

ESHB 1774 - S COMM AMD

By Committee on Human Services & Corrections

NOT ADOPTED 04/07/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.34.130 and 2010 c 288 s 1 are each amended to read
4 as follows:

5 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
6 been proven by a preponderance of the evidence that the child is
7 dependent within the meaning of RCW 13.34.030 after consideration of
8 the social study prepared pursuant to RCW 13.34.110 and after a
9 disposition hearing has been held pursuant to RCW 13.34.110, the court
10 shall enter an order of disposition pursuant to this section.

11 (1) The court shall order one of the following dispositions of the
12 case:

13 (a) Order a disposition (~~other than removal of the child from~~)
14 that maintains the child in his or her home, which shall provide a
15 program designed to alleviate the immediate danger to the child, to
16 mitigate or cure any damage the child has already suffered, and to aid
17 the parents so that the child will not be endangered in the future. In
18 determining the disposition, the court should choose services to assist
19 the parents in maintaining the child in the home, including housing
20 assistance, if appropriate, that least interfere with family autonomy
21 and are adequate to protect the child.

22 (b)(i) Order the child to be removed from his or her home and into
23 the custody, control, and care of a relative or other suitable person,
24 the department, or a supervising agency for supervision of the child's
25 placement. The court may not order an Indian child, as defined in 25
26 U.S.C. Sec. 1903, to be removed from his or her home unless the court
27 finds, by clear and convincing evidence including testimony of
28 qualified expert witnesses, that the continued custody of the child by
29 the parent or Indian custodian is likely to result in serious emotional
30 or physical damage to the child.

1 (ii) The department or supervising agency has the authority to
2 place the child, subject to review and approval by the court (A) with
3 a relative as defined in RCW 74.15.020(2)(a), (B) in the home of
4 another suitable person if the child or family has a preexisting
5 relationship with that person, and the person has completed all
6 required criminal history background checks and otherwise appears to
7 the department or supervising agency to be suitable and competent to
8 provide care for the child, or (C) in a foster family home or group
9 care facility licensed pursuant to chapter 74.15 RCW.

10 (iii) The department may also consider placing the child, subject
11 to review and approval by the court, with a person with whom the
12 child's sibling or half-sibling is residing or a person who has adopted
13 the sibling or half-sibling of the child being placed as long as the
14 person has completed all required criminal history background checks
15 and otherwise appears to the department or supervising agency to be
16 competent to provide care for the child.

17 (2) Absent good cause, the department or supervising agency shall
18 follow the wishes of the natural parent regarding the placement of the
19 child in accordance with RCW 13.34.260.

20 (3) The department or supervising agency may only place a child
21 with a person not related to the child as defined in RCW
22 74.15.020(2)(a), including a placement provided for in subsection
23 (1)(b)(iii) of this section, when the court finds that such placement
24 is in the best interest of the child. Unless there is reasonable cause
25 to believe that the health, safety, or welfare of the child would be
26 jeopardized or that efforts to reunite the parent and child will be
27 hindered, the child shall be placed with a person who is willing,
28 appropriate, and available to care for the child, and who is: (I)
29 Related to the child as defined in RCW 74.15.020(2)(a) with whom the
30 child has a relationship and is comfortable; or (II) a suitable person
31 as described in (~~this~~) subsection (1)(b) of this section. The court
32 shall consider the child's existing relationships and attachments when
33 determining placement.

34 (~~(2)~~) (4) When placing an Indian child in out-of-home care, the
35 department or supervising agency shall follow the placement preference
36 characteristics in RCW 13.34.250 and in 25 U.S.C. Sec. 1915.

37 (~~(3)~~) (5) Placement of the child with a relative or other
38 suitable person as described in subsection (1)(b) of this section shall

1 be given preference by the court. An order for out-of-home placement
2 may be made only if the court finds that reasonable efforts have been
3 made to prevent or eliminate the need for removal of the child from the
4 child's home and to make it possible for the child to return home,
5 specifying the services, including housing assistance, that have been
6 provided to the child and the child's parent, guardian, or legal
7 custodian, and that preventive services have been offered or provided
8 and have failed to prevent the need for out-of-home placement, unless
9 the health, safety, and welfare of the child cannot be protected
10 adequately in the home, and that:

11 (a) There is no parent or guardian available to care for such
12 child;

13 (b) The parent, guardian, or legal custodian is not willing to take
14 custody of the child; or

15 (c) The court finds, by clear, cogent, and convincing evidence, a
16 manifest danger exists that the child will suffer serious abuse or
17 neglect if the child is not removed from the home and an order under
18 RCW 26.44.063 would not protect the child from danger.

