

SSB 5656 - S AMD 170

By Senators Hargrove, Stevens

ADOPTED 03/05/2011

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

3 "NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter shall be known
4 and cited as the "Washington state Indian child welfare act."

5 NEW SECTION. **Sec. 2.** APPLICATION. This chapter shall apply in
6 all child custody proceedings as that term is defined in this chapter.
7 Whenever there is a conflict between chapter 13.32A, 13.34, 13.36,
8 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

9 NEW SECTION. **Sec. 3.** INTENT. The legislature finds that the
10 state is committed to protecting the essential tribal relations and
11 best interests of Indian children by promoting practices designed to
12 prevent out-of-home placement of Indian children that is inconsistent
13 with the rights of the parents, the health, safety, or welfare of the
14 children, or the interests of their tribe. Whenever out-of-home
15 placement of an Indian child is necessary in a proceeding subject to
16 the terms of the federal Indian child welfare act and in this chapter,
17 the best interests of the Indian child may be served by placing the
18 Indian child in accordance with the placement priorities expressed in
19 this chapter. The legislature further finds that where placement away
20 from the parent or Indian custodian is necessary for the child's
21 safety, the state is committed to a placement that reflects and honors
22 the unique values of the child's tribal culture and is best able to
23 assist the Indian child in establishing, developing, and maintaining a
24 political, cultural, social, and spiritual relationship with the
25 child's tribe and tribal community.

26 It is the intent of the legislature that this chapter is a step in
27 clarifying existing laws and codifying existing policies and practices.

1 This chapter shall not be construed to reject or eliminate current
2 policies and practices that are not included in its provisions.

3 The legislature further intends that nothing in this chapter is
4 intended to interfere with policies and procedures that are derived
5 from agreements entered into between the department and a tribe or
6 tribes, as authorized by section 109 of the federal Indian child
7 welfare act. The legislature finds that this chapter specifies the
8 minimum requirements that must be applied in a child custody proceeding
9 and does not prevent the department from providing a higher standard of
10 protection to the right of any Indian child, parent, Indian custodian,
11 or Indian child's tribe.

12 It is also the legislature's intent that the department's policy
13 manual on Indian child welfare, the tribal-state agreement, and
14 relevant local agreements between individual federally recognized
15 tribes and the department should serve as persuasive guides in the
16 interpretation and implementation of the federal Indian child welfare
17 act, this chapter, and other relevant state laws.

18 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this
19 section apply throughout this chapter unless the context clearly
20 requires otherwise.

21 (1) "Active efforts" means the following:

22 (a) In any foster care placement or termination of parental rights
23 proceeding of an Indian child under chapter 13.34 RCW and this chapter
24 where the department or a supervising agency as defined in RCW
25 74.13.020 has a statutory or contractual duty to directly provide
26 services to, or procure services for, the parent or parents or Indian
27 custodian, or is providing services to a parent or parents or Indian
28 custodian pursuant to a disposition order entered pursuant to RCW
29 13.34.130, the department or supervising agency shall make timely and
30 affirmative efforts to provide or procure such services, including
31 engaging the parent or parents or Indian custodian in reasonably
32 available and culturally appropriate preventive, remedial, or
33 rehabilitative services. This shall include those services offered by
34 tribes and Indian organizations whenever possible. At a minimum
35 "active efforts" shall include:

36 (i) In any dependency proceeding under chapter 13.34 RCW seeking
37 out-of-home placement of an Indian child in which the department or

1 supervising agency provided voluntary services to the parent, parents,
2 or Indian custodian prior to filing the dependency petition, a showing
3 to the court that the department or supervising agency social workers
4 actively worked with the parent, parents, or Indian custodian to engage
5 them in remedial services and rehabilitation programs to prevent the
6 breakup of the family beyond simply providing referrals to such
7 services.

8 (ii) In any dependency proceeding under chapter 13.34 RCW, in which
9 the petitioner is seeking the continued out-of-home placement of an
10 Indian child, the department or supervising agency must show to the
11 court that it has actively worked with the parent, parents, or Indian
12 custodian in accordance with existing court orders and the individual
13 service plan to engage them in remedial services and rehabilitative
14 programs to prevent the breakup of the family beyond simply providing
15 referrals to such services.

16 (iii) In any termination of parental rights proceeding regarding an
17 Indian child under chapter 13.34 RCW in which the department or
18 supervising agency provided services to the parent, parents, or Indian
19 custodian, a showing to the court that the department or supervising
20 agency social workers actively worked with the parent, parents, or
21 Indian custodian to engage them in remedial services and rehabilitation
22 programs ordered by the court or identified in the department or
23 supervising agency's individual service and safety plan rather than
24 requiring that the plan or court order be performed on its own.

25 (b) In any foster care placement or termination of parental rights
26 proceeding in which the petitioner does not otherwise have a statutory
27 or contractual duty to directly provide services to, or procure
28 services for, the parent or Indian custodian, "active efforts" means a
29 documented, concerted, and good faith effort to facilitate the parent's
30 or Indian custodian's receipt of and engagement in services capable of
31 meeting the criteria set out in (a) of this subsection.

32 (2) "Best interests of the Indian child" means the use of practices
33 in accordance with the federal Indian child welfare act, this chapter,
34 and other applicable law, that are designed to accomplish the
35 following: (a) Protect the safety, well-being, development, and
36 stability of the Indian child; (b) prevent the unnecessary out-of-home
37 placement of the Indian child; (c) acknowledge the right of Indian
38 tribes to maintain their existence and integrity which will promote the

1 stability and security of their children and families; (d) recognize
2 the value to the Indian child of establishing, developing, or
3 maintaining a political, cultural, social, and spiritual relationship
4 with the Indian child's tribe and tribal community; and (e) in a
5 proceeding under this chapter where out-of-home placement is necessary,
6 to prioritize placement of the Indian child in accordance with the
7 placement preferences of this chapter.

8 (3) "Child custody proceeding" includes:

9 (a) "Foster care placement" which means any action removing an
10 Indian child from his or her parent or Indian custodian for temporary
11 placement in a foster home, institution, or with a relative, guardian,
12 conservator, or suitable other person where the parent or Indian
13 custodian cannot have the child returned upon demand, but where
14 parental rights have not been terminated;

15 (b) "Termination of parental rights" which means any action
16 resulting in the termination of the parent-child relationship;

17 (c) "Preadoptive placement" which means the temporary placement of
18 an Indian child in a foster home or institution after the termination
19 of parental rights but before or in lieu of adoptive placement; and

20 (d) "Adoptive placement" which means the permanent placement of an
21 Indian child for adoption, including any action resulting in a final
22 decree of adoption.

23 These terms shall not include a placement based upon an act which,
24 if committed by an adult, would be deemed a crime or upon an award, in
25 a dissolution proceeding of custody to one of the parents.

26 (4) "Court of competent jurisdiction" means a federal or state
27 court that entered an order in a child custody proceeding involving an
28 Indian child, as long as the state court had proper subject matter
29 jurisdiction in accordance with this chapter and the laws of that
30 state, or the tribal court that had or has exclusive or concurrent
31 jurisdiction pursuant to 25 U.S.C. Sec. 1911.

32 (5) "Department" means the department of social and health services
33 and any of its divisions. "Department" also includes supervising
34 agencies as defined in RCW 74.13.020(12) with which the department
35 entered into a contract to provide services, care, placement, case
36 management, contract monitoring, or supervision to children subject to
37 a petition filed under chapter 13.34 or 26.33 RCW.

1 (6) "Indian" means a person who is a member of an Indian tribe, or
2 who is an Alaska native and a member of a regional corporation as
3 defined in 43 U.S.C. Sec. 1606.

4 (7) "Indian child" means an unmarried and unemancipated Indian
5 person who is under eighteen years of age and is either: (a) A member
6 of an Indian tribe; or (b) eligible for membership in an Indian tribe
7 and is the biological child of a member of an Indian tribe.

8 (8) "Indian child's family" or "extended family member" means an
9 individual, defined by the law or custom of the child's tribe, as a
10 relative of the child. If the child's tribe does not identify such
11 individuals by law or custom, the term means an adult who is the Indian
12 child's grandparent, aunt, uncle, brother, sister, brother-in-law,
13 sister-in-law, niece, nephew, first or second cousin, or step-parent,
14 even following termination of the marriage.

15 (9) "Indian child's tribe" means a tribe in which an Indian child
16 is a member or eligible for membership.

17 (10) "Indian custodian" means an Indian person who under tribal
18 law, tribal custom, or state law, has legal or temporary physical
19 custody of an Indian child, or to whom the parent has transferred
20 temporary care, physical custody, and control of an Indian child.

21 (11) "Indian tribe" or "tribe" means any Indian tribe, band,
22 nation, or other organized group or community of Indians recognized as
23 eligible for the services provided to Indians by the secretary of the
24 interior because of their status as Indians, including any Alaska
25 native village as defined in 43 U.S.C. Sec. 1602(c).

26 (12) "Member" and "membership" means a determination by an Indian
27 tribe that a person is a member or eligible for membership in that
28 Indian tribe.

29 (13) "Parent" means a biological parent or parents of an Indian
30 child or a person who has lawfully adopted an Indian child, including
31 adoptions made under tribal law or custom. "Parent" does not include
32 an unwed father whose paternity has not been acknowledged or
33 established.

34 (14) "Secretary of the interior" means the secretary of the United
35 States department of the interior.

36 (15) "Tribal court" means a court or body vested by an Indian tribe
37 with jurisdiction over child custody proceedings, including but not
38 limited to a federal court of Indian offenses, a court established and

1 operated under the code or custom of an Indian tribe, or an
2 administrative body of an Indian tribe vested with authority over child
3 custody proceedings.

4 (16) "Tribal customary adoption" means adoption or other process
5 through the tribal custom, traditions, or laws of an Indian child's
6 tribe by which the Indian child is permanently placed with a nonparent
7 and through which the nonparent is vested with the rights, privileges,
8 and obligations of a legal parent. Termination of the parent-child
9 relationship between the Indian child and the biological parent is not
10 required to effect or recognize a tribal customary adoption.

