

2 **SHB 1849** - S COMM AMD

3 By Committee on Health & Long-Term Care

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature intends to provide a
8 discrete, separate process for children with developmental disabilities
9 who require home-based or out-of-home care that complies with the
10 federal requirements for receipt of federal funds for services under
11 Title IV-B and Title IV-E of the social security act. The legislature
12 intends by this act to minimize the embarrassment and inconvenience of
13 children with developmental disabilities and their families caused by
14 complying with these federal requirements.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.13 RCW
16 to read as follows:

17 As used in this chapter, "developmentally disabled dependent child"
18 is a child who has a developmental disability as defined in RCW
19 71A.10.020 and whose parent, guardian, or legal custodian and with the
20 department mutually agree that services appropriate to the child's
21 needs can not be provided in the home.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.13 RCW
23 to read as follows:

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

1 As used in this section, "voluntary placement agreement" means a
2 written agreement between the department and a child's parent or legal
3 guardian authorizing the department to place the child in a licensed
4 facility. Under the terms of this agreement, the parent or legal
5 guardian shall retain legal custody and the department shall be
6 responsible for the child's placement and care. The agreement shall at
7 a minimum specify the legal status of the child and the rights and
8 obligations of the parent or legal guardian, the child, and the
9 department while the child is in placement. The agreement must be
10 signed by the child's parent or legal guardian and the department to be
11 in effect, except that an agreement regarding an Indian child shall not
12 be valid unless executed in writing before the court and filed with the
13 court as provided in RCW 13.34.245. Any party to a voluntary placement
14 agreement may terminate the agreement at any time. Upon termination of
15 the agreement, the child shall be returned to the care of the child's
16 parent or legal guardian unless the child has been taken into custody
17 pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant
18 to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

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

22 Whenever the department places a child in out-of-home care under a
23 voluntary placement pursuant to this section, the department shall have
24 the responsibility for the child's placement and care. The department
25 shall develop a permanency plan of care for the child no later than
26 sixty days from the date that the department assumes responsibility for
27 the child's placement and care. Within the first one hundred eighty
28 days of the placement, the department shall obtain a judicial
29 determination pursuant to RCW 13.04.030(1)(j) and section 7 of this act
30 that the placement is in the best interests of the child. The
31 permanency planning hearings shall review whether the child's best
32 interests are served by continued out-of-home placement and determine
33 the future legal status of the child.

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

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

1 The department shall adopt rules providing for the implementation
2 of this act and the transfer of responsibility for out-of-home
3 placements from the dependency process under chapter 13.34 RCW to the
4 process under this chapter.

5 **Sec. 4.** RCW 13.34.030 and 1995 c 311 s 23 are each amended to read
6 as follows:

7 For purposes of this chapter:

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

10 (2) "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 the child returns
14 home, an adoption decree or guardianship order is entered, or the
15 dependency is dismissed, whichever occurs soonest. If the most recent
16 date of removal occurred prior to the filing of a dependency petition
17 under this chapter or after filing but prior to entry of a disposition
18 order, such time periods shall be included when calculating the length
19 of a child's current placement episode.

20 (3) "Dependency guardian" means the person, nonprofit corporation,
21 or Indian tribe appointed by the court pursuant to RCW 13.34.232 for
22 the limited purpose of assisting the court in the supervision of the
23 dependency.

24 (4) "Dependent child" means any child:

25 (a) Who has been abandoned; that is, where the child's parent,
26 guardian, or other custodian has expressed either by statement or
27 conduct, an intent to forego, for an extended period, parental rights
28 or parental responsibilities despite an ability to do so. If the court
29 finds that the petitioner has exercised due diligence in attempting to
30 locate the parent, no contact between the child and the child's parent,
31 guardian, or other custodian for a period of three months creates a
32 rebuttable presumption of abandonment, even if there is no expressed
33 intent to abandon;

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

36 (c) Who has no parent, guardian, or custodian capable of adequately
37 caring for the child, such that the child is in circumstances which

