Treating Prior Terminations of Parental Rights as Grounds for Present Terminations

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TREATING PRIOR TERMINATIONS OF PARENTAL RIGHTS AS GROUNDS FOR PRESENT TERMINATIONS

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Abstract: The federal Adoption and Safe Families Act of 1997 recognized that in certain egregious circumstances, states need not seek to reunify a family before terminating the rights of abusive and neglectful parents. Washington State responded by revising its termination of parental rights statute to treat parents' violent criminal convictions as sole grounds for terminating parental rights. This Comment argues that the Washington statute should be further amended to recognize that a termination of rights to a previous child may serve as grounds for terminating rights to a present child if the State finds the parent's continuing behavior puts the child at risk for abuse or neglect. Washington courts have already recognized that parents who have mistreated children are likely to continue to do so. Furthermore, other state laws that treat prior terminations as sufficient proof of a parent's present unfitness have been justified on public policy grounds and upheld under constitutional scrutiny. This Comment concludes that the proposed statutory revision is constitutional because the compelling State interest in protecting children outweighs the rights of abusive and neglectful parents, and the Washington statute is already extremely protective of parents' due process rights.

When a child has been abused or neglected and her parents lack the capacity to care for her, terminating parental rights protects the child's rights to nurture, safety, and welfare. Termination facilitates the child's integration into a stable and permanent home by ceasing all parental involvement in the child's life and freeing her for adoption. As it affects only present children, however, termination does not prevent parents from mistreating children they have in the future. Our state lawmakers should more closely examine a growing problem in child welfare adjudication and society: parents who, having previously lost their parental rights, bring new children into the world and promptly demonstrate a tendency to mistreat them as they mistreated their previous children.


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Consider a case in which Tina, a chronic drug abuser, has severely neglected her two children, Jenny and Jason. When child protective workers take the children into custody, they observe that Jenny and Jason are filthy, infected with parasites, malnourished, and unresponsive to human interaction. As a result of parental neglect, Jason has severe diaper rash and cannot bear weight on his legs, while Jenny exhibits behavioral problems and cognitive delays. The children are declared dependent and placed in licensed foster care while the Department of Children and Family Services offers the mother drug treatment and parenting classes. Tina fails to attend most of her treatment sessions and continues to abuse drugs. Many months later, finding the State had made reasonable efforts to rehabilitate her, the court terminates Tina’s parental rights. Child protective workers subsequently learn that Tina is pregnant, and she soon gives birth to a baby girl. While her newborn is receiving medical treatment for cocaine addiction, Tina visits the child only once. The family court declares the baby dependent and the State places her in licensed care. Tina is again offered substance abuse treatment and parenting classes, but again she fails to attend the sessions. Tina demonstrates no ability to provide a safe and stable home for her infant.

Reunifying families like Tina’s jeopardizes the welfare and safety of children. Nevertheless, federal law has long required state child welfare systems to make “reasonable efforts” to reunify families before terminating the rights of abusive and neglectful parents. Leaving abused or neglected children in parental custody seeks to ensure that children will not spend long periods of time in foster care or endure the disruption of multiple placements. With the Adoption and Safe Families Act of 1997 (ASFA), federal lawmakers clarified this “reasonable efforts” requirement. The drafters ordered that in particularly egregious cases,

4. Although the facts of this case example have been taken from real dependency cases, character names and profiles are fictional.
5. “Dependent” essentially means children have been abused or neglected or are at risk and state intervention is necessary to remedy parental deficiencies. See infra note 71 and accompanying text.
6. See infra Part I.B.
7. The reasonable efforts requirement was designed to achieve these goals. See infra text accompanying notes 38–42.
such as when a parent has been convicted of a violent crime victimizing a child, the State must not seek to reunify the family before terminating the parent’s rights and seek an adoptive home for the child. Following the federal lead, Washington revised its statute to treat certain criminal convictions as sole grounds for terminating parental rights.

This Comment argues that Washington should further amend its termination statute to provide that, like a criminal conviction, a prior termination of parental rights should, in some circumstances, constitute sole grounds for terminating rights to a present child. A prior termination, followed by a parent’s demonstration of continuing unfitness, indicates that decisive termination of parental rights is the best way to protect the child’s welfare. Termination ultimately facilitates adoption, which alleviates many of the hardships children endure when their natural parents are unfit to care for them.

Part I of this Comment defines child abuse and neglect, describes the “reasonable efforts” requirement, and explains how new legislation treats criminal convictions, but not prior terminations, as sole grounds for present terminations. Part II discusses Washington’s current termination of parental rights law, and describes how it attempts to expedite the process when a parent has previously lost rights to a child. Part III explains how the judicial recognition that parents’ past treatment of children is indicative of future parenting supports treating prior terminations as sole grounds for present terminations. Part IV argues that the proposed statutory change would survive constitutional due process challenge because it is essential to the welfare of children and adequately protects parental rights.

I. ABUSE, NEGLECT, AND THE “REASONABLE EFFORTS” REQUIREMENT

A. The Washington Definition of Child Maltreatment

Washington defines child abuse and neglect as “injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child...by any person under circumstances which indicate that the

10. For a description of ASFA’s provisions, see infra Part I.B.
child’s . . . health, welfare, and safety is harmed.12 The Department of Social and Health Services (DSHS) is responsible for providing a general definition of child maltreatment and discerning whether particular children have been abused or neglected. In the employ of DSHS, social service workers guide state and local attorneys through individual child welfare adjudications.13 Child welfare agents recognize several different forms of child maltreatment, including physical, emotional, and sexual abuse and physical, medical, and educational neglect.14 Washington appellate courts have affirmed terminations of parental rights when parents had neglected children’s basic physical, emotional, educational, and environmental needs;15 subjected children to sexual,16 emotional,17 and physical abuse;18 and failed to protect children from abuse at the hands of others.19

Child welfare workers and legislators hesitate to define child neglect specifically because it takes so many forms. Examples of neglect include allowing children to suffer from infections and parasites;20 failing to