11 NEW SECTION. **Sec. 5.** DETERMINATION OF INDIAN STATUS. Any party
12 seeking the foster care placement of, termination of parental rights
13 over, or the adoption of a child must make a good faith effort to
14 determine whether the child is an Indian child. This shall be done by
15 consultation with the child's parent or parents, any person who has
16 custody of the child or with whom the child resides, and any other
17 person that reasonably can be expected to have information regarding
18 the child's possible membership or eligibility for membership in an
19 Indian tribe to determine if the child is an Indian child, and by
20 contacting any Indian tribe in which the child may be a member or may
21 be eligible for membership. Preliminary contacts for the purpose of
22 making a good faith effort to determine a child's possible Indian
23 status, do not constitute legal notice as required by section 7 of this
24 act.

25 NEW SECTION. **Sec. 6.** JURISDICTION. (1) An Indian tribe shall
26 have exclusive jurisdiction over any child custody proceeding involving
27 an Indian child who resides or is domiciled within the reservation of
28 that tribe, unless the tribe has consented to the state's concurrent
29 jurisdiction, the tribe has expressly declined to exercise its
30 exclusive jurisdiction, or the state is exercising emergency
31 jurisdiction in strict compliance with section 14 of this act.

32 (2) If an Indian child is already a ward of a tribal court at the
33 start of the child custody proceeding, the Indian tribe may retain
34 exclusive jurisdiction, notwithstanding the residence or domicile of
35 the child.

1 NEW SECTION.

2 **Sec. 7. NOTICE.**

3 (1) In any involuntary child
4 custody proceeding seeking the foster care placement of, or the
5 termination of parental rights to, a child in which the petitioning
6 party or the court knows, or has reason to know, that the child is or
7 may be an Indian child as defined in this chapter, the petitioning
8 party shall notify the parent or Indian custodian and the Indian
9 child's tribe or tribes, by certified mail, return receipt requested,
10 and by use of a mandatory Indian child welfare act notice. If the
11 identity or location of the parent or Indian custodian and the tribe
12 cannot be determined, such notice shall be given to the secretary of
13 the interior by registered mail, return receipt requested, in
14 accordance with the regulations of the bureau of Indian affairs. The
15 secretary of the interior has fifteen days after receipt to provide the
16 requisite notice to the parent or Indian custodian and the tribe. No
17 foster care placement or termination of parental rights proceeding
18 shall be held until at least ten days after receipt of notice by the
19 parent or Indian custodian and the tribe. The parent or Indian
20 custodian or the tribe shall, upon request, be granted up to twenty
21 additional days to prepare for the proceeding.

22 (2) The determination of the Indian status of a child shall be made
23 as soon as practicable in order to serve the best interests of the
24 Indian child and protect the interests of the child's tribe.

25 (3)(a) A written determination by an Indian tribe that a child is
26 a member of or eligible for membership in that tribe, or testimony by
27 the tribe attesting to such status shall be conclusive that the child
28 is an Indian child;

29 (b) A written determination by an Indian tribe that a child is not
30 a member of or eligible for membership in that tribe, or testimony by
31 the tribe attesting to such status shall be conclusive that the child
32 is not a member or eligible for membership in that tribe. Such
33 determinations are presumptively those of the tribe where submitted in
34 the form of a tribal resolution, or signed by or testified to by the
35 person(s) authorized by the tribe's governing body to speak for the
36 tribe, or by the tribe's agent designated to receive notice under the
37 federal Indian child welfare act where such designation is published in
38 the federal register;

39 (c) Where a tribe provides no response to notice under section 7 of
40 this act, such nonresponse shall not constitute evidence that the child

1 is not a member or eligible for membership. Provided, however, that
2 under such circumstances the party asserting application of the federal
3 Indian child welfare act, or this chapter, will have the burden of
4 proving that the child is an Indian child.

5 (4) Where a child has been determined not to be an Indian child,
6 any party to the proceeding, or an Indian tribe that subsequently
7 determines the child is a member, may move the court for
8 redetermination of the child's Indian status at any time based upon new
9 evidence, redetermination by the child's tribe, or newly conferred
10 federal recognition of the tribe.

11 NEW SECTION. **Sec. 8.** TRANSFER OF JURISDICTION. (1) In any
12 proceeding for the foster care placement of, or termination of parental
13 rights to, an Indian child who is not domiciled or residing within the
14 reservation of the Indian child's tribe, the court shall, in the
15 absence of good cause to the contrary, transfer the proceeding to the
16 jurisdiction of the Indian child's tribe, upon the motion of any of the
17 following persons:

- 18 (a) Either of the child's parents;
- 19 (b) The child's Indian custodian;
- 20 (c) The child's tribe; or
- 21 (d) The child, if age twelve or older.

22 The transfer shall be subject to declination by the tribe. The tribe
23 shall have seventy-five days to affirmatively respond to a motion or
24 order transferring jurisdiction to the tribal court. A failure of the
25 tribe to respond within the seventy-five day period shall be construed
26 as a declination to accept transfer of the case.

27 (2) If the child's tribe has not formally intervened, the moving
28 party shall serve a copy of the motion and all supporting documents on
29 the tribal court to which the moving party seeks transfer.

30 (3) If either of the Indian child's parents objects to transfer of
31 the proceeding to the Indian child's tribe, the court shall not
32 transfer the proceeding.

33 (4) Following entry of an order transferring jurisdiction to the
34 Indian child's tribe:

- 35 (a) Upon receipt of an order from a tribal court accepting
36 jurisdiction, the state court shall dismiss the child custody
37 proceeding without prejudice.

1 (b) Pending receipt of such tribal court order, the state court may
2 conduct additional hearings and enter orders which strictly comply with
3 the requirements of the federal Indian child welfare act and this
4 chapter. The state court shall not enter a final order in any child
5 custody proceeding, except an order dismissing the proceeding and
6 returning the Indian child to the care of the parent or Indian
7 custodian from whose care the child was removed, while awaiting receipt
8 of a tribal court order accepting jurisdiction, or in the absence of a
9 tribal court order or other formal written declination of jurisdiction.

10 (c) If the Indian child's tribe declines jurisdiction, the state
11 court shall enter an order vacating the order transferring jurisdiction
12 and proceed with adjudication of the child custody matter in strict
13 compliance with the federal Indian child welfare act, this chapter, and
14 any applicable tribal-state agreement.

15 NEW SECTION. **Sec. 9.** INTERVENTION. The Indian child, the Indian
16 child's tribe or tribes, and the Indian custodian have the right to
17 intervene at any point in any child custody proceeding involving the
18 Indian child.

19 NEW SECTION. **Sec. 10.** FULL FAITH AND CREDIT. The state shall
20 give full faith and credit to the public acts, records, judicial
21 proceedings, and judgments of any Indian tribe applicable to Indian
22 child custody proceedings.

23 NEW SECTION. **Sec. 11.** RIGHT TO COUNSEL. In any child custody
24 proceeding under this chapter in which the court determines the Indian
25 child's parent or Indian custodian is indigent, the parent or Indian
26 custodian shall have the right to court-appointed counsel. The court
27 may, in its discretion, appoint counsel for the Indian child upon a
28 finding that the appointment is in the best interests of the Indian
29 child.

30 NEW SECTION. **Sec. 12.** RIGHT TO ACCESS TO EVIDENCE. Each party to
31 a child custody proceeding involving an Indian child shall have the
32 right to examine all reports or other documents filed with the court
33 upon which any decision with respect to the proceeding may be based.

1 NEW SECTION. **Sec. 13.** EVIDENTIARY REQUIREMENTS. (1) A party

2 seeking to effect a foster care placement of or termination of parental
3 rights to an Indian child shall satisfy the court that active efforts
4 have been made to provide remedial services and rehabilitative programs
5 designed to prevent the breakup of the Indian family and that these
6 efforts have proved unsuccessful.

7 (2) No foster care placement may be ordered in a child custody
8 proceeding in the absence of a determination, supported by clear and
9 convincing evidence, including testimony of qualified expert witnesses,
10 that the continued custody of the child by the parent or Indian
11 custodian is likely to result in serious emotional or physical damage
12 to the child. For purposes of this subsection, any harm to the bond
13 between the foster parent and the child that could result from removing
14 the child from foster care shall not be the sole basis or primary
15 reason for continuing the child in foster care.

16 (3) No termination of parental rights may be ordered in a child
17 custody proceeding in the absence of a determination, supported by
18 evidence beyond a reasonable doubt, including testimony of qualified
19 expert witnesses, that the continued custody of the child by the parent
20 or Indian custodian is likely to result in serious emotional or
21 physical damage to the child.

22 (4)(a) For purposes of this section, "qualified expert witness"
23 means a person who provides testimony in a proceeding under this
24 chapter to assist a court in the determination of whether the continued
25 custody of the child by, or return of the child to, the parent,
26 parents, or Indian custodian, is likely to result in serious emotional
27 or physical damage to the child. In any proceeding in which the
28 child's Indian tribe has intervened pursuant to section 9 of this act
29 or, if the department is the petitioner and the Indian child's tribe
30 has entered into a local agreement with the department for the
31 provision of child welfare services, the petitioner shall contact the
32 tribe and ask the tribe to identify a tribal member or other person of
33 the tribe's choice who is recognized by the tribe as knowledgeable
34 regarding tribal customs as they pertain to family organization or
35 child rearing practices. The petitioner shall notify the child's
36 Indian tribe of the need to provide a "qualified expert witness" at
37 least twenty days prior to any evidentiary hearing in which the
38 testimony of the witness will be required. If the child's Indian tribe

1 does not identify a "qualified expert witness" for the proceeding on a
2 timely basis, the petitioner may proceed to identify such a witness
3 pursuant to (b) of this subsection.

4 (b) In any proceeding in which the child's Indian tribe has not
5 intervened or entered into a local agreement with the department for
6 the provision of child welfare services, or a child's Indian tribe has
7 not responded to a request to identify a "qualified expert witness" for
8 the proceeding on a timely basis, the petitioner shall provide a
9 "qualified expert witness" who meets one or more of the following
10 requirements in descending order of preference:

11 (i) A member of the child's Indian tribe or other person of the
12 tribe's choice who is recognized by the tribe as knowledgeable
13 regarding tribal customs as they pertain to family organization or
14 child rearing practices for this purpose;

15 (ii) Any person having substantial experience in the delivery of
16 child and family services to Indians, and extensive knowledge of
17 prevailing social and cultural standards and child rearing practices
18 within the Indian child's tribe;

19 (iii) Any person having substantial experience in the delivery of
20 child and family services to Indians, and knowledge of prevailing
21 social and cultural standards and child rearing practices in Indian
22 tribes with cultural similarities to the Indian child's tribe; or

23 (iv) A professional person having substantial education and
24 experience in the area of his or her specialty.

