

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 1938

61st Legislature
2009 Regular Session

Passed by the House March 9, 2009
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 15, 2009
Yeas 43 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1938** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1938

Passed Legislature - 2009 Regular Session

State of Washington 61st Legislature 2009 Regular Session

By House Health & Human Services Appropriations (originally sponsored by Representatives Roberts, Kagi, Angel, Walsh, Dunshee, Pettigrew, Green, Goodman, Haler, and Kenney)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to children's interests in maintaining postadoption
2 contact with their siblings; amending RCW 26.33.295 and 26.33.190;
3 reenacting and amending RCW 13.34.136; and adding new sections to
4 chapter 26.33 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.33 RCW
7 to read as follows:

8 The legislature finds that the importance of children's
9 relationships with their siblings is well recognized in law and
10 science. The bonds between siblings are often irreplaceable, leading
11 some experts to believe that sibling relationships can be longer
12 lasting and more influential than any other over a person's lifetime.
13 For children who have been removed from home due to abuse or neglect,
14 these bonds are often much stronger because siblings have learned early
15 the importance of depending on one another and cooperating in order to
16 cope with their common problems. The legislature further finds that
17 when children are in the foster care system they typically have some
18 degree of contact or visitation with their siblings even when they are
19 not living together. The legislature finds, however, that when one or

1 more of the siblings is adopted from foster care, these relationships
2 may be severed completely if an open adoption agreement fails to attend
3 to the needs of the siblings for continuing postadoption contact. The
4 legislature intends to promote a greater focus, in permanency planning
5 and adoption proceedings, on the interests of siblings separated by
6 adoptive placements and to encourage the inclusion in adoption
7 agreements of provisions to support ongoing postadoption contact
8 between siblings.

9 NEW SECTION. **Sec. 2.** A new section is added to chapter 26.33 RCW
10 to read as follows:

11 The court, in reviewing and approving an agreement under RCW
12 26.33.295 for the adoption of a child from foster care, shall encourage
13 the adoptive parents, birth parents, foster parents, kinship
14 caregivers, and the department or other supervising agency to seriously
15 consider the long-term benefits to the child adoptee and siblings of
16 the child adoptee of providing for and facilitating continuing
17 postadoption contact between siblings. To the extent feasible, and
18 when in the best interests of the child adoptee and siblings of the
19 child adoptee, contact between the siblings should be frequent and of
20 a similar nature as that which existed prior to the adoption. If the
21 child adoptee or known siblings of the child adoptee are represented by
22 an attorney or guardian ad litem in a proceeding under this chapter or
23 in any other child custody proceeding, the court shall inquire of each
24 attorney and guardian ad litem regarding the potential benefits of
25 continuing contact between the siblings and the potential detriments of
26 severing contact.

27 **Sec. 3.** RCW 26.33.295 and 1990 c 285 s 4 are each amended to read
28 as follows:

29 (1) Nothing in this chapter shall be construed to prohibit the
30 parties to a proceeding under this chapter from entering into
31 agreements regarding communication with or contact between child
32 adoptees, adoptive parents, siblings of child adoptees, and a birth
33 parent or parents.

34 (2) Agreements regarding communication with or contact between
35 child adoptees, adoptive parents, siblings of child adoptees, and a
36 birth parent or parents shall not be legally enforceable unless the

1 terms of the agreement are set forth in a written court order entered
2 in accordance with the provisions of this section. The court shall not
3 enter a proposed order unless the terms of such order have been
4 approved in writing by the prospective adoptive parents, any birth
5 parent whose parental rights have not previously been terminated, and,
6 if the child (~~(is)~~) or siblings of the child are in the custody of the
7 department or a licensed child-placing agency, a representative of the
8 department or child-placing agency. If the child is represented by an
9 attorney or guardian ad litem in a proceeding under this chapter or in
10 any other child-custody proceeding, the terms of the proposed order
11 also must be approved in writing by the child's representative. An
12 agreement under this section need not disclose the identity of the
13 parties to be legally enforceable. The court shall not enter a
14 proposed order unless the court finds that the communication or contact
15 (~~(between)~~) with the child adoptee, (~~(the adoptive parents, and a birth~~
16 ~~parent or parents)~~) as agreed upon and as set forth in the proposed
17 order, would be in the child adoptee's best interests.

