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SENATE BILL 5127

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State of Washington

52nd Legislature

1991 Regular Session

By Senators Craswell, Bailey, Vognild, Erwin, L. Smith, Stratton, Matson, Conner and Roach.

Read first time January 22, 1991. Referred to Committee on Children & Family Services.

1 AN ACT Relating to Indian child welfare cases; amending RCW  
2 13.70.005, 13.70.010, and 13.70.110; reenacting and amending RCW  
3 13.34.130; adding a new section to chapter 13.70 RCW; repealing RCW  
4 13.70.900; making an appropriation; and declaring an emergency.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 13.70 RCW  
7 to read as follows:

8 (1) If a case involves an Indian child, as defined by 25 U.S.C.  
9 Sec. 1903 or by department rule or policy, the court may appoint the  
10 local Indian child welfare advisory committee to serve as the citizen  
11 review board for the case unless otherwise requested by the child's  
12 tribe or by the local Indian child welfare advisory committee.

13 (2) The provisions of RCW 13.70.030, 13.70.040, 13.70.050, and  
14 13.70.090(1) shall not apply to cases in which the court has appointed

1 a committee to serve as a citizen review board. All other provisions  
2 of this chapter shall apply to such cases.

3 (3) Within ten days following court appointment of a committee to  
4 serve as a citizen review board for a particular case, the committee  
5 shall notify the court whether the committee will accept the case for  
6 review. If the committee accepts a case for review, the committee  
7 shall conduct the review in accordance with the requirements of this  
8 chapter except as otherwise provided in this section. If the committee  
9 does not accept a case for review, the court shall immediately reassign  
10 the case to an available board.

11 (4) The requirements of this chapter shall not apply to cases  
12 involving Indian children who are under tribal court jurisdiction or  
13 wardship.

14 **Sec. 2.** RCW 13.70.005 and 1989 1st ex.s. c 17 s 2 are each amended  
15 to read as follows:

16 Periodic case review of all children in substitute care shall be  
17 provided in at least ((one class 1 or higher county)) three counties,  
18 in accordance with this chapter.

19 The administrator for the courts shall coordinate and assist in the  
20 administration of the local citizen review board pilot program created  
21 by this chapter.

22 **Sec. 3.** RCW 13.70.010 and 1989 1st ex.s. c 17 s 3 are each amended  
23 to read as follows:

24 Unless the context requires otherwise, the definitions in this  
25 section apply throughout this chapter.

26 (1) "Board" means the local citizen review board established  
27 pursuant to this chapter.

28 (2) "Child" means a person less than eighteen years of age.

1       (3) "Committee" means a local Indian child welfare advisory  
2 committee established pursuant to WAC 388-70-610, as now existing or  
3 hereafter amended by the department.

4       (4) "Conflict of interest" means that a person appointed to a board  
5 has a personal or pecuniary interest in a case being reviewed by that  
6 board.

7       (~~(4)~~) (5) "Court" means the juvenile court.

8       (~~(5)~~) (6) "Custodian" means that person who has legal custody of  
9 the child.

10       (~~(6)~~) (7) "Department" means the department of social and health  
11 services.

12       (~~(7)~~) (8) "Mature child" means a child who is able to understand  
13 and participate in the decision-making process without excessive  
14 anxiety or fear. A child twelve years old or over shall be rebuttably  
15 presumed to be a mature child.

16       (~~(8)~~) (9) "Parent" or "parents" means the biological or adoptive  
17 parents of a child unless the legal rights of that person have been  
18 terminated by judicial proceedings.

19       (~~(9)~~) (10) "Placement episode" means the period of time that  
20 begins with the date the child was removed from the home of the parent  
21 or legal custodian for the purposes of placement in substitute care and  
22 continues until the child returns home or an adoption decree or  
23 guardianship order is entered.

24       (~~(10)~~) (11) "Records" means any information in written form,  
25 pictures, photographs, charts, graphs, recordings, or documents  
26 pertaining to a case.

27       (~~(11)~~) (12) "Resides" or "residence," when used in reference to  
28 the residence of a child, means the place where the child is actually  
29 living and not the legal residence or domicile of the parent or  
30 guardian.

1       (~~(12)~~) (13) "Substitute care" means an out-of-home placement of  
2 a child for purposes related to the provision of child welfare services  
3 in accordance with chapter 74.13 RCW where the child is in the care,  
4 custody, and control of the department pursuant to a proceeding under  
5 chapter 13.34 RCW or pursuant to the written consent of the child's  
6 parent or parents or custodian.

