
SENATE BILL 5525

State of Washington

68th Legislature

2023 Regular Session

By Senator MacEwen

1 AN ACT Relating to maintaining the safety of children who have
2 been removed from a parent based on abuse, neglect, or abandonment;
3 amending RCW 13.34.145; reenacting and amending RCW 13.34.138; adding
4 a new section to chapter 13.34 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** This act may be known and cited as the
7 Oakley Carlson act.

8 NEW SECTION. **Sec. 2.** (1) The tragic disappearance of six year
9 old Oakley Carlson has captured the attention of people from all
10 corners of Washington state, the United States, and the world. The
11 fact that this vibrant little girl vanished after being removed from
12 loving foster parents and returned to troubled birth parents raises
13 serious questions about the effectiveness of our state's child
14 welfare policies and bureaucracies.

15 (2) The legislature intends to:

16 (a) Improve the operations and oversight of Washington's child
17 welfare system; and

18 (b) Create positive change from the sadness and sorrow of young
19 Oakley's disappearance.

1 (3) For these reasons, the legislature finds that clear and
2 specific standards for returning young children to birth parents who
3 have lost custody of those children will help reduce the risk of harm
4 befalling those children. While reunification of birth families is a
5 good and necessary goal, it must be realized in a careful and
6 comprehensive manner. Reunification must be realized in a manner that
7 protects the children above all other interests.

8 **Sec. 3.** RCW 13.34.138 and 2021 c 208 s 3 and 2021 c 67 s 5 are
9 each reenacted and amended to read as follows:

10 (1) The status of all children found to be dependent shall be
11 reviewed by the court at least every six months from the beginning
12 date of the placement episode or the date dependency is established,
13 whichever is first. The purpose of the hearing shall be to review the
14 progress of the parties and determine whether court supervision
15 should continue.

16 (a) The initial review hearing shall be an in-court review and
17 shall be set six months from the beginning date of the placement
18 episode or no more than 90 days from the entry of the disposition
19 order, whichever comes first. The requirements for the initial review
20 hearing, including the in-court review requirement, shall be
21 accomplished within existing resources.

22 (b) The initial review hearing may be a permanency planning
23 hearing when necessary to meet the time frames set forth in RCW
24 13.34.145(1)(a) or 13.34.134.

25 (2)(a) A child shall not be returned home at the review hearing
26 unless the court finds that a reason for removal as set forth in RCW
27 13.34.130 no longer exists. The parents, guardian, or legal custodian
28 shall report to the court the efforts they have made to correct the
29 conditions which led to removal. If a child is returned, casework
30 supervision by the department shall continue for a period of (~~six~~
31 ~~months~~) time determined under RCW 13.34.145, at which time there
32 shall be a hearing on the need for continued intervention.

33 (b) Prior to the child returning home, the department must
34 complete the following:

35 (i) Identify all adults residing in the home and conduct
36 background checks on those persons;

37 (ii) Identify any persons who may act as a caregiver for the
38 child in addition to the parent with whom the child is being placed
39 and determine whether such persons are in need of any services in

1 order to ensure the safety of the child, regardless of whether such
2 persons are a party to the dependency. The department may recommend
3 to the court and the court may order that placement of the child in
4 the parent's home be contingent on or delayed based on the need for
5 such persons to engage in or complete services to ensure the safety
6 of the child prior to placement. If services are recommended for the
7 caregiver, and the caregiver fails to engage in or follow through
8 with the recommended services, the department must promptly notify
9 the court; (~~and~~)

10 (iii) Notify the parent with whom the child is being placed that
11 he or she has an ongoing duty to notify the department of all persons
12 who reside in the home or who may act as a caregiver for the child
13 both prior to the placement of the child in the home and subsequent
14 to the placement of the child in the home as long as the court
15 retains jurisdiction of the dependency proceeding or the department
16 is providing or monitoring either remedial services to the parent or
17 services to ensure the safety of the child to any caregivers; and

18 (iv) In cases where substance use disorder on the part of the
19 parent was a primary or contributing factor in the removal of the
20 child, demonstrate that the parent has at least six months of
21 sobriety by providing documentation to the court of at least six
22 months of random drug or alcohol testing that occurred at least twice
23 per month.

