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**SUBSTITUTE SENATE BILL 5656**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Hargrove, Regala, White, McAuliffe, and Kline)

READ FIRST TIME 02/21/11.

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; adding a new chapter to Title  
5 13 RCW; and repealing RCW 13.34.250.

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 13.34, 13.36, 26.10, or  
12 26.33 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 out-of-home placement of Indian children that is inconsistent  
17 with the rights of the parents, the health, safety, or welfare of the

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

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

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

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

32 NEW SECTION. **Sec. 4.** DEFINITIONS. The definitions in this  
33 section apply throughout this chapter unless the context clearly  
34 requires otherwise.

35 (1) "Active efforts" means the following:

36 (a) In any foster care placement or termination of parental rights  
37 proceeding of an Indian child under chapter 13.34 RCW and this chapter

1 where the department or a supervising agency as defined in chapter  
2 13.34 RCW has a statutory or contractual duty to directly provide  
3 services to, or procure services for, the parent or parents or Indian  
4 custodian, or is providing services to a parent or parents or Indian  
5 custodian pursuant to a disposition order entered pursuant to RCW  
6 13.34.130, the department or supervising agency shall make timely and  
7 affirmative efforts to provide or procure such services, including  
8 engaging the parent or parents or Indian custodian in reasonably  
9 available and culturally appropriate preventive, remedial, or  
10 rehabilitative services. At a minimum "active efforts" shall include:

11 (i) In any dependency proceeding under chapter 13.34 RCW seeking  
12 out-of-home placement of an Indian child in which the department or  
13 supervising agency provided voluntary services to the parent, parents,  
14 or Indian custodian prior to filing the dependency petition, a showing  
15 to the court that the department or supervising agency social workers  
16 actively worked with the parent, parents, or Indian custodian to engage  
17 them in remedial services and rehabilitation programs to prevent the  
18 breakup of the family beyond simply providing referrals to such  
19 services.

20 (ii) In any termination of parental rights proceeding regarding an  
21 Indian child under chapter 13.34 RCW in which the department or  
22 supervising agency provided services to the parent, parents, or Indian  
23 custodian, a showing to the court that the department or supervising  
24 agency social workers actively worked with the parent, parents, or  
25 Indian custodian to engage them in any remedial services and  
26 rehabilitation programs ordered by the court or identified in the  
27 department or supervising agency's individual service and safety plan  
28 rather than requiring that the plan or court order be performed on its  
29 own.

30 (b) In any foster care placement or termination of parental rights  
31 proceeding in which the petitioner does not otherwise have a statutory  
32 or contractual duty to directly provide services to, or procure  
33 services for, the parent or Indian custodian, "active efforts" means a  
34 documented, concerted, and good faith effort to facilitate the parent's  
35 or Indian custodian's receipt of and engagement in services capable of  
36 meeting the criteria set out in (a) of this subsection.

37 (2) "Best interests of the Indian child" means the use of practices  
38 in accordance with the federal Indian child welfare act, this chapter,

1 and other applicable law, that are designed to accomplish the  
2 following: (a) Protect the safety, well-being, development, and  
3 stability of the Indian child; (b) prevent the unnecessary out-of-home  
4 placement of the Indian child; (c) acknowledge the right of Indian  
5 tribes to maintain their existence and integrity which will promote the  
6 stability and security of their children and families; (d) recognize  
7 the value to the Indian child of establishing, developing, or  
8 maintaining a political, cultural, social, and spiritual relationship  
9 with the Indian child's tribe and tribal community; and (e) in a  
10 proceeding under this chapter where out-of-home placement is necessary,  
11 to prioritize placement of the Indian child in accordance with the  
12 placement preferences of this chapter.

13 (3) "Child custody proceeding" includes:

14 (a) "Foster care placement" which means any action removing an  
15 Indian child from his or her parent or Indian custodian for temporary  
16 placement in a foster home, institution, or with a relative, guardian,  
17 conservator, or suitable other person where the parent or Indian  
18 custodian cannot have the child returned upon demand, but where  
19 parental rights have not been terminated;

20 (b) "Termination of parental rights" which means any action  
21 resulting in the termination of the parent-child relationship;

22 (c) "Preadoptive placement" which means the temporary placement of  
23 an Indian child in a foster home or institution after the termination  
24 of parental rights but before or in lieu of adoptive placement; and

25 (d) "Adoptive placement" which means the permanent placement of an  
26 Indian child for adoption, including any action resulting in a final  
27 decree of adoption.

28 These terms shall not include a placement based upon an act which,  
29 if committed by an adult, would be deemed a crime or upon an award, in  
30 a dissolution proceeding of custody to one of the parents.

31 (4) "Court of competent jurisdiction" means a federal or state  
32 court that entered an order in a child custody proceeding involving an  
33 Indian child, as long as the state court had proper subject matter  
34 jurisdiction in accordance with this chapter and the laws of that  
35 state, or the tribal court that had or has exclusive or concurrent  
36 jurisdiction pursuant to 25 U.S.C. Sec. 1911.

37 (5) "Department" means the department of social and health services  
38 and any of its divisions. "Department" also includes supervising

1 agencies as defined in RCW 74.13.020(12) with which the department  
2 entered into a contract to provide services, care, placement, case  
3 management, contract monitoring, or supervision to children subject to  
4 a petition filed under chapter 13.34 or 26.33 RCW.

5 (6) "Indian" means a person who is a member of an Indian tribe, or  
6 who is an Alaska native and a member of a regional corporation as  
7 defined in 43 U.S.C. Sec. 1606.

8 (7) "Indian child" means an unmarried and unemancipated Indian  
9 person who is under eighteen years of age and is either: (a) A member  
10 of an Indian tribe; or (b) eligible for membership in an Indian tribe  
11 and is the biological child of a member of an Indian tribe.

12 (8) "Indian child's family" or "extended family member" means an  
13 individual, defined by the law or custom of the child's tribe, as a  
14 relative of the child. If the child's tribe does not identify such  
15 individuals by law or custom, the term means an adult who is the Indian  
16 child's grandparent, aunt, uncle, brother, sister, brother-in-law,  
17 sister-in-law, niece, nephew, first or second cousin, or step-parent,  
18 even following termination of the marriage.