7       **Sec. 4.** RCW 13.34.130 and 1990 c 284 s 32 and 1990 c 246 s 5 are  
8 each reenacted and amended to read as follows:

9       If, after a fact-finding hearing pursuant to RCW 13.34.110, as now  
10 or hereafter amended, it has been proven by a preponderance of the  
11 evidence that the child is dependent within the meaning of RCW  
12 13.34.030(2); after consideration of the predisposition report prepared  
13 pursuant to RCW 13.34.110 and after a disposition hearing has been held  
14 pursuant to RCW 13.34.110, the court shall enter an order of  
15 disposition pursuant to this section.

16       (1) The court shall order one of the following dispositions of the  
17 case:

18       (a) Order a disposition other than removal of the child from his or  
19 her home, which shall provide a program designed to alleviate the  
20 immediate danger to the child, to mitigate or cure any damage the child  
21 has already suffered, and to aid the parents so that the child will not  
22 be endangered in the future. In selecting a program, the court should  
23 choose those services that least interfere with family autonomy,  
24 provided that the services are adequate to protect the child.

25       (b) Order that the child be removed from his or her home and  
26 ordered into the custody, control, and care of a relative or the  
27 department of social and health services or a licensed child placing  
28 agency for placement in a foster family home or group care facility  
29 licensed pursuant to chapter 74.15 RCW or in a home not required to be

1 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
2 cause to believe that the safety or welfare of the child would be  
3 jeopardized or that efforts to reunite the parent and child will be  
4 hindered, such child shall be placed with a grandparent, brother,  
5 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom  
6 the child has a relationship and is comfortable, and who is willing and  
7 available to care for the child. An order for out-of-home placement  
8 may be made only if the court finds that reasonable efforts have been  
9 made to prevent or eliminate the need for removal of the child from the  
10 child's home and to make it possible for the child to return home,  
11 specifying the services that have been provided to the child and the  
12 child's parent, guardian, or legal custodian, and that:

13 (i) There is no parent or guardian available to care for such  
14 child;

15 (ii) The parent, guardian, or legal custodian is not willing to  
16 take custody of the child;

17 (iii) A manifest danger exists that the child will suffer serious  
18 abuse or neglect if the child is not removed from the home and an order  
19 under RCW 26.44.063 would not protect the child from danger; or

20 (iv) The extent of the child's disability is such that the parent,  
21 guardian, or legal custodian is unable to provide the necessary care  
22 for the child and the parent, guardian, or legal custodian has  
23 determined that the child would benefit from placement outside of the  
24 home.

25 (2) If the court has ordered a child removed from his or her home  
26 pursuant to RCW 13.34.130(1)(b), the court may order that a petition  
27 seeking termination of the parent and child relationship be filed if  
28 the court finds it is recommended by the supervising agency, that it is  
29 in the best interests of the child and that it is not reasonable to  
30 provide further services to reunify the family because the existence of

1 aggravated circumstances make it unlikely that services will effectuate  
2 the return of the child to the child's parents in the near future. In  
3 determining whether aggravated circumstances exist, the court shall  
4 consider one or more of the following:

5 (a) Conviction of the parent of rape of the child in the first,  
6 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
7 9A.44.079;

8 (b) Conviction of the parent of criminal mistreatment of the child  
9 in the first or second degree as defined in RCW 9A.42.020 and  
10 9A.42.030;

11 (c) Conviction of the parent of assault of the child in the first  
12 or second degree as defined in RCW 9A.36.011 and 9A.36.021;

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

15 (e) A finding by a court that a parent is a sexually violent  
16 predator as defined in RCW (~~9A.88.010~~) 71.09.020;

17 (f) Failure of the parent to complete available treatment ordered  
18 under this chapter or the equivalent laws of another state, where such  
19 failure has resulted in a prior termination of parental rights to  
20 another child and the parent has failed to effect significant change in  
21 the interim.

22 (3) Whenever a child is ordered removed from the child's home, the  
23 agency charged with his or her care shall provide the court with:

24 (a) A permanent plan of care that may include one of the following:  
25 Return of the child to the home of the child's parent, adoption,  
26 guardianship, or long-term placement with a relative or in foster care  
27 with a written agreement.

28 (b) Unless the court has ordered, pursuant to RCW 13.34.130(2),  
29 that a termination petition be filed, a specific plan as to where the  
30 child will be placed, what steps will be taken to return the child

1 home, and what actions the agency will take to maintain parent-child  
2 ties. All aspects of the plan shall include the goal of achieving  
3 permanence for the child.