13. Washington’s Division of Children and Family Services (DCFS) is a subdivision of DSHS with jurisdiction over child abuse and neglect. DCFS has two subdivisions devoted to child welfare: Child Protective Services (CPS) and Child Welfare Services (CWS). This Comment uses the terms “child welfare worker” and “child protective agent” to refer to DSHS employees. In most counties, the Washington State Attorney General’s Office provides legal representation for DSHS; in a few counties, prosecuting attorneys represent the Department.
20. See In re Dependency of J.C., 78 Wash. App. 143, 145, 896 P.2d 720, 721–22 (1995), rev’d, 130 Wash. 2d 418, 924 P.2d 21 (1996). As the facts of this case demonstrate, courts grant termination only in egregious cases of neglect. J.C.’s parents’ home was littered with rotten garbage and animal feces. All the children suffered from ringworm and head lice, and one child had a cockroach embedded in his ear canal. Id.
provide for children's basic needs of food, clothing, and shelter;\textsuperscript{21} causing children to be underdeveloped and unable to interact with adults by failing to provide physical and mental stimulation;\textsuperscript{22} and maintaining children in filthy, unsafe environments.\textsuperscript{23} Neglected children suffer a variety of effects, including extreme inattentiveness, excessive dependency, and poor school performance.\textsuperscript{24}

Physical abuse is characterized by violent conduct or excessive discipline.\textsuperscript{25} Physically abused children suffer not only physical injury, but emotional and developmental effects as well. Abused children display heightened anger, frustration, hyperactivity, lack of self-control, low self-esteem, self-destructive behaviors, and poor school performance.\textsuperscript{26} A significant percentage of abused children mistreat their own families during adulthood.\textsuperscript{27} Adults abused as children may also have a higher risk of committing violent criminal offenses and a greater propensity toward anger, aggression, and suicide.\textsuperscript{28}

Sexual abuse is defined as any contact or interaction in which the child is sexually exploited for the gratification or profit of the perpetrator.\textsuperscript{29} Sexual abuse causes severe emotional problems in children, including aggressive sexualized behavior, unusual fears, nightmares, poor school performance, impaired concentration, low self-esteem, suicidal tendencies, eating disorders, and social withdrawal.\textsuperscript{30}

Washington DSHS ranks a parent's prior serious abuse or neglect of other children among the highest of risk factors predicting the parent's


\textsuperscript{25} For a description of the forms of physical abuse and the injuries abused children commonly suffer, see Kathleen Coulborn Faller et al., \textit{Types of Child Abuse and Neglect}, in Faller & Ziefert, supra note 14, at 13–31.

\textsuperscript{26} See Egeland, supra note 24, at 49–50.


\textsuperscript{28} Id. at 11–12, 14–16.

\textsuperscript{29} Mary Gibbons & E. Chris Vincent, \textit{Childhood Sexual Abuse}, 49 Am. Fam. Physician 125, 125 (1994). Sexual abuse may include fondling, exhibitionism, pornography, and penetration. \textit{Id}.

\textsuperscript{30} Id. at 127.
propensity to maltreat children in the future. Abusive and neglectful parents, who "are not candidates for quick change," may require long-term treatment and support to improve their parenting skills. Additionally, a parent's previous involvement with child protective services may indicate that a child's siblings are in danger. Abuse or neglect of one child creates a corresponding risk that the parent will abuse or neglect the child's siblings.

Psychologists find that abusive parents frequently possess certain identifiable personality characteristics that, if not corrected, may contribute to re-offense. These traits include low self-esteem, excessive dependency, impulsiveness, anger, aggression, deficient conscience, parental collusion in abuse, cognitive delays, substance abuse, and a tendency to scapegoat children for problems. A smaller number exhibit psychopathy, which manifests itself in a lack of remorse for violent actions, and psychosis, the harboring of delusions in which the parent may see the child as devil-possessed or potentially harmful.

B. The "Reasonable Efforts" Requirement

Juxtaposed against the horrors of abuse and neglect and the risk that parents will continue to mistreat their children is the federal requirement that state social service agencies make reasonable efforts to reunify and prevent the fragmentation of families. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) required state child welfare agencies to make reasonable efforts to maintain children in the home and leave families intact. This Act sought to reunify families, combat foster care "drift," encourage child welfare agencies to plan systematically for

31. See Washington State Dep't of Soc. & Health Servs., Risk Factor Matrix (on file with author).
34. Faller & Ziefert, supra note 14, at 34.
35. Id. at 34–41.
36. Id. at 35–36.
37. Id. at 36–37.
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children’s permanent placements, and revise financial programs that previously had given states an incentive to place children in foster care.39

P.L. 96-272 conditioned the grant of federal funding to state foster care upon state courts making a specific finding in each case that the child welfare agency had directed reasonable efforts toward family reunification.40 “Reasonable efforts” was purposefully left undefined in order to allow state courts to make findings on a case-by-case basis.41 The requirement is commonly satisfied when the State has offered adequate services designed to remedy parental deficiencies.42 For example, the Washington statute commands the State to offer parents services43 and the State must prove it has offered all reasonable services before a court may terminate parental rights.44

Unfortunately, the 1980 reasonable efforts requirement wrought tragic consequences. Often, states interpreted reasonable efforts, as outlined in the statute, to mean “unreasonable” efforts—“efforts to reunite families which are families in name only . . . [families with] dangerous, abusive adults who represent a threat to the health and safety and even the lives of these children.”45 Members of the U.S. Congress in 1997 were incredulous that their predecessors in 1980 could have intended States to return children to the custody of adults who had proven themselves dangerous and abusive.46

In 1997, Congress enacted the Adoption and Safe Families Act (ASFA),47 which excuses states from directing reasonable efforts toward reunification when parents have been convicted of certain crimes against children. ASFA orders states to petition immediately to terminate the

40. Id. at 3.
42. Hardin, supra note 39, at 10-11.
43. See Wash. Rev. Code § 13.34.130(4)(b)(i) (1998) (ordering agency to provide plan detailing services to be provided parent).
46. See id.
rights of parents who have been convicted of murder, manslaughter, or assault of a child, or conspiracy to perpetrate any of these crimes. 48

In compliance with ASFA, the Washington Legislature enacted a significant amendment to the state termination statute. 49 The amendment abolishes the requirement that the State prove the traditional elements of a termination when the parent has committed murder or manslaughter against a child, or has assaulted the surviving child or another child of the parent. 50 The criminal conviction becomes, in and of itself, grounds for terminating parental rights. 51 Most importantly, a prior conviction exempts the State from proving that it has offered the parent all services reasonably capable of remedying parental deficiencies, so that termination may be granted immediately. 52 But the amendment had no effect on prior terminations. Therefore, the current scheme, which affords no significant evidentiary weight to prior terminations of parental rights, remains in place.

