

SB 5490 - H COMM AMD

By Committee on Early Learning & Human Services

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.38.070 and 2011 c 309 s 7 are each amended to
4 read as follows:

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

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

30 (3)(a) A written determination by an Indian tribe that a child is
31 a member of or eligible for membership in that tribe, or testimony by

1 the tribe attesting to such status shall be conclusive that the child
2 is an Indian child;

3 (b) A written determination by an Indian tribe that a child is
4 not a member of or eligible for membership in that tribe, or
5 testimony by the tribe attesting to such status shall be conclusive
6 that the child is not a member or eligible for membership in that
7 tribe. Such determinations are presumptively those of the tribe where
8 submitted in the form of a tribal resolution, or signed by or
9 testified to by the person(s) authorized by the tribe's governing
10 body to speak for the tribe, or by the tribe's agent designated to
11 receive notice under the federal Indian child welfare act where such
12 designation is published in the federal register;

13 (c) Where a tribe provides no response to notice under ((RCW
14 ~~13.38.070~~)) this section, such nonresponse shall not constitute
15 evidence that the child is not a member or eligible for membership.
16 Provided, however, that under such circumstances the party asserting
17 application of the federal Indian child welfare act, or this chapter,
18 will have the burden of proving by a preponderance of the evidence
19 that the child is an Indian child.

20 (4)(a) Where a child has been determined not to be an Indian
21 child, any party to the proceeding, or an Indian tribe that
22 subsequently determines the child is a member, may, during the
23 pendency of any child custody proceeding to which this chapter or the
24 federal Indian child welfare act applies, move the court for
25 redetermination of the child's Indian status based upon new evidence,
26 redetermination by the child's tribe, or newly conferred federal
27 recognition of the tribe.

28 (b) This subsection (4) does not affect the rights afforded under
29 25 U.S.C. Sec. 1914.

30 **Sec. 2.** RCW 26.44.100 and 2005 c 512 s 1 are each amended to
31 read as follows:

32 (1) The legislature finds parents and children often are not
33 aware of their due process rights when agencies are investigating
34 allegations of child abuse and neglect. The legislature reaffirms
35 that all citizens, including parents, shall be afforded due process,
36 that protection of children remains the priority of the legislature,
37 and that this protection includes protecting the family unit from
38 unnecessary disruption. To facilitate this goal, the legislature
39 wishes to ensure that parents and children be advised in writing and

1 orally, if feasible, of their basic rights and other specific
2 information as set forth in this chapter, provided that nothing
3 contained in this chapter shall cause any delay in protective custody
4 action.

5 (2) The department shall notify the parent, guardian, or legal
6 custodian of a child of any allegations of child abuse or neglect
7 made against such person at the initial point of contact with such
8 person, in a manner consistent with the laws maintaining the
9 confidentiality of the persons making the complaints or allegations.
10 Investigations of child abuse and neglect should be conducted in a
11 manner that will not jeopardize the safety or protection of the child
12 or the integrity of the investigation process.

13 Whenever the department completes an investigation of a child
14 abuse or neglect report under this chapter (~~(26.44—RCW)~~), the
15 department shall notify the subject of the report of the department's
16 investigative findings. The notice shall also advise the subject of
17 the report that:

18 (a) A written response to the report may be provided to the
19 department and that such response will be filed in the record
20 following receipt by the department;

21 (b) Information in the department's record may be considered in
22 subsequent investigations or proceedings related to child protection
23 or child custody;

24 (c) Founded reports of child abuse and neglect may be considered
25 in determining whether the person is disqualified from being licensed
26 to provide child care, employed by a licensed child care agency, or
27 authorized by the department to care for children; and

28 (d) A subject named in a founded report of child abuse or neglect
29 has the right to seek review of the finding as provided in this
30 chapter.

31 (3) The founded finding notification required by this section
32 shall be made by certified mail, return receipt requested, to the
33 person's last known address.

34 (4) The unfounded finding notification required by this section
35 must be made by regular mail to the person's last known address or by
36 email.

