



# WORKSHOP MATERIALS

Child Welfare Reform, the Washington State Indian Child Welfare Act  
and What Lies Ahead for Indian Children and Families

Saturday, June 9, 2012  
3:30PM – 5:00PM  
Suite 200/500

## Performance Based Contracting Procurement Timeline

March 30, 2012

The following reflects the proposed schedule for a procurement to implement performance based contracting for family support and related services under Network Administrators, incorporating specific requirements from E2SHB 2264 in **bold italics**. Target dates not in statute may change to address issues.

Target Date	Task
March 30, 2012	<ul style="list-style-type: none"> <li>▪ Final bill signed by Governor</li> </ul>
May – June 2012	<ul style="list-style-type: none"> <li>▪ <b>Consultation<sup>1</sup> with CA caseworkers, WFSE, Tribes, veteran parents, youth, child welfare researchers, WSIPP</b></li> <li>▪ <b>Data and research review</b></li> </ul>
<b>July 15, 2012</b>	<ul style="list-style-type: none"> <li>▪ <b>Define categories of family support &amp; related services</b></li> </ul>
July – September 2012	<ul style="list-style-type: none"> <li>▪ <b>Consultation with other state agencies (eg. HCA, OFM) and philanthropic entities in conducting the procurement</b></li> <li>▪ RFP drafted consistent with consultation received, <i>OFM approval of draft</i></li> </ul>
October 2012	<ul style="list-style-type: none"> <li>▪ Release RFP Draft for Comment</li> </ul>
October 2012	<ul style="list-style-type: none"> <li>▪ Comments Due</li> </ul>
November 2012	<ul style="list-style-type: none"> <li>▪ Comments reviewed &amp; incorporated</li> </ul>
December 2012	<ul style="list-style-type: none"> <li>▪ <b>Approval of RFP by OFM Director</b></li> </ul>
<b>December 31, 2012</b>	<ul style="list-style-type: none"> <li>▪ <b>Issue RFP</b></li> </ul>
January – February 2013	<ul style="list-style-type: none"> <li>▪ Non-Mandatory Responder’s Conference two (2) weeks after release of RFP</li> <li>▪ Mandatory Letter of Intent to Submit a Proposal due from Responders three (3) weeks after issuance of RFP</li> <li>▪ Written questions due from Responders three (3) weeks after release of RFP</li> <li>▪ Issue response to written questions seven (7) weeks after release of RFP</li> </ul>
March 15, 2013	<ul style="list-style-type: none"> <li>▪ Proposals due eleven (11) weeks after release of RFP</li> </ul>
April – May 2013	<ul style="list-style-type: none"> <li>▪ Evaluate proposals</li> </ul>
<b>June 30, 2013</b>	<ul style="list-style-type: none"> <li>▪ <b>Notify apparently successful and unsuccessful bidders</b></li> </ul>
June – July 2013	<ul style="list-style-type: none"> <li>▪ Contract negotiation</li> </ul>
August 2013	<ul style="list-style-type: none"> <li>▪ <b>Enter into performance based contracts by December 1, 2013</b></li> </ul>
July – September 2013	<ul style="list-style-type: none"> <li>▪ Network Administrator infrastructure development &amp; service network development</li> <li>▪ Start-up &amp; Readiness Assessment</li> <li>▪ Joint CA – Network Administrator staff training</li> </ul>
September – December 2013	<ul style="list-style-type: none"> <li>▪ Transition to Network Administrators providing family support and related services</li> </ul>

<sup>1</sup> Consultation identified in the PBC Procurement Timeline is required by E2SHB 2264 and will be done through existing meetings whenever possible (e.g. Indian Policy Advisory Committee, Washington State Parent Advocacy Committee, Passion to Action). In addition, Children’s Administration (CA) anticipates receiving input from the Children Youth and Family Services Advisory Committee, Washington State Racial Disproportionality Advisory Committee, and Child Welfare Transformation Design Committee, and anticipates holding at least one meeting in eastern and western Washington to receive community input.

# E2SHB 2264 Overview

## Authorizing Legislation

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- Passed by the Legislature March 7, 2012; becomes law June 7, 2012
- Does two primary things:
  1. **Establishes a new chapter in RCW 74 with requirements for performance based contracts**
  2. Extends the timeline to implement case management demonstration sites by 3 years

## Performance Based Contracts for Family Support & Related Services

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### *Overview*

- New chapter in RCW 74 for performance based contracts (PBC) results in:
  - PBC de-linked from the statute on case management demonstration sites
  - Transformation Design Committee (TDC) no longer has a statutorily required role for PBC
- CA required to implement performance-based contracts with network administrators for family support & related services by **December 1, 2013**

### *Network Administrator*

- Network administrator to develop a provider network to provide family support & related services:
  - Directly OR
  - Through subcontracts with service providers
- CA caseworkers will choose services from those in the provider network based on:
  - Geographic proximity
  - Provider performance
- Network administrator will provide services:
  - Within the categories of contracted services included in a child or family's case plan
  - Within funds available under contract

### *Family Support & Related Services*

- Categories of family support and related services must be identified by **July 15, 2012**
- To assist in identifying the categories of family support and related services, CA must consult with:
  - Department caseworkers & Washington Federation of State Employees
  - Tribal representatives
  - Veteran parents & youth currently or previously in foster care
  - Child welfare services researchers & WSIPP

### *Case Management*

- CA social workers are responsible for case management
- New definition of case management:

“...means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian Child Welfare Act.”
- CA may continue to contract for case management services with CPAs, BRS providers or other entities that provided case management services prior to July 1, 2005

### *Procurement*

- CA must actively consult with entities with expertise in performance-based contracting:
  - Other relevant state agencies
  - Philanthropic entities

- Procurement must be developed and implemented in a manner that:
  - Complies with applicable provisions of inter-governmental agreements between the state of Washington and tribal governments
  - Provides an opportunity for tribal governments to contract for service delivery through network administrators
- OFM Director must approve RFP before issuance
- Issue RFP by **December 31, 2012**
- Notify apparently successful bidders by **June 30, 2013**
- Enter into performance-based contracts with network administrator(s) by **December 1, 2013**

### *Contract Requirements*

- The following must receive primary preference over private for-profit entities when all elements of responses to the procurement are equal:
  - Private non-profit entities
  - Federally recognized Indian tribes located in Washington
- Contracting for family support and related services is expressly mandated by the legislature
- Contracts are not subject to RCW 41.06.142 (contracting out for services and impact on employees in classified service)

### *Contract Standards Must Include*

- Use of family engagement approaches
- Use of veteran parents and foster youth alumni as mentors
- Qualifications for service providers to participate in provider network
- Culturally competent service providers & adequate provider capacity
- Fiscal solvency
- Use of evidence-based, research-based, and promising practices
- Quality assurance and data reporting
- Compliance with intergovernmental agreements and ICWA

### *Funding & Performance Measures*

- Contract funding must be within appropriated level
- Contracts must use performance-based payment methodologies and may include a shared savings methodology
- Performance measures should relate to:
  - Successful engagement by a child or parent in services included in their case plan
  - Resulting improvement in identified problem behaviors and interactions.
- Services should be effective:
  - Mitigate child safety concerns
  - Promote permanency, including reunification, and child well-being

### *Contract Updates*

Beginning in FY 16, CA and network administrators will:

- Review and update the services offered
  - In response to service outcome data
  - Research on evidence-based or research-based services
- Review and update procurement policies and/or contracts
- CA must consult with the following in doing this review:
  - CA caseworkers & WFSE
  - Tribal representatives
  - Veteran parents & youth currently or previously in foster care
  - Child welfare services researchers & WSIPP
  - Representatives of child welfare service providers