II. THE WASHINGTON TERMINATION OF PARENTAL RIGHTS LAW

In Washington, termination of parental rights occurs in two phases: dependency and termination. 53 Children first enter the State's jurisdiction by being declared "dependent," which means they have been abused, neglected, abandoned, or are at risk, such that state intervention is

48. § 103(a)(3), 111 Stat. at 2118 (codified as amended at 42 U.S.C.A. § 675(5)(E) (West Supp. 1998)). Specifically, ASFA directs states to file immediately for termination when the parent has been convicted of murder or manslaughter of another child, conspiracy to do so, or felony assault resulting in serious bodily injury to the child or another child of the parent. § 103(a)(3), 111 Stat. at 2118. Additionally, ASFA suggests that reasonable efforts to return the child home shall not be required when the State has terminated parental rights to a sibling, but does not treat prior terminations as sole grounds to file immediately for termination. § 101(a), 111 Stat. at 2116 (codified as amended at 42 U.S.C.A. § 671(a)(15)(D)(iii) (West Supp. 1998)).
52. Wash. Rev. Code § 13.34.180(4) (1998) commands the State to prove that services have been "expressly and understandably" offered or provided.
53. Not all, or even most, parents with dependent children ultimately lose their parental rights. Other outcomes of dependency include in-home placement, guardianship, and dismissal. See Wash. Rev. Code § 13.34.130(4)(a) (1998) (listing dismissal, in-home dependency, and guardianship as possible outcomes of dependency).
necessary to prevent harm and remedy parental deficiencies. The dependency phase is remedial; its purpose is to help preserve and mend family ties through state intervention. Before terminating a parent’s rights, a child must have been declared dependent and have resided in out-of-home placement for a minimum of six months, during which time the State provided the parent services and the chance to remedy parental deficiencies. Involuntary termination, which follows the dependency period, achieves the “unmitigated cessation of all natural and legal rights a parent has with a child . . . . It terminates the parent-child relationship, including the parents’ rights to the custody of the child[,] the right to visit the child . . . [and] the necessity to consent to adoption of the child . . . .” While dependency seeks to maintain family ties, termination—the remedy of an unsuccessful dependency—severs them.

A. The Dependency Phase

From the very beginning of a child’s dependency, the State offers parents a variety of services to achieve the goal of family reunification. Biological parents have a right to custody and control of their children that may not be abridged unless the state has made reasonable efforts to reunify the family and has provided the parent the protection of due process safeguards. The Washington dependency statute contains an array of procedural protections giving parents the right to notice, opportunity to be heard, representation by counsel, and attendance at all hearings.

Dependency adjudication usually begins when an interested party, such as a child welfare agent, having noticed evidence or heard a report

54. For a definition of dependency under the statute, see infra note 71 and accompanying text.
55. Wash. Rev. Code § 13.34.180(1) (1998) (providing that at termination trial, State must prove child has been declared dependent); Wash. Rev. Code § 13.34.180(3) (1998) (providing that at termination trial, State must prove child has been residing out-of-home for at least six months). An exception to the six month rule is the aggravated circumstances provision, which allows a termination trial to proceed immediately following the declaration of dependency. See infra Part II.C.
58. See infra notes 67–68 and accompanying text. For a discussion of parents’ constitutional rights, see infra Part IV.
of abuse or neglect, files a dependency petition with the court.\textsuperscript{59} The court has cause to remove a child from the home if it reasonably believes the child's health, safety, and welfare will be seriously endangered if he or she is not removed.\textsuperscript{60} If the court finds cause, it enters an order directing a law enforcement officer, probation counselor, or child protective services official to take the child into custody.\textsuperscript{61} Child protective agents must make reasonable efforts to inform parents of the reasons for their child's removal and advise them of their legal rights.\textsuperscript{62}

The State routinely intervenes before children suffer harm pursuant to a general goal of saving children from "unnecessary torture and possible death."\textsuperscript{63} Child protective agents may find that infants born to parents who have mistreated other children face clear and present danger of harm, even if the parents have not yet maltreated them.\textsuperscript{64} The State is authorized to take these children into custody at birth.\textsuperscript{65}

The parent is entitled to a shelter care hearing within seventy-two hours of the child's removal, at which the court decides whether to order that the child remain in out-of-home placement or return home.\textsuperscript{66} At the shelter care hearing, parents have the right to representation by an attorney, as well as the right to speak, introduce evidence, and examine witnesses on their own behalf.\textsuperscript{67} Courts must appoint attorneys for indigent parents unless they have expressly and voluntarily waived the right to counsel.\textsuperscript{68} Following the shelter care hearing, the court must

\begin{itemize}
\item \textsuperscript{59} Wash. Rev. Code § 13.34.040 (1998).
\item \textsuperscript{60} Wash. Rev. Code § 13.34.050(1)(c) (1998).
\item \textsuperscript{61} Wash. Rev. Code § 13.34.050(1) (1998).
\item \textsuperscript{62} Wash. Rev. Code § 13.34.060(2) (1998).
\item \textsuperscript{64} \textit{In re Dependency of Frederiksen}, 25 Wash. App. 726, 610 P.2d 371 (1979). When CPS takes an unharmed child out of parental custody because the parent has previously abused or neglected other children, the parent still receives all the procedural safeguards of the dependency explained infra.
\item \textsuperscript{65} Id.
\item \textsuperscript{67} Wash. Rev. Code § 13.34.060(6) (1998).
\item \textsuperscript{68} Wash. Rev. Code § 13.34.060(5) (1998).
\end{itemize}
return the child to the parent unless return would present a serious threat of substantial harm to the child.69

If at the shelter care hearing the court decides the child should remain out of parental custody, the court must conduct a dependency fact-finding hearing within seventy-five days of the child’s removal.70 The purpose of fact-finding is to determine whether the child should be declared dependent. According to the statute, a dependent child is one who has been abandoned; has been abused or neglected; or has no parent, guardian, or custodian capable of adequately caring for her, such that the child faces danger of substantial damage to her psychological or physical development.71

Immediately following the fact-finding, or within fourteen days,72 the court must hold a dependency disposition hearing, during which it declares where the dependent child is to be placed: with the parent, a relative, or in licensed foster or group care.73 The court may order that the child reside out of parental custody only if the State has made reasonable efforts to prevent or eliminate the need for removal and to enable the child to return home.74 Additionally, the statute requires the court to find clear, cogent, and convincing evidence of a manifest danger that the child will suffer serious abuse or neglect if returned to parental custody.75

At the dependency disposition, the child welfare agent must provide the court with a plan detailing the steps that will be taken to return the child home, the services to be offered to the parents, and the actions to be taken to maintain parent-child ties.76 Services offered include alcohol and drug treatment,77 lessons in basic hygiene and child care,78 parenting

70. Wash. Rev. Code § 13.34.070 (1998) (providing that fact-finding hearing must occur within this time period unless exceptional reasons for continuance are found).
74. See Wash. Rev. Code § 13.34.130(1)(b).
classes, supervised visitation, visiting public health nurse services, anger management training, and mental health counseling. If a parent fails to remedy deficiencies after being offered services and the child welfare agent is convinced the parent is unlikely to become a capable parent in the near future, the termination process may begin.