1 constitute a danger of substantial damage to the child's psychological
2 or physical development(~~(or~~

3 ~~(d) Who has a developmental disability, as defined in RCW~~
4 ~~71A.10.020 and whose parent, guardian, or legal custodian together with~~
5 ~~the department determines that services appropriate to the child's~~
6 ~~needs can not be provided in the home. However, (a), (b), and (c) of~~
7 ~~this subsection may still be applied if other reasons for removal of~~
8 ~~the child from the home exist)).~~

9 (5) "Guardian" means the person or agency that: (a) Has been
10 appointed as the guardian of a child in a legal proceeding other than
11 a proceeding under this chapter; and (b) has the legal right to custody
12 of the child pursuant to such appointment. The term "guardian" shall
13 not include a "dependency guardian" appointed pursuant to a proceeding
14 under this chapter.

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

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

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

34 (9) "Preventive services" means preservation services, as defined
35 in chapter 74.14C RCW, and other reasonably available services capable
36 of preventing the need for out-of-home placement while protecting the
37 child.

1 **Sec. 5.** RCW 13.04.030 and 1995 c 312 s 39 and 1995 c 311 s 15 are
2 each reenacted and amended to read as follows:

3 (1) Except as provided in subsection (2) of this section, the
4 juvenile courts in the several counties of this state((7)) shall have
5 exclusive original jurisdiction over all proceedings:

6 (a) Under the interstate compact on placement of children as
7 provided in chapter 26.34 RCW;

8 (b) Relating to children alleged or found to be dependent as
9 provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.170;

10 (c) Relating to the termination of a parent and child relationship
11 as provided in RCW 13.34.180 through 13.34.210;

12 (d) To approve or disapprove out-of-home placement as provided in
13 RCW 13.32A.170;

14 (e) Relating to juveniles alleged or found to have committed
15 offenses, traffic infractions, or violations as provided in RCW
16 13.40.020 through 13.40.230, unless:

17 (i) The juvenile court transfers jurisdiction of a particular
18 juvenile to adult criminal court pursuant to RCW 13.40.110; or

19 (ii) The statute of limitations applicable to adult prosecution for
20 the offense, traffic infraction, or violation has expired; or

21 (iii) The alleged offense or infraction is a traffic, fish,
22 boating, or game offense or traffic infraction committed by a juvenile
23 sixteen years of age or older and would, if committed by an adult, be
24 tried or heard in a court of limited jurisdiction, in which instance
25 the appropriate court of limited jurisdiction shall have jurisdiction
26 over the alleged offense or infraction: PROVIDED, That if such an
27 alleged offense or infraction and an alleged offense or infraction
28 subject to juvenile court jurisdiction arise out of the same event or
29 incident, the juvenile court may have jurisdiction of both matters:
30 PROVIDED FURTHER, That the jurisdiction under this subsection does not
31 constitute "transfer" or a "decline" for purposes of RCW 13.40.110(1)
32 or (e)(i) of this subsection: PROVIDED FURTHER, That courts of limited
33 jurisdiction which confine juveniles for an alleged offense or
34 infraction may place juveniles in juvenile detention facilities under
35 an agreement with the officials responsible for the administration of
36 the juvenile detention facility in RCW 13.04.035 and 13.20.060; or

37 (iv) The juvenile is sixteen or seventeen years old and the alleged
38 offense is: (A) A serious violent offense as defined in RCW 9.94A.030
39 committed on or after June 13, 1994; or (B) a violent offense as

1 defined in RCW 9.94A.030 committed on or after June 13, 1994, and the
2 juvenile has a criminal history consisting of: (I) One or more prior
3 serious violent offenses; (II) two or more prior violent offenses; or
4 (III) three or more of any combination of the following offenses: Any
5 class A felony, any class B felony, vehicular assault, or manslaughter
6 in the second degree, all of which must have been committed after the
7 juvenile's thirteenth birthday and prosecuted separately. In such a
8 case the adult criminal court shall have exclusive original
9 jurisdiction.

