20 findings of fact shall hold a hearing to consider disposition of the
21 case immediately following the fact-finding hearing or at a continued
22 hearing within fourteen days or longer for good cause shown. The
23 parties need not appear at the fact-finding or dispositional hearing if
24 ~~((all))~~ the parties, their attorneys, the guardian ad litem, and court-
25 appointed special advocates, if any, are all in agreement~~((+ but))~~.
26 The court shall receive and review a social study before entering an
27 order based on agreement. No social file or social study may be
28 considered by the court in connection with the fact-finding hearing or
29 prior to factual determination, except as otherwise admissible under
30 the rules of evidence. Notice of the time and place of the continued
31 hearing may be given in open court. If notice in open court is not
32 given to a party, that party shall be notified by mail of the time and
33 place of any continued hearing.

34 All hearings may be conducted at any time or place within the
35 limits of the county, and such cases may not be heard in conjunction
36 with other business of any other division of the superior court. The
37 general public shall be excluded, and only such persons may be admitted
38 who are found by the judge to have a direct interest in the case or in

1 the work of the court. If a child resides in foster care or in the
2 home of a relative pursuant to a disposition order entered under RCW
3 13.34.130, the court may allow the child's foster parent or relative
4 care provider to attend dependency review proceedings pertaining to the
5 child for the sole purpose of providing information about the child to
6 the court.

7 Stenographic notes or any device which accurately records the
8 proceedings may be required as provided in other civil cases pursuant
9 to RCW 2.32.200.

10 **Sec. 8.** RCW 13.34.120 and 1987 c 524 s 5 are each amended to read
11 as follows:

12 (1) To aid the court in its decision on disposition, a social
13 study, consisting of a written evaluation of matters relevant to the
14 disposition of the case, shall be made by the person or agency filing
15 the petition. The study shall include all social records and may also
16 include facts relating to the child's cultural heritage, and shall be
17 made available to the court. The court shall consider the social file
18 ~~((and))~~, social study, guardian ad litem report, the court-appointed
19 special advocates report, if any, and any reports filed by a party at
20 the disposition hearing in addition to evidence produced at the fact-
21 finding hearing. At least ten working days before the disposition
22 hearing, the department shall mail to the parent and his or her
23 attorney a copy of the agency's social study and proposed service plan,
24 which shall be in writing or in a form understandable to the parents or
25 custodians. In addition, the department shall provide an opportunity
26 for parents to review and comment on the plan at the community service
27 office. If the parents disagree with the agency's plan or any part
28 thereof, the parents shall submit to the court at least twenty-four
29 hours before the hearing, in writing, or signed oral statement, an
30 alternative plan to correct the problems which led to the finding of
31 dependency. This section shall not interfere with the right of the
32 parents or custodians to submit oral arguments regarding the
33 disposition plan at the hearing.

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

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

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

8 (c) If removal is recommended, a full description of the reasons
9 why the child cannot be protected adequately in the home, including a
10 description of any previous efforts to work with the parents and the
11 child in the home; the in-home treatment programs which have been
12 considered and rejected; and the parents' attitude toward placement of
13 the child;

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

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

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

22 **Sec. 9.** RCW 13.34.150 and 1990 c 246 s 6 are each amended to read
23 as follows:

24 Any order made by the court in the case of a dependent child may be
25 changed, modified, or set aside, only upon a showing of a change in
26 circumstance or as provided in section 8 of this act.

27 **Sec. 10.** RCW 13.34.162 and 1988 c 275 s 15 are each amended to
28 read as follows:

29 A determination of child support shall be based upon the child
30 support schedule and standards (~~adopted~~) provided under chapter 26.19
31 RCW (~~26.19.040~~).

32 NEW SECTION. **Sec. 11.** A new section is added to chapter 26.44 RCW
33 to read as follows:

34 (1) This chapter shall not be construed to authorize interference
35 with child-raising practices, including reasonable parental discipline,
36 which are not injurious to the child's health, welfare, and safety.

