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**SUBSTITUTE HOUSE BILL 1239**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** House Early Learning & Children's Services (originally sponsored by Representatives Kagi, Walsh, Goodman, Haler, Roberts, Appleton, Moeller, and Kenney)

READ FIRST TIME 02/23/09.

1       AN ACT Relating to parenting plans and residential schedules in  
2 dependency proceedings; amending RCW 13.34.155; and reenacting and  
3 amending RCW 13.04.030 and 13.34.062.

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

5       **Sec. 1.** RCW 13.04.030 and 2005 c 290 s 1 and 2005 c 238 s 1 are  
6 each reenacted and amended to read as follows:

7       (1) Except as provided in this section, the juvenile courts in this  
8 state shall have exclusive original jurisdiction over all proceedings:

9       (a) Under the interstate compact on placement of children as  
10 provided in chapter 26.34 RCW;

11       (b) Relating to children alleged or found to be dependent as  
12 provided in chapter 26.44 RCW and in RCW 13.34.030 through  
13 ~~((13.34.170))~~ 13.34.161;

14       (c) Relating to the termination of a parent and child relationship  
15 as provided in RCW 13.34.180 through 13.34.210;

16       (d) To approve or disapprove out-of-home placement as provided in  
17 RCW 13.32A.170;

18       (e) Relating to juveniles alleged or found to have committed

1 offenses, traffic or civil infractions, or violations as provided in  
2 RCW 13.40.020 through 13.40.230, unless:

3 (i) The juvenile court transfers jurisdiction of a particular  
4 juvenile to adult criminal court pursuant to RCW 13.40.110;

5 (ii) The statute of limitations applicable to adult prosecution for  
6 the offense, traffic or civil infraction, or violation has expired;

7 (iii) The alleged offense or infraction is a traffic, fish,  
8 boating, or game offense, or traffic or civil infraction committed by  
9 a juvenile sixteen years of age or older and would, if committed by an  
10 adult, be tried or heard in a court of limited jurisdiction, in which  
11 instance the appropriate court of limited jurisdiction shall have  
12 jurisdiction over the alleged offense or infraction, and no guardian ad  
13 litem is required in any such proceeding due to the juvenile's age:  
14 PROVIDED, That if such an alleged offense or infraction and an alleged  
15 offense or infraction subject to juvenile court jurisdiction arise out  
16 of the same event or incident, the juvenile court may have jurisdiction  
17 of both matters: PROVIDED FURTHER, That the jurisdiction under this  
18 subsection does not constitute "transfer" or a "decline" for purposes  
19 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,  
20 That courts of limited jurisdiction which confine juveniles for an  
21 alleged offense or infraction may place juveniles in juvenile detention  
22 facilities under an agreement with the officials responsible for the  
23 administration of the juvenile detention facility in RCW 13.04.035 and  
24 13.20.060;

25 (iv) The alleged offense is a traffic or civil infraction, a  
26 violation of compulsory school attendance provisions under chapter  
27 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has  
28 assumed concurrent jurisdiction over those offenses as provided in RCW  
29 13.04.0301; or

30 (v) The juvenile is sixteen or seventeen years old on the date the  
31 alleged offense is committed and the alleged offense is:

32 (A) A serious violent offense as defined in RCW 9.94A.030;

33 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile  
34 has a criminal history consisting of: (I) One or more prior serious  
35 violent offenses; (II) two or more prior violent offenses; or (III)  
36 three or more of any combination of the following offenses: Any class  
37 A felony, any class B felony, vehicular assault, or manslaughter in the

1 second degree, all of which must have been committed after the  
2 juvenile's thirteenth birthday and prosecuted separately;

3 (C) Robbery in the first degree, rape of a child in the first  
4 degree, or drive-by shooting, committed on or after July 1, 1997;

5 (D) Burglary in the first degree committed on or after July 1,  
6 1997, and the juvenile has a criminal history consisting of one or more  
7 prior felony or misdemeanor offenses; or

8 (E) Any violent offense as defined in RCW 9.94A.030 committed on or  
9 after July 1, 1997, and the juvenile is alleged to have been armed with  
10 a firearm.

11 (I) In such a case the adult criminal court shall have exclusive  
12 original jurisdiction, except as provided in (e)(v)(E)(II) of this  
13 subsection.