25 (c) When the petitioner is the department or a supervising agency,
26 the currently assigned department or agency caseworker or the
27 caseworker's supervisor may not testify as a "qualified expert witness"
28 for purposes of this section. Nothing in this section shall bar the
29 assigned department or agency caseworker or the caseworker's supervisor
30 from testifying as an expert witness for other purposes in a proceeding
31 under this chapter. Nothing in this section shall bar other department
32 or supervising agency employees with appropriate expert qualifications
33 or experience from testifying as a "qualified expert witness" in a
34 proceeding under this chapter. Nothing in this section shall bar the
35 petitioner or any other party in a proceeding under this chapter from
36 providing additional witnesses or expert testimony, subject to the
37 approval of the court, on any issue before the court including the

1 determination of whether the continued custody of the child by, or
2 return of the child to, the parent, parents, or Indian custodian, is
3 likely to result in serious emotional or physical damage to the child.

4 NEW SECTION. **Sec. 14.** EMERGENCY REMOVAL OF AN INDIAN CHILD. (1)
5 Notwithstanding any other provision of federal or state law, nothing
6 shall be construed to prevent the department or law enforcement from
7 the emergency removal of an Indian child who is a resident of or is
8 domiciled on an Indian reservation, but is temporarily located off the
9 reservation, from his or her parent or Indian custodian or the
10 emergency placement of such child in a foster home, under applicable
11 state law, to prevent imminent physical damage or harm to the child.

12 (2) The department or law enforcement agency shall ensure that the
13 emergency removal or placement terminates immediately when such removal
14 or placement is no longer necessary to prevent imminent physical damage
15 or harm to the child and shall expeditiously initiate a child custody
16 proceeding subject to the provisions of the federal Indian child
17 welfare act and this chapter to transfer the child to the jurisdiction
18 of the appropriate Indian tribe or restore the child to the child's
19 parent or Indian custodian, if appropriate.

20 (3) When the nature of the emergency allows, the department must
21 notify the child's tribe before the removal has occurred. If prior
22 notification is not possible, the department shall notify the child's
23 tribe by the quickest means possible. The notice must contain the
24 basis for the Indian child's removal, the time, date, and place of the
25 initial hearing, and the tribe's right to intervene and participate in
26 the proceeding. This notice shall not constitute the notice required
27 under section 7 of this act for purposes of subsequent dependency,
28 termination of parental rights, or adoption proceedings.

29 NEW SECTION. **Sec. 15.** CONSENT. (1) If an Indian child's parent
30 or Indian custodian voluntarily consents to a foster care placement of
31 the child or to termination of parental rights, the consent is not
32 valid unless executed in writing and recorded before a judge of a court
33 of competent jurisdiction and accompanied by the judge's certificate
34 that the terms and consequences of the consent were fully explained in
35 detail and were fully understood by the parent or Indian custodian.
36 The court must also certify that either the parent or Indian custodian

1 fully understood the explanation in English or that it was interpreted
2 into a language that the parent or Indian custodian understood. Any
3 consent for release of custody given prior to, or within ten days
4 after, the birth of the Indian child shall not be valid.

5 (2) An Indian child's parent or Indian custodian may withdraw
6 consent to a voluntary foster care placement at any time and, upon the
7 withdrawal of consent, the child shall be returned to the parent or
8 Indian custodian.

9 (3) In a voluntary proceeding for termination of parental rights
10 to, or adoptive placement of, an Indian child, the consent of the
11 parent may be withdrawn for any reason at any time prior to the entry
12 of an order terminating parental rights or a final decree of adoption,
13 and the child shall be returned to the parent.

14 (4) After the entry of a final decree of adoption of an Indian
15 child, the parent may withdraw consent to the adoption upon the grounds
16 that consent was obtained through fraud or duress. Upon a finding that
17 such consent was obtained through fraud or duress the court shall
18 vacate the decree and return the child to the parent. No adoption
19 which has been effective for at least two years may be invalidated
20 under this section unless otherwise allowed by state law.

21 NEW SECTION. **Sec. 16.** IMPROPER REMOVAL OF AN INDIAN CHILD. If a
22 petitioner in a child custody proceeding under this chapter has
23 improperly removed the child from the custody of the parent or Indian
24 custodian or has improperly retained custody after a visit or other
25 temporary relinquishment of custody, the court shall decline
26 jurisdiction over the petition and shall immediately return the child
27 to the child's parent or Indian custodian unless returning the child to
28 the parent or Indian custodian would subject the child to substantial
29 and immediate danger or threat of such danger.

30 NEW SECTION. **Sec. 17.** REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR
31 FOSTER CARE PLACEMENT. (1) If a final decree of adoption of an Indian
32 child has been vacated or set aside or the adoptive parents voluntarily
33 consent to the termination of their parental rights to the child, the
34 biological parent or prior Indian custodian may petition to have the
35 child returned to their custody and the court shall grant the request

1 unless there is a showing by clear and convincing evidence that return
2 of custody to the biological parent or prior Indian custodian is not in
3 the best interests of the Indian child.

4 (2) If an Indian child is removed from a foster care placement or
5 a preadoptive or adoptive home for the purpose of further foster care,
6 preadoptive, or adoptive placement, the placement shall be in
7 accordance with this chapter, except when an Indian child is being
8 returned to the parent or Indian custodian from whose custody the child
9 was originally removed.

10 NEW SECTION. **Sec. 18.** PLACEMENT PREFERENCES. (1) When an
11 emergency removal, foster care placement, or preadoptive placement of
12 an Indian child is necessary, a good faith effort will be made to place
13 the Indian child:

- 14 (a) In the least restrictive setting;
- 15 (b) Which most approximates a family situation;
- 16 (c) Which is in reasonable proximity to the Indian child's home;
- 17 and
- 18 (d) In which the Indian child's special needs, if any, will be met.

19 (2) In any foster care or preadoptive placement, a preference shall
20 be given, in absence of good cause to the contrary, to the child's
21 placement with one of the following:

- 22 (a) A member of the child's extended family.
- 23 (b) A foster home licensed, approved, or specified by the child's
24 tribe.
- 25 (c) An Indian foster home licensed or approved by an authorized
26 non-Indian licensing authority.
- 27 (d) A child foster care agency approved by an Indian tribe or
28 operated by an Indian organization which has a program suitable to meet
29 the Indian child's needs.
- 30 (e) A non-Indian child foster care agency approved by the child's
31 tribe.

- 32 (f) A non-Indian family that is committed to:
 - 33 (i) Promoting and allowing appropriate extended family visitation;
 - 34 (ii) Establishing, maintaining, and strengthening the child's
35 relationship with his or her tribe or tribes; and
 - 36 (iii) Participating in the cultural and ceremonial events of the
37 child's tribe.

1 (3) In the absence of good cause to the contrary, any adoptive or
2 other permanent placement of an Indian child, preference shall be given
3 to a placement with one of the following, in descending priority order:

4 (a) Extended family members;

5 (b) An Indian family of the same tribe as the child;

6 (c) An Indian family that is of a similar culture to the child's
7 tribe;

8 (d) Another Indian family; or

9 (e) Any other family which can provide a suitable home for an
10 Indian child, such suitability to be determined in consultation with
11 the Indian child's tribe or, where the Indian child's tribe has not
12 intervened or participated, the local Indian child welfare advisory
13 committee.

14 (4) Notwithstanding the placement preferences listed in subsections
15 (2) and (3) of this section, if a different order of placement
16 preference is established by the child's tribe, the court or agency
17 effecting the placement shall follow the order of preference
18 established by the tribe so long as the placement is in the least
19 restrictive setting appropriate to the particular needs of the child.
20 Where appropriate, the preference of the Indian child or his or her
21 parent shall be considered.

22 (5) The standards to be applied in meeting the preference
23 requirements of this section shall be the prevailing social and
24 cultural standards of the Indian community in which the parent or
25 extended family members of an Indian child reside, or with which the
26 parent or extended family members maintain social and cultural ties.

27 (6) Nothing in this section shall prevent the department or the
28 court from placing the child with a parent to effectuate a permanent
29 plan regardless of the parent's relationship to the child's tribe.

30 NEW SECTION. **Sec. 19.** COMPLIANCE. (1) The department, in
31 consultation with Indian tribes, shall establish standards and
32 procedures for the department's review of cases subject to this chapter
33 and methods for monitoring the department's compliance with provisions
34 of the federal Indian child welfare act and this chapter. These
35 standards and procedures and the monitoring methods shall also be
36 integrated into the department's child welfare contracting and contract
37 monitoring process.

1 (2) Any Indian child who is the subject of any action for foster
2 care placement or termination of parental rights under chapter 13.34 or
3 26.33 RCW, any parent or Indian custodian from whose custody such child
4 was removed, and the Indian child's tribe may petition any court of
5 competent jurisdiction to invalidate such action upon a showing that
6 such action violated provisions of this chapter or the federal Indian
7 child welfare act.

8 NEW SECTION. **Sec. 20.** SEVERABILITY. If any provision of this act
9 or its application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 **Sec. 21.** RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read
13 as follows:

14 (1) Whenever a child in need of services petition is filed by: (a)
15 A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent
16 pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW
17 13.32A.140, the filing party shall have a copy of the petition served
18 on the parents of the youth. Service shall first be attempted in
19 person and if unsuccessful, then by certified mail with return receipt.

20 (2) Whenever a child in need of services petition is filed by a
21 youth or parent pursuant to RCW 13.32A.150, the court shall immediately
22 notify the department that a petition has been filed.