37 (5) The duty of notification created by this section is subject
38 to the ability of the department to ascertain the location of the
39 person to be notified. The department shall exercise reasonable,

1 good-faith efforts to ascertain the location of persons entitled to
2 notification under this section.

3 ~~((+5))~~ (6) The department shall provide training to all
4 department personnel who conduct investigations under this section
5 that shall include, but is not limited to, training regarding the
6 legal duties of the department from the initial time of contact
7 during investigation through treatment in order to protect children
8 and families.

9 **Sec. 3.** RCW 43.20B.430 and 1989 c 175 s 99 are each amended to
10 read as follows:

11 In all cases where a determination is made that the estate of a
12 resident of a residential habilitation center is able to pay all or
13 any portion of the charges, ~~((a))~~ an initial notice and finding of
14 responsibility shall be served on the guardian of the resident's
15 estate, or if no guardian has been appointed then to the resident,
16 the resident's spouse, or other person acting in a representative
17 capacity and having property in his or her possession belonging to a
18 resident. The initial notice shall set forth the amount the
19 department has determined that such estate is able to pay, not to
20 exceed the charge as fixed in accordance with RCW 43.20B.420, and the
21 responsibility for payment to the department shall commence twenty-
22 eight days after ~~((personal))~~ service of such notice and finding of
23 responsibility. Service of the initial notice shall be in the manner
24 prescribed for the service of a summons in a civil action or may be
25 served by certified mail, return receipt requested. The return
26 receipt signed by addressee only is prima facie evidence of service.
27 An application for an adjudicative proceeding from the determination
28 of responsibility may be made to the secretary by the guardian of the
29 resident's estate, or if no guardian has been appointed then by the
30 resident, the resident's spouse, or other person acting in a
31 representative capacity and having property in his or her possession
32 belonging to a resident of a state school, within such twenty-eight
33 day period. The application must be written and served on the
34 secretary by registered or certified mail, or by personal service. If
35 no application is filed, the notice and finding of responsibility
36 shall become final. If an application is filed, the execution of
37 notice and finding of responsibility shall be stayed pending the
38 final adjudicative order. The hearing shall be conducted in a local
39 department office or other location in Washington convenient to the

1 appellant. The proceeding is governed by the Administrative Procedure
2 Act, chapter 34.05 RCW.

3 **Sec. 4.** RCW 43.20B.435 and 1979 c 141 s 240 are each amended to
4 read as follows:

5 The secretary, upon application of the guardian of the estate of
6 the resident, and after investigation, or upon investigation without
7 application, may, if satisfied of the financial ability or inability
8 of such person to make payments in accordance with the ~~((original))~~
9 initial finding of responsibility as provided for in RCW 43.20B.430,
10 modify or vacate such ~~((original))~~ initial finding of responsibility,
11 and enter a new finding of responsibility. The secretary's
12 determination to modify or vacate findings of responsibility shall be
13 served ~~((and))~~ by regular mail. A new finding of responsibility shall
14 be appealable in the same manner and in accordance with the same
15 procedure for appeals of ~~((original))~~ initial findings of
16 responsibility.

17 **Sec. 5.** RCW 43.20B.635 and 1990 c 100 s 1 are each amended to
18 read as follows:

19 (1) After service of a notice of debt for an overpayment as
20 provided for in RCW 43.20B.630, stating the debt accrued, the
21 secretary may issue to any person, firm, corporation, association,
22 political subdivision, or department of the state, an order to
23 withhold and deliver property of any kind including, but not
24 restricted to, earnings which are due, owing, or belonging to the
25 debtor, when the secretary has reason to believe that there is in the
26 possession of such person, firm, corporation, association, political
27 subdivision, or department of the state property which is due, owing,
28 or belonging to the debtor.

29 (2)(a) The order to withhold and deliver shall state the amount
30 of the debt, and shall state in summary the terms of this section,
31 RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C.
32 1673, and other state or federal exemption laws applicable generally
33 to debtors.