B. The Termination Phase

Washington courts have consistently advised that "[termination] of parental rights should be allowed 'only for the most powerful reasons.'" Accordingly, courts hear termination petitions only after considerable efforts to cure parental deficiencies and reunify the family have failed. After the filing of termination petitions, courts may involuntarily terminate rights only upon finding that parents have abused, neglected, or abandoned the children and are unable or unwilling to change in the near future.

Courts must conduct exhaustive termination trials to decide whether to terminate parental rights. At trial, the State must produce clear and convincing evidence that: (1) the child has been found dependent, (2) the court has entered a dispositional order declaring the child dependent and determining placement, (3) the child has been or will have been removed from parental custody for at least six months, (4) the State has offered the parent all necessary and reasonably available services

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79. See, e.g., id.
82. See, e.g., J.C., 78 Wash. App. at 147, 896 P.2d at 722.
83. See, e.g., id.
84. See, e.g., A.J.R., 78 Wash. App. at 229, 896 P.2d at 1302 (citations omitted).
86. See Wash. Rev. Code § 13.34.030(4) (1998) (defining dependent child as one who has been abused, neglected, or abandoned, or lacks parent capable of caring for her); Wash. Rev. Code § 13.34.180(1) (requiring child be found dependent prior to terminating parental rights); Wash. Rev. Code § 13.34.180(5) (requiring termination court to find parent has little chance of remediating deficiencies so child may be returned home); Wash. Rev. Code § 13.34.190(2) (1998) (requiring court to find that termination is in child's best interests).
87. See Wash. Rev. Code § 13.34.190(1)(a) (1998) (providing that court may terminate parental rights only if it finds that allegations of termination petition have been established at trial).
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capable of correcting parental deficiencies within the foreseeable future, (5) there is little likelihood conditions will be remedied so the child can be returned to the parent in the near future, and (6) continuation of the parent-child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

C. The Aggravated Circumstance

The Washington statute enumerates several "aggravated circumstances" that may indicate a child faces a heightened risk of harm and that termination of parental rights should therefore be expedited. The presence of an aggravated circumstance allows the court to bypass the mandatory six-month waiting period between the child's removal from the home and the filing of the termination petition. With an aggravated circumstance the court may, once the child is declared dependent, order the child welfare agency to petition for termination of parental rights.

89. In determining whether conditions will be remedied, the statute authorizes the court to consider use of intoxicating or controlled substances that renders the parent incapable of providing proper care for the child, psychological incapacity, or mental deficiency, combined with the parent's unwillingness to receive treatment for either drug abuse or psychological problems. Wash. Rev. Code § 13.34.180(5). Documented multiple failed treatment attempts may allow the court to conclude the parent is unwilling to receive treatment. Wash. Rev. Code § 13.34.180(5).

90. Wash. Rev. Code § 13.34.180(1)–(6). In lieu of the six requirements, the court may grant termination if the State proves that the parent's whereabouts are unknown, or, under the 1998 statutory revisions, the child has been declared dependent and the parent has been convicted of murder or manslaughter of another child, or assault against the surviving child or another child of the parent. Wash. Rev. Code § 13.34.180(7), (8). Additionally, if the State establishes beyond a reasonable doubt the child's dependency and disposition, little likelihood that conditions will be remedied so that a child can be returned home, and that continuation of the parent-child relationship hinders the child's integration into a stable and permanent home, the State need not establish that the child has been removed for six months and all reasonable services have been offered or provided. See Wash. Rev. Code § 13.34.190(1)(b) (1998).

91. The statute lists the following aggravated circumstances: the parent's conviction of rape, criminal mistreatment, or assault of the child; the parent's conviction of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child; a prior termination of parental rights granted in response to a parent's failure to complete services; a finding by the court that the parent is a sexually violent predator; abandonment of an infant under three years of age; or the birth of three or more drug-addicted infants. Wash. Rev. Code § 13.34.130(2)(c)(i)–(ix) (1998). Some of these aggravated circumstances are now sole grounds for termination of parental rights under the 1998 amendments. See Wash. Rev. Code § 13.34.180(8). The statute does not treat prior termination of parental rights as grounds for present termination.

92. The six month waiting period is contained in Wash. Rev. Code § 13.34.180(3).

The statute recognizes that a parent’s previous termination of parental rights presents an aggravated circumstance.\(^9\) When a parent has previously lost rights to a child, the court is authorized to order expedited filing of a termination petition for present children. The court will order expedited filing pursuant to an aggravated circumstance only if it finds that the parent has failed to effect significant, positive change in his or her parenting abilities.\(^9\) Even with a finding that the parent has not changed, the court may only take the aggravated circumstances shortcut if the supervising agency recommends the parent’s rights be terminated; termination is in the best interests of the child; and because of the aggravated circumstance, reasonable efforts to reunify the family are not required.\(^9\)

In enacting the aggravated circumstance provisions, the Legislature acknowledged that a prior termination may necessitate moving swiftly toward a present termination; but, even in egregious cases the aggravated circumstance merely attempts to speed up filing of the termination petition. An aggravated circumstance does not authorize courts to expedite termination proceedings and trial, which are conducted after filing. At an exhaustive termination trial, the State still must establish, by clear and convincing evidence, the traditional elements of termination before it can free the child from a parent who has previously mistreated children and has demonstrated an inability or unwillingness to change.\(^9\)

### III. WASHINGTON SHOULD TREAT PRIOR TERMINATIONS AS GROUNDS FOR PRESENT TERMINATIONS

Treating criminal convictions as sole grounds for terminations is a step in the right direction. However, Washington’s newly amended statute still fails to extend special protection to children whose parents have previously lost parental rights but have not sustained criminal...
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convictions. Arguably, prior terminations may provide even stronger
evidence of parental unfitness; in every termination the State must prove
identical statutory elements. 98

The Washington Legislature should amend its statute to treat prior
terminations of parental rights both as aggravated circumstances—as it
currently does—and as grounds for bypassing the traditional elements of
termination and expediting the termination trial. 99 The statute should
provide that if a court has found it necessary to declare a child dependent
and file an expedited termination petition pursuant to an aggravated
circumstance, the court should then treat the parent’s prior termination as
sufficient evidentiary grounds to grant the present termination. 100

The legislature should excuse the State from expressly proving that
the present child has been removed from the home for six months, 101 and
that the State has offered the parent services during the present child’s
dependency. The court’s declaration of dependency, along with the
aggravated circumstance, should prove that there is little likelihood
conditions will be remedied so the child can be returned to the parent,
and that continuation of the parent-child relationship frustrates the
child’s integration into a stable and permanent home. The prior
termination, along with the necessity of declaring the present child
dependent, should create an inference that the parent is still unfit.