23 (3) ~~((a) Whenever))~~ When a child in need of services petition is
24 filed by the department, and the court or the petitioning party knows
25 or has reason to know that an Indian child is involved, the
26 ~~((petitioning party shall promptly provide notice to the child's parent~~
27 ~~or Indian custodian and to the agent designated by the child's Indian~~
28 ~~tribe to receive such notices. Notice shall be by certified mail with~~
29 ~~return receipt requested. If the identity or location of the parent or~~
30 ~~Indian custodian and the tribe cannot be determined, notice shall be~~
31 ~~given to the secretary of the interior in the manner described in 25~~
32 ~~C.F.R. 23.11. If the child may be a member of more than one tribe, the~~
33 ~~petitioning party shall send notice to all tribes the petitioner has~~
34 ~~reason to know may be affiliated with the child.~~

35 ~~(b) The notice shall: (i) Contain a statement notifying the parent~~
36 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~

1 ~~the tribe of the tribe's right to intervene and/or request that the~~
2 ~~case be transferred to tribal court)) provisions of chapter 13.--- RCW~~
3 ~~(the new chapter created in section 34 of this act) apply.~~

4 **Sec. 22.** RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s
5 10, and 2010 c 94 s 6 are each reenacted and amended to read as
6 follows:

7 For purposes of this chapter:

8 (1) "Abandoned" means when the child's parent, guardian, or other
9 custodian has expressed, either by statement or conduct, an intent to
10 forego, for an extended period, parental rights or responsibilities
11 despite an ability to exercise such rights and responsibilities. If
12 the court finds that the petitioner has exercised due diligence in
13 attempting to locate the parent, no contact between the child and the
14 child's parent, guardian, or other custodian for a period of three
15 months creates a rebuttable presumption of abandonment, even if there
16 is no expressed intent to abandon.

17 (2) "Child" and "juvenile" means any individual under the age of
18 eighteen years.

19 (3) "Current placement episode" means the period of time that
20 begins with the most recent date that the child was removed from the
21 home of the parent, guardian, or legal custodian for purposes of
22 placement in out-of-home care and continues until: (a) The child
23 returns home; (b) an adoption decree, a permanent custody order, or
24 guardianship order is entered; or (c) the dependency is dismissed,
25 whichever occurs first.

26 (4) "Department" means the department of social and health
27 services.

28 (5) "Dependency guardian" means the person, nonprofit corporation,
29 or Indian tribe appointed by the court pursuant to this chapter for the
30 limited purpose of assisting the court in the supervision of the
31 dependency.

32 (6) "Dependent child" means any child who:

33 (a) Has been abandoned;

34 (b) Is abused or neglected as defined in chapter 26.44 RCW by a
35 person legally responsible for the care of the child; or

36 (c) Has no parent, guardian, or custodian capable of adequately

1 caring for the child, such that the child is in circumstances which
2 constitute a danger of substantial damage to the child's psychological
3 or physical development.

4 (7) "Developmental disability" means a disability attributable to
5 intellectual disability, cerebral palsy, epilepsy, autism, or another
6 neurological or other condition of an individual found by the secretary
7 to be closely related to an intellectual disability or to require
8 treatment similar to that required for individuals with intellectual
9 disabilities, which disability originates before the individual attains
10 age eighteen, which has continued or can be expected to continue
11 indefinitely, and which constitutes a substantial limitation to the
12 individual.

13 (8) "Guardian" means the person or agency that: (a) Has been
14 appointed as the guardian of a child in a legal proceeding, including
15 a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the
16 legal right to custody of the child pursuant to such appointment. The
17 term "guardian" does not include a "dependency guardian" appointed
18 pursuant to a proceeding under this chapter.

19 (9) "Guardian ad litem" means a person, appointed by the court to
20 represent the best interests of a child in a proceeding under this
21 chapter, or in any matter which may be consolidated with a proceeding
22 under this chapter. A "court-appointed special advocate" appointed by
23 the court to be the guardian ad litem for the child, or to perform
24 substantially the same duties and functions as a guardian ad litem,
25 shall be deemed to be guardian ad litem for all purposes and uses of
26 this chapter.

27 (10) "Guardian ad litem program" means a court-authorized volunteer
28 program, which is or may be established by the superior court of the
29 county in which such proceeding is filed, to manage all aspects of
30 volunteer guardian ad litem representation for children alleged or
31 found to be dependent. Such management shall include but is not
32 limited to: Recruitment, screening, training, supervision, assignment,
33 and discharge of volunteers.

34 (11) "Housing assistance" means appropriate referrals by the
35 department or other supervising agencies to federal, state, local, or
36 private agencies or organizations, assistance with forms, applications,
37 or financial subsidies or other monetary assistance for housing. For

1 purposes of this chapter, "housing assistance" is not a remedial
2 service or time-limited family reunification service as described in
3 RCW 13.34.025(2).

4 (12) "Indigent" means a person who, at any stage of a court
5 proceeding, is:

6 (a) Receiving one of the following types of public assistance:
7 Temporary assistance for needy families, disability lifeline benefits,
8 poverty-related veterans' benefits, food stamps or food stamp benefits
9 transferred electronically, refugee resettlement benefits, medicaid, or
10 supplemental security income; or

11 (b) Involuntarily committed to a public mental health facility; or

12 (c) Receiving an annual income, after taxes, of one hundred twenty-
13 five percent or less of the federally established poverty level; or

14 (d) Unable to pay the anticipated cost of counsel for the matter
15 before the court because his or her available funds are insufficient to
16 pay any amount for the retention of counsel.

17 (13) "Out-of-home care" means placement in a foster family home or
18 group care facility licensed pursuant to chapter 74.15 RCW or placement
19 in a home, other than that of the child's parent, guardian, or legal
20 custodian, not required to be licensed pursuant to chapter 74.15 RCW.

21 (14) "Preventive services" means preservation services, as defined
22 in chapter 74.14C RCW, and other reasonably available services,
23 including housing assistance, capable of preventing the need for out-
24 of-home placement while protecting the child.

25 (15) "Shelter care" means temporary physical care in a facility
26 licensed pursuant to RCW 74.15.030 or in a home not required to be
27 licensed pursuant to RCW 74.15.030.

28 (16) "Sibling" means a child's birth brother, birth sister,
29 adoptive brother, adoptive sister, half-brother, or half-sister, or as
30 defined by the law or custom of the Indian child's tribe for an Indian
31 child as defined in (~~25 U.S.C. Sec. 1903(4)~~) section 4 of this act.

32 (17) "Social study" means a written evaluation of matters relevant
33 to the disposition of the case and shall contain the following
34 information:

35 (a) A statement of the specific harm or harms to the child that
36 intervention is designed to alleviate;

37 (b) A description of the specific services and activities, for both
38 the parents and child, that are needed in order to prevent serious harm

1 to the child; the reasons why such services and activities are likely
2 to be useful; the availability of any proposed services; and the
3 agency's overall plan for ensuring that the services will be delivered.
4 The description shall identify the services chosen and approved by the
5 parent;

6 (c) If removal is recommended, a full description of the reasons
7 why the child cannot be protected adequately in the home, including a
8 description of any previous efforts to work with the parents and the
9 child in the home; the in-home treatment programs that have been
10 considered and rejected; the preventive services, including housing
11 assistance, that have been offered or provided and have failed to
12 prevent the need for out-of-home placement, unless the health, safety,
13 and welfare of the child cannot be protected adequately in the home;
14 and the parents' attitude toward placement of the child;

15 (d) A statement of the likely harms the child will suffer as a
16 result of removal;

17 (e) A description of the steps that will be taken to minimize the
18 harm to the child that may result if separation occurs including an
19 assessment of the child's relationship and emotional bond with any
20 siblings, and the agency's plan to provide ongoing contact between the
21 child and the child's siblings if appropriate; and

22 (f) Behavior that will be expected before determination that
23 supervision of the family or placement is no longer necessary.

24 (18) "Supervising agency" means an agency licensed by the state
25 under RCW 74.15.090, or licensed by a federally recognized Indian tribe
26 located in this state under RCW 74.15.190, that has entered into a
27 performance-based contract with the department to provide case
28 management for the delivery and documentation of child welfare services
29 as defined in RCW 74.13.020.

30 **Sec. 23.** RCW 13.34.040 and 2004 c 64 s 3 are each amended to read
31 as follows:

32 (1) Any person may file with the clerk of the superior court a
33 petition showing that there is within the county, or residing within
34 the county, a dependent child and requesting that the superior court
35 deal with such child as provided in this chapter. There shall be no
36 fee for filing such petitions.

1 (2) In counties having paid probation officers, these officers
2 shall, to the extent possible, first determine if a petition is
3 reasonably justifiable. Each petition shall be verified and contain a
4 statement of facts constituting a dependency, and the names and
5 residence, if known to the petitioner, of the parents, guardian, or
6 custodian of the alleged dependent child.

7 (3) Every petition filed in proceedings under this chapter shall
8 contain a statement alleging whether the child is or may be an Indian
9 child as defined in (~~25 U.S.C. Sec. 1903~~) section 4 of this act. If
10 the child is an Indian child (~~as defined under the Indian child~~
11 ~~welfare act, the provisions of the act~~) chapter 13.--- RCW (the new
12 chapter created in section 34 of this act) shall apply.

13 (4) Every order or decree entered under this chapter shall contain
14 a finding that the federal Indian child welfare act or chapter 13.---
15 RCW (the new chapter created in section 34 of this act) does or does
16 not apply. Where there is a finding that the federal Indian child
17 welfare act or chapter 13.--- RCW (the new chapter created in section
18 34 of this act) does apply, the decree or order must also contain a
19 finding that all notice requirements and evidentiary requirements under
20 the federal Indian child welfare act and chapter 13.--- RCW (the new
21 chapter created in section 34 of this act) have been satisfied.

22 **Sec. 24.** RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009
23 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as
24 follows:

25 (1)(a) When a child is taken into custody, the court shall hold a
26 shelter care hearing within seventy-two hours, excluding Saturdays,
27 Sundays, and holidays. The primary purpose of the shelter care hearing
28 is to determine whether the child can be immediately and safely
29 returned home while the adjudication of the dependency is pending.

30 (b) Any parent, guardian, or legal custodian who for good cause is
31 unable to attend the shelter care hearing may request that a subsequent
32 shelter care hearing be scheduled. The request shall be made to the
33 clerk of the court where the petition is filed prior to the initial
34 shelter care hearing. Upon the request of the parent, the court shall
35 schedule the hearing within seventy-two hours of the request, excluding
36 Saturdays, Sundays, and holidays. The clerk shall notify all other
37 parties of the hearing by any reasonable means.

1 (2)(a) If it is likely that the child will remain in shelter care
2 longer than seventy-two hours, in those areas in which child welfare
3 services are being provided by a supervising agency, the supervising
4 agency shall assume case management responsibilities of the case. The
5 department or supervising agency shall submit a recommendation to the
6 court as to the further need for shelter care in all cases in which the
7 child will remain in shelter care longer than the seventy-two hour
8 period. In all other cases, the recommendation shall be submitted by
9 the juvenile court probation counselor.

10 (b) All parties have the right to present testimony to the court
11 regarding the need or lack of need for shelter care.

