

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5656

Chapter 309, Laws of 2011

62nd Legislature
2011 Regular Session

INDIAN CHILD WELFARE ACT

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 21, 2011
YEAS 44 NAYS 3

BRAD OWEN

President of the Senate

Passed by the House April 18, 2011
YEAS 82 NAYS 16

FRANK CHOPP

Speaker of the House of Representatives

Approved May 10, 2011, 4:23 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5656** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 11, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5656

AS AMENDED BY THE HOUSE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Regala, White, McAuliffe, and Kline)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to a state Indian child welfare act; amending RCW
2 13.32A.152, 13.34.040, 13.34.070, 13.34.105, 13.34.130, 13.34.132,
3 13.34.190, 26.10.034, 26.33.040, 26.33.240, and 74.13.350; reenacting
4 and amending RCW 13.34.030, 13.34.065, and 13.34.136; adding a new
5 chapter to Title 13 RCW; and repealing RCW 13.34.250.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

9 NEW SECTION. **Sec. 2.** APPLICATION. This chapter shall apply in
10 all child custody proceedings as that term is defined in this chapter.
11 Whenever there is a conflict between chapter 13.32A, 13.34, 13.36,
12 26.10, or 26.33 RCW, the provisions of this chapter shall apply.

13 NEW SECTION. **Sec. 3.** INTENT. The legislature finds that the
14 state is committed to protecting the essential tribal relations and
15 best interests of Indian children by promoting practices designed to
16 prevent out-of-home placement of Indian children that is inconsistent
17 with the rights of the parents, the health, safety, or welfare of the

1 children, or the interests of their tribe. Whenever out-of-home
2 placement of an Indian child is necessary in a proceeding subject to
3 the terms of the federal Indian child welfare act and in this chapter,
4 the best interests of the Indian child may be served by placing the
5 Indian child in accordance with the placement priorities expressed in
6 this chapter. The legislature further finds that where placement away
7 from the parent or Indian custodian is necessary for the child's
8 safety, the state is committed to a placement that reflects and honors
9 the unique values of the child's tribal culture and is best able to
10 assist the Indian child in establishing, developing, and maintaining a
11 political, cultural, social, and spiritual relationship with the
12 child's tribe and tribal community.

13 It is the intent of the legislature that this chapter is a step in
14 clarifying existing laws and codifying existing policies and practices.
15 This chapter shall not be construed to reject or eliminate current
16 policies and practices that are not included in its provisions.

17 The legislature further intends that nothing in this chapter is
18 intended to interfere with policies and procedures that are derived
19 from agreements entered into between the department and a tribe or
20 tribes, as authorized by section 109 of the federal Indian child
21 welfare act. The legislature finds that this chapter specifies the
22 minimum requirements that must be applied in a child custody proceeding
23 and does not prevent the department from providing a higher standard of
24 protection to the right of any Indian child, parent, Indian custodian,
25 or Indian child's tribe.

26 It is also the legislature's intent that the department's policy
27 manual on Indian child welfare, the tribal-state agreement, and
28 relevant local agreements between individual federally recognized
29 tribes and the department should serve as persuasive guides in the
30 interpretation and implementation of the federal Indian child welfare
31 act, this chapter, and other relevant state laws.

32 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this
33 section apply throughout this chapter unless the context clearly
34 requires otherwise.

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

36 (a) In any foster care placement or termination of parental rights
37 proceeding of an Indian child under chapter 13.34 RCW and this chapter

1 where the department or a supervising agency as defined in RCW
2 74.13.020 has a statutory or contractual duty to provide services to,
3 or procure services for, the parent or parents or Indian custodian, or
4 is providing services to a parent or parents or Indian custodian
5 pursuant to a disposition order entered pursuant to RCW 13.34.130, the
6 department or supervising agency shall make timely and diligent efforts
7 to provide or procure such services, including engaging the parent or
8 parents or Indian custodian in reasonably available and culturally
9 appropriate preventive, remedial, or rehabilitative services. This
10 shall include those services offered by tribes and Indian organizations
11 whenever possible. At a minimum "active efforts" shall include:

12 (i) In any dependency proceeding under chapter 13.34 RCW seeking
13 out-of-home placement of an Indian child in which the department or
14 supervising agency provided voluntary services to the parent, parents,
15 or Indian custodian prior to filing the dependency petition, a showing
16 to the court that the department or supervising agency social workers
17 actively worked with the parent, parents, or Indian custodian to engage
18 them in remedial services and rehabilitation programs to prevent the
19 breakup of the family beyond simply providing referrals to such
20 services.

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

29 (iii) In any termination of parental rights proceeding regarding an
30 Indian child under chapter 13.34 RCW in which the department or
31 supervising agency provided services to the parent, parents, or Indian
32 custodian, a showing to the court that the department or supervising
33 agency social workers actively worked with the parent, parents, or
34 Indian custodian to engage them in remedial services and rehabilitation
35 programs ordered by the court or identified in the department or
36 supervising agency's individual service and safety plan beyond simply
37 providing referrals to such services.

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

8 (2) "Best interests of the Indian child" means the use of practices
9 in accordance with the federal Indian child welfare act, this chapter,
10 and other applicable law, that are designed to accomplish the
11 following: (a) Protect the safety, well-being, development, and
12 stability of the Indian child; (b) prevent the unnecessary out-of-home
13 placement of the Indian child; (c) acknowledge the right of Indian
14 tribes to maintain their existence and integrity which will promote the
15 stability and security of their children and families; (d) recognize
16 the value to the Indian child of establishing, developing, or
17 maintaining a political, cultural, social, and spiritual relationship
18 with the Indian child's tribe and tribal community; and (e) in a
19 proceeding under this chapter where out-of-home placement is necessary,
20 to prioritize placement of the Indian child in accordance with the
21 placement preferences of this chapter.

22 (3) "Child custody proceeding" includes:

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

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

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

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

37 These terms shall not include a placement based upon an act which,

1 if committed by an adult, would be deemed a crime or upon an award, in
2 a dissolution proceeding of custody to one of the parents.

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

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

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

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

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

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

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

35 (11) "Indian tribe" or "tribe" means any Indian tribe, band,
36 nation, or other organized group or community of Indians recognized as
37 eligible for the services provided to Indians by the secretary of the

1 interior because of their status as Indians, including any Alaska
2 native village as defined in 43 U.S.C. Sec. 1602(c).

3 (12) "Member" and "membership" means a determination by an Indian
4 tribe that a person is a member or eligible for membership in that
5 Indian tribe.

6 (13) "Parent" means a biological parent or parents of an Indian
7 child or a person who has lawfully adopted an Indian child, including
8 adoptions made under tribal law or custom. "Parent" does not include
9 an unwed father whose paternity has not been acknowledged or
10 established under chapter 26.26 RCW or the applicable laws of other
11 states.

12 (14) "Secretary of the interior" means the secretary of the United
13 States department of the interior.

14 (15) "Tribal court" means a court or body vested by an Indian tribe
15 with jurisdiction over child custody proceedings, including but not
16 limited to a federal court of Indian offenses, a court established and
17 operated under the code or custom of an Indian tribe, or an
18 administrative body of an Indian tribe vested with authority over child
19 custody proceedings.

20 (16) "Tribal customary adoption" means adoption or other process
21 through the tribal custom, traditions, or laws of an Indian child's
22 tribe by which the Indian child is permanently placed with a nonparent
23 and through which the nonparent is vested with the rights, privileges,
24 and obligations of a legal parent. Termination of the parent-child
25 relationship between the Indian child and the biological parent is not
26 required to effect or recognize a tribal customary adoption.

