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COURT OF APPEALS, DIV. #1
STATE OF WASHINGTON

95 DEC -6 AM 9:12

95 OCT -9 PM 4:46

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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DEPARTMENT OF SOCIAL AND)
HEALTH SERVICES,)

Appellant,)

NO. 36377-8-I

vs.)

DECLARATION OF
SERVICE/MAILING

WASHINGTON STATE)
COALITION FOR THE)
HOMELESS, et al.,)

Respondents.)

Robin Rickett declares as follows:

I am a Legal Secretary for the Attorney
General's Office.

I sent a copy of the Motion for Extension of
Time, Motion for Overlong Brief, and Brief of
Appellant, on October 9, 1995, by Legal
Messengers, Inc. to: Michael Mirra at Evergreen
Legal Services, 401 Second Avenue, Suite, 401,
Seattle, WA 98104. The original and one copy of
the above documents was filed at the Court of
Appeals, Division One on October 9, 1995.

I declare under penalty of perjury under the
laws of the State of Washington that the
foregoing is true and correct.

DATED this 9th day of October, 1995, in
Seattle, Washington.

ORIGINAL


ROBIN RICKETT
Legal Secretary

TABLE OF CONTENTS

I.	<u>ISSUES PRESENTED FOR REVIEW</u>	1
	A. <u>Assignments of Error</u>	1
	B. <u>Issues Pertaining to Assignments of Error</u>	2
II.	<u>STATEMENT OF THE CASE</u>	3
	A. <u>Procedural Facts</u>	3
	B. <u>Substantive Facts</u>	8
III.	<u>SUMMARY OF ARGUMENT</u>	12
IV.	<u>ARGUMENT</u>	15
	A. <u>The Trial Court's Ruling that the General Child Welfare Provision of RCW 74.13.031 Requires DSHS to Develop a Housing Plan for Homeless Children Violates Accepted Rules of Statutory Construction.</u>	15
	1. The broad policy language of RCW 74.13.031(1) does not create enforceable rights to a housing plan	15
	2. The statute requiring a coordinated and comprehensive plan for "homeless, runaway, dependent, or neglected children" is not clear and unambiguous.	17
	3. Neither the language of RCW 74.13 or the history of the statute supports the trial court's order requiring the department to include housing as a component of its child welfare plan.	21

4. The department's child welfare plans satisfy the requirements of RCW 74.13 because they comply with federal law.	28
5. Claims based on RCW 74.13 should have been dismissed on the pleadings, because that statute does not create individually enforceable rights	34
B. <u>The Legislature has Specifically Delegated Authority for Housing Programs and Housing Plans to the Department of Community, Trade and Economic Development.</u>	37
C. <u>The Relief Granted by the Trial Court Pursuant to 74.13, Infringes on the Department's Discretion to Coordinate Services Within the Department and With Other Agencies.</u>	43
D. <u>The Court Did Not Have Jurisdiction to Enter a Declaratory Ruling Regarding the Reasonable Efforts Language of RCW 13.34, Because there was no Justiciable Controversy and the Claims were Barred by Res Judicata.</u>	49
1. The court did not have jurisdiction to enter a declaratory judgment regarding RCW 13.34.	49
2. The plaintiffs' claims regarding reasonable efforts pursuant to RCW 13.34 are barred by Res Judicata.	52
E. <u>RCW 13.34 Does Not Authorize the Creation of a "Housing Assistance" Program for any Class of Children.</u>	54
V. <u>CONCLUSION</u>	58

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Alexander v. Choate</u> , 469 U.S. 287, 83 L. Ed. 2d 661, 105 S. Ct. 712 (1985)	48
<u>Anderson v. Morris</u> , 87 Wn.2d 706, 588 P.2d 155 (1976)	28
<u>Aripa v. Social and Health Services</u> , 91 Wn.2d 135, 588 P.2d 185 (1978)	17
<u>Bennett v. Hardy.</u> , 113 Wn.2d 912, 784 P.2d 1258 (1990).	34
<u>Bradley v. Dept. Labor & Industries</u> , 52 Wn.2d 780, 329 P.2d 196 (1958)	23
<u>Dep't of Transportation v. Seib</u> , 97 Wn.2d 454, 645 P.2d 1076 (1982)	24
<u>Everett Concrete v. Dept. of Labor & Indus.</u> , 109 Wn.2d 819, 748 P.2d 1112, 1114 (1988) . .	32
<u>Green River College v. HEP Board</u> , 95 Wn.2d 108, 622 P.2d 826 (1980)	23, 25
<u>Greenholtz v. Nebraska Penal Inmates</u> , 442 U.S. 1, 60 L. Ed. 2d 668, 99 S. Ct. 2100 (1979) .	36
<u>Hama Hama v. Shorelines Hearings Bd.</u> , 85 Wn.2d 441, 536 P.2d 157 (1975)	23, 38
<u>Hillis Homes, Inc. v. Snohomish County</u> , 32 Wn. App. 279, 647 P.2d 43 (1982)	47
<u>In re Juvenile Director</u> , 87 Wn.2d 232, 552 P.2d 163 (1976)	44
<u>In Re Marriage of Perry</u> , 31 Wn. App. 604, 644 P.2d 142 (1982)	49
<u>In re Matter of Bible</u> , 69 Wn. App. 394, 845 P.2d 1236 (1992)	22

<u>In re the Welfare of J.H.</u> , 75 Wn. App 887, 880 P.2d 1030 (1994), <u>rev. denied</u> , 126 Wn.2d 1024 (1995) . . .	16, 35, 51-55
<u>Kuehl v. Edmonds</u> , 91 Wn. 195, 157 P. 850 (1916)	34
<u>Mellor v. Chamberlin</u> , 100 Wn.2d 643, 673 P.2d 610 (1983)	52
<u>Melville v. State</u> , 115 Wn.2d 34, 793 P.2d 952, 954-55 (1990)	17
<u>Morin v. Johnson</u> , 49 Wn.2d 275, 300 P.2d 569 (1956)	24
<u>Mulhausen v. Bates</u> , 9 Wn.2d 264, 114 P.2d 995 (1941)	50
<u>Pannell v. Thompson</u> , 91 Wn.2d 591, 589 P.2d 1240 (1979)	48
<u>Perry v. Island Savings & Loan Ass'n</u> , 101 Wn.2d 795, 805 n.6, 684 P.2d 1281, 1287 n.6 (1984) .	34
<u>Reeder v. King County</u> , 57 Wn.2d 563, 358 P.2d 810 (1961)	50
<u>Rozner v. Bellevue</u> , 116 Wn.2d 342, 804 P.2d 24 (1991)	17
<u>Ski Acres, Inc. v. Kittitas Cy.</u> , 118 Wn.2d 852, 827 P.2d 1000 (1992)	20
<u>State v. Elgin</u> , 118 Wn.2d 551, 825 P.2d 314 (1992)	22
<u>Transamerica Mortgage Advisors v. Lewis</u> , 444 U.S. 11, 62 L. Ed. 2d 146, 100 S. Ct. 242 (1979)	36
<u>Walker v. Munro</u> , 124 Wn.2d 402, 879 P.2d 920 (1994)	51, 52

Washington Water Power Co. v. State Human Rights Commission, 91 Wn.2d 62, 586 P.2d 1149 (1978) . 57

White v. State, 49 Wn.2d 716, 306 P.2d 230 (1957) 25

Statutes & Regulations

42 U.S.C. § 622	29, 30
42 U.S.C. § 625	33
42 U.S.C. § 627	30
42 U.S.C. § 1396	28
42 U.S.C. § 11302	20
42 U.S.C. § 12705	41
42 U.S.C. § 12773	40
42 U.S.C. § 12805	40
42 U.S.C. §§ 601	4, 28
42 U.S.C. §§ 602	4
42 U.S.C. §§ 621	4
42 U.S.C. §§ 1397	4
42 U.S.C. §§ 1437c	40
42 U.S.C. §§ 11341	40
42 U.S.C. §§ 11371	40
1903 Wash. Laws, Ch. 49, <u>later codified</u> at RCW ch. 26.37. <u>repealed</u> , 1984 Wash. Laws, ch. 155 § 39	33
1937 Wash. Laws 452, Chap. 114	31, 32

1982 Wash. Laws, ch. 118, § 3	25
1983 Wash. Laws, ch. 246, § 4	25, 26
1987 Wash. Laws, ch. 170, § 10	25
1987 Wash. Laws, ch. 505, § 69	25
1988 Wash. Laws, ch. 213, § 3	25
1990 Wash. Laws, ch. 146, § 9	25
1990 Washington Laws 1st Ex. Session, Ch. 16, § 225 (28)	39
RCW 7.24.010	50
RCW 13.04.030	49
RCW 13.32A	36
RCW 13.34	3-6, 14, 36, 49, 50, 52-56, 58
RCW 13.34.030(4)	19
RCW 13.34.030(4)(b)	19
RCW 13.34.060	56
RCW 13.34.060(8)(a)	6
RCW 13.34.090	56
RCW 13.34.110	56
RCW 13.34.120	56
RCW 13.34.130	56, 57
RCW 13.34.130(1)(b)	6
RCW 13.34.130(2)(d)	53
RCW 13.34.150	56
RCW 13.34.180	56

RCW 13.34.190	56
RCW 13.34.231	56
RCW 26.44.030(13)	24
RCW 43.180.010	39
RCW 43.185	38
RCW 43.185.050	38
RCW 43.185A	38
RCW 43.185A.020	39
RCW 43.185A.040	39
RCW 43.185B.005	42
RCW 43.185B.030	41
RCW 43.185B.040	42
RCW 43.260.010(2)(a)	27
RCW 43.330.005	3
RCW 43.330.110	41
RCW 43.330.110(2)	40, 41
RCW 59.24.010	39
RCW 70.190.005	12
RCW 74.04.050	29
RCW 74.04.055	28-30
RCW 74.08.090	57
RCW 74.09	57
RCW 74.12	57

RCW 74.12.010	19
RCW 74.13	2, 4, 13, 16, 18, 21, 22, 25-28, 30, 34-37, 43, 57, 58
RCW 74.13.020	7, 18
RCW 74.13.020(2)	16, 18
RCW 74.13.031	7, 15, 17, 18, 25, 48
RCW 74.13.031(1)	1, 5, 15, 21, 29
RCW 74.13.031(2)	35, 36
RCW 74.13.031(3)	22
RCW 74.13.031(4)	35
RCW 74.13.036(2)(d)	36
RCW 74.13.045	36
RCW 74.13.075	22, 25
RCW 74.13.090(2)(b)	36
RCW 74.13.095	22, 25
RCW 74.13.250	22, 25
RCW 74.13.270	22, 25, 35
RCW 74.14A	4, 5, 26, 54, 58
RCW 74.14A.025	54
Social Security Act, 49 Stat. 620, ch. 531, sec. 521, (1935)	31

Other Authorities

Down and Out in America; The Origins of Homelessness, Peter H. Rossi, The University of Chicago Press, Chicago, 1989	20
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H.R. Rep. 74-615, 74th Cong., 1st Sess.,	
24 (1935)	33

I. ISSUES PRESENTED FOR REVIEW

A. Assignments of Error

1. The trial court erred in ruling that the term homeless children means children of homeless families, and the trial court erred in ruling that the Department of Social and Health Services (DSHS or Department) must have a separate housing plan for homeless children pursuant to the general child welfare provisions of RCW 74.13.031(1) (Paragraphs Nos. A 1, A 2, A 3, B 1, B 2 and B 3 in its Order on Cross Motions for Summary Judgment and paragraph No. 7 of its Order on Motion for Judgment on the Pleadings).

2. The trial court erred in declaring that RCW 13.34 authorizes juvenile court to order DSHS to provide housing assistance, which can range from assistance in retaining or obtaining housing from federal, state, local or private agencies, to the expenditure of DSHS funds, whenever the court determines that a family's homelessness is the primary factor that would either result in a child's placement or prevent reunification, and is in the child's best interest. (Paragraph No. B 3

in its Order on Cross Motions for Summary Judgment).