18 (3) Failure to comply with the terms of an agreed order regarding
19 communication or contact that has been entered by the court pursuant to
20 this section shall not be grounds for setting aside an adoption decree
21 or revocation of a written consent to an adoption after that consent
22 has been approved by the court as provided in this chapter.

23 (4) An agreed order entered pursuant to this section may be
24 enforced by a civil action and the prevailing party in that action may
25 be awarded, as part of the costs of the action, a reasonable amount to
26 be fixed by the court as attorneys' fees. The court shall not modify
27 an agreed order under this section unless it finds that the
28 modification is necessary to serve the best interests of the child
29 adoptee, and that: (a) The modification is agreed to by the adoptive
30 parent and the birth parent or parents; or (b) exceptional
31 circumstances have arisen since the agreed order was entered that
32 justify modification of the order.

33 (5) This section does not require the department or other
34 supervising agency to agree to any specific provisions in an open
35 adoption agreement and does not create a new obligation for the
36 department to provide supervision or transportation for visits between
37 siblings separated by adoption from foster care.

1 **Sec. 4.** RCW 26.33.190 and 2007 c 387 s 2 are each amended to read
2 as follows:

3 (1) Any person may at any time request an agency, the department,
4 an individual approved by the court, or a qualified salaried court
5 employee to prepare a preplacement report. A certificate signed under
6 penalty of perjury by the person preparing the report specifying his or
7 her qualifications as required in this chapter shall be attached to or
8 filed with each preplacement report and shall include a statement of
9 training or experience that qualifies the person preparing the report
10 to discuss relevant adoption issues. A person may have more than one
11 preplacement report prepared. All preplacement reports shall be filed
12 with the court in which the petition for adoption is filed.

13 (2) The preplacement report shall be a written document setting
14 forth all relevant information relating to the fitness of the person
15 requesting the report as an adoptive parent. The report shall be based
16 on a study which shall include an investigation of the home
17 environment, family life, health, facilities, and resources of the
18 person requesting the report. The report shall include a list of the
19 sources of information on which the report is based. The report shall
20 include a recommendation as to the fitness of the person requesting the
21 report to be an adoptive parent. The report shall also verify that the
22 following issues were discussed with the prospective adoptive parents:

23 (a) The concept of adoption as a lifelong developmental process and
24 commitment;

25 (b) The potential for the child to have feelings of identity
26 confusion and loss regarding separation from the birth parents;

27 (c) If applicable, the relevance of the child's relationship with
28 siblings and the potential benefit to the child of providing for a
29 continuing relationship and contact between the child and known
30 siblings;

31 (d) Disclosure of the fact of adoption to the child;

32 ~~((d))~~ (e) The child's possible questions about birth parents and
33 relatives; and

34 ~~((e))~~ (f) The relevance of the child's racial, ethnic, and
35 cultural heritage.

36 (3) All preplacement reports shall include a background check of
37 any conviction records, pending charges, or disciplinary board final
38 decisions of prospective adoptive parents. The background check shall

1 include an examination of state and national criminal identification
2 data provided by the Washington state patrol criminal identification
3 system including, but not limited to, a fingerprint-based background
4 check of national crime information databases for any person being
5 investigated. It shall also include a review of any child abuse and
6 neglect history of any adult living in the prospective adoptive
7 parents' home. The background check of the child abuse and neglect
8 history shall include a review of the child abuse and neglect
9 registries of all states in which the prospective adoptive parents or
10 any other adult living in the home have lived during the five years
11 preceding the date of the preplacement report.

12 (4) An agency, the department, or a court approved individual may
13 charge a reasonable fee based on the time spent in conducting the study
14 and preparing the preplacement report. The court may set a reasonable
15 fee for conducting the study and preparing the report when a court
16 employee has prepared the report. An agency, the department, a court
17 approved individual, or the court may reduce or waive the fee if the
18 financial condition of the person requesting the report so warrants.
19 An agency's, the department's, or court approved individual's, fee is
20 subject to review by the court upon request of the person requesting
21 the report.