With a prior termination on the record, the statute should not require
the court to conduct an extensive termination trial at which the State

98. Criminal convictions call for a higher burden of proof than do terminations of parental rights.
Criminal culpability must be proved beyond a reasonable doubt, while the State must establish the
elements of termination by clear and convincing evidence. See supra note 88. This distinction does
not unduly abridge parents’ due process rights because terminations always invoke the same
standard: clear and convincing evidence. Treating a prior termination as sole grounds therefore does
not ask a court to rely on evidence proved at a lower quantum to establish a fact at a higher quantum.

99. For a description of the traditional elements of termination, see supra text accompanying
notes 89–90.

100. The importance of enacting legislation, rather than relying on courts to act in individual
cases, was recently demonstrated. A District of Columbia superior court judge ordered that Latrena
Pixley be moved from a detention center—where she is currently serving time for murdering her
infant daughter—to a facility that would allow her to retain custody of her two-year-old son. Sally B.
28, 28. A different judge had determined it was “in the child’s best interests” to reside with his
biological mother, despite the fact that the boy’s foster family wished to adopt him. Id. Foster-care
had been arranged informally and the mother was thus exempt from ASFA’s mandatory termination
law. Id.

101. The aggravated circumstance provision abolishes this requirement with respect to prior
terminations. See supra Part II.C.
must prove the same statutory criteria it established at the first termination. Instead, the court should conduct a swift hearing, within thirty days of the dependency disposition, during which the State must prove by clear and convincing evidence that: (1) the current child has been declared dependent,\(^{102}\) (2) the parent has undergone a previous termination of parental rights, (3) termination of parental rights is in the present child's best interests, and (4) the prior termination indicates that services are unlikely to effectuate the present child's safe return to parental custody.\(^{103}\)

Washington courts have often considered a parent's past conduct when determining whether to declare a child dependent or terminate parental rights.\(^{104}\) Additionally, a few other states have already authorized, by court decision or statute, the expedited grant of present terminations when a parent has lost rights to a previous child.\(^{105}\) The proposed amendment would adequately protect parents' due process rights because it retains the requirement that the State first find the present child dependent and afford parents the safeguards of the dependency process\(^{106}\)—a process that adequately protect parents' fundamental right to custody and control of children.\(^{107}\)

A. Washington Courts Have Recognized that Past Parenting Predicts Future Parenting

Washington courts have long held that parents' past treatment of children, even when not verified in criminal convictions, may supply proof of their future inability to parent.\(^{108}\) Court decisions have also suggested that parents' deficiencies, as demonstrated by past conduct toward children, may predict a general inability to care for children.

As early as 1952, the Supreme Court of Washington held that a "brutal" and "sadistic" father who was incapable of raising children did

\(^{102}\) Even with a prior termination, the elements of a dependency remain the same. As discussed in Part II.A, supra, the court still must find that the child is abused or neglected, faces risk of harm, or lacks a parent capable of caring for her.

\(^{103}\) These "proofs" are modeled on the aggravated circumstances provisions already present in Wash. Rev. Code § 13.34.130(2)(a)–(c) (1998).

\(^{104}\) See infra Part III.A.

\(^{105}\) See infra Part III.B.

\(^{106}\) For discussion of dependency safeguards, see supra text accompanying notes 66–68.

\(^{107}\) See infra Part IV.

\(^{108}\) See infra Part III.A.
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not have the "privilege of inflicting brutal treatment upon each of his children in succession before they [could] individually obtain the protection of the state." 109 The court found that, because the dependency and need to remove all the children was based on the parent's deficiencies and past conduct, the trial court was excused from making individualized findings of abuse to each child. 110 Abuse of any one of the children, evidencing the parent's "sadistic" nature, could justify terminating the parent's rights to all the children at once. 111

Similarly, Washington courts have found that parental deficiencies, evidenced by the manner in which parents have treated their children in the past, are predictive of whether they will become adequate parents in the foreseeable future. In this vein, one court of appeals affirmed that an abusive mother's schizophrenia contributed to a likelihood that she would be unable to parent in the near future and that no available services had a reasonable hope of improving her parenting capabilities. 112 Similarly, the court found that a father's "consistent refusal to acknowledge responsibility for his actions show[ed] a lack of insight into the consequences of his violent conduct" and that he had a tendency to respond violently to certain situations. 113 The presence of an aggravated circumstance (the murder of the children's mother) warranted expedited termination of his parental rights because the court could readily conclude that he was likely to react to future situations in the same manner. 114 In so holding, the court impliedly recognized that the father's parental deficiencies would not be remedied in the near future.

On a procedural level, Washington courts have long treated prior terminations of parental rights as relevant to adjudication of present dependencies. In proceedings to terminate parental rights to another child, courts consider prior terminations. 115 The "entire record of parenthood" is open for the court's investigation and inquiry because the court is entitled to hear the entire story before acting. 116

110. Id. at 323, 242 P.2d at 1017–18.
111. Id.
114. Id. at 694, 904 P.2d at 1176.
116. Id. at 28, 792 P.2d at 164; see also In re Ross, 45 Wash. 2d 654, 657, 277 P.2d 335, 335 (1954).
As Washington courts have recognized, in all termination proceedings the ultimate issue for resolution is whether a child's parents will be able to meet that child's needs in the near future. "Termination statutes by their very nature, are prospective and predictive . . . . Their purpose is not to punish parents for past behavior, but rather to prevent future harm to children by interpreting past behavior as indicative of future parental unfitness." A prior termination may give the court every reason to terminate that parent's rights again; a court has already determined the parent is unfit to care for a child's needs in the near future.

Washington courts understand that parents, not children, are the source of child abuse and consequently, siblings of maltreated children may face an equal risk of abuse or neglect. In giving prior demonstrations of unfitness substantial weight, Washington courts have laid the groundwork for the legislature to accomplish what other states have already done by statute or court decision: treating prior terminations of parental rights as sole grounds for present terminations.

