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HOUSE BILL 2000

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State of Washington

58th Legislature

2003 Regular Session

By Representatives Pettigrew, Dickerson, McCoy, Kenney and Santos

Read first time 02/19/2003. Referred to Committee on Juvenile Justice & Family Law.

1 AN ACT Relating to third-party custody proceedings involving the  
2 Indian Child Welfare Act; amending RCW 13.04.030, 13.34.245, and  
3 26.10.130; and adding a new section to chapter 26.10 RCW.

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

5 **Sec. 1.** RCW 13.04.030 and 2000 c 135 s 2 are each amended to read  
6 as follows:

7 (1) Except as provided in this section, the juvenile courts in this  
8 state shall have exclusive original jurisdiction over all proceedings:

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

11 (b) Relating to children alleged or found to be dependent as  
12 provided in chapter 26.44 RCW and in RCW 13.34.030 through  
13 ((13.34.170)) 13.34.161;

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

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

18 (e) Relating to juveniles alleged or found to have committed

1 offenses, traffic or civil infractions, or violations as provided in  
2 RCW 13.40.020 through 13.40.230, unless:

3 (i) The juvenile court transfers jurisdiction of a particular  
4 juvenile to adult criminal court pursuant to RCW 13.40.110;

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

7 (iii) The alleged offense or infraction is a traffic, fish,  
8 boating, or game offense, or traffic or civil infraction committed by  
9 a juvenile sixteen years of age or older and would, if committed by an  
10 adult, be tried or heard in a court of limited jurisdiction, in which  
11 instance the appropriate court of limited jurisdiction shall have  
12 jurisdiction over the alleged offense or infraction, and no guardian ad  
13 litem is required in any such proceeding due to the juvenile's age:  
14 PROVIDED, That if such an alleged offense or infraction and an alleged  
15 offense or infraction subject to juvenile court jurisdiction arise out  
16 of the same event or incident, the juvenile court may have jurisdiction  
17 of both matters: PROVIDED FURTHER, That the jurisdiction under this  
18 subsection does not constitute "transfer" or a "decline" for purposes  
19 of RCW 13.40.110(1) or (e)(i) of this subsection: PROVIDED FURTHER,  
20 That courts of limited jurisdiction which confine juveniles for an  
21 alleged offense or infraction may place juveniles in juvenile detention  
22 facilities under an agreement with the officials responsible for the  
23 administration of the juvenile detention facility in RCW 13.04.035 and  
24 13.20.060;

25 (iv) The alleged offense is a traffic or civil infraction, a  
26 violation of compulsory school attendance provisions under chapter  
27 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has  
28 assumed concurrent jurisdiction over those offenses as provided in RCW  
29 13.04.0301; or

30 (v) The juvenile is sixteen or seventeen years old and the alleged  
31 offense is:

32 (A) A serious violent offense as defined in RCW 9.94A.030;

33 (B) A violent offense as defined in RCW 9.94A.030 and the juvenile  
34 has a criminal history consisting of: (I) One or more prior serious  
35 violent offenses; (II) two or more prior violent offenses; or (III)  
36 three or more of any combination of the following offenses: Any class  
37 A felony, any class B felony, vehicular assault, or manslaughter in the

1 second degree, all of which must have been committed after the  
2 juvenile's thirteenth birthday and prosecuted separately;

3 (C) Robbery in the first degree, rape of a child in the first  
4 degree, or drive-by shooting, committed on or after July 1, 1997;

5 (D) Burglary in the first degree committed on or after July 1,  
6 1997, and the juvenile has a criminal history consisting of one or more  
7 prior felony or misdemeanor offenses; or

8 (E) Any violent offense as defined in RCW 9.94A.030 committed on or  
9 after July 1, 1997, and the juvenile is alleged to have been armed with  
10 a firearm.