3. The trial court erred in entering Finding of Fact No. 5 in its order of March 15, 1995.

4. The trial court erred in entering Conclusions of Law Nos. 1, 2, and 3 in its order of March 15, 1995.

5. The trial court erred in ordering DSHS to submit a plan to the court and the parties within five months of the entry of the order dated March 15, 1995.

6. The trial court erred in ordering that the court would hold further hearings or require the submission of additional material as it finds necessary for its determination and monitoring of the plan's adequacy in its order of March 15, 1995.

B. Issues Pertaining to Assignments of Error

1. Does RCW 74.13, which grants DSHS broad discretion to provide child welfare services for children, require DSHS to create a comprehensive housing plan for homeless children and their families, when the legislature has not delegated DSHS the authority to create housing programs and

has instead designated the Department of Community, Trade and Economic Development (CTED) the responsibility to provide and plan for housing in the State of Washington.¹ (Assignment of error nos. 1, 3, 4, 5, and 6).

2. Can Superior Court interpret the meaning of the "reasonable efforts" language in RCW 13.34 when Juvenile Court has been granted exclusive jurisdiction over all dependency matters and there is no actual controversy before the court? (Assignment of error no. 2).

3. Does RCW 13.34 authorize the judiciary to order housing assistance payments when the legislature has not created a housing assistance program or appropriated money for such a program? (Assignment of error no. 2).

II. STATEMENT OF THE CASE

A. Procedural Facts

This lawsuit was initiated in March, 1991, by

¹ When this case was filed the Department of Community Development (DCD) was responsible for housing. Between summary judgment and trial DCD was merged into the Department of Community, Trade and Economic Development (CTED). RCW 43.330.005 (Supp. 1995). For consistency all references in this memorandum will be to CTED.

the Washington State Coalition for the Homeless (Coalition) and four named plaintiffs representing a class of homeless families. CP 113-141. The plaintiffs alleged they were not receiving "housing assistance" from DSHS and further alleged that such assistance is required by a plethora of federal statutes including Aid to Families with Dependent Children, Part IV-A of the Social Security Act (hereinafter the "Act"), 42 U.S.C. §§ 601 et seq., Child Welfare Services, Part IV-B of the Act, 42 U.S.C. §§ 621 et seq., Foster Care and Adoption Assistance Act, Part IV-E of the Act, 42 U.S.C. §§ 602 et seq. and Block Grants to States for Social Services, Title XX of the Act, 42 U.S.C. §§ 1397 et seq. Id. Plaintiffs also alleged that the lack of housing assistance violated the due process clause of the federal and state constitutions, the equal protection clause of the federal and state constitutions, and the following state statutes: the Child Welfare Act, RCW 74.13 et seq.; the Children and Family Services Act, RCW 74.14A et seq.; and the Juvenile Court Act, RCW 13.34 et seq. Federal and state tort claims for damages also were

made on behalf of the named plaintiffs. Id.

The Department filed a Motion for Judgment on the Pleadings on all counts. The plaintiffs voluntarily dismissed their claims pursuant to Titles IV-A and XX of the Social Security Act. The Court dismissed the remaining federal statutory claims (Titles IV-B and IV-A of the Act), the equal protection claim of the Constitution of the United States, the privileges and immunity clause claim based on the Washington State Constitution, the federal tort claims and the substantive due process claims. CP 458-62.

The RCW 74.14A claims, the RCW 74.13.031(1) claim that DSHS was required to have a "coordinated and comprehensive plan" for homeless children, survived along with the "reasonable efforts" claims of RCW 13.34, the state tort claims and the procedural due process claims based on the federal and state constitutions. CP 458-62.

The parties filed a Stipulated Order of Class Certification on December 15, 1992. CP 463-467.

Both sides moved for summary judgment on the remaining claims. In its summary judgment

decision, issued December 17, 1993, the trial judge ruled that there was no statutory entitlement to housing and dismissed the procedural due process claims. CP 982. The court also dismissed the plaintiffs' state tort claims. CP 979, 983.

The "reasonable efforts"² provision of RCW 13.34 ensures that the Juvenile Court not place children in foster care unless efforts have first been made to prevent placement. The trial court issued a declaratory ruling that, if homelessness was the primary reason for placing or maintaining a child in foster care, juvenile court had the authority to order the expenditure of funds for housing. CP 982-83.

² This language appears in two statutes in RCW 13.34. The first reference is in the statute governing shelter care and provides that the court cannot place a child in shelter care unless it finds that "reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home..." RCW 13.34.060(8)(a). The second reference to reasonable efforts is in the dispositional statute. It provides that an order for out-of-home placement may only be made if the court finds that "reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home..." RCW 13.34.130(1)(b). Copies are attached as Appendix A.

The trial court also held that RCW 74.13.031³, which governs child welfare services, required the state to have a "comprehensive and coordinated plan" for homeless children. The court ordered a trial to determine if there was a plan which met the requirements of the statute and whether it was "adequate." CP 980-81.

A trial was held in May, 1994. On March 6, 1995, the trial judge issued a decision concluding that the Department's plans were not adequate and therefore did not meet the requirements of RCW 74.13.031. CP 1238-63.

On April 5, 1995, the Department filed its appeal. CP 1238-63. On April 18, 1995, the plaintiffs filed their cross-appeal.

On June 19, 1995, the Department filed a Motion to Stay Enforcement of Trial Court Decision which was denied by Commissioner Kessler on July 11, 1995. On July 14, 1995, the Department filed a Motion for Revision. The Motion for Revision was granted on July 18, 1995.

³ The text of RCW 74.13.031 and 74.13.020 are attached as Appendix B.

B. Substantive Facts

The DSHS Child Welfare Plans for the fiscal years 88-89, 90-91, 92-93 and 94-97 were provided to the court. SJ Exs. A-C, Tr. Ex. 1.⁴ Each of these Plans has been approved by the federal government. CP 524-25. RP 5/24/94 at 10.

A July, 1993 Comprehensive Plan to Coordinate Services for Homeless Children and Families (Comprehensive Plan) is also part of the record. SJ Ex. D, Tr. Ex. 5. This plan had not yet been implemented at the time of summary judgment, but was implemented by the time of trial.

Each of the Child Welfare Plans contains an overview of the Child Welfare System in the State of Washington, including a brief description of the services that the legislature has chosen to fund in Washington State.

The budget for the Division of Children and Family Services (DCFS), a division of DSHS, a list of goals and objectives for the future relating to child welfare services, and a report on the

⁴ The summary judgment exhibits will be preceded by "SJ" and the trial exhibits will be preceded by "Tr".

Department's implementation of goals and objectives of past plans are part of each child welfare plan. SJ Exs. A, B and C at 83-90, Tr. Ex. 1.

The Department also provided evidence about some of the programs described in the child welfare plans including the role of Child Protective Services (CPS), Family Reconciliation Services (FRS) and Child Welfare Services (CWS) within the Child Welfare System.⁵ CP 526-31, RP 5/19/94 at 6-29.

Witnesses testified that the purpose of CPS is to assess the risk of abuse and neglect to children, to provide early intervention information and referral services to families, to develop case plans that prevent or remedy abuse and neglect issues in the shortest amount of time and to prevent or reduce the amount of time of out-of-home placement. Staff consider specific risk factors to assess the risk to a child. Low risk cases are

⁵ The declaration of Lee Doren, Program Manager for DCFS, describes these services. CP 526-31. The manual sections Mr. Doren refers to in his declaration were included in the summary judgment exhibits. At trial, Charles Wilson also described these programs.

referred for services. High risk cases require full investigations and the case is then either closed, a voluntary agreement is reached with the family or a dependency petition is filed. CP 526-31. The Risk Factor Matrix helps staff determine risk so that social workers focus their limited resources on families with the greatest need. RP 5/19/94 at 13-17. Homelessness, or housing, is a factor considered in the risk factor matrix and how cases of homeless families are handled depends on the circumstances of the individual case. Id. at 22, 23, 28-29. A number of services are available to families: case management, early intervention programs, CPS/CWS child care, therapeutic child care, home based services, homebuilders, home support specialists, independent living services, group care, and community services. Witnesses also described the Family Reconciliation Services (FRS) program and the Child Welfare Services (CWS) program. CP 526-31.

All child welfare programs described in the Child Welfare Plans are available to homeless families. Some of these programs such as Home

Based Services and Family Preservation Services provide a shelter component. RP 5/23/94 at 36-41; RP 5/24/94 at 20, 35. One witness testified that the Child Welfare Plan was adequate given the resources of DSHS. Id. at 50.

The evidence below established that CTED, not DSHS, was funded by the legislature to provide housing in Washington. RP 5/23/94 at 49, RP 5/24/94 at 35. The legislature has not appropriated funds for DSHS for homeless programs except for homeless day care. CP 664 at # 4.

The Department's financial assistance program, Aid to Families with Dependent Children (AFDC) and the emergency programs that are part of AFDC were also described. The program provides half a billion dollars a year to indigent families. RP 5/23/94 at 37-39, 47-48. Several proposals to expand the emergency programs to provide money to pay security deposits for homeless families were rejected in the past because of overall budget priorities. Id. at 60.

The Department presented evidence that the Comprehensive Plan with its resource manuals

regarding housing programs and training about financial programs reinforce and focus staff's attention on resources available both outside and within the Department that can aid homeless families. Tr. Ex. 5, RP 5/24/94 at 13, 15-17. DSHS also coordinates with other departments pursuant to the Family Policy Initiative⁶ and participates on an interagency task force with CTED to prevent duplication of services. Tr. Ex. 1 at 121, RP 5/23/94 at 28-31, 58.

The named plaintiffs did not submit declarations at summary judgment or testify at trial. Their facts were submitted by defendants at summary judgment and their damage claims were dismissed.

III. SUMMARY OF ARGUMENT

By ordering DCFS to create a housing plan and to provide housing assistance whenever juvenile court deems it necessary, the trial court misinterpreted statutes, ignored legislative and administrative history, and usurped authority

⁶ The Family Policy Council legislation was intended to enhance the coordination of services for children. RCW 70.190.005.

properly belonging to other branches of government. The result is that DCFS, an agency responsible for coordinating services to children at risk of abuse and neglect, has been transformed into a housing authority.

First, the court erred in concluding that language in RCW 74.13 creates a privately enforceable right to a child welfare plan which includes housing assistance. This statute contains broad policy language directing DCFS to create a coordinated and comprehensive plan for child welfare services. The statute does not require, or even mention, the provision of housing assistance as a child welfare service. In fact, it is clear from a review of this and other statutes that the legislature intended another state agency, CTED, to have the responsibility for planning and providing housing assistance to homeless families. This is the agency required by state and federal law to develop the state's comprehensive housing affordability strategy which plans for meeting the housing needs of homeless families.

DCFS, on the other hand, provides numerous

child welfare services to families in need. Some of these services include: day care, counseling for domestic violence victims, homebased services, homebuilders, and other case management services. These services are described in a coordinated and comprehensive plan which has been approved by the federal government. All of these services are available to homeless children and their families if they meet the necessary eligibility criteria. The trial court's orders ignore this legislative scheme, and impose obligations which the court has no authority to impose.

Second, the trial court erred in declaring that juvenile court could, pursuant to RCW 13.34, order DCFS to provide housing assistance whenever the court deems it necessary. Juvenile court has no authority to order the provision of specific services in a dependency action. If the court believes that the department has not made reasonable efforts to prevent foster care placement, the court's remedy is to deny the request for foster care. Additionally, both the plaintiffs and the class they represent are or have

been involved in a dependency action where claims that reasonable efforts were not made in their individual case could have been made. Their claims are barred by res judicata. The court's order declaring juvenile court's authority amounts to nothing more than an advisory opinion made in the absence of a justiciable controversy.

IV. ARGUMENT

A. The Trial Court's Ruling that the General Child Welfare Provision of RCW 74.13.031 Requires DSHS to Develop a Housing Plan for Homeless Children Violates Accepted Rules of Statutory Construction.

1. The broad policy language of RCW 74.13.031(1) does not create enforceable rights to a housing plan.

The trial court found RCW 74.13.031 to be privately enforceable by the plaintiffs in this action based on two references in the statute to "homeless" children. The first is in RCW 74.13.031(1) which requires DSHS to have a plan for the protection and care of "homeless, runaway, dependent, or neglected children." (emphasis added) The second is in the definitional section of RCW 74.13, which defines child welfare services as those services,

[W]hich strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

2. Protecting and caring for homeless, dependent, or neglected children.

RCW 74.13.020(2) (emphasis added).