24 Caregivers may be required to engage in services under this
25 subsection solely for the purpose of ensuring the present and future
26 safety of a child who is a ward of the court. This subsection does
27 not grant party status to any individual not already a party to the
28 dependency proceeding, create an entitlement to services or a duty on
29 the part of the department to provide services, or create judicial
30 authority to order the provision of services to any person other than
31 for the express purposes of this section or RCW 13.34.025 or if the
32 services are unavailable or unsuitable or the person is not eligible
33 for such services.

34 (c) If the child is not returned home, the court shall establish
35 in writing:

36 (i) Whether the department is making reasonable efforts to
37 provide services to the family and eliminate the need for placement
38 of the child. If additional services, including housing assistance,
39 are needed to facilitate the return of the child to the child's

1 parents, the court shall order that reasonable services be offered
2 specifying such services;

3 (ii) Whether there has been compliance with the case plan by the
4 child, the child's parents, and the agency supervising the placement;

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

7 (iv) Whether the services set forth in the case plan and the
8 responsibilities of the parties need to be clarified or modified due
9 to the availability of additional information or changed
10 circumstances;

11 (v) Whether there is a continuing need for placement;

12 (vi) Within 60 days of the placement of a child in a qualified
13 residential treatment program as defined in this chapter, and at each
14 review hearing thereafter if the child remains in such a program, the
15 following:

16 (A) Whether ongoing assessment of the child's strengths and needs
17 continues to support the determination that the child's needs cannot
18 be met through placement in a foster family home;

19 (B) Whether the child's placement provides the most effective and
20 appropriate level of care in the least restrictive environment;

21 (C) Whether the placement is consistent with the child's
22 permanency plan;

23 (D) What specific treatment or service needs will be met in the
24 placement, and how long the child is expected to need the treatment
25 or services; and

26 (E) What efforts the department has made to prepare the child to
27 return home or be placed with a fit and willing relative as defined
28 in RCW 13.34.030, a Title 13 RCW legal guardian, an adoptive parent,
29 or in a foster family home;

30 (vii) Whether a parent's experiencing homelessness or lack of
31 suitable housing is a significant factor delaying permanency for the
32 child by preventing the return of the child to the home of the
33 child's parent and whether housing assistance should be provided by
34 the department;

35 (viii) Whether the child is in an appropriate placement which
36 adequately meets all physical, emotional, and educational needs;

37 (ix) Whether preference has been given to placement with the
38 child's relatives if such placement is in the child's best interests;

39 (x) Whether both in-state and, where appropriate, out-of-state
40 placements have been considered;

1 (xi) Whether the parents have visited the child and any reasons
2 why visitation has not occurred or has been infrequent;

3 (xii) Whether terms of visitation need to be modified. If the
4 court previously ordered that visitation between a parent and child
5 must be supervised or monitored, there shall be a presumption that
6 such supervision or monitoring will no longer be necessary after the
7 review hearing. To overcome this presumption, a party must provide a
8 report to the court including evidence establishing that removing
9 visit supervision or monitoring would create a risk to the child's
10 safety, and the court shall make a determination as to whether visit
11 supervision or monitoring must continue;

12 (xiii) Whether the court-approved long-term permanent plan for
13 the child remains the best plan for the child;

14 (xiv) Whether any additional court orders need to be made to move
15 the case toward permanency; and

16 (xv) The projected date by which the child will be returned home
17 or other permanent plan of care will be implemented.

18 (d) The court at the review hearing may order that a petition
19 seeking termination of the parent and child relationship be filed.

20 (3) (a) In any case in which the court orders that a dependent
21 child may be returned to or remain in the (~~child's~~) parent's home,
22 the in-home placement shall be contingent upon the following:

23 (i) The compliance of the parents with court orders related to
24 the care and supervision of the child, including compliance with the
25 department's case plan; and

26 (ii) The continued participation of the parents, if applicable,
27 in available substance abuse or mental health treatment if
28 (~~substance abuse or mental illness~~) a behavioral health disorder
29 was a contributing factor to the removal of the child.