## E2SHB 2264 Overview

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### Demonstration Sites

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- Full implementation of demonstration sites extended by 3 years to **December 30, 2015**
- Transformation Design Committee (TDC) extended by 1 year to **July 1, 2016**
  - TDC has continued responsibility to develop a transition plan for contracting out case management in demonstration sites
  - TDC no longer has a statutorily required role for performance based contracting for services
- Report from WSIPP to legislature and governor on measurable effects of demonstration sites extended by 3 years to **April 1, 2018**
- Decision by Governor whether to expand demonstration sites statewide or to terminate sites extended by 3 years to **June 1, 2018**
- Repealed requirement for Partners for Our Children and legislative staff to provide staff support for the TDC

## **ICWA and WSICWA Web Resources**

Washington State Indian Child Welfare Act (Session Law):

<http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/Session%20Law%202011/5656-S.SL.pdf>

Washington Children's Administration Indian Child Welfare Policy Manual:

[http://www.dshs.wa.gov/ca/pubs/mnl\\_icw/chapter1.asp](http://www.dshs.wa.gov/ca/pubs/mnl_icw/chapter1.asp)

Tribal-State Agreement and Local Agreements between DSHS and Cowlitz, Jamestown S'Klallam, Quinault, Snoqualmie, Suquamish, and Tulalip Tribes:

<http://www.dshs.wa.gov/ca/services/srvICWAgree.asp>

Indian Child Welfare Act of 1978 – Full Text:

[http://www.nicwa.org/Indian\\_Child\\_Welfare\\_Act/ICWA.pdf](http://www.nicwa.org/Indian_Child_Welfare_Act/ICWA.pdf)

Indian Child Welfare Act of 1978 – Complete Legislative History:

<http://www.narf.org/icwa/print/app1.pdf>

Local Indian Child Welfare Advisory Committee Regulations (WAC 388-70):

<http://apps.leg.wa.gov/wac/default.aspx?cite=388-70>

Administrative Policy No. 7.01:

[http://www.dshs.wa.gov/pdf/oip/AP7.01\\_0309.pdf](http://www.dshs.wa.gov/pdf/oip/AP7.01_0309.pdf)

2106 Web Site:

<http://www.joinhandsforchildren.org/>

## **Chapter 13.38 RCW**

### **Indian child welfare act**

- 13.38.010 Short title.
- 13.38.020 Application.
- 13.38.030 Findings and intent.
- 13.38.040 Definitions.
- 13.38.050 Determination of Indian status.
- 13.38.060 Jurisdiction.
- 13.38.070 Notice -- Procedures -- Determination of Indian status.
- 13.38.080 Transfer of jurisdiction.
- 13.38.090 Right to intervene.
- 13.38.100 Full faith and credit.
- 13.38.110 Right to counsel.
- 13.38.120 Right to examine reports, other documents.
- 13.38.130 Involuntary foster care placement, termination of parental rights --  
Determination -- Qualified expert witness.
- 13.38.140 Emergency removal or placement of Indian child -- Notice.
- 13.38.150 Consent to foster care placement or termination of parental rights --  
Withdrawal.
- 13.38.160 Improper removal of Indian child.
- 13.38.170 Removal of Indian child from adoptive or foster care placement.
- 13.38.180 Placement preferences.
- 13.38.190 Review of cases -- Standards and procedures -- Compliance.

### **13.38.010**

#### **Short title.**

This chapter shall be known and cited as the "Washington state Indian child welfare act."

[2011 c 309 § 1.]

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### **13.38.020**

#### **Application.**

This chapter shall apply in all child custody proceedings as that term is defined in this chapter. Whenever there is a conflict between chapter [13.32A](#), [13.34](#), [13.36](#), [26.10](#), or [26.33](#) RCW, the provisions of this chapter shall apply.

[2011 c 309 § 2.]

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### **13.38.030**

#### **Findings and intent.**

The legislature finds that the state is committed to protecting the essential tribal relations and best interests of Indian children by promoting practices designed to prevent out-of-home placement of Indian children that is inconsistent with the rights of the parents, the health, safety, or welfare of the children, or the interests of their tribe. Whenever out-of-home placement of an Indian child is necessary in a proceeding subject to the terms of the federal Indian child welfare act and in this chapter, the best interests of the Indian child may be served by placing the Indian child in accordance with the placement priorities expressed in this chapter. The legislature further finds that where placement away from the parent or Indian custodian is necessary for the child's safety, the state is committed to a placement that reflects and honors the unique values of the child's tribal culture and is best able to assist the Indian child in establishing, developing, and maintaining a political, cultural, social, and spiritual relationship with the child's tribe and tribal community.

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

The legislature further intends that nothing in this chapter is intended to interfere with policies and procedures that are derived from agreements entered into between the



department and a tribe or tribes, as authorized by section 109 of the federal Indian child welfare act. The legislature finds that this chapter specifies the minimum requirements that must be applied in a child custody proceeding and does not prevent the department from providing a higher standard of protection to the right of any Indian child, parent, Indian custodian, or Indian child's tribe.

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

[2011 c 309 § 3.]

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### **13.38.040**

#### **Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active efforts" means the following:

(a) In any foster care placement or termination of parental rights proceeding of an Indian child under chapter [13.34](#) RCW and this chapter where the department or a supervising agency as defined in RCW [74.13.020](#) has a statutory or contractual duty to provide services to, or procure services for, the parent or parents or Indian custodian, or is providing services to a parent or parents or Indian custodian pursuant to a disposition order entered pursuant to RCW [13.34.130](#), the department or supervising agency shall make timely and diligent efforts to provide or procure such services, including engaging the parent or parents or Indian custodian in reasonably available and culturally appropriate preventive, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible. At a minimum "active efforts" shall include:

(i) In any dependency proceeding under chapter [13.34](#) RCW seeking out-of-home placement of an Indian child in which the department or supervising agency provided voluntary services to the parent, parents, or Indian custodian prior to filing the dependency petition, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup of the

family beyond simply providing referrals to such services.

(ii) In any dependency proceeding under chapter [13.34](#) RCW, in which the petitioner is seeking the continued out-of-home placement of an Indian child, the department or supervising agency must show to the court that it has actively worked with the parent, parents, or Indian custodian in accordance with existing court orders and the individual service plan to engage them in remedial services and rehabilitative programs to prevent the breakup of the family beyond simply providing referrals to such services.

(iii) In any termination of parental rights proceeding regarding an Indian child under chapter [13.34](#) RCW in which the department or supervising agency provided services to the parent, parents, or Indian custodian, a showing to the court that the department or supervising agency social workers actively worked with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs ordered by the court or identified in the department or supervising agency's individual service and safety plan beyond simply providing referrals to such services.

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

(2) "Best interests of the Indian child" means the use of practices in accordance with the federal Indian child welfare act, this chapter, and other applicable law, that are designed to accomplish the following: (a) Protect the safety, well-being, development, and stability of the Indian child; (b) prevent the unnecessary out-of-home placement of the Indian child; (c) acknowledge the right of Indian tribes to maintain their existence and integrity which will promote the stability and security of their children and families; (d) recognize the value to the Indian child of establishing, developing, or maintaining a political, cultural, social, and spiritual relationship with the Indian child's tribe and tribal community; and (e) in a proceeding under this chapter where out-of-home placement is necessary, to prioritize placement of the Indian child in accordance with the placement preferences of this chapter.

(3) "Child custody proceeding" includes:

(a) "Foster care placement" which means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home,

institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

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

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

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

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

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

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

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

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

(8) "Indian child's family" or "extended family member" means an individual, defined by the law or custom of the child's tribe, as a relative of the child. If the child's tribe does

not identify such individuals by law or custom, the term means an adult who is the Indian child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, even following termination of the marriage.