This court has held that this specific language represents nothing more than broad policy language. In re the Welfare of J.H., 75 Wn. App 887, 880 P.2d 1030 (1994), rev. denied, 126 Wn.2d 1024 (1995). In J.H., a mother of four dependent children, argued that Juvenile Court had the authority to order DSHS to provide her with a cash grant for housing, so that foster care placement of her children would be avoided. She relied, in part, on the identical language upon which the trial court in this case relied. This court rejected her argument and held that "[t]his general duty is an example of a statutory policy statement that does not give rise to enforceable rights." Id. at 891.

This holding is consistent with prior Supreme Court decisions interpreting similar statutory schemes. Melville v. State, 115 Wn.2d 34, 37-38, 793 P.2d 952, 954-55 (1990), Aripa v. Social and

Health Services, 91 Wn.2d 135, 139, 588 P.2d 185 (1978). The language in RCW 74.13.031 simply identifies goals aimed at protecting children and preserving family integrity and mandates DSHS to provide services to achieve these general goals. The statute is not specific and does not give the plaintiffs a right to dictate the provision of any specific child welfare service. The trial court erred in finding this statute created an enforceable right to a housing plan.

2. The statute requiring a coordinated and comprehensive plan for "homeless, runaway, dependent, or neglected children" is not clear and unambiguous.

The goal of statutory construction is to carry out the intent of the legislature. Rozner v. Bellevue, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). First, the court must look to the words of the statute. Id. at 347, 804 P.2d 24 (1991). If the statutory language is plain and unambiguous, the meaning can be derived from the wording of the statute itself. Id.

In ruling on the claims based on RCW 74.13, the trial court simply reiterated the terms of the

statute as if the language is clear on its face. RCW 74.13.031 is not, however, clear and unambiguous. There is no plain meaning of the term "child welfare services." The term is defined at RCW 74.13.020 but that definition simply describes the goals to which the services should be put, and indicates they must "strengthen, supplement or substitute for parental care and supervision...". RCW 74.13.020(2). Only three specific services are referenced - adoption assistance, foster care and day care - despite the fact that there are more services described in RCW 74.13. A literal reading of RCW 74.13.031 would require coordination of only those three services described in the definitional section.

The words "homeless, runaway, dependent or neglected children" are also ambiguous. None are defined in the statute. The term "dependent" has more than one meaning. The plain, ordinary meaning is a child under the age of 18. Under the Juvenile Court Act, a child is dependent when he is abused, neglected, has no parent available to care for him or is developmentally disabled. RCW 13.34.030(4).

For the purposes of Aid to Families with Dependent Children (AFDC), a dependent child is any child under eighteen who is "in need" and deprived of parental support. RCW 74.12.010. Similarly, the term "neglected" has no clear, unambiguous meaning. A neglected child can be a "dependent" child, RCW 13.34.030(4)(b) or it can refer to children who are ill-fed, ill-housed, or unclothed and it can include children who are abandoned entirely, or emotionally but who are not legally dependent pursuant to RCW 13.34.030(4).

There is also no ordinary meaning of the word "homeless". The legislative history of the statute indicates that it was intended to refer to those children who have no family. See infra at 30-34. Even if the legislative history is ignored, however, a precise definition of "homelessness" has eluded social scientists:

. . . Indeed the range of definitions [of homelessness] currently in use is very wide, running the gamut from highly inclusive ones that cover all those who are inadequately housed - including doubled-up households, persons living in (by some standards) poor housing, and persons temporarily housed in hospitals or other institutions, as well as those who do not rent or own conventional

dwellings. More restrictive definitions focus primarily on the last group.

Down and Out in America; The Origins of Homelessness, Peter H. Rossi, The University of Chicago Press, Chicago, 1989. In the McKinney Homeless Assistance Act, Congress defined "homeless" because it did not consider the word to have an ordinary meaning upon which they could base their homeless assistance program.⁷ 42 U.S.C. § 11302. The class definition for this case adopts a definition nearly identical to the McKinney Act's.⁸

At no time did the trial court recognize this ambiguity in the language or attempt to look beyond the language to decipher the legislative intent.

Courts should seek to avoid unlikely, absurd and strained consequences. Ski Acres, Inc. v. Kittitas Cy., 118 Wn.2d 852, 857, 827 P.2d 1000 (1992). The trial court interpreted RCW 74.13.031

⁷ The definition of "homeless" in the federal McKinney Act is attached as Appendix C.

⁸ While the definition of "homeless" in the class certification is similar to the McKinney Act, the class definition greatly expands those to be served to include: the imminently homeless, and those residing in a housing program that provides housing assistance. Stipulated Order of Class Certification, CP 463-67 at 2.

to include homeless children and their parents, even though parents are not mentioned in the statute. Additionally the court interpreted the statute to require a separate plan for each category of children i.e. homeless, runaway, dependent, and neglected children.⁹ Not only does this interpretation ignore the literal language of the statute, but it also ignores the federal and state statutory scheme for addressing housing needs of the homeless. See infra at 37-43. The results are absurd because it will require duplication of effort by different state agencies, and separate plans for populations that may have identical social service needs.

3. Neither the language of RCW 74.13 or the history of the statute supports the trial court's order requiring the department to include housing as a component of its child welfare plan.

Statutory provisions are interpreted so as to give effect to the legislative intent as determined by the entire statute. State v. Elgin, 118 Wn.2d

⁹ The language of the statute requires a plan for "homeless, runaway, dependent, or neglected children". RCW 74.13.031(1).

551, 555, 825 P.2d 314 (1992). Piecemeal analysis should be avoided and various provisions should be interpreted in light of one another. In re Matter of Bible, 69 Wn. App. 394, 399, 845 P.2d 1236 (1992).

There is no evidence in either the language of RCW 74.13, or in the legislative history and administrative interpretation of the statute to indicate that the legislature intended DSHS to include housing as a component of its child welfare plans. The child welfare statute, RCW 74.13, provides for a number of services for abused and neglected children.¹⁰ It does not address housing, shelter or any of the specific "duties" that the trial court ultimately imposed on DSHS.

In construing the legislature's intent the Supreme Court has stated that "...we must construe the statute by evaluating such indicia as the

¹⁰ (1) the investigation by caseworkers of abuse and neglect and the provision of child welfare services to families in need, RCW 74.13.031(3); (2) affordable day care funded by an expansion grant, RCW 74.13.095; (3) services for sexually aggressive youth, RCW 74.13.075; (4) the training of foster parents RCW 74.13.250; and (5) a program for respite care for foster parents, RCW 74.13.270.

legislative history of the enactment of the statutes, and of subsequent amendments thereto, the interpretation given by administrative agencies, and the expression of legislative purpose, if any." Green River College v. HEP Board, 95 Wn.2d 108, 113, 622 P.2d 826 (1980). See Hama Hama v. Shorelines Hearings Bd., 85 Wn.2d 441, 448, 536 P.2d 157 (1975), Bradley v. Dept. Labor & Industries, 52 Wn.2d 780, 786-7, 329 P.2d 196 (1958). (An agency's interpretation is entitled to considerable weight in determining legislative intention.)

In Hama Hama, 85 Wn.2d at 441, the Court explained why courts defer to agency interpretations:

" . . . there is the well known rule of statutory interpretation that the construction placed upon a statute by an administrative agency charged with its administration and enforcement, while not absolutely controlling upon the courts, should be given great weight in determining legislative intent. . . . The primary foundation and rationale for this rule is that considerable judicial deference should be accorded to the special expertise of administrative agencies. . . ."

Id. at 448.

The Department has never interpreted RCW 74.13.031 as requiring a separate plan for homeless children or any other group of children. CP 524-25. The Department has consistently produced child welfare plans which delineate services for all the children in the state, but focus on those children most at risk of abuse and neglect.¹¹ Homeless children, if they are at risk of abuse and neglect, are eligible for the entire array of child welfare services.

It is well established that courts defer to administrative interpretations where there have been years of acquiescence by the legislative body, Morin v. Johnson, 49 Wn.2d 275, 279, 300 P.2d 569 (1956), and when the legislature has amended the statute but never repudiated the administrative interpretation. Dep't of Transportation v. Seib, 97 Wn.2d 454, 462, 645 P.2d 1076 (1982), Green River College, 95 Wn.2d at 118, White v. State, 49

¹¹ In 1986, the legislature directed DSHS to begin a pilot project using risk assessment to investigate abuse and neglect cases and to report to the legislature regarding the expanded use of the tool. In 1989, the legislature directed DSHS to use risk assessment in all child abuse and neglect investigations. See RCW 26.44.030(13).

Wn.2d 716, 725, 306 P.2d 230 (1957). In Green River, 95 Wn.2d at 114-16, the court relied heavily on a report to the legislature which it found probative of legislative intent.

The legislature has amended RCW 74.13.031 numerous times, and has never sought to have the Department file a separate plan for "homeless" children.¹² The legislature has also amended other parts of RCW 74.13 and has established specific services by creating and describing specific programs.¹³ It has not, however, ever required DSHS to provide housing services. It is obvious that the Department has properly interpreted the

¹² Parts of RCW 74.13.031 have been amended by 1982 Wash. Laws, ch. 118, § 3; 1983 Wash. Laws, ch. 246, § 4; 1987 Wash. Laws, ch. 170, § 10; 1987 Wash. Laws, ch. 505, § 69; 1990 Wash. Laws, ch. 146, § 9.

¹³ See e.g. RCW 74.13.095 (legislature recognized shortage of affordable day-care and authorized an expansion grant for that service) 1988 Wash. Laws, ch. 213, § 3; RCW 74.13.075 (legislature recognized problems with accessibility to services for sexually aggressive youth so established a program and funded it) 1990 Wash. Laws, ch. 3, § 305; RCW 74.13.250 (legislature recognized and established a program for preserving and training of foster parents) 1990 Wash. Laws, ch. 284, § 2; RCW 74.13.270 (legislature established a program for respite care for foster parents) 1990 Wash. Laws, ch. 284, § 8.

statute and carried out the legislature's intent.

The record in this case establishes that the legislature has been well aware of both the Department's interpretation of RCW 74.13 and the kind of child welfare services the Department has proposed to provide. Several reports over the years have been provided to the legislature concerning child welfare services, and none recommended a housing program.

In 1983, when the legislature enacted RCW 74.14A, it directed DSHS to develop a plan to implement the new child welfare policies. 1983 Wash. Laws, ch. 192 § 5 (attached at Appendix D). The legislature specified certain topics that DSHS had to address but homelessness and housing was not among the topics. DSHS produced two plans which recommended numerous changes in child welfare law but no recommendations regarding housing. See SJ Exs. O and P.

In 1988, the legislature created the Governor's Commission on Children and directed it to "... develop a long-term Children's Service strategy for the development of an effective,

comprehensive coordinated Children's Service delivery system..." RCW 43.260.010(2)(a) (attached as Appendix E). The report of the Governor's Commission on Children examined the child welfare system and made no recommendations that DSHS be responsible for housing assistance programs or housing plans. SJ Ex. S.¹⁴ These reports are probative of the legislature's knowledge and intent concerning the child welfare system.

The legislature has known that DSHS has not, as part of its child welfare planning, created specific plans for housing "homeless" children and their families, yet has never insisted that such planning occur. Such acquiescence by the legislature of the Department's interpretation of its duties under RCW 74.13 demonstrates that the legislature never contemplated housing assistance to be a component of child welfare services.

4. The department's child welfare plans satisfy the requirements of RCW 74.13 because they comply with federal law.

¹⁴ The commission did acknowledge that funding for shelters for the homeless was an important issue and recommended increased funding for local governments. SJ Ex. S at 120.

Both at summary judgment and at trial the Department introduced evidence of its child welfare plans. These plans have been approved by the federal government and allow the state to receive federal funds for child welfare services.

The legislature has stated that the language of RCW 74.13 must be interpreted in order to allow the state to receive federal assistance. RCW 74.04.055. Therefore, the Department's child welfare plans which satisfy federal child welfare law also meet the statutory obligations pursuant to RCW 74.13.