27 NEW SECTION. **Sec. 5.** DETERMINATION OF INDIAN STATUS. Any party
28 seeking the foster care placement of, termination of parental rights
29 over, or the adoption of a child must make a good faith effort to
30 determine whether the child is an Indian child. This shall be done by
31 consultation with the child's parent or parents, any person who has
32 custody of the child or with whom the child resides, and any other
33 person that reasonably can be expected to have information regarding
34 the child's possible membership or eligibility for membership in an
35 Indian tribe to determine if the child is an Indian child, and by
36 contacting any Indian tribe in which the child may be a member or may
37 be eligible for membership. Preliminary contacts for the purpose of

1 making a good faith effort to determine a child's possible Indian
2 status, do not constitute legal notice as required by section 7 of this
3 act.

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

11 (2) If an Indian child is already a ward of a tribal court at the
12 start of the child custody proceeding, the Indian tribe may retain
13 exclusive jurisdiction, notwithstanding the residence or domicile of
14 the child.

15 NEW SECTION. **Sec. 7.** NOTICE. (1) In any involuntary child
16 custody proceeding seeking the foster care placement of, or the
17 termination of parental rights to, a child in which the petitioning
18 party or the court knows, or has reason to know, that the child is or
19 may be an Indian child as defined in this chapter, the petitioning
20 party shall notify the parent or Indian custodian and the Indian
21 child's tribe or tribes, by certified mail, return receipt requested,
22 and by use of a mandatory Indian child welfare act notice. If the
23 identity or location of the parent or Indian custodian and the tribe
24 cannot be determined, such notice shall be given to the secretary of
25 the interior by registered mail, return receipt requested, in
26 accordance with the regulations of the bureau of Indian affairs. The
27 secretary of the interior has fifteen days after receipt to provide the
28 requisite notice to the parent or Indian custodian and the tribe. No
29 foster care placement or termination of parental rights proceeding
30 shall be held until at least ten days after receipt of notice by the
31 parent or Indian custodian and the tribe. The parent or Indian
32 custodian or the tribe shall, upon request, be granted up to twenty
33 additional days to prepare for the proceeding.

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

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

5 (b) A written determination by an Indian tribe that a child is not
6 a member of or eligible for membership in that tribe, or testimony by
7 the tribe attesting to such status shall be conclusive that the child
8 is not a member or eligible for membership in that tribe. Such
9 determinations are presumptively those of the tribe where submitted in
10 the form of a tribal resolution, or signed by or testified to by the
11 person(s) authorized by the tribe's governing body to speak for the
12 tribe, or by the tribe's agent designated to receive notice under the
13 federal Indian child welfare act where such designation is published in
14 the federal register;

15 (c) Where a tribe provides no response to notice under section 7 of
16 this act, such nonresponse shall not constitute evidence that the child
17 is not a member or eligible for membership. Provided, however, that
18 under such circumstances the party asserting application of the federal
19 Indian child welfare act, or this chapter, will have the burden of
20 proving by a preponderance of the evidence that the child is an Indian
21 child.

22 (4)(a) Where a child has been determined not to be an Indian child,
23 any party to the proceeding, or an Indian tribe that subsequently
24 determines the child is a member, may, during the pendency of any child
25 custody proceeding to which this chapter or the federal Indian child
26 welfare act applies, move the court for redetermination of the child's
27 Indian status based upon new evidence, redetermination by the child's
28 tribe, or newly conferred federal recognition of the tribe.

29 (b) This subsection (4) does not affect the rights afforded under
30 25 U.S.C. Sec. 1914.

31 NEW SECTION. **Sec. 8.** TRANSFER OF JURISDICTION. (1) In any
32 proceeding for the foster care placement of, or termination of parental
33 rights to, an Indian child who is not domiciled or residing within the
34 reservation of the Indian child's tribe, the court shall, in the
35 absence of good cause to the contrary, transfer the proceeding to the
36 jurisdiction of the Indian child's tribe, upon the motion of any of the
37 following persons:

- 1 (a) Either of the child's parents;
- 2 (b) The child's Indian custodian;
- 3 (c) The child's tribe; or
- 4 (d) The child, if age twelve or older.

5 The transfer shall be subject to declination by the tribe. The tribe
6 shall have seventy-five days to affirmatively respond to a motion or
7 order transferring jurisdiction to the tribal court. A failure of the
8 tribe to respond within the seventy-five day period shall be construed
9 as a declination to accept transfer of the case.

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

13 (3) If either of the Indian child's parents objects to transfer of
14 the proceeding to the Indian child's tribe, the court shall not
15 transfer the proceeding.

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

18 (a) Upon receipt of an order from a tribal court accepting
19 jurisdiction, the state court shall dismiss the child custody
20 proceeding without prejudice.

21 (b) Pending receipt of such tribal court order, the state court may
22 conduct additional hearings and enter orders which strictly comply with
23 the requirements of the federal Indian child welfare act and this
24 chapter. The state court shall not enter a final order in any child
25 custody proceeding, except an order dismissing the proceeding and
26 returning the Indian child to the care of the parent or Indian
27 custodian from whose care the child was removed, while awaiting receipt
28 of a tribal court order accepting jurisdiction, or in the absence of a
29 tribal court order or other formal written declination of jurisdiction.

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

35 NEW SECTION. **Sec. 9.** INTERVENTION. The Indian child, the Indian
36 child's tribe or tribes, and the Indian custodian have the right to

1 intervene at any point in any child custody proceeding involving the
2 Indian child.

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

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

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

18 NEW SECTION. **Sec. 13.** EVIDENTIARY REQUIREMENTS. (1) A party
19 seeking to effect an involuntary foster care placement of or the
20 involuntary termination of parental rights to an Indian child shall
21 satisfy the court that active efforts have been made to provide
22 remedial services and rehabilitative programs designed to prevent the
23 breakup of the Indian family and that these efforts have proved
24 unsuccessful.

25 (2) No involuntary foster care placement may be ordered in a child
26 custody proceeding in the absence of a determination, supported by
27 clear and convincing evidence, including testimony of qualified expert
28 witnesses, that the continued custody of the child by the parent or
29 Indian custodian is likely to result in serious emotional or physical
30 damage to the child. For purposes of this subsection, any harm that
31 may result from interfering with the bond or attachment between the
32 foster parent and the child shall not be the sole basis or primary
33 reason for continuing the child in foster care.

1 (3) No involuntary termination of parental rights may be ordered in
2 a child custody proceeding in the absence of a determination, supported
3 by evidence beyond a reasonable doubt, including testimony of qualified
4 expert witnesses, that the continued custody of the child by the parent
5 or Indian custodian is likely to result in serious emotional or
6 physical damage to the child. For the purposes of this subsection, any
7 harm that may result from interfering with the bond or attachment that
8 may have formed between the child and a foster care provider shall not
9 be the sole basis or primary reason for termination of parental rights
10 over an Indian child.