30 (b) The following may be grounds for removal of the child from
31 the home, subject to review by the court:

32 (i) Noncompliance by the parents with the department's case plan
33 or court order;

34 (ii) The parent's inability, unwillingness, or failure to
35 participate in available services or treatment for themselves or the
36 child, including substance abuse treatment if a parent's substance
37 abuse was a contributing factor to the abuse or neglect; or

38 (iii) The failure of the parents to successfully and
39 substantially complete available services or treatment for themselves

1 or the child, including substance abuse treatment if a parent's
2 substance abuse was a contributing factor to the abuse or neglect.

3 (c) In a pending dependency case in which the court orders that a
4 dependent child may be returned home and that child is later removed
5 from the home, the court shall hold a review hearing within thirty
6 days from the date of removal to determine whether the permanency
7 plan should be changed, a termination petition should be filed, or
8 other action is warranted. The best interests of the child shall be
9 the court's primary consideration in the review hearing.

10 (4) The court's authority to order housing assistance under this
11 chapter is: (a) Limited to cases in which a parent's experiencing
12 homelessness or lack of suitable housing is a significant factor
13 delaying permanency for the child and housing assistance would aid
14 the parent in providing an appropriate home for the child; and (b)
15 subject to the availability of funds appropriated for this specific
16 purpose. Nothing in this chapter shall be construed to create an
17 entitlement to housing assistance nor to create judicial authority to
18 order the provision of such assistance to any person or family if the
19 assistance or funding are unavailable or the child or family are not
20 eligible for such assistance.

21 (5) The court shall consider the child's relationship with
22 siblings in accordance with RCW 13.34.130(7).

23 (6) The court shall advise the petitioner that the failure to
24 provide court-ordered visitation may result in a finding that the
25 petitioner failed to make reasonable efforts to finalize the
26 permanency plan. The lack of sufficient contracted visitation
27 providers will not excuse the failure to provide court-ordered
28 visitation.

29 **Sec. 4.** RCW 13.34.145 and 2022 c 127 s 1 are each amended to
30 read as follows:

31 (1) The purpose of a permanency planning hearing is to review the
32 permanency plan for the child, inquire into the welfare of the child
33 and progress of the case, and reach decisions regarding the permanent
34 placement of the child.

35 (a) A permanency planning hearing shall be held in all cases
36 where the child has remained in out-of-home care for at least nine
37 months and an adoption decree, guardianship order, or permanent
38 custody order has not previously been entered. The hearing shall take

1 place no later than 12 months following commencement of the current
2 placement episode.

3 (b) Whenever a child is removed from the home of a dependency
4 guardian or long-term relative or foster care provider, and the child
5 is not returned to the home of the parent, guardian, or legal
6 custodian but is placed in out-of-home care, a permanency planning
7 hearing shall take place no later than 12 months, as provided in this
8 section, following the date of removal unless, prior to the hearing,
9 the child returns to the home of the dependency guardian or long-term
10 care provider, the child is placed in the home of the parent,
11 guardian, or legal custodian, an adoption decree, guardianship order,
12 or a permanent custody order is entered, or the dependency is
13 dismissed. Every effort shall be made to provide stability in long-
14 term placement, and to avoid disruption of placement, unless the
15 child is being returned home or it is in the best interest of the
16 child.

17 (c) Permanency planning goals should be achieved at the earliest
18 possible date, preferably before the child has been in out-of-home
19 care for 15 months. In cases where parental rights have been
20 terminated, the child is legally free for adoption, and adoption has
21 been identified as the primary permanency planning goal, it shall be
22 a goal to complete the adoption within six months following entry of
23 the termination order.

24 (2) No later than 10 working days prior to the permanency
25 planning hearing, the agency having custody of the child shall submit
26 a written permanency plan to the court and shall mail a copy of the
27 plan to all parties and their legal counsel, if any.

28 (3) When the youth is at least age 17 years but not older than 17
29 years and six months, the department shall provide the youth with
30 written documentation which explains the availability of extended
31 foster care services and detailed instructions regarding how the
32 youth may access such services after he or she reaches age 18 years.