19 (9) "Indian child's tribe" means a tribe in which an Indian child  
20 is a member or eligible for membership.

21 (10) "Indian custodian" means an Indian person who under tribal  
22 law, tribal custom, or state law, has legal or temporary physical  
23 custody of an Indian child, or to whom the parent has transferred  
24 temporary care, physical custody, and control of an Indian child.

25 (11) "Indian tribe" or "tribe" means any Indian tribe, band,  
26 nation, or other organized group or community of Indians recognized as  
27 eligible for the services provided to Indians by the secretary of the  
28 interior because of their status as Indians, including any Alaska  
29 native village as defined in 43 U.S.C. Sec. 1602(c).

30 (12) "Member" and "membership" means a determination by an Indian  
31 tribe that a person is a member or eligible for membership in that  
32 Indian tribe.

33 (13) "Parent" means a biological parent or parents of an Indian  
34 child or a person who has lawfully adopted an Indian child, including  
35 adoptions made under tribal law or custom. "Parent" does not include  
36 an unwed father whose paternity has not been acknowledged or  
37 established.

1 (14) "Secretary of the interior" means the secretary of the United  
2 States department of the interior.

3 (15) "Tribal court" means a court or body vested by an Indian tribe  
4 with jurisdiction over child custody proceedings, including but not  
5 limited to a federal court of Indian offenses, a court established and  
6 operated under the code or custom of an Indian tribe, or an  
7 administrative body of an Indian tribe vested with authority over child  
8 custody proceedings.

9 (16) "Tribal customary adoption" means adoption or other process  
10 through the tribal custom, traditions, or laws of an Indian child's  
11 tribe by which the Indian child is permanently placed with a nonparent  
12 and through which the nonparent is vested with the rights, privileges,  
13 and obligations of a legal parent. Termination of the parent-child  
14 relationship between the Indian child and the biological parent is not  
15 required to effect or recognize a tribal customary adoption.

16 NEW SECTION. **Sec. 5.** DETERMINATION OF INDIAN STATUS. Any party  
17 seeking the foster care placement of, termination of parental rights  
18 over, or the adoption of a child must make a good faith effort to  
19 determine whether the child is an Indian child. This may be done by  
20 consultation with the child's parent or parents, any person who has  
21 custody of the child or with whom the child resides, and any other  
22 person that reasonably can be expected to have information regarding  
23 the child's possible membership or eligibility for membership in an  
24 Indian tribe to determine if the child is an Indian child, and by  
25 contacting any Indian tribe in which the child may be a member or may  
26 be eligible for membership. Preliminary contacts for the purpose of  
27 making a good faith effort to determine a child's possible Indian  
28 status, do not constitute legal notice as required by section 7 of this  
29 act.

30 NEW SECTION. **Sec. 6.** JURISDICTION. (1) An Indian tribe shall  
31 have exclusive jurisdiction over any child custody proceeding involving  
32 an Indian child who resides or is domiciled within the reservation of  
33 that tribe, unless the tribe has consented to the state's concurrent  
34 jurisdiction, where the tribe has expressly declined to exercise its  
35 exclusive jurisdiction, or where the state is exercising emergency  
36 jurisdiction in strict compliance with section 14 of this act.

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

5 NEW SECTION. **Sec. 7.** NOTICE. (1) In any involuntary child  
6 custody proceeding seeking the foster care placement of, or the  
7 termination of parental rights to, a child in which the petitioning  
8 party or the court knows, or has reason to know, that the child is or  
9 may be an Indian child as defined in this chapter, the petitioning  
10 party shall notify the parent or Indian custodian and the Indian  
11 child's tribe, by certified mail, return receipt requested, and by use  
12 of a mandatory Indian child welfare act notice. If the identity or  
13 location of the parent or Indian custodian and the tribe cannot be  
14 determined, such notice shall be given to the secretary of the interior  
15 by registered mail, return receipt requested, in accordance with the  
16 regulations of the bureau of Indian affairs. The secretary of the  
17 interior has fifteen days after receipt to provide the requisite notice  
18 to the parent or Indian custodian and the tribe. No foster care  
19 placement or termination of parental rights proceeding shall be held  
20 until at least ten days after receipt of notice by the parent or Indian  
21 custodian and the tribe. The parent or Indian custodian or the tribe  
22 shall, upon request, be granted up to twenty additional days to prepare  
23 for the proceeding.

24 (2) The determination of the Indian status of a child shall be made  
25 as soon as practicable in order to serve the best interests of the  
26 Indian child and protect the interests of the child's tribe.

27 (3)(a) A written determination by an Indian tribe that a child is  
28 a member of or eligible for membership in that tribe, or testimony by  
29 the tribe attesting to such status shall be conclusive that the child  
30 is an Indian child;

31 (b) A written determination by an Indian tribe that a child is not  
32 a member of or eligible for membership in that tribe, or testimony by  
33 the tribe attesting to such status shall be conclusive that the child  
34 is not a member or eligible for membership in that tribe. Such  
35 determinations are presumptively those of the tribe where submitted in  
36 the form of a tribal resolution, or signed by or testified to by the  
37 person(s) authorized by the tribe's governing body to speak for the

1 tribe, or by the tribe's agent designated to receive notice under the  
2 federal Indian child welfare act where such designation is published in  
3 the federal register;

4 (c) Where a tribe provides no response to notice under section 7 of  
5 this act, such nonresponse shall not constitute evidence that the child  
6 is not a member or eligible for membership. Provided, however, that  
7 under such circumstances the party asserting application of the federal  
8 Indian child welfare act, or this chapter, will have the burden of  
9 proving that the child is an Indian child.

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

16 NEW SECTION. **Sec. 8.** TRANSFER OF JURISDICTION. (1) In any child  
17 custody proceeding involving an Indian child who is not domiciled or  
18 residing within the reservation of the Indian child's tribe, the court  
19 shall, in the absence of good cause to the contrary, transfer the  
20 proceeding to the jurisdiction of the Indian child's tribe, upon the  
21 motion of any of the following persons:

- 22 (a) Either of the child's parents;
- 23 (b) The child's Indian custodian;
- 24 (c) The child's tribe; or
- 25 (d) The child, if age twelve or older.