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

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

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

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

(13) "Parent" means a biological parent or parents of an Indian child or a person who has lawfully adopted an Indian child, including adoptions made under tribal law or custom. "Parent" does not include an unwed father whose paternity has not been acknowledged or established under chapter [26.26](#) RCW or the applicable laws of other states.

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

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

(16) "Tribal customary adoption" means adoption or other process through the tribal custom, traditions, or laws of an Indian child's tribe by which the Indian child is permanently placed with a nonparent and through which the nonparent is vested with the rights, privileges, and obligations of a legal parent. Termination of the parent-child

relationship between the Indian child and the biological parent is not required to effect or recognize a tribal customary adoption.

[2011 c 309 § 4.]

**Notes:**

\***Reviser's note:** RCW [74.13.020](#) was amended by 2011 c 330 § 4, changing subsection (12) to subsection (13).

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**13.38.050**

**Determination of Indian status.**

Any party seeking the foster care placement of, termination of parental rights over, or the adoption of a child must make a good faith effort to determine whether the child is an Indian child. This shall be done by consultation with the child's parent or parents, any person who has custody of the child or with whom the child resides, and any other person that reasonably can be expected to have information regarding the child's possible membership or eligibility for membership in an Indian tribe to determine if the child is an Indian child, and by contacting any Indian tribe in which the child may be a member or may be eligible for membership. Preliminary contacts for the purpose of making a good faith effort to determine a child's possible Indian status, do not constitute legal notice as required by RCW [13.38.070](#).

[2011 c 309 § 5.]

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**13.38.060**

**Jurisdiction.**

(1) An Indian tribe shall have exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of that tribe, unless the tribe has consented to the state's concurrent jurisdiction, the tribe has expressly declined to exercise its exclusive jurisdiction, or the state is exercising emergency jurisdiction in strict compliance with RCW [13.38.140](#).

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

[2011 c 309 § 6.]

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### **13.38.070**

#### **Notice — Procedures — Determination of Indian status.**

(1) In any involuntary child custody proceeding seeking the foster care placement of, or the termination of parental rights to, a child in which the petitioning party or the court knows, or has reason to know, that the child is or may be an Indian child as defined in this chapter, the petitioning party shall notify the parent or Indian custodian and the Indian child's tribe or tribes, by certified mail, return receipt requested, and by use of a mandatory Indian child welfare act notice. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs. The secretary of the interior has fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe. The parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for the proceeding.

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

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

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

(c) Where a tribe provides no response to notice under RCW [13.38.070](#), such nonresponse shall not constitute evidence that the child is not a member or eligible for membership. Provided, however, that under such circumstances the party asserting application of the federal Indian child welfare act, or this chapter, will have the burden of

proving by a preponderance of the evidence that the child is an Indian child.

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

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

[2011 c 309 § 7.]

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### **13.38.080**

#### **Transfer of jurisdiction.**

(1) In any proceeding for the foster care placement of, or termination of parental rights to, an Indian child who is not domiciled or residing within the reservation of the Indian child's tribe, the court shall, in the absence of good cause to the contrary, transfer the proceeding to the jurisdiction of the Indian child's tribe, upon the motion of any of the following persons:

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

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

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

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

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

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

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

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

[2011 c 309 § 8.]

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### **13.38.090**

#### **Right to intervene.**

The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child.

[2011 c 309 § 9.]

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### **13.38.100**

#### **Full faith and credit.**

The state shall give full faith and credit to the public acts, records, judicial proceedings, and judgments of any Indian tribe applicable to Indian child custody proceedings.

[2011 c 309 § 10.]



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**13.38.110****Right to counsel.**

In any child custody proceeding under this chapter in which the court determines the Indian child's parent or Indian custodian is indigent, the parent or Indian custodian shall have the right to court-appointed counsel. The court may, in its discretion, appoint counsel for the Indian child upon a finding that the appointment is in the best interests of the Indian child.

[2011 c 309 § 11.]

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**13.38.120****Right to examine reports, other documents.**

Each party to a child custody proceeding involving an Indian child shall have the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceeding may be based.

[2011 c 309 § 12.]

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**13.38.130****Involuntary foster care placement, termination of parental rights — Determination — Qualified expert witness.**

(1) A party seeking to effect an involuntary foster care placement of or the involuntary termination of parental rights to an Indian child shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

(2) No involuntary foster care placement may be ordered in a child custody proceeding in the absence of a determination, supported by clear and convincing evidence, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For purposes of this subsection, any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for continuing the child in foster care.

(3) No involuntary termination of parental rights may be ordered in a child custody proceeding in the absence of a determination, supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. For the purposes of this subsection, any harm that may result from interfering with the bond or attachment that may have formed between the child and a foster care provider shall not be the sole basis or primary reason for termination of parental rights over an Indian child.

(4)(a) For purposes of this section, "qualified expert witness" means a person who provides testimony in a proceeding under this chapter to assist a court in the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child. In any proceeding in which the child's Indian tribe has intervened pursuant to RCW [13.38.090](#) or, if the department is the petitioner and the Indian child's tribe has entered into a local agreement with the department for the provision of child welfare services, the petitioner shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices. The petitioner shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required. If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the petitioner may proceed to identify such a witness pursuant to (b) of this subsection.

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

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

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

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

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

(c) When the petitioner is the department or a supervising agency, the currently assigned department or agency caseworker or the caseworker's supervisor may not testify as a "qualified expert witness" for purposes of this section. Nothing in this section shall bar the assigned department or agency caseworker or the caseworker's supervisor from testifying as an expert witness for other purposes in a proceeding under this chapter. Nothing in this section shall bar other department or supervising agency employees with appropriate expert qualifications or experience from testifying as a "qualified expert witness" in a proceeding under this chapter. Nothing in this section shall bar the petitioner or any other party in a proceeding under this chapter from providing additional witnesses or expert testimony, subject to the approval of the court, on any issue before the court including the determination of whether the continued custody of the child by, or return of the child to, the parent, parents, or Indian custodian, is likely to result in serious emotional or physical damage to the child.

[2011 c 309 § 13.]

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### **13.38.140**

#### **Emergency removal or placement of Indian child — Notice.**

(1) Notwithstanding any other provision of federal or state law, nothing shall be construed to prevent the department or law enforcement from the emergency removal of an Indian child who is a resident of or is domiciled on an Indian reservation, but is temporarily located off the reservation, from his or her parent or Indian custodian or the emergency placement of such child in a foster home, under applicable state law, to prevent imminent physical damage or harm to the child.

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

(3) When the nature of the emergency allows, the department must notify the child's tribe before the removal has occurred. If prior notification is not possible, the department shall notify the child's tribe by the quickest means possible. The notice must contain the basis for the Indian child's removal, the time, date, and place of the initial hearing, and the tribe's right to intervene and participate in the proceeding. This notice shall not constitute the notice required under RCW [13.38.070](#) for purposes of subsequent dependency, termination of parental rights, or adoption proceedings.

[2011 c 309 § 14.]

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### **13.38.150**

#### **Consent to foster care placement or termination of parental rights — Withdrawal.**

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

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

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

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

[2011 c 309 § 15.]

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### **13.38.160**

#### **Improper removal of Indian child.**

If a petitioner in a child custody proceeding under this chapter has improperly removed the child from the custody of the parent or Indian custodian or has improperly retained custody after a visit or other temporary relinquishment of custody, the court shall decline jurisdiction over the petition and shall immediately return the child to the child's parent or Indian custodian unless returning the child to the parent or Indian custodian would subject the child to substantial and immediate danger or threat of such danger.

[2011 c 309 § 16.]