The federal government and the states cooperate in a number of public assistance programs. See e.g. 42 U.S.C. § 601 et. seq. (Aid to Families with Dependent Children), 42 U.S.C. § 1396 et. seq. (Medicaid). When States voluntarily participate in these federal-state programs they receive federal funding and they are bound by federal laws and regulations implementing the programs. Anderson v. Morris, 87 Wn.2d 706, 709, 588 P.2d 155 (1976).

In Washington, DSHS is the single state agency

responsible for public assistance including "... (1) Medical Assistance; (2) Aid to Dependent Children; and (3) Child Welfare Services..." RCW 74.04.050. By statute, the Department cooperates with the federal government and submits plans as required by the federal government. Id. The legislature has instructed that "[a]ny section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds..." (emphasis added) RCW 74.04.055.

In order to receive federal payments Washington must submit a child welfare plan that complies with federal law. 42 U.S.C. § 622 (attached as Appendix F). This plan is jointly developed with the federal government and requires coordination of certain programs, training, description of services and goals. Id. The child welfare plan required by RCW 74.13.031(1) was intended to comply with federal law. The child welfare plan contains no housing programs for homeless children because the federal statute does

not require a housing service for "homeless" children and it emphasizes services for children at risk of placement in foster care. 42 U.S.C. § 627.

The trial court's construction of the statute is directly at odds with the legislative directions of RCW 74.04.055. The construction ignores the requirements of joint planning with the Secretary of Health and Human Services, coordination with Title IV-A (AFDC) and XX (Block Grants) and other specific requirements of federal law. See 42 U.S.C. § 622 (a) and (b).

The legislative history of RCW 74.13 and the federal child welfare statute also demonstrate that the term "homeless children" the legislature referred to were children without families and not children who lacked housing.

The term "homeless" in RCW 74.13 has its genesis in the 1935 Social Security Bill passed by Congress to provide, for the first time, federal funding to the states for various social welfare programs. Section 521 of that bill provided:

Sec 521. (a) For the purpose of enabling the United States, through the Children's Bureau, to cooperate with State public welfare agencies in

establishing, extending, and strengthening, especially in predominately rural areas, public-welfare services (hereinafter in this section referred to as "child-welfare services") for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent, there is hereby authorized to be appropriated for each fiscal year, beginning with the fiscal year ending June 30, 1936, the sum of \$1,500,000. Such amount shall be allotted by the Secretary of Labor for use by cooperating State public-welfare agencies on the basis of plans developed jointly by the State agency and the Children's Bureau.

Social Security Act, 49 Stat. 620, ch. 531, sec. 521, (1935) (emphasis added).

The Washington Legislature, like other states, responded quickly to form public child welfare agencies and plans to qualify for federal aid. In early 1937, the Washington legislature passed S.B. 295 "An act relating to an providing for aid to dependent children, child welfare services and services to crippled children as included in the Federal Social Security Act..." See preamble to Chap. 114, 1937 Wash. Laws 452. Section 6 of the state act provided:

Child Welfare Services. The department of social security, through and by means of the division for children, shall have the power to

cooperate with the Federal government, its agencies or instrumentalities in developing, administering and supervising a plan for establishing, extending aid and strengthening services for the protection and care of homeless, dependent, and neglected children, and children in danger of becoming delinquent and to receive and expend all funds made available through the department of social security by the Federal government, the state or its political subdivisions for such purposes.

Chapter 114, 1937 Wash. Laws at 453-454. (emphasis added).

Since the 1937 Act was modelled after the 1935 Social Security Act, and adopted its language verbatim, the purpose behind the state enactment can be discovered by understanding the purpose behind its federal counterpart. See Everett Concrete v. Dept. of Labor & Indus., 109 Wn.2d 819, 823, 748 P.2d 1112, 1114 (1988).

The legislative history of the 1935 Social Security Act relating to "child welfare" services states:

... These services are concerned with the 300,000 dependent and neglected children, the 200,000 children who annually come as delinquents before the courts, and the 70,000 illegitimate children born each year.

H.R. Rep. 74-615, 74th Cong., 1st Sess., 24 (1935).

It is evident from this language that Congress was not speaking in terms of a separate category of children whose families lacked housing, but of children who lacked a family unit, whether by virtue of abandonment, illegitimacy or delinquency.

This definition is consistent with other child welfare statutes in existence at the time of the 1937 legislation. See "An Act for Protection of Orphan, Homeless, Neglected or Abused Children," 1903 Wash. Laws, Ch. 49, later codified at RCW ch. 26.37. repealed, 1984 Wash. Laws, ch. 155 § 39 (providing for foster care placement and adoption of children through benevolent or charitable societies incorporated...for the purpose of receiving caring or placing out for adoption, or improving the condition of orphan, homeless, neglected or abused minor children..." Id., § 1.

Since 1937, the reference to services for protection and care of "homeless...children" has remained substantially unchanged in both state and federal statutes. See also 42 U.S.C. § 625(a) (1) (A) (attached as Appendix G). Accordingly, it should be presumed that the term has retained its

original meaning through subsequent legislative reenactment. See Perry v. Island Savings & Loan Ass'n, 101 Wn.2d 795, 805 n.6, 684 P.2d 1281, 1287 n.6 (1984) (provisions of prior statute carried forward and reenacted in subsequent statute should be construed as law continuing from first enactment); Kuehl v. Edmonds, 91 Wn. 195, 198, 157 P. 850 (1916). The trial court erred in concluding that the term "homeless children" means children of homeless families, and in requiring a separate plan for this population.

5. Claims based on RCW 74.13 should have been dismissed on the pleadings, because that statute does not create individually enforceable rights.

In order to decide if a statute creates an implied cause of action a court must determine:

[F]irst, whether the plaintiff is within the class for whose especial benefit the statute was enacted; second, whether legislative intent, explicitly or implicitly, supports creating or denying a remedy; third, whether implying a remedy is consistent with the underlying purpose of the legislation.

Bennett v. Hardy., 113 Wn.2d 912, 920-1, 784 P.2d 1258 (1990).

The general provisions describing "homeless,

runaway, dependent or neglected children" does not define an identifiable class of children who were intended to benefit from the statute. See In Re Welfare of J.H., 75 Wn. App. at 891. Additionally, the term "homeless children" in RCW 74.13 was not created for the benefit of the plaintiffs because it did not refer to those families who lacked a physical dwelling. See supra at 30-34. RCW Chapter 74.13 describes in only general terms the Department's obligations. The Department is granted discretion regarding the services available and none mandate housing benefits for homeless children.¹⁵

The trial court's finding of an implied right of action to enforce this statute will invite endless litigation regarding almost every service in RCW 74.13. This will have a chilling effect on the Department's efforts to improve or change any service.

RCW 74.13 also provides alternative

¹⁵ See, e.g. RCW 74.13.031(2) (development of a recruiting plan for foster homes), RCW 74.13.031(4) (offering family reconciliation services to families), RCW 74.13.270 (designing a respite care program for foster homes).

enforcement mechanisms which indicate the legislature intended to foreclose private enforcement. See, Transamerica Mortgage Advisors v. Lewis, 444 U.S. 11, 62 L. Ed. 2d 146, 100 S. Ct. 242 (1979) (where alternate enforcement mechanisms are provided, presumption is against finding a private right of action).¹⁶ There is an informal complaint resolution process for individuals who have complaints about the Department's policies or procedures related to RCW 74.13. RCW 74.13.045. Additionally, the statutory scheme in RCW 74.13 evidences a high degree of accountability directly to the legislature. See, e.g., RCW 74.13.031(2) (requires annual submission of a plan to legislative committees); RCW 74.13.036(2)(d) (requires plan to implement chapters 13.32A and 13.34 RCW to be submitted to the legislature); RCW 74.13.090(2)(b) (requires annual reports regarding child care to be provided to the legislature). If the legislature had intended individuals to

¹⁶ Federal cases are informative on this point because enforceable rights under state law can be created only in the same way as federal law. Greenholtz v. Nebraska Penal Inmates, 442 U.S. 1, 60 L. Ed. 2d 668, 99 S. Ct. 2100 (1979).

privately enforce RCW 74.13, these alternative enforcement mechanisms would not be necessary.

Finally, the trial court's decision contravenes the purpose of the legislation which is to coordinate child welfare services for children, not to create housing programs or coordinate housing programs.

B. The Legislature has Specifically Delegated Authority for Housing Programs and Housing Plans to the Department of Community, Trade and Economic Development.

The plaintiffs seek to have one particular subdivision of DSHS, the Division of Children and Family Services (DCFS), provide them with "emergency shelter, transitional and permanent housing". The failure of DCFS to provide these services is not, as the court seemed to find, a function of misplaced priorities by DSHS, but instead is the result of legislative design.

When one statute deals with a subject in a general manner and another statute deals with it in a specific manner, the latter statute governs. Hama Hama v. Shorelines Hearing Board, 85 Wn.2d 441, 447, 536 P.2d 157 (1975).

The legislature has indeed addressed homelessness and the lack of sufficient low-income housing in this state, but the funding and responsibility for planning for these efforts have been directed to agencies other than DSHS. Specifically, the legislature has directed CTED and the Affordable Housing Advisory Board to develop a comprehensive housing plan for the state.

The legislature enacted the "Housing Assistance For Low-Income Persons", which establishes the Housing Trust Fund and the Housing Assistance Program to be administered by CTED. RCW 43.185 (Supp. 1995) et seq.¹⁷ The legislature specifically allowed CTED to target appropriated funds for shelters and related services for the homeless, rental payments to prevent homelessness, and other low-income housing. RCW 43.185.050(f) and (g) (Supp. 1995). The legislature has also enacted the "Affordable Housing Program," RCW 43.185A (Supp. 1995), to develop affordable housing for low-income households in the State of

¹⁷ CTED publishes reports listing awards granted from the Housing Trust Fund. SJ Exs. I, J.

Washington. RCW 43.185A.020 (Supp. 1995). This program is administered by CTED. The rent subsidies and funds available under this program are intended for local governments, local housing authorities and non-profit organizations. RCW 43.185A.040 (Supp. 1995).

The legislature has also established the Housing Finance Commission to facilitate the development of affordable and decent housing throughout the state. RCW 43.180.010 et. seq. In 1989, it established a "Rental Security Deposit Guarantee Program" for homeless families and required that it be administered by CTED. RCW 59.24.010 et. seq.

In 1990 the legislature funded two pilot projects for families with children through CTED: a homelessness prevention program and a transitional rental assistance program. 1990 Washington Laws 1st Ex. Session, Ch. 16, § 225 (28). See SJ Ex. Q at 1. The legislature declined to expand these programs on a state-wide basis. SJ Ex. M at 14, §§ 4-1, 4-23.

To the extent that federal funding for

production, development, rehabilitation and operation of housing for low-income persons is available to the state, CTED has also been designated as the participating state agency for all programs of the federal Department of Housing and Urban Development. RCW 43.330.110(2) (Supp. 1995). Federal funding available to construct and manage low-income housing and shelters goes directly to public housing authorities and non-profit organizations.¹⁸

The legislature has given CTED the responsibility for coordinating a housing strategy for the state. See RCW 43.330.110. The statute

¹⁸ See, e.g., 42 U.S.C. §§ 1437c et. seq. (federal funding for low-income housing projects administered by public housing authorities); 42 U.S.C. § 12773 (Supp. 1995) (funding for community housing development organizations); 42 U.S.C. § 12805 (Supp. 1995) et. seq. (providing for the establishment of a model "sweat equity" program that provides grants to public and private non-profit organizations for housing rehabilitation); 42 U.S.C. §§ 11341 (Supp. 1995) et. seq. (grants to be distributed to local governments and non-profit agencies for "efforts to provide shelter, food and supportive services to the homeless"); 42 U.S.C. §§ 11371 et. seq. (Supp. 1995) (establishing a "supportive services demonstration program" to award grants to state, county, government entities, or non-profit organizations to provide supportive housing to facilitate the movement of homeless individuals and families into permanent housing).

creating CTED states that it shall "... offer housing services, and provide emergency, transitional, and special needs housing services, and ... shall develop or assist local governments in developing housing plans required by the state or federal government." RCW 43.330.110(2) (Supp. 1995) (emphasis added). The affordable housing advisory board of CTED is responsible for producing a Comprehensive Housing Affordability Strategy (CHAS) required by federal law. RCW 43.185B.030 (Supp. 1995). The CHAS must:

(2) describe the nature and extent of homelessness ... within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, ... and a description of the jurisdiction's strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within the jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living; . . .