B. Other States Have Found Treating Prior Terminations as Proof of Parental Unfitness Necessary and Constitutional

Washington is not alone in recognizing that past parenting is a good indicator of future parenting ability. Indeed, some jurisdictions have extended even greater protection to children facing risk of aggravated abuse. By terminating parental rights to one child on the basis of the parent's previous mistreatment of other children, courts in other jurisdictions have suggested that some parents may be unfit to care for the children they have in the foreseeable future. Similarly, other jurisdictions have enacted statutes that give special evidentiary weight to prior terminations of parental rights. These statutory provisions and judicial grants of termination have been justified on public policy grounds and upheld under constitutional scrutiny.

117. See P.A.D., 58 Wash. App. at 28, 792 P.2d at 165.
118. Haddix, supra note 56, at 786. The "predictive" nature of terminations is especially evident in the Washington statute, which commands courts to find that all services capable of remedying parental deficiencies within the foreseeable future have been offered, and there is little likelihood that conditions will be remedied so the child can be returned home in the near future. Wash. Rev. Code § 13.34.180(4)–(5) (1998).
119. Blum, supra note 63, at 998.
120. See infra notes 131–37 and accompanying text.
In a landmark decision, Padgett v. Department of Health and Rehabilitative Services, the Supreme Court of Florida ruled that a previous termination of rights could constitute sole grounds for permanently severing the parent’s rights to a new child. The court rejected the mother’s argument that basing a termination on “prospective abuse” is equivalent to jailing someone based on speculation that she “would have” committed a crime, justifying the termination on public policy grounds. The court held that exposing present children to abuse when the state had established that the parents had previously mistreated children posed an unacceptable risk to the child, when the parent’s propensity to abuse was beyond reasonable hope of modification. Finding that the legislature could not have intended to make children suffer before trial courts could act, the court declared, “While we are loathe to sanction government interference in the sacrosanct parent-child relationship, we are more reluctant still to forsake the welfare of our youth. Florida’s children are simply too important.”

Similarly, a Missouri court of appeals acknowledged that when a child’s older sibling had suffered abuse and the parent had not modified deficiencies giving rise to the abuse, it would be a “tragic misapplication of the law” to require the child “to suffer the fate of his siblings prior to

121. 577 So. 2d 565 (Fla. 1991).
122. The Padgetts’ rights to five children had been terminated after horrific abuse. The mother bound her children by their wrists and left them unattended for hours. Id. at 566–68. Two of the children exhibited signs of sexual abuse. Id. Additionally, the mother had pled guilty to sexually abusing a four year old girl in her care. Id. Following the first termination (of all five children), the Padgetts gave birth to a baby boy who was immediately removed from parental custody. Id. A psychological evaluation revealed the Padgetts’ propensity to abuse the new child was very great and predicted that the parents were incapable of remedying their parental deficiencies. Id. After Mrs. Padgett was found “poking” and displaying other inappropriate, sexual behavior toward her newborn, the court granted the service agency’s petition for a second termination. Id.
123. Id. at 568.
124. Id. at 570.
125. Id.
126. Id. at 569.
127. Id. at 571.
128. In re Dependency of C.M.W., 813 S.W.2d 331, 334 (Mo. App. 1991). The mother had failed to protect her son from severe and repeated sexual abuse at the hands of her uncle, and had neglected to complete offered services. Id. She therefore lost rights to her son. Id. The mother’s rights to her new infant daughter were later terminated when it was discovered she was leading a dangerous lifestyle, supporting herself by prostitution. Id. Additionally, she demonstrated parental apathy by only sporadically attending supervised visits with her daughter. Id.
The Missouri court interpreted its statute broadly, justifying its holding on public policy grounds. The court found authorization to terminate the parent's rights in the statute, which allowed termination when a severe act or recurrent acts of abuse are directed toward "any child in the family" and when the parent knew, or should have known, that such acts were being committed. The Missouri court interpreted its statute broadly, justifying its holding on public policy grounds. The court found authorization to terminate the parent's rights in the statute, which allowed termination when a severe act or recurrent acts of abuse are directed toward "any child in the family" and when the parent knew, or should have known, that such acts were being committed. Other states, including Kansas and Maine, have enacted legislation allowing courts to give great weight to a parent's previous adjudication of unfitness. These states provide that a prior termination of parental rights creates a rebuttable presumption that the parent is unfit to care for the present child. The Kansas law, enacted in 1994, has been twice challenged on constitutional grounds and upheld. The courts have found that inferring a parent's present unfitness from a past finding of unfitness is not unreasonable or arbitrary. Decisions have concluded that the statute is facially constitutional provided that in each case the rebuttable presumption arises from evidence having probative value concerning the present adjudication, the circumstances of the prior termination have a rational connection to present circumstances, the parent is given a reasonable opportunity to rebut the presumption of unfitness, and the lapse of time between the prior adjudication of unfitness and the present dependency is not too great. The same court later held that a long passage of time between the prior adjudication of unfitness and the present dependency does not weaken the evidence of unfitness when the parent has maintained continual contact with child protective service workers, who have observed no improvement in parenting skills.

129. Id.
130. Id. (quoting Mo. Rev. Stat. § 211.447(2)(c) (1986)).
131. See Kan. Stat. Ann. § 38-1585(a)(1) (West 1992) (providing that parent is unfit if State establishes by clear and convincing evidence that he or she has previously been found unfit); see also Me. Rev. Stat. Ann. tit. 22, § 4055(1-A) (West 1995) (allowing courts to presume parents are unwilling or unable to protect child from jeopardy, and that circumstances are unlikely to change in time to meet child's needs, when court has previously terminated parental rights to another child).
134. Id. at 1136.
135. L.D.B., 891 P.2d at 471.
136. J.L., 891 P.2d at 1136.
Washington should follow Kansas in enacting legislation that gives substantive weight to prior terminations. However, enacting a rebuttable presumption in Washington would not be the most effective solution because it would not shorten the time period necessary to terminate parental rights. Merely shifting the burden of proof from the State (to show parental unfitness) to the parent (to show parental fitness) would involve the same adjudicatory delays inherent in a system in which identical elements of unfitness must be proved despite a prior finding of unfitness. Even if the fitness burden were shifted to the parents, the State would still have to conduct an exhaustive termination trial to determine whether parents had successfully rebutted the presumption. Parents would logically attempt rebuttal by establishing that they had completed or attempted to complete remedial services. This would effectively force the State again to offer aid to parents who have demonstrated no willingness or ability to complete court-ordered services, causing unacceptable delays in the termination process.