1 (2) Nothing in this chapter may be used to prohibit the reasonable
2 use of corporal punishment as a means of discipline.

3 (3) No parent or guardian may be deemed abusive or neglectful
4 solely by reason of the parent's or child's blindness, deafness,
5 developmental disability, or other handicap.

6 (4) A person reporting injury, abuse, or neglect to an adult
7 dependent person shall not suffer negative consequences if the person
8 reporting believes in good faith that the adult dependent person has
9 been found legally incompetent or disabled.

10 **Sec. 12.** RCW 26.44.020 and 1988 c 142 s 1 are each amended to read
11 as follows:

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

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

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

18 (3) "Practitioner of the healing arts" or "practitioner" means a
19 person licensed by this state to practice (~~podiatry~~) podiatric
20 medicine and surgery, optometry, chiropractic, nursing, dentistry,
21 osteopathy and surgery, or medicine and surgery or to provide other
22 health services. The term "practitioner" shall include a duly
23 accredited Christian Science practitioner: PROVIDED, HOWEVER, That a
24 person who is being furnished Christian Science treatment by a duly
25 accredited Christian Science practitioner shall not be considered, for
26 that reason alone, a neglected person for the purposes of this chapter.

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

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

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

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

36 (8) "Social service counselor" shall mean anyone engaged in a
37 professional capacity during the regular course of employment in
38 encouraging or promoting the health, welfare, support or education of

1 children, or providing social services to adults or families, including
2 mental health, drug and alcohol treatment, and domestic violence
3 programs, whether in an individual capacity, or as an employee or agent
4 of any public or private organization or institution.

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

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

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

17 (12) "~~((Child)) Abuse or neglect~~" shall mean the injury, sexual
18 abuse, sexual exploitation, ~~((or)) negligent treatment,~~ or maltreatment
19 of a child, adult dependent, or developmentally disabled person by any
20 person under circumstances which indicate that the child's or adult's
21 health, welfare, and safety is harmed ~~((thereby))~~. An abused child is
22 a child who has been subjected to child abuse or neglect as defined
23 herein ~~((:— PROVIDED, That this subsection shall not be construed to~~
24 ~~authorize interference with child raising practices, including~~
25 ~~reasonable parental discipline, which are not proved to be injurious to~~
26 ~~the child's health, welfare, and safety:— AND PROVIDED FURTHER, That~~
27 ~~nothing in this section shall be used to prohibit the reasonable use of~~
28 ~~corporal punishment as a means of discipline. No parent or guardian~~
29 ~~shall be deemed abusive or neglectful solely by reason of the parent's~~
30 ~~or child's blindness, deafness, developmental disability, or other~~
31 ~~handicap))~~.

32 (13) "Child protective services section" shall mean the child
33 protective services section of the department.

34 (14) "Adult dependent persons ~~((not able to provide for their own~~
35 ~~protection through the criminal justice system))~~" shall be defined as
36 those persons over the age of eighteen years who have been found to be
37 legally incompetent or disabled pursuant to chapter 11.88 RCW ~~((or~~
38 ~~found disabled to such a degree pursuant to said chapter, that such~~
39 ~~protection is indicated:— PROVIDED, That no persons reporting injury,~~

1 ~~abuse, or neglect to an adult dependent person as defined herein shall~~
2 ~~suffer negative consequences if such a judicial determination of~~
3 ~~incompetency or disability has not taken place and the person reporting~~
4 ~~believes in good faith that the adult dependent person has been found~~
5 ~~legally incompetent pursuant to chapter 11.88 RCW)).~~

6 (15) "Sexual exploitation" includes: (a) Allowing, permitting, or
7 encouraging a child to engage in prostitution by any person; or (b)
8 allowing, permitting, encouraging, or engaging in the obscene or
9 pornographic photographing, filming, or depicting of a child (~~for~~
10 ~~commercial purposes as those acts are defined by state law~~) by any
11 person.

