
HOUSE BILL 1895

State of Washington

62nd Legislature

2011 Regular Session

By Representatives McCoy and Santos

Read first time 02/08/11. Referred to Committee on State Government & Tribal Affairs.

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, and 74.13.350; reenacting and amending
4 RCW 13.34.030, 13.34.065, and 13.34.136; and adding a new chapter to
5 Title 13 RCW.

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, or 26.33
12 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 voluntary or involuntary out-of-home placement. Whenever such
17 placement is necessary, the best interests of the Indian child is

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

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

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

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

29 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this
30 section apply throughout this chapter unless the context clearly
31 requires otherwise.

32 (1) "Active efforts" means at least the following:

33 (a) The department or supervising agency's efforts to prevent or
34 eliminate the need for removal, or continued removal of the child from
35 the family home, including taking the parent or parents or Indian
36 custodian through the steps of the plan rather than requiring that the
37 plan be performed on its own. "Passive efforts" consist of merely

1 drawing up a plan and requiring the parent or Indian custodian to use
2 his or her own resources to bring the plan to fruition. In actions
3 under chapters 13.34 and 26.33 RCW, "active efforts" require more
4 direct involvement with the family than reasonable efforts;

5 (b) In any proceeding under chapter 13.34 or 26.33 RCW in which the
6 petitioner does not otherwise have a statutory or contractual duty to
7 directly provide services to, or procure services for, the parent or
8 Indian custodian, "active efforts" means a documented, concerted, and
9 good faith effort to facilitate the parent's or Indian custodian's
10 receipt of and engagement in services capable of meeting the criteria
11 set out in (a) of this subsection.

12 (2) "Adoptive placement" means the permanent placement of an Indian
13 child for adoption in any action under chapter 26.33 RCW resulting in
14 a final decree of adoption. "Adoptive placement" does not include a
15 placement based upon an act by an Indian child which, if committed by
16 an adult, would be deemed a crime, or upon an award, in a divorce
17 proceeding, of custody to one of the child's parents.

18 (3) "Best interests of the Indian child" means the use of practices
19 in accordance with the federal Indian child welfare act, this chapter,
20 and other applicable law, that are designed to accomplish the
21 following: (a) Protect the safety, development, and stability of the
22 Indian child; (b) prevent the Indian child's voluntary or involuntary
23 out-of-home placement; (c) whenever such placement is necessary or
24 ordered, to place the Indian child in accordance with the placement
25 preferences expressed in the federal Indian child welfare act or this
26 chapter; and make an effort to secure a placement of the Indian child
27 that reflects the unique values of the Indian child's tribal culture
28 and is best able to assist the Indian child in establishing,
29 developing, and maintaining a political, cultural, social, and
30 spiritual relationship with the Indian child's tribe and tribal
31 community.

32 (4) "Child custody proceeding" means a foster care placement,
33 termination of parental rights, preadoptive placement, and adoptive
34 placement.

35 (5) "Court of competent jurisdiction" means a federal or state
36 court that entered an order in a child custody proceeding involving an
37 Indian child, as long as the state court had proper subject matter

1 jurisdiction in accordance with this chapter and the laws of that
2 state, or the tribal court that had or has exclusive or concurrent
3 jurisdiction pursuant to 25 U.S.C. Sec. 1911.

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

10 (7) "Foster care placement" means any action removing an Indian
11 child from its parent or Indian custodian for temporary placement in a
12 foster home or the home of a guardian where the parent or Indian
13 custodian cannot have the child returned upon demand but where parental
14 rights have not been terminated.

15 (8) "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 (9) "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 (10) "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 (11) "Indian child's tribe" means a tribe in which an Indian child
30 is a member or eligible for membership.

31 (12) "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 (13) "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 (14) "Member" and "membership" means a determination by an Indian
4 tribe by any means and based on any criteria deemed appropriate by that
5 Indian tribe that a person is a member or eligible for membership in
6 that Indian tribe and shall not be limited by enrollment or blood
7 quantum unless expressly so limited by that Indian tribe.

8 (15) "Parent" means a biological parent or parents of an Indian
9 child or a person who has lawfully adopted an Indian child, including
10 adoptions made under tribal law or custom. "Parent" does not include
11 an unwed father whose paternity has not been acknowledged or
12 established. Except for purposes of the federal Indian child welfare
13 act as codified in 25 U.S.C. Secs. 1913(b), (c), and (d), 1916, 1917,
14 and 1951, "parent" does not include a person whose parental rights to
15 that child have been terminated.

16 (16) "Preadoptive placement" means the temporary placement of an
17 Indian child in a foster home or institution after the termination of
18 parental rights, but prior to or in lieu of adoptive placement.

19 (17) "Qualified expert witness" means a person who:

20 (a)(i) Is a social worker, sociologist, physician, psychologist,
21 traditional tribal therapist and healer, spiritual leader, historian,
22 or elder; and

23 (ii) Is a member of the child's Indian tribe who is recognized by
24 the child's tribal community as knowledgeable regarding tribal customs
25 as the customs pertain to family organization or child-rearing
26 practices.

27 (b) If such a person is not available then "qualified expert
28 witness" means:

29 (i) A member of another tribe who is formally recognized by the
30 Indian child's tribe as having the knowledge to be a qualified expert
31 witness; or

32 (ii) A layperson having substantial experience in the delivery of
33 child and family services to Indians, and substantial knowledge of the
34 prevailing social and cultural standards and child-rearing practices
35 within the Indian child's tribe; or

36 (iii) A professional person having substantial education and
37 experience in the person's professional specialty and having

1 substantial knowledge of the prevailing social and cultural standards
2 and child-rearing practices within the Indian child's tribe.

3 (c) No employee of the department or a supervising agency may be a
4 "qualified expert witness" unless expressly recognized as such by the
5 Indian child's tribe.

6 (18) "Secretary of the interior" means the secretary of the United
7 States department of the interior.

8 (19) "Termination of parental rights" means any action resulting in
9 the termination of the parent-child relationship.

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

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

23 NEW SECTION. **Sec. 5.** DETERMINATION OF INDIAN STATUS. (1) Any
24 party seeking the foster care placement of, termination of parental
25 rights over, or the adoption of, a child must make a good faith effort
26 to determine whether the child is an Indian child by contacting any
27 Indian tribe in which the child may be a member or may be eligible for
28 membership. The petitioning party may also consult with the child's
29 parent, any person who has custody of the child or with whom the child
30 resides, and any other person that reasonably can be expected to have
31 information regarding the child's possible membership or eligibility
32 for membership in an Indian tribe to determine if the child is an
33 Indian child.