11 (4)(a) For purposes of this section, "qualified expert witness"
12 means a person who provides testimony in a proceeding under this
13 chapter to assist a court in the determination of whether the continued
14 custody of the child by, or return of the child to, the parent,
15 parents, or Indian custodian, is likely to result in serious emotional
16 or physical damage to the child. In any proceeding in which the
17 child's Indian tribe has intervened pursuant to section 9 of this act
18 or, if the department is the petitioner and the Indian child's tribe
19 has entered into a local agreement with the department for the
20 provision of child welfare services, the petitioner shall contact the
21 tribe and ask the tribe to identify a tribal member or other person of
22 the tribe's choice who is recognized by the tribe as knowledgeable
23 regarding tribal customs as they pertain to family organization or
24 child rearing practices. The petitioner shall notify the child's
25 Indian tribe of the need to provide a "qualified expert witness" at
26 least twenty days prior to any evidentiary hearing in which the
27 testimony of the witness will be required. If the child's Indian tribe
28 does not identify a "qualified expert witness" for the proceeding on a
29 timely basis, the petitioner may proceed to identify such a witness
30 pursuant to (b) of this subsection.

31 (b) In any proceeding in which the child's Indian tribe has not
32 intervened or entered into a local agreement with the department for
33 the provision of child welfare services, or a child's Indian tribe has
34 not responded to a request to identify a "qualified expert witness" for
35 the proceeding on a timely basis, the petitioner shall provide a
36 "qualified expert witness" who meets one or more of the following
37 requirements in descending order of preference:

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

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

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

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

15 (c) When the petitioner is the department or a supervising agency,
16 the currently assigned department or agency caseworker or the
17 caseworker's supervisor may not testify as a "qualified expert witness"
18 for purposes of this section. Nothing in this section shall bar the
19 assigned department or agency caseworker or the caseworker's supervisor
20 from testifying as an expert witness for other purposes in a proceeding
21 under this chapter. Nothing in this section shall bar other department
22 or supervising agency employees with appropriate expert qualifications
23 or experience from testifying as a "qualified expert witness" in a
24 proceeding under this chapter. Nothing in this section shall bar the
25 petitioner or any other party in a proceeding under this chapter from
26 providing additional witnesses or expert testimony, subject to the
27 approval of the court, on any issue before the court including the
28 determination of whether the continued custody of the child by, or
29 return of the child to, the parent, parents, or Indian custodian, is
30 likely to result in serious emotional or physical damage to the child.

31 NEW SECTION. **Sec. 14.** EMERGENCY REMOVAL OF AN INDIAN CHILD. (1)
32 Notwithstanding any other provision of federal or state law, nothing
33 shall be construed to prevent the department or law enforcement from
34 the emergency removal of an Indian child who is a resident of or is
35 domiciled on an Indian reservation, but is temporarily located off the
36 reservation, from his or her parent or Indian custodian or the

1 emergency placement of such child in a foster home, under applicable
2 state law, to prevent imminent physical damage or harm to the child.

3 (2) The department or law enforcement agency shall ensure that the
4 emergency removal or placement terminates immediately when such removal
5 or placement is no longer necessary to prevent imminent physical damage
6 or harm to the child and shall expeditiously initiate a child custody
7 proceeding subject to the provisions of the federal Indian child
8 welfare act and this chapter to transfer the child to the jurisdiction
9 of the appropriate Indian tribe or restore the child to the child's
10 parent or Indian custodian, if appropriate.

11 (3) When the nature of the emergency allows, the department must
12 notify the child's tribe before the removal has occurred. If prior
13 notification is not possible, the department shall notify the child's
14 tribe by the quickest means possible. The notice must contain the
15 basis for the Indian child's removal, the time, date, and place of the
16 initial hearing, and the tribe's right to intervene and participate in
17 the proceeding. This notice shall not constitute the notice required
18 under section 7 of this act for purposes of subsequent dependency,
19 termination of parental rights, or adoption proceedings.

20 NEW SECTION. **Sec. 15.** CONSENT. (1) If an Indian child's parent
21 or Indian custodian voluntarily consents to a foster care placement of
22 the child or to termination of parental rights, the consent is not
23 valid unless executed in writing and recorded before a judge of a court
24 of competent jurisdiction and accompanied by the judge's certificate
25 that the terms and consequences of the consent were fully explained in
26 detail and were fully understood by the parent or Indian custodian.
27 The court must also certify that either the parent or Indian custodian
28 fully understood the explanation in English or that it was interpreted
29 into a language that the parent or Indian custodian understood. Any
30 consent for release of custody given prior to, or within ten days
31 after, the birth of the Indian child shall not be valid.

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

36 (3) In a voluntary proceeding for termination of parental rights
37 to, or adoptive placement of, an Indian child, the consent of the

1 parent may be withdrawn for any reason at any time prior to the entry
2 of an order terminating parental rights or a final decree of adoption,
3 and the child shall be returned to the parent.

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

11 NEW SECTION. **Sec. 16.** IMPROPER REMOVAL OF AN INDIAN CHILD. If a
12 petitioner in a child custody proceeding under this chapter has
13 improperly removed the child from the custody of the parent or Indian
14 custodian or has improperly retained custody after a visit or other
15 temporary relinquishment of custody, the court shall decline
16 jurisdiction over the petition and shall immediately return the child
17 to the child's parent or Indian custodian unless returning the child to
18 the parent or Indian custodian would subject the child to substantial
19 and immediate danger or threat of such danger.

20 NEW SECTION. **Sec. 17.** REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR
21 FOSTER CARE PLACEMENT. (1) If a final decree of adoption of an Indian
22 child has been vacated or set aside or the adoptive parents voluntarily
23 consent to the termination of their parental rights to the child, the
24 biological parent or prior Indian custodian may petition to have the
25 child returned to their custody and the court shall grant the request
26 unless there is a showing by clear and convincing evidence that return
27 of custody to the biological parent or prior Indian custodian is not in
28 the best interests of the Indian child.

29 (2) If an Indian child is removed from a foster care placement or
30 a preadoptive or adoptive home for the purpose of further foster care,
31 preadoptive, or adoptive placement, the placement shall be in
32 accordance with this chapter, except when an Indian child is being
33 returned to the parent or Indian custodian from whose custody the child
34 was originally removed.

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

5 (a) In the least restrictive setting;

6 (b) Which most approximates a family situation;

7 (c) Which is in reasonable proximity to the Indian child's home;

8 and

9 (d) In which the Indian child's special needs, if any, will be met.

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

13 (a) A member of the child's extended family.

14 (b) A foster home licensed, approved, or specified by the child's
15 tribe.

16 (c) An Indian foster home licensed or approved by an authorized
17 non-Indian licensing authority.

18 (d) A child foster care agency approved by an Indian tribe or
19 operated by an Indian organization which has a program suitable to meet
20 the Indian child's needs.

21 (e) A non-Indian child foster care agency approved by the child's
22 tribe.

23 (f) A non-Indian family that is committed to:

24 (i) Promoting and allowing appropriate extended family visitation;

25 (ii) Establishing, maintaining, and strengthening the child's
26 relationship with his or her tribe or tribes; and

27 (iii) Participating in the cultural and ceremonial events of the
28 child's tribe.

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

32 (a) Extended family members;

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

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

36 (d) Another Indian family; or

37 (e) Any other family which can provide a suitable home for an
38 Indian child, such suitability to be determined in consultation with

1 the Indian child's tribe or, in proceedings under chapter 13.34 RCW
2 where the Indian child is in the custody of the department or a
3 supervising agency and the Indian child's tribe has not intervened or
4 participated, the local Indian child welfare advisory committee.

5 (4) Notwithstanding the placement preferences listed in subsections
6 (2) and (3) of this section, if a different order of placement
7 preference is established by the child's tribe, the court or agency
8 effecting the placement shall follow the order of preference
9 established by the tribe so long as the placement is in the least
10 restrictive setting appropriate to the particular needs of the child.

