

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1121

Chapter 130, Laws of 1998

55th Legislature
1998 Regular Session

CUSTODY OF DEPENDENT CHILDREN

EFFECTIVE DATE: 6/11/98

Passed by the House March 7, 1998
Yeas 95 Nays 0

CLYDE BALLARD
**Speaker of the
House of Representatives**

Passed by the Senate March 3, 1998
Yeas 47 Nays 0

BRAD OWEN
President of the Senate

Approved March 25, 1998

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1121** as passed by the House of Representatives and the Senate on the dates hereon set forth.

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 25, 1998 - 4:16 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1121

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Veloria, Cooke, Tokuda, Wolfe, Dunn and Costa)

Read first time 02/11/97.

1 AN ACT Relating to dependent children; amending RCW 13.34.030,
2 13.34.130, and 26.10.030; and reenacting and amending RCW 13.34.145.

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

4 **Sec. 1.** RCW 13.34.030 and 1997 c 386 s 7 are each amended to read
5 as follows:

6 For purposes of this chapter:

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

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

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

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

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

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

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

21 (5) "Guardian" means the person or agency that: (a) Has been
22 appointed as the guardian of a child in a legal proceeding other than
23 a proceeding under this chapter; and (b) has the legal right to custody
24 of the child pursuant to such appointment. The term "guardian" shall
25 not include a "dependency guardian" appointed pursuant to a proceeding
26 under this chapter.

27 (6) "Guardian ad litem" means a person, appointed by the court to
28 represent the best interest of a child in a proceeding under this
29 chapter, or in any matter which may be consolidated with a proceeding
30 under this chapter. A "court-appointed special advocate" appointed by
31 the court to be the guardian ad litem for the child, or to perform
32 substantially the same duties and functions as a guardian ad litem,
33 shall be deemed to be guardian ad litem for all purposes and uses of
34 this chapter.

35 (7) "Guardian ad litem program" means a court-authorized volunteer
36 program, which is or may be established by the superior court of the
37 county in which such proceeding is filed, to manage all aspects of
38 volunteer guardian ad litem representation for children alleged or
39 found to be dependent. Such management shall include but is not

1 limited to: Recruitment, screening, training, supervision, assignment,
2 and discharge of volunteers.

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

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

11 **Sec. 2.** RCW 13.34.130 and 1997 c 280 s 1 are each amended to read
12 as follows:

13 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
14 been proven by a preponderance of the evidence that the child is
15 dependent within the meaning of RCW 13.34.030; after consideration of
16 the predisposition report prepared pursuant to RCW 13.34.110 and after
17 a disposition hearing has been held pursuant to RCW 13.34.110, the
18 court shall enter an order of disposition pursuant to this section.

19 (1) The court shall order one of the following dispositions of the
20 case:

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

28 (b) Order that the child be removed from his or her home and
29 ordered into the custody, control, and care of a relative or the
30 department of social and health services or a licensed child placing
31 agency for placement in a foster family home or group care facility
32 licensed pursuant to chapter 74.15 RCW or in a home not required to be
33 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
34 cause to believe that the safety or welfare of the child would be
35 jeopardized or that efforts to reunite the parent and child will be
36 hindered, such child shall be placed with a person who is related to
37 the child as defined in RCW 74.15.020(4)(a) and with whom the child has
38 a relationship and is comfortable, and who is willing and available to

1 care for the child. Placement of the child with a relative under this
2 subsection shall be given preference by the court. An order for out-
3 of-home placement may be made only if the court finds that reasonable
4 efforts have been made to prevent or eliminate the need for removal of
5 the child from the child's home and to make it possible for the child
6 to return home, specifying the services that have been provided to the
7 child and the child's parent, guardian, or legal custodian, and that
8 preventive services have been offered or provided and have failed to
9 prevent the need for out-of-home placement, unless the health, safety,
10 and welfare of the child cannot be protected adequately in the home,
11 and that:

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

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

16 (iii) The court finds, by clear, cogent, and convincing evidence,
17 a manifest danger exists that the child will suffer serious abuse or
18 neglect if the child is not removed from the home and an order under
19 RCW 26.44.063 would not protect the child from danger; or