34 (2) A written determination by an Indian tribe that a child is a
35 member of or eligible for membership in that tribe, or testimony
36 attesting to such status by a person authorized by the tribe to make
37 such a determination, shall be conclusive that the child is an Indian

1 child. A written determination by an Indian tribe, or testimony by a
2 person authorized by the tribe to make such a determination, that a
3 child is not a member of, or eligible for membership in that tribe,
4 shall be conclusive that the child is not an Indian child as to that
5 tribe. Where a tribe provides no response to notice under section 7 of
6 this act, such nonresponse shall not constitute evidence that the child
7 is not a member or eligible for membership.

8 (3) The determination of the Indian status of a child shall be made
9 as soon as practicable in order to serve the best interests of the
10 Indian child.

11 (4) Where a child has been determined not to be an Indian child,
12 any party to the proceeding, or an Indian tribe that subsequently
13 determines the child is a member, may move the court for
14 redetermination of the child's Indian status at any time based upon new
15 evidence, redetermination by the child's tribe, or newly conferred
16 recognition of the tribe.

17 NEW SECTION. **Sec. 6.** JURISDICTION. (1) An Indian tribe shall
18 have exclusive jurisdiction over any child custody proceeding involving
19 an Indian child who resides or is domiciled within the reservation of
20 that tribe, unless the tribe has consented to the state's concurrent
21 jurisdiction, where the tribe has expressly declined to exercise its
22 exclusive jurisdiction, or where the state is exercising emergency
23 jurisdiction in strict compliance with section 15 of this act.

24 (2) If an Indian child is already a ward of a tribal court at the
25 start of the child custody proceeding, the Indian tribe may retain
26 exclusive jurisdiction, notwithstanding the residence or domicile of
27 the child.

28 NEW SECTION. **Sec. 7.** NOTICE. In any child custody proceeding in
29 which any party or the court knows, or has reason to know, that the
30 child is or may be an Indian child, the party seeking the foster care
31 placement of, or the termination of parental rights to, an Indian child
32 shall notify the parent or Indian custodian and the Indian child's
33 tribe, by registered mail with return receipt requested, of the pending
34 proceedings and of their right of intervention. If the identity or
35 location of the parent or Indian custodian and the tribe cannot be
36 determined, such notice shall be given to the secretary by registered

1 mail, return receipt requested. The secretary has fifteen days after
2 receipt to provide the requisite notice to the parent or Indian
3 custodian and the tribe. No foster care placement or termination of
4 parental rights proceeding shall be held until at least ten days after
5 receipt of notice by the parent or Indian custodian and the tribe or
6 the secretary. The parent or Indian custodian or the tribe shall, upon
7 request, be granted up to twenty additional days to prepare for the
8 proceeding.

9 NEW SECTION. **Sec. 8.** TRANSFER OF JURISDICTION. (1) In any child
10 custody proceeding involving an Indian child who is not domiciled or
11 residing within the reservation of the Indian child's tribe or who is
12 not a ward of a tribal court, the court shall, in the absence of
13 parental objection or good cause, transfer the proceeding to the
14 jurisdiction of the Indian child's tribe, upon the motion of any of the
15 following persons:

- 16 (a) Either of the child's parents;
- 17 (b) The child's Indian custodian;
- 18 (c) The child's tribe; or
- 19 (d) The child.

20 The tribe may decline transfer of the proceeding.

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

24 (3) If either of the Indian child's parents objects to transfer of
25 the proceeding to the Indian child's tribe, the court shall not
26 transfer the proceeding.

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

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

32 (b) Pending receipt of such tribal court order, the state court may
33 conduct additional hearings and enter orders which strictly comply with
34 the requirements of the federal Indian child welfare act and this
35 chapter. The state court shall not enter a final order in any child
36 custody proceeding, except an order dismissing the proceeding and
37 returning the Indian child to the care of the parent or Indian

1 custodian from whose care the child was removed, while awaiting receipt
2 of a tribal court order accepting jurisdiction, or in the absence of a
3 tribal court order or other formal written declination of jurisdiction.

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

9 NEW SECTION. **Sec. 9.** INTERVENTION. The Indian child, the Indian
10 child's tribe or tribes, and the Indian custodian have the right to
11 intervene at any point in any child custody proceeding involving the
12 Indian child.

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

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

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

28 NEW SECTION. **Sec. 13.** EVIDENTIARY REQUIREMENTS. (1) Before an
29 Indian child can be placed in a foster care placement, the department
30 or supervising agency must show that active efforts have been made to
31 provide remedial services and rehabilitative programs designed to
32 prevent the breakup of the Indian family and that these efforts have

1 proved unsuccessful. The court shall not order a foster care placement
2 without a specific finding describing the active efforts that have been
3 made and the circumstances that show such efforts were unsuccessful.

4 (2) The court may not order that an Indian child be placed in
5 foster care in the absence of a determination, supported by clear and
6 convincing evidence, including the testimony of a qualified expert
7 witness, that the continued custody of the child by the child's parent
8 or Indian custodian, is likely to result in serious emotional or
9 physical damage to the child. For purposes of this subsection, any
10 harm that may result from interfering with the bond or attachment that
11 may have formed between the child and a foster care provider shall not
12 be a basis for denying return of custody to the parent or Indian
13 custodian.

14 (3) The court shall not order the termination of parental rights
15 over an Indian child in the absence of a determination, supported by
16 evidence beyond a reasonable doubt, including the testimony of a
17 qualified expert witness, that the continued custody of the child by
18 the child's parent or Indian custodian, or the return of custody of the
19 child to the child's parent or Indian custodian, is likely to result in
20 serious emotional or physical damage to the child. For purposes of
21 this subsection, any harm that may result from interfering with the
22 bond or attachment that may have formed between the child and a foster
23 care provider shall not be a basis for termination of parental rights
24 over an Indian child.

25 NEW SECTION. **Sec. 14.** CHOICE OF LAW. If another state or federal
26 law applicable to a child custody proceeding provides a higher standard
27 of protection to the rights of the Indian child in accordance with the
28 best interests of the Indian child as defined in section 4 of this act,
29 the Indian child's tribe, or the parent or parents or Indian custodian
30 of an Indian child, than the rights provided under this chapter, the
31 court shall apply the higher standard as long as the higher standard
32 does not directly conflict with the federal Indian child welfare act.

