
SENATE BILL 6470

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By Senators Kauffman, Hargrove, Prentice, Gordon, Regala, Keiser, McAuliffe, Stevens, and Kline

Read first time 01/14/10. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the burdens of proof required in dependency
2 matters affecting Indian children; amending RCW 13.34.190; and
3 reenacting and amending RCW 13.34.130.

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

5 **Sec. 1.** RCW 13.34.130 and 2009 c 520 s 27, 2009 c 491 s 2, and
6 2009 c 397 s 3 are each reenacted and amended to read as follows:

7 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has
8 been proven by a preponderance of the evidence that the child is
9 dependent within the meaning of RCW 13.34.030 after consideration of
10 the social study prepared pursuant to RCW 13.34.110 and after a
11 disposition hearing has been held pursuant to RCW 13.34.110, the court
12 shall enter an order of disposition pursuant to this section.

13 (1) The court shall order one of the following dispositions of the
14 case:

15 (a) Order a disposition other than removal of the child from his or
16 her home, which shall provide a program designed to alleviate the
17 immediate danger to the child, to mitigate or cure any damage the child
18 has already suffered, and to aid the parents so that the child will not
19 be endangered in the future. In determining the disposition, the court

1 should choose services to assist the parents in maintaining the child
2 in the home, including housing assistance, if appropriate, that least
3 interfere with family autonomy and are adequate to protect the child.

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

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

37 (2) When placing an Indian child in out-of-home care, the

1 department or supervising agency shall follow the placement preference
2 characteristics in RCW 13.34.250.

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

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

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

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

23 ~~((+3))~~ (4) If the court has ordered a child removed from his or
24 her home pursuant to subsection (1)(b) of this section, the court shall
25 consider whether it is in a child's best interest to be placed with,
26 have contact with, or have visits with siblings.

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

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

33 (ii) There is no reasonable cause to believe that the health,
34 safety, or welfare of any child subject to the order of placement,
35 contact, or visitation would be jeopardized or that efforts to reunite
36 the parent and child would be hindered by such placement, contact, or
37 visitation. In no event shall parental visitation time be reduced in
38 order to provide sibling visitation.

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

5 ~~((+4))~~ (5) If the court has ordered a child removed from his or
6 her home pursuant to subsection (1)(b) of this section and placed into
7 nonparental or nonrelative care, the court shall order a placement that
8 allows the child to remain in the same school he or she attended prior
9 to the initiation of the dependency proceeding when such a placement is
10 practical and in the child's best interest.

11 ~~((+5))~~ (6) If the court has ordered a child removed from his or
12 her home pursuant to subsection (1)(b) of this section, the court may
13 order that a petition seeking termination of the parent and child
14 relationship be filed if the requirements of RCW 13.34.132 are met.

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

35 **Sec. 2.** RCW 13.34.190 and 2000 c 122 s 26 are each amended to read
36 as follows:

37 (1) Except as provided in subsection (2) of this section, after

1 hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an
2 order terminating all parental rights to a child only if the court
3 finds that such an order is in the best interests of the child and
4 that:

5 ((+1)) (a) The allegations contained in the petition as provided in
6 RCW 13.34.180(1) are established by clear, cogent, and convincing
7 evidence; or

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

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

18 (d) The allegation under RCW 13.34.180(3) is established beyond a
19 reasonable doubt(~~(+and)~~).

20 (2) (~~(Such an order is in the best interests of the child.)~~) After
21 hearings pursuant to RCW 13.34.110 or 13.34.130, the court may enter an
22 order terminating all parental rights to an Indian child as defined in
23 25 U.S.C. Sec. 1903 only if the court finds that the allegations
24 contained in the petition as provided in RCW 13.34.180(1) are proved
25 beyond a reasonable doubt and that the continued custody of the child
26 by the parent is likely to result in serious emotional or physical
27 damage to the child.

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