

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1239**

61st Legislature  
2009 Regular Session

Passed by the House April 24, 2009  
Yeas 94 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate April 22, 2009  
Yeas 46 Nays 0

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1239** as passed by the House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1239**

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AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

**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.

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  
15 alleged offense or infraction subject to juvenile court jurisdiction  
16 arise out of the same event or incident, the juvenile court may have  
17 jurisdiction of both matters(~~(+~~ ~~PROVIDED FURTHER, That)~~). The  
18 jurisdiction under this subsection does not constitute "transfer" or a  
19 "decline" for purposes of RCW 13.40.110(1) or (e)(i) of this  
20 subsection(~~(+~~ ~~PROVIDED FURTHER, That)~~). Courts of limited  
21 jurisdiction which confine juveniles for an alleged offense or  
22 infraction may place juveniles in juvenile detention facilities under  
23 an agreement with the officials responsible for the administration of  
24 the juvenile detention facility in RCW 13.04.035 and 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 chapters  
22 26.09 and 26.26 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 13.34.155 and 2000 c 135 s 1 are each amended to read  
28 as follows:

29 (1) The court hearing the dependency petition may hear and  
30 determine issues related to chapter 26.10 RCW in a dependency  
31 proceeding as necessary to facilitate a permanency plan for the child  
32 or children as part of the dependency disposition order or a dependency  
33 review order or as otherwise necessary to implement a permanency plan  
34 of care for a child. The parents, guardians, or legal custodian of the  
35 child must agree, subject to court approval, to establish a permanent  
36 custody order. This agreed order may have the concurrence of the other  
37 parties to the dependency including the supervising agency, the

1 guardian ad litem of the child, and the child if age twelve or older,  
2 and must also be in the best interests of the child. If the petitioner  
3 for a custody order under chapter 26.10 RCW is not a party to the  
4 dependency proceeding, he or she must agree on the record or by the  
5 filing of a declaration to the entry of a custody order. Once an order  
6 is entered under chapter 26.10 RCW, and the dependency petition  
7 dismissed, the department shall not continue to supervise the  
8 placement.

9 (2)(a) The court hearing the dependency petition may establish or  
10 modify a parenting plan under chapter 26.09 or 26.26 RCW as part of a  
11 disposition order or at a review hearing when doing so will implement  
12 a permanent plan of care for the child and result in dismissal of the  
13 dependency.

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

18 (c) Unless the whereabouts of one of the parents is unknown to  
19 either the department or the court, the parents must agree, subject to  
20 court approval, to establish the parenting plan or modify an existing  
21 parenting plan.

22 (d) Whenever the court is asked to establish or modify a parenting  
23 plan, the child's residential schedule, the allocation of decision-  
24 making authority, and dispute resolution under this section, the  
25 dependency court may:

26 (i) Appoint a guardian ad litem to represent the interests of the  
27 child when the court believes the appointment is necessary to protect  
28 the best interests of the child; and

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

31 (e) The dependency court must make a written finding that the  
32 parenting plan established or modified by the dependency court under  
33 this section is in the child's best interests.

34 (f) The dependency court may interview the child in chambers to  
35 ascertain the child's wishes as to the child's residential schedule in  
36 a proceeding for the entry or modification of a parenting plan under  
37 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 or 26.26 RCW.

4 (g) In the absence of agreement by a parent, guardian, or legal  
5 custodian of the child to allow the juvenile court to hear and  
6 determine issues related to the establishment or modification of a  
7 parenting plan under chapter 26.09 or 26.26 RCW, a party may move the  
8 court to transfer such issues to the family law department of the  
9 superior court for further resolution. The court may only grant the  
10 motion upon entry of a written finding that it is in the best interests  
11 of the child.

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

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

19 ((+3)) (4) Any order entered in the dependency court establishing  
20 or modifying a permanent legal custody order or, parenting plan, or  
21 residential schedule under chapters 26.09, 26.10, and 26.26 RCW shall  
22 also be filed in the chapter 26.09, 26.10, and 26.26 RCW action by the  
23 moving or prevailing party. If the petitioning or moving party has  
24 been found indigent and appointed counsel at public expense in the  
25 dependency proceeding, no filing fees shall be imposed by the clerk.  
26 Once filed, any order, parenting plan, or residential schedule  
27 establishing or modifying permanent legal custody of a child shall  
28 survive dismissal of the dependency proceeding.

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