11 In such a case the adult criminal court shall have exclusive  
12 original jurisdiction.

13 If the juvenile challenges the state's determination of the  
14 juvenile's criminal history under (e)(v) of this subsection, the state  
15 may establish the offender's criminal history by a preponderance of the  
16 evidence. If the criminal history consists of adjudications entered  
17 upon a plea of guilty, the state shall not bear a burden of  
18 establishing the knowing and voluntariness of the plea;

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

21 (g) Relating to termination of a diversion agreement under RCW  
22 13.40.080, including a proceeding in which the divertee has attained  
23 eighteen years of age;

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

30 (i) Relating to petitions to compel disclosure of information filed  
31 by the department of social and health services pursuant to RCW  
32 74.13.042; and

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

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

5 (3) The juvenile court shall have concurrent original jurisdiction  
6 with the family court over child custody proceedings under chapter  
7 26.10 RCW:

8 (a) As provided for in RCW 13.34.155; or

9 (b) Where the court knows or has reason to know that a child who is  
10 the subject of a contested custody proceeding is an Indian child as  
11 defined in 25 U.S.C. Sec. 1903(4), except if the parent or Indian  
12 custodian and child are residents of or domiciled within the boundaries  
13 of a federally recognized Indian reservation over which the tribe  
14 exercises exclusive jurisdiction.

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

19 **Sec. 2.** RCW 13.34.245 and 1997 c 386 s 18 are each amended to read  
20 as follows:

21 (1) Where any parent or Indian custodian voluntarily consents to  
22 foster care placement of an Indian child and a petition for dependency  
23 has not been filed regarding the child, such consent shall not be valid  
24 unless executed in writing before the court and filed with the court.  
25 The consent shall be accompanied by the written certification of the  
26 court that the terms and consequences of the consent were fully  
27 explained in detail to the parent or Indian custodian during the court  
28 proceeding and were fully understood by the parent or Indian custodian.  
29 The court shall also certify in writing either that the parent or  
30 Indian custodian fully understood the explanation in English or that it  
31 was interpreted into a language that the parent or Indian custodian  
32 understood. Any consent given prior to, or within ten days after, the  
33 birth of the Indian child shall not be valid.

34 (2) To obtain court validation of a voluntary consent to foster  
35 care placement, any person may file a petition for validation alleging  
36 that there is located or residing within the county an Indian child  
37 whose parent or Indian custodian wishes to voluntarily consent to

1 foster care placement of the child and requesting that the court  
2 validate the consent as provided in this section. The petition shall  
3 contain the name, date of birth, and residence of the child, the names  
4 and residences of the consenting parent or Indian custodian, and the  
5 name and location of the Indian tribe in which the child is a member or  
6 eligible for membership. The petition shall state whether the  
7 placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be  
8 followed. Reasonable attempts shall be made by the petitioner to  
9 ascertain and set forth in the petition the identity, location, and  
10 custodial status of any parent or Indian custodian who has not  
11 consented to foster care placement and why that parent or Indian  
12 custodian cannot assume custody of the child.

13 (3) Upon filing of the petition for validation, the clerk of the  
14 court shall schedule the petition for a hearing on the court validation  
15 of the voluntary consent no later than forty-eight hours after the  
16 petition has been filed, excluding Saturdays, Sundays, and holidays.  
17 Notification of time, date, location, and purpose of the validation  
18 hearing shall be provided as soon as possible to the consenting parent  
19 or Indian custodian, the department or other child-placing agency which  
20 is to assume responsibility for the child's placement and care pursuant  
21 to the consent to foster care placement, and the Indian tribe in which  
22 the child is enrolled or eligible for enrollment as a member. If the  
23 identity and location of any nonconsenting parent or Indian custodian  
24 is known, reasonable attempts shall be made to notify the parent or  
25 Indian custodian of the consent to placement and the validation  
26 hearing. Notification under this subsection may be given by the most  
27 expedient means, including, but not limited to, mail, personal service,  
28 telephone, and telegraph.

29 (4) Any parent or Indian custodian may withdraw consent to a  
30 voluntary foster care placement, made under this section, at any time.  
31 Unless the Indian child has been taken in custody pursuant to RCW  
32 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW  
33 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the  
34 Indian child shall be returned to the parent or Indian custodian upon  
35 withdrawal of consent to foster care placement of the child.