33 NEW SECTION. **Sec. 15.** EMERGENCY REMOVAL OF AN INDIAN CHILD. (1)
34 Notwithstanding any other provision of federal or state law, the court
35 may order emergency removal of an Indian child, including an Indian
36 child who is a resident of or is domiciled on an Indian reservation,

1 but is temporarily located off the reservation, or the emergency
2 placement of such child in a foster home or institution, to prevent
3 imminent physical damage or harm to the child.

4 (2) In case of an emergency removal of an Indian child, regardless
5 of residence or domicile of the child, the court or the department or
6 supervising agency shall terminate the emergency removal or placement
7 immediately when the removal or placement is no longer necessary to
8 prevent imminent physical damage or harm to the child.

9 (3) The party that obtained the emergency removal or placement
10 shall:

11 (a) Immediately initiate a child custody proceeding subject to
12 strict compliance with the federal Indian child welfare act and this
13 chapter;

14 (b) Transfer the child to the jurisdiction of the appropriate
15 Indian tribe; or

16 (c) Restore the child to the child's parent or Indian custodian, if
17 appropriate.

18 (4) An emergency removal or placement of an Indian child shall
19 immediately terminate, and any court order approving the removal or
20 placement shall be vacated, when the removal or placement is no longer
21 necessary to prevent imminent physical damage or harm to the child.

22 (5) Upon termination of the emergency removal or placement order,
23 the child shall immediately be returned to the custody of the child's
24 parent or Indian custodian unless any of the following circumstances
25 exist:

26 (a) The child is transferred to the jurisdiction of the child's
27 tribe;

28 (b) In an involuntary foster care placement proceeding pursuant to
29 and in strict compliance with the federal Indian child welfare act and
30 this chapter, the court orders that the child shall be placed in foster
31 care; or

32 (c) The child's parent or Indian custodian voluntarily consents to
33 the foster care placement of the child pursuant to and in strict
34 compliance with the provisions of the federal Indian child welfare act
35 and this chapter.

36 NEW SECTION. **Sec. 16.** CONSENT. (1) If an Indian child's parent
37 or Indian custodian voluntarily consents to a foster care placement of

1 the child or to termination of parental rights, the consent is not
2 valid unless executed in writing and recorded before a judge of a court
3 of competent jurisdiction and accompanied by the judge's certificate
4 that the terms and consequences of the consent were fully explained in
5 detail and were fully understood by the parent or Indian custodian.
6 The court must also certify that either the parent or Indian custodian
7 fully understood the explanation in English or that it was interpreted
8 into a language that the parent or Indian custodian understood. Any
9 consent for release of custody given prior to, or within ten days
10 after, the birth of the Indian child shall not be valid.

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

15 (3) In a voluntary proceeding for termination of parental rights
16 to, or adoptive placement of, an Indian child, the consent of the
17 parent may be withdrawn for any reason at any time prior to the entry
18 of a final decree termination of parental rights or adoption, and the
19 child shall be returned to the parent.

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

27 NEW SECTION. **Sec. 17.** IMPROPER REMOVAL OF AN INDIAN CHILD. If a
28 petitioner in a child custody proceeding under this chapter has
29 improperly removed the child from the custody of the parent or Indian
30 custodian or has improperly retained custody after a visit or other
31 temporary relinquishment of custody, the court shall decline
32 jurisdiction over the petition and shall immediately return the child
33 to the child's parent or Indian custodian unless returning the child to
34 the parent or Indian custodian would subject the child to substantial
35 and immediate danger or threat of such danger.

1 NEW SECTION. **Sec. 18.** REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR
2 FOSTER CARE PLACEMENT. (1) If a final decree of adoption of an Indian
3 child has been vacated or set aside or the adoptive parents voluntarily
4 consent to the termination of their parental rights to the child, the
5 biological parent or prior Indian custodian may petition to have the
6 child returned to their custody and the court shall grant the request
7 unless there is a showing by clear and convincing evidence that return
8 of custody to the biological parent or prior Indian custodian is not in
9 the best interests of the child.

10 (2) If an Indian child is removed from a foster care placement or
11 a preadoptive or adoptive home for the purpose of further foster care,
12 preadoptive, or adoptive placement, the placement shall be in
13 accordance with this chapter, except when an Indian child is being
14 returned to the parent or Indian custodian from whose custody the child
15 was originally removed.

16 NEW SECTION. **Sec. 19.** PLACEMENT PREFERENCES. (1) In the absence
17 of good cause to the contrary, any adoptive or other permanent
18 placement of an Indian child, preference shall be given to a placement
19 with one of the following, in descending priority order:

20 (a) Relatives;

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

22 (c) An Indian family of a Washington Indian tribe that is of a
23 similar culture to the child's tribe; or

24 (d) Any other family which can provide a suitable home for an
25 Indian child, such suitability to be determined in consultation with a
26 local Indian child welfare advisory committee.

27 (2) When an emergency removal, foster care placement, or
28 preadoptive placement of an Indian child is necessary, a good faith
29 effort will be made to place the Indian child:

30 (a) In the least restrictive setting;

31 (b) Which most approximates a family situation;

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

33 and

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

35 (3) In any foster care or preadoptive placement, a preference shall
36 be given, in absence of good cause to the contrary, to the child's
37 placement with one of the following:

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

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

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

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

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

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

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

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

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

17 (4) Notwithstanding the placement preferences listed in subsection
18 (1) of this section, if a different order of placement preference is
19 established by the child's tribe, the court or agency effecting the
20 placement shall follow the order of preference established by the
21 tribe.

22 (5) The standards to be applied in meeting the preference
23 requirements of this section shall be the prevailing social and
24 cultural standards of the Indian community in which the parent or
25 extended family members of an Indian child reside, or with which the
26 parent or extended family members maintain social and cultural ties.

27 NEW SECTION. **Sec. 20.** COMPLIANCE. (1) The department, in
28 consultation with Indian tribes, shall establish standards and
29 procedures for the department's review of cases subject to this chapter
30 and methods for monitoring the department's compliance with provisions
31 of the federal Indian child welfare act and this chapter. These
32 standards and procedures and the monitoring methods shall also be
33 integrated into the department's child welfare contracting and contract
34 monitoring process.