11 (5) Where appropriate, the preference of the Indian child or his or
12 her parent shall be considered by the court. Where a consenting parent
13 evidences a desire for anonymity, the court or agency shall give weight
14 to such desire in applying the preferences.

15 (6) The standards to be applied in meeting the preference
16 requirements of this section shall be the prevailing social and
17 cultural standards of the Indian community in which the parent or
18 extended family members of an Indian child reside, or with which the
19 parent or extended family members maintain social and cultural ties.

20 (7) Nothing in this section shall prevent the department or the
21 court from placing the child with a parent to effectuate a permanent
22 plan regardless of the parent's relationship to the child's tribe.

23 NEW SECTION. **Sec. 19.** COMPLIANCE. (1) The department, in
24 consultation with Indian tribes, shall establish standards and
25 procedures for the department's review of cases subject to this chapter
26 and methods for monitoring the department's compliance with provisions
27 of the federal Indian child welfare act and this chapter. These
28 standards and procedures and the monitoring methods shall also be
29 integrated into the department's child welfare contracting and contract
30 monitoring process.

31 (2) Nothing in this chapter shall affect, impair, or limit rights
32 or remedies provided to any party under the federal Indian child
33 welfare act, 25 U.S.C. Sec. 1914.

34 NEW SECTION. **Sec. 20.** SEVERABILITY. If any provision of this act
35 or its application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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

5 (1) Whenever a child in need of services petition is filed by: (a)
6 A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent
7 pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW
8 13.32A.140, the filing party shall have a copy of the petition served
9 on the parents of the youth. Service shall first be attempted in
10 person and if unsuccessful, then by certified mail with return receipt.

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

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

26 ~~(b) The notice shall: (i) Contain a statement notifying the parent~~
27 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~
28 ~~the tribe of the tribe's right to intervene and/or request that the~~
29 ~~case be transferred to tribal court))~~ provisions of chapter 13.--- RCW
30 (the new chapter created in section 35 of this act) apply.

31 **Sec. 22.** RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s
32 10, and 2010 c 94 s 6 are each reenacted and amended to read as
33 follows:

34 For purposes of this chapter:
35 (1) "Abandoned" means when the child's parent, guardian, or other
36 custodian has expressed, either by statement or conduct, an intent to

1 forego, for an extended period, parental rights or responsibilities
2 despite an ability to exercise such rights and responsibilities. If
3 the court finds that the petitioner has exercised due diligence in
4 attempting to locate the parent, no contact between the child and the
5 child's parent, guardian, or other custodian for a period of three
6 months creates a rebuttable presumption of abandonment, even if there
7 is no expressed intent to abandon.

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

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

17 (4) "Department" means the department of social and health
18 services.

19 (5) "Dependency guardian" means the person, nonprofit corporation,
20 or Indian tribe appointed by the court pursuant to this chapter for the
21 limited purpose of assisting the court in the supervision of the
22 dependency.

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

24 (a) Has been abandoned;

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

27 (c) Has no parent, guardian, or custodian capable of adequately
28 caring for the child, such that the child is in circumstances which
29 constitute a danger of substantial damage to the child's psychological
30 or physical development.

31 (7) "Developmental disability" means a disability attributable to
32 intellectual disability, cerebral palsy, epilepsy, autism, or another
33 neurological or other condition of an individual found by the secretary
34 to be closely related to an intellectual disability or to require
35 treatment similar to that required for individuals with intellectual
36 disabilities, which disability originates before the individual attains
37 age eighteen, which has continued or can be expected to continue

1 indefinitely, and which constitutes a substantial limitation to the
2 individual.

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

9 (9) "Guardian ad litem" means a person, appointed by the court to
10 represent the best interests of a child in a proceeding under this
11 chapter, or in any matter which may be consolidated with a proceeding
12 under this chapter. A "court-appointed special advocate" appointed by
13 the court to be the guardian ad litem for the child, or to perform
14 substantially the same duties and functions as a guardian ad litem,
15 shall be deemed to be guardian ad litem for all purposes and uses of
16 this chapter.

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

24 (11) "Housing assistance" means appropriate referrals by the
25 department or other supervising agencies to federal, state, local, or
26 private agencies or organizations, assistance with forms, applications,
27 or financial subsidies or other monetary assistance for housing. For
28 purposes of this chapter, "housing assistance" is not a remedial
29 service or time-limited family reunification service as described in
30 RCW 13.34.025(2).

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

33 (a) Receiving one of the following types of public assistance:
34 Temporary assistance for needy families, disability lifeline benefits,
35 poverty-related veterans' benefits, food stamps or food stamp benefits
36 transferred electronically, refugee resettlement benefits, medicaid, or
37 supplemental security income; or

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

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

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

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

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

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

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

21 (17) "Social study" means a written evaluation of matters relevant
22 to the disposition of the case and shall contain the following
23 information:

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

26 (b) A description of the specific services and activities, for both
27 the parents and child, that are needed in order to prevent serious harm
28 to the child; the reasons why such services and activities are likely
29 to be useful; the availability of any proposed services; and the
30 agency's overall plan for ensuring that the services will be delivered.
31 The description shall identify the services chosen and approved by the
32 parent;

33 (c) If removal is recommended, a full description of the reasons
34 why the child cannot be protected adequately in the home, including a
35 description of any previous efforts to work with the parents and the
36 child in the home; the in-home treatment programs that have been
37 considered and rejected; the preventive services, including housing
38 assistance, that have been offered or provided and have failed to

1 prevent the need for out-of-home placement, unless the health, safety,
2 and welfare of the child cannot be protected adequately in the home;
3 and the parents' attitude toward placement of the child;

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

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

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

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

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

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

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

32 (3) Every petition filed in proceedings under this chapter shall
33 contain a statement alleging whether the child is or may be an Indian
34 child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If
35 the child is an Indian child ~~((as defined under the Indian child
36 welfare act, the provisions of the act))~~ chapter 13.--- RCW (the new
37 chapter created in section 35 of this act) shall apply.

1 (4) Every order or decree entered under this chapter shall contain
2 a finding that the federal Indian child welfare act or chapter 13.---
3 RCW (the new chapter created in section 35 of this act) does or does
4 not apply. Where there is a finding that the federal Indian child
5 welfare act or chapter 13.--- RCW (the new chapter created in section
6 35 of this act) does apply, the decree or order must also contain a
7 finding that all notice requirements and evidentiary requirements under
8 the federal Indian child welfare act and chapter 13.--- RCW (the new
9 chapter created in section 35 of this act) have been satisfied.

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

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

18 (b) Any parent, guardian, or legal custodian who for good cause is
19 unable to attend the shelter care hearing may request that a subsequent
20 shelter care hearing be scheduled. The request shall be made to the
21 clerk of the court where the petition is filed prior to the initial
22 shelter care hearing. Upon the request of the parent, the court shall
23 schedule the hearing within seventy-two hours of the request, excluding
24 Saturdays, Sundays, and holidays. The clerk shall notify all other
25 parties of the hearing by any reasonable means.

26 (2)(a) If it is likely that the child will remain in shelter care
27 longer than seventy-two hours, in those areas in which child welfare
28 services are being provided by a supervising agency, the supervising
29 agency shall assume case management responsibilities of the case. The
30 department or supervising agency shall submit a recommendation to the
31 court as to the further need for shelter care in all cases in which the
32 child will remain in shelter care longer than the seventy-two hour
33 period. In all other cases, the recommendation shall be submitted by
34 the juvenile court probation counselor.