36 (5) Upon termination of the voluntary foster care placement and  
37 return of the child to the parent or Indian custodian, the department  
38 or other child-placing agency which had assumed responsibility for the

1 child's placement and care pursuant to the consent to foster care  
2 placement shall file with the court written notification of the child's  
3 return and shall also send such notification to the Indian tribe in  
4 which the child is enrolled or eligible for enrollment as a member and  
5 to any other party to the validation proceeding including any  
6 noncustodial parent.

7 (6) If an Indian child as defined in 25 U.S.C. Sec. 1903(4) is the  
8 subject of a contested nonparental custody proceeding pursuant to  
9 chapter 26.10 RCW that has been transferred to juvenile court and the  
10 department has determined that there is no basis to file a dependency  
11 petition, the department shall, subject to available resources, offer  
12 or provide reasonably available child welfare services with the goal of  
13 reunifying the child with the child's parent or parents. Such services  
14 shall be offered or provided for a period not to exceed fifteen months,  
15 during which the court shall determine if reunification is likely to  
16 occur in the near future or if entry of a permanent custody order is in  
17 the best interest of the child.

18 (7) Nothing in this section may be construed to either limit the  
19 court's authority to order reunification services as otherwise provided  
20 for under this chapter or to create an entitlement to services or to  
21 create judicial authority to order the provision of services to any  
22 person or family if the services are unavailable or unsuitable, the  
23 child or family is not eligible for such services, or for any purpose  
24 other than that specified in subsection (6) of this section.

25 NEW SECTION. Sec. 3. A new section is added to chapter 26.10 RCW  
26 to read as follows:

27 Every petition filed in proceedings under this chapter shall  
28 contain a statement alleging whether the Indian child welfare act, 25  
29 U.S.C. Sec. 1901 et seq., applies to the proceeding. Every order or  
30 decree entered in any proceeding under this chapter shall contain a  
31 finding that the Indian child welfare act does or does not apply.

32 **Sec. 4.** RCW 26.10.130 and 1993 c 289 s 2 are each amended to read  
33 as follows:

34 (1) In contested custody proceedings, and in other custody  
35 proceedings if a parent or the child's custodian so requests, the court  
36 may order an investigation and report concerning custodian arrangements

1 for the child, or may appoint a guardian ad litem pursuant to RCW  
2 26.12.175, or both. The investigation and report may be made by the  
3 guardian ad litem, the staff of the juvenile court, or other  
4 professional social service organization experienced in counseling  
5 children and families.

6 (2) In preparing the report concerning a child, the investigator  
7 may consult any person who may have information about the child and  
8 potential custodian arrangements. Upon order of the court, the  
9 investigator may refer the child to professional personnel for  
10 diagnosis. The investigator may consult with and obtain information  
11 from medical, psychiatric, or other expert persons who have served the  
12 child in the past without obtaining the consent of the parent or the  
13 child's custodian; but the child's consent must be obtained if the  
14 child has reached the age of twelve, unless the court finds that the  
15 child lacks mental capacity to consent. If the requirements of  
16 subsection (3) of this section are fulfilled, the investigator's report  
17 may be received in evidence at the hearing.

18 (3) The investigator shall mail the investigator's report to  
19 counsel and to any party not represented by counsel at least ten days  
20 prior to the hearing unless a shorter time is ordered by the court for  
21 good cause shown. The investigator shall make available to counsel and  
22 to any party not represented by counsel the investigator's file of  
23 underlying data and reports, complete texts of diagnostic reports made  
24 to the investigator pursuant to the provisions of subsection (2) of  
25 this section, and the names and addresses of all persons whom the  
26 investigator has consulted. Any party to the proceeding may call the  
27 investigator and any person whom the investigator has consulted for  
28 cross-examination. A party may not waive the right of cross-  
29 examination prior to the hearing.

30 (4) If the court knows or has reason to believe that a child who is  
31 the subject of a custody proceeding filed under this chapter is an  
32 Indian child as defined in 25 U.S.C. Sec. 1903(4), the court may order  
33 the department of social and health services to review the case to  
34 determine whether the case is appropriate for a dependency petition  
35 under chapter 13.34 RCW.

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