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### **13.38.170**

#### **Removal of Indian child from adoptive or foster care placement.**

(1) If a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, the biological parent or prior Indian custodian may petition to have the child returned to their custody and the court shall grant the request unless there is a showing by clear and convincing evidence that return of custody to the biological parent or prior Indian custodian is not in the best interests of the Indian child.

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

[2011 c 309 § 17.]

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### **13.38.180**

#### **Placement preferences.**

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

(a) In the least restrictive setting;

(b) Which most approximates a family situation;

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

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

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

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

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

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

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

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

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

(i) Promoting and allowing appropriate extended family visitation;

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

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

(3) In the absence of good cause to the contrary, any adoptive or other permanent placement of an Indian child, preference shall be given to a placement with one of the following, in descending priority order:

(a) Extended family members;

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

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

(d) Another Indian family; or

(e) Any other family which can provide a suitable home for an Indian child, such suitability to be determined in consultation with the Indian child's tribe or, in proceedings under chapter [13.34](#) RCW where the Indian child is in the custody of the department or a supervising agency and the Indian child's tribe has not intervened or participated, the local Indian child welfare advisory committee.

(4) Notwithstanding the placement preferences listed in subsections (2) and (3) of this section, if a different order of placement preference is established by the child's tribe, the court or agency effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.

(5) Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court. Where a consenting parent evidences a desire for anonymity, the court or agency shall give weight to such desire in applying the preferences.

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

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

[2011 c 309 § 18.]

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### **13.38.190**

#### **Review of cases — Standards and procedures — Compliance.**

(1) The department, in consultation with Indian tribes, shall establish standards and procedures for the department's review of cases subject to this chapter and methods for monitoring the department's compliance with provisions of the federal Indian child welfare act and this chapter. These standards and procedures and the monitoring methods shall also be integrated into the department's child welfare contracting and contract monitoring process.

(2) Nothing in this chapter shall affect, impair, or limit rights or remedies provided to any party under the federal Indian child welfare act, 25 U.S.C. Sec. 1914.

[2011 c 309 § 19.]



# FINAL BILL REPORT

## 2SHB 2106

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### PARTIAL VETO C 520 L 09 Synopsis as Enacted

**Brief Description:** Improving child welfare outcomes through the phased implementation of strategic and proven reforms.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representatives Kagi, Roberts, Kenney and Morrell).

**House Committee on Early Learning & Children's Services**  
**House Committee on Ways & Means**  
**Senate Committee on Human Services & Corrections**  
**Senate Committee on Ways & Means**

#### **Background:**

##### Report from the Washington State Institute for Public Policy.

In 2007 the Legislature directed the Washington State Institute for Public Policy (Institute) to study evidence-based, cost-effective programs and policies to reduce the likelihood of children entering and remaining in the child welfare system, including prevention and intervention programs. In its analysis, the Institute focused on three key questions:

- Is there credible evidence that specific programs "work" to improve these outcomes?
- If so, do benefits outweigh program costs?
- What would be the total net gain to Washington if these evidence-based programs were implemented more widely across the state?

The Institute conducted a systematic review of 74 rigorous comparison group evaluations of programs and policies to identify what works to improve child welfare outcomes. The Institute then estimated the monetary value of the benefits to Washington if these programs were implemented in the state. In estimating monetary value, the Institute examined factors such as reduced child welfare system expenditures, reduced costs to the victims of child maltreatment, and other long-term outcomes to participants and taxpayers, such as improved educational and labor market performance, and lower criminal activity.

The Institute estimated the statewide benefits of implementing an expanded portfolio of evidence-based programs and found that after five years of implementing such a strategy,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington would receive long-term net benefits between \$317 and \$493 million (of which \$6 million to \$62 million would be net taxpayer benefits). Several of the cost-effective evidence-based programs listed in the expanded portfolio are offered and available to a limited degree in the state, including:

- homebuilders program for intensive family preservation;
- parent-child interaction therapy;
- nurse family partnership home visitation program; and
- parents as teachers.

#### Child Welfare Services Contracts.

The Department of Social and Health Services (DSHS) contracts with multiple private providers for the purchase of various child welfare services, including: individual and group counseling or therapy; group care and behavioral health services; assessment and treatment for chemical dependence, domestic violence, or mental health needs; reunification services; and adoption services. Approximately 1,800 fee-for-service contracts are in force with both non-profit and for-profit entities. None of the contracts are performance-based.

#### Foster Care Budgeting.

Budgeting for the state's share of foster care costs includes the use of information developed by the Caseload Forecast Council. State appropriations for foster care are increased or reduced depending on the forecasted caseload. When the DSHS is successful in reducing foster care caseloads through implementation of prevention and intervention programs or other policies, the savings from reduced caseloads are not available to be used for reinvestment into sustaining or expanding these programs to achieve long-term reduced caseloads and additional statewide reforms.

Researchers and experts in foster care reform frequently emphasize the importance of implementing a reinvestment strategy as the means of sustaining and expanding prevention and early intervention programs designed to strengthen permanent families and thereby reduce foster care caseloads and improve long-term child welfare outcomes.

#### Legislative Children's Oversight Committee.

The Legislative Children's Oversight Committee (LCOC) is responsible for monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children's services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The LCOC meets at the call of the chair and consists of six legislators total, three from the House of Representatives and three from the Senate, with no more than two members from the same political party per chamber.

#### Partners For Our Children.

Partners for Our Children (POC) is an independent public-private partnership aimed at improving Washington's child welfare system. The partnership consists of the DSHS, the University of Washington School of Social Work, and the regional philanthropic community.

#### **Summary:**

By January 1, 2011, the Department of Social and Health Services (DSHS) must consolidate and convert its existing contracts for child welfare services to performance-based contracts

linking the contractors' performance to the level and timing of reimbursement for services. Numerous administrative statutes relating to child welfare services and statutes governing the child dependency court processes are amended to reflect that the DSHS, as well as private contractors and Indian tribes, may provide child welfare services, including case management services, under performance-based contracts. Non-profit private contractors must receive primary preference over for-profit contractors.

#### Child Welfare Transformation Design Committee.

A Child Welfare Transformation Design Committee (Committee) is established and charged with selecting two demonstration sites in which the DSHS must contract out for all child welfare services, and developing a transition plan for implementing the performance-based contracts.

The Committee includes representation from the following entities:

- the Office of the Governor;
- the Office of the Attorney General;
- the Children's Administration within the DSHS;
- the Office of the Family and Children's Ombudsman;
- the Indian Policy Advisory Committee convened by DSHS;
- the Racial Disproportionality Advisory Committee convened by the DSHS;
- the bargaining representative for the largest number of Children's Administration's employees;
- nationally recognized experts in performance-based contracting;
- private agencies providing child welfare service in Washington;
- parents with experience in the dependency process;
- Partners for Our Children (POC);
- superior court judges; and
- foster parents.

Staff support for the Committee must be provided jointly by POC staff and legislative staff. It is expected that administrative costs for the Committee will be supported by private funds. The Committee expires July 1, 2015.

#### Demonstration Sites.

The Committee will select the location and size of the demonstration sites to ensure adequate statistical power to assess any meaningful differences in outcomes in the demonstration sites as compared with the current service delivery system.

Effective July 1, 2012, the DSHS must contract for all child welfare services in the demonstration sites, including the following case management functions:

- conducting child-caseworker visits;
- arranging for family visits;
- convening of family group conferences;
- development and revision of the case plan;
- coordination and monitoring of services needed by the child and family;
- performance of court-related duties, including preparing court reports and attending hearings; and

- ensuring the child is progressing toward permanency within state and federal mandates, including the federal Indian Child Welfare Act.