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

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

18 (18) "Child protective services" means those services provided by
19 the department designed to protect children from child abuse and
20 neglect and safeguard the general welfare of such children and shall
21 include investigations of child abuse and neglect reports, including
22 reports regarding child care centers and family child care homes, and
23 the development, management, and provision of or referral to services
24 to ameliorate conditions which endanger the welfare of children, the
25 coordination of necessary programs and services relevant to the
26 prevention, intervention, and treatment of child abuse and neglect, and
27 services to children to ensure that each child has a permanent home.
28 In determining whether protective services should be provided, the
29 department shall not decline to provide such services solely because of
30 the child's unwillingness or developmental inability to describe the
31 nature and severity of the abuse or neglect.

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

37 **Sec. 13.** RCW 26.44.030 and 1991 c 111 s 1 are each amended to read
38 as follows:

1 (1)(a) When any practitioner, professional school personnel,
2 registered or licensed nurse, social service counselor, psychologist,
3 pharmacist, licensed or certified child care providers or their
4 employees, employee of the department, or juvenile probation officer
5 has reasonable cause to believe that a child or adult dependent or
6 developmentally disabled person, has suffered abuse or neglect, he or
7 she shall report such incident, or cause a report to be made, to the
8 proper law enforcement agency or to the department as provided in RCW
9 26.44.040.

10 (b) The reporting requirement shall also apply to any adult who has
11 reasonable cause to believe that a child or adult dependent or
12 developmentally disabled person, who resides with them, has suffered
13 severe abuse, and is able or capable of making a report. For the
14 purposes of this subsection, "severe abuse" means any of the following:
15 Any single act of abuse that causes physical trauma of sufficient
16 severity that, if left untreated, could cause death; any single act of
17 sexual abuse that causes significant bleeding, deep bruising, or
18 significant external or internal swelling; or more than one act of
19 physical abuse, each of which causes bleeding, deep bruising,
20 significant external or internal swelling, bone fracture, or
21 unconsciousness.

22 (c) The report shall be made at the first opportunity, but ; and
23 in no case longer than forty-eight hours after there is reasonable
24 cause to believe that the child or adult has suffered abuse or neglect.
25 The report shall include the identity of the accused if known.

26 (2) The reporting requirement of subsection (1) of this section
27 does not apply to the discovery of abuse or neglect that occurred
28 during childhood if it is discovered after the child has become an
29 adult. However, if there is reasonable cause to believe other
30 children, dependent adults, or developmentally disabled persons are or
31 may be at risk of abuse or neglect by the accused, the reporting
32 requirement of subsection (1) of this section shall apply.

33 (3) Any other person who has reasonable cause to believe that a
34 child or adult dependent or developmentally disabled person has
35 suffered abuse or neglect may report such incident to the proper law
36 enforcement agency or to the department of social and health services
37 as provided in RCW 26.44.040.

38 (4) The department, upon receiving a report of an incident of abuse
39 or neglect pursuant to this chapter, involving a child or adult

1 dependent or developmentally disabled person who has died or has had
2 physical injury or injuries inflicted upon him or her other than by
3 accidental means or who has been subjected to sexual abuse, shall
4 report such incident to the proper law enforcement agency. In
5 emergency cases, where the child, adult dependent, or developmentally
6 disabled person's welfare is endangered, the department shall notify
7 the proper law enforcement agency within twenty-four hours after a
8 report is received by the department. In all other cases, the
9 department shall notify the law enforcement agency within seventy-two
10 hours after a report is received by the department. If the department
11 makes an oral report, a written report shall also be made to the proper
12 law enforcement agency within five days thereafter.