34 (b) The order to withhold and deliver shall be served ~~((in the~~
35 ~~manner prescribed for the service of a summons in a civil action or~~
36 ~~by certified mail, return receipt requested))~~ by regular mail or,
37 with a party's agreement, electronically.

1 (3)(a) Any person, firm, corporation, association, political
2 subdivision, or department of the state upon whom service has been
3 made shall answer the order to withhold and deliver within twenty
4 days, exclusive of the day of service, under oath and in writing, and
5 shall make true answers to the matters inquired of therein.

6 (b) The secretary may require further and additional answers to
7 be completed by the person, firm, corporation, association, political
8 subdivision, or department of the state.

9 (c) If any such person, firm, corporation, association, political
10 subdivision, or department of the state possesses any property which
11 may be subject to the claim of the department of social and health
12 services, such property shall be withheld immediately upon receipt of
13 the order to withhold and deliver and shall, after the twenty-day
14 period, upon demand, be delivered forthwith to the secretary.

15 (d) The secretary shall hold the property in trust for
16 application on the indebtedness involved or for return, without
17 interest, in accordance with final determination of liability or
18 nonliability. In the alternative, there may be furnished to the
19 secretary a good and sufficient bond, satisfactory to the secretary,
20 conditioned upon final determination of liability.

21 (e) Where money is due and owing under any contract of
22 employment, express or implied, or is held by any person, firm,
23 corporation, association, political subdivision, or department of the
24 state subject to withdrawal by the debtor, such money shall be
25 delivered by remittance payable to the order of the secretary.
26 Delivery to the secretary, subject to the exemptions under RCW
27 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. 1673,
28 and other state or federal law applicable generally to debtors, of
29 the money or other property held or claimed satisfies the requirement
30 of the order to withhold and deliver. Delivery to the secretary
31 serves as full acquittance, and the state warrants and represents
32 that it shall defend and hold harmless for such actions persons
33 delivering money or property to the secretary pursuant to this
34 chapter. The state also warrants and represents that it shall defend
35 and hold harmless for such actions persons withholding money or
36 property pursuant to this chapter.

37 (4)(a) The secretary shall also, on or before the date of service
38 of the order to withhold and deliver, mail or cause to be mailed (~~by~~
39 ~~certified mail~~) a copy of the order to withhold and deliver to the
40 debtor at the debtor's last known post office address(~~(-)~~) or, (~~in~~

1 ~~the alternative, a copy of the order to withhold and deliver shall be~~
2 ~~served on the debtor in the same manner as a summons in a civil~~
3 ~~action on or before the date of service of the order or within two~~
4 ~~days thereafter)) with a party's agreement serve the order upon the
5 debtor electronically on or before the date of service of the order
6 to withhold and deliver.~~

7 (b) The copy of the order shall be mailed or served together with
8 a concise explanation of the right to petition for a hearing on any
9 issue related to the collection. This requirement is not
10 jurisdictional, but, if the copy is not mailed or served as provided
11 in this section, or if any irregularity appears with respect to the
12 mailing or service electronically, the superior court, on its
13 discretion on motion of the debtor promptly made and supported by
14 affidavit showing that the debtor has suffered substantial injury due
15 to the failure to mail the copy or serve the copy electronically, may
16 set aside the order to withhold and deliver and award to the debtor
17 an amount equal to the damages resulting from the secretary's failure
18 to serve on or mail to the debtor the copy.

19 **Sec. 6.** RCW 74.20A.320 and 2009 c 408 s 1 are each amended to
20 read as follows:

21 (1) The department may serve upon a responsible parent a notice
22 informing the responsible parent of the department's intent to submit
23 the parent's name to the department of licensing and any appropriate
24 licensing entity as a licensee who is not in compliance with a child
25 support order. (~~The department shall attach a copy of the~~
26 ~~responsible parent's child support order to the notice.))~~

27 (a) If the support order establishing or modifying the child
28 support obligation includes a statement required under RCW 26.23.050
29 that the responsible parent's privileges to obtain and maintain a
30 license may not be renewed or may be suspended if the parent is not
31 in compliance with a support order, the department may send the
32 notice required by this section to the responsible parent by regular
33 mail, addressed to the responsible parent's last known mailing
34 address on file with the department or by personal service. Notice by
35 regular mail is deemed served three days from the date the notice was
36 deposited with the United States postal service.