The DSHS may not directly provide child welfare services in the demonstration sites except in an emergency, or if the DSHS is unable to contract with a private agency or the contractor or the DSHS terminate the contract prematurely.

#### Reporting and Evaluations.

The Committee must report in writing to the Governor and the Legislative Children's Oversight Committee as follows:

- quarterly from June 30, 2009, through June 30, 2012; and
- semi-annually from June 30, 2012, through January 1, 2015.

The Washington State Institute for Public Policy (WSIPP) must report to the Governor and the Legislature regarding the DSHS's conversion of existing contracts for child welfare services to performance-based contracts. An initial report is due June 30, 2011, and a final report is due June 30, 2012.

The WSIPP also must conduct a review of the measurable effects achieved by private contractors in the demonstration sites as compared to measurable effects achieved outside the demonstration sites. The WSIPP must provide a report to the Governor and the Legislature by April 1, 2015.

#### Governor's Authority.

Based upon the reports from the WSIPP, the Governor shall, by June 1, 2015, determine whether to expand the demonstration sites or terminate the contracting of all child welfare services, including case management services. The Governor must inform the Legislature of the decision within seven days of making the determination. Regardless of the Governor's decision regarding expansion or termination of the demonstration sites, the DSHS must continue use of performance-based contracts to the extent that it contracts for child welfare services.

#### Proposal for Reinvestment of Savings.

The Caseload Forecast Council, the Office of Financial Management, and the DSHS jointly must develop a proposal for consideration by the Legislature and the Governor allowing for the savings, including savings from reduced foster care caseloads, to be reinvested to expand evidence-based and promising practices to prevent the need for or reduce the duration of foster care placements. The agencies shall brief the Governor and the Legislature on the proposal by November 30, 2010.

#### Statutes Repealed.

Statutes relating to past due dates for reports and studies regarding drug-affected and alcohol-affected infants, abuse and neglect of adolescents, and child care for children at risk of child abuse or neglect are repealed. In addition, statutes requiring contracts for regional foster parent liaisons and directing the implementation and reporting of the intensive resource home pilot program for youth in foster care are repealed.

#### **Votes on Final Passage:**

House 97 0  
Senate 37 10 (Senate amended)  
House 97 0 (House concurred)

**Effective:** July 26, 2009  
May 18, 2009 (Section 8)

**Partial Veto Summary:** The Governor vetoed section one, relating to legislative findings and intent; section 14, relating to disclosure of unfounded allegations of child abuse and neglect; and section 19, relating to curriculum and training requirements for child protective services workers.

# FINAL BILL REPORT

## E2SHB 2264

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Synopsis as Enacted

**Brief Description:** Concerning performance-based contracting related to child welfare services.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representatives Kagi, Walsh, Hinkle, Carlyle, Darneille, Jinkins, Roberts, Dickerson and Ryu).

**House Committee on Early Learning & Human Services**  
**House Committee on Ways & Means**  
**Senate Committee on Human Services & Corrections**  
**Senate Committee on Ways & Means**

**Background:**

In 2009 Second Substitute House Bill 2106 (2SHB 2106) was enacted, which directed the Department of Social and Health Services (DSHS) to: (1) convert its existing contracts for child welfare services to performance-based contracts by January 1, 2011; and (2) contract with supervising agencies for child welfare services, including case management functions, in selected demonstration sites by June 30, 2012.

In 2010 Substitute Senate Bill 6832 was enacted, which extended the date by which the DSHS had to convert its contracts from January 1, 2011, to July 1, 2011. It also extended the implementation date of demonstration sites from June 30, 2012, to December 30, 2012.

On February 18, 2011, the DSHS issued a Request for Proposal (RFP) for performance-based contracts. Under the Personnel System Reform Act of 2002, state agencies may contract for services customarily and historically performed by state employees if the agency provides 90-day notice to the affected employees, who have 60 days to offer alternatives to the purchase of services by contract and then may compete for the contract if the agency does not accept the alternatives. However, if the contracting is expressly mandated by the Legislature, then for those contracts the agency is not subject to these requirements. Under 2SHB 2106, the Legislature expressly mandated performance-based contracting and declared that it was not subject to the competitive bidding process.

Upon issuance of the RFP, affected employees were not offered alternatives to the purchase of services by contract. On May 5, 2011, the Washington Federation of State Employees (WFSE) filed a motion for preliminary injunction in Thurston County Superior Court, asking

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

the court to stop the DSHS from proceeding with the RFP. On May 13, 2011, the court issued an oral ruling granting the WFSE's motion for preliminary injunction, and enjoining the DSHS from proceeding with its solicitations under the February RFP. The court found that the scope of the RFP exceeded the legislative mandate, and as a result, the issuance of the RFP was not exempt from the competitive bidding process. The injunction was ordered to remain in place until the DSHS complied with the requirements of the competitive bidding process.

**Summary:**

Changes to Second Substitute House Bill 2106 (2009).

Provisions originating in 2SHB 2106 which mandated the conversion of contracts for child welfare services to performance-based contracts are repealed. Multiple implementation dates related to demonstration sites are extended. Child welfare services, including case management, must be provided by supervising agencies in demonstration sites by December 30, 2015. The definition of supervising agency is applicable on or after December 30, 2015. The related Washington State Institute for Public Policy (WSIPP) report is extended to April 1, 2018. The Governor must make a decision regarding statewide implementation no later than June 1, 2018.

Performance-based Contracting Express Mandate.

*Scope and Timing.*

A new chapter is added to the Washington Code containing a new mandate regarding performance based contracting. Under this new chapter, beginning December 1, 2013, the DSHS may not renew its current contracts with individuals or entities for the provision of child welfare services in geographic areas served by network administrators (definition provided under this act), except as mutually agreed upon between the DSHS and the network administrator to allow for the successful transition of services that meet the needs of children and families.

The DSHS is expressly mandated to enter into performance-based contracts with one or more network administrators for family support and related services by December 1, 2013. The DSHS may enter into performance-based contracts for additional services other than case management. The DSHS must issue its request for proposal no later than December 31, 2012, and must notify the apparently successful bidders by June 30, 2013. When all other elements of the responses to any procurement under this act are equal, contracting with private nonprofit entities and federally recognized Indian tribes located in this state is preferred.

The procurement for family support and related services may not include case management services. Case management means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan (ISSP), coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian Child Welfare Act.

*Procurement Process.*

The DSHS's procurement process must be developed and implemented in a manner that complies with applicable provisions of intergovernmental agreements between the state and tribal governments. The DSHS must actively consult with other state agencies and philanthropic entities with expertise in performance-based contracting for child welfare services. The Director of the Office of Financial Management must approve the RFP prior to its issuance.

As part of the procurement process, the DSHS must consult with specified stakeholders to assist in identifying the categories of family support and related services that will be included in the procurement. In identifying services, the DSHS must review current data and research related to the effectiveness of family support and related services that mitigate child safety concerns and promote permanency, including reunification and child well-being. Expenditures for the family support services must remain within appropriated levels. Categories of family support and related services must be defined no later than July 15, 2012.

*Requirements and Standards.*

The procurement and resulting contracts must include:

- the use of family engagement approaches;
- the use of parents and youth who are veterans of the child welfare system;
- service provider qualifications;
- adequate provider capacity to meet anticipated service needs;
- fiscal solvency of network administrators;
- the use of evidence-based, research-based, and promising practices;
- network administrator quality assurance activities;
- network administrator data reporting; and
- network administrator compliance with applicable provisions of intergovernmental agreements between the state and tribes.

*Payment Methodologies.*

Performance-based payment methodologies must be used in network administrator contracting. The DSHS may transfer financial risk for the provision of services to network administrators only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. The DSHS may develop a shared savings methodology through which the network administrator will receive a defined share of any savings that results from improved performance.