13 (5) Any law enforcement agency receiving a report of an incident of
14 abuse or neglect pursuant to this chapter, involving a child or adult
15 dependent or developmentally disabled person who has died or has had
16 physical injury or injuries inflicted upon him or her other than by
17 accidental means, or who has been subjected to sexual abuse, shall
18 report such incident in writing as provided in RCW 26.44.040 to the
19 proper county prosecutor or city attorney for appropriate action
20 whenever the law enforcement agency's investigation reveals that a
21 crime may have been committed. The law enforcement agency shall also
22 notify the department of all reports received and the law enforcement
23 agency's disposition of them. In emergency cases, where the child,
24 adult dependent, or developmentally disabled person's welfare is
25 endangered, the law enforcement agency shall notify the department
26 within twenty-four hours. In all other cases, the law enforcement
27 agency shall notify the department within seventy-two hours after a
28 report is received by the law enforcement agency.

29 (6) Any county prosecutor or city attorney receiving a report under
30 subsection (5) of this section shall notify the victim, any persons the
31 victim requests, and the local office of the department, of the
32 decision to charge or decline to charge a crime, within five days of
33 making the decision.

34 (7) The department may conduct ongoing case planning and
35 consultation with those persons or agencies required to report under
36 this section, with consultants designated by the department, and with
37 designated representatives of Washington Indian tribes if the client
38 information exchanged is pertinent to cases currently receiving child
39 protective services or department case services for the developmentally

1 disabled. Upon request, the department shall conduct such planning and
2 consultation with those persons required to report under this section
3 if the department determines it is in the best interests of the child
4 or developmentally disabled person. Information considered privileged
5 by statute and not directly related to reports required by this section
6 shall not be divulged without a valid written waiver of the privilege.

7 (8) Any case referred to the department by a physician licensed
8 under chapter 18.57 or 18.71 RCW on the basis of an expert medical
9 opinion that child abuse, neglect, or sexual assault has occurred and
10 that the child's safety will be seriously endangered if returned home,
11 the department shall file a dependency petition unless a second
12 licensed physician of the parents' choice believes that such expert
13 medical opinion is incorrect. If the parents fail to designate a
14 second physician, the department may make the selection. If a
15 physician finds that a child has suffered abuse or neglect but that
16 such abuse or neglect does not constitute imminent danger to the
17 child's health or safety, and the department agrees with the
18 physician's assessment, the child may be left in the parents' home
19 while the department proceeds with reasonable efforts to remedy
20 parenting deficiencies.

21 (9) Persons or agencies exchanging information under subsection (7)
22 of this section shall not further disseminate or release the
23 information except as authorized by state or federal statute.
24 Violation of this subsection is a misdemeanor.

25 (10) Upon receiving reports of abuse or neglect, the department or
26 law enforcement agency may interview children. The interviews may be
27 conducted on school premises, at day-care facilities, at the child's
28 home, or at other suitable locations outside of the presence of
29 parents. Parental notification of the interview shall occur at the
30 earliest possible point in the investigation that will not jeopardize
31 the safety or protection of the child or the course of the
32 investigation. Prior to commencing the interview the department or law
33 enforcement agency shall determine whether the child wishes a third
34 party to be present for the interview and, if so, shall make reasonable
35 efforts to accommodate the child's wishes. Unless the child objects,
36 the department or law enforcement agency shall make reasonable efforts
37 to include a third party in any interview so long as the presence of
38 the third party will not jeopardize the course of the investigation.

1 (11) Upon receiving a report of incidents, conditions, or
2 circumstances of child abuse and neglect, the department shall have
3 access to all relevant records of the child in the possession of
4 mandated reporters and their employees.

5 (12) The department shall maintain investigation records and
6 conduct timely and periodic reviews of all cases constituting abuse and
7 neglect. The department shall maintain a log of screened-out
8 nonabusive cases.

9 (13) The department ~~((of social and health services))~~ shall~~((~~
10 ~~within funds appropriated for this purpose,~~) use a risk assessment
11 ~~((tool))~~ process when investigating child abuse and neglect referrals.
12 ~~((The tool shall be used, on a pilot basis, in three local office~~
13 ~~service areas.))~~ The department shall present the risk factors at all
14 hearings in which the placement of a dependent child is an issue. The
15 department shall, within funds appropriated for this purpose, offer
16 enhanced community-based services to persons who are determined not to
17 require further state intervention.

