
ENGROSSED SUBSTITUTE SENATE BILL 6389

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Stevens, Hargrove and Long)

Read first time 02/04/2000.

1 AN ACT Relating to court jurisdiction over permanency planning
2 matters in dependency proceedings; amending RCW 26.10.030 and
3 13.34.145; reenacting and amending RCW 13.04.030; and adding a new
4 section to chapter 13.34 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.34 RCW
7 to read as follows:

8 (1) The court hearing the dependency petition may hear and
9 determine issues related to chapter 26.10 RCW in a dependency
10 proceeding as necessary to facilitate a permanency plan for the child
11 or children as part of the dependency disposition order or a dependency
12 review order or as otherwise necessary to implement a permanency plan
13 of care for a child. The parents, guardians, or legal custodian of the
14 child must agree, subject to court approval, to establish a permanent
15 custody order. This agreed order may have the concurrence of the other
16 parties to the dependency including the supervising agency, the
17 guardian ad litem of the child, and the child if age twelve or older,
18 and must also be in the best interests of the child. If the petitioner
19 for a custody order under chapter 26.10 RCW is not a party to the

1 dependency proceeding, he or she must agree on the record or by the
2 filing of a declaration to the entry of a custody order. Once an order
3 is entered under chapter 26.10 RCW, and the dependency petition
4 dismissed, the department shall not continue to supervise the
5 placement.

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

9 (3) Any order entered in the dependency court establishing or
10 modifying a permanent legal custody order under chapter 26.10 RCW shall
11 also be filed in the chapter 26.10 RCW action by the prevailing party.
12 Once filed, any order establishing or modifying permanent legal custody
13 shall survive dismissal of the dependency proceeding.

14 **Sec. 2.** RCW 13.04.030 and 1997 c 386 s 17, 1997 c 341 s 3, and
15 1997 c 338 s 7 are each reenacted and amended to read as follows:

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

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

20 (b) Relating to children alleged or found to be dependent as
21 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

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

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

26 (e) Relating to juveniles alleged or found to have committed
27 offenses, traffic or civil infractions, or violations as provided in
28 RCW 13.40.020 through 13.40.230, unless:

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

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

33 (iii) The alleged offense or infraction is a traffic, fish,
34 boating, or game offense, or traffic or civil infraction committed by
35 a juvenile sixteen years of age or older and would, if committed by an
36 adult, be tried or heard in a court of limited jurisdiction, in which
37 instance the appropriate court of limited jurisdiction shall have
38 jurisdiction over the alleged offense or infraction, and no guardian ad

1 litem is required in any such proceeding due to the juvenile's age:
2 PROVIDED, That if such an alleged offense or infraction and an alleged
3 offense or infraction subject to juvenile court jurisdiction arise out
4 of the same event or incident, the juvenile court may have jurisdiction
5 of both matters: PROVIDED FURTHER, That the jurisdiction under this
6 subsection does not constitute "transfer" or a "decline" for purposes
7 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,
8 That courts of limited jurisdiction which confine juveniles for an
9 alleged offense or infraction may place juveniles in juvenile detention
10 facilities under an agreement with the officials responsible for the
11 administration of the juvenile detention facility in RCW 13.04.035 and
12 13.20.060;

13 (iv) The alleged offense is a traffic or civil infraction, a
14 violation of compulsory school attendance provisions under chapter
15 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
16 assumed concurrent jurisdiction over those offenses as provided in RCW
17 13.04.0301; or

18 (v) The juvenile is sixteen or seventeen years old and the alleged
19 offense is:

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

21 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile
22 has a criminal history consisting of: (I) One or more prior serious
23 violent offenses; (II) two or more prior violent offenses; or (III)
24 three or more of any combination of the following offenses: Any class
25 A felony, any class B felony, vehicular assault, or manslaughter in the
26 second degree, all of which must have been committed after the
27 juvenile's thirteenth birthday and prosecuted separately;

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

30 (D) Burglary in the first degree committed on or after July 1,
31 1997, and the juvenile has a criminal history consisting of one or more
32 prior felony or misdemeanor offenses; or

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

36 In such a case the adult criminal court shall have exclusive
37 original jurisdiction.

38 If the juvenile challenges the state's determination of the
39 juvenile's criminal history under (e)(v) of this subsection, the state

1 may establish the offender's criminal history by a preponderance of the
2 evidence. If the criminal history consists of adjudications entered
3 upon a plea of guilty, the state shall not bear a burden of
4 establishing the knowing and voluntariness of the plea;

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

7 (g) Relating to termination of a diversion agreement under RCW
8 13.40.080, including a proceeding in which the divertee has attained
9 eighteen years of age;

10 (h) Relating to court validation of a voluntary consent to an out-
11 of-home placement under chapter 13.34 RCW, by the parent or Indian
12 custodian of an Indian child, except if the parent or Indian custodian
13 and child are residents of or domiciled within the boundaries of a
14 federally recognized Indian reservation over which the tribe exercises
15 exclusive jurisdiction;

16 (i) Relating to petitions to compel disclosure of information filed
17 by the department of social and health services pursuant to RCW
18 74.13.042; and

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

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

28 (3) The juvenile court shall have concurrent original jurisdiction
29 with the family court over child custody proceedings under chapter
30 26.10 RCW as provided for in section 1 of this act.