*Department of Social and Health Services and Network Administrator Roles.*

Network administrators must, directly or through subcontracts with service providers: (1) assist caseworkers in meeting their responsibility for implementation of case plans and ISSPs, and (2) provide the family support and related services within the categories of contracted services included in a child or family's case plan within funds available under contract.

The DSHS caseworkers must choose service providers from among providers in the network administrator's network. The criteria for provider selection must include geographic proximity of the provider to the child or family, and the performance of the provider. If a



reasonably qualified provider is not available through the network, then at the request of the DSHS caseworker, a provider who is not currently contracted may be offered a provisional contract, if such provider meets applicable qualifications to participate.

The DSHS must develop a dispute resolution process to be used when the network administrator disagrees with the DSHS caseworker's choice of service provider. The mediator or decision maker must be a neutral employee of the DSHS who has not been previously involved in the case. The dispute resolution process must not result in more than a two-day delay of services needed by the child or family.

The DSHS must actively monitor network administrator compliance with the terms of contracts. The use of performance-based contracts may not be executed in a manner that adversely affects the state's ability to continue to obtain federal funding.

*Annual Service Review.*

Beginning in the 2015-17 biennium, the DSHS and network administrators must annually review and update the services offered through performance-based contracts, review service utilization and outcome data to determine changes needed, and consult with a variety of specified stakeholders when conducting the review.

*Washington State Institute for Public Policy.*

The WSIPP must report to the Legislature and Governor by December 1, 2014, on the DSHS's conversion to performance-based contracting. The WSIPP must submit a second report on specific outcomes achieved through performance-based contracting by June 30, 2016. The WSIPP must consult with a university-based child welfare research entity in Washington. The DSHS and network administrators must respond to the WSIPP's requests for data and other information needed to complete reports in a timely manner.

**Votes on Final Passage:**

House	77	21	
Senate	47	1	(Senate amended)
House			(House refused to concur)
Senate	47	2	(Senate amended)
House	93	4	(House concurred)

**Effective:** June 7, 2012

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2264**

Chapter 205, Laws of 2012

62nd Legislature  
2012 Regular Session

CHILD WELFARE SYSTEM--PERFORMANCE-BASED CONTRACTING

EFFECTIVE DATE: 06/07/12

Passed by the House March 7, 2012  
Yeas 93 Nays 4

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 7, 2012  
Yeas 47 Nays 2

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 30, 2012, 11:15 a.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**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 **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2264** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 30, 2012

**Secretary of State  
State of Washington**

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**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2264**

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AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** House Ways & Means (originally sponsored by Representatives Kagi, Walsh, Hinkle, Carlyle, Darneille, Jinkins, Roberts, Dickerson, and Ryu)

READ FIRST TIME 02/07/12.

1       AN ACT Relating to performance-based contracting for certain  
2 services provided to children and families in the child welfare system;  
3 amending RCW 74.13.360, 74.13.370, 74.13.368, and 74.13.372; reenacting  
4 and amending RCW 74.13.020; adding a new chapter to Title 74 RCW; and  
5 providing an expiration date.

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

7       NEW SECTION. **Sec. 1.** (1) The legislature finds that:

8       (a) The state of Washington and several Indian tribes in the state  
9 of Washington assume legal responsibility for abused or neglected  
10 children when their parents or caregivers are unable or unwilling to  
11 adequately provide for their safety, health, and welfare;

12       (b) Washington state has a strong history of partnership between  
13 the department of social and health services and contracted service  
14 providers who currently serve children and families in the child  
15 welfare system. The department and its contracted service providers  
16 have responsibility for providing services to address parenting  
17 deficiencies resulting in child maltreatment, and the needs of children  
18 impacted by maltreatment;

1 (c) Department caseworkers and contracted service providers each  
2 play a critical and complementary role in the child welfare system;

3 (d) The current system of contracting for services needed by  
4 children and families in the child welfare system is fragmented,  
5 inflexible, and lacks incentives for improving outcomes for children  
6 and families.

7 (2) The legislature intends:

8 (a) To reform the delivery of certain services to children and  
9 families in the child welfare system by creating a flexible,  
10 accountable community-based system of care that utilizes  
11 performance-based contracting, maximizes the use of evidence-based,  
12 research-based, and promising practices, and expands the capacity of  
13 community-based agencies to leverage local funding and other resources  
14 to benefit children and families served by the department;

15 (b) To achieve improved child safety, child permanency, including  
16 reunification, and child well-being outcomes through the collaborative  
17 efforts of the department and contracted service providers and the  
18 prioritization of these goals in performance-based contracting; and

19 (c) To implement performance-based contracting under this act in a  
20 manner that supports and complies with the federal and Washington state  
21 Indian child welfare act.

22 NEW SECTION. **Sec. 2.** For purposes of this chapter:

23 (1) "Case management" means convening family meetings, developing,  
24 revising, and monitoring implementation of any case plan or individual  
25 service and safety plan, coordinating and monitoring services needed by  
26 the child and family, caseworker-child visits, family visits, and the  
27 assumption of court-related duties, excluding legal representation,  
28 including preparing court reports, attending judicial hearings and  
29 permanency hearings, and ensuring that the child is progressing toward  
30 permanency within state and federal mandates, including the Indian  
31 child welfare act.

32 (2) "Child" means:

33 (a) A person less than eighteen years of age; or

34 (b) A person age eighteen to twenty-one years who is eligible to  
35 receive the extended foster care services authorized under RCW  
36 74.13.031.

1 (3) "Child-placing agency" has the same meaning as in RCW  
2 74.15.020.

3 (4) "Child welfare services" means social services including  
4 voluntary and in-home services, out-of-home care, case management, and  
5 adoption services which strengthen, supplement, or substitute for,  
6 parental care and supervision for the purpose of:

7 (a) Preventing or remedying, or assisting in the solution of  
8 problems which may result in families in conflict, or the neglect,  
9 abuse, exploitation, or criminal behavior of children;

10 (b) Protecting and caring for dependent, abused, or neglected  
11 children;

12 (c) Assisting children who are in conflict with their parents, and  
13 assisting parents who are in conflict with their children, with  
14 services designed to resolve such conflicts;

15 (d) Protecting and promoting the welfare of children, including the  
16 strengthening of their own homes where possible, or, where needed;

17 (e) Providing adequate care of children away from their homes in  
18 foster family homes or day care or other child care agencies or  
19 facilities.

20 (5) "Department" means the department of social and health  
21 services.

22 (6) "Evidence-based" means a program or practice that is cost-  
23 effective and includes at least two randomized or statistically  
24 controlled evaluations that have demonstrated improved outcomes for its  
25 intended population.

26 (7) "Network administrator" means an entity that contracts with the  
27 department to provide defined services to children and families in the  
28 child welfare system through its provider network, as provided in  
29 section 3 of this act.

30 (8) "Performance-based contracting" means structuring all aspects  
31 of the procurement of services around the purpose of the work to be  
32 performed and the desired results with the contract requirements set  
33 forth in clear, specific, and objective terms with measurable outcomes  
34 and linking payment for services to contractor performance.

35 (9) "Promising practice" means a practice that presents, based upon  
36 preliminary information, potential for becoming a research-based or  
37 consensus-based practice.

1 (10) "Provider network" means those service providers who contract  
2 with a network administrator to provide services to children and  
3 families in the geographic area served by the network administrator.

4 (11) "Research-based" means a program or practice that has some  
5 research demonstrating effectiveness, but that does not yet meet the  
6 standard of evidence-based practices.

