
SENATE BILL 6389

State of Washington

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By Senators Stevens, Hargrove and Long

Read first time 01/14/2000. Referred to Committee on Human Services & Corrections.

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 may agree, subject to court approval, to establish a permanent
15 custody order. This agreed order must have the concurrence of the
16 other 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.

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

4 (3) Any order entered in the dependency court establishing or
5 modifying a permanent legal custody order under chapter 26.10 RCW shall
6 also be filed in the chapter 26.10 RCW action by the prevailing party.
7 Once filed, any order establishing or modifying permanent legal custody
8 shall survive dismissal of the dependency proceeding.

9 **Sec. 2.** RCW 13.04.030 and 1997 c 386 s 17, 1997 c 341 s 3, and
10 1997 c 338 s 7 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

28 (iii) The alleged offense or infraction is a traffic, fish,
29 boating, or game offense, or traffic or civil infraction committed by
30 a juvenile sixteen years of age or older and would, if committed by an
31 adult, be tried or heard in a court of limited jurisdiction, in which
32 instance the appropriate court of limited jurisdiction shall have
33 jurisdiction over the alleged offense or infraction, and no guardian ad
34 litem is required in any such proceeding due to the juvenile's age:
35 PROVIDED, That if such an alleged offense or infraction and an alleged
36 offense or infraction subject to juvenile court jurisdiction arise out
37 of the same event or incident, the juvenile court may have jurisdiction
38 of both matters: PROVIDED FURTHER, That the jurisdiction under this

1 subsection does not constitute "transfer" or a "decline" for purposes
2 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,
3 That courts of limited jurisdiction which confine juveniles for an
4 alleged offense or infraction may place juveniles in juvenile detention
5 facilities under an agreement with the officials responsible for the
6 administration of the juvenile detention facility in RCW 13.04.035 and
7 13.20.060;

8 (iv) The alleged offense is a traffic or civil infraction, a
9 violation of compulsory school attendance provisions under chapter
10 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has
11 assumed concurrent jurisdiction over those offenses as provided in RCW
12 13.04.0301; or

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

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

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

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

25 (D) Burglary in the first degree committed on or after July 1,
26 1997, and the juvenile has a criminal history consisting of one or more
27 prior felony or misdemeanor offenses; or

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

31 In such a case the adult criminal court shall have exclusive
32 original jurisdiction.

33 If the juvenile challenges the state's determination of the
34 juvenile's criminal history under (e)(v) of this subsection, the state
35 may establish the offender's criminal history by a preponderance of the
36 evidence. If the criminal history consists of adjudications entered
37 upon a plea of guilty, the state shall not bear a burden of
38 establishing the knowing and voluntariness of the plea;

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

3 (g) Relating to termination of a diversion agreement under RCW
4 13.40.080, including a proceeding in which the divertee has attained
5 eighteen years of age;

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

12 (i) Relating to petitions to compel disclosure of information filed
13 by the department of social and health services pursuant to RCW
14 74.13.042; and

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

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

24 (3) The juvenile court shall have concurrent original jurisdiction
25 with the family court over child custody proceedings under chapter
26 26.10 RCW as provided for in section 1 of this act.

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

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

33 (1) Except as authorized for proceedings brought under chapter
34 13.34 or 26.50 RCW in district or municipal courts, a child custody
35 proceeding is commenced in the superior court by a person other than a
36 parent, by filing a petition seeking custody of the child in the county
37 where the child is permanently resident or where the child is found,
38 but only if the child is not in the physical custody of one of its

1 parents or if the petitioner alleges that neither parent is a suitable
2 custodian. In proceedings in which the juvenile court has not
3 exercised concurrent jurisdiction and prior to a child custody hearing,
4 the court shall determine if the child is the subject of a pending
5 dependency action.

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

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

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

19 (a) Whenever a child is placed in out-of-home care pursuant to RCW
20 13.34.130, the agency that has custody of the child shall provide the
21 court with a written permanency plan of care directed towards securing
22 a safe, stable, and permanent home for the child as soon as possible.
23 The plan shall identify one of the following outcomes as the primary
24 goal and may also identify additional outcomes as alternative goals:
25 Return of the child to the home of the child's parent, guardian, or
26 legal custodian; adoption; guardianship; permanent legal custody; long-
27 term relative or foster care, until the child is age eighteen, with a
28 written agreement between the parties and the care provider; a
29 responsible living skills program; and independent living, if
30 appropriate and if the child is age sixteen or older and the provisions
31 of subsection (2) of this section are met.

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

34 (c) Permanency planning goals should be achieved at the earliest
35 possible date, preferably before the child has been in out-of-home care
36 for fifteen months. In cases where parental rights have been
37 terminated, the child is legally free for adoption, and adoption has
38 been identified as the primary permanency planning goal, it shall be a

1 goal to complete the adoption within six months following entry of the
2 termination order.

3 (d) For purposes related to permanency planning:

4 (i) "Guardianship" means a dependency guardianship pursuant to this
5 chapter, a legal guardianship pursuant to chapter 11.88 RCW, or
6 equivalent laws of another state or a federally recognized Indian
7 tribe.

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

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

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

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

31 (4) Whenever a child is removed from the home of a dependency
32 guardian or long-term relative or foster care provider, and the child
33 is not returned to the home of the parent, guardian, or legal custodian
34 but is placed in out-of-home care, a permanency planning hearing shall
35 take place no later than twelve months, as provided in subsection (3)
36 of this section, following the date of removal unless, prior to the
37 hearing, the child returns to the home of the dependency guardian or
38 long-term care provider, the child is placed in the home of the parent,

1 guardian, or legal custodian, an adoption decree, guardianship order,
2 or permanent custody order is entered, or the dependency is dismissed.

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

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

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

24 (ii) Modify the permanency plan, and order implementation of the
25 modified plan; and

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

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

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

35 (8) ~~((Continued)) The juvenile court ((jurisdiction under this~~
36 ~~chapter shall not be a barrier to the entry of an order establishing a~~
37 ~~legal guardianship or)) may hear a petition for permanent legal custody~~
38 ~~when((7)) (a) the court has ordered implementation of a permanency plan~~
39 ~~that includes ((legal guardianship or)) permanent legal custody, and~~

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

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

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

20 (~~(10)~~) (11) Except as otherwise provided in RCW 13.34.235, the
21 status of all dependent children shall continue to be reviewed by the
22 court at least once every six months, in accordance with RCW
23 13.34.130(7), until the dependency is dismissed. Prior to the second
24 permanency planning hearing, the agency that has custody of the child
25 shall consider whether to file a petition for termination of parental
26 rights.

27 (~~(11)~~) (12) Nothing in this chapter may be construed to limit the
28 ability of the agency that has custody of the child to file a petition
29 for termination of parental rights or a guardianship petition at any
30 time following the establishment of dependency. Upon the filing of
31 such a petition, a fact-finding hearing shall be scheduled and held in
32 accordance with this chapter unless the agency requests dismissal of
33 the petition prior to the hearing or unless the parties enter an agreed
34 order terminating parental rights, establishing guardianship, or
35 otherwise resolving the matter.

36 (~~(12)~~) (13) The approval of a permanency plan that does not
37 contemplate return of the child to the parent does not relieve the
38 supervising agency of its obligation to provide reasonable services,

1 under this chapter, intended to effectuate the return of the child to
2 the parent, including but not limited to, visitation rights.

3 (~~(13)~~) (14) Nothing in this chapter may be construed to limit the
4 procedural due process rights of any party in a termination or
5 guardianship proceeding filed under this chapter.

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