22 (5) The person requesting the report shall designate to the agency,
23 the department, the court approved individual, or the court in writing
24 the county in which the preplacement report is to be filed. If the
25 person requesting the report has not filed a petition for adoption, the
26 report shall be indexed in the name of the person requesting the report
27 and a cause number shall be assigned. A fee shall not be charged for
28 filing the report. The applicable filing fee may be charged at the
29 time a petition governed by this chapter is filed. Any subsequent
30 preplacement reports shall be filed together with the original report.

31 (6) A copy of the completed preplacement report shall be delivered
32 to the person requesting the report.

33 (7) A person may request that a report not be completed. A
34 reasonable fee may be charged for the value of work done.

35 **Sec. 5.** RCW 13.34.136 and 2008 c 267 s 3 and 2008 c 152 s 2 are
36 each reenacted and amended to read as follows:

37 (1) Whenever a child is ordered removed from the home, a permanency

1 plan shall be developed no later than sixty days from the time the
2 supervising agency assumes responsibility for providing services,
3 including placing the child, or at the time of a hearing under RCW
4 13.34.130, whichever occurs first. The permanency planning process
5 continues until a permanency planning goal is achieved or dependency is
6 dismissed. The planning process shall include reasonable efforts to
7 return the child to the parent's home.

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

14 The permanency plan shall include:

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

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

34 (i) The agency plan shall specify what services the parents will be
35 offered to enable them to resume custody, what requirements the parents
36 must meet to resume custody, and a time limit for each service plan and
37 parental requirement.

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

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

23 (iv) The plan shall state whether both in-state and, where
24 appropriate, out-of-state placement options have been considered by the
25 department.

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

30 (vi) The agency charged with supervising a child in placement shall
31 provide all reasonable services that are available within the agency,
32 or within the community, or those services which the department has
33 existing contracts to purchase. It shall report to the court if it is
34 unable to provide such services; and

35 (c) If the court has ordered, pursuant to RCW 13.34.130(5), that a
36 termination petition be filed, a specific plan as to where the child
37 will be placed, what steps will be taken to achieve permanency for the
38 child, services to be offered or provided to the child, and, if

1 visitation would be in the best interests of the child, a
2 recommendation to the court regarding visitation between parent and
3 child pending a fact-finding hearing on the termination petition. The
4 agency shall not be required to develop a plan of services for the
5 parents or provide services to the parents if the court orders a
6 termination petition be filed. However, reasonable efforts to ensure
7 visitation and contact between siblings shall be made unless there is
8 reasonable cause to believe the best interests of the child or siblings
9 would be jeopardized.

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

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

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

27 (6) The court shall consider the child's relationships with the
28 child's siblings in accordance with RCW 13.34.130(3). Whenever the
29 permanency plan for a child is adoption, the court shall encourage the
30 prospective adoptive parents, birth parents, foster parents, kinship
31 caregivers, and the department or other supervising agency to seriously
32 consider the long-term benefits to the child adoptee and his or her
33 siblings of providing for and facilitating continuing postadoption
34 contact between the siblings. To the extent that it is feasible, and
35 when it is in the best interests of the child adoptee and his or her
36 siblings, contact between the siblings should be frequent and of a
37 similar nature as that which existed prior to the adoption. If the
38 child adoptee or his or her siblings are represented by an attorney or

1 guardian ad litem in a proceeding under this chapter or in any other
2 child custody proceeding, the court shall inquire of each attorney and
3 guardian ad litem regarding the potential benefits of continuing
4 contact between the siblings and the potential detriments of severing
5 contact. This section does not require the department of social and
6 health services or other supervising agency to agree to any specific
7 provisions in an open adoption agreement and does not create a new
8 obligation for the department to provide supervision or transportation
9 for visits between siblings separated by adoption from foster care.

10 (7) For purposes related to permanency planning:

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

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

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

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