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

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

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

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

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

10 (iii) If the parent, guardian, or custodian is not represented by
11 counsel, the right to be represented. If the parent, guardian, or
12 custodian is indigent, the court shall appoint counsel as provided in
13 RCW 13.34.090; and

14 (b) If a parent, guardian, or legal custodian desires to waive the
15 shelter care hearing, the court shall determine, on the record and with
16 the parties present, whether such waiver is knowing and voluntary. A
17 parent may not waive his or her right to the shelter care hearing
18 unless he or she appears in court and the court determines that the
19 waiver is knowing and voluntary. Regardless of whether the court
20 accepts the parental waiver of the shelter care hearing, the court must
21 provide notice to the parents of their rights required under (a) of
22 this subsection and make the finding required under subsection (4) of
23 this section.

24 (4) At the shelter care hearing the court shall examine the need
25 for shelter care and inquire into the status of the case. The
26 paramount consideration for the court shall be the health, welfare, and
27 safety of the child. At a minimum, the court shall inquire into the
28 following:

29 (a) Whether the notice required under RCW 13.34.062 was given to
30 all known parents, guardians, or legal custodians of the child. The
31 court shall make an express finding as to whether the notice required
32 under RCW 13.34.062 was given to the parent, guardian, or legal
33 custodian. If actual notice was not given to the parent, guardian, or
34 legal custodian and the whereabouts of such person is known or can be
35 ascertained, the court shall order the department to make reasonable
36 efforts to advise the parent, guardian, or legal custodian of the
37 status of the case, including the date and time of any subsequent
38 hearings, and their rights under RCW 13.34.090;

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

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

8 (d) What services were provided to the family to prevent or
9 eliminate the need for removal of the child from the child's home. If
10 the dependency petition or other information before the court alleges
11 that homelessness or the lack of suitable housing was a significant
12 factor contributing to the removal of the child, the court shall
13 inquire as to whether housing assistance was provided to the family to
14 prevent or eliminate the need for removal of the child or children;

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

18 (f) Whether it is in the best interest of the child to remain
19 enrolled in the school, developmental program, or child care the child
20 was in prior to placement and what efforts have been made to maintain
21 the child in the school, program, or child care if it would be in the
22 best interest of the child to remain in the same school, program, or
23 child care;

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

25 (h) Whether the child is or may be an Indian child as defined in
26 (~~25 U.S.C. Sec. 1903~~) section 4 of this act, whether the provisions
27 of the federal Indian child welfare act or chapter 13.--- RCW (the new
28 chapter created in section 35 of this act) apply, and whether there is
29 compliance with the federal Indian child welfare act and chapter 13.---
30 RCW (the new chapter created in section 35 of this act), including
31 notice to the child's tribe;

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

36 (j) Whether any orders for examinations, evaluations, or immediate
37 services are needed. The court may not order a parent to undergo

1 examinations, evaluation, or services at the shelter care hearing
2 unless the parent agrees to the examination, evaluation, or service;

3 (k) The terms and conditions for parental, sibling, and family
4 visitation.

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

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

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

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

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

20 (b) If the court does not release the child to his or her parent,
21 guardian, or legal custodian, the court shall order placement with a
22 relative or other suitable person as described in RCW 13.34.130(1)(b),
23 unless there is reasonable cause to believe the health, safety, or
24 welfare of the child would be jeopardized or that the efforts to
25 reunite the parent and child will be hindered. The court must also
26 determine whether placement with the relative or other suitable person
27 is in the child's best interests. The relative or other suitable
28 person must be willing and available to:

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

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

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

36 (c) If the child was not initially placed with a relative or other
37 suitable person, and the court does not release the child to his or her
38 parent, guardian, or legal custodian, the supervising agency shall make

1 reasonable efforts to locate a relative or other suitable person
2 pursuant to RCW 13.34.060(1). In determining placement, the court
3 shall weigh the child's length of stay and attachment to the current
4 provider in determining what is in the best interest of the child.

5 (d) If a relative or other suitable person is not available, the
6 court shall order continued shelter care and shall set forth its
7 reasons for the order. If the court orders placement of the child with
8 a person not related to the child and not licensed to provide foster
9 care, the placement is subject to all terms and conditions of this
10 section that apply to relative placements.

11 (e) Any placement with a relative, or other suitable person
12 approved by the court pursuant to this section, shall be contingent
13 upon cooperation with the department's or supervising agency's case
14 plan and compliance with court orders related to the care and
15 supervision of the child including, but not limited to, court orders
16 regarding parent-child contacts, sibling contacts, and any other
17 conditions imposed by the court. Noncompliance with the case plan or
18 court order is grounds for removal of the child from the home of the
19 relative or other suitable person, subject to review by the court.

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

26 (6)(a) A shelter care order issued pursuant to this section shall
27 include the requirement for a case conference as provided in RCW
28 13.34.067. However, if the parent is not present at the shelter care
29 hearing, or does not agree to the case conference, the court shall not
30 include the requirement for the case conference in the shelter care
31 order.

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

36 (c) The court may order another conference, case staffing, or
37 hearing as an alternative to the case conference required under RCW
38 13.34.067 so long as the conference, case staffing, or hearing ordered

1 by the court meets all requirements under RCW 13.34.067, including the
2 requirement of a written agreement specifying the services to be
3 provided to the parent.

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

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

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

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

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

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

26 (1) Upon the filing of the petition, the clerk of the court shall
27 issue a summons, one directed to the child, if the child is twelve or
28 more years of age, and another to the parents, guardian, or custodian,
29 and such other persons as appear to the court to be proper or necessary
30 parties to the proceedings, requiring them to appear personally before
31 the court at the time fixed to hear the petition. If the child is
32 developmentally disabled and not living at home, the notice shall be
33 given to the child's custodian as well as to the child's parent. The
34 developmentally disabled child shall not be required to appear unless
35 requested by the court. When the custodian is summoned, the parent or
36 guardian or both shall also be served with a summons. The fact-finding
37 hearing on the petition shall be held no later than seventy-five days

1 after the filing of the petition, unless exceptional reasons for a
2 continuance are found. The party requesting the continuance shall have
3 the burden of proving by a preponderance of the evidence that
4 exceptional circumstances exist. To ensure that the hearing on the
5 petition occurs within the seventy-five day time limit, the court shall
6 schedule and hear the matter on an expedited basis.

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

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

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

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

18 (6) If it appears from affidavit or sworn statement presented to
19 the judge that there is probable cause for the issuance of a warrant of
20 arrest or that the child needs to be taken into custody pursuant to RCW
21 13.34.050, the judge may endorse upon the summons an order that an
22 officer serving the summons shall at once take the child into custody
23 and take him or her to the place of shelter designated by the court.

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

29 NOTICE:

30 VIOLATION OF THIS ORDER

31 IS SUBJECT TO PROCEEDING

32 FOR CONTEMPT OF COURT

33 PURSUANT TO RCW 13.34.070.

34 (8) If a party to be served with a summons can be found within the
35 state, the summons shall be served upon the party personally as soon as
36 possible following the filing of the petition, but in no case later
37 than fifteen court days before the fact-finding hearing, or such time
38 as set by the court. If the party is within the state and cannot be

1 personally served, but the party's address is known or can with
2 reasonable diligence be ascertained, the summons may be served upon the
3 party by mailing a copy by certified mail as soon as possible following
4 the filing of the petition, but in no case later than fifteen court
5 days before the hearing, or such time as set by the court. If a party
6 other than the child is without the state but can be found or the
7 address is known, or can with reasonable diligence be ascertained,
8 service of the summons may be made either by delivering a copy to the
9 party personally or by mailing a copy thereof to the party by certified
10 mail at least ten court days before the fact-finding hearing, or such
11 time as set by the court.