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

35 **Sec. 3.** RCW 26.10.030 and 1998 c 130 s 4 are each amended to read
36 as follows:

37 (1) Except as authorized for proceedings brought under chapter
38 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a

1 child custody proceeding is commenced in the superior court by a person
2 other than a parent, by filing a petition seeking custody of the child
3 in the county where the child is permanently resident or where the
4 child is found, but only if the child is not in the physical custody of
5 one of its parents or if the petitioner alleges that neither parent is
6 a suitable custodian. In proceedings in which the juvenile court has
7 not exercised concurrent jurisdiction and prior to a child custody
8 hearing, the court shall determine if the child is the subject of a
9 pending dependency action.

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

14 **Sec. 4.** RCW 13.34.145 and 1999 c 267 s 17 are each amended to read
15 as follows:

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

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

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

1 (c) Permanency planning goals should be achieved at the earliest
2 possible date, preferably before the child has been in out-of-home care
3 for fifteen months. In cases where parental rights have been
4 terminated, the child is legally free for adoption, and adoption has
5 been identified as the primary permanency planning goal, it shall be a
6 goal to complete the adoption within six months following entry of the
7 termination order.

8 (d) For purposes related to permanency planning:

9 (i) "Guardianship" means a dependency guardianship pursuant to this
10 chapter, a legal guardianship pursuant to chapter 11.88 RCW, or
11 equivalent laws of another state or a federally recognized Indian
12 tribe.

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

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

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

30 (3) A permanency planning hearing shall be held in all cases where
31 the child has remained in out-of-home care for at least nine months and
32 an adoption decree, guardianship order, or permanent custody order has
33 not previously been entered. The hearing shall take place no later
34 than twelve months following commencement of the current placement
35 episode.

36 (4) Whenever a child is removed from the home of a dependency
37 guardian or long-term relative or foster care provider, and the child
38 is not returned to the home of the parent, guardian, or legal custodian
39 but is placed in out-of-home care, a permanency planning hearing shall

1 take place no later than twelve months, as provided in subsection (3)
2 of this section, following the date of removal unless, prior to the
3 hearing, the child returns to the home of the dependency guardian or
4 long-term care provider, the child is placed in the home of the parent,
5 guardian, or legal custodian, an adoption decree, guardianship order,
6 or permanent custody order is entered, or the dependency is dismissed.

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

11 (6) At the permanency planning hearing, the court shall enter
12 findings as required by RCW 13.34.130(7) and shall review the
13 permanency plan prepared by the agency. If the child has resided in
14 the home of a foster parent or relative for more than six months prior
15 to the permanency planning hearing, the court shall also enter a
16 finding regarding whether the foster parent or relative was informed of
17 the hearing as required in RCW 74.13.280 and 13.34.130(7). If a goal
18 of long-term foster or relative care has been achieved prior to the
19 permanency planning hearing, the court shall review the child's status
20 to determine whether the placement and the plan for the child's care
21 remain appropriate. In cases where the primary permanency planning
22 goal has not yet been achieved, the court shall inquire regarding the
23 reasons why the primary goal has not been achieved and determine what
24 needs to be done to make it possible to achieve the primary goal. In
25 all cases, the court shall:

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

28 (ii) Modify the permanency plan, and order implementation of the
29 modified plan; and

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

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

35 (7) If the court orders the child returned home, casework
36 supervision shall continue for at least six months, at which time a
37 review hearing shall be held pursuant to RCW 13.34.130(7), and the
38 court shall determine the need for continued intervention.

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

16 (9) Continued juvenile court jurisdiction under this chapter shall
17 not be a barrier to the entry of an order establishing a legal
18 guardianship or permanent legal custody when the requirements of
19 subsection (8) of this section are met.

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

25 (~~10~~) (11) Except as otherwise provided in RCW 13.34.235, the
26 status of all dependent children shall continue to be reviewed by the
27 court at least once every six months, in accordance with RCW
28 13.34.130(7), until the dependency is dismissed. Prior to the second
29 permanency planning hearing, the agency that has custody of the child
30 shall consider whether to file a petition for termination of parental
31 rights.

32 (~~11~~) (12) Nothing in this chapter may be construed to limit the
33 ability of the agency that has custody of the child to file a petition
34 for termination of parental rights or a guardianship petition at any
35 time following the establishment of dependency. Upon the filing of
36 such a petition, a fact-finding hearing shall be scheduled and held in
37 accordance with this chapter unless the agency requests dismissal of
38 the petition prior to the hearing or unless the parties enter an agreed

1 order terminating parental rights, establishing guardianship, or
2 otherwise resolving the matter.

3 (~~(12)~~) (13) The approval of a permanency plan that does not
4 contemplate return of the child to the parent does not relieve the
5 supervising agency of its obligation to provide reasonable services,
6 under this chapter, intended to effectuate the return of the child to
7 the parent, including but not limited to, visitation rights.

8 (~~(13)~~) (14) Nothing in this chapter may be construed to limit the
9 procedural due process rights of any party in a termination or
10 guardianship proceeding filed under this chapter.

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