18 The department shall provide annual reports to the ~~((ways and~~
19 ~~means))~~ appropriate committees of the senate and house of
20 representatives on the ~~((use))~~ effectiveness of the ~~((tool by December~~
21 ~~1, 1989. The report shall include recommendations on the continued use~~
22 ~~and possible expanded use of the tool))~~ risk assessment process.

23 (14) Upon receipt of ~~((such))~~ a report of abuse or neglect the law
24 enforcement agency may arrange to interview the person making the
25 report and any collateral sources to determine if any malice is
26 involved in the reporting.

27 **Sec. 14.** RCW 26.44.040 and 1987 c 206 s 4 are each amended to read
28 as follows:

29 An immediate oral report shall be made by telephone or otherwise to
30 the proper law enforcement agency or the department of social and
31 health services and, upon request, shall be followed by a report in
32 writing. Such reports shall contain the following information, if
33 known:

34 (1) The name, address, and age of the child or adult dependent or
35 developmentally disabled person;

36 (2) The name and address of the child's parents, stepparents,
37 guardians, or other persons having custody of the child or the
38 residence of the adult dependent or developmentally disabled person;

- 1 (3) The nature and extent of the injury or injuries;
- 2 (4) The nature and extent of the neglect;
- 3 (5) The nature and extent of the sexual abuse;
- 4 (6) Any evidence of previous injuries, including their nature and
5 extent; and
- 6 (7) Any other information which may be helpful in establishing the
7 cause of the child's or adult dependent or developmentally disabled
8 person's death, injury, or injuries and the identity of the alleged
9 perpetrator or perpetrators.

10 **Sec. 15.** RCW 26.44.063 and 1988 c 190 s 3 are each amended to read
11 as follows:

12 (1) It is the intent of the legislature to minimize trauma to a
13 child involved in an allegation of sexual or physical abuse. The
14 legislature declares that removing the child from the home often has
15 the effect of further traumatizing the child. It is, therefore, the
16 legislature's intent that the alleged offender, rather than the child,
17 shall be removed from the home and that this should be done at the
18 earliest possible point of intervention in accordance with RCW
19 10.31.100, 13.34.130, this section, and RCW 26.44.130.

20 (2) In any judicial proceeding in which it is alleged that a child
21 has been subjected to sexual or physical abuse, if the court finds
22 reasonable grounds to believe that an incident of sexual or physical
23 abuse has occurred, the court may, on its own motion, or the motion of
24 the guardian ad litem or other parties, issue a temporary restraining
25 order or preliminary injunction restraining or enjoining the person
26 accused of committing the abuse from:

27 (a) Molesting or disturbing the peace of the alleged victim;

28 (b) Entering the family home of the alleged victim except as
29 specifically authorized by the court; or

30 (c) Having any contact with the alleged victim, except as
31 specifically authorized by the court.

32 (3) In issuing a temporary restraining order or preliminary
33 injunction, the court may impose any additional restrictions that the
34 court in its discretion determines are necessary to protect the child
35 from further abuse or emotional trauma pending final resolution of the
36 abuse allegations.

37 (4) The court shall issue a temporary restraining order prohibiting
38 a person from entering the family home if the court finds that the

1 order would eliminate the need for an out-of-home placement to protect
2 the child's right to nurturance, health, and safety and is sufficient
3 to protect the child from further sexual or physical abuse or coercion.

4 (5) The court may issue a temporary restraining order without
5 requiring notice to the party to be restrained or other parties only if
6 it finds on the basis of the moving affidavit or other evidence that
7 irreparable injury could result if an order is not issued until the
8 time for responding has elapsed.

9 (6) A temporary restraining order or preliminary injunction:

10 (a) Does not prejudice the rights of a party or any child which are
11 to be adjudicated at subsequent hearings in the proceeding; and

12 (b) May be revoked or modified.

