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**SUBSTITUTE SENATE BILL 6470**

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**State of Washington**

**61st Legislature**

**2010 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Kauffman, Hargrove, Prentice, Gordon, Regala, Keiser, McAuliffe, Stevens, and Kline)

READ FIRST TIME 02/04/10.

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

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

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

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

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

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

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

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

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

1           (2) When placing an Indian child in out-of-home care, the  
2 department or supervising agency shall follow the placement preference  
3 characteristics in RCW 13.34.250 and in 25 U.S.C. Sec. 1915.

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

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

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

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

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

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

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

34           (ii) There is no reasonable cause to believe that the health,  
35 safety, or welfare of any child subject to the order of placement,  
36 contact, or visitation would be jeopardized or that efforts to reunite  
37 the parent and child would be hindered by such placement, contact, or

1 visitation. In no event shall parental visitation time be reduced in  
2 order to provide sibling visitation.

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

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

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

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

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

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

7       ~~((1))~~ (a)(i) The allegations contained in the petition as provided  
8 in RCW 13.34.180(1) are established by clear, cogent, and convincing  
9 evidence; or

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

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

21       ~~((d))~~ (iv) The allegation under RCW 13.34.180(3) is established  
22 beyond a reasonable doubt; and

23       ~~((2))~~ (b) Such an order is in the best interests of the child.

24       (2) In any proceeding under this chapter for termination of the  
25 parent-child relationship, the court may enter an order terminating all  
26 parental rights to an Indian child as defined in 25 U.S.C. Sec. 1903  
27 only if the court finds that termination is supported by evidence  
28 beyond a reasonable doubt, including the testimony of qualified expert  
29 witnesses that the continued custody of the child by the parent or  
30 Indian custodian is likely to result in serious emotional or physical  
31 damage to the child.

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