4 (i) The agency plan shall specify what services the parents will be  
5 offered in order to enable them to resume custody, what requirements  
6 the parents must meet in order to resume custody, and a time limit for  
7 each service plan and parental requirement.

8 (ii) The agency shall be required to encourage the maximum parent-  
9 child contact possible, including regular visitation and participation  
10 by the parents in the care of the child while the child is in  
11 placement. Visitation may be limited or denied only if the court  
12 determines that such limitation or denial is necessary to protect the  
13 child's health, safety, or welfare.

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

18 (iv) The agency charged with supervising a child in placement shall  
19 provide all reasonable services that are available within the agency,  
20 or within the community, or those services which the department of  
21 social and health services has existing contracts to purchase. It  
22 shall report to the court if it is unable to provide such services.

23 (c) If the court has ordered, pursuant to RCW 13.34.130(2), that a  
24 termination petition be filed, a specific plan as to where the child  
25 will be placed, what steps will be taken to achieve permanency for the  
26 child, services to be offered or provided to the child, and, if  
27 visitation would be in the best interests of the child, a  
28 recommendation to the court regarding visitation between parent and  
29 child pending a fact-finding hearing on the termination petition. The

1 agency shall not be required to develop a plan of services for the  
2 parents or provide services to the parents.

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

20 (5) Except for children whose cases are reviewed by a citizen  
21 review board under chapter 13.70 RCW, the status of all children found  
22 to be dependent shall be reviewed by the court at least every six  
23 months from the beginning date of the placement episode or the date  
24 dependency is established, whichever is first, at a hearing in which it  
25 shall be determined whether court supervision should continue. The  
26 review shall include findings regarding the agency and parental  
27 completion of disposition plan requirements, and if necessary, revised  
28 permanency time limits.

29 (a) A child shall not be returned home at the review hearing unless  
30 the court finds that a reason for removal as set forth in this section

1 no longer exists. The parents, guardian, or legal custodian shall  
2 report to the court the efforts they have made to correct the  
3 conditions which led to removal. If a child is returned, casework  
4 supervision shall continue for a period of six months, at which time  
5 there shall be a hearing on the need for continued intervention.

6 (b) If the child is not returned home, the court shall establish in  
7 writing:

8 (i) Whether reasonable services have been provided to or offered to  
9 the parties to facilitate reunion, specifying the services provided or  
10 offered;

11 (ii) Whether the child has been placed in the least-restrictive  
12 setting appropriate to the child's needs, including whether  
13 consideration has been given to placement with the child's relatives;

14 (iii) Whether there is a continuing need for placement and whether  
15 the placement is appropriate;

16 (iv) Whether there has been compliance with the case plan by the  
17 child, the child's parents, and the agency supervising the placement;

18 (v) Whether progress has been made toward correcting the problems  
19 that necessitated the child's placement in out-of-home care;

20 (vi) Whether the parents have visited the child and any reasons why  
21 visitation has not occurred or has been infrequent;

22 (vii) Whether additional services are needed to facilitate the  
23 return of the child to the child's parents; if so, the court shall  
24 order that reasonable services be offered specifying such services; and

25 (viii) The projected date by which the child will be returned home  
26 or other permanent plan of care will be implemented.

27 (c) The court at the review hearing may order that a petition  
28 seeking termination of the parent and child relationship be filed.

1       **Sec. 5.**   RCW 13.70.110 and 1989 1st ex.s. c 17 s 13 are each  
2 amended to read as follows:

3       (1) This section shall apply to cases where a child has been placed  
4 in substitute care pursuant to a proceeding under chapter 13.34 RCW.

5       (2) Within forty-five days following commencement of the placement  
6 episode, the court shall assign the child's case to a board and forward  
7 to the board a copy of the dependency petition and any shelter care or  
8 dependency disposition orders which have been entered in the case by  
9 the court.

10       (3) The board shall review the case plan for each child whose case  
11 is assigned to the board by the court. The review shall take place at  
12 times set by the board. The first review shall occur within ninety  
13 days following commencement of the placement episode. The second  
14 review shall occur within six months following commencement of the  
15 placement episode. The next review shall occur within one year after  
16 commencement of the placement episode. Within eighteen months  
17 following commencement of the placement episode, a permanency planning  
18 hearing shall be held before the court in accordance with RCW  
19 13.34.145. Thereafter, the court shall assign the child's case for a  
20 board review or a court review hearing pursuant to RCW 13.34.130(~~(+4)~~))

21 (5) shall take place at least once every six months until the child is  
22 no longer within the jurisdiction of the court or no longer in  
23 substitute care or until a guardianship order or adoption decree is  
24 entered. After the permanency planning hearing, a court review hearing  
25 must occur at least once a year as provided in RCW 13.34.130. The  
26 board shall review any case where a petition to terminate parental  
27 rights has been denied, and such review shall occur as soon as  
28 practical but no later than forty-five days after the denial.