35 (2) A court of competent jurisdiction shall vacate a court order
36 and order such additional proceedings as are necessary for appropriate
37 disposition for any of the following violations of this chapter:

1 (a) Failure to provide notice to an Indian parent, Indian
2 custodian, or tribe under the federal Indian child welfare act and this
3 chapter;

4 (b) Failure to recognize the jurisdiction of an Indian tribe;

5 (c) Failure, without cause as specified under this chapter, to
6 transfer jurisdiction to an Indian tribe where a party appropriately
7 requests transfer;

8 (d) Failure to give full faith and credit to the public acts,
9 records, or judicial proceedings of an Indian tribe;

10 (e) Failure to return the child to the child's parent or Indian
11 custodian when emergency removal or placement is no longer necessary to
12 prevent imminent serious physical damage or harm;

13 (f) Failure to strictly comply with the voluntary consent
14 requirement of this chapter;

15 (g) Failure to make active efforts to provide remedial services or
16 rehabilitative programs designed to prevent the breakup of the Indian
17 family as required by this chapter; or

18 (h) Failure to provide the testimony of qualified expert witnesses
19 as required by this chapter.

20 (3) If a petitioner in a child custody proceeding before a state
21 court has improperly removed the child from the custody of the child's
22 parent or Indian custodian or has improperly retained custody after a
23 visit or other temporary relinquishment of custody, the court shall
24 decline jurisdiction over the petition and shall immediately order the
25 return of the child to the child's parent or Indian custodian unless
26 returning the child to the parent or Indian custodian would subject the
27 child to imminent serious physical damage or harm.

28 NEW SECTION. **Sec. 21.** SEVERABILITY. If any provision of this act
29 or its application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

32 **Sec. 22.** RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read
33 as follows:

34 (1) Whenever a child in need of services petition is filed by: (a)
35 A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent
36 pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW

1 13.32A.140, the filing party shall have a copy of the petition served
2 on the parents of the youth. Service shall first be attempted in
3 person and if unsuccessful, then by certified mail with return receipt.

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

7 (3)(a) Whenever the court or the petitioning party knows or has
8 reason to know that an Indian child is involved, the petitioning party
9 shall promptly provide notice to the child's parent or Indian custodian
10 and to the agent designated by the child's Indian tribe to receive such
11 notices. Notice shall be by certified mail with return receipt
12 requested. If the identity or location of the parent or Indian
13 custodian and the tribe cannot be determined, notice shall be given to
14 the secretary of the interior in the manner described in 25 C.F.R.
15 23.11 and section 7 of this act. If the child may be a member of more
16 than one tribe, the petitioning party shall send notice to all tribes
17 the petitioner has reason to know may be affiliated with the child.

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

22 **Sec. 23.** RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s
23 10, and 2010 c 94 s 6 are each reenacted and amended to read as
24 follows:

25 For purposes of this chapter:

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

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

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

8 (4) "Department" means the department of social and health
9 services.

10 (5) "Dependency guardian" means the person, nonprofit corporation,
11 or Indian tribe appointed by the court pursuant to this chapter for the
12 limited purpose of assisting the court in the supervision of the
13 dependency.

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

15 (a) Has been abandoned;

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

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

22 (7) "Developmental disability" means a disability attributable to
23 intellectual disability, cerebral palsy, epilepsy, autism, or another
24 neurological or other condition of an individual found by the secretary
25 to be closely related to an intellectual disability or to require
26 treatment similar to that required for individuals with intellectual
27 disabilities, which disability originates before the individual attains
28 age eighteen, which has continued or can be expected to continue
29 indefinitely, and which constitutes a substantial limitation to the
30 individual.

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

37 (9) "Guardian ad litem" means a person, appointed by the court to
38 represent the best interests of a child in a proceeding under this

1 chapter, or in any matter which may be consolidated with a proceeding
2 under this chapter. A "court-appointed special advocate" appointed by
3 the court to be the guardian ad litem for the child, or to perform
4 substantially the same duties and functions as a guardian ad litem,
5 shall be deemed to be guardian ad litem for all purposes and uses of
6 this chapter.

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

14 (11) "Housing assistance" means appropriate referrals by the
15 department or other supervising agencies to federal, state, local, or
16 private agencies or organizations, assistance with forms, applications,
17 or financial subsidies or other monetary assistance for housing. For
18 purposes of this chapter, "housing assistance" is not a remedial
19 service or time-limited family reunification service as described in
20 RCW 13.34.025(2).

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

23 (a) Receiving one of the following types of public assistance:
24 Temporary assistance for needy families, disability lifeline benefits,
25 poverty-related veterans' benefits, food stamps or food stamp benefits
26 transferred electronically, refugee resettlement benefits, medicaid, or
27 supplemental security income; or

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

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

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

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

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

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

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

12 (17) "Social study" means a written evaluation of matters relevant
13 to the disposition of the case and shall contain the following
14 information:

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

17 (b) A description of the specific services and activities, for both
18 the parents and child, that are needed in order to prevent serious harm
19 to the child; the reasons why such services and activities are likely
20 to be useful; the availability of any proposed services; and the
21 agency's overall plan for ensuring that the services will be delivered.
22 The description shall identify the services chosen and approved by the
23 parent;

24 (c) If removal is recommended, a full description of the reasons
25 why the child cannot be protected adequately in the home, including a
26 description of any previous efforts to work with the parents and the
27 child in the home; the in-home treatment programs that have been
28 considered and rejected; the preventive services, including housing
29 assistance, that have been offered or provided and have failed to
30 prevent the need for out-of-home placement, unless the health, safety,
31 and welfare of the child cannot be protected adequately in the home;
32 and the parents' attitude toward placement of the child;

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

35 (e) A description of the steps that will be taken to minimize the
36 harm to the child that may result if separation occurs including an
37 assessment of the child's relationship and emotional bond with any

1 siblings, and the agency's plan to provide ongoing contact between the
2 child and the child's siblings if appropriate; and

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

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

11 **Sec. 24.** RCW 13.34.040 and 2004 c 64 s 3 are each amended to read
12 as follows:

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

18 (2) In counties having paid probation officers, these officers
19 shall, to the extent possible, first determine if a petition is
20 reasonably justifiable. Each petition shall be verified and contain a
21 statement of facts constituting a dependency, and the names and
22 residence, if known to the petitioner, of the parents, guardian, or
23 custodian of the alleged dependent child.