Treating a prior termination as sole grounds for termination, rather than as a mere rebuttable presumption of unfitness, would exempt the State from again offering services to parents who have shown no initiative to complete them and expedites the termination trial, thus saving children considerable time. Furthermore, expediting the termination trial would be constitutionally permissible because the Washington statute, unlike many of its kind, affords parents sufficient due process safeguards before termination is even contemplated.

IV. THE CONSTITUTIONAL CHALLENGE

Individuals who have lost their parental rights have challenged the Washington dependency and termination laws on constitutional due process grounds. Parents have argued that their due process rights were violated by: admitting at the termination trial a child’s testimony obtained outside the presence of parents; requiring (as an element of a termination) a finding of the child’s dependency, which must be proved

139. See supra text accompanying notes 89–90.
140. For discussion of parents’ due process rights, see supra Part II.A. and infra Part IV.
by a mere preponderance of the evidence; expediting termination pursuant to an aggravated circumstance; and terminating parental rights by default judgment. Given the frequency in which parents raise due process challenges to the existing statute, the recommended statutory revision will probably face such a challenge.

In *Santosky v. Kramer,* the U.S. Supreme Court explained that to determine whether a state statute affords parents sufficient due process, courts must balance three factors: the private interests affected by the proceedings, the risk of error created by the state’s chosen procedure, and the countervailing government interest supporting use of the challenged procedure. With the proposed amendment, the private interests affected are natural parents’ desire for and right to the companionship, care, custody, and management of their children. The countervailing state interests are the need to protect children from abuse and neglect and to expedite termination and adoption proceedings. The State risks erroneously depriving parents of their interests if it fails to afford them adequate due process safeguards or make sufficient findings of unfitness before terminating their rights.

Treating prior terminations of parental rights as grounds for present terminations satisfies due process. While parents have a constitutional right to custody and control of their children, the state’s interest in protecting abused and neglected children by expediting child welfare proceedings substantially outweighs this right. Furthermore, the risk that parents would ever be erroneously deprived of their rights is minimal, given the many safeguards of the dependency process.

146. 455 U.S. 745 (1982).
147. *Id.* at 754.
148. *Id.* at 758 (citing *Lassiter v. Department of Social Servs.*, 452 U.S. 18 (1981)).
149. *See Santosky,* 455 U.S. at 758 (holding that countervailing State interest in maintaining preponderance of evidence standard for terminations is slight compared to risk of erroneous termination present at that level of proof).
150. *See infra* Part IV.B.
151. For examples of specific due process protections, see *supra* text accompanying notes 66–68.
A. The Parent's Interest

While parents have a staunchly-protected right to raise their children, that right is not absolute, but qualified by the rights of the child. The U.S. Supreme Court has long identified freedom of personal choice in matters of family life as a fundamental liberty interest protected by the Fourteenth Amendment.\textsuperscript{152} Supreme Court decisions protect the right to marry,\textsuperscript{153} use contraception,\textsuperscript{154} terminate a pregnancy,\textsuperscript{155} and educate one’s child\textsuperscript{156} without undo State interference. In the specific context of child welfare, the Supreme Court has recognized as fundamental unwed fathers’ right to have a hearing on fitness before their children are declared dependent,\textsuperscript{157} indigent parents’ right to representation by counsel,\textsuperscript{158} and all parents’ right to have the State establish the elements of termination by clear and convincing evidence.\textsuperscript{159}

Washington laws set forth the State’s right and obligation to protect children when parental action or inaction endangers their welfare.\textsuperscript{160} Parents are entitled to due process protections including representation by counsel, notice, opportunity to be heard, and a strict burden of proof, but the right to parent does not confer the right to abuse. Child abuse and neglect, “by their very nature, should be viewed as outside the scope of the fundamental liberty interest.”\textsuperscript{161}

Additionally, parents’ constitutional right to custody and control of their children must be considered relative to children’s statutory rights. To achieve the compelling state interest of safeguarding child welfare, lawmakers have ordered that children’s right to health, welfare, and safety supersede parents’ rights. ASFA’s drafters refused to continue the current system of “always putting the needs and rights of the biological

\textsuperscript{152} Santosky, 455 U.S. at 753.
\textsuperscript{156} See, e.g., Meyer v. Nebraska, 262 U.S. 390, 391 (1923) (holding that Fourteenth Amendment protects parents’ right to teach foreign languages to children).
\textsuperscript{158} See, e.g., Lassiter v. Department of Social Servs., 452 U.S. 18 (1981) (establishing balancing test for determining when State must provide counsel for indigent parents).
\textsuperscript{161} Haddix, supra note 118, at 773 (citation omitted).
parents first." Consequently, they commanded that children's safety and health be the paramount concern. Similarly, the Washington statute explicitly provides that when the rights of parent and child conflict, the child's rights to basic nurturing and a safe, stable, and permanent home should prevail.

### B. The Countervailing State Interest

As long as parents' basic due process rights are protected, the state interest in protecting abused and neglected children substantially outweighs unfit parents' interests in maintaining parent-child ties. First, states have a general interest in protecting children from risk of abuse. Second, states have a compelling interest in promoting efficient adoption, a measure that cannot take place until biological parents' rights are terminated.

Although they lack the full rights of adulthood, children are citizens of the state entitled to protection against harm. Termination, which completely severs the parent-child relationship, frees children from the risk of harm at the hands of their biological parents. As long as parental rights are maintained, children risk being returned to their abusive or neglectful homes.

In addition to protecting citizens from being harmed in childhood, the state has a compelling interest in terminating parental rights because child abuse and neglect create so many long-term problems that persist into adulthood. Abused and neglected children often have extreme difficulty developing into responsible, productive adults. Through

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163. See id.
166. See supra notes 24–37 and accompanying text.
167. Raymond C. O'Brien, An Analysis of Realistic Due Process Rights of Children Versus Parents, 26 Conn. L. Rev. 1209, 1247 (1994); see also Bruce Chapman, Adoption Option Too Often Neglected in State Foster Care Mess, Seattle Post-Intelligencer, Apr. 4, 1997, at A11 (lamenting that children "neglected by both their parents and their government" form disproportionate number of adults in welfare system, mental institutions, homeless shelters, and prisons).
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termination, the state seeks to prevent societal ills by freeing children for adoption and thereby securing stable, permanent homes for them.168