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

25 (2) If the court has ordered a child removed from his or her home
26 pursuant to subsection (1)(b) of this section, the court may order that
27 a petition seeking termination of the parent and child relationship be
28 filed if the court finds it is recommended by the supervising agency,
29 that it is in the best interests of the child and that it is not
30 reasonable to provide further services to reunify the family because
31 the existence of aggravated circumstances make it unlikely that
32 services will effectuate the return of the child to the child's parents
33 in the near future. In determining whether aggravated circumstances
34 exist, the court shall consider one or more of the following:

35 (a) Conviction of the parent of rape of the child in the first,
36 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
37 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 and
3 9A.42.030;

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

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

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

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

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

19 (a) A permanency plan of care that shall identify one of the
20 following outcomes as a primary goal and may identify additional
21 outcomes as alternative goals: Return of the child to the home of the
22 child's parent, guardian, or legal custodian; adoption; guardianship;
23 permanent legal custody; or long-term relative or foster care, until
24 the child is age eighteen, with a written agreement between the parties
25 and the care provider; and independent living, if appropriate and if
26 the child is age sixteen or older. Whenever a permanency plan
27 identifies independent living as a goal, the plan shall also
28 specifically identify the services that will be provided to assist the
29 child to make a successful transition from foster care to independent
30 living. Before the court approves independent living as a permanency
31 plan of care, the court shall make a finding that the provision of
32 services to assist the child in making a transition from foster care to
33 independent living will allow the child to manage his or her financial
34 affairs and to manage his or her personal, social, educational, and
35 nonfinancial affairs. The department shall not discharge a child to an
36 independent living situation before the child is eighteen years of age
37 unless the child becomes emancipated pursuant to chapter 13.64 RCW.

38 (b) Unless the court has ordered, pursuant to subsection (2) of
39 this section, that a termination petition be filed, a specific plan as

1 to where the child will be placed, what steps will be taken to return
2 the child home, and what actions the agency will take to maintain
3 parent-child ties. All aspects of the plan shall include the goal of
4 achieving permanence for the child.

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

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

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

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

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

33 (4) If there is insufficient information at the time of the
34 disposition hearing upon which to base a determination regarding the
35 suitability of a proposed placement with a relative, the child shall
36 remain in foster care and the court shall direct the supervising agency
37 to conduct necessary background investigations as provided in chapter
38 74.15 RCW and report the results of such investigation to the court
39 within thirty days. However, if such relative appears otherwise

1 suitable and competent to provide care and treatment, the criminal
2 history background check need not be completed before placement, but as
3 soon as possible after placement. Any placements with relatives,
4 pursuant to this section, shall be contingent upon cooperation by the
5 relative with the agency case plan and compliance with court orders
6 related to the care and supervision of the child including, but not
7 limited to, court orders regarding parent-child contacts and any other
8 conditions imposed by the court. Noncompliance with the case plan or
9 court order shall be grounds for removal of the child from the
10 relative's home, subject to review by the court.

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

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

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

29 (i) Whether reasonable services have been provided to or offered to
30 the parties to facilitate reunion, specifying the services provided or
31 offered;

32 (ii) Whether the child has been placed in the least-restrictive
33 setting appropriate to the child's needs, including whether
34 consideration and preference has been given to placement with the
35 child's relatives;

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

38 (iv) Whether there has been compliance with the case plan by the
39 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. 3.** RCW 13.34.145 and 1995 c 311 s 20 and 1995 c 53 s 2 are
13 each reenacted and amended to read as follows:

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

21 (a) Whenever a child is placed in out-of-home care pursuant to RCW
22 13.34.130, the agency that has custody of the child shall provide the
23 court with a written permanency plan of care directed towards securing
24 a safe, stable, and permanent home for the child as soon as possible.
25 The plan shall identify one of the following outcomes as the primary
26 goal and may also identify additional outcomes as alternative goals:
27 Return of the child to the home of the child's parent, guardian, or
28 legal custodian; adoption; guardianship; permanent legal custody; or
29 long-term relative or foster care, until the child is age eighteen,
30 with a written agreement between the parties and the care provider; and
31 independent living, if appropriate and if the child is age sixteen or
32 older and the provisions of subsection (2) of this section are met.