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

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

1 **Sec. 25.** RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009
2 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as
3 follows:

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

9 (b) Any parent, guardian, or legal custodian who for good cause is
10 unable to attend the shelter care hearing may request that a subsequent
11 shelter care hearing be scheduled. The request shall be made to the
12 clerk of the court where the petition is filed prior to the initial
13 shelter care hearing. Upon the request of the parent, the court shall
14 schedule the hearing within seventy-two hours of the request, excluding
15 Saturdays, Sundays, and holidays. The clerk shall notify all other
16 parties of the hearing by any reasonable means.

17 (2)(a) If it is likely that the child will remain in shelter care
18 longer than seventy-two hours, in those areas in which child welfare
19 services are being provided by a supervising agency, the supervising
20 agency shall assume case management responsibilities of the case. The
21 department or supervising agency shall submit a recommendation to the
22 court as to the further need for shelter care in all cases in which the
23 child will remain in shelter care longer than the seventy-two hour
24 period. In all other cases, the recommendation shall be submitted by
25 the juvenile court probation counselor.

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

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

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

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

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

37 (iii) If the parent, guardian, or custodian is not represented by

1 counsel, the right to be represented. If the parent, guardian, or
2 custodian is indigent, the court shall appoint counsel as provided in
3 RCW 13.34.090; and

4 (b) If a parent, guardian, or legal custodian desires to waive the
5 shelter care hearing, the court shall determine, on the record and with
6 the parties present, whether such waiver is knowing and voluntary. A
7 parent may not waive his or her right to the shelter care hearing
8 unless he or she appears in court and the court determines that the
9 waiver is knowing and voluntary. Regardless of whether the court
10 accepts the parental waiver of the shelter care hearing, the court must
11 provide notice to the parents of their rights required under (a) of
12 this subsection and make the finding required under subsection (4) of
13 this section.

14 (4) At the shelter care hearing the court shall examine the need
15 for shelter care and inquire into the status of the case. The
16 paramount consideration for the court shall be the health, welfare, and
17 safety of the child. At a minimum, the court shall inquire into the
18 following:

19 (a) Whether the notice required under RCW 13.34.062 was given to
20 all known parents, guardians, or legal custodians of the child. The
21 court shall make an express finding as to whether the notice required
22 under RCW 13.34.062 was given to the parent, guardian, or legal
23 custodian. If actual notice was not given to the parent, guardian, or
24 legal custodian and the whereabouts of such person is known or can be
25 ascertained, the court shall order the department to make reasonable
26 efforts to advise the parent, guardian, or legal custodian of the
27 status of the case, including the date and time of any subsequent
28 hearings, and their rights under RCW 13.34.090;

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

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

36 (d) What services were provided to the family to prevent or
37 eliminate the need for removal of the child from the child's home. If
38 the dependency petition or other information before the court alleges

1 that homelessness or the lack of suitable housing was a significant
2 factor contributing to the removal of the child, the court shall
3 inquire as to whether housing assistance was provided to the family to
4 prevent or eliminate the need for removal of the child or children;

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

8 (f) Whether it is in the best interest of the child to remain
9 enrolled in the school, developmental program, or child care the child
10 was in prior to placement and what efforts have been made to maintain
11 the child in the school, program, or child care if it would be in the
12 best interest of the child to remain in the same school, program, or
13 child care;

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

15 (h) Whether the child is or may be an Indian child as defined in
16 (~~25 U.S.C. Sec. 1903~~) section 4 of this act, whether the provisions
17 of the federal Indian child welfare act or chapter 13.--- RCW (the new
18 chapter created in section 35 of this act) apply, and whether there is
19 compliance with the federal Indian child welfare act and chapter 13.---
20 RCW (the new chapter created in section 35 of this act), including
21 notice to the child's tribe;

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

26 (j) Whether any orders for examinations, evaluations, or immediate
27 services are needed. The court may not order a parent to undergo
28 examinations, evaluation, or services at the shelter care hearing
29 unless the parent agrees to the examination, evaluation, or service;

30 (k) The terms and conditions for parental, sibling, and family
31 visitation.

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

36 (i) After consideration of the specific services that have been
37 provided, reasonable efforts have been made to prevent or eliminate the

1 need for removal of the child from the child's home and to make it
2 possible for the child to return home; and

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

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

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

10 (b) If the court does not release the child to his or her parent,
11 guardian, or legal custodian, the court shall order placement with a
12 relative or other suitable person as described in RCW 13.34.130(1)(b),
13 unless there is reasonable cause to believe the health, safety, or
14 welfare of the child would be jeopardized or that the efforts to
15 reunite the parent and child will be hindered. The court must also
16 determine whether placement with the relative or other suitable person
17 is in the child's best interests. The relative or other suitable
18 person must be willing and available to:

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

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

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

26 (c) If the child was not initially placed with a relative or other
27 suitable person, and the court does not release the child to his or her
28 parent, guardian, or legal custodian, the supervising agency shall make
29 reasonable efforts to locate a relative or other suitable person
30 pursuant to RCW 13.34.060(1). In determining placement, the court
31 shall weigh the child's length of stay and attachment to the current
32 provider in determining what is in the best interest of the child.

33 (d) If a relative or other suitable person is not available, the
34 court shall order continued shelter care and shall set forth its
35 reasons for the order. If the court orders placement of the child with
36 a person not related to the child and not licensed to provide foster
37 care, the placement is subject to all terms and conditions of this
38 section that apply to relative placements.

1 (e) Any placement with a relative, or other suitable person
2 approved by the court pursuant to this section, shall be contingent
3 upon cooperation with the department's or supervising agency's case
4 plan and compliance with court orders related to the care and
5 supervision of the child including, but not limited to, court orders
6 regarding parent-child contacts, sibling contacts, and any other
7 conditions imposed by the court. Noncompliance with the case plan or
8 court order is grounds for removal of the child from the home of the
9 relative or other suitable person, subject to review by the court.

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

16 (6)(a) A shelter care order issued pursuant to this section shall
17 include the requirement for a case conference as provided in RCW
18 13.34.067. However, if the parent is not present at the shelter care
19 hearing, or does not agree to the case conference, the court shall not
20 include the requirement for the case conference in the shelter care
21 order.

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

26 (c) The court may order another conference, case staffing, or
27 hearing as an alternative to the case conference required under RCW
28 13.34.067 so long as the conference, case staffing, or hearing ordered
29 by the court meets all requirements under RCW 13.34.067, including the
30 requirement of a written agreement specifying the services to be
31 provided to the parent.