26 The transfer shall be subject to declination by the tribe. The tribe  
27 shall have seventy-five days to affirmatively respond to a motion or  
28 order transferring jurisdiction to the tribal court. A failure of the  
29 tribe to respond within the seventy-five day period shall be construed  
30 as a declination to accept transfer of the case.

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

34 (3) If either of the Indian child's parents objects to transfer of  
35 the proceeding to the Indian child's tribe, the court shall not  
36 transfer the proceeding.



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

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

6 (b) Pending receipt of such tribal court order, the state court may  
7 conduct additional hearings and enter orders which strictly comply with  
8 the requirements of the federal Indian child welfare act and this  
9 chapter. The state court shall not enter a final order in any child  
10 custody proceeding, except an order dismissing the proceeding and  
11 returning the Indian child to the care of the parent or Indian  
12 custodian from whose care the child was removed, while awaiting receipt  
13 of a tribal court order accepting jurisdiction, or in the absence of a  
14 tribal court order or other formal written declination of jurisdiction.

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

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

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

28 NEW SECTION. **Sec. 11.** RIGHT TO COUNSEL. In any child custody  
29 proceeding under this chapter in which the court determines the Indian  
30 child's parent or Indian custodian is indigent, the parent or Indian  
31 custodian shall have the right to court-appointed counsel. The court  
32 may, in its discretion, appoint counsel for the Indian child upon a  
33 finding that the appointment is in the best interests of the Indian  
34 child.

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

5        NEW SECTION.    **Sec. 13.**    EVIDENTIARY REQUIREMENTS.    (1) A party  
6 seeking to effect a foster care placement of an Indian child shall  
7 satisfy the court that active efforts have been made to provide  
8 remedial services and rehabilitative programs designed to prevent the  
9 breakup of the Indian family and that these efforts have proved  
10 unsuccessful.    No foster care placement may be ordered in a child  
11 custody proceeding in the absence of a determination, supported by  
12 clear and convincing evidence, including testimony of qualified expert  
13 witnesses, that the continued custody of the child by the parent or  
14 Indian custodian is likely to result in serious emotional or physical  
15 damage to the child.

16        (2) No termination of parental rights may be ordered in a child  
17 custody proceeding in the absence of a determination, supported by  
18 evidence beyond a reasonable doubt, including testimony of qualified  
19 expert witnesses, that the continued custody of the child by the parent  
20 or Indian custodian is likely to result in serious emotional or  
21 physical damage to the child.

22        (a) For purposes of this section, "qualified expert witness" means  
23 a person who provides testimony in a proceeding under this chapter to  
24 assist a court in the determination of whether the continued custody of  
25 the child by, or return of the child to, the parent, parents, or Indian  
26 custodian, is likely to result in serious emotional or physical damage  
27 to the child.    In any proceeding in which the child's Indian tribe has  
28 intervened pursuant to section 9 of this act or, if the department is  
29 the petitioner and the Indian child's tribe has entered into a local  
30 agreement with the department for the provision of child welfare  
31 services, the petitioner shall contact the tribe and ask the tribe to  
32 identify a tribal member or other person of the tribe's choice who is  
33 recognized by the tribe as knowledgeable regarding tribal customs as  
34 they pertain to family organization or child rearing practices.    The  
35 petitioner shall notify the child's Indian tribe of the need to provide  
36 a "qualified expert witness" at least twenty days prior to any  
37 evidentiary hearing in which the testimony of the witness will be

1 required. If the child's Indian tribe does not identify a "qualified  
2 expert witness" for the proceeding on a timely basis, the petitioner  
3 may proceed to identify such a witness pursuant to (b) of this  
4 subsection.

5 (b) In any proceeding in which the child's Indian tribe has not  
6 intervened or entered into a local agreement with the department for  
7 the provision of child welfare services, or a child's Indian tribe has  
8 not responded to a request to identify a "qualified expert witness" for  
9 the proceeding on a timely basis, the petitioner shall provide a  
10 "qualified expert witness" who meets one or more of the following  
11 requirements in descending order of preference:

12 (i) A member of the child's Indian tribe or other person of the  
13 tribe's choice who is recognized by the tribe as knowledgeable  
14 regarding tribal customs as they pertain to family organization or  
15 child rearing practices for this purpose;

16 (ii) Any person having substantial experience in the delivery of  
17 child and family services to Indians, and extensive knowledge of  
18 prevailing social and cultural standards and child rearing practices  
19 within the Indian child's tribe;

20 (iii) Any person having substantial experience in the delivery of  
21 child and family services to Indians, and knowledge of prevailing  
22 social and cultural standards and child rearing practices in Indian  
23 tribes with cultural similarities to the Indian child's tribe; or

24 (iv) A professional person having substantial education and  
25 experience in the area of his or her specialty.

26 (c) When the petitioner is the department or a supervising agency,  
27 the currently assigned department or agency caseworker or the  
28 caseworker's supervisor may not testify as a "qualified expert witness"  
29 for purposes of this section. Nothing in this section shall bar the  
30 assigned department or agency caseworker or the caseworker's supervisor  
31 from testifying as an expert witness for other purposes in a proceeding  
32 under this chapter. Nothing in this section shall bar other department  
33 or supervising agency employees with appropriate expert qualifications  
34 or experience from testifying as a "qualified expert witness" in a  
35 proceeding under this chapter. Nothing in this section shall bar the  
36 petitioner or any other party in a proceeding under this chapter from  
37 providing additional witnesses or expert testimony, subject to the  
38 approval of the court, on any issue before the court including the

1 determination of whether the continued custody of the child by, or  
2 return of the child to, the parent, parents, or Indian custodian, is  
3 likely to result in serious emotional or physical damage to the child.

4 NEW SECTION. **Sec. 14.** EMERGENCY REMOVAL OF AN INDIAN CHILD. (1)  
5 Notwithstanding any other provision of federal or state law, nothing  
6 shall be construed to prevent the department or law enforcement from  
7 the emergency removal of an Indian child who is a resident of or is  
8 domiciled on an Indian reservation, but is temporarily located off the  
9 reservation, from his or her parent or Indian custodian or the  
10 emergency placement of such child in a foster home, under applicable  
11 state law, to prevent imminent physical damage or harm to the child.