7 NEW SECTION. **Sec. 3.** (1) No later than December 1, 2013, the  
8 department shall enter into performance-based contracts for the  
9 provision of family support and related services. The department may  
10 enter into performance-based contracts for additional services, other  
11 than case management.

12 (2) Beginning December 1, 2013, the department may not renew its  
13 current contracts with individuals or entities for the provision of the  
14 child welfare services included in performance-based contracts under  
15 this section for services in geographic areas served by network  
16 administrators under such contracts, except as mutually agreed upon  
17 between the department and the network administrator to allow for the  
18 successful transition of services that meet the needs of children and  
19 families.

20 (3) The department shall conduct a procurement process to enter  
21 into performance-based contracts with one or more network  
22 administrators for family support and related services. As part of the  
23 procurement process, the department shall consult with department  
24 caseworkers, the exclusive bargaining representative for employees of  
25 the department, tribal representatives, parents who were formerly  
26 involved in the child welfare system, youth currently or previously in  
27 foster care, child welfare services researchers, and the Washington  
28 state institute for public policy to assist in identifying the  
29 categories of family support and related services that will be included  
30 in the procurement. The categories of family support and related  
31 services shall be defined no later than July 15, 2012. In identifying  
32 services, the department must review current data and research related  
33 to the effectiveness of family support and related services that  
34 mitigate child safety concerns and promote permanency, including  
35 reunification, and child well-being. Expenditures for family support  
36 and related services purchased under this section must remain within  
37 the levels appropriated in the operating budget.

1 (4)(a) Network administrators shall, directly or through  
2 subcontracts with service providers:

3 (i) Assist caseworkers in meeting their responsibility for  
4 implementation of case plans and individual service and safety plans;  
5 and

6 (ii) Provide the family support and related services within the  
7 categories of contracted services that are included in a child or  
8 family's case plan or individual service and safety plan within funds  
9 available under contract.

10 (b) While the department caseworker retains responsibility for case  
11 management, nothing in this act limits the ability of the department to  
12 continue to contract for the provision of case management services by  
13 child-placing agencies, behavioral rehabilitation services agencies, or  
14 other entities that provided case management under contract with the  
15 department prior to July 1, 2005.

16 (5) In conducting the procurement, the department shall actively  
17 consult with other state agencies with relevant expertise, such as the  
18 health care authority, and with philanthropic entities with expertise  
19 in performance-based contracting for child welfare services. The  
20 director of the office of financial management must approve the request  
21 for proposal prior to its issuance.

22 (6) The procurement process must be developed and implemented in a  
23 manner that complies with applicable provisions of intergovernmental  
24 agreements between the state of Washington and tribal governments and  
25 must provide an opportunity for tribal governments to contract for  
26 service delivery through network administrators.

27 (7) The procurement and resulting contracts must include, but are  
28 not limited to, the following standards and requirements:

29 (a) The use of family engagement approaches to successfully  
30 motivate families to engage in services and training of the network's  
31 contracted providers to apply such approaches;

32 (b) The use of parents and youth who are successful veterans of the  
33 child welfare system to act as mentors through activities that include,  
34 but are not limited to, helping families navigate the system,  
35 facilitating parent engagement, and minimizing distrust of the child  
36 welfare system;

37 (c) The establishment of qualifications for service providers

1 participating in provider networks, such as appropriate licensure or  
2 certification, education, and accreditation by professional accrediting  
3 entities;

4 (d) Adequate provider capacity to meet the anticipated service  
5 needs in the network administrator's contracted service area. The  
6 network administrator must be able to demonstrate that its provider  
7 network is culturally competent and has adequate capacity to address  
8 disproportionality, including utilization of tribal and other ethnic  
9 providers capable of serving children and families of color or who need  
10 language-appropriate services;

11 (e) Fiscal solvency of network administrators and providers  
12 participating in the network;

13 (f) The use of evidence-based, research-based, and promising  
14 practices, where appropriate, including fidelity and quality assurance  
15 provisions;

16 (g) Network administrator quality assurance activities, including  
17 monitoring of the performance of providers in their provider network,  
18 with respect to meeting measurable service outcomes;

19 (h) Network administrator data reporting, including data on  
20 contracted provider performance and service outcomes; and

21 (i) Network administrator compliance with applicable provisions of  
22 intergovernmental agreements between the state of Washington and tribal  
23 governments and the federal and Washington state Indian child welfare  
24 act.

25 (8) As part of the procurement process under this section, the  
26 department shall issue the request for proposals no later than December  
27 31, 2012. The department shall notify the apparently successful  
28 bidders no later than June 30, 2013.

29 (9) Performance-based payment methodologies must be used in network  
30 administrator contracting. Performance measures should relate to  
31 successful engagement by a child or parent in services included in  
32 their case plan, and resulting improvement in identified problem  
33 behaviors and interactions. For the initial three-year period of  
34 implementation of performance-based contracting, the department may  
35 transfer financial risk for the provision of services to network  
36 administrators only to the limited extent necessary to implement a  
37 performance-based payment methodology, such as phased payment for  
38 services. However, the department may develop a shared savings



1 methodology through which the network administrator will receive a  
2 defined share of any savings that result from improved performance. If  
3 the department receives a Title IV-E waiver, the shared savings  
4 methodology must be consistent with the terms of the waiver. If a  
5 shared savings methodology is adopted, the network administrator shall  
6 reinvest the savings in enhanced services to better meet the needs of  
7 the families and children they serve.

8 (10) The department must actively monitor network administrator  
9 compliance with the terms of contracts executed under this section.

10 (11) The use of performance-based contracts under this section must  
11 be done in a manner that does not adversely affect the state's ability  
12 to continue to obtain federal funding for child welfare-related  
13 functions currently performed by the state and with consideration of  
14 options to further maximize federal funding opportunities and increase  
15 flexibility in the use of such funds, including use for preventive and  
16 in-home child welfare services.

17 NEW SECTION. **Sec. 4.** (1) For those services included in contracts  
18 under section 3 of this act, the service providers must be chosen by  
19 the department caseworker from among those in the network  
20 administrator's provider network. The criteria for provider selection  
21 must include the geographic proximity of the provider to the child or  
22 family, and the performance of the provider based upon data collected  
23 and provided by the network administrator. If a reasonably qualified  
24 provider is not available through the network administrator's provider  
25 network, at the request of a department caseworker, a provider who is  
26 not currently under contract with the network administrator may be  
27 offered a provisional contract by the network administrator, pending  
28 that provider demonstrating that he or she meets applicable provider  
29 qualifications to participate in the administrator's provider network.

30 (2) The department shall develop a dispute resolution process to be  
31 used when the network administrator disagrees with the department  
32 caseworker's choice of a service provider due to factors such as the  
33 service provider's performance history or ability to serve culturally  
34 diverse families. The mediator or decision maker must be a neutral  
35 employee of the department who has not been previously involved in the  
36 case. The dispute resolution process must not result in a delay of

1 more than two business days in the receipt of needed services by the  
2 child or family.

3 (3) The department and network administrator shall collaborate to  
4 identify and respond to patterns or trends in service utilization that  
5 may indicate overutilization or underutilization of family support and  
6 related services, or may indicate a need to enhance service capacity.

7 NEW SECTION. **Sec. 5.** (1) On an annual basis, beginning in the  
8 2015-2017 biennium, the department and contracted network  
9 administrators shall:

10 (a) Review and update the services offered through performance-  
11 based contracts in response to service outcome data for currently  
12 contracted services and any research that has identified new evidence-  
13 based or research-based services not included in a previous  
14 procurement; and

15 (b) Review service utilization and outcome data to determine  
16 whether changes are needed in procurement policies or performance-based  
17 contracts to better meet the goals established in section 1 of this  
18 act.