42 U.S.C. § 12705(b)(2) (Supp. 1995) (attached as Appendix H).

CTED has produced a CHAS for Washington State

which addresses the housing needs, housing market, the state housing delivery system and public policies which affect housing in Washington State. See SJ Exs. N and N-1. The CHAS specifically addresses housing plans for the homeless and CTED's role in leveraging federal and state money to meet those needs. SJ Exs. N at 28-32, 45-51, 139-141, N-1 at 7-9. The CHAS states:

The Housing Division of [CTED] is the back bone of the Washington State Housing delivery system. It has a full time professional staff of 41 and administers \$60 million worth of state and federal programs annually.

SJ Ex. N at 93. The CHAS addresses coordination with local governments, other agencies, private developers and public housing. Id. at 92-105.

The Washington Housing Policy Act also provides for a comprehensive and coordinated housing strategy for the State. RCW 43.185B.005 (Supp. 1995) et. seq. The affordable housing advisory board and CTED are responsible for providing a housing advisory plan to the legislature. RCW 43.185B.040 (Supp. 1995) (attached as Appendix I).

The legislature has given CTED the primary

role in planning for housing in Washington State because of their housing expertise and their involvement in housing, economic development and growth management. The trial court's unilateral decision that DCFS have this responsibility instead is contrary to federal and state law. The trial court's orders ignore this legislative scheme and impose obligations on a subdivision of DSHS that has neither the obligation nor the resources to solve the problem of homelessness in this state.

C. The Relief Granted by the Trial Court Pursuant to 74.13, Infringes on the Department's Discretion to Coordinate Services Within the Department and With Other Agencies.

At summary judgment the court issued a declaratory ruling that RCW 74.13 requires DSHS to develop a plan which includes housing assistance for homeless children and their families. The court found a material issue of fact existed as to whether DSHS had such a plan, and set the matter over for trial. Following trial, the court not only found the Department's plans inadequate, but then went on to dictate how the Department would have to go about developing an adequate plan. By

requiring the development of a new plan pursuant to these directives, and retaining jurisdiction to review the plan for adequacy, the trial court usurped the authority of the coordinate branches of government. See In re Juvenile Director, 87 Wn.2d 232, 245, 552 P.2d 163 (1976).

The Department presented two plans that were entered into evidence and that meet the requirements of the law. The Child Welfare Plan is a plan for all of the children of the State of Washington. Tr. Ex. 1. This includes homeless children. It was un rebutted at trial that the services available in the plan are available to homeless children if they meet the criteria of the services. There is nothing in the statute which states that every homeless child, regardless of risk or other eligibility criteria, is entitled to any particular services.

At summary judgment and at trial, DSHS explained in detail the comprehensive assessment that is necessary to determine level of risk in order to focus its limited resources on those children who are most at risk. The housing, or

lack of housing, of a family is a factor in this process but it is not determinative. RP 5/19/94 at 22-3. A homeless family in the summer, without other problems, would not require intervention; a homeless family in the dead of winter would require action. RP 5/19/94 at 28-9. In some cases Home Based Services money is available for shelter costs. RP 5/19/94 at 44.

Other services offered by DSHS can also be helpful to homeless families: Family Preservation Act program money can supply shelter resources, and caseworkers who are assigned to work with families can refer them to public assistance sources, charitable organizations, shelters and public housing.

The Department also introduced its Comprehensive Plan to Coordinate Services for Homeless Children and Families. Tr. Ex. 5. This plan presented the DCFS enhancement which substituted a State grant for federal AFDC grant when a child goes into foster care for 90 days or less. This enhancement prevents a parent from completely losing their AFDC grant, and

consequently their home, while their child or children is in temporary care. The plan also described cross training financial workers and social workers who do CPS work so that they will be aware of the financial programs available within the Department. The plan also created a resource manual which would be available for all workers in order to refer homeless families to shelter and other housing services.

These plans do address housing services for homeless families by providing some direct aid for shelter and information and referrals to housing and shelters.

The plans do not provide financial assistance beyond what the Department has been authorized by statute to provide. They do not provide a comprehensive housing plan for the homeless because that duty has been specifically delegated to the Department of Community, Trade and Economic Development. See discussion supra at ____.

Once the Department exercised its discretion in creating these child welfare plans, the trial court could not defer to plaintiffs' experts

regarding the Plans' "adequacy" and then find them insufficient. See Hillis Homes, Inc. v. Snohomish County, 32 Wn. App. 279, 281, 647 P.2d 43 (1982). (Though a court may compel an official to exercise his discretion, the court may not control how that discretion is exercised.)

The rulings by the trial court leave the Department in an untenable position. First, the ruling that housing is a mandated child welfare service leaves the Department vulnerable to future lawsuits by individuals who believe the Department should provide them a specific service. Second, by dictating various steps that the Department would need to go through in creating an adequate plan, the court has asserted control over the way in which DSHS exercises its discretion. Third, by not articulating any standards by which the Department's future plans are to be judged, the court left the Department in the position of speculating what it would require.

DSHS presented two separate plans to the court and the determination of their "adequacy," which is not defined in the statute, was based on the

testimony of experts in housing who have no concept of the services, responsibilities, administrative or fiscal limitations of DSHS. The court's order regarding an adequate plan makes no sense.

Justice Marshall addressed the meaning of adequacy in the context of public assistance:

At base, such a suggestion must rest on the notion that the benefit provided through state Medicaid programs is the amorphous objective of "adequate health care". . . . but the benefit provided remains the individual services offered--not "adequate health care."

Alexander v. Choate, 469 U.S. 287, 303, 83 L. Ed. 2d 661, 105 S. Ct. 712 (1985). Similarly, our Supreme Court has held that the decision to create programs as well as how much to fund them is a legislative prerogative. Pannell v. Thompson, 91 Wn.2d 591, 599, 589 P.2d 1240 (1979).

The Department has coordinated the existing resources that exist for housing and its plans satisfy RCW 74.13.031.

D. The Court Did Not Have Jurisdiction to Enter a Declaratory Ruling Regarding the Reasonable Efforts Language of RCW 13.34, Because there was no Justiciable Controversy and the Claims were Barred by Res Judicata.

1. The court did not have jurisdiction to enter a declaratory judgment

regarding RCW 13.34.

The plaintiffs, in their complaint, stated that the Department violated the "reasonable efforts" portions of the Juvenile Court Act in cases relating to the Dependency of a Child, Ch. 13.34 RCW¹⁹, by failing to provide housing assistance to families. The plaintiffs requested declaratory and injunctive relief from the court. CP 113-41.

The trial court, however, never had jurisdiction to consider this request. The Juvenile Court Act states that juvenile court has exclusive jurisdiction over all cases involving dependent children and cases relating to the termination of parental rights of a child. RCW 13.04.030 (3) and (4); See also In Re Marriage of Perry, 31 Wn. App. 604, 608, 644 P.2d 142 (1982). The named plaintiffs, Coughlin and Sanders, as well as the members of the class, had active, ongoing cases in juvenile court where any requests for housing or arguments that "reasonable efforts" were

¹⁹ Relevant parts of RCW 13.34 are attached as Appendix A.

not made should have been made.

The court also lacked jurisdiction under the Uniform Declaratory Judgment Act, RCW 7.24.010 et. seq. The Supreme Court has held that declaratory judgments are not available to plaintiffs when there is an exclusive statutory remedy available to them. Mulhausen v. Bates, 9 Wn.2d 264, 270-271, 114 P.2d 995 (1941) (action for declaratory relief dismissed because the unemployment compensation act sets up a complete and exclusive statutory method for determining rights). See also Reeder v. King County, 57 Wn.2d 563, 564, 358 P.2d 810 (1961). (Courts will not invoke the jurisdiction of the declaratory judgment act when a plaintiff has an adequate remedy at law available).

In this case, the plaintiff class are families with dependent children who have active cases in juvenile court. Juvenile court is the forum, with special expertise, that the legislature has designated to hear and decide cases involving RCW 13.34. There is no reason that any member of the class could not make their appeal for housing assistance to the juvenile court. In fact, such

claims have been raised and litigated in that forum. See In Re Welfare of J.H., 75 Wn. App. 887, 880 P.2d 1030 (1994) rev. denied 126 Wn.2d 1024 (1995) (a family requested housing assistance in a Juvenile Court proceeding).

The trial court also lacked jurisdiction because there is no justiciable controversy. The Supreme Court has held that a justiciable controversy is:

(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. (citations omitted)

Walker v. Munro, 124 Wn.2d 402, 411, 879 P.2d 920 (1994).

In this case, the plaintiffs do not meet a single requirement. There was no attempt at any point to change decisions made by Juvenile Court in any of the class representative's cases. The request to declare the "meaning" of the "reasonable efforts" portions of RCW 13.34 was purely a

theoretical exercise made in a complete vacuum as to the circumstances of the individual plaintiffs or the services available within the Department or the community. Cf. In Re Welfare of J.H., 75 Wn. App. at 888-90 (the appellate court had a complete picture of both the circumstances resulting in homelessness and the services provided by the department and available to the family).

The trial court's ruling is not "final and conclusive" as to any participant in Juvenile Court proceedings because it provided only an advisory opinion regarding when "housing assistance" should be ordered by a juvenile court. The Supreme Court has held that courts in Washington do not render advisory opinions. Walker, 124 Wn.2d at 414.

2. The plaintiffs' claims regarding reasonable efforts pursuant to RCW 13.34 are barred by Res Judicata.

Res Judicata ensures the finality of decisions and bars parties from relitigating issues that were or could have been raised in a prior action. Mellor v. Chamberlin, 100 Wn.2d 643, 673 P.2d 610 (1983). Res judicata occurs when the prior decision has four elements in common with the

subsequent action. Id. at 645. They are identity of: 1) subject matter, 2) cause of action, 3) persons and parties, and 4) the quality of the persons for or against whom the claim is made. Id.

Applying this criteria to the claims raised by the Coughlin/Sanders plaintiffs, it is clear that their claims, based on RCW 13.34, about whether reasonable efforts were made to prevent or eliminate the need to place their children in foster care are barred by res judicata. First, the subject matter in this lawsuit is identical to what the Juvenile Court had to address in the dependency action. Second, the same claim for relief existed in Juvenile Court. Moreover, the specific relief they are requesting in this lawsuit, i.e., provision of housing assistance by DSHS, could have been raised and litigated in the dependency proceeding. RCW 13.34.130(2)(d). See In re Welfare of J.H., 75. Wn. App. at 887.

The persons and parties, the plaintiffs and the defendant, are identical. The "quality" of the persons has not changed in either action.

E. RCW 13.34 Does Not Authorize the Creation of a "Housing Assistance" Program for any

Class of Children.

In its summary judgment decision the court read RCW 74.14A and the reasonable efforts language of RCW 13.34 together. The court concluded that determinations as to reasonable efforts and reasonable services is made by the judiciary and held that:

However, for those cases that the court determines that a family's homelessness is the primary factor that would either result in a child's placement or prevent reunification and if it is in the child's best interest, the court has the authority to require the department to provide housing assistance. Housing assistance can range from providing assistance in retaining or obtaining housing from federal, state, local or private agencies to the expenditure of funds.

CP 982-83 at § B 3.

The language in RCW 74.14A sets forth broad policy guidelines and does not give rise to enforceable rights and duties. See RCW 74.14A.025, In re Welfare of J.H., 75 Wn. App. at 891. The court erred by interpreting policy statements to create enforceable rights to housing assistance.