37 (b) If the support order does not include a statement as required
38 under RCW 26.23.050 that the responsible parent's privileges to
39 obtain and maintain a license may not be renewed or may be suspended

1 if the parent is not in compliance with a support order, service of
2 the notice required by this section to the responsible parent must be
3 by certified mail, return receipt requested. The department must
4 attach a copy of the responsible parent's child support order to the
5 notice. If service by certified mail is not successful, service shall
6 be by personal service.

7 (2) The notice of noncompliance must include the following
8 information:

9 (a) The address and telephone number of the department's division
10 of child support office that issued the notice;

11 (b) That in order to prevent the department from certifying the
12 parent's name to the department of licensing or any other licensing
13 entity, the parent has twenty days from receipt of the notice to
14 contact the department and:

15 (i) Pay the overdue support amount in full;

16 (ii) Request an adjudicative proceeding as provided in RCW
17 74.20A.322;

18 (iii) Agree to a payment schedule with the department as provided
19 in RCW 74.20A.326; or

20 (iv) File an action to modify the child support order with the
21 appropriate court or administrative forum, in which case the
22 department will stay the certification process up to six months;

23 (c) That failure to contact the department within twenty days of
24 receipt of the notice will result in certification of the responsible
25 parent's name to the department of licensing and any other
26 appropriate licensing entity for noncompliance with a child support
27 order. Upon receipt of the notice:

28 (i) The licensing entity will suspend or not renew the parent's
29 license and the department of licensing will suspend or not renew any
30 driver's license that the parent holds until the parent provides the
31 department of licensing and the licensing entity with a release from
32 the department stating that the responsible parent is in compliance
33 with the child support order;

34 (ii) The department of fish and wildlife will suspend a fishing
35 license, hunting license, occupational licenses, such as a commercial
36 fishing license, or any other license issued under chapter 77.32 RCW
37 that the responsible parent may possess, and suspension of a license
38 by the department of fish and wildlife may also affect the parent's
39 ability to obtain permits, such as special hunting permits, issued by
40 the department. Notice from the department of licensing that a

1 responsible parent's driver's license has been suspended shall serve
2 as notice of the suspension of a license issued under chapter 77.32
3 RCW;

4 (d) That suspension of a license will affect insurability if the
5 responsible parent's insurance policy excludes coverage for acts
6 occurring after the suspension of a license;

7 (e) If the responsible parent subsequently comes into compliance
8 with the child support order, the department will promptly provide
9 the parent and the appropriate licensing entities with a release
10 stating that the parent is in compliance with the order.

11 (3) When a responsible parent who is served notice under
12 subsection (1) of this section subsequently complies with the child
13 support order, a copy of a release stating that the responsible
14 parent is in compliance with the order shall be transmitted by the
15 department to the appropriate licensing entities.

16 (4) The department of licensing and a licensing entity may renew,
17 reinstate, or otherwise extend a license in accordance with the
18 licensing entity's or the department of licensing's rules after the
19 licensing entity or the department of licensing receives a copy of
20 the release specified in subsection (3) of this section. The
21 department of licensing and a licensing entity may waive any
22 applicable requirement for reissuance, renewal, or other extension if
23 it determines that the imposition of that requirement places an undue
24 burden on the person and that waiver of the requirement is consistent
25 with the public interest."

26 Correct the title.

EFFECT: Specifies that notice provided by the Department of Social and Health Services required pursuant to the Indian Child Welfare Act must be addressed to the tribal agent designated for receipt of Indian Child Welfare Act notice published by the Bureau of Indian Affairs in the Federal Register.

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