14 (II) The juvenile court shall have exclusive jurisdiction over the  
15 disposition of any remaining charges in any case in which the juvenile  
16 is found not guilty in the adult criminal court of the charge or  
17 charges for which he or she was transferred, or is convicted in the  
18 adult criminal court of a lesser included offense that is not also an  
19 offense listed in (e)(v) of this subsection. The juvenile court shall  
20 enter an order extending juvenile court jurisdiction if the juvenile  
21 has turned eighteen years of age during the adult criminal court  
22 proceedings pursuant to RCW 13.40.300. However, once the case is  
23 returned to juvenile court, the court may hold a decline hearing  
24 pursuant to RCW 13.40.110 to determine whether to retain the case in  
25 juvenile court for the purpose of disposition or return the case to  
26 adult criminal court for sentencing.

27 If the juvenile challenges the state's determination of the  
28 juvenile's criminal history under (e)(v) of this subsection, the state  
29 may establish the offender's criminal history by a preponderance of the  
30 evidence. If the criminal history consists of adjudications entered  
31 upon a plea of guilty, the state shall not bear a burden of  
32 establishing the knowing and voluntariness of the plea;

33 (f) Under the interstate compact on juveniles as provided in  
34 chapter 13.24 RCW;

35 (g) Relating to termination of a diversion agreement under RCW  
36 13.40.080, including a proceeding in which the divertee has attained  
37 eighteen years of age;

1 (h) Relating to court validation of a voluntary consent to an out-  
2 of-home placement under chapter 13.34 RCW, by the parent or Indian  
3 custodian of an Indian child, except if the parent or Indian custodian  
4 and child are residents of or domiciled within the boundaries of a  
5 federally recognized Indian reservation over which the tribe exercises  
6 exclusive jurisdiction;

7 (i) Relating to petitions to compel disclosure of information filed  
8 by the department of social and health services pursuant to RCW  
9 74.13.042; and

10 (j) Relating to judicial determinations and permanency planning  
11 hearings involving developmentally disabled children who have been  
12 placed in out-of-home care pursuant to a voluntary placement agreement  
13 between the child's parent, guardian, or legal custodian and the  
14 department of social and health services.

15 (2) The family court shall have concurrent original jurisdiction  
16 with the juvenile court over all proceedings under this section if the  
17 superior court judges of a county authorize concurrent jurisdiction as  
18 provided in RCW 26.12.010.

19 (3) The juvenile court shall have concurrent original jurisdiction  
20 with the family court over child custody proceedings under chapter  
21 26.10 RCW and parenting plans or residential schedules under chapter  
22 26.09 RCW as provided for in RCW 13.34.155.

23 (4) A juvenile subject to adult superior court jurisdiction under  
24 subsection (1)(e)(i) through (v) of this section, who is detained  
25 pending trial, may be detained in a detention facility as defined in  
26 RCW 13.40.020 pending sentencing or a dismissal.

27 **Sec. 2.** RCW 13.34.062 and 2007 c 413 s 4 and 2007 c 409 s 5 are  
28 each reenacted and amended to read as follows:

29 (1)(a) Whenever a child is taken into custody by child protective  
30 services pursuant to a court order issued under RCW 13.34.050 or when  
31 child protective services is notified that a child has been taken into  
32 custody pursuant to RCW 26.44.050 or 26.44.056, child protective  
33 services shall make reasonable efforts to inform the parent, guardian,  
34 or legal custodian of the fact that the child has been taken into  
35 custody, the reasons why the child was taken into custody, and their  
36 legal rights under this title, including the right to a shelter care  
37 hearing, as soon as possible. Notice must be provided in an

1 understandable manner and take into consideration the parent's,  
2 guardian's, or legal custodian's primary language, level of education,  
3 and cultural issues.

4 (b) In no event shall the notice required by this section be  
5 provided to the parent, guardian, or legal custodian more than twenty-  
6 four hours after the child has been taken into custody or twenty-four  
7 hours after child protective services has been notified that the child  
8 has been taken into custody.

9 (2)(a) The notice of custody and rights may be given by any means  
10 reasonably certain of notifying the parents including, but not limited  
11 to, written, telephone, or in person oral notification. If the initial  
12 notification is provided by a means other than writing, child  
13 protective services shall make reasonable efforts to also provide  
14 written notification.