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

16 (10)((+a)) Whenever the court or the petitioning party in a
17 proceeding under this chapter knows or has reason to know that an
18 Indian child as defined in section 4 of this act is involved, the
19 petitioning party shall promptly provide notice to the child's parent
20 or Indian custodian and to the agent designated by the child's Indian
21 tribe to receive such notices. Notice shall ~~((be by certified mail
22 with return receipt requested. If the identity or location of the
23 parent or Indian custodian and the tribe cannot be determined, notice
24 shall be given to the secretary of the interior in the manner described
25 in 25 C.F.R. 23.11. If the child may be a member of more than one
26 tribe, the petitioning party shall send notice to all tribes the
27 petitioner has reason to know may be affiliated with the child.~~

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

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

35 (1) Unless otherwise directed by the court, the duties of the
36 guardian ad litem for a child subject to a proceeding under this

1 chapter, including an attorney specifically appointed by the court to
2 serve as a guardian ad litem, include but are not limited to the
3 following:

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

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

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

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

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

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

21 (g) To inform the child, if the child is twelve years old or older,
22 of his or her right to request counsel and to ask the child whether he
23 or she wishes to have counsel, pursuant to RCW 13.34.100(6). The
24 guardian ad litem shall report to the court that the child was notified
25 of this right and indicate the child's position regarding appointment
26 of counsel. The guardian ad litem shall report to the court his or her
27 independent recommendation as to whether appointment of counsel is in
28 the best interest of the child; and

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

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

34 (3) Except for information or records specified in RCW
35 13.50.100(7), the guardian ad litem shall have access to all
36 information available to the state or agency on the case. Upon
37 presentation of the order of appointment by the guardian ad litem, any
38 agency, hospital, school organization, division or department of the

1 state, doctor, nurse, or other health care provider, psychologist,
2 psychiatrist, police department, or mental health clinic shall permit
3 the guardian ad litem to inspect and copy any records relating to the
4 child or children involved in the case, without the consent of the
5 parent or guardian of the child, or of the child if the child is under
6 the age of thirteen years, unless such access is otherwise specifically
7 prohibited by law.

8 (4) A guardian ad litem may release confidential information,
9 records, and reports to the office of the family and children's
10 ombudsman for the purposes of carrying out its duties under chapter
11 43.06A RCW.

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

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

16 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
17 been proven by a preponderance of the evidence that the child is
18 dependent within the meaning of RCW 13.34.030 after consideration of
19 the social study prepared pursuant to RCW 13.34.110 and after a
20 disposition hearing has been held pursuant to RCW 13.34.110, the court
21 shall enter an order of disposition pursuant to this section.

22 (1) The court shall order one of the following dispositions of the
23 case:

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

32 (b)(i) Order the child to be removed from his or her home and into
33 the custody, control, and care of a relative or other suitable person,
34 the department, or a supervising agency for supervision of the child's
35 placement. The court may not order an Indian child, as defined in (~~25~~
36 ~~U.S.C. Sec. 1903~~)) section 4 of this act, to be removed from his or her
37 home unless the court finds, by clear and convincing evidence including

1 testimony of qualified expert witnesses, that the continued custody of
2 the child by the parent or Indian custodian is likely to result in
3 serious emotional or physical damage to the child.

4 (ii) The department or supervising agency has the authority to
5 place the child, subject to review and approval by the court (A) with
6 a relative as defined in RCW 74.15.020(2)(a), (B) in the home of
7 another suitable person if the child or family has a preexisting
8 relationship with that person, and the person has completed all
9 required criminal history background checks and otherwise appears to
10 the department or supervising agency to be suitable and competent to
11 provide care for the child, or (C) in a foster family home or group
12 care facility licensed pursuant to chapter 74.15 RCW. Absent good
13 cause, the department or supervising agency shall follow the wishes of
14 the natural parent regarding the placement of the child in accordance
15 with RCW 13.34.260. The department or supervising agency may only
16 place a child with a person not related to the child as defined in RCW
17 74.15.020(2)(a) when the court finds that such placement is in the best
18 interest of the child. Unless there is reasonable cause to believe
19 that the health, safety, or welfare of the child would be jeopardized
20 or that efforts to reunite the parent and child will be hindered, the
21 child shall be placed with a person who is willing, appropriate, and
22 available to care for the child, and who is: (I) Related to the child
23 as defined in RCW 74.15.020(2)(a) with whom the child has a
24 relationship and is comfortable; or (II) a suitable person as described
25 in this subsection (1)(b). The court shall consider the child's
26 existing relationships and attachments when determining placement.

27 (2) When placing an Indian child in out-of-home care, the
28 department or supervising agency shall follow the placement preference
29 characteristics in (~~RCW 13.34.250 and in 25 U.S.C. Sec. 1915~~) section
30 18 of this act.

31 (3) Placement of the child with a relative or other suitable person
32 as described in subsection (1)(b) of this section shall be given
33 preference by the court. An order for out-of-home placement may be
34 made only if the court finds that reasonable efforts have been made to
35 prevent or eliminate the need for removal of the child from the child's
36 home and to make it possible for the child to return home, specifying
37 the services, including housing assistance, that have been provided to
38 the child and the child's parent, guardian, or legal custodian, and

1 that preventive services have been offered or provided and have failed
2 to prevent the need for out-of-home placement, unless the health,
3 safety, and welfare of the child cannot be protected adequately in the
4 home, and that:

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

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

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

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

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

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

23 (ii) There is no reasonable cause to believe that the health,
24 safety, or welfare of any child subject to the order of placement,
25 contact, or visitation would be jeopardized or that efforts to reunite
26 the parent and child would be hindered by such placement, contact, or
27 visitation. In no event shall parental visitation time be reduced in
28 order to provide sibling visitation.

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

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

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

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

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

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

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

31 (2) Termination is recommended by the department or the supervising
32 agency;

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

34 (4) Because of the existence of aggravated circumstances,
35 reasonable efforts to unify the family are not required.
36 Notwithstanding the existence of aggravated circumstances, reasonable
37 efforts may be required if the court or department determines it is in

1 the best interests of the child. In determining whether aggravated
2 circumstances exist by clear, cogent, and convincing evidence, the
3 court shall consider one or more of the following:

4 (a) Conviction of the parent of rape of the child in the first,
5 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
6 9A.44.079;

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

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

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

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

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

21 (g) Failure of the parent to complete available treatment ordered
22 under this chapter or the equivalent laws of another state, where such
23 failure has resulted in a prior termination of parental rights to
24 another child and the parent has failed to effect significant change in
25 the interim. In the case of a parent of an Indian child, as defined in
26 ~~((the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903))~~
27 section 4 of this act, the court shall also consider tribal efforts to
28 assist the parent in completing treatment and make it possible for the
29 child to return home;

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

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

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

36 (1) Whenever a child is ordered removed from the home, a permanency
37 plan shall be developed no later than sixty days from the time the

1 supervising agency assumes responsibility for providing services,
2 including placing the child, or at the time of a hearing under RCW
3 13.34.130, whichever occurs first. The permanency planning process
4 continues until a permanency planning goal is achieved or dependency is
5 dismissed. The planning process shall include reasonable efforts to
6 return the child to the parent's home.