12 (c) Hearsay evidence before the court regarding the need or lack of
13 need for shelter care must be supported by sworn testimony, affidavit,
14 or declaration of the person offering such evidence.

15 (3)(a) At the commencement of the hearing, the court shall notify
16 the parent, guardian, or custodian of the following:

17 (i) The parent, guardian, or custodian has the right to a shelter
18 care hearing;

19 (ii) The nature of the shelter care hearing, the rights of the
20 parents, and the proceedings that will follow; and

21 (iii) If the parent, guardian, or custodian is not represented by
22 counsel, the right to be represented. If the parent, guardian, or
23 custodian is indigent, the court shall appoint counsel as provided in
24 RCW 13.34.090; and

25 (b) If a parent, guardian, or legal custodian desires to waive the
26 shelter care hearing, the court shall determine, on the record and with
27 the parties present, whether such waiver is knowing and voluntary. A
28 parent may not waive his or her right to the shelter care hearing
29 unless he or she appears in court and the court determines that the
30 waiver is knowing and voluntary. Regardless of whether the court
31 accepts the parental waiver of the shelter care hearing, the court must
32 provide notice to the parents of their rights required under (a) of
33 this subsection and make the finding required under subsection (4) of
34 this section.

35 (4) At the shelter care hearing the court shall examine the need
36 for shelter care and inquire into the status of the case. The
37 paramount consideration for the court shall be the health, welfare, and

1 safety of the child. At a minimum, the court shall inquire into the
2 following:

3 (a) Whether the notice required under RCW 13.34.062 was given to
4 all known parents, guardians, or legal custodians of the child. The
5 court shall make an express finding as to whether the notice required
6 under RCW 13.34.062 was given to the parent, guardian, or legal
7 custodian. If actual notice was not given to the parent, guardian, or
8 legal custodian and the whereabouts of such person is known or can be
9 ascertained, the court shall order the department to make reasonable
10 efforts to advise the parent, guardian, or legal custodian of the
11 status of the case, including the date and time of any subsequent
12 hearings, and their rights under RCW 13.34.090;

13 (b) Whether the child can be safely returned home while the
14 adjudication of the dependency is pending;

15 (c) What efforts have been made to place the child with a relative.
16 The court shall ask the parents whether the department discussed with
17 them the placement of the child with a relative or other suitable
18 person described in RCW 13.34.130(1)(b) and shall determine what
19 efforts have been made toward such a placement;

20 (d) What services were provided to the family to prevent or
21 eliminate the need for removal of the child from the child's home. If
22 the dependency petition or other information before the court alleges
23 that homelessness or the lack of suitable housing was a significant
24 factor contributing to the removal of the child, the court shall
25 inquire as to whether housing assistance was provided to the family to
26 prevent or eliminate the need for removal of the child or children;

27 (e) Is the placement proposed by the department or supervising
28 agency the least disruptive and most family-like setting that meets the
29 needs of the child;

30 (f) Whether it is in the best interest of the child to remain
31 enrolled in the school, developmental program, or child care the child
32 was in prior to placement and what efforts have been made to maintain
33 the child in the school, program, or child care if it would be in the
34 best interest of the child to remain in the same school, program, or
35 child care;

36 (g) Appointment of a guardian ad litem or attorney;

37 (h) Whether the child is or may be an Indian child as defined in
38 (~~25 U.S.C. Sec. 1903~~) section 4 of this act, whether the provisions

1 of the federal Indian child welfare act or chapter 13.--- RCW (the new
2 chapter created in section 34 of this act) apply, and whether there is
3 compliance with the federal Indian child welfare act and chapter 13.---
4 RCW (the new chapter created in section 34 of this act), including
5 notice to the child's tribe;

6 (i) Whether, as provided in RCW 26.44.063, restraining orders, or
7 orders expelling an allegedly abusive household member from the home of
8 a nonabusive parent, guardian, or legal custodian, will allow the child
9 to safely remain in the home;

10 (j) Whether any orders for examinations, evaluations, or immediate
11 services are needed. The court may not order a parent to undergo
12 examinations, evaluation, or services at the shelter care hearing
13 unless the parent agrees to the examination, evaluation, or service;

14 (k) The terms and conditions for parental, sibling, and family
15 visitation.

16 (5)(a) The court shall release a child alleged to be dependent to
17 the care, custody, and control of the child's parent, guardian, or
18 legal custodian unless the court finds there is reasonable cause to
19 believe that:

20 (i) After consideration of the specific services that have been
21 provided, reasonable efforts have been made to prevent or eliminate the
22 need for removal of the child from the child's home and to make it
23 possible for the child to return home; and

24 (ii)(A) The child has no parent, guardian, or legal custodian to
25 provide supervision and care for such child; or

26 (B) The release of such child would present a serious threat of
27 substantial harm to such child, notwithstanding an order entered
28 pursuant to RCW 26.44.063; or

29 (C) The parent, guardian, or custodian to whom the child could be
30 released has been charged with violating RCW 9A.40.060 or 9A.40.070.

31 (b) If the court does not release the child to his or her parent,
32 guardian, or legal custodian, the court shall order placement with a
33 relative or other suitable person as described in RCW 13.34.130(1)(b),
34 unless there is reasonable cause to believe the health, safety, or
35 welfare of the child would be jeopardized or that the efforts to
36 reunite the parent and child will be hindered. The court must also
37 determine whether placement with the relative or other suitable person

1 is in the child's best interests. The relative or other suitable
2 person must be willing and available to:

3 (i) Care for the child and be able to meet any special needs of the
4 child;

5 (ii) Facilitate the child's visitation with siblings, if such
6 visitation is part of the supervising agency's plan or is ordered by
7 the court; and

8 (iii) Cooperate with the department or supervising agency in
9 providing necessary background checks and home studies.

10 (c) If the child was not initially placed with a relative or other
11 suitable person, and the court does not release the child to his or her
12 parent, guardian, or legal custodian, the supervising agency shall make
13 reasonable efforts to locate a relative or other suitable person
14 pursuant to RCW 13.34.060(1). In determining placement, the court
15 shall weigh the child's length of stay and attachment to the current
16 provider in determining what is in the best interest of the child.

17 (d) If a relative or other suitable person is not available, the
18 court shall order continued shelter care and shall set forth its
19 reasons for the order. If the court orders placement of the child with
20 a person not related to the child and not licensed to provide foster
21 care, the placement is subject to all terms and conditions of this
22 section that apply to relative placements.

23 (e) Any placement with a relative, or other suitable person
24 approved by the court pursuant to this section, shall be contingent
25 upon cooperation with the department's or supervising agency's case
26 plan and compliance with court orders related to the care and
27 supervision of the child including, but not limited to, court orders
28 regarding parent-child contacts, sibling contacts, and any other
29 conditions imposed by the court. Noncompliance with the case plan or
30 court order is grounds for removal of the child from the home of the
31 relative or other suitable person, subject to review by the court.

32 (f) Uncertainty by a parent, guardian, legal custodian, relative,
33 or other suitable person that the alleged abuser has in fact abused the
34 child shall not, alone, be the basis upon which a child is removed from
35 the care of a parent, guardian, or legal custodian under (a) of this
36 subsection, nor shall it be a basis, alone, to preclude placement with
37 a relative or other suitable person under (b) of this subsection.

1 (6)(a) A shelter care order issued pursuant to this section shall
2 include the requirement for a case conference as provided in RCW
3 13.34.067. However, if the parent is not present at the shelter care
4 hearing, or does not agree to the case conference, the court shall not
5 include the requirement for the case conference in the shelter care
6 order.

7 (b) If the court orders a case conference, the shelter care order
8 shall include notice to all parties and establish the date, time, and
9 location of the case conference which shall be no later than thirty
10 days before the fact-finding hearing.

11 (c) The court may order another conference, case staffing, or
12 hearing as an alternative to the case conference required under RCW
13 13.34.067 so long as the conference, case staffing, or hearing ordered
14 by the court meets all requirements under RCW 13.34.067, including the
15 requirement of a written agreement specifying the services to be
16 provided to the parent.

17 (7)(a) A shelter care order issued pursuant to this section may be
18 amended at any time with notice and hearing thereon. The shelter care
19 decision of placement shall be modified only upon a showing of change
20 in circumstances. No child may be placed in shelter care for longer
21 than thirty days without an order, signed by the judge, authorizing
22 continued shelter care.

23 (b)(i) An order releasing the child on any conditions specified in
24 this section may at any time be amended, with notice and hearing
25 thereon, so as to return the child to shelter care for failure of the
26 parties to conform to the conditions originally imposed.

27 (ii) The court shall consider whether nonconformance with any
28 conditions resulted from circumstances beyond the control of the
29 parent, guardian, or legal custodian and give weight to that fact
30 before ordering return of the child to shelter care.

31 (8)(a) If a child is returned home from shelter care a second time
32 in the case, or if the supervisor of the caseworker deems it necessary,
33 the multidisciplinary team may be reconvened.

34 (b) If a child is returned home from shelter care a second time in
35 the case a law enforcement officer must be present and file a report to
36 the department.

1 **Sec. 25.** RCW 13.34.070 and 2004 c 64 s 4 are each amended to read
2 as follows:

3 (1) Upon the filing of the petition, the clerk of the court shall
4 issue a summons, one directed to the child, if the child is twelve or
5 more years of age, and another to the parents, guardian, or custodian,
6 and such other persons as appear to the court to be proper or necessary
7 parties to the proceedings, requiring them to appear personally before
8 the court at the time fixed to hear the petition. If the child is
9 developmentally disabled and not living at home, the notice shall be
10 given to the child's custodian as well as to the child's parent. The
11 developmentally disabled child shall not be required to appear unless
12 requested by the court. When the custodian is summoned, the parent or
13 guardian or both shall also be served with a summons. The fact-finding
14 hearing on the petition shall be held no later than seventy-five days
15 after the filing of the petition, unless exceptional reasons for a
16 continuance are found. The party requesting the continuance shall have
17 the burden of proving by a preponderance of the evidence that
18 exceptional circumstances exist. To ensure that the hearing on the
19 petition occurs within the seventy-five day time limit, the court shall
20 schedule and hear the matter on an expedited basis.

21 (2) A copy of the petition shall be attached to each summons.

22 (3) The summons shall advise the parties of the right to counsel.
23 The summons shall also inform the child's parent, guardian, or legal
24 custodian of his or her right to appointed counsel, if indigent, and of
25 the procedure to use to secure appointed counsel.