This court has already held that the "reasonable efforts" language in RCW 13.34 does not

authorize court-ordered payment of housing assistance. See In re Welfare of J.H., 75 Wn. App. at 892-95. In that case the juvenile court ordered the payment of \$1200 to a family in a shelter. Id. The court reversed, holding that only the legislature could create public assistance programs and that:

The court's order ... not only presumes the availability of \$1200 that the legislature has not appropriated but also presumes the court's ability to administer an open-ended housing program for similarly situated families. . . . In the absence of a specific appropriation or statutory entitlement, we hold that paragraph 7 rests on untenable grounds...

Id. at 894-95.

In the case at bar the plaintiffs and the court were unable to point to a specific statutory entitlement or appropriation and the decision should be reversed.

RCW 13.34 governs dependencies, guardianships and termination of parental rights proceedings. The statute sets forth the procedural protections afforded to families who are involved in the above proceedings. See RCW 13.34.060 (right to shelter care hearings); RCW 13.34.090 (right to an

attorney, to introduce evidence, and examine witnesses); RCW 13.34.110 (right to a fact-finding hearing); RCW 13.34.120-130 (disposition hearing and review hearings); RCW 13.34.150 (modification of orders); RCW 13.34.180 and .190 (standards for a termination proceeding); RCW 13.34.231 (standards for guardianship). There is no delegation of authority in RCW 13.34 to the court to order DSHS to provide housing services.

The reasonable efforts language in RCW 13.34 applies only to cases where foster care is sought. If the juvenile court believes that reasonable efforts have not been made, its remedy is not to order the provision of specific services, but to deny the request for foster care. There is no authority in RCW 13.34 which allows the juvenile court to order the provision of specific services.

Finally, the "reasonable efforts" and "reasonable services" language of RCW 13.34 says reasonable, it does not state that every service shall be provided to a family. The legislature has defined "reasonable services" as services available within the agency, the community and through

existing DSHS contractual arrangements. RCW 13.34.130(3)(b)(iv). It is per se unreasonable to require the provision of services that do not exist.

The court also ignored the basic principle that an administrative agency is limited to the power, authority, and funding granted to it by the legislature. Washington Water Power Co. v. State Human Rights Commission, 91 Wn.2d 62, 65, 586 P.2d 1149 (1978). In RCW Title 74, the legislature has delegated to the Department the authority to administer several programs including the Medical Assistance Program, the Aid to Families with Dependent Children Program, and the Child Welfare Program. See RCW 74.09 et. seq., RCW 74.12 et. seq., RCW 74.13 et. seq. The legislature authorized the Department to promulgate rules and regulations to implement the programs in Title 74. RCW 74.08.090. The undisputed evidence, however, demonstrates that the legislature has never funded the creation of a housing program within DCFS.

V. CONCLUSION

For all the foregoing reasons, the Department

respectfully requests that this court reverse the trial court's orders to the extent that it: 1) declared that RCW 13.34 and 74.14A permit juvenile court to order DSHS to provide housing assistance in a dependency action and 2) found the Department's child welfare plans not in compliance with RCW 74.13, required the development of a new plan for child welfare services, and ordered that housing assistance be a component of the plan.


RESPECTFULLY SUBMITTED this 9th day of October, 1995.

CHRISTINE O. GREGOIRE
Attorney General

By


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By


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APPENDIX
TABLE OF CONTENTS

Appendix

RCW 13.34.060.....	A-1
RCW 13.13.130(1)(b).....	A-2
RCW 74.13.031 and 74.13.020.....	B
42 U.S.C. § 11302.....	C
1983 Washington Laws, Ch.192.....	D
RCW 43.260 (Governor's Commission on Children).....	E
42 U.S.C. § 622.....	F
42 U.S.C. § 625.....	G
42 U.S.C. § 12705.....	H
RCW 43.185B.040 (Housing Advisory Plan).....	I

counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived in court.

(6) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall make an express finding as to whether the notice required under subsections (2) and (3) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(7) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(8) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to whether subsections (2) and (3) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian

welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

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

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

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

Amended by Laws 1993, ch. 412, § 8; Laws 1994, ch. 288, § 2.

¹ Reviser's note: RCW 13.34.030 was amended by 1994 c 288 § 1, changing subsection (2) to subsection (4).

Historical and Statutory Notes

1993 Legislation

Laws 1993, ch. 412, § 8, in subsec. (1), in the third sentence, following "The court shall consider the social file, social study" inserted ", guardian ad litem report, the court-appointed special advocates report, if any, and any reports filed by a party".

1994 Legislation

Laws 1994, ch. 288, § 2, in subsec. (2)(c) inserted "the preventive services that

have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home;"

13.34.130. Order of disposition for certain dependent children, alternatives—Petition seeking termination of parent-child relationship—Permanency plan of care—Placement with relatives—Later review hearings

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

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

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

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a grandparent, brother, sister, brother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for

child. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

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

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

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

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

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

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

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

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

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

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

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

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

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider.

A
as
A-2

74.13.031**PUBLIC ASSISTANCE**

Section		Section	
74.13.090.	Child care coordinating committee.	74.13.127.	Voluntary amendments agreements—Procedure when adoptive parties disagree.
74.13.0901.	Child care partnership.		
74.13.0902.	Child care partnership employer liaison.	74.13.130.	Nonrecurring adoption expenses.
74.13.0903.	Office of child care policy.	74.13.133.	Records—Confidentiality.
74.13.095.	Child care expansion grant fund.	74.13.136.	Recommendations for support of the adoption of certain children.
ADOPTION SUPPORT DEMONSTRATION ACT OF 1971		74.13.139.	"Secretary" and "department" defined.
		74.13.145.	Short title—1971 act.
74.13.100.	Adoption support—State policy enunciated.	74.13.150.	Adoption support reconsideration program.
74.13.106.	Adoption services—Disposition of fees—Use—Federal funds—Gifts and grants.	74.13.170.	Therapeutic family home program for youth in custody under chapter 13.3 RCW.
74.13.109.	Adoption support program administration—Rules and regulations—Disbursements from general fund, criteria.	74.13.240.	Implementation and enforcement of juvenile justice laws—Reports.
74.13.112.	Factors determining payments or adjustment in standards.	FOSTER CARE	
74.13.115.	Both continuing payments and lump sum payments authorized.	74.13.250.	Preservice training.
74.13.118.	Review of support payments.	74.13.260.	On-site monitoring program.
74.13.121.	Copy of adoptive parent's federal income tax return to be filed—Additional financial information.	74.13.270.	Respite care.
74.13.124.	Agreements as contracts within state and federal Constitutions—State's continuing obligation.	74.13.280.	Client information.
		74.13.290.	Fewest possible placements for children.
		74.13.300.	Notification of proposed placement changes.
		74.13.310.	Foster parent training.
		74.13.320.	Recruitment of foster homes and adoptive homes for special needs children.
		74.13.330.	Responsibilities of foster parents.

74.13.031. Duties of department—Child welfare services—Children's services advisory committee

The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons

74.13.020

PUBLIC ASSISTANCE

74.13.020 Definitions—"Child", "child welfare services"

As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(2) Protecting and caring for homeless, dependent, or neglected children;

(3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;

(4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter, child means a person less than eighteen years of age.

Added by Laws 1965, ch. 30, § 3, eff. March 20, 1965. Amended by Laws 1971, Ex.Sess., ch. 292, § 66; Laws 1975-76, 2nd Ex.Sess., ch. 71, § 3; Laws 1977, Ex.Sess., ch. 291, § 21, eff. July 1, 1978; Laws 1979, ch. 155, § 76, eff. March 29, 1979.

Historical Note

The 1971 amendment, in the last paragraph, substituted "less than eighteen years of age" for "less than twenty-one years of age".

The 1975-76 amendment, in subd. (2), preceding "or neglected children" inserted "incorrigible as defined in RCW 13.04.010(7)".

The 1977 amendment, in subd. (2), deleted the language inserted by the 1975-76 amendment; inserted subd. (3); and renumbered former subds. (3) and (4) as (4) and (5), respectively.

The 1979 amendment, in subd. (1), following "which may result in" in-

serted "families in conflict, or"; and, at the end of subd. (1), substituted "criminal behavior of children" for "delinquency of children".

Appropriation—Effective date—Severability—Laws 1979, ch. 155: See Historical Note following § 13.04.011.

Effective date—Severability—Laws 1977, Ex.Sess., ch. 291: See Historical Note following § 13.04.005.

Severability—Laws 1971, Ex.Sess., ch. 292: See Historical Note following § 26.28.010.

American Digest System

Corporations and instrumentalities controlled by government; housing and financing, see United States §§ 53(1) et seq., 53(9).
 Disbursement of federal funds; housing and urban development, see United States §§ 82(3 to 3.5).

Encyclopedias

Corporations and instrumentalities controlled by government; housing and financing, see C.J.S. United States §§ 65 et seq., 70.
 Disbursement of federal fund; housing and urban development, see C.J.S. United States § 122 et seq.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 11302. General definition of homeless individual**(a) In general**

For purposes of this chapter, the term "homeless" or "homeless individual or homeless person"¹ includes—

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is—

(A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;

(B) an institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(b) Income eligibility**(1) In general**

A homeless individual shall be eligible for assistance under a program provided by this chapter, only if the individual complies with the income eligibility requirements otherwise applicable to such program.

(2) Exception

Notwithstanding paragraph (1), a homeless individual shall be eligible for assistance under the Job Training Partnership Act [U.S.C.A. § 1501 et seq.].

Exclusion

For purposes of this chapter, the term "homeless individual" does not include an individual who is detained pursuant to a court order.

Pub. L. 100-77, Title VIII, § 822, 1987, Nov. 29, 1987, as amended.

Division Notes and 1987 Acts. House Report No. 100-100, Parts I and II, Conference Report, Statement by President of the House of Representatives, and Address by the President of the House of Representatives.

1990 Acts. Senate Report No. 100-100, Conference Report, Statement by the President of the Senate, and Statement by the President of the House of Representatives.

House Report No. 100-100, House Conference Report, Statement by the President of the House of Representatives, and Statement by the President of the Senate.

References in Text. This chapter, reference to "this" shall be construed to mean the original "this" as amended by the Act of July 22, 1987, known as the Street Homeless Assistance Act of 1987.

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CHAPTER 192

[Engrossed Substitute House Bill No. 433]

CHILDREN—EMOTIONALLY DISTURBED OR MENTALLY ILL—JUVENILE
OFFENDERS—PLACEMENT AND TREATMENT POLICIES

AN ACT Relating to children and family services; adding a new chapter to Title 74 RCW; creating new sections; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature reaffirms its declarations under RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that the family unit should remain intact in the absence of compelling evidence to the contrary. The legislature declares that the goal of serving emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict in their own homes to avoid out-of-home placement of the child, when that form of care is premature, unnecessary, or inappropriate, is a high priority of this state.

NEW SECTION. Sec. 2. The department of social and health services shall address the needs of emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict by:

(1) Serving children and families as a unit in the least restrictive setting available and in close proximity to the family home, consistent with the best interests and special needs of the child;

(2) Ensuring that appropriate social and health services are provided to the family unit both prior to the removal of a child from the home and after family reunification;

(3) Developing and implementing comprehensive, preventive, and early intervention social and health services which have demonstrated the ability to delay or reduce the need for out-of-home placements and ameliorate problems before they become chronic or severe;

(4) Developing coordinated social and health services which:

(a) Identify problems experienced by children and their families early and provide services which are adequate in availability, appropriate to the situation, and effective;

(b) Seek to bring about meaningful change before family situations become irreversibly destructive and before disturbed psychological behavioral patterns and health problems become severe or permanent;

(c) Serve children and families in their own homes thus preventing unnecessary out-of-home placement or institutionalization;

(d) Focus resources on social and health problems as they begin to manifest themselves rather than waiting for chronic and severe patterns of illness, criminality, and dependency to develop which require long-term

- (e) Reduce duplication of and gaps in service delivery;
- (f) Improve planning, budgeting, and communication among all units of the department serving children and families; and
- (g) Develop outcome standards for measuring the effectiveness of social and health services for children and families.

NEW SECTION. Sec. 3. The department shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety.

NEW SECTION. Sec. 4. The department shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process.