7 (2) The agency supervising the dependency shall submit a written
8 permanency plan to all parties and the court not less than fourteen
9 days prior to the scheduled hearing. Responsive reports of parties not
10 in agreement with the department's or supervising agency's proposed
11 permanency plan must be provided to the department or supervising
12 agency, all other parties, and the court at least seven days prior to
13 the hearing.

14 The permanency plan shall include:

15 (a) A permanency plan of care that shall identify one of the
16 following outcomes as a primary goal and may identify additional
17 outcomes as alternative goals: Return of the child to the home of the
18 child's parent, guardian, or legal custodian; adoption, including a
19 tribal customary adoption as defined in section 4 of this act;
20 guardianship; permanent legal custody; long-term relative or foster
21 care, until the child is age eighteen, with a written agreement between
22 the parties and the care provider; successful completion of a
23 responsible living skills program; or independent living, if
24 appropriate and if the child is age sixteen or older. The department
25 or supervising agency shall not discharge a child to an independent
26 living situation before the child is eighteen years of age unless the
27 child becomes emancipated pursuant to chapter 13.64 RCW;

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

37 (i) The department's or supervising agency's plan shall specify

1 what services the parents will be offered to enable them to resume
2 custody, what requirements the parents must meet to resume custody, and
3 a time limit for each service plan and parental requirement.

4 (ii) Visitation is the right of the family, including the child and
5 the parent, in cases in which visitation is in the best interest of the
6 child. Early, consistent, and frequent visitation is crucial for
7 maintaining parent-child relationships and making it possible for
8 parents and children to safely reunify. The supervising agency or
9 department shall encourage the maximum parent and child and sibling
10 contact possible, when it is in the best interest of the child,
11 including regular visitation and participation by the parents in the
12 care of the child while the child is in placement. Visitation shall
13 not be limited as a sanction for a parent's failure to comply with
14 court orders or services where the health, safety, or welfare of the
15 child is not at risk as a result of the visitation. Visitation may be
16 limited or denied only if the court determines that such limitation or
17 denial is necessary to protect the child's health, safety, or welfare.
18 The court and the department or supervising agency should rely upon
19 community resources, relatives, foster parents, and other appropriate
20 persons to provide transportation and supervision for visitation to the
21 extent that such resources are available, and appropriate, and the
22 child's safety would not be compromised.

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

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

30 (v) Unless it is not in the best interests of the child, whenever
31 practical, the plan should ensure the child remains enrolled in the
32 school the child was attending at the time the child entered foster
33 care.

34 (vi) The supervising agency or department shall provide all
35 reasonable services that are available within the department or
36 supervising agency, or within the community, or those services which
37 the department has existing contracts to purchase. It shall report to
38 the court if it is unable to provide such services; and

1 (c) If the court has ordered, pursuant to RCW 13.34.130(~~((+5+))~~) (6),
2 that a termination petition be filed, a specific plan as to where the
3 child will be placed, what steps will be taken to achieve permanency
4 for the child, services to be offered or provided to the child, and, if
5 visitation would be in the best interests of the child, a
6 recommendation to the court regarding visitation between parent and
7 child pending a fact-finding hearing on the termination petition. The
8 department or supervising agency shall not be required to develop a
9 plan of services for the parents or provide services to the parents if
10 the court orders a termination petition be filed. However, reasonable
11 efforts to ensure visitation and contact between siblings shall be made
12 unless there is reasonable cause to believe the best interests of the
13 child or siblings would be jeopardized.

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

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

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

31 (6) The court shall consider the child's relationships with the
32 child's siblings in accordance with RCW 13.34.130(~~((+3+))~~) (4). Whenever
33 the permanency plan for a child is adoption, the court shall encourage
34 the prospective adoptive parents, birth parents, foster parents,
35 kinship caregivers, and the department or other supervising agency to
36 seriously consider the long-term benefits to the child adoptee and his
37 or her siblings of providing for and facilitating continuing
38 postadoption contact between the siblings. To the extent that it is

1 feasible, and when it is in the best interests of the child adoptee and
2 his or her siblings, contact between the siblings should be frequent
3 and of a similar nature as that which existed prior to the adoption.
4 If the child adoptee or his or her siblings are represented by an
5 attorney or guardian ad litem in a proceeding under this chapter or in
6 any other child custody proceeding, the court shall inquire of each
7 attorney and guardian ad litem regarding the potential benefits of
8 continuing contact between the siblings and the potential detriments of
9 severing contact. This section does not require the department of
10 social and health services or other supervising agency to agree to any
11 specific provisions in an open adoption agreement and does not create
12 a new obligation for the department to provide supervision or
13 transportation for visits between siblings separated by adoption from
14 foster care.

15 (7) For purposes related to permanency planning:

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

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

21 (c) "Permanent legal custody" means legal custody pursuant to
22 chapter 26.10 RCW or equivalent laws of another state or a federally
23 recognized Indian tribe.

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

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

30 (a)(i) The allegations contained in the petition as provided in RCW
31 13.34.180(1) are established by clear, cogent, and convincing evidence;
32 or

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

1 (iii) The allegation under RCW 13.34.180(2) is established beyond
2 a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and
3 (f) are established beyond a reasonable doubt, the court shall consider
4 whether one or more of the aggravated circumstances listed in RCW
5 13.34.132 exist; or

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

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

9 (2) The provisions of chapter 13.--- RCW (the new chapter created
10 in section 35 of this act) must be followed in any proceeding under
11 this chapter for termination of the parent-child relationship of an
12 Indian child as defined in ((25 U.S.C. Sec. 1903, no termination of
13 parental rights may be ordered in such proceeding in the absence of a
14 determination, supported by evidence beyond a reasonable doubt,
15 including testimony of qualified expert witnesses, that the continued
16 custody of the child by the parent or Indian custodian is likely to
17 result in serious emotional or physical damage to the child)) section
18 4 of this act.

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

21 (1)((~~a~~)) Every petition filed in proceedings under this chapter
22 shall contain a statement alleging whether the child is or may be an
23 Indian child as defined in ((25 U.S.C. Sec. 1903)) section 4 of this
24 act. If the child is an Indian child ((~~as defined under the Indian~~
25 ~~child welfare act, the provisions of the act)), chapter 13.--- RCW (the
26 new chapter created in section 35 of this act) shall apply.~~

27 ((~~b~~) Whenever the court or the petitioning party in a proceeding
28 under this chapter knows or has reason to know that an Indian child is
29 involved, the petitioning party shall promptly provide notice to the
30 child's parent or Indian custodian and to the agent designated by the
31 child's Indian tribe to receive such notices. Notice shall be by
32 certified mail with return receipt requested. If the identity or
33 location of the parent or Indian custodian and the tribe cannot be
34 determined, notice shall be given to the secretary of the interior in
35 the manner described in 25 C.F.R. 23.11. If the child may be a member
36 of more than one tribe, the petitioning party shall send notice to all

1 ~~tribes the petitioner has reason to know may be affiliated with the~~
2 ~~child.~~

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

7 (2) Every order or decree entered in any proceeding under this
8 chapter shall contain a finding that the federal Indian child welfare
9 act or chapter 13.--- RCW (the new chapter created in section 35 of
10 this act) does or does not apply. Where there is a finding that the
11 federal Indian child welfare act or chapter 13.--- RCW (the new chapter
12 created in section 35 of this act) does apply, the decree or order must
13 also contain a finding that all notice (~~requirements~~) and evidentiary
14 requirements under the federal Indian child welfare act and chapter
15 13.--- RCW (the new chapter created in section 35 of this act) have
16 been satisfied.