19 ((+4)) (6) If the court has ordered a child removed from his or
20 her home pursuant to subsection (1)(b) of this section, the court shall
21 consider whether it is in a child's best interest to be placed with,
22 have contact with, or have visits with siblings.

23 (a) There shall be a presumption that such placement, contact, or
24 visits are in the best interests of the child provided that:

25 (i) The court has jurisdiction over all siblings subject to the
26 order of placement, contact, or visitation pursuant to petitions filed
27 under this chapter or the parents of a child for whom there is no
28 jurisdiction are willing to agree; and

29 (ii) There is no reasonable cause to believe that the health,
30 safety, or welfare of any child subject to the order of placement,
31 contact, or visitation would be jeopardized or that efforts to reunite
32 the parent and child would be hindered by such placement, contact, or
33 visitation. In no event shall parental visitation time be reduced in
34 order to provide sibling visitation.

35 (b) The court may also order placement, contact, or visitation of
36 a child with a step-brother or step-sister provided that in addition to
37 the factors in (a) of this subsection, the child has a relationship and
38 is comfortable with the step-sibling.

1 ~~((+5))~~ (7) If the court has ordered a child removed from his or
2 her home pursuant to subsection (1)(b) of this section and placed into
3 nonparental or nonrelative care, the court shall order a placement that
4 allows the child to remain in the same school he or she attended prior
5 to the initiation of the dependency proceeding when such a placement is
6 practical and in the child's best interest.

7 ~~((+6))~~ (8) If the court has ordered a child removed from his or
8 her home pursuant to subsection (1)(b) of this section, the court may
9 order that a petition seeking termination of the parent and child
10 relationship be filed if the requirements of RCW 13.34.132 are met.

11 ~~((+7))~~ (9) If there is insufficient information at the time of the
12 disposition hearing upon which to base a determination regarding the
13 suitability of a proposed placement with a relative or other suitable
14 person, the child shall remain in foster care and the court shall
15 direct the department or supervising agency to conduct necessary
16 background investigations as provided in chapter 74.15 RCW and report
17 the results of such investigation to the court within thirty days.
18 However, if such relative or other person appears otherwise suitable
19 and competent to provide care and treatment, the criminal history
20 background check need not be completed before placement, but as soon as
21 possible after placement. Any placements with relatives or other
22 suitable persons, pursuant to this section, shall be contingent upon
23 cooperation by the relative or other suitable person with the agency
24 case plan and compliance with court orders related to the care and
25 supervision of the child including, but not limited to, court orders
26 regarding parent-child contacts, sibling contacts, and any other
27 conditions imposed by the court. Noncompliance with the case plan or
28 court order shall be grounds for removal of the child from the
29 relative's or other suitable person's home, subject to review by the
30 court.

31 **Sec. 2.** RCW 13.34.215 and 2010 c 180 s 4 are each amended to read
32 as follows:

33 (1) A child may petition the juvenile court to reinstate the
34 previously terminated parental rights of his or her parent under the
35 following circumstances:

36 (a) The child was previously found to be a dependent child under
37 this chapter;

1 (b) The child's parent's rights were terminated in a proceeding
2 under this chapter;

3 (c)(i) The child has not achieved his or her permanency plan
4 (~~within three years of a final order of termination~~); or

5 (ii) While the child achieved a permanency plan, it has not since
6 been sustained;

7 (d) Three years have passed since the final order of termination
8 was entered; and

9 (~~(d)~~) (e) The child must be at least twelve years old at the time
10 the petition is filed. Upon the child's motion for good cause shown,
11 or on its own motion, the court may hear a petition filed by a child
12 younger than twelve years old.

13 (2) If the child is eligible to petition the juvenile court under
14 subsection (1) of this section and a parent whose rights have been
15 previously terminated contacts the department or supervising agency or
16 the child's guardian ad litem regarding reinstatement, the department
17 or supervising agency or the guardian ad litem must notify the eligible
18 child about his or her right to petition for reinstatement of parental
19 rights.

20 (3) A child seeking to petition under this section shall be
21 provided counsel at no cost to the child.

22 (4) The petition must be signed by the child in the absence of a
23 showing of good cause as to why the child could not do so.

24 (5) If, after a threshold hearing to consider the parent's apparent
25 fitness and interest in reinstatement of parental rights, the court
26 finds by a preponderance of the evidence that the best interests of the
27 child may be served by reinstatement of parental rights, the juvenile
28 court shall order that a hearing on the merits of the petition be held.