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

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

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

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

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

15 **Sec. 26.** RCW 13.34.070 and 2004 c 64 s 4 are each amended to read
16 as follows:

17 (1) Upon the filing of the petition, the clerk of the court shall
18 issue a summons, one directed to the child, if the child is twelve or
19 more years of age, and another to the parents, guardian, or custodian,
20 and such other persons as appear to the court to be proper or necessary
21 parties to the proceedings, requiring them to appear personally before
22 the court at the time fixed to hear the petition. If the child is
23 developmentally disabled and not living at home, the notice shall be
24 given to the child's custodian as well as to the child's parent. The
25 developmentally disabled child shall not be required to appear unless
26 requested by the court. When the custodian is summoned, the parent or
27 guardian or both shall also be served with a summons. The fact-finding
28 hearing on the petition shall be held no later than seventy-five days
29 after the filing of the petition, unless exceptional reasons for a
30 continuance are found. The party requesting the continuance shall have
31 the burden of proving by a preponderance of the evidence that
32 exceptional circumstances exist. To ensure that the hearing on the
33 petition occurs within the seventy-five day time limit, the court shall
34 schedule and hear the matter on an expedited basis.

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

36 (3) The summons shall advise the parties of the right to counsel.

1 The summons shall also inform the child's parent, guardian, or legal
2 custodian of his or her right to appointed counsel, if indigent, and of
3 the procedure to use to secure appointed counsel.

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

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

10 (6) If it appears from affidavit or sworn statement presented to
11 the judge that there is probable cause for the issuance of a warrant of
12 arrest or that the child needs to be taken into custody pursuant to RCW
13 13.34.050, the judge may endorse upon the summons an order that an
14 officer serving the summons shall at once take the child into custody
15 and take him or her to the place of shelter designated by the court.

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

21 NOTICE:

22 VIOLATION OF THIS ORDER

23 IS SUBJECT TO PROCEEDING

24 FOR CONTEMPT OF COURT

25 PURSUANT TO RCW 13.34.070.

26 (8) If a party to be served with a summons can be found within the
27 state, the summons shall be served upon the party personally as soon as
28 possible following the filing of the petition, but in no case later
29 than fifteen court days before the fact-finding hearing, or such time
30 as set by the court. If the party is within the state and cannot be
31 personally served, but the party's address is known or can with
32 reasonable diligence be ascertained, the summons may be served upon the
33 party by mailing a copy by certified mail as soon as possible following
34 the filing of the petition, but in no case later than fifteen court
35 days before the hearing, or such time as set by the court. If a party
36 other than the child is without the state but can be found or the
37 address is known, or can with reasonable diligence be ascertained,
38 service of the summons may be made either by delivering a copy to the

1 party personally or by mailing a copy thereof to the party by certified
2 mail at least ten court days before the fact-finding hearing, or such
3 time as set by the court.

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

8 (10)(a) Whenever the court or the petitioning party in a proceeding
9 under this chapter knows or has reason to know that an Indian child as
10 defined in section 4 of this act is involved, the petitioning party
11 shall promptly provide notice to the child's parent or Indian custodian
12 and to the agent designated by the child's Indian tribe to receive such
13 notices. Notice shall ~~((be by certified mail with return receipt~~
14 ~~requested. If the identity or location of the parent or Indian~~
15 ~~custodian and the tribe cannot be determined, notice shall be given to~~
16 ~~the secretary of the interior in the manner described in 25 C.F.R.~~
17 ~~23.11. If the child may be a member of more than one tribe, the~~
18 ~~petitioning party shall send notice to all tribes the petitioner has~~
19 ~~reason to know may be affiliated with the child)) comply with section
20 7 of this act.~~

21 (b) The notice shall: (i) Contain a statement notifying the parent
22 or custodian and the tribe of the pending proceeding; and (ii) notify
23 the tribe of the tribe's right to intervene and/or request that the
24 case be transferred to tribal court.

25 **Sec. 27.** RCW 13.34.105 and 2010 c 180 s 3 are each amended to read
26 as follows:

27 (1) Unless otherwise directed by the court, the duties of the
28 guardian ad litem for a child subject to a proceeding under this
29 chapter, including an attorney specifically appointed by the court to
30 serve as a guardian ad litem, include but are not limited to the
31 following:

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

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

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

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

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

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

12 (g) To inform the child, if the child is twelve years old or older,
13 of his or her right to request counsel and to ask the child whether he
14 or she wishes to have counsel, pursuant to RCW 13.34.100(6). The
15 guardian ad litem shall report to the court that the child was notified
16 of this right and indicate the child's position regarding appointment
17 of counsel. The guardian ad litem shall report to the court his or her
18 independent recommendation as to whether appointment of counsel is in
19 the best interest of the child; and

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

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

25 (3) Except for information or records specified in RCW
26 13.50.100(7), the guardian ad litem shall have access to all
27 information available to the state or agency on the case. Upon
28 presentation of the order of appointment by the guardian ad litem, any
29 agency, hospital, school organization, division or department of the
30 state, doctor, nurse, or other health care provider, psychologist,
31 psychiatrist, police department, or mental health clinic shall permit
32 the guardian ad litem to inspect and copy any records relating to the
33 child or children involved in the case, without the consent of the
34 parent or guardian of the child, or of the child if the child is under
35 the age of thirteen years, unless such access is otherwise specifically
36 prohibited by law.

37 (4) A guardian ad litem may release confidential information,

1 records, and reports to the office of the family and children's
2 ombudsman for the purposes of carrying out its duties under chapter
3 43.06A RCW.

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

6 **Sec. 28.** RCW 13.34.130 and 2010 c 288 s 1 are each amended to read
7 as follows:

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

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

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

24 (b)(i) Order the child to be removed from his or her home and into
25 the custody, control, and care of a relative or other suitable person,
26 the department, or a supervising agency for supervision of the child's
27 placement. The court may not order an Indian child, as defined in ((25
28 ~~U.S.C. Sec. 1903~~)) section 4 of this act, to be removed from his or her
29 home unless the court finds, by clear and convincing evidence including
30 testimony of qualified expert witnesses, that the continued custody of
31 the child by the parent or Indian custodian is likely to result in
32 serious emotional or physical damage to the child.