29       (4) The board shall prepare written findings and recommendations  
30 with respect to:

1 (a) Whether reasonable efforts were made before the placement to  
2 prevent or eliminate the need for removal of the child from the home,  
3 including whether consideration was given to removing the alleged  
4 offender, rather than the child, from the home;

5 (b) Whether reasonable efforts have been made subsequent to the  
6 placement to make it possible for the child to be returned home;

7 (c) Whether the child has been placed in the least-restrictive  
8 setting appropriate to the child's needs, including whether  
9 consideration has been given to placement with the child's relatives;

10 (d) Whether there is a continuing need for placement and whether  
11 the placement is appropriate;

12 (e) Whether there has been compliance with the case plan;

13 (f) Whether progress has been made toward alleviating the need for  
14 placement;

15 (g) A likely date by which the child may be returned home or other  
16 permanent plan of care may be implemented; and

17 (h) Other problems, solutions, or alternatives the board determines  
18 should be explored.

19 (5) Within ten working days following the review, the board shall  
20 send a copy of its findings and recommendations to the parents and  
21 their attorneys, the child's custodians and their attorneys, mature  
22 children and their attorneys, other attorneys or guardians ad litem  
23 appointed by the court to represent children, the department and other  
24 child placement agencies directly responsible for supervising the  
25 child's placement, and any prosecuting attorney or attorney general  
26 actively involved in the case. If the child is an Indian as defined in  
27 the Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., a copy of  
28 the board's findings and recommendations shall also be sent to the  
29 child's Indian tribe.

1 (6) If the department is unable or unwilling to implement the board  
2 recommendations, the department shall submit to the board, within ten  
3 working days after receipt of the findings and recommendations, an  
4 implementation report setting forth the reasons why the department is  
5 unable or unwilling to implement the board's recommendations. The  
6 report will also set forth the case plan which the department intends  
7 to implement.

8 (7) Within forty-five days following the review, the board shall  
9 either:

10 (a) Schedule the case for further review by the board; or

11 (b) ~~((File with the court a motion for a review hearing;~~

12 ~~(e)))~~ Submit to the court the board's findings and  
13 recommendations~~((,))~~ and the department's implementation reports, if  
14 any~~((, and a proposed amended court order agreed to by the parties to~~  
15 ~~the action, if any))~~ . If the board's recommendations are different  
16 from the existing court-ordered case plan, the board shall also file  
17 with the court a motion for a review hearing.

18 (8) ~~((Upon))~~ Within ten days of receipt of the board's written  
19 findings and recommendations, the department's implementation report,  
20 if any, ((and the proposed amended court order, if any,)) the court  
21 shall ~~((either:~~

22 ~~(a) Approve the recommendations; or~~

23 ~~(b) Upon its own motion, schedule a review hearing))~~ review the  
24 findings and recommendations and implementation reports, if any. If  
25 the court finds it appropriate, the court may on its own motion  
26 schedule a review hearing.

27 (9) Unless modified by subsequent court order, the court-ordered  
28 case plan and court orders that are in effect at the time that a board  
29 reviews a case shall remain in full force and effect. Board findings

1 and recommendations are advisory only and do not in any way modify  
2 existing court orders or court-ordered case plans.

3 (10) The findings and recommendations of the board and the  
4 department's implementation report, if any, shall become part of the  
5 department's case file and the court social file pertaining to the  
6 child.

7 ~~((10))~~ (11) Nothing in this section shall limit or otherwise  
8 modify the rights of any party to a dependency proceeding to request  
9 and receive a court review hearing pursuant to the provisions of  
10 chapter 13.34 RCW or applicable court rules.

11 NEW SECTION. Sec. 6. RCW 13.70.900 and 1989 1st ex.s. c 17 s  
12 19 are each repealed.

13 NEW SECTION. Sec. 7. The sum of eight hundred fifty thousand  
14 dollars, or as much thereof as may be necessary, is appropriated for  
15 the biennium ending June 30, 1993, from the general fund to the office  
16 of the administrator for the courts for the purposes of this act.

17 NEW SECTION. Sec. 8. This act is necessary for the immediate  
18 preservation of the public peace, health, or safety, or support of the  
19 state government and its existing public institutions, and shall take  
20 effect immediately.