NEW SECTION. Sec. 5. The department shall develop a plan in cooperation with an advisory committee of community representatives appointed by the secretary for the implementation of sections 2 through 4 of this act for submission to the appropriate committees of the house of representatives and the senate by November 15, 1983. The plan shall include:

(1) Policies and procedures for the coordinated and cooperative functioning of all units of the department serving children and families which eliminate duplications, inconsistencies, and conflicting rules;

(2) Policies and procedures for the coordinated and cooperative functioning of the department with agencies of local government, schools, courts, and the private sector;

(3) An evaluation of the desirability and feasibility of locating out-of-home placements, treatment programs, and institutions in close geographical proximity to the area or residence of the child and the family;

(4) Priorities for all departmental units serving children and families;

(5) Training initiatives directed toward all departmental units and contractors serving children and families;

(6) Policies and procedures which address the appropriate role of the department of social and health services in fostering services which address the special needs of parents and their young children. The policies and procedures shall pay attention to the unique needs of culturally diverse groups;

(7) Policies and procedures designed to ensure coordination between all departmental units serving children and families and the public schools;

(8) Policies for the evaluation, treatment, and referral of children and families by all departmental units serving children and families;

(9) Procedures for all departmental units serving children and families to use in identifying and meeting the needs of children and families at the local level;

(10) Changes which may be necessary in statutes to permit the full implementation of sections 2 through 4 of this act;

(11) An evaluation of whether the existing organizational structure of the department will permit the full implementation of sections 2 through 4 of this act or whether an alternative organizational structure is more appropriate;

(12) Outcome standards which can be used to measure the effectiveness of social and health service programs; and

(13) Procedures for the establishment of local volunteer oversight groups within each department service area. The oversight group shall be comprised of parents, professionals in the field of children and family services not employed by the department, local government employees in law enforcement or children and family services, and members of other non-profit organizations participating in children and family services activities.

NEW SECTION. Sec. 6. This act may be known and cited as the "children and family services act."

NEW SECTION. Sec. 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 8. Sections 2 through 4 of this act shall take effect January 1, 1984.

NEW SECTION. Sec. 9. Sections 1 through 4 of this act shall constitute a new chapter in Title 74 RCW.

Passed the House April 23, 1983.

Passed the Senate April 20, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.

CHAPTER 193

[Engrossed House Bill No. 436]

WOOD COLLECTION PERMITS—STATE PARKS—OVER 65 YEARS— EXEMPT

AN ACT Relating to the state parks and recreation commission; adding a new section to chapter 43.51 RCW; and repealing section 2, chapter 114, Laws of 1981 and RCW 43.51.390

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. There is added to chapter 43.51 RCW a new section to read as follows:

Persons over the age of sixty-five are exempt from any permit or other administrative fee imposed by the commission for the collection of wood debris in state parks, if such wood is for personal use.

NEW SECTION. Sec. 2. Section 2, chapter 114, Laws of 1981 and RCW 43.51.390 are each repealed.

Passed the House April 22, 1983.

Passed the Senate April 18, 1983.

Approved by the Governor May 16, 1983.

Filed in Office of Secretary of State May 16, 1983.

CHAPTER 194

[Substitute House Bill No. 452]

DEPARTMENT OF SERVICES FOR THE BLIND CREATED—POWERS AND DUTIES—ADVISORY COUNCIL FOR THE BLIND

AN ACT Relating to blind persons; amending section 40, chapter 18, Laws of 1970 ex. sess. as amended by section 15, chapter 40, Laws of 1977 ex. sess. and RCW 43.20A.300; adding a new section to chapter 74.09 RCW; creating a new chapter in Title 74 RCW; repealing section 39, chapter 99, Laws of 1979 and RCW 43.131.225; repealing section 81, chapter 99; Laws of 1979 and RCW 43.131.226; repealing section 74.04.017, chapter 26, Laws of 1959, section 297, chapter 141, Laws of 1979 and RCW 74.04.017; repealing section 74.16.030, chapter 26, Laws of 1959, section 1, chapter 128, Laws of 1965, section 1, chapter 78, Laws of 1967, section 9, chapter 169, Laws of 1971 ex. sess. and RCW 74.16.030; repealing section 74.16.040, chapter 26, Laws of 1959 and RCW 74.16.040; repealing section 74.16.170, chapter 26, Laws of 1959, section 16, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.170; repealing section 1, chapter 59, Laws of 1967, section 17, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.181; repealing section 2, chapter 59, Laws of 1967, section 18, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.183; repealing section 74.16.300, chapter 26, Laws of 1959, section 20, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.300; repealing section 1, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.400; repealing section 2, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.410; repealing section 3, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.420; repealing section 4, chapter 40, Laws of 1977 ex. sess., section 174, chapter 151, Laws of 1979 and RCW 74.16.430; repealing section 5, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.440; repealing section 6, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.450; repealing section 7, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.460; repealing section 8, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.470; repealing section 9, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.480; repealing section 10, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.490; repealing section 11, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.500; repealing section 12, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.510; repealing section 13, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.520; repealing section 14, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.530; repealing section 24, chapter 40, Laws of 1977 ex. sess. and RCW 74.16.540; repealing section 1, chapter 251, Laws of 1975 1st ex. sess., section 21, chapter 40, Laws of 1977 ex. sess. and RCW 74.17.010; repealing section 2, chapter 251, Laws of 1975 1st ex. sess., section 22, chapter 40, Laws of 1977 ex. sess. and RCW 74.17.020; repealing section 1, chapter 251, Laws of 1975 1st ex. sess. and RCW 74.17.030; repealing section 4, chapter 251, Laws of 1975 1st ex. sess., section 23, chapter 40, Laws of 1977 ex. sess. and RCW 74.17.040; providing effective dates; providing an expiration date; and declaring an emergency

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The purposes of this chapter are to promote economic and social welfare of blind persons in the state of Washi

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purchased, sold, or exchanged; the administrative expenses of the investment pool; and such other information as the state treasurer deems relevant. Enacted by Laws 1986, ch. 294, § 8.

43.250.090. Administration of chapter—Rules

The state finance committee shall administer this chapter and adopt appropriate rules.

Enacted by Laws 1986, ch. 294, § 9.

CHAPTER 43.260

GOVERNOR'S COMMISSION ON CHILDREN

Section	Section
43.260.010. Governor's commission on children established— Functions—Report.	43.260.900. Dissolution of commission— Expiration of chapter. 43.260.901. Effective date—1987 c 473.

43.260.010. Governor's commission on children established— Functions—Report

(1) There is established the governor's commission on children, referred to in this chapter as the commission.

(2) The commission shall have the following functions:

(a) To develop a long-term children's services strategy for the development of an effective, comprehensive coordinated children's services delivery system that will meet the needs of children in the state. The objective of the strategy shall be to (i) define existing service needs of children in Washington state, utilizing existing studies and data sources where appropriate, (ii) identify the kinds of services needed by children and families to meet a minimum standard and level of physical and mental health and safety, (iii) identify the current level of services available and gaps or overlapping services, and (iv) make recommendations to implement an effective comprehensive service delivery system. The commission shall submit an initial strategy to the appropriate committees of the legislature by October 1, 1988;

(b) In formulating the long-term children's services strategy, the commission shall seek input from providers with expertise in children's mental health, health care including prenatal care, adolescent drug and alcohol treatment, education including early childhood education, nonprofit funding sources, child abuse and neglect, child care, dependency, delinquency and the juvenile justice system, family support services, and representatives from minority communities including the migrant worker community, the black community, the native American community, and the Asian community. The commission shall also consult with the governor, the director of revenue, the office of financial management, the director of community development, the superintendent of public instruction, and the secretary of the department of social and health services;

(c) To consult with the Washington council for the prevention of child abuse and neglect regarding the creation of a state-wide data-base clearinghouse. The commission shall report to the appropriate legislative committees regarding the need for and feasibility of a state-wide clearinghouse. If the commission recommends the creation of a clearinghouse, the report shall include

and by adding at the end the following:

both the startup and maintenance of a clearinghouse, potential housing sites for the clearinghouse and placements for terminal links, and funding sources for the clearinghouse. This clearinghouse shall be concerned with programs and information on parenting education as well as child abuse and neglect prevention programs and information;

(3) The strategy under subsection (2)(a) of this section shall include consideration of:

(a) The identification of ways to reduce overlapping services and to fill in service gaps through shared service provisions;

(b) Methods to increase the effectiveness, participation, and communication among city, county, state, private nonprofit, and private for profit funding sources in defining and funding the service delivery system; and

(c) The identification and recommendation of state funding priorities for prevention and early intervention activities to meet the needs of children and families;

(4) A final report outlining the long-term children's services strategy and recommendations shall be submitted to the appropriate committees of the legislature by January 10, 1989.

Enacted by Laws 1987, ch. 473, § 1, eff. July 1, 1987. Amended by Laws 1988, ch. 278, § 6, eff. March 24, 1988.

Historical and Statutory Notes

1988 Legislation

Laws 1988, ch. 278, § 6, in subsec.

(2)(c), added the last sentence.

43.260.900. Dissolution of commission—Expiration of chapter

The commission shall be dissolved and this chapter shall expire on January 30, 1989, unless significant need for its continuation is demonstrated and the legislature acts to extend its operation.

Enacted by Laws 1987, ch. 473, § 2, eff. July 1, 1987.

43.260.901. Effective date—1987 c 473

This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987.

Enacted by Laws 1987, ch. 473, § 4, eff. July 1, 1987.

CHAPTER 43.270

COMMUNITY MOBILIZATION AGAINST SUBSTANCE ABUSE

Section	Section
43.270.010. Intent.	43.270.060. Criteria for making awards.
43.270.020. Grant program—Activities funded.	43.270.070. Community suggestions.
43.270.030. Content of application.	43.270.080. Gifts, grants, and endowments.
43.270.040. Coordinated strategies.	43.270.900. Severability—1989 c 271.
43.270.050. Application requirements.	

LIBRARY REFERENCES

American Digest System

Appropriations and funding by federal government, see United States §82(3), 85.

Child welfare revenues, see Social Security and Public Welfare §194.30 et seq.

Encyclopedias

Appropriations and funding by federal government, see C.J.S. United States § 122 et seq.

Child welfare revenues, see C.J.S. Social Security and Public Welfare §§ 124, 125.

WESTLAW ELECTRONIC RESEARCH

Social security and public welfare cases: 356ak[add key number].

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 625. Definitions

(a)(1) For purposes of this subchapter, the term "child welfare services" means public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

(2) Funds expended by a State for any calendar quarter to comply with the statistical report required by section 676(b) of this title, and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this subchapter, shall be deemed to have been expended for child welfare services.

(b) For other definitions relating to this part and to part E of this subchapter, see section 675 of this title.

(Aug. 14, 1935, c. 531, Title IV, § 425, as added Jan. 2, 1968, Pub.L. 90-248, Title II, § 240(c), 81 Stat. 914, and amended June 17, 1980, Pub.L. 96-272, Title 1, § 103(a), 94 Stat. 519.)

PUBLIC HEALTH AND WELFARE

energy efficiency improvements in existing homes
ch improvements in the mortgage.

"efficient mortgage" means a mortgage that provides for the purchase of energy efficient homes, or that provides for energy efficiency improvements in existing homes, or that provides for such improvements in the mortgage.

28, 1990, 104 Stat. 4085; Pub.L. 102-229, Title I, Dec. 12, 1990, 104 Stat. 1720; Pub.L. 102-486, Title I, § 101, Dec. 12, 1991, 105 Stat. 1720; Pub.L. 102-550, Title II, §§ 211(a)(1), 217(a), 218, 219, Title III, § 301, Apr. 26, 1992, 106 Stat. 3760, 3761, 3877; Pub.L. 103-233, Title II, § 201, Apr. 26, 1992, 106 Stat. 3760, 3761, 3877.

acted.
have been enacted.

LEGAL AND STATUTORY NOTES

(1), (2), (6),
L. 101-625,
own as the

1991 Amendments

Par. (1). Pub.L. 102-229, Title I, in
directed that "Guam, the Northern Marian

State". See codification note set out under section.

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See repeals
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Effective Date of 1992 Amendments

Except as otherwise provided, amendments to Pub.L. 102-550 effective Oct. 28, 1992, section 2 of Pub.L. 102-550, set out as a note in section 5301 of this title.