12 (2) The department or law enforcement agency shall ensure that the  
13 emergency removal or placement terminates immediately when such removal  
14 or placement is no longer necessary to prevent imminent physical damage  
15 or harm to the child and shall expeditiously initiate a child custody  
16 proceeding subject to the provisions of the federal Indian child  
17 welfare act and this chapter to transfer the child to the jurisdiction  
18 of the appropriate Indian tribe or restore the child to the child's  
19 parent or Indian custodian, if appropriate.

20 NEW SECTION. **Sec. 15.** CONSENT. (1) If an Indian child's parent  
21 or Indian custodian voluntarily consents to a foster care placement of  
22 the child or to termination of parental rights, the consent is not  
23 valid unless executed in writing and recorded before a judge of a court  
24 of competent jurisdiction and accompanied by the judge's certificate  
25 that the terms and consequences of the consent were fully explained in  
26 detail and were fully understood by the parent or Indian custodian.  
27 The court must also certify that either the parent or Indian custodian  
28 fully understood the explanation in English or that it was interpreted  
29 into a language that the parent or Indian custodian understood. Any  
30 consent for release of custody given prior to, or within ten days  
31 after, the birth of the Indian child shall not be valid.

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

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

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

13 NEW SECTION. **Sec. 16.** IMPROPER REMOVAL OF AN INDIAN CHILD. If a  
14 petitioner in a child custody proceeding under this chapter has  
15 improperly removed the child from the custody of the parent or Indian  
16 custodian or has improperly retained custody after a visit or other  
17 temporary relinquishment of custody, the court shall decline  
18 jurisdiction over the petition and shall immediately return the child  
19 to the child's parent or Indian custodian unless returning the child to  
20 the parent or Indian custodian would subject the child to substantial  
21 and immediate danger or threat of such danger.

22 NEW SECTION. **Sec. 17.** REMOVAL OF INDIAN CHILD FROM ADOPTIVE OR  
23 FOSTER CARE PLACEMENT. (1) If a final decree of adoption of an Indian  
24 child has been vacated or set aside or the adoptive parents voluntarily  
25 consent to the termination of their parental rights to the child, the  
26 biological parent or prior Indian custodian may petition to have the  
27 child returned to their custody and the court shall grant the request  
28 unless there is a showing by clear and convincing evidence that return  
29 of custody to the biological parent or prior Indian custodian is not in  
30 the best interests of the child.

31 (2) If an Indian child is removed from a foster care placement or  
32 a preadoptive or adoptive home for the purpose of further foster care,  
33 preadoptive, or adoptive placement, the placement shall be in  
34 accordance with this chapter, except when an Indian child is being  
35 returned to the parent or Indian custodian from whose custody the child  
36 was originally removed.

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

5        (a) Extended family members;

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

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

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

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

15        (a) In the least restrictive setting;

16        (b) Which most approximates a family situation;

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

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

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

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

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

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

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

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

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

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

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

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

1 (4) Notwithstanding the placement preferences listed in subsections  
2 (1) and (3) of this section, if a different order of placement  
3 preference is established by the child's tribe, the court or agency  
4 effecting the placement shall follow the order of preference  
5 established by the tribe so long as the placement is in the least  
6 restrictive setting appropriate to the particular needs of the child.  
7 Where appropriate, the preference of the Indian child or his or her  
8 parent shall be considered.

9 (5) The standards to be applied in meeting the preference  
10 requirements of this section shall be the prevailing social and  
11 cultural standards of the Indian community in which the parent or  
12 extended family members of an Indian child reside, or with which the  
13 parent or extended family members maintain social and cultural ties.

14 (6) Nothing in this section shall prevent the department or the  
15 court from placing the child with a parent to effectuate a permanent  
16 plan regardless of the parent's relationship to the child's tribe.

17 NEW SECTION. **Sec. 19.** COMPLIANCE. (1) The department, in  
18 consultation with Indian tribes, shall establish standards and  
19 procedures for the department's review of cases subject to this chapter  
20 and methods for monitoring the department's compliance with provisions  
21 of the federal Indian child welfare act and this chapter. These  
22 standards and procedures and the monitoring methods shall also be  
23 integrated into the department's child welfare contracting and contract  
24 monitoring process.

25 (2) Any Indian child who is the subject of any action for foster  
26 care placement or termination of parental rights under chapter 13.34 or  
27 26.33 RCW, any parent or Indian custodian from whose custody such child  
28 was removed, and the Indian child's tribe may petition any court of  
29 competent jurisdiction to invalidate such action upon a showing that  
30 such action violated provisions of this chapter or the federal Indian  
31 child welfare act.

32 NEW SECTION. **Sec. 20.** SEVERABILITY. If any provision of this act  
33 or its application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

1           **Sec. 21.** RCW 13.32A.152 and 2004 c 64 s 5 are each amended to read  
2 as follows:

3           (1) Whenever a child in need of services petition is filed by: (a)  
4 A youth pursuant to RCW 13.32A.150; (b) the child or the child's parent  
5 pursuant to RCW 13.32A.120; or (c) the department pursuant to RCW  
6 13.32A.140, the filing party shall have a copy of the petition served  
7 on the parents of the youth. Service shall first be attempted in  
8 person and if unsuccessful, then by certified mail with return receipt.

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

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

24           ~~(b) The notice shall: (i) Contain a statement notifying the parent~~  
25 ~~or custodian and the tribe of the pending proceeding; and (ii) notify~~  
26 ~~the tribe of the tribe's right to intervene and/or request that the~~  
27 ~~case be transferred to tribal court))~~ provisions of chapter 13.--- RCW  
28 (the new chapter created in section 34 of this act) apply.

29           **Sec. 22.** RCW 13.34.030 and 2010 1st sp.s. c 8 s 13, 2010 c 272 s  
30 10, and 2010 c 94 s 6 are each reenacted and amended to read as  
31 follows:

32           For purposes of this chapter:

33           (1) "Abandoned" means when the child's parent, guardian, or other  
34 custodian has expressed, either by statement or conduct, an intent to  
35 forego, for an extended period, parental rights or responsibilities  
36 despite an ability to exercise such rights and responsibilities. If  
37 the court finds that the petitioner has exercised due diligence in



1 attempting to locate the parent, no contact between the child and the  
2 child's parent, guardian, or other custodian for a period of three  
3 months creates a rebuttable presumption of abandonment, even if there  
4 is no expressed intent to abandon.