33 (4) At the permanency planning hearing, the court shall conduct
34 the following inquiry:

35 (a) If a goal of long-term foster or relative care has been
36 achieved prior to the permanency planning hearing, the court shall
37 review the child's status to determine whether the placement and the
38 plan for the child's care remain appropriate. The court shall find,
39 as of the date of the hearing, that the child's placement and plan of
40 care is the best permanency plan for the child and provide compelling

1 reasons why it continues to not be in the child's best interest to
2 (i) return home; (ii) be placed for adoption; (iii) be placed with a
3 legal guardian; or (iv) be placed with a fit and willing relative. If
4 the child is present at the hearing, the court should ask the child
5 about his or her desired permanency outcome.

6 (b) In cases where the primary permanency planning goal has not
7 been achieved, the court shall inquire regarding the reasons why the
8 primary goal has not been achieved and determine what needs to be
9 done to make it possible to achieve the primary goal. The court shall
10 review the permanency plan prepared by the agency and make explicit
11 findings regarding each of the following:

12 (i) The continuing necessity for, and the safety and
13 appropriateness of, the placement;

14 (ii) The extent of compliance with the permanency plan by the
15 department and any other service providers, the child's parents, the
16 child, and the child's guardian, if any;

17 (iii) The extent of any efforts to involve appropriate service
18 providers in addition to department staff in planning to meet the
19 special needs of the child and the child's parents;

20 (iv) The progress toward eliminating the causes for the child's
21 placement outside of his or her home and toward returning the child
22 safely to his or her home or obtaining a permanent placement for the
23 child;

24 (v) The date by which it is likely that the child will be
25 returned to his or her home or placed for adoption, with a guardian
26 or in some other alternative permanent placement; and

27 (vi) If the child has been placed outside of his or her home for
28 15 of the most recent 22 months, not including any period during
29 which the child was a runaway from the out-of-home placement or the
30 first six months of any period during which the child was returned to
31 his or her home for a trial home visit, the appropriateness of the
32 permanency plan, whether reasonable efforts were made by the
33 department to achieve the goal of the permanency plan, and the
34 circumstances which prevent the child from any of the following:

35 (A) Being returned safely to his or her home;

36 (B) Having a petition for the involuntary termination of parental
37 rights filed on behalf of the child;

38 (C) Being placed for adoption;

39 (D) Being placed with a guardian;

1 (E) Being placed in the home of a fit and willing relative of the
2 child; or

3 (F) Being placed in some other alternative permanent placement,
4 including independent living or long-term foster care.

5 (c) Regardless of whether the primary permanency planning goal
6 has been achieved, for a child who remains placed in a qualified
7 residential treatment program as defined in this chapter for at least
8 60 days, and remains placed there at subsequent permanency planning
9 hearings, the court shall establish in writing:

10 (i) Whether ongoing assessment of the child's strengths and needs
11 continues to support the determination that the child's needs cannot
12 be met through placement in a foster family home;

13 (ii) Whether the child's placement provides the most effective
14 and appropriate level of care in the least restrictive environment;

15 (iii) Whether the placement is consistent with the child's short
16 and long-term goals as stated in the child's permanency plan;

17 (iv) What specific treatment or service needs will be met in the
18 placement, and how long the child is expected to need the treatment
19 or services; and

20 (v) What efforts the department has made to prepare the child to
21 return home or be placed with a fit and willing relative as defined
22 in RCW 13.34.030, a Title 13 RCW guardian, a guardian pursuant to RCW
23 11.130.215, an adoptive parent, or in a foster family home.

24 (5) Following this inquiry, at the permanency planning hearing,
25 the court shall order the department to file a petition seeking
26 termination of parental rights if the child has been in out-of-home
27 care for 15 of the last 22 months since the date the dependency
28 petition was filed unless the court makes a good cause exception as
29 to why the filing of a termination of parental rights petition is not
30 appropriate. Any good cause finding shall be reviewed at all
31 subsequent hearings pertaining to the child. The six-month period of
32 sobriety required before returning a child to his or her parent under
33 RCW 13.34.138 is not included in the period of time the child is in
34 out-of-home care under this subsection (5) used for purposes of
35 determining whether the court shall order the department to file a
36 termination of parental rights petition.