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

19 (1)(a) Every petition filed in proceedings under this chapter shall
20 contain a statement alleging whether the child is or may be an Indian
21 child as defined in (~~25 U.S.C. Sec. 1903~~) section 4 of this act. If
22 the child is an Indian child (~~as defined under the Indian child~~
23 ~~welfare act, the provisions of the act~~), chapter 13.--- RCW (the new
24 chapter created in section 35 of this act) shall apply.

25 (b) Every order or decree entered in any proceeding under this
26 chapter shall contain a finding that the federal Indian child welfare
27 act or chapter 13.--- RCW (the new chapter created in section 35 of
28 this act) does or does not apply. Where there is a finding that the
29 federal Indian child welfare act or chapter 13.--- RCW (the new chapter
30 created in section 35 of this act) does apply, the decree or order must
31 also contain a finding that all notice, consent, and evidentiary
32 requirements (~~and evidentiary requirements~~) under the federal Indian
33 child welfare act, chapter 13.--- RCW (the new chapter created in
34 section 35 of this act), and this section have been satisfied.

35 (c) In proceedings under this chapter, the adoption facilitator
36 shall file a sworn statement documenting efforts to determine whether

1 an Indian child (~~as defined under the Indian child welfare act, 25~~
2 ~~U.S.C. Sec. 1903,~~) is involved.

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

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

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

23 (2) Every petition filed in proceedings under this chapter shall
24 contain a statement alleging whether the (~~Soldiers and Sailors~~)
25 federal servicemembers civil relief act of (~~1940~~) 2004, 50 U.S.C.
26 Sec. 501 et seq. applies to the proceeding. Every order or decree
27 entered in any proceeding under this chapter shall contain a finding
28 that the (~~Soldiers and Sailors~~) federal servicemembers civil relief
29 act of (~~1940~~) 2004 does or does not apply.

30 **Sec. 33.** RCW 26.33.240 and 1987 c 170 s 8 are each amended to read
31 as follows:

32 (1) After the reports required by RCW 26.33.190 and 26.33.200 have
33 been filed, the court shall schedule a hearing on the petition for
34 adoption upon request of the petitioner for adoption. Notice of the
35 date, time, and place of hearing shall be given to the petitioner and
36 any person or agency whose consent to adoption is required under RCW
37 26.33.160, unless the person or agency has waived in writing the right

1 to receive notice of the hearing. If the child is an Indian child,
2 notice shall also be given to the child's tribe. Notice shall be given
3 in the manner prescribed by RCW 26.33.310.

4 (2) Notice of the adoption hearing shall also be given to any
5 person who or agency which has prepared a preplacement report. The
6 notice shall be given in the manner prescribed by RCW 26.33.230.

7 (3) If the court determines, after review of the petition,
8 preplacement and post-placement reports, and other evidence introduced
9 at the hearing, that all necessary consents to adoption are valid or
10 have been dispensed with pursuant to RCW 26.33.170 and that the
11 adoption is in the best interest of the adoptee, and, in the case of an
12 adoption of an Indian child, that the adoptive parents are within the
13 placement preferences of (~~25 U.S.C. Sec. 1915~~) section 18 of this act
14 or good cause to the contrary has been shown on the record, the court
15 shall enter a decree of adoption pursuant to RCW 26.33.250.

16 (4) If the court determines the petition should not be granted
17 because the adoption is not in the best interest of the child, the
18 court shall make appropriate provision for the care and custody of the
19 child.

20 **Sec. 34.** RCW 74.13.350 and 2004 c 183 s 4 are each amended to read
21 as follows:

22 It is the intent of the legislature that parents are responsible
23 for the care and support of children with developmental disabilities.
24 The legislature recognizes that, because of the intense support
25 required to care for a child with developmental disabilities, the help
26 of an out-of-home placement may be needed. It is the intent of the
27 legislature that, when the sole reason for the out-of-home placement is
28 the child's developmental disability, such services be offered by the
29 department to these children and their families through a voluntary
30 placement agreement. In these cases, the parents shall retain legal
31 custody of the child.

32 As used in this section, "voluntary placement agreement" means a
33 written agreement between the department and a child's parent or legal
34 guardian authorizing the department to place the child in a licensed
35 facility. Under the terms of this agreement, the parent or legal
36 guardian shall retain legal custody and the department shall be
37 responsible for the child's placement and care. The agreement shall at

1 a minimum specify the legal status of the child and the rights and
2 obligations of the parent or legal guardian, the child, and the
3 department while the child is in placement. The agreement must be
4 signed by the child's parent or legal guardian and the department to be
5 in effect, except that an agreement regarding an Indian child shall not
6 be valid unless executed (~~((in writing before the court and filed with
7 the court as provided in RCW 13.34.245))~~) in accordance with section 15
8 of this act. Any party to a voluntary placement agreement may
9 terminate the agreement at any time. Upon termination of the
10 agreement, the child shall be returned to the care of the child's
11 parent or legal guardian unless the child has been taken into custody
12 pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant
13 to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

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

17 Whenever the department places a child in out-of-home care under a
18 voluntary placement pursuant to this section, the department shall have
19 the responsibility for the child's placement and care. The department
20 shall develop a permanency plan of care for the child no later than
21 sixty days from the date that the department assumes responsibility for
22 the child's placement and care. Within the first one hundred eighty
23 days of the placement, the department shall obtain a judicial
24 determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the
25 placement is in the best interests of the child. If the child's out-
26 of-home placement ends before one hundred eighty days have elapsed, no
27 judicial determination under RCW 13.04.030(1)(b) is required. The
28 permanency planning hearings shall review whether the child's best
29 interests are served by continued out-of-home placement and determine
30 the future legal status of the child.

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

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

37 The department shall adopt rules providing for the implementation

1 of chapter 386, Laws of 1997 and the transfer of responsibility for
2 out-of-home placements from the dependency process under chapter 13.34
3 RCW to the process under this chapter.

4 It is the intent of the legislature that the department undertake
5 voluntary out-of-home placement in cases where the child's
6 developmental disability is such that the parent, guardian, or legal
7 custodian is unable to provide the necessary care for the child, and
8 the parent, guardian, or legal custodian has determined that the child
9 would benefit from placement outside of the home. If the department
10 does not accept a voluntary placement agreement signed by the parent,
11 a petition may be filed and an action pursued under chapter 13.34 RCW.
12 The department shall inform the parent, guardian, or legal custodian in
13 writing of their right to civil action under chapter 13.34 RCW.

14 Nothing in this section prohibits the department from seeking
15 support from parents of a child, including a child with a developmental
16 disability if the child has been placed into care as a result of an
17 action under chapter 13.34 RCW, when state or federal funds are
18 expended for the care and maintenance of that child or when the
19 department receives an application for services from the physical
20 custodian of the child, unless the department finds that there is good
21 cause not to pursue collection of child support against the parent or
22 parents.

23 NEW SECTION. **Sec. 35.** Sections 1 through 20 of this act
24 constitute a new chapter in Title 13 RCW.

25 NEW SECTION. **Sec. 36.** RCW 13.34.250 (Preference characteristics
26 when placing Indian child in foster care home) and 1979 c 155 s 53 are
27 each repealed.

Passed by the Senate April 21, 2011.

Passed by the House April 18, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.