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

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

14 (4) "Department" means the department of social and health  
15 services.

16 (5) "Dependency guardian" means the person, nonprofit corporation,  
17 or Indian tribe appointed by the court pursuant to this chapter for the  
18 limited purpose of assisting the court in the supervision of the  
19 dependency.

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

21 (a) Has been abandoned;

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

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

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

37 (8) "Guardian" means the person or agency that: (a) Has been  
38 appointed as the guardian of a child in a legal proceeding, including

1 a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the  
2 legal right to custody of the child pursuant to such appointment. The  
3 term "guardian" does not include a "dependency guardian" appointed  
4 pursuant to a proceeding under this chapter.

5 (9) "Guardian ad litem" means a person, appointed by the court to  
6 represent the best interests of a child in a proceeding under this  
7 chapter, or in any matter which may be consolidated with a proceeding  
8 under this chapter. A "court-appointed special advocate" appointed by  
9 the court to be the guardian ad litem for the child, or to perform  
10 substantially the same duties and functions as a guardian ad litem,  
11 shall be deemed to be guardian ad litem for all purposes and uses of  
12 this chapter.

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

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

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

29 (a) Receiving one of the following types of public assistance:  
30 Temporary assistance for needy families, disability lifeline benefits,  
31 poverty-related veterans' benefits, food stamps or food stamp benefits  
32 transferred electronically, refugee resettlement benefits, medicaid, or  
33 supplemental security income; or

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

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

37 (d) Unable to pay the anticipated cost of counsel for the matter

1 before the court because his or her available funds are insufficient to  
2 pay any amount for the retention of counsel.

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

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

11 (15) "Shelter care" means temporary physical care in a facility  
12 licensed pursuant to RCW 74.15.030 or in a home not required to be  
13 licensed pursuant to RCW 74.15.030.

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

18 (17) "Social study" means a written evaluation of matters relevant  
19 to the disposition of the case and shall contain the following  
20 information:

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

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

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

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

3 (e) A description of the steps that will be taken to minimize the  
4 harm to the child that may result if separation occurs including an  
5 assessment of the child's relationship and emotional bond with any  
6 siblings, and the agency's plan to provide ongoing contact between the  
7 child and the child's siblings if appropriate; and

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

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

16 **Sec. 23.** RCW 13.34.040 and 2004 c 64 s 3 are each amended to read  
17 as follows:

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

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

29 (3) Every petition filed in proceedings under this chapter shall  
30 contain a statement alleging whether the child is or may be an Indian  
31 child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If  
32 the child is an Indian child ~~((as defined under the Indian child  
33 welfare act, the provisions of the act))~~ chapter 13.--- RCW ~~(the new  
34 chapter created in section 34 of this act)~~ shall apply.

35 (4) Every order or decree entered under this chapter shall contain  
36 a finding that the federal Indian child welfare act or chapter 13.---  
37 RCW (the new chapter created in section 34 of this act) does or does

1 not apply. Where there is a finding that the federal Indian child  
2 welfare act or chapter 13.--- RCW (the new chapter created in section  
3 34 of this act) does apply, the decree or order must also contain a  
4 finding that all notice requirements and evidentiary requirements under  
5 the federal Indian child welfare act have been satisfied.

6 **Sec. 24.** RCW 13.34.065 and 2009 c 520 s 22, 2009 c 491 s 1, 2009  
7 c 477 s 3, and 2009 c 397 s 2 are each reenacted and amended to read as  
8 follows:

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

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

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

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

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

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

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

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

5 (iii) If the parent, guardian, or custodian is not represented by  
6 counsel, the right to be represented. If the parent, guardian, or  
7 custodian is indigent, the court shall appoint counsel as provided in  
8 RCW 13.34.090; and

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

19 (4) At the shelter care hearing the court shall examine the need  
20 for shelter care and inquire into the status of the case. The  
21 paramount consideration for the court shall be the health, welfare, and  
22 safety of the child. At a minimum, the court shall inquire into the  
23 following:

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

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

36 (c) What efforts have been made to place the child with a relative.  
37 The court shall ask the parents whether the department discussed with

1 them the placement of the child with a relative or other suitable  
2 person described in RCW 13.34.130(1)(b) and shall determine what  
3 efforts have been made toward such a placement;

4 (d) What services were provided to the family to prevent or  
5 eliminate the need for removal of the child from the child's home. If  
6 the dependency petition or other information before the court alleges  
7 that homelessness or the lack of suitable housing was a significant  
8 factor contributing to the removal of the child, the court shall  
9 inquire as to whether housing assistance was provided to the family to  
10 prevent or eliminate the need for removal of the child or children;

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

14 (f) Whether it is in the best interest of the child to remain  
15 enrolled in the school, developmental program, or child care the child  
16 was in prior to placement and what efforts have been made to maintain  
17 the child in the school, program, or child care if it would be in the  
18 best interest of the child to remain in the same school, program, or  
19 child care;

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

21 (h) Whether the child is or may be an Indian child as defined in  
22 (~~25 U.S.C. Sec. 1903~~) section 4 of this act, whether the provisions  
23 of the federal Indian child welfare act or chapter 13.--- RCW (the new  
24 chapter created in section 34 of this act) apply, and whether there is  
25 compliance with the federal Indian child welfare act and chapter 13.---  
26 RCW (the new chapter created in section 34 of this act), including  
27 notice to the child's tribe;

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

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

36 (k) The terms and conditions for parental, sibling, and family  
37 visitation.

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

5 (i) After consideration of the specific services that have been  
6 provided, reasonable efforts have been made to prevent or eliminate the  
7 need for removal of the child from the child's home and to make it  
8 possible for the child to return home; and

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

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

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

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

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

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

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

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



1 (d) If a relative or other suitable person is not available, the  
2 court shall order continued shelter care and shall set forth its  
3 reasons for the order. If the court orders placement of the child with  
4 a person not related to the child and not licensed to provide foster  
5 care, the placement is subject to all terms and conditions of this  
6 section that apply to relative placements.