26 (4) The summons shall advise the parents that they may be held
27 responsible for the support of the child if the child is placed in out-
28 of-home care.

29 (5) The judge may endorse upon the summons an order directing any
30 parent, guardian, or custodian having the custody or control of the
31 child to bring the child to the hearing.

32 (6) If it appears from affidavit or sworn statement presented to
33 the judge that there is probable cause for the issuance of a warrant of
34 arrest or that the child needs to be taken into custody pursuant to RCW
35 13.34.050, the judge may endorse upon the summons an order that an
36 officer serving the summons shall at once take the child into custody
37 and take him or her to the place of shelter designated by the court.

1 (7) If the person summoned as provided in this section is subject
2 to an order of the court pursuant to subsection (5) or (6) of this
3 section, and if the person fails to abide by the order, he or she may
4 be proceeded against as for contempt of court. The order endorsed upon
5 the summons shall conspicuously display the following legend:

6 NOTICE:

7 VIOLATION OF THIS ORDER
8 IS SUBJECT TO PROCEEDING
9 FOR CONTEMPT OF COURT
10 PURSUANT TO RCW 13.34.070.

11 (8) If a party to be served with a summons can be found within the
12 state, the summons shall be served upon the party personally as soon as
13 possible following the filing of the petition, but in no case later
14 than fifteen court days before the fact-finding hearing, or such time
15 as set by the court. If the party is within the state and cannot be
16 personally served, but the party's address is known or can with
17 reasonable diligence be ascertained, the summons may be served upon the
18 party by mailing a copy by certified mail as soon as possible following
19 the filing of the petition, but in no case later than fifteen court
20 days before the hearing, or such time as set by the court. If a party
21 other than the child is without the state but can be found or the
22 address is known, or can with reasonable diligence be ascertained,
23 service of the summons may be made either by delivering a copy to the
24 party personally or by mailing a copy thereof to the party by certified
25 mail at least ten court days before the fact-finding hearing, or such
26 time as set by the court.

27 (9) Service of summons may be made under the direction of the court
28 by any person eighteen years of age or older who is not a party to the
29 proceedings or by any law enforcement officer, probation counselor, or
30 department employee.

31 (10)((+a)) Whenever the court or the petitioning party in a
32 proceeding under this chapter knows or has reason to know that an
33 Indian child as defined in section 4 of this act is involved, the
34 petitioning party shall promptly provide notice to the child's parent
35 or Indian custodian and to the agent designated by the child's Indian
36 tribe to receive such notices. Notice shall ~~((be by certified mail~~
37 ~~with return receipt requested. If the identity or location of the~~
38 ~~parent or Indian custodian and the tribe cannot be determined, notice~~

1 ~~shall be given to the secretary of the interior in the manner described~~
2 ~~in 25 C.F.R. 23.11. If the child may be a member of more than one~~
3 ~~tribe, the petitioning party shall send notice to all tribes the~~
4 ~~petitioner has reason to know may be affiliated with the child.~~

5 ~~(b) The notice shall: (i) Contain a statement notifying the parent~~
6 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~
7 ~~the tribe of the tribe's right to intervene and/or request that the~~
8 ~~case be transferred to tribal court)) comply with section 7 of this~~
9 ~~act.~~

10 **Sec. 26.** RCW 13.34.105 and 2010 c 180 s 3 are each amended to read
11 as follows:

12 (1) Unless otherwise directed by the court, the duties of the
13 guardian ad litem for a child subject to a proceeding under this
14 chapter, including an attorney specifically appointed by the court to
15 serve as a guardian ad litem, include but are not limited to the
16 following:

17 (a) To investigate, collect relevant information about the child's
18 situation, and report to the court factual information regarding the
19 best interests of the child;

20 (b) To meet with, interview, or observe the child, depending on the
21 child's age and developmental status, and report to the court any views
22 or positions expressed by the child on issues pending before the court;

23 (c) To monitor all court orders for compliance and to bring to the
24 court's attention any change in circumstances that may require a
25 modification of the court's order;

26 (d) To report to the court information on the legal status of a
27 child's membership in any Indian tribe or band;

28 (e) Court-appointed special advocates and guardians ad litem may
29 make recommendations based upon an independent investigation regarding
30 the best interests of the child, which the court may consider and weigh
31 in conjunction with the recommendations of all of the parties;

32 (f) To represent and be an advocate for the best interests of the
33 child; (~~and~~))

34 (g) To inform the child, if the child is twelve years old or older,
35 of his or her right to request counsel and to ask the child whether he
36 or she wishes to have counsel, pursuant to RCW 13.34.100(6). The
37 guardian ad litem shall report to the court that the child was notified

1 of this right and indicate the child's position regarding appointment
2 of counsel. The guardian ad litem shall report to the court his or her
3 independent recommendation as to whether appointment of counsel is in
4 the best interest of the child; and

5 (h) In the case of an Indian child as defined in section 4 of this
6 act, know, understand, and advocate the best interests of the Indian
7 child.

8 (2) A guardian ad litem shall be deemed an officer of the court for
9 the purpose of immunity from civil liability.

10 (3) Except for information or records specified in RCW
11 13.50.100(7), the guardian ad litem shall have access to all
12 information available to the state or agency on the case. Upon
13 presentation of the order of appointment by the guardian ad litem, any
14 agency, hospital, school organization, division or department of the
15 state, doctor, nurse, or other health care provider, psychologist,
16 psychiatrist, police department, or mental health clinic shall permit
17 the guardian ad litem to inspect and copy any records relating to the
18 child or children involved in the case, without the consent of the
19 parent or guardian of the child, or of the child if the child is under
20 the age of thirteen years, unless such access is otherwise specifically
21 prohibited by law.

22 (4) A guardian ad litem may release confidential information,
23 records, and reports to the office of the family and children's
24 ombudsman for the purposes of carrying out its duties under chapter
25 43.06A RCW.

26 (5) The guardian ad litem shall release case information in
27 accordance with the provisions of RCW 13.50.100.

28 **Sec. 27.** RCW 13.34.130 and 2010 c 288 s 1 are each amended to read
29 as follows:

30 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
31 been proven by a preponderance of the evidence that the child is
32 dependent within the meaning of RCW 13.34.030 after consideration of
33 the social study prepared pursuant to RCW 13.34.110 and after a
34 disposition hearing has been held pursuant to RCW 13.34.110, the court
35 shall enter an order of disposition pursuant to this section.

36 (1) The court shall order one of the following dispositions of the
37 case:

1 (a) Order a disposition other than removal of the child from his or
2 her home, which shall provide a program designed to alleviate the
3 immediate danger to the child, to mitigate or cure any damage the child
4 has already suffered, and to aid the parents so that the child will not
5 be endangered in the future. In determining the disposition, the court
6 should choose services to assist the parents in maintaining the child
7 in the home, including housing assistance, if appropriate, that least
8 interfere with family autonomy and are adequate to protect the child.

9 (b)(i) Order the child to be removed from his or her home and into
10 the custody, control, and care of a relative or other suitable person,
11 the department, or a supervising agency for supervision of the child's
12 placement. The court may not order an Indian child, as defined in (~~25~~
13 ~~U.S.C. Sec. 1903~~) section 4 of this act, to be removed from his or her
14 home unless the court finds, by clear and convincing evidence including
15 testimony of qualified expert witnesses, that the continued custody of
16 the child by the parent or Indian custodian is likely to result in
17 serious emotional or physical damage to the child.

18 (ii) The department or supervising agency has the authority to
19 place the child, subject to review and approval by the court (A) with
20 a relative as defined in RCW 74.15.020(2)(a), (B) in the home of
21 another suitable person if the child or family has a preexisting
22 relationship with that person, and the person has completed all
23 required criminal history background checks and otherwise appears to
24 the department or supervising agency to be suitable and competent to
25 provide care for the child, or (C) in a foster family home or group
26 care facility licensed pursuant to chapter 74.15 RCW. Absent good
27 cause, the department or supervising agency shall follow the wishes of
28 the natural parent regarding the placement of the child in accordance
29 with RCW 13.34.260. The department or supervising agency may only
30 place a child with a person not related to the child as defined in RCW
31 74.15.020(2)(a) when the court finds that such placement is in the best
32 interest of the child. Unless there is reasonable cause to believe
33 that the health, safety, or welfare of the child would be jeopardized
34 or that efforts to reunite the parent and child will be hindered, the
35 child shall be placed with a person who is willing, appropriate, and
36 available to care for the child, and who is: (I) Related to the child
37 as defined in RCW 74.15.020(2)(a) with whom the child has a

1 relationship and is comfortable; or (II) a suitable person as described
2 in this subsection (1)(b). The court shall consider the child's
3 existing relationships and attachments when determining placement.

4 (2) When placing an Indian child in out-of-home care, the
5 department or supervising agency shall follow the placement preference
6 characteristics in (~~RCW 13.34.250 and in 25 U.S.C. Sec. 1915~~) section
7 18 of this act.

8 (3) Placement of the child with a relative or other suitable person
9 as described in subsection (1)(b) of this section shall be given
10 preference by the court. An order for out-of-home placement may be
11 made only if the court finds that reasonable efforts have been made to
12 prevent or eliminate the need for removal of the child from the child's
13 home and to make it possible for the child to return home, specifying
14 the services, including housing assistance, that have been provided to
15 the child and the child's parent, guardian, or legal custodian, and
16 that preventive services have been offered or provided and have failed
17 to prevent the need for out-of-home placement, unless the health,
18 safety, and welfare of the child cannot be protected adequately in the
19 home, and that:

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

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

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

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

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

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

1 (ii) There is no reasonable cause to believe that the health,
2 safety, or welfare of any child subject to the order of placement,
3 contact, or visitation would be jeopardized or that efforts to reunite
4 the parent and child would be hindered by such placement, contact, or
5 visitation. In no event shall parental visitation time be reduced in
6 order to provide sibling visitation.

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

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

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

21 (7) If there is insufficient information at the time of the
22 disposition hearing upon which to base a determination regarding the
23 suitability of a proposed placement with a relative or other suitable
24 person, the child shall remain in foster care and the court shall
25 direct the department or supervising agency to conduct necessary
26 background investigations as provided in chapter 74.15 RCW and report
27 the results of such investigation to the court within thirty days.
28 However, if such relative or other person appears otherwise suitable
29 and competent to provide care and treatment, the criminal history
30 background check need not be completed before placement, but as soon as
31 possible after placement. Any placements with relatives or other
32 suitable persons, pursuant to this section, shall be contingent upon
33 cooperation by the relative or other suitable person with the agency
34 case plan and compliance with court orders related to the care and
35 supervision of the child including, but not limited to, court orders
36 regarding parent-child contacts, sibling contacts, and any other
37 conditions imposed by the court. Noncompliance with the case plan or

1 court order shall be grounds for removal of the child from the
2 relative's or other suitable person's home, subject to review by the
3 court.