37 (a) For purposes of this subsection, "good cause exception"
38 includes but is not limited to the following:

39 (i) The child is being cared for by a relative;

1 (ii) The department has not provided to the child's family such
2 services as the court and the department have deemed necessary for
3 the child's safe return home;

4 (iii) The department has documented in the case plan a compelling
5 reason for determining that filing a petition to terminate parental
6 rights would not be in the child's best interests;

7 (iv) The parent is incarcerated, or the parent's prior
8 incarceration is a significant factor in why the child has been in
9 foster care for 15 of the last 22 months, the parent maintains a
10 meaningful role in the child's life, and the department has not
11 documented another reason why it would be otherwise appropriate to
12 file a petition pursuant to this section;

13 (v) Where a parent has been accepted into a dependency treatment
14 court program or long-term substance abuse or dual diagnoses
15 treatment program and is demonstrating compliance with treatment
16 goals;

17 (vi) Where a parent who has been court ordered to complete
18 services necessary for the child's safe return home files a
19 declaration under penalty of perjury stating the parent's financial
20 inability to pay for the same court-ordered services, and also
21 declares the department was unwilling or unable to pay for the same
22 services necessary for the child's safe return home; or

23 (vii) The department has not yet met with the caregiver for the
24 child to discuss guardianship as an alternative to adoption or the
25 court has determined that guardianship is an appropriate permanent
26 plan.

27 (b) The court's assessment of whether a parent who is
28 incarcerated maintains a meaningful role in the child's life may
29 include consideration of the following:

30 (i) The parent's expressions or acts of manifesting concern for
31 the child, such as letters, telephone calls, visits, and other forms
32 of communication with the child;

33 (ii) The parent's efforts to communicate and work with the
34 department or other individuals for the purpose of complying with the
35 service plan and repairing, maintaining, or building the parent-child
36 relationship;

37 (iii) A positive response by the parent to the reasonable efforts
38 of the department;

39 (iv) Information provided by individuals or agencies in a
40 reasonable position to assist the court in making this assessment,

1 including but not limited to the parent's attorney, correctional and
2 mental health personnel, or other individuals providing services to
3 the parent;

4 (v) Limitations in the parent's access to family support
5 programs, therapeutic services, and visiting opportunities,
6 restrictions to telephone and mail services, inability to participate
7 in foster care planning meetings, and difficulty accessing lawyers
8 and participating meaningfully in court proceedings; and

9 (vi) Whether the continued involvement of the parent in the
10 child's life is in the child's best interest.

11 (c) The constraints of a parent's current or prior incarceration
12 and associated delays or barriers to accessing court-mandated
13 services may be considered in rebuttal to a claim of aggravated
14 circumstances under RCW 13.34.132(4)(h) for a parent's failure to
15 complete available treatment.

16 (6)(a) If the permanency plan identifies independent living as a
17 goal, the court at the permanency planning hearing shall make a
18 finding that the provision of services to assist the child in making
19 a transition from foster care to independent living will allow the
20 child to manage his or her financial, personal, social, educational,
21 and nonfinancial affairs prior to approving independent living as a
22 permanency plan of care. The court will inquire whether the child has
23 been provided information about extended foster care services.

24 (b) The permanency plan shall also specifically identify the
25 services, including extended foster care services, where appropriate,
26 that will be provided to assist the child to make a successful
27 transition from foster care to independent living.

28 (c) The department shall not discharge a child to an independent
29 living situation before the child is eighteen years of age unless the
30 child becomes emancipated pursuant to chapter 13.64 RCW.

31 (7) If the child has resided in the home of a foster parent or
32 relative for more than six months prior to the permanency planning
33 hearing, the court shall:

34 (a) Enter a finding regarding whether the foster parent or
35 relative was informed of the hearing as required in RCW 74.13.280,
36 13.34.215(6), and 13.34.096; and

37 (b) Instruct the department to discuss guardianship as a
38 permanent option for the child with the child's parents and caregiver
39 as an alternative to termination of parental rights and adoption. No
40 child who is placed with a relative or other suitable person may be

1 moved, unless, pursuant to the criteria established in RCW 13.34.130,
2 the court finds that a change in circumstances necessitates a change
3 in placement.

