

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1239

Chapter 526, Laws of 2009

61st Legislature
2009 Regular Session

DEPENDENCY PROCEEDINGS--PARENTING PLANS

EFFECTIVE DATE: 07/26/09

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

FRANK CHOPP

Speaker of the House of Representatives

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

BRAD OWEN

President of the Senate

Approved May 18, 2009, 3:19 p.m.

CHRISTINE GREGOIRE

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.

BARBARA BAKER

Chief Clerk

FILED

May 20, 2009

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1239

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.

Passed by the House April 24, 2009.

Passed by the Senate April 22, 2009.

Approved by the Governor May 18, 2009.

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