13 (7) The person having physical custody of the child shall have an
14 affirmative duty to assist in the enforcement of the restraining order
15 including but not limited to a duty to notify the court as soon as
16 practicable of any violation of the order, a duty to request the
17 assistance of law enforcement officers to enforce the order, and a duty
18 to notify the department of social and health services of any violation
19 of the order as soon as practicable if the department is a party to the
20 action. Failure by the custodial party to discharge these affirmative
21 duties shall be subject to contempt proceedings.

22 (8) Willful violation of a court order entered under this section
23 is a misdemeanor. A written order shall contain the court's directive
24 and shall bear the legend: "Violation of this order with actual notice
25 of its terms is a criminal offense under chapter 26.44 RCW, is also
26 subject to contempt proceedings, and will subject a violator to
27 arrest."

28 **Sec. 16.** RCW 26.44.067 and 1989 c 373 s 23 are each amended to
29 read as follows:

30 (1) Any person having had actual notice of the existence of a
31 restraining order issued by a court of competent jurisdiction pursuant
32 to RCW 26.44.063 who refuses to comply with the provisions of such
33 order (~~(when requested by any peace officer of the state)~~) shall be
34 guilty of a misdemeanor.

35 (2) The notice requirements of subsection (1) of this section may
36 be satisfied by the peace officer giving oral or written evidence to
37 the person subject to the order by reading from or handing to that
38 person a copy certified by a notary public or the clerk of the court to

1 be an accurate copy of the original court order which is on file. The
2 copy may be supplied by the court or any party.

3 (3) The remedies provided in this section shall not apply unless
4 restraining orders subject to this section shall bear this legend:
5 VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL
6 OFFENSE UNDER CHAPTER 26.44 RCW AND IS ALSO SUBJECT TO CONTEMPT
7 PROCEEDINGS.

8 (4) It is a defense to prosecution under subsection (1) of this
9 section that the court order was issued contrary to law or court rule.
10 No right of action shall accrue against any peace officer acting upon
11 a properly certified copy of a court order lawful on its face if such
12 officer employs otherwise lawful means to effect the arrest.

13 **Sec. 17.** RCW 26.44.100 and 1985 c 183 s 1 are each amended to read
14 as follows:

15 The legislature finds parents and children often are not aware of
16 their due process rights when agencies are investigating allegations of
17 child abuse and neglect. The legislature reaffirms that all citizens,
18 including parents, shall be afforded due process, that protection of
19 children remains the priority of the legislature, and that this
20 protection includes protecting the family unit from unnecessary
21 disruption. To facilitate this goal, the legislature wishes to ensure
22 that parents and children be advised in writing and orally, if
23 feasible, of their basic rights and other specific information as set
24 forth in this ((aet)) chapter, provided that nothing contained in this
25 ((aet)) chapter shall cause any delay in protective custody action.

26 NEW SECTION. **Sec. 18.** A new section is added to chapter 26.44 RCW
27 to read as follows:

28 (1) If a person who has unsupervised visitation rights with a minor
29 child pursuant to a court order is accused of sexually or physically
30 abusing a child and the alleged abuse has been reported to the proper
31 authorities for investigation, the law enforcement officer conducting
32 the investigation may file an affidavit with the prosecuting attorney
33 stating that the person is currently under investigation for sexual or
34 physical abuse of a child and that there is a risk of harm to the child
35 if a temporary restraining order is not entered. Upon receipt of the
36 affidavit, the prosecuting attorney shall determine whether there is a
37 risk of harm to the child if a temporary restraining order is not

1 entered. If the prosecutor determines there is a risk of harm, the
2 prosecutor shall immediately file a motion for an order to show cause
3 seeking to restrict visitation with the child, and seek a temporary
4 restraining order. The restraining order shall be issued for up to
5 ninety days or until the investigation has been concluded in favor of
6 the alleged abuser, whichever is shorter.

7 (2) Willful violation of a court order entered under this section
8 is a misdemeanor. The court order shall state: "Violation of this
9 order is a criminal offense under chapter 26.44 RCW and will subject
10 the violator to arrest."

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