29 (6) The court shall give prior notice for any proceeding under this
30 section, or cause prior notice to be given, to the department or the
31 supervising agency, the child's attorney, and the child. The court
32 shall also order the department or supervising agency to give prior
33 notice of any hearing to the child's former parent whose parental
34 rights are the subject of the petition, any parent whose rights have
35 not been terminated, the child's current foster parent, relative
36 caregiver, guardian or custodian, and the child's tribe, if applicable.

37 (7) The juvenile court shall conditionally grant the petition if it
38 finds by clear and convincing evidence that the child has not achieved

1 his or her permanency plan and is not likely to imminently achieve his
2 or her permanency plan and that reinstatement of parental rights is in
3 the child's best interest. In determining whether reinstatement is in
4 the child's best interest the court shall consider, but is not limited
5 to, the following:

6 (a) Whether the parent whose rights are to be reinstated is a fit
7 parent and has remedied his or her deficits as provided in the record
8 of the prior termination proceedings and prior termination order;

9 (b) The age and maturity of the child, and the ability of the child
10 to express his or her preference;

11 (c) Whether the reinstatement of parental rights will present a
12 risk to the child's health, welfare, or safety; and

13 (d) Other material changes in circumstances, if any, that may have
14 occurred which warrant the granting of the petition.

15 (8) In determining whether the child has or has not achieved his or
16 her permanency plan or whether the child is likely to achieve his or
17 her permanency plan, the department or supervising agency shall provide
18 the court, and the court shall review, information related to any
19 efforts to achieve the permanency plan including efforts to achieve
20 adoption or a permanent guardianship.

21 (9)(a) If the court conditionally grants the petition under
22 subsection (7) of this section, the case will be continued for six
23 months and a temporary order of reinstatement entered. During this
24 period, the child shall be placed in the custody of the parent. The
25 department or supervising agency shall develop a permanency plan for
26 the child reflecting the plan to be reunification and shall provide
27 transition services to the family as appropriate.

28 (b) If the child must be removed from the parent due to abuse or
29 neglect allegations prior to the expiration of the conditional six-
30 month period, the court shall dismiss the petition for reinstatement of
31 parental rights if the court finds the allegations have been proven by
32 a preponderance of the evidence.

33 (c) If the child has been successfully placed with the parent for
34 six months, the court order reinstating parental rights remains in
35 effect and the court shall dismiss the dependency.

36 (10) After the child has been placed with the parent for six
37 months, the court shall hold a hearing. If the placement with the
38 parent has been successful, the court shall enter a final order of

1 reinstatement of parental rights, which shall restore all rights,
2 powers, privileges, immunities, duties, and obligations of the parent
3 as to the child, including those relating to custody, control, and
4 support of the child. The court shall dismiss the dependency and
5 direct the clerk's office to provide a certified copy of the final
6 order of reinstatement of parental rights to the parent at no cost.

7 (11) The granting of the petition under this section does not
8 vacate or otherwise affect the validity of the original termination
9 order.

10 (12) Any parent whose rights are reinstated under this section
11 shall not be liable for any child support owed to the department
12 pursuant to RCW 13.34.160 or Title 26 RCW or costs of other services
13 provided to a child for the time period from the date of termination of
14 parental rights to the date parental rights are reinstated.

15 (13) A proceeding to reinstate parental rights is a separate action
16 from the termination of parental rights proceeding and does not vacate
17 the original termination of parental rights. An order granted under
18 this section reinstates the parental rights to the child. This
19 reinstatement is a recognition that the situation of the parent and
20 child have changed since the time of the termination of parental rights
21 and reunification is now appropriate.

22 (14) This section is retroactive and applies to any child who is
23 under the jurisdiction of the juvenile court at the time of the hearing
24 regardless of the date parental rights were terminated.

25 (15) The state, the department, the supervising agency, and its
26 employees are not liable for civil damages resulting from any act or
27 omission in the provision of services under this section, unless the
28 act or omission constitutes gross negligence. This section does not
29 create any duty and shall not be construed to create a duty where none
30 exists. This section does not create a cause of action against the
31 state, the department, the supervising agency, or its employees
32 concerning the original termination."

NOT ADOPTED 04/07/2011

1 On page 1, line 1 of the title, after "Relating to" strike the
2 remainder of the title and insert "dependency matters; and amending RCW
3 13.34.130 and 13.34.215."

EFFECT: Provides that the department or supervising agency may consider, with court approval, the placement of a child with a person with whom the child's sibling or half-sibling is placed or with the adoptive parent of the child's sibling or half-sibling as long as the person passes a criminal background check and otherwise appears competent to care for the child.

Provides that in a reinstatement of parental rights matter, a child may petition for reinstatement if his or her permanency plan has not been achieved or has not been sustained and 3 years have passed since the parental rights were terminated.

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