33 (ii) The department or supervising agency has the authority to
34 place the child, subject to review and approval by the court (A) with
35 a relative as defined in RCW 74.15.020(2)(a), (B) in the home of
36 another suitable person if the child or family has a preexisting
37 relationship with that person, and the person has completed all

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

19 (2) When placing an Indian child in out-of-home care, the
20 department or supervising agency shall follow the placement preference
21 characteristics in (~~RCW 13.34.250 and in 25 U.S.C. Sec. 1915~~) section
22 19 of this act.

23 (3) Placement of the child with a relative or other suitable person
24 as described in subsection (1)(b) of this section shall be given
25 preference by the court. An order for out-of-home placement may be
26 made only if the court finds that reasonable efforts have been made to
27 prevent or eliminate the need for removal of the child from the child's
28 home and to make it possible for the child to return home, specifying
29 the services, including housing assistance, that have been provided to
30 the child and the child's parent, guardian, or legal custodian, and
31 that preventive services have been offered or provided and have failed
32 to prevent the need for out-of-home placement, unless the health,
33 safety, and welfare of the child cannot be protected adequately in the
34 home, and that:

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

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

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

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

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

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

15 (ii) There is no reasonable cause to believe that the health,
16 safety, or welfare of any child subject to the order of placement,
17 contact, or visitation would be jeopardized or that efforts to reunite
18 the parent and child would be hindered by such placement, contact, or
19 visitation. In no event shall parental visitation time be reduced in
20 order to provide sibling visitation.

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

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

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

35 (7) If there is insufficient information at the time of the
36 disposition hearing upon which to base a determination regarding the
37 suitability of a proposed placement with a relative or other suitable
38 person, the child shall remain in foster care and the court shall

1 direct the department or supervising agency to conduct necessary
2 background investigations as provided in chapter 74.15 RCW and report
3 the results of such investigation to the court within thirty days.
4 However, if such relative or other person appears otherwise suitable
5 and competent to provide care and treatment, the criminal history
6 background check need not be completed before placement, but as soon as
7 possible after placement. Any placements with relatives or other
8 suitable persons, pursuant to this section, shall be contingent upon
9 cooperation by the relative or other suitable person with the agency
10 case plan and compliance with court orders related to the care and
11 supervision of the child including, but not limited to, court orders
12 regarding parent-child contacts, sibling contacts, and any other
13 conditions imposed by the court. Noncompliance with the case plan or
14 court order shall be grounds for removal of the child from the
15 relative's or other suitable person's home, subject to review by the
16 court.

17 **Sec. 29.** RCW 13.34.132 and 2000 c 122 s 16 are each amended to
18 read as follows:

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

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

23 (2) Termination is recommended by the supervising agency;

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

25 (4) Because of the existence of aggravated circumstances,
26 reasonable efforts to unify the family are not required.

27 Notwithstanding the existence of aggravated circumstances, reasonable
28 efforts may be required if the court or department determines it is in
29 the best interests of the child. In determining whether aggravated
30 circumstances exist by clear, cogent, and convincing evidence, the
31 court shall consider one or more of the following:

32 (a) Conviction of the parent of rape of the child in the first,
33 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
34 9A.44.079;

35 (b) Conviction of the parent of criminal mistreatment of the child
36 in the first or second degree as defined in RCW 9A.42.020 and
37 9A.42.030;

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

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

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

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

12 (g) Failure of the parent to complete available treatment ordered
13 under this chapter or the equivalent laws of another state, where such
14 failure has resulted in a prior termination of parental rights to
15 another child and the parent has failed to effect significant change in
16 the interim(~~(. In the case of a parent of an Indian child, as defined
17 in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903), the
18 court shall also consider tribal efforts to assist the parent in
19 completing treatment and make it possible for the child to return
20 home))~~);

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

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

25 **Sec. 30.** RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are
26 each reenacted and amended to read as follows:

27 (1) Whenever a child is ordered removed from the home, a permanency
28 plan shall be developed no later than sixty days from the time the
29 supervising agency assumes responsibility for providing services,
30 including placing the child, or at the time of a hearing under RCW
31 13.34.130, whichever occurs first. The permanency planning process
32 continues until a permanency planning goal is achieved or dependency is
33 dismissed. The planning process shall include reasonable efforts to
34 return the child to the parent's home.

35 (2) The agency supervising the dependency shall submit a written
36 permanency plan to all parties and the court not less than fourteen
37 days prior to the scheduled hearing. Responsive reports of parties not

1 in agreement with the department's or supervising agency's proposed
2 permanency plan must be provided to the department or supervising
3 agency, all other parties, and the court at least seven days prior to
4 the hearing.

5 The permanency plan shall include:

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

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

28 (i) The department's or supervising agency's plan shall specify
29 what services the parents will be offered to enable them to resume
30 custody, what requirements the parents must meet to resume custody, and
31 a time limit for each service plan and parental requirement.

32 (ii) Visitation is the right of the family, including the child and
33 the parent, in cases in which visitation is in the best interest of the
34 child. Early, consistent, and frequent visitation is crucial for
35 maintaining parent-child relationships and making it possible for
36 parents and children to safely reunify. The supervising agency or
37 department shall encourage the maximum parent and child and sibling
38 contact possible, when it is in the best interest of the child,

1 including regular visitation and participation by the parents in the
2 care of the child while the child is in placement. Visitation shall
3 not be limited as a sanction for a parent's failure to comply with
4 court orders or services where the health, safety, or welfare of the
5 child is not at risk as a result of the visitation. Visitation may be
6 limited or denied only if the court determines that such limitation or
7 denial is necessary to protect the child's health, safety, or welfare.
8 The court and the department or supervising agency should rely upon
9 community resources, relatives, foster parents, and other appropriate
10 persons to provide transportation and supervision for visitation to the
11 extent that such resources are available, and appropriate, and the
12 child's safety would not be compromised.

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

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

20 (v) Unless it is not in the best interests of the child, whenever
21 practical, the plan should ensure the child remains enrolled in the
22 school the child was attending at the time the child entered foster
23 care.

24 (vi) The supervising agency or department shall provide all
25 reasonable services that are available within the department or
26 supervising agency, or within the community, or those services which
27 the department has existing contracts to purchase. It shall report to
28 the court if it is unable to provide such services; and

29 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+5)~~) (6),
30 that a termination petition be filed, a specific plan as to where the
31 child will be placed, what steps will be taken to achieve permanency
32 for the child, services to be offered or provided to the child, and, if
33 visitation would be in the best interests of the child, a
34 recommendation to the court regarding visitation between parent and
35 child pending a fact-finding hearing on the termination petition. The
36 department or supervising agency shall not be required to develop a
37 plan of services for the parents or provide services to the parents if
38 the court orders a termination petition be filed. However, reasonable

1 efforts to ensure visitation and contact between siblings shall be made
2 unless there is reasonable cause to believe the best interests of the
3 child or siblings would be jeopardized.