7 (e) Any placement with a relative, or other suitable person  
8 approved by the court pursuant to this section, shall be contingent  
9 upon cooperation with the department's or supervising agency's case  
10 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 is grounds for removal of the child from the home of the  
15 relative or other suitable person, subject to review by the court.

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

22 (6)(a) A shelter care order issued pursuant to this section shall  
23 include the requirement for a case conference as provided in RCW  
24 13.34.067. However, if the parent is not present at the shelter care  
25 hearing, or does not agree to the case conference, the court shall not  
26 include the requirement for the case conference in the shelter care  
27 order.

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

32 (c) The court may order another conference, case staffing, or  
33 hearing as an alternative to the case conference required under RCW  
34 13.34.067 so long as the conference, case staffing, or hearing ordered  
35 by the court meets all requirements under RCW 13.34.067, including the  
36 requirement of a written agreement specifying the services to be  
37 provided to the parent.

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

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

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

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

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

21 **Sec. 25.** RCW 13.34.070 and 2004 c 64 s 4 are each amended to read  
22 as follows:

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

1 exceptional circumstances exist. To ensure that the hearing on the  
2 petition occurs within the seventy-five day time limit, the court shall  
3 schedule and hear the matter on an expedited basis.

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

5 (3) The summons shall advise the parties of the right to counsel.  
6 The summons shall also inform the child's parent, guardian, or legal  
7 custodian of his or her right to appointed counsel, if indigent, and of  
8 the procedure to use to secure appointed counsel.

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

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

15 (6) If it appears from affidavit or sworn statement presented to  
16 the judge that there is probable cause for the issuance of a warrant of  
17 arrest or that the child needs to be taken into custody pursuant to RCW  
18 13.34.050, the judge may endorse upon the summons an order that an  
19 officer serving the summons shall at once take the child into custody  
20 and take him or her to the place of shelter designated by the court.

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

26 NOTICE:

27 VIOLATION OF THIS ORDER

28 IS SUBJECT TO PROCEEDING

29 FOR CONTEMPT OF COURT

30 PURSUANT TO RCW 13.34.070.

31 (8) If a party to be served with a summons can be found within the  
32 state, the summons shall be served upon the party personally as soon as  
33 possible following the filing of the petition, but in no case later  
34 than fifteen court days before the fact-finding hearing, or such time  
35 as set by the court. If the party is within the state and cannot be  
36 personally served, but the party's address is known or can with  
37 reasonable diligence be ascertained, the summons may be served upon the  
38 party by mailing a copy by certified mail as soon as possible following

1 the filing of the petition, but in no case later than fifteen court  
2 days before the hearing, or such time as set by the court. If a party  
3 other than the child is without the state but can be found or the  
4 address is known, or can with reasonable diligence be ascertained,  
5 service of the summons may be made either by delivering a copy to the  
6 party personally or by mailing a copy thereof to the party by certified  
7 mail at least ten court days before the fact-finding hearing, or such  
8 time as set by the court.

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

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

25 ~~(b) The notice shall: (i) Contain a statement notifying the parent  
26 or custodian and the tribe of the pending proceeding; and (ii) notify  
27 the tribe of the tribe's right to intervene and/or request that the  
28 case be transferred to tribal court))~~ comply with section 7 of this  
29 act.

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

32 (1) Unless otherwise directed by the court, the duties of the  
33 guardian ad litem for a child subject to a proceeding under this  
34 chapter, including an attorney specifically appointed by the court to  
35 serve as a guardian ad litem, include but are not limited to the  
36 following:

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

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

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

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

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

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

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

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

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

31 (3) Except for information or records specified in RCW  
32 13.50.100(7), the guardian ad litem shall have access to all  
33 information available to the state or agency on the case. Upon  
34 presentation of the order of appointment by the guardian ad litem, any  
35 agency, hospital, school organization, division or department of the  
36 state, doctor, nurse, or other health care provider, psychologist,  
37 psychiatrist, police department, or mental health clinic shall permit  
38 the guardian ad litem to inspect and copy any records relating to the

1 child or children involved in the case, without the consent of the  
2 parent or guardian of the child, or of the child if the child is under  
3 the age of thirteen years, unless such access is otherwise specifically  
4 prohibited by law.

5 (4) A guardian ad litem may release confidential information,  
6 records, and reports to the office of the family and children's  
7 ombudsman for the purposes of carrying out its duties under chapter  
8 43.06A RCW.

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

11 **Sec. 27.** RCW 13.34.130 and 2010 c 288 s 1 are each amended to read  
12 as follows:

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

19 (1) The court shall order one of the following dispositions of the  
20 case:

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

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

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

24 (2) When placing an Indian child in out-of-home care, the  
25 department or supervising agency shall follow the placement preference  
26 characteristics in (~~RCW 13.34.250 and in 25 U.S.C. Sec. 1915~~) section  
27 18 of this act.

28 (3) Placement of the child with a relative or other suitable person  
29 as described in subsection (1)(b) of this section shall be given  
30 preference by the court. An order for out-of-home placement may be  
31 made only if the court finds that reasonable efforts have been made to  
32 prevent or eliminate the need for removal of the child from the child's  
33 home and to make it possible for the child to return home, specifying  
34 the services, including housing assistance, that have been provided to  
35 the child and the child's parent, guardian, or legal custodian, and  
36 that preventive services have been offered or provided and have failed  
37 to prevent the need for out-of-home placement, unless the health,

1 safety, and welfare of the child cannot be protected adequately in the  
2 home, and that:

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

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

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

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

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

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

21 (ii) There is no reasonable cause to believe that the health,  
22 safety, or welfare of any child subject to the order of placement,  
23 contact, or visitation would be jeopardized or that efforts to reunite  
24 the parent and child would be hindered by such placement, contact, or  
25 visitation. In no event shall parental visitation time be reduced in  
26 order to provide sibling visitation.

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

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

37 (6) If the court has ordered a child removed from his or her home



1 pursuant to subsection (1)(b) of this section, the court may order that  
2 a petition seeking termination of the parent and child relationship be  
3 filed if the requirements of RCW 13.34.132 are met.