10 If the juvenile challenges the state's determination of the
11 juvenile's criminal history, the state may establish the offender's
12 criminal history by a preponderance of the evidence. If the criminal
13 history consists of adjudications entered upon a plea of guilty, the
14 state shall not bear a burden of establishing the knowing and
15 voluntariness of the plea;

16 (f) Under the interstate compact on juveniles as provided in
17 chapter 13.24 RCW;

18 (g) Relating to termination of a diversion agreement under RCW
19 13.40.080, including a proceeding in which the divertee has attained
20 eighteen years of age;

21 (h) Relating to court validation of a voluntary consent to an out-
22 of-home placement under chapter 13.34 RCW, by the parent or Indian
23 custodian of an Indian child, except if the parent or Indian custodian
24 and child are residents of or domiciled within the boundaries of a
25 federally recognized Indian reservation over which the tribe exercises
26 exclusive jurisdiction; (~~and~~)

27 (i) Relating to petitions to compel disclosure of information filed
28 by the department of social and health services pursuant to RCW
29 74.13.042; and

30 (j) Relating to judicial determinations and permanency planning
31 hearings involving developmentally disabled children who have been
32 placed in out-of-home care pursuant to a voluntary placement agreement
33 between the child's parent, guardian, or legal custodian and the
34 department of social and health services.

35 (2) The family court shall have concurrent original jurisdiction
36 with the juvenile court over all proceedings under this section if the
37 superior court judges of a county authorize concurrent jurisdiction as
38 provided in RCW 26.12.010.

1 (3) A juvenile subject to adult superior court jurisdiction under
2 subsection (1)(e) (i) through (iv) of this section, who is detained
3 pending trial, may be detained in a county detention facility as
4 defined in RCW 13.40.020 pending sentencing or a dismissal.

5 **Sec. 6.** RCW 13.34.245 and 1987 c 170 s 2 are each amended to read
6 as follows:

7 (1) Where any parent or Indian custodian voluntarily consents to
8 foster care placement of an Indian child and a petition for dependency
9 has not been filed regarding the child, such consent shall not be valid
10 unless executed in writing before the court and filed with the court.
11 The consent shall be accompanied by the written certification of the
12 court that the terms and consequences of the consent were fully
13 explained in detail to the parent or Indian custodian during the court
14 proceeding and were fully understood by the parent or Indian custodian.
15 The court shall also certify in writing either that the parent or
16 Indian custodian fully understood the explanation in English or that it
17 was interpreted into a language that the parent or Indian custodian
18 understood. Any consent given prior to, or within ten days after, the
19 birth of the Indian child shall not be valid.

20 (2) To obtain court validation of a voluntary consent to foster
21 care placement, any person may file a petition for validation alleging
22 that there is located or residing within the county an Indian child
23 whose parent or Indian custodian wishes to voluntarily consent to
24 foster care placement of the child and requesting that the court
25 validate the consent as provided in this section. The petition shall
26 contain the name, date of birth, and residence of the child, the names
27 and residences of the consenting parent or Indian custodian, and the
28 name and location of the Indian tribe in which the child is a member or
29 eligible for membership. The petition shall state whether the
30 placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be
31 followed. Reasonable attempts shall be made by the petitioner to
32 ascertain and set forth in the petition the identity, location, and
33 custodial status of any parent or Indian custodian who has not
34 consented to foster care placement and why that parent or Indian
35 custodian cannot assume custody of the child.