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

35 (c) Permanency planning goals should be achieved at the earliest
36 possible date, preferably before the child has been in out-of-home care
37 for fifteen months. In cases where parental rights have been
38 terminated, the child is legally free for adoption, and adoption has

1 been identified as the primary permanency planning goal, it shall be a
2 goal to complete the adoption within six months following entry of the
3 termination order.

4 (d) For purposes related to permanency planning:

5 (i) "Guardianship" means a dependency guardianship pursuant to this
6 chapter, a legal guardianship pursuant to chapter 11.88 RCW, or
7 equivalent laws of another state or a federally recognized Indian
8 tribe.

9 (ii) "Permanent custody order" means a custody order entered
10 pursuant to chapter 26.10 RCW.

11 (iii) "Permanent legal custody" means legal custody pursuant to
12 chapter 26.10 RCW or equivalent laws of another state or of a federally
13 recognized Indian tribe.

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

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

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

38 (4) Whenever a child is removed from the home of a dependency
39 guardian or long-term relative or foster care provider, and the child

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

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

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

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

31 (ii) Modify the permanency plan, and order implementation of the
32 modified plan; and

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

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

38 (7) If the court orders the child returned home, casework
39 supervision shall continue for at least six months, at which time a

1 review hearing shall be held pursuant to RCW 13.34.130(5), and the
2 court shall determine the need for continued intervention.

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

17 (9) Following the first permanency planning hearing, the court
18 shall hold a further permanency planning hearing in accordance with
19 this section at least once every twelve months until a permanency
20 planning goal is achieved or the dependency is dismissed, whichever
21 occurs first.

22 ~~((+9))~~ (10) Except as otherwise provided in RCW 13.34.235, the
23 status of all dependent children shall continue to be reviewed by the
24 court at least once every six months, in accordance with RCW
25 13.34.130(5), until the dependency is dismissed. Prior to the second
26 permanency planning hearing, the agency that has custody of the child
27 shall consider whether to file a petition for termination of parental
28 rights.

29 ~~((+10))~~ (11) Nothing in this chapter may be construed to limit the
30 ability of the agency that has custody of the child to file a petition
31 for termination of parental rights or a guardianship petition at any
32 time following the establishment of dependency. Upon the filing of
33 such a petition, a fact-finding hearing shall be scheduled and held in
34 accordance with this chapter unless the agency requests dismissal of
35 the petition prior to the hearing or unless the parties enter an agreed
36 order terminating parental rights, establishing guardianship, or
37 otherwise resolving the matter.

38 ~~((+11))~~ (12) The approval of a permanency plan that does not
39 contemplate return of the child to the parent does not relieve the

1 supervising agency of its obligation to provide reasonable services,
2 under this chapter, intended to effectuate the return of the child to
3 the parent, including but not limited to, visitation rights.

4 (~~(12)~~) (13) Nothing in this chapter may be construed to limit the
5 procedural due process rights of any party in a termination or
6 guardianship proceeding filed under this chapter.

7 **Sec. 4.** RCW 26.10.030 and 1987 c 460 s 27 are each amended to read
8 as follows:

9 (1) Except as authorized for proceedings brought under chapter
10 26.50 RCW in district or municipal courts, a child custody proceeding
11 is commenced in the superior court by a person other than a parent, by
12 filing a petition seeking custody of the child in the county where the
13 child is permanently resident or where the child is found, but only if
14 the child is not in the physical custody of one of its parents or if
15 the petitioner alleges that neither parent is a suitable custodian.
16 Prior to a child custody hearing, the court shall determine if the
17 child is the subject of a pending dependency action.

18 (2) Notice of a child custody proceeding shall be given to the
19 child's parent, guardian and custodian, who may appear and be heard and
20 may file a responsive pleading. The court may, upon a showing of good
21 cause, permit the intervention of other interested parties.

Passed the House March 7, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor March 25, 1998.

Filed in Office of Secretary of State March 25, 1998.