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

24 **Sec. 28.** RCW 13.34.132 and 2000 c 122 s 16 are each amended to  
25 read as follows:

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

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

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

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

32 (4) Because of the existence of aggravated circumstances,  
33 reasonable efforts to unify the family are not required.  
34 Notwithstanding the existence of aggravated circumstances, reasonable  
35 efforts may be required if the court or department determines it is in  
36 the best interests of the child. In determining whether aggravated

1 circumstances exist by clear, cogent, and convincing evidence, the  
2 court shall consider one or more of the following:

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

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

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

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

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

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

20 (g) Failure of the parent to complete available treatment ordered  
21 under this chapter or the equivalent laws of another state, where such  
22 failure has resulted in a prior termination of parental rights to  
23 another child and the parent has failed to effect significant change in  
24 the interim. In the case of a parent of an Indian child, as defined in  
25 (~~the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. Sec. 1903)~~)  
26 section 4 of this act, the court shall also consider tribal efforts to  
27 assist the parent in completing treatment and make it possible for the  
28 child to return home;

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

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

33 **Sec. 29.** RCW 13.34.136 and 2009 c 520 s 28 and 2009 c 234 s 5 are  
34 each reenacted and amended to read as follows:

35 (1) Whenever a child is ordered removed from the home, a permanency  
36 plan shall be developed no later than sixty days from the time the  
37 supervising agency assumes responsibility for providing services,

1 including placing the child, or at the time of a hearing under RCW  
2 13.34.130, whichever occurs first. The permanency planning process  
3 continues until a permanency planning goal is achieved or dependency is  
4 dismissed. The planning process shall include reasonable efforts to  
5 return the child to the parent's home.

6 (2) The agency supervising the dependency shall submit a written  
7 permanency plan to all parties and the court not less than fourteen  
8 days prior to the scheduled hearing. Responsive reports of parties not  
9 in agreement with the department's or supervising agency's proposed  
10 permanency plan must be provided to the department or supervising  
11 agency, all other parties, and the court at least seven days prior to  
12 the hearing.

13 The permanency plan shall include:

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

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

36 (i) The department's or supervising agency's plan shall specify  
37 what services the parents will be offered to enable them to resume

1 custody, what requirements the parents must meet to resume custody, and  
2 a time limit for each service plan and parental requirement.

3 (ii) Visitation is the right of the family, including the child and  
4 the parent, in cases in which visitation is in the best interest of the  
5 child. Early, consistent, and frequent visitation is crucial for  
6 maintaining parent-child relationships and making it possible for  
7 parents and children to safely reunify. The supervising agency or  
8 department shall encourage the maximum parent and child and sibling  
9 contact possible, when it is in the best interest of the child,  
10 including regular visitation and participation by the parents in the  
11 care of the child while the child is in placement. Visitation shall  
12 not be limited as a sanction for a parent's failure to comply with  
13 court orders or services where the health, safety, or welfare of the  
14 child is not at risk as a result of the visitation. Visitation may be  
15 limited or denied only if the court determines that such limitation or  
16 denial is necessary to protect the child's health, safety, or welfare.  
17 The court and the department or supervising agency should rely upon  
18 community resources, relatives, foster parents, and other appropriate  
19 persons to provide transportation and supervision for visitation to the  
20 extent that such resources are available, and appropriate, and the  
21 child's safety would not be compromised.

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

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

29 (v) Unless it is not in the best interests of the child, whenever  
30 practical, the plan should ensure the child remains enrolled in the  
31 school the child was attending at the time the child entered foster  
32 care.

33 (vi) The supervising agency or department shall provide all  
34 reasonable services that are available within the department or  
35 supervising agency, or within the community, or those services which  
36 the department has existing contracts to purchase. It shall report to  
37 the court if it is unable to provide such services; and

1 (c) If the court has ordered, pursuant to RCW 13.34.130(~~((+5+))~~) (6),  
2 that a termination petition be filed, a specific plan as to where the  
3 child will be placed, what steps will be taken to achieve permanency  
4 for the child, services to be offered or provided to the child, and, if  
5 visitation would be in the best interests of the child, a  
6 recommendation to the court regarding visitation between parent and  
7 child pending a fact-finding hearing on the termination petition. The  
8 department or supervising agency shall not be required to develop a  
9 plan of services for the parents or provide services to the parents if  
10 the court orders a termination petition be filed. However, reasonable  
11 efforts to ensure visitation and contact between siblings shall be made  
12 unless there is reasonable cause to believe the best interests of the  
13 child or siblings would be jeopardized.

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

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

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

31 (6) The court shall consider the child's relationships with the  
32 child's siblings in accordance with RCW 13.34.130(~~((+3+))~~) (4). Whenever  
33 the permanency plan for a child is adoption, the court shall encourage  
34 the prospective adoptive parents, birth parents, foster parents,  
35 kinship caregivers, and the department or other supervising agency to  
36 seriously consider the long-term benefits to the child adoptee and his  
37 or her siblings of providing for and facilitating continuing  
38 postadoption contact between the siblings. To the extent that it is

1 feasible, and when it is in the best interests of the child adoptee and  
2 his or her siblings, contact between the siblings should be frequent  
3 and of a similar nature as that which existed prior to the adoption.  
4 If the child adoptee or his or her siblings are represented by an  
5 attorney or guardian ad litem in a proceeding under this chapter or in  
6 any other child custody proceeding, the court shall inquire of each  
7 attorney and guardian ad litem regarding the potential benefits of  
8 continuing contact between the siblings and the potential detriments of  
9 severing contact. This section does not require the department of  
10 social and health services or other supervising agency to agree to any  
11 specific provisions in an open adoption agreement and does not create  
12 a new obligation for the department to provide supervision or  
13 transportation for visits between siblings separated by adoption from  
14 foster care.