4 **Sec. 28.** RCW 13.34.132 and 2000 c 122 s 16 are each amended to
5 read as follows:

6 A court may order that a petition seeking termination of the parent
7 and child relationship be filed if the following requirements are met:

8 (1) The court has removed the child from his or her home pursuant
9 to RCW 13.34.130;

10 (2) Termination is recommended by the supervising agency;

11 (3) Termination is in the best interests of the child; and

12 (4) Because of the existence of aggravated circumstances,
13 reasonable efforts to unify the family are not required.
14 Notwithstanding the existence of aggravated circumstances, reasonable
15 efforts may be required if the court or department determines it is in
16 the best interests of the child. In determining whether aggravated
17 circumstances exist by clear, cogent, and convincing evidence, the
18 court shall consider one or more of the following:

19 (a) Conviction of the parent of rape of the child in the first,
20 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
21 9A.44.079;

22 (b) Conviction of the parent of criminal mistreatment of the child
23 in the first or second degree as defined in RCW 9A.42.020 and
24 9A.42.030;

25 (c) Conviction of the parent of one of the following assault
26 crimes, when the child is the victim: Assault in the first or second
27 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child
28 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

29 (d) Conviction of the parent of murder, manslaughter, or homicide
30 by abuse of the child's other parent, sibling, or another child;

31 (e) Conviction of the parent of attempting, soliciting, or
32 conspiring to commit a crime listed in (a), (b), (c), or (d) of this
33 subsection;

34 (f) A finding by a court that a parent is a sexually violent
35 predator as defined in RCW 71.09.020;

36 (g) Failure of the parent to complete available treatment ordered
37 under this chapter or the equivalent laws of another state, where such

1 failure has resulted in a prior termination of parental rights to
2 another child and the parent has failed to effect significant change in
3 the interim. In the case of a parent of an Indian child, as defined in
4 (~~the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903)~~)
5 section 4 of this act, the court shall also consider tribal efforts to
6 assist the parent in completing treatment and make it possible for the
7 child to return home;

8 (h) An infant under three years of age has been abandoned;

9 (i) Conviction of the parent, when a child has been born of the
10 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest
11 under RCW 9A.64.020.

12 **Sec. 29.** RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are
13 each reenacted and amended to read as follows:

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

22 (2) The agency supervising the dependency shall submit a written
23 permanency plan to all parties and the court not less than fourteen
24 days prior to the scheduled hearing. Responsive reports of parties not
25 in agreement with the department's or supervising agency's proposed
26 permanency plan must be provided to the department or supervising
27 agency, all other parties, and the court at least seven days prior to
28 the hearing.

29 The permanency plan shall include:

30 (a) A permanency plan of care that shall identify one of the
31 following outcomes as a primary goal and may identify additional
32 outcomes as alternative goals: Return of the child to the home of the
33 child's parent, guardian, or legal custodian; adoption, including a
34 tribal customary adoption as defined in section 4 of this act;
35 guardianship; permanent legal custody; long-term relative or foster
36 care, until the child is age eighteen, with a written agreement between
37 the parties and the care provider; successful completion of a

1 responsible living skills program; or independent living, if
2 appropriate and if the child is age sixteen or older. The department
3 or supervising agency shall not discharge a child to an independent
4 living situation before the child is eighteen years of age unless the
5 child becomes emancipated pursuant to chapter 13.64 RCW;

6 (b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(+5)~~)
7 (6), that a termination petition be filed, a specific plan as to where
8 the child will be placed, what steps will be taken to return the child
9 home, what steps the supervising agency or the department will take to
10 promote existing appropriate sibling relationships and/or facilitate
11 placement together or contact in accordance with the best interests of
12 each child, and what actions the department or supervising agency will
13 take to maintain parent-child ties. All aspects of the plan shall
14 include the goal of achieving permanence for the child.

15 (i) The department's or supervising agency's plan shall specify
16 what services the parents will be offered to enable them to resume
17 custody, what requirements the parents must meet to resume custody, and
18 a time limit for each service plan and parental requirement.

19 (ii) Visitation is the right of the family, including the child and
20 the parent, in cases in which visitation is in the best interest of the
21 child. Early, consistent, and frequent visitation is crucial for
22 maintaining parent-child relationships and making it possible for
23 parents and children to safely reunify. The supervising agency or
24 department shall encourage the maximum parent and child and sibling
25 contact possible, when it is in the best interest of the child,
26 including regular visitation and participation by the parents in the
27 care of the child while the child is in placement. Visitation shall
28 not be limited as a sanction for a parent's failure to comply with
29 court orders or services where the health, safety, or welfare of the
30 child is not at risk as a result of the visitation. Visitation may be
31 limited or denied only if the court determines that such limitation or
32 denial is necessary to protect the child's health, safety, or welfare.
33 The court and the department or supervising agency should rely upon
34 community resources, relatives, foster parents, and other appropriate
35 persons to provide transportation and supervision for visitation to the
36 extent that such resources are available, and appropriate, and the
37 child's safety would not be compromised.

1 (iii) A child shall be placed as close to the child's home as
2 possible, preferably in the child's own neighborhood, unless the court
3 finds that placement at a greater distance is necessary to promote the
4 child's or parents' well-being.

5 (iv) The plan shall state whether both in-state and, where
6 appropriate, out-of-state placement options have been considered by the
7 department or supervising agency.

8 (v) Unless it is not in the best interests of the child, whenever
9 practical, the plan should ensure the child remains enrolled in the
10 school the child was attending at the time the child entered foster
11 care.

12 (vi) The supervising agency or department shall provide all
13 reasonable services that are available within the department or
14 supervising agency, or within the community, or those services which
15 the department has existing contracts to purchase. It shall report to
16 the court if it is unable to provide such services; and

17 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+5)~~) (6),
18 that a termination petition be filed, a specific plan as to where the
19 child will be placed, what steps will be taken to achieve permanency
20 for the child, services to be offered or provided to the child, and, if
21 visitation would be in the best interests of the child, a
22 recommendation to the court regarding visitation between parent and
23 child pending a fact-finding hearing on the termination petition. The
24 department or supervising agency shall not be required to develop a
25 plan of services for the parents or provide services to the parents if
26 the court orders a termination petition be filed. However, reasonable
27 efforts to ensure visitation and contact between siblings shall be made
28 unless there is reasonable cause to believe the best interests of the
29 child or siblings would be jeopardized.

30 (3) Permanency planning goals should be achieved at the earliest
31 possible date. If the child has been in out-of-home care for fifteen
32 of the most recent twenty-two months, the court shall require the
33 department or supervising agency to file a petition seeking termination
34 of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In
35 cases where parental rights have been terminated, the child is legally
36 free for adoption, and adoption has been identified as the primary
37 permanency planning goal, it shall be a goal to complete the adoption
38 within six months following entry of the termination order.

1 (4) If the court determines that the continuation of reasonable
2 efforts to prevent or eliminate the need to remove the child from his
3 or her home or to safely return the child home should not be part of
4 the permanency plan of care for the child, reasonable efforts shall be
5 made to place the child in a timely manner and to complete whatever
6 steps are necessary to finalize the permanent placement of the child.

7 (5) The identified outcomes and goals of the permanency plan may
8 change over time based upon the circumstances of the particular case.

9 (6) The court shall consider the child's relationships with the
10 child's siblings in accordance with RCW 13.34.130(~~((3))~~) (4). Whenever
11 the permanency plan for a child is adoption, the court shall encourage
12 the prospective adoptive parents, birth parents, foster parents,
13 kinship caregivers, and the department or other supervising agency to
14 seriously consider the long-term benefits to the child adoptee and his
15 or her siblings of providing for and facilitating continuing
16 postadoption contact between the siblings. To the extent that it is
17 feasible, and when it is in the best interests of the child adoptee and
18 his or her siblings, contact between the siblings should be frequent
19 and of a similar nature as that which existed prior to the adoption.
20 If the child adoptee or his or her siblings are represented by an
21 attorney or guardian ad litem in a proceeding under this chapter or in
22 any other child custody proceeding, the court shall inquire of each
23 attorney and guardian ad litem regarding the potential benefits of
24 continuing contact between the siblings and the potential detriments of
25 severing contact. This section does not require the department of
26 social and health services or other supervising agency to agree to any
27 specific provisions in an open adoption agreement and does not create
28 a new obligation for the department to provide supervision or
29 transportation for visits between siblings separated by adoption from
30 foster care.

31 (7) For purposes related to permanency planning:

32 (a) "Guardianship" means a dependency guardianship or a legal
33 guardianship pursuant to chapter 11.88 RCW or equivalent laws of
34 another state or a federally recognized Indian tribe.

35 (b) "Permanent custody order" means a custody order entered
36 pursuant to chapter 26.10 RCW.

37 (c) "Permanent legal custody" means legal custody pursuant to

1 chapter 26.10 RCW or equivalent laws of another state or a federally
2 recognized Indian tribe.

3 **Sec. 30.** RCW 13.34.190 and 2010 c 288 s 2 are each amended to read
4 as follows:

5 (1) Except as provided in subsection (2) of this section, after
6 hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an
7 order terminating all parental rights to a child only if the court
8 finds that:

9 (a)(i) The allegations contained in the petition as provided in RCW
10 13.34.180(1) are established by clear, cogent, and convincing evidence;
11 or

12 (ii) The provisions of RCW 13.34.180(1) (a), (b), (e), and (f) are
13 established beyond a reasonable doubt and if so, then RCW 13.34.180(1)
14 (c) and (d) may be waived. When an infant has been abandoned, as
15 defined in RCW 13.34.030, and the abandonment has been proved beyond a
16 reasonable doubt, then RCW 13.34.180(1) (c) and (d) may be waived; or

17 (iii) The allegation under RCW 13.34.180(2) is established beyond
18 a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and
19 (f) are established beyond a reasonable doubt, the court shall consider
20 whether one or more of the aggravated circumstances listed in RCW
21 13.34.132 exist; or

22 (iv) The allegation under RCW 13.34.180(3) is established beyond a
23 reasonable doubt; and

24 (b) Such an order is in the best interests of the child.