Children face victimization both at the hands of their parents and at the hands of the State. Traditional termination and adoption procedures are inefficient and often result in long delays. The current Washington termination scheme delays children’s adjudications because the State must take the time to monitor parents to see if they have completed social services169 or have otherwise remedied parental deficiencies. The State must then conduct an exhaustive termination trial.170 While the above delays are necessary to ensure thorough adjudication of the first termination, such delays are unacceptable during subsequent terminations, when present deficiencies indicate that parents have not changed. Allowing courts to base present terminations on prior terminations seeks to protect children from procedural delays and expedite their integration into permanent homes.171

States have a compelling interest in expediting their termination processes because if they do not, adoptions will lag. Delaying termination and adoption can be tragic because, as they age, children become less adoptable and thus less amenable to placement in stable and permanent homes.172 Accordingly, federal law has declared that states must work toward promoting adoptions in order to protect children more effectively. ASFA seeks to reduce the time children must wait to be adopted by requiring states to seek adoptive placement while courts are still adjudicating dependencies and terminations.173 Similarly, ASFA seeks to reduce interstate adoption barriers by prohibiting discrimination against potential adoptive families from out-of-state.174 Under ASFA, for

169. See supra text accompanying note 89.
170. See supra note 87 and accompanying text.
171. For an explanation of how the recommended statutory revision will expedite the termination process, see supra Part III.
172. See In re Hall, 99 Wash. 2d 842, 848, 664 P.2d 1245, 1249 (1983) (finding that younger children are generally more eligible for adoption than older children); O'Brien, supra note 167, at 1246 (same).
the first time, states must make “reasonable efforts” to place children for adoption if returning them to the family is not safe.\textsuperscript{175}

Efficient termination and adoption are compelling goals. Once the State has removed a child from a parent, failure to integrate her promptly into a permanent home can be devastating. Child psychologists have noted that the absence of stable, long-term parental figures causes children considerable disruption and emotional scarring.\textsuperscript{176} Adoption in the early weeks of an infant’s life gives adoptive parents the chance to develop a “psychological parent-child relationship”—a chance that is diminished if adoption occurs after the child has already formed and broken attachments.\textsuperscript{177} The “instability” of foster placements and the “series of moves that many foster children experience [results in] problems of developing trust in others and a sense of appropriate autonomy.”\textsuperscript{178} In conclusion, if biological parents are incapable of caring for their children, it serves the children’s best interests to sever parent-child ties and move the children as swiftly as possible into stable and permanent homes.

\textbf{C. The Risk of Erroneous Deprivation}

The many procedural safeguards afforded parents mitigate the risk that a parent’s rights would ever be erroneously terminated. Under the suggested statutory revision, all parents would retain their rights to legal representation, notice, and the opportunity to speak, produce evidence, and present witnesses at all hearings.\textsuperscript{179} A prior termination would not remove the necessity of holding these preliminary hearings to adjudge whether the child faces a risk of abuse. The proposed amendment would forbid filing of termination petitions before children have been actually declared dependent and their parents have been granted both shelter care and dependency fact-finding hearings.\textsuperscript{180}

The existing statute already prohibits courts from ordering expedited filing—pursuant to an aggravated circumstance—unless they are convinced that the parent demonstrates a tendency to abuse or neglect a

\textsuperscript{175} 143 Cong. Rec. at S12,673 (statement of Sen. Craig).
\textsuperscript{176} Joseph Goldstein et al., Beyond the Best Interests of the Child 40–41 (1979).
\textsuperscript{177} Id. at 22.
\textsuperscript{178} Vieth, supra note 32, at 732.
\textsuperscript{179} For discussion of dependency procedures and protections, see supra Part II.A.
\textsuperscript{180} See supra Part II.A.
present child, and that it is necessary to declare the present child dependent.\textsuperscript{181} Before a prior termination may ever be treated as an aggravated circumstance, the court must find that the supervising agency recommends the parent's rights be terminated, termination is in the best interests of the child, and the prior termination and continuing demonstration of unfitness make it unreasonable for the social service agency to provide the parent further services in an effort to reunify the family.\textsuperscript{182} Under the proposed amendment, the State would be required to establish similar elements again at the termination hearing, to be conducted within thirty days of the dependency disposition.\textsuperscript{183}

The Washington statute, unlike many of its kind, affords parents a myriad of due process protections before termination is even contemplated. It is children, not parents, who are most in need of additional protections. Therefore, expediting the termination process, when the State has established that present children face a grave risk of suffering the same fate as their siblings, would be constitutionally permissible.

IV. CONCLUSION

Recently, public sentiment has drifted away from the belief that abused and neglected children should usually be returned to their parents and toward a realization that "social workers should put less emphasis on trying to fix broken families and more emphasis on finding children a safe home."\textsuperscript{184} Although child welfare agencies must continue to seek family reunification, these efforts should not "[discount] a child's interest in being cared for by people who will love and not mistreat him or her."\textsuperscript{185} In accordance with this new way of thinking, federal lawmakers have directed courts to terminate immediately the rights of parents who have been convicted of certain violent crimes. The Washington


\textsuperscript{182} Wash. Rev. Code § 13.34.130(2)(a)-(c) (naming preliminary findings as necessary grounds for finding aggravated circumstance). Under the proposed change, one way a court may be able to determine that a parent is at risk of abusing or neglecting a present child is if the parent has clearly failed to effect significant change in his or her parenting habits during the time period between the prior termination and the present adjudication. Failure to effect change must be determined on a case by case basis. See supra note 95.

\textsuperscript{183} See supra Part III.

\textsuperscript{184} David Hess, House Tries to Hasten Adoption of Children, Seattle Times, May 1, 1997, at A1.

\textsuperscript{185} Id.
Legislature subsequently revised its statute to treat prior criminal convictions as sole grounds for termination of parental rights. Although this change may help some children, it does not sufficiently protect the welfare and safety of our state's young citizens.

Washington needs a statutory amendment allowing courts to treat prior terminations of parental rights, followed by subsequent declarations that present children are dependent as grounds for present terminations. This proposal finds support in the fact that when a court finds a parent unfit to care for a child and incapable of remedying his or her parenting deficiencies, that parent may be unfit to care for other children in the foreseeable future.\textsuperscript{186} The proposed amendment recognizes that with violent criminal convictions and prior terminations alike, the best way to protect children from aggravated abuse and prevent them from becoming victims of state processes is not family reunification, but swift termination followed by adoption. Washington's children deserve no less than this reasonable solution to the aggravated problem of abuse and neglect.

\textsuperscript{186} Kassenbaum, \textit{supra} note 33, at 1551; \textit{see also supra} Part III.B.