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

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

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

21 (6) The court shall consider the child's relationships with the
22 child's siblings in accordance with RCW 13.34.130(~~((+3+))~~) (4). Whenever
23 the permanency plan for a child is adoption, the court shall encourage
24 the prospective adoptive parents, birth parents, foster parents,
25 kinship caregivers, and the department or other supervising agency to
26 seriously consider the long-term benefits to the child adoptee and his
27 or her siblings of providing for and facilitating continuing
28 postadoption contact between the siblings. To the extent that it is
29 feasible, and when it is in the best interests of the child adoptee and
30 his or her siblings, contact between the siblings should be frequent
31 and of a similar nature as that which existed prior to the adoption.
32 If the child adoptee or his or her siblings are represented by an
33 attorney or guardian ad litem in a proceeding under this chapter or in
34 any other child custody proceeding, the court shall inquire of each
35 attorney and guardian ad litem regarding the potential benefits of
36 continuing contact between the siblings and the potential detriments of
37 severing contact. This section does not require the department of
38 social and health services or other supervising agency to agree to any

1 specific provisions in an open adoption agreement and does not create
2 a new obligation for the department to provide supervision or
3 transportation for visits between siblings separated by adoption from
4 foster care.

5 (7) For purposes related to permanency planning:

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

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

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

14 **Sec. 31.** RCW 13.34.190 and 2010 c 288 s 2 are each amended to read
15 as follows:

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

20 (a)(i) The allegations contained in the petition as provided in RCW
21 13.34.180(1) are established by clear, cogent, and convincing evidence;
22 or

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

28 (iii) The allegation under RCW 13.34.180(2) is established beyond
29 a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and
30 (f) are established beyond a reasonable doubt, the court shall consider
31 whether one or more of the aggravated circumstances listed in RCW
32 13.34.132 exist; or

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

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

36 (2) In any proceeding under this chapter for termination of the
37 parent-child relationship of an Indian child as defined in (~~25 U.S.C.~~

1 ~~Sec. 1903, no termination of)~~ section 4 of this act, the process to
2 terminate parental rights (~~(may be ordered in such proceeding in the~~
3 ~~absence of a determination, supported by evidence beyond a reasonable~~
4 ~~doubt, including testimony of qualified expert witnesses, that the~~
5 ~~continued custody of the child by the parent or Indian custodian is~~
6 ~~likely to result in serious emotional or physical damage to the child))~~
7 must include the determination required by section 13(3) of this act.

8 **Sec. 32.** RCW 26.10.034 and 2004 c 64 s 1 are each amended to read
9 as follows:

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

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

28 ~~(c) 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.))~~

32 (2) Every order or decree entered in any proceeding under this
33 chapter shall contain a finding that the federal Indian child welfare
34 act or chapter 13.--- RCW ~~(the new chapter created in section 35 of~~
35 this act) does or does not apply. Where there is a finding that the
36 federal Indian child welfare act or chapter 13.--- RCW ~~(the new chapter~~
37 created in section 35 of this act) does apply, the decree or order must

1 also contain a finding that all notice requirements and evidentiary
2 requirements under the federal Indian child welfare act and chapter
3 13.--- RCW (the new chapter created in section 35 of this act) have
4 been satisfied.

5 **Sec. 33.** RCW 26.33.040 and 2004 c 64 s 2 are each amended to read
6 as follows:

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

13 (b) Every order or decree entered in any proceeding under this
14 chapter shall contain a finding that the federal Indian child welfare
15 act or chapter 13.--- RCW (the new chapter created in section 35 of
16 this act) does or does not apply. Where there is a finding that the
17 federal Indian child welfare act or chapter 13.--- RCW (the new chapter
18 created in section 35 of this act) does apply, the decree or order must
19 also contain a finding that all notice requirements and evidentiary
20 requirements under the federal Indian child welfare act and chapter
21 13.--- RCW (the new chapter created in section 35 of this act) have
22 been satisfied.

23 (c) In proceedings under this chapter, the adoption facilitator
24 shall file a sworn statement documenting efforts to determine whether
25 an Indian child (~~as defined under the Indian child welfare act, 25~~
26 ~~U.S.C. Sec. 1903,~~) is involved.

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

1 ~~petitioning party shall send notice to all tribes the petitioner has~~
2 ~~reason to know may be affiliated with the child.~~

3 ~~(e) 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)) follow the notice provisions in~~
7 ~~section 7 of this act.~~

8 ((+f)) (e) No termination, relinquishment, or placement proceeding
9 shall be held until at least ten days after receipt of notice by the
10 tribe. If the tribe requests, the court shall grant the tribe up to
11 twenty additional days to prepare for such proceeding.

12 (2) Every petition filed in proceedings under this chapter shall
13 contain a statement alleging whether the Soldiers and Sailors Civil
14 Relief Act of 1940, 50 U.S.C. Sec. 501 et seq. applies to the
15 proceeding. Every order or decree entered in any proceeding under this
16 chapter shall contain a finding that the Soldiers and Sailors Civil
17 Relief Act of 1940 does or does not apply.

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

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

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

1 department while the child is in placement. The agreement must be
2 signed by the child's parent or legal guardian and the department to be
3 in effect, except that an agreement regarding an Indian child shall not
4 be valid unless executed (~~((in writing before the court and filed with~~
5 ~~the court as provided in RCW 13.34.245))~~ in accordance with section 16
6 of this act. Any party to a voluntary placement agreement may
7 terminate the agreement at any time. Upon termination of the
8 agreement, the child shall be returned to the care of the child's
9 parent or legal guardian unless the child has been taken into custody
10 pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant
11 to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

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

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

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

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

35 The department shall adopt rules providing for the implementation
36 of chapter 386, Laws of 1997 and the transfer of responsibility for
37 out-of-home placements from the dependency process under chapter 13.34
38 RCW to the process under this chapter.

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

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

20 NEW SECTION. **Sec. 35.** Sections 1 through 21 of this act
21 constitute a new chapter in Title 13 RCW.

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