36 (3) Upon filing of the petition for validation, the clerk of the
37 court shall schedule the petition for a hearing on the court validation
38 of the voluntary consent no later than forty-eight hours after the

1 petition has been filed, excluding Saturdays, Sundays, and holidays.
2 Notification of time, date, location, and purpose of the validation
3 hearing shall be provided as soon as possible to the consenting parent
4 or Indian custodian, the department or other child-placing agency which
5 is to assume (~~eustody of the child~~) responsibility for the child's
6 placement and care pursuant to the consent to foster care placement,
7 and the Indian tribe in which the child is enrolled or eligible for
8 enrollment as a member. If the identity and location of any
9 nonconsenting parent or Indian custodian is known, reasonable attempts
10 shall be made to notify the parent or Indian custodian of the consent
11 to placement and the validation hearing. Notification under this
12 subsection may be given by the most expedient means, including, but not
13 limited to, mail, personal service, telephone, and telegraph.

14 (4) Any parent or Indian custodian may withdraw consent to a
15 voluntary foster care placement, made under this section, at any time.
16 Unless the Indian child has been taken in custody pursuant to RCW
17 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW
18 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the
19 Indian child shall be returned to the parent or Indian custodian upon
20 withdrawal of consent to foster care placement of the child.

21 (5) Upon termination of the voluntary foster care placement and
22 return of the child to the parent or Indian custodian, the department
23 or other child-placing agency which had assumed (~~eustody of the~~
24 ~~child~~) responsibility for the child's placement and care pursuant to
25 the consent to foster care placement shall file with the court written
26 notification of the child's return and shall also send such
27 notification to the Indian tribe in which the child is enrolled or
28 eligible for enrollment as a member and to any other party to the
29 validation proceeding including any noncustodial parent.

30 NEW SECTION. Sec. 7. A new section is added to chapter 13.34 RCW
31 to read as follows:

32 (1) Whenever the department of social and health services places a
33 developmentally disabled child in out-of-home care pursuant to section
34 3 of this act, the department shall obtain a judicial determination
35 within one hundred eighty days of the placement that continued
36 placement is in the best interests of the child.

37 (2) To obtain the judicial determination, the department shall file
38 a petition alleging that there is located or residing within the county

1 a child who has a developmental disability, as defined in RCW
2 71A.10.020, and that the child has been placed in out-of-home care
3 pursuant to section 3 of this act. The petition shall request that the
4 court review the child's placement, make a determination that continued
5 placement is in the best interests of the child, and take other
6 necessary action as provided in this section. The petition shall
7 contain the name, date of birth, and residence of the child and the
8 names and residences of the child's parent or legal guardian who has
9 agreed to the child's placement in out-of-home care. Reasonable
10 attempts shall be made by the department to ascertain and set forth in
11 the petition the identity, location, and custodial status of any parent
12 who is not a party to the placement agreement and why that parent
13 cannot assume custody of the child.

14 (3) Upon filing of the petition, the clerk of the court shall
15 schedule the petition for a hearing to be held no later than fourteen
16 calendar days after the petition has been filed. The department shall
17 provide notification of the time, date, and purpose of the hearing to
18 the parent or legal guardian who has agreed to the child's placement in
19 out-of-home care. The department shall also make reasonable attempts
20 to notify any parent who is not a party to the placement agreement, if
21 the parent's identity and location is known. Notification under this
22 section may be given by the most expedient means, including but not
23 limited to, mail, personal service, telephone, and telegraph.

24 (4) The court shall appoint a guardian ad litem for the child as
25 provided in RCW 13.34.100, unless the court for good cause finds the
26 appointment unnecessary.

27 (5) Permanency planning hearings shall be held as provided in this
28 subsection. At the hearing, the court shall review whether the child's
29 best interests are served by continued out-of-home placement and
30 determine the future legal status of the child.

31 (a) For children age ten and under, a permanency planning hearing
32 shall be held in all cases where the child has remained in out-of-home
33 care for at least nine months and an adoption decree or guardianship
34 order has not previously been entered. The hearing shall take place no
35 later than twelve months following commencement of the child's current
36 placement episode.

37 (b) For children over age ten, a permanency planning hearing shall
38 be held in all cases where the child has remained in out-of-home care
39 for at least fifteen months and an adoption decree or guardianship

1 order has not previously been entered. The hearing shall take place no
2 later than eighteen months following commencement of the current
3 placement episode.