25 (2) The provisions of chapter 13.--- RCW (the new chapter created
26 in section 34 of this act) must be followed in any proceeding under
27 this chapter for termination of the parent-child relationship of an
28 Indian child as defined in ((25 U.S.C. Sec. 1903, no termination of
29 parental rights may be ordered in such proceeding in the absence of a
30 determination, supported by evidence beyond a reasonable doubt,
31 including testimony of qualified expert witnesses, that the continued
32 custody of the child by the parent or Indian custodian is likely to
33 result in serious emotional or physical damage to the child)) section
34 4 of this act.

35 **Sec. 31.** RCW 26.10.034 and 2004 c 64 s 1 are each amended to read
36 as follows:

1 (1)~~((a))~~ Every petition filed in proceedings under this chapter
2 shall contain a statement alleging whether the child is or may be an
3 Indian child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this
4 act. If the child is an Indian child ~~((as defined under the Indian~~
5 ~~child welfare act, the provisions of the act))~~, chapter 13.--- RCW ~~(the~~
6 new chapter created in section 34 of this act) shall apply.

7 ~~((b) Whenever the court or the petitioning party in a proceeding~~
8 ~~under this chapter knows or has reason to know that an Indian child is~~
9 ~~involved, the petitioning party shall promptly provide notice to the~~
10 ~~child's parent or Indian custodian and to the agent designated by the~~
11 ~~child's Indian tribe to receive such notices. Notice shall be by~~
12 ~~certified mail with return receipt requested. If the identity or~~
13 ~~location of the parent or Indian custodian and the tribe cannot be~~
14 ~~determined, notice shall be given to the secretary of the interior in~~
15 ~~the manner described in 25 C.F.R. 23.11. If the child may be a member~~
16 ~~of more than one tribe, the petitioning party shall send notice to all~~
17 ~~tribes the petitioner has reason to know may be affiliated with the~~
18 ~~child.~~

19 ~~(c) The notice shall: (i) Contain a statement notifying the parent~~
20 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~
21 ~~the tribe of the tribe's right to intervene and/or request that the~~
22 ~~case be transferred to tribal court.))~~

23 (2) Every order or decree entered in any proceeding under this
24 chapter shall contain a finding that the federal Indian child welfare
25 act or chapter 13.--- RCW ~~(the new chapter created in section 34 of~~
26 this act) does or does not apply. Where there is a finding that the
27 federal Indian child welfare act or chapter 13.--- RCW ~~(the new chapter~~
28 created in section 34 of this act) does apply, the decree or order must
29 also contain a finding that all notice ~~((requirements))~~ and evidentiary
30 requirements under the federal Indian child welfare act and chapter
31 13.--- RCW ~~(the new chapter created in section 34 of this act)~~ have
32 been satisfied.

33 **Sec. 32.** RCW 26.33.040 and 2004 c 64 s 2 are each amended to read
34 as follows:

35 (1)(a) Every petition filed in proceedings under this chapter shall
36 contain a statement alleging whether the child is or may be an Indian
37 child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If

1 the child is an Indian child (~~as defined under the Indian child~~
2 ~~welfare act, the provisions of the act~~), chapter 13.--- RCW (the new
3 chapter created in section 34 of this act) shall apply.

4 (b) Every order or decree entered in any proceeding under this
5 chapter shall contain a finding that the federal Indian child welfare
6 act or chapter 13.--- RCW (the new chapter created in section 34 of
7 this act) does or does not apply. Where there is a finding that the
8 federal Indian child welfare act or chapter 13.--- RCW (the new chapter
9 created in section 34 of this act) does apply, the decree or order must
10 also contain a finding that all notice requirements and evidentiary
11 requirements under the federal Indian child welfare act and chapter
12 13.--- RCW (the new chapter created in section 34 of this act) have
13 been satisfied.

14 (c) In proceedings under this chapter, the adoption facilitator
15 shall file a sworn statement documenting efforts to determine whether
16 an Indian child (~~as defined under the Indian child welfare act, 25~~
17 ~~U.S.C. Sec. 1903,~~) is involved.

18 (d) Whenever the court or the petitioning party knows or has reason
19 to know that an Indian child is involved in any termination,
20 relinquishment, or placement proceeding under this chapter, the
21 petitioning party shall promptly provide notice to the child's parent
22 or Indian custodian and to the agent designated by the child's Indian
23 tribe to receive such notices. Notice shall be by certified mail with
24 return receipt requested. If the identity or location of the parent or
25 Indian custodian and the tribe cannot be determined, notice shall be
26 given to the secretary of the interior in the manner described in 25
27 C.F.R. 23.11. If the child may be a member of more than one tribe, the
28 petitioning party shall send notice to all tribes the petitioner has
29 reason to know may be affiliated with the child.

30 (e) The notice shall: (i) Contain a statement notifying the parent
31 or custodian and the tribe of the pending proceeding; and (ii) notify
32 the tribe of the tribe's right to intervene and/or request that the
33 case be transferred to tribal court.

34 (f) No termination, relinquishment, or placement proceeding shall
35 be held until at least ten days after receipt of notice by the tribe.
36 If the tribe requests, the court shall grant the tribe up to twenty
37 additional days to prepare for such proceeding.

1 (2) Every petition filed in proceedings under this chapter shall
2 contain a statement alleging whether the Soldiers and Sailors Civil
3 Relief Act of 1940, 50 U.S.C. Sec. 501 et seq. applies to the
4 proceeding. Every order or decree entered in any proceeding under this
5 chapter shall contain a finding that the Soldiers and Sailors Civil
6 Relief Act of 1940 does or does not apply.

7 **Sec. 33.** RCW 74.13.350 and 2004 c 183 s 4 are each amended to read
8 as follows:

9 It is the intent of the legislature that parents are responsible
10 for the care and support of children with developmental disabilities.
11 The legislature recognizes that, because of the intense support
12 required to care for a child with developmental disabilities, the help
13 of an out-of-home placement may be needed. It is the intent of the
14 legislature that, when the sole reason for the out-of-home placement is
15 the child's developmental disability, such services be offered by the
16 department to these children and their families through a voluntary
17 placement agreement. In these cases, the parents shall retain legal
18 custody of the child.

19 As used in this section, "voluntary placement agreement" means a
20 written agreement between the department and a child's parent or legal
21 guardian authorizing the department to place the child in a licensed
22 facility. Under the terms of this agreement, the parent or legal
23 guardian shall retain legal custody and the department shall be
24 responsible for the child's placement and care. The agreement shall at
25 a minimum specify the legal status of the child and the rights and
26 obligations of the parent or legal guardian, the child, and the
27 department while the child is in placement. The agreement must be
28 signed by the child's parent or legal guardian and the department to be
29 in effect, except that an agreement regarding an Indian child shall not
30 be valid unless executed (~~in writing before the court and filed with
31 the court as provided in RCW 13.34.245~~) in accordance with section 15
32 of this act. Any party to a voluntary placement agreement may
33 terminate the agreement at any time. Upon termination of the
34 agreement, the child shall be returned to the care of the child's
35 parent or legal guardian unless the child has been taken into custody
36 pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant
37 to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

1 As used in this section, "out-of-home placement" and "out-of-home
2 care" mean the placement of a child in a foster family home or group
3 care facility licensed under chapter 74.15 RCW.

4 Whenever the department places a child in out-of-home care under a
5 voluntary placement pursuant to this section, the department shall have
6 the responsibility for the child's placement and care. The department
7 shall develop a permanency plan of care for the child no later than
8 sixty days from the date that the department assumes responsibility for
9 the child's placement and care. Within the first one hundred eighty
10 days of the placement, the department shall obtain a judicial
11 determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the
12 placement is in the best interests of the child. If the child's out-
13 of-home placement ends before one hundred eighty days have elapsed, no
14 judicial determination under RCW 13.04.030(1)(b) is required. The
15 permanency planning hearings shall review whether the child's best
16 interests are served by continued out-of-home placement and determine
17 the future legal status of the child.

18 The department shall provide for periodic administrative reviews as
19 required by federal law. A review may be called at any time by either
20 the department, the parent, or the legal guardian.

21 Nothing in this section shall prevent the department from filing a
22 dependency petition if there is reason to believe that the child is a
23 dependent child as defined in RCW 13.34.030.

24 The department shall adopt rules providing for the implementation
25 of chapter 386, Laws of 1997 and the transfer of responsibility for
26 out-of-home placements from the dependency process under chapter 13.34
27 RCW to the process under this chapter.

28 It is the intent of the legislature that the department undertake
29 voluntary out-of-home placement in cases where the child's
30 developmental disability is such that the parent, guardian, or legal
31 custodian is unable to provide the necessary care for the child, and
32 the parent, guardian, or legal custodian has determined that the child
33 would benefit from placement outside of the home. If the department
34 does not accept a voluntary placement agreement signed by the parent,
35 a petition may be filed and an action pursued under chapter 13.34 RCW.
36 The department shall inform the parent, guardian, or legal custodian in
37 writing of their right to civil action under chapter 13.34 RCW.

1 Nothing in this section prohibits the department from seeking
2 support from parents of a child, including a child with a developmental
3 disability if the child has been placed into care as a result of an
4 action under chapter 13.34 RCW, when state or federal funds are
5 expended for the care and maintenance of that child or when the
6 department receives an application for services from the physical
7 custodian of the child, unless the department finds that there is good
8 cause not to pursue collection of child support against the parent or
9 parents.

10 NEW SECTION. **Sec. 34.** Sections 1 through 20 of this act
11 constitute a new chapter in Title 13 RCW.

12 NEW SECTION. **Sec. 35.** RCW 13.34.250 (Preference characteristics
13 when placing Indian child in foster care home) and 1979 c 155 s 53 are
14 each repealed."

SSB 5656 - S AMD

By Senators Hargrove, Stevens

ADOPTED 03/05/2011

15 On page 1, line 1 of the title, after "welfare act;" strike the
16 remainder of the title and insert "amending RCW 13.32A.152, 13.34.040,
17 13.34.070, 13.34.105, 13.34.130, 13.34.132, 13.34.190, 26.10.034,
18 26.33.040, and 74.13.350; reenacting and amending RCW 13.34.030,
19 13.34.065, and 13.34.136; adding a new chapter to Title 13 RCW; and
20 repealing RCW 13.34.250."

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