Section 211(b) of Pub.L. 102-550 provides that: "The amendments made by subsection [amending this section and section 12747 of title] shall apply with respect to fiscal year and thereafter."

Repeals

Section 211(a)(1) of Pub.L. 102-550 reads that this section is amended to read as if 2 of Pub.L. 102-230, amending par. (1) section and enacting a par. (24) of this had not been enacted.

Regulations

ned to be in-
family dwell-
§ 219, added

Section 222 of Pub.L. 102-550 provides: "The Secretary of Housing and Urban Development shall issue any final regulations necessary to implement the provisions of this title and amendments made by this title [enacting

PUBLIC HEALTH AND WELFARE

12810 of this title, amending sections 12704, 12705, 12724, 12742, 12745, 12746, 12747, 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title, and enacting provisions set out as notes under sections 12704, 12746, and 12750 of this title] not later than the expiration of the 180-day period beginning on the date of the enactment of this Act [Oct. 28, 1992], except as expressly provided otherwise in this title and the amendments made by this title. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code [section 553 of Title 5, Government Organization and Employees] (notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section)."

Retroactive Application of HOME Amend- ments

Section 223 of Pub.L. 102-550 provided that:

The amendments made by this title [enacting sections 12810 of this title, amending sections 12704, 12705, 12724, 12742, 12745, 12746, 12747, 12748, 12750, 12771, 12773, 12774, 12782, and 12784 of this title, and enacting provisions set out as notes under sections 12704, 12746, and 12750 of this title] shall apply to unexpended funds allocated under title II of the Cranston-Gonzalez National Affordable Housing Act [sub-

§ 12705. State and local housing strategies

(g) In general

The Secretary shall provide assistance directly to a jurisdiction only if—

- (1) the jurisdiction submits to the Secretary a comprehensive housing affordability strategy (hereafter in this section referred to as the "housing strategy");
- (2) the jurisdiction submits annual updates of the housing strategy; and
- (3) the housing strategy, and any annual update of such strategy, is approved by the Secretary.

The Secretary shall establish such dates and manner for the submission and approval of housing strategies under this section that the Secretary determines will facilitate orderly program management by jurisdictions and provide for timely investment or other use of funds made available under subchapter II of this chapter and other programs requiring submission of a housing strategy. If the Secretary finds there is good cause, the Secretary may provide reasonable extensions of any deadlines for submission of a jurisdiction's housing strategy.

(b) Contents

A housing strategy submitted under this section shall be in a form that the Secretary determines to be appropriate for the assistance the jurisdiction may be provided and shall—

- (1) describe the jurisdiction's estimated housing needs projected for the ensuing 5-year period, and the jurisdiction's need for assistance for very low-income, low-income, and moderate-income families, specifying such needs for different types of tenure and for different categories of residents, such as very low-income, low-income, and moderate-income families, the elderly, persons with disabilities, single persons, large families, residents of nonmetropolitan areas, families who are participating in an organized program to achieve economic independence and self-sufficiency, persons with acquired immunodeficiency syndrome, and other categories of persons residing in or expected to reside in the jurisdiction that the Secretary determines to be appropriate;
- (2) describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, including tabular representation of such information, and a description of the jurisdiction's

42 § 12705

chapter II of this chapter] in fiscal year 1992, except as otherwise specifically provided."

Transition Rule

Section 217(b) of Pub.L. 102-550 provided that: "For the purposes of determining compliance with the requirements of section 104(6) of the Cranston-Gonzalez National Affordable Housing Act [par. (6) of this section], the Secretary of Housing and Urban Development may provide an exception for organizations that meet the definition of community housing development organization, except for significant representation of low-income community residents on the board, if such organization fulfills such requirement within 6 months of receiving funds under title II of such Act [this subchapter] or September 30, 1993, whichever is sooner."

Legislative History

For legislative history and purpose of Pub.L. 101-625, see 1990 U.S. Code Cong. and Adm. News, p. 5763. See, also, Pub.L. 102-229, 1991 U.S. Code Cong. and Adm. News, p. 1361; Pub.L. 102-486, 1992 U.S. Code Cong. and Adm. News, p. 1953; Pub.L. 102-550, 1992 U.S. Code Cong. and Adm. News, p. 3281; Pub.L. 103-233, 1994 U.S. Code Cong. and Adm. News, p. 232.

strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living;

(3) describe the significant characteristics of the jurisdiction's housing market, indicating how those characteristics will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units;

(4) explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment, and describe the jurisdiction's strategy to remove or ameliorate negative effects, if any, of such policies, except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this paragraph;

(5) explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing strategy, assessing the strengths and gaps in that delivery system and describing what the jurisdiction will do to overcome those gaps;

(6) indicate resources from private and non-Federal public sources that are reasonably expected to be made available to carry out the purposes of this Act, explaining how funds made available will leverage those additional resources and identifying, where the jurisdiction deems it appropriate, publicly owned land or property located within the jurisdiction that may be utilized to carry out the purposes of this Act;

(7) set forth the jurisdiction's plan for investment or other use of housing funds made available under subchapter II of this chapter, the United States Housing Act of 1937 [42 U.S.C.A. § 1437 et seq.], the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act [42 U.S.C.A. § 11301 et seq.], during the ensuing year or such longer period as the Secretary determines to be appropriate, indicating the general priorities for allocating investment geographically within the jurisdiction and among different activities and housing needs;

(8) describe how the jurisdiction's plan will address the housing needs identified pursuant to subparagraphs (1) and (2), describe the reasons for allocation priorities, and identify any obstacles to addressing underserved needs;

(9) describe the means of cooperation and coordination among the State and any units of general local government in the development, submission, and implementation of their housing strategies;

(10) in the case of a unit of local government, describe the number of public housing units in the jurisdiction, the physical condition of such units, the restoration and revitalization needs of public housing projects within the jurisdiction, the public housing agency's strategy for improving the management and operation of such public housing, and the public housing agency's strategy for improving the living environment of low- and very-low-income families residing in public housing;

(11) in the case of a State, describe the strategy to coordinate the Low-Income Tax Credit with development of housing, including public housing, that is affordable to very low-income and low-income families;

(12) describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership;

(13) describe the standards and procedures according to which the jurisdiction will monitor activities authorized under this Act and ensure long-term compliance with provisions of this Act;

(14) include a certification that the jurisdiction will affirmatively further its housing;

(15) include a certification that the jurisdiction has in effect and is following a residential antidisplacement and relocation assistance plan that, in any case of any such displacement in connection with any activity assisted with amounts provided under subchapter II of this chapter, requires the same actions and provides the same rights as required and provided under a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 [42 U.S.C.A. § 5304(d)] in the event of displacement in connection with a development project assisted under section 106 [42 U.S.C.A. § 5306] or 119 [42 U.S.C.A. § 5318] of such Act;

(16)¹ estimate the number of housing units within the jurisdiction that are occupied by low-income families or very low-income families and that contain lead-based paint hazards, as defined in section 4851b of this title, outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how lead-based paint hazard reduction will be integrated into housing policies and programs;

(16)¹ include the number of families to whom the jurisdiction will provide affordable housing as defined in section 12745 of this title using funds made available;

(17)² describe the jurisdiction's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies; and

(17)² for any housing strategy submitted for fiscal year 1994 or any fiscal year thereafter and taking into consideration factors over which the jurisdiction has control, describe the jurisdiction's goals, programs, and policies for reducing the number of households with incomes below the poverty line (as defined by the Office of Management and Budget and revised annually), and, in consultation with other appropriate public and private agencies, state how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing set forth in the housing strategy will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line.

The Secretary may provide for the submission of abbreviated housing strategies by jurisdictions that are not otherwise expected to be participating jurisdictions under subchapter II of this chapter. Such an abbreviated housing strategy shall be appropriate to the types and amounts of assistance the jurisdiction is to receive as determined by the Secretary.

(c) Approval

(1) In general

The Secretary shall review the housing strategy upon receipt. Not later than 60 days after receipt by the Secretary, the housing strategy shall be approved unless the Secretary determines before that date that (A) the housing strategy is inconsistent with the purposes of this Act, or (B) the information described in subsection (b) of this section has not been provided in a substantially complete manner. For the purpose of the preceding sentence, the adoption or continuation of a public policy identified pursuant to subsection (b)(4) of this section shall not be a basis for the Secretary's disapproval of a housing strategy. During the 18-month period following November 28, 1990, the Secretary may extend the review period to not longer than 90 days.

(2) Actions in case of disapproval

If the Secretary disapproves the housing strategy, the Secretary shall immediately notify the jurisdiction of such disapproval. Not later than 15 days after the Secretary's disapproval, the Secretary shall inform the jurisdiction in writing of (A) the reasons for disapproval, and (B) actions that the jurisdiction could take to meet the criteria for approval. If the Secretary fails to inform the jurisdiction of the reasons for disapproval within such 15-day period, the housing strategy shall be deemed to have been approved.

Amendments and resubmission

The Secretary shall, for a period of not less than 45 days following the date of first disapproval, permit amendments to, or the resubmission of,

APP. H-2

43.185B.030

STATE GOVERNMENT—EXECUTIVE

sponse in the annual housing report to the legislature required in section 12 of this act; and

(4) Prepare and submit to the director, by each December 1st, beginning December 1, 1993, a report detailing its findings and make specific program, legislative, and funding recommendations and any other recommendations it deems appropriate.

Enacted by Laws 1993, ch. 478, § 6.

43.185B.040. Housing advisory plan—Report to legislature

(1) The department shall, in consultation with the affordable housing advisory board created in RCW 43.185B.020, prepare and from time to time amend a five-year housing advisory plan. The purpose of the plan is to document the need for affordable housing in the state and the extent to which that need is being met through public and private sector programs, to facilitate planning to meet the affordable housing needs of the state, and to enable the development of sound strategies and programs for affordable housing. The information in the five-year housing advisory plan must include:

- (a) An assessment of the state's housing market trends;
- (b) An assessment of the housing needs for all economic segments of the state and special needs populations;
- (c) An inventory of the supply and geographic distribution of affordable housing units made available through public and private sector programs;
- (d) A status report on the degree of progress made by the public and private sector toward meeting the housing needs of the state;
- (e) An identification of state and local regulatory barriers to affordable housing and proposed regulatory and administrative techniques designed to remove barriers to the development and placement of affordable housing; and
- (f) Specific recommendations, policies, or proposals for meeting the affordable housing needs of the state.

(2)(a) The five-year housing advisory plan required under subsection (1) of this section must be submitted to the legislature on or before February 1, 1994, and subsequent plans must be submitted every five years thereafter.

(b) Each February 1st, beginning February 1, 1995, the department shall submit an annual progress report, to the legislature, detailing the extent to which the state's affordable housing needs were met during the preceding year and recommendations for meeting those needs.

Enacted by Laws 1993, ch. 478, § 12.

43.185B.900. Short title

This chapter may be known and cited as the "Washington housing policy act."

Enacted by Laws 1993, ch. 478, § 24.

CHAPTER 43.190

LONG-TERM CARE OMBUDSMAN PROGRAM

Section

43.190.010. Findings.

43.190.020. "Long-term care facility" defined.

Section

43.190.030. Office of state long-term care ombudsman created—Powers and duties.

Section
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COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

CLERK/STAFF ATTORNEY

DEPARTMENT OF SOCIAL AND)	
HEALTH SERVICES,)	
Appellant,)	NO. 36377-8-I
vs.)	
WASHINGTON STATE)	DECLARATION OF
COALITION FOR THE)	SERVICE/MAILING
HOMELESS, <u>et al.</u> ,)	
Respondents.)	

Robin Rickett declares as follows:

I am a Legal Secretary for the Attorney General's Office.

I sent a copy of the Motion for Extension of Time, Motion for Overlong Brief, and Brief of Appellant, on October 9, 1995, by Legal Messengers, Inc. to: Michael Mirra at Evergreen Legal Services, 401 Second Avenue, Suite, 401, Seattle, WA 98104. The original and one copy of the above documents was filed at the Court of Appeals, Division One on October 9, 1995.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of October, 1995, in
Seattle, Washington.

ORIGINAL


ROBIN RICKETT
Legal Secretary