4 (c) No later than ten working days before the permanency planning
5 hearing, the department shall submit a written permanency plan to the
6 court and shall mail a copy of the plan to all parties. The plan shall
7 be directed toward securing a safe, stable, and permanent home for the
8 child as soon as possible. The plan shall identify one of the
9 following outcomes as the primary goal and may also identify additional
10 outcomes as alternative goals: Return of the child to the home of the
11 child's parent or legal guardian; adoption; guardianship; or long-term
12 out-of-home care, until the child is age eighteen, with a written
13 agreement between the parties and the child's care provider.

14 (d) If a goal of long-term out-of-home care has been achieved
15 before the permanency planning hearing, the court shall review the
16 child's status to determine whether the placement and the plan for the
17 child's care remains appropriate. In cases where the primary
18 permanency planning goal has not been achieved, the court shall inquire
19 regarding the reasons why the primary goal has not been achieved and
20 determine what needs to be done to make it possible to achieve the
21 primary goal.

22 (e) Following the first permanency planning hearing, the court
23 shall hold a further permanency planning hearing in accordance with
24 this section at least once every twelve months until a permanency
25 planning goal is achieved or the voluntary placement agreement is
26 terminated.

27 (6) Any party to the voluntary placement agreement may terminate
28 the agreement at any time. Upon termination of the agreement, the
29 child shall be returned to the care of the child's parent or legal
30 guardian, unless the child has been taken into custody pursuant to RCW
31 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW
32 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The
33 department shall notify the court upon termination of the voluntary
34 placement agreement and return of the child to the care of the child's
35 parent or legal guardian. Whenever a voluntary placement agreement is
36 terminated, an action under this section shall be dismissed.

37 (7) This section does not prevent the department from filing a
38 dependency petition if there is reason to believe that the child is a
39 dependent child as defined in RCW 13.34.030. An action filed under

1 this section shall be dismissed upon the filing of a dependency
2 petition regarding a child who is the subject of the action under this
3 section.

4 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.13 RCW
5 to read as follows:

6 (1) The legislature is concerned about the lack of coordination and
7 expertise in the handling of placement cases involving developmentally
8 disabled children. As a result, the legislature directs the department
9 to adopt rules to do the following:

10 (a) Increase the coordination between the division of developmental
11 disabilities and the division of children and family services for
12 developmentally disabled children in placement, addressing
13 responsibilities of developmental disabilities case managers and
14 definitions of social worker;

15 (b) Provide increased training on issues facing developmentally
16 disabled children to caseworkers;

17 (c) Require the division of developmental disabilities to assist
18 the division of children and family services in recruiting foster and
19 adoptive homes for developmentally disabled children; and

20 (d) Require the division of children and family services to assign
21 caseworkers to specialized caseloads consisting of developmentally
22 disabled children where feasible.

23 (2) In all matters involving the out-of-home placement of a
24 developmentally disabled child, the division of children and family
25 services caseworker shall be the primary point of contact for the
26 family.

27 NEW SECTION. **Sec. 9.** Section 3 of this act is necessary for the
28 immediate preservation of the public peace, health, or safety, or
29 support of the state government and its existing public institutions,
30 and takes effect immediately.

31 NEW SECTION. **Sec. 10.** Sections 2 and 4 of this act are necessary
32 for the immediate preservation of the public peace, health, or safety,
33 or support of the state government and its existing public
34 institutions, and take effect July 1, 1997."

1 **SHB 1849** - S COMM AMD
2 By Committee on Health & Long-Term Care

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4 On page 1, line 1 of the title, after "disabilities;" strike the
5 remainder of the title and insert "amending RCW 13.34.030 and
6 13.34.245; reenacting and amending RCW 13.04.030; adding new sections
7 to chapter 74.13 RCW; adding a new section to chapter 13.34 RCW;
8 creating a new section; providing an effective date; and declaring an
9 emergency."

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