15 (b) The written notice of custody and rights required by this  
16 section shall be in substantially the following form:

17 "NOTICE

18 Your child has been placed in temporary custody under the  
19 supervision of Child Protective Services (or other person or agency).  
20 You have important legal rights and you must take steps to protect your  
21 interests.

22 1. A court hearing will be held before a judge within 72 hours of  
23 the time your child is taken into custody excluding Saturdays, Sundays,  
24 and holidays. You should call the court at \_\_\_\_\_ (insert appropriate  
25 phone number here) \_\_\_\_\_ for specific information about the date, time,  
26 and location of the court hearing.

27 2. You have the right to have a lawyer represent you at the  
28 hearing. Your right to representation continues after the shelter care  
29 hearing. You have the right to records the department intends to rely  
30 upon. A lawyer can look at the files in your case, talk to child  
31 protective services and other agencies, tell you about the law, help  
32 you understand your rights, and help you at hearings. If you cannot  
33 afford a lawyer, the court will appoint one to represent you. To get  
34 a court-appointed lawyer you must contact: \_\_\_\_\_ (explain local  
35 procedure) \_\_\_\_\_.

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

1 4. If your hearing occurs before a court commissioner, you have the  
2 right to have the decision of the court commissioner reviewed by a  
3 superior court judge. To obtain that review, you must, within ten days  
4 after the entry of the decision of the court commissioner, file with  
5 the court a motion for revision of the decision, as provided in RCW  
6 2.24.050.

7 You should be present at any shelter care hearing. If you do not  
8 come, the judge will not hear what you have to say.

9 You may call the Child Protective Services' caseworker for more  
10 information about your child. The caseworker's name and telephone  
11 number are: (insert name and telephone number).

12 5. You have a right to a case conference to develop a written  
13 service agreement following the shelter care hearing. The service  
14 agreement may not conflict with the court's order of shelter care. You  
15 may request that a multidisciplinary team, family group conference, or  
16 prognostic staffing be convened for your child's case. You may  
17 participate in these processes with your counsel present.

18 6. If your child is placed in the custody of the department of  
19 social and health services or other supervising agency, immediately  
20 following the shelter care hearing, the court will enter an order  
21 granting the department or other supervising agency the right to  
22 inspect and copy all health, medical, mental health, and education  
23 records of the child, directing health care providers to release such  
24 information without your further consent, and granting the department  
25 or supervising agency or its designee the authority and responsibility,  
26 where applicable, to:

27 (1) Notify the child's school that the child is in out-of-home  
28 placement;

29 (2) Enroll the child in school;

30 (3) Request the school transfer records;

31 (4) Request and authorize evaluation of special needs;

32 (5) Attend parent or teacher conferences;

33 (6) Excuse absences;

34 (7) Grant permission for extracurricular activities;

35 (8) Authorize medications which need to be administered during  
36 school hours and sign for medical needs that arise during school hours;  
37 and

38 (9) Complete or update school emergency records.

1        7. A dependency petition begins a judicial process which, if the  
2 court finds your child dependent, could result in substantial  
3 restrictions including the entry or modification of a parenting plan or  
4 residential schedule, nonparental custody order or decree, guardianship  
5 order, or the permanent loss of your parental rights."

6        Upon receipt of the written notice, the parent, guardian, or legal  
7 custodian shall acknowledge such notice by signing a receipt prepared  
8 by child protective services. If the parent, guardian, or legal  
9 custodian does not sign the receipt, the reason for lack of a signature  
10 shall be written on the receipt. The receipt shall be made a part of  
11 the court's file in the dependency action.

12        If after making reasonable efforts to provide notification, child  
13 protective services is unable to determine the whereabouts of the  
14 parents, guardian, or legal custodian, the notice shall be delivered or  
15 sent to the last known address of the parent, guardian, or legal  
16 custodian.

17        (3) If child protective services is not required to give notice  
18 under this section, the juvenile court counselor assigned to the matter  
19 shall make all reasonable efforts to advise the parents, guardian, or  
20 legal custodian of the time and place of any shelter care hearing,  
21 request that they be present, and inform them of their basic rights as  
22 provided in RCW 13.34.090.