15 (7) For purposes related to permanency planning:

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

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

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

24 **Sec. 30.** RCW 13.34.190 and 2010 c 288 s 2 are each amended to read  
25 as follows:

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

30 (a)(i) The allegations contained in the petition as provided in RCW  
31 13.34.180(1) are established by clear, cogent, and convincing evidence;  
32 or

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

1 (iii) The allegation under RCW 13.34.180(2) is established beyond  
2 a reasonable doubt. In determining whether RCW 13.34.180(1) (e) and  
3 (f) are established beyond a reasonable doubt, the court shall consider  
4 whether one or more of the aggravated circumstances listed in RCW  
5 13.34.132 exist; or

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

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

9 (2) The provisions of chapter 13.--- RCW (the new chapter created  
10 in section 34 of this act) must be followed in any proceeding under  
11 this chapter for termination of the parent-child relationship of an  
12 Indian child as defined in ((25 U.S.C. Sec. 1903, no termination of  
13 parental rights may be ordered in such proceeding in the absence of a  
14 determination, supported by evidence beyond a reasonable doubt,  
15 including testimony of qualified expert witnesses, that the continued  
16 custody of the child by the parent or Indian custodian is likely to  
17 result in serious emotional or physical damage to the child)) section  
18 4 of this act.

19 **Sec. 31.** RCW 26.10.034 and 2004 c 64 s 1 are each amended to read  
20 as follows:

21 (1)((~~a~~)) Every petition filed in proceedings under this chapter  
22 shall contain a statement alleging whether the child is or may be an  
23 Indian child as defined in ((25 U.S.C. Sec. 1903)) section 4 of this  
24 act. If the child is an Indian child ((~~as defined under the Indian~~  
25 ~~child welfare act, the provisions of the act)), chapter 13.--- RCW (the  
26 new chapter created in section 34 of this act) shall apply.~~

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

1 ~~tribes the petitioner has reason to know may be affiliated with the~~  
2 ~~child.~~

3 ~~(c) 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.)~~

7 (2) Every order or decree entered in any proceeding under this  
8 chapter shall contain a finding that the federal Indian child welfare  
9 act or chapter 13.--- RCW (the new chapter created in section 34 of  
10 this act) does or does not apply. Where there is a finding that the  
11 federal Indian child welfare act or chapter 13.--- RCW (the new chapter  
12 created in section 34 of this act) does apply, the decree or order must  
13 also contain a finding that all notice requirements and evidentiary  
14 requirements under the federal Indian child welfare act and chapter  
15 13.--- RCW (the new chapter created in section 34 of this act) have  
16 been satisfied.

17 **Sec. 32.** RCW 26.33.040 and 2004 c 64 s 2 are each amended to read  
18 as follows:

19 (1)(a) Every petition filed in proceedings under this chapter shall  
20 contain a statement alleging whether the child is or may be an Indian  
21 child as defined in ~~((25 U.S.C. Sec. 1903))~~ section 4 of this act. If  
22 the child is an Indian child ~~((as defined under the Indian child~~  
23 ~~welfare act, the provisions of the act)),~~ chapter 13.--- RCW (the new  
24 chapter created in section 34 of this act) shall apply.

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

35 (c) In proceedings under this chapter, the adoption facilitator  
36 shall file a sworn statement documenting efforts to determine whether



1 an Indian child (~~as defined under the Indian child welfare act, 25~~  
2 ~~U.S.C. Sec. 1903,~~) is involved.

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

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

19 (f) No termination, relinquishment, or placement proceeding shall  
20 be held until at least ten days after receipt of notice by the tribe.  
21 If the tribe requests, the court shall grant the tribe up to twenty  
22 additional days to prepare for such proceeding.

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

29 **Sec. 33.** RCW 74.13.350 and 2004 c 183 s 4 are each amended to read  
30 as follows:

31 It is the intent of the legislature that parents are responsible  
32 for the care and support of children with developmental disabilities.  
33 The legislature recognizes that, because of the intense support  
34 required to care for a child with developmental disabilities, the help  
35 of an out-of-home placement may be needed. It is the intent of the  
36 legislature that, when the sole reason for the out-of-home placement is  
37 the child's developmental disability, such services be offered by the

1 department to these children and their families through a voluntary  
2 placement agreement. In these cases, the parents shall retain legal  
3 custody of the child.

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

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

26 Whenever the department places a child in out-of-home care under a  
27 voluntary placement pursuant to this section, the department shall have  
28 the responsibility for the child's placement and care. The department  
29 shall develop a permanency plan of care for the child no later than  
30 sixty days from the date that the department assumes responsibility for  
31 the child's placement and care. Within the first one hundred eighty  
32 days of the placement, the department shall obtain a judicial  
33 determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the  
34 placement is in the best interests of the child. If the child's out-  
35 of-home placement ends before one hundred eighty days have elapsed, no  
36 judicial determination under RCW 13.04.030(1)(b) is required. The  
37 permanency planning hearings shall review whether the child's best

1 interests are served by continued out-of-home placement and determine  
2 the future legal status of the child.

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

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

9 The department shall adopt rules providing for the implementation  
10 of chapter 386, Laws of 1997 and the transfer of responsibility for  
11 out-of-home placements from the dependency process under chapter 13.34  
12 RCW to the process under this chapter.

13 It is the intent of the legislature that the department undertake  
14 voluntary out-of-home placement in cases where the child's  
15 developmental disability is such that the parent, guardian, or legal  
16 custodian is unable to provide the necessary care for the child, and  
17 the parent, guardian, or legal custodian has determined that the child  
18 would benefit from placement outside of the home. If the department  
19 does not accept a voluntary placement agreement signed by the parent,  
20 a petition may be filed and an action pursued under chapter 13.34 RCW.  
21 The department shall inform the parent, guardian, or legal custodian in  
22 writing of their right to civil action under chapter 13.34 RCW.

23 Nothing in this section prohibits the department from seeking  
24 support from parents of a child, including a child with a developmental  
25 disability if the child has been placed into care as a result of an  
26 action under chapter 13.34 RCW, when state or federal funds are  
27 expended for the care and maintenance of that child or when the  
28 department receives an application for services from the physical  
29 custodian of the child, unless the department finds that there is good  
30 cause not to pursue collection of child support against the parent or  
31 parents.

32 NEW SECTION. **Sec. 34.** Sections 1 through 20 of this act  
33 constitute a new chapter in Title 13 RCW.

34 NEW SECTION. **Sec. 35.** RCW 13.34.250 (Preference characteristics

1 when placing Indian child in foster care home) and 1979 c 155 s 53 are  
2 each repealed.

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