4 (8) In all cases, at the permanency planning hearing, the court
5 shall:

6 (a) (i) Order the permanency plan prepared by the department to be
7 implemented; or

8 (ii) Modify the permanency plan, and order implementation of the
9 modified plan; and

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

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

16 (9) Following the first permanency planning hearing, the court
17 shall hold a further permanency planning hearing in accordance with
18 this section at least once every 12 months until a permanency
19 planning goal is achieved or the dependency is dismissed, whichever
20 occurs first.

21 (10) Prior to the second permanency planning hearing, the agency
22 that has custody of the child shall consider whether to file a
23 petition for termination of parental rights.

24 (11) (~~(F)~~) (a) Except as provided in (b) of this subsection, if
25 the court orders the child returned home, casework supervision by the
26 department shall continue for at least six months, at which time a
27 review hearing shall be held pursuant to RCW 13.34.138, and the court
28 shall determine the need for continued intervention.

29 (b) If the court orders the child returned home, casework
30 supervision by the department must continue for at least five years,
31 at which time a review hearing must be held pursuant to RCW
32 13.34.138, and the court shall determine the need for continued
33 intervention for cases involving:

34 (i) Substance use disorder on the part of a parent that
35 contributed to the removal of the child or that occurred during the
36 dependency; or

37 (ii) Conviction of the parent of a crime against children as
38 defined in RCW 28A.400.322.

39 (12) The juvenile court may hear a petition for permanent legal
40 custody when: (a) The court has ordered implementation of a

1 permanency plan that includes permanent legal custody; and (b) the
2 party pursuing the permanent legal custody is the party identified in
3 the permanency plan as the prospective legal custodian. During the
4 pendency of such proceeding, the court shall conduct review hearings
5 and further permanency planning hearings as provided in this chapter.
6 At the conclusion of the legal guardianship or permanent legal
7 custody proceeding, a juvenile court hearing shall be held for the
8 purpose of determining whether dependency should be dismissed. If a
9 guardianship or permanent custody order has been entered, the
10 dependency shall be dismissed.

11 (13) Continued juvenile court jurisdiction under this chapter
12 shall not be a barrier to the entry of an order establishing a legal
13 guardianship or permanent legal custody when the requirements of
14 subsection (12) of this section are met.

15 (14) Nothing in this chapter may be construed to limit the
16 ability of the agency that has custody of the child to file a
17 petition for termination of parental rights or a guardianship
18 petition at any time following the establishment of dependency. Upon
19 the filing of such a petition, a fact-finding hearing shall be
20 scheduled and held in accordance with this chapter unless the
21 department requests dismissal of the petition prior to the hearing or
22 unless the parties enter an agreed order terminating parental rights,
23 establishing guardianship, or otherwise resolving the matter.

24 (15) The approval of a permanency plan that does not contemplate
25 return of the child to the parent does not relieve the department of
26 its obligation to provide reasonable services, under this chapter,
27 intended to effectuate the return of the child to the parent,
28 including but not limited to, visitation rights. The court shall
29 consider the child's relationships with siblings in accordance with
30 RCW 13.34.130.

31 (16) Nothing in this chapter may be construed to limit the
32 procedural due process rights of any party in a termination or
33 guardianship proceeding filed under this chapter.

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

36 (1) Following the dismissal of any dependency case under this
37 chapter, the department shall continue to engage with individuals who
38 are mandated reporters of child abuse and neglect under RCW 26.44.030
39 who have contact with the child for one year following dismissal of

1 the dependency. The engagement required under this subsection must
2 include requesting weekly reports detailing their observations of the
3 child's health and safety from mandated reporters of child abuse and
4 neglect under RCW 26.44.030 who have contact with the child.

5 (2) The department shall develop a standard form to provide to
6 mandated reporters of child abuse and neglect under RCW 26.44.030 who
7 have contact with the child that allows mandated reporters to easily
8 report to the department their observations of the child's health and
9 safety as described in this section.

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