23        (4) Reasonable efforts to advise and to give notice, as required in  
24 this section, shall include, at a minimum, investigation of the  
25 whereabouts of the parent, guardian, or legal custodian. If such  
26 reasonable efforts are not successful, or the parent, guardian, or  
27 legal custodian does not appear at the shelter care hearing, the  
28 petitioner shall testify at the hearing or state in a declaration:

29        (a) The efforts made to investigate the whereabouts of, and to  
30 advise, the parent, guardian, or legal custodian; and

31        (b) Whether actual advice of rights was made, to whom it was made,  
32 and how it was made, including the substance of any oral communication  
33 or copies of written materials used.

34        **Sec. 3.** RCW 13.34.155 and 2000 c 135 s 1 are each amended to read  
35 as follows:

36        (1) The court hearing the dependency petition may hear and  
37 determine issues related to chapter 26.10 RCW in a dependency

1 proceeding as necessary to facilitate a permanency plan for the child  
2 or children as part of the dependency disposition order or a dependency  
3 review order or as otherwise necessary to implement a permanency plan  
4 of care for a child. The parents, guardians, or legal custodian of the  
5 child must agree, subject to court approval, to establish a permanent  
6 custody order. This agreed order may have the concurrence of the other  
7 parties to the dependency including the supervising agency, the  
8 guardian ad litem of the child, and the child if age twelve or older,  
9 and must also be in the best interests of the child. If the petitioner  
10 for a custody order under chapter 26.10 RCW is not a party to the  
11 dependency proceeding, he or she must agree on the record or by the  
12 filing of a declaration to the entry of a custody order. Once an order  
13 is entered under chapter 26.10 RCW, and the dependency petition  
14 dismissed, the department shall not continue to supervise the  
15 placement.

16 (2) The court hearing the dependency petition may hear and  
17 determine matters agreed to by the child's parents for the  
18 establishment or modification of a parenting plan under chapter 26.09  
19 RCW as part of the dependency disposition or dependency review  
20 proceedings when doing so will implement a permanent plan of care for  
21 the child and result in dismissal of the dependency.

22 (a) The dependency court shall adhere to procedural requirements  
23 under chapter 26.09 RCW and must make a written finding that the  
24 parenting plan established or modified by the dependency court under  
25 this section is in the child's best interests.

26 (b) When hearing and determining matters agreed to by the child's  
27 parents regarding custody, the child's residential schedule, the  
28 allocation of parental decision-making authority, and dispute  
29 resolution, the dependency court may:

30 (i) Appoint a guardian ad litem to represent the interests of the  
31 child when the court believes the appointment is necessary to protect  
32 the best interest of the child; and

33 (ii) Appoint an attorney to represent the interests of the child  
34 with respect to provisions for the parenting plan.

35 (c) The dependency court may interview the child in chambers to  
36 ascertain the child's wishes as to the child's residential schedule in  
37 a proceeding for the entry or modification of a parenting plan under  
38 this section. The court may permit counsel to be present at the



1 interview. The court shall cause a record of the interview to be made  
2 and to become part of the court record of the dependency case and the  
3 case under chapter 26.09 RCW.

4 (d) In any parenting plan agreed to by the parents and entered or  
5 modified in juvenile court under this section, all issues pertaining to  
6 child support and the division of marital property shall be referred to  
7 or retained by the family law department of the superior court.

8 (3) Any court order determining issues under chapter 26.10 RCW is  
9 subject to modification upon the same showing and standards as a court  
10 order determining Title 26 RCW issues.

11 ((+3)) (4) Any order entered in the dependency court establishing  
12 or modifying a permanent legal custody order or, parenting plan, or  
13 residential schedule under chapters 26.09 and 26.10 RCW shall also be  
14 filed in the chapter 26.10 RCW action by the prevailing party, and in  
15 the chapter 26.09 RCW action, by the petitioning or moving party. If  
16 the petitioning or moving party has been found indigent and appointed  
17 counsel at public expense in the dependency proceeding, no filing fees  
18 shall be imposed by the clerk. Once filed, any order, parenting plan,  
19 or residential schedule establishing or modifying permanent legal  
20 custody of a child shall survive dismissal of the dependency  
21 proceeding.

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