19 (2) In conducting the review under subsection (1) of this section,  
20 the department must consult with department caseworkers, the exclusive  
21 bargaining representative for employees of the department, tribal  
22 representatives, parents who were formerly involved in the child  
23 welfare system, youth currently or previously in foster care, child  
24 welfare services researchers, representatives of child welfare service  
25 providers, and the Washington state institute for public policy.

26 NEW SECTION. **Sec. 6.** (1) To achieve the service delivery  
27 improvements and efficiencies intended in sections 1, 3, 4, and 7 of  
28 this act and in RCW 74.13.370, and pursuant to RCW 41.06.142(3),  
29 contracting with network administrators to provide services needed by  
30 children and families in the child welfare system, pursuant to  
31 sections 3 and 4 of this act, and execution and monitoring of  
32 individual provider contracts, pursuant to section 3 of this act, are  
33 expressly mandated by the legislature and are not subject to the  
34 processes set forth in RCW 41.06.142 (1), (4), and (5).

35 (2) The express mandate in subsection (1) of this section is  
36 limited to those services and activities provided in sections 3 and 4

1 of this act. If the department includes services customarily and  
2 historically performed by department employees in the classified  
3 service in a procurement for network administrators that exceeds the  
4 scope of services or activities provided in sections 3 and 4 of this  
5 act, such contracting is not specifically mandated and will be subject  
6 to all applicable contractual and legal obligations.

7 NEW SECTION. **Sec. 7.** For the purposes of the provision of child  
8 welfare services by provider networks, when all other elements of the  
9 responses to any procurement under section 3 of this act are equal,  
10 private nonprofit entities and federally recognized Indian tribes  
11 located in this state must receive primary preference over private  
12 for-profit entities.

13 **Sec. 8.** RCW 74.13.360 and 2010 c 291 s 4 are each amended to read  
14 as follows:

15 (1) ~~((No later than July 1, 2011, the department shall convert its  
16 current contracts with providers of child welfare services into  
17 performance based contracts. In accomplishing this conversion, the  
18 department shall decrease the total number of contracts it uses to  
19 purchase child welfare services from providers. The conversion of  
20 contracts for the provision of child welfare services to performance  
21 based contracts must be done in a manner that does not adversely affect  
22 the state's ability to continue to obtain federal funding for child  
23 welfare related functions currently performed by the state and with  
24 consideration of options to further maximize federal funding  
25 opportunities and increase flexibility in the use of such funds,  
26 including use for preventive and in home child welfare services.~~

27 ~~(2))~~ No later than December 30, ~~((2012))~~ 2015:

28 (a) In the demonstration sites selected under RCW 74.13.368(4)(a),  
29 child welfare services shall be provided by supervising agencies with  
30 whom the department has entered into performance-based contracts.  
31 Supervising agencies may enter into subcontracts with other licensed  
32 agencies; and

33 (b) Except as provided in subsection ~~((4))~~ (3) of this section,  
34 and notwithstanding any law to the contrary, the department may not  
35 directly provide child welfare services to families and children

1 provided child welfare services by supervising agencies in the  
2 demonstration sites selected under RCW 74.13.368(4)(a).

3 ~~((+3))~~ (2) No later than December 30, ~~((2012))~~ 2015, for families  
4 and children provided child welfare services by supervising agencies in  
5 the demonstration sites selected under RCW 74.13.368(4)(a), the  
6 department is responsible for only the following:

7 (a) Monitoring the quality of services for which the department  
8 contracts under this chapter;

9 (b) Ensuring that the services are provided in accordance with  
10 federal law and the laws of this state, including the Indian child  
11 welfare act;

12 (c) Providing child protection functions and services, including  
13 intake and investigation of allegations of child abuse or neglect,  
14 emergency shelter care functions under RCW 13.34.050, and referrals to  
15 appropriate providers; and

16 (d) Issuing licenses pursuant to chapter 74.15 RCW.

17 ~~((+4))~~ (3) No later than December 30, ~~((2012))~~ 2015, for families  
18 and children provided child welfare services by supervising agencies in  
19 the demonstration sites selected under RCW 74.13.368(4)(a), the  
20 department may provide child welfare services only:

21 (a) For the limited purpose of establishing a control or comparison  
22 group as deemed necessary by the child welfare transformation design  
23 committee, with input from the Washington state institute for public  
24 policy, to implement the demonstration sites selected and defined  
25 pursuant to RCW 74.13.368(4)(a) in which the performance in achieving  
26 measurable outcomes will be compared and evaluated pursuant to RCW  
27 74.13.370; or

28 (b) In an emergency or as a provider of last resort. The  
29 department shall adopt rules describing the circumstances under which  
30 the department may provide those services. For purposes of this  
31 section, "provider of last resort" means the department is unable to  
32 contract with a private agency to provide child welfare services in a  
33 particular geographic area or, after entering into a contract with a  
34 private agency, either the contractor or the department terminates the  
35 contract.

36 ~~((+5))~~ (4) For purposes of this chapter, on and after September 1,  
37 2010, performance-based contracts shall be structured to hold the

1 supervising agencies accountable for achieving the following goals in  
2 order of importance: Child safety; child permanency, including  
3 reunification; and child well-being.

4 ~~((+6+))~~ (5) A federally recognized tribe located in this state may  
5 enter into a performance-based contract with the department to provide  
6 child welfare services to Indian children whether or not they reside on  
7 a reservation. Nothing in this section prohibits a federally  
8 recognized Indian tribe located in this state from providing child  
9 welfare services to its members or other Indian children pursuant to  
10 existing tribal law, regulation, or custom, or from directly entering  
11 into agreements for the provision of such services with the department,  
12 if the department continues to otherwise provide such services, or with  
13 federal agencies.

14 **Sec. 9.** RCW 74.13.370 and 2009 c 520 s 9 are each amended to read  
15 as follows:

16 (1) Based upon the recommendations of the child welfare  
17 transformation design committee, including the two sets of outcomes  
18 developed by the committee under RCW 74.13.368(4)(b), the Washington  
19 state institute for public policy is to conduct a review of measurable  
20 effects achieved by the supervising agencies and compare those  
21 measurable effects with the existing services offered by the state.  
22 The report on the measurable effects shall be provided to the governor  
23 and the legislature no later than April 1, ~~((2015))~~ 2018.

24 (2) No later than ~~((June 30, 2011))~~ December 1, 2014, the  
25 Washington state institute for public policy shall provide the  
26 legislature and the governor an initial report on the department's  
27 conversion to the use of performance-based contracts as provided in  
28 ~~((RCW 74.13.360(1))~~ sections 3 and 4 of this act. No later than June  
29 30, ~~((2012))~~ 2016, the Washington state institute for public policy  
30 shall provide the governor and the legislature with a second report on  
31 the ~~((department's conversion of its contracts to performance-based~~  
32 ~~contracts)) extent to which the use of performance-based contracting~~  
33 has resulted in:

34 (a) Increased use of evidence-based, research-based, and promising  
35 practices; and

36 (b) Improvements in outcomes for children, including child safety,  
37 child permanency, including reunification, and child well-being.

1 (3) The department and network administrators shall respond to the  
2 Washington institute for public policy's request for data and other  
3 information with which to complete these reports in a timely manner.

4 (4) The Washington state institute for public policy must consult  
5 with a university-based child welfare research entity to evaluate  
6 performance-based contracting.

7 **Sec. 10.** RCW 74.13.368 and 2010 c 291 s 2 are each amended to read  
8 as follows:

9 (1)(a) The child welfare transformation design committee is  
10 established, with members as provided in this subsection.

11 (i) The governor or the governor's designee;

12 (ii) Four private agencies that, as of May 18, 2009, provide child  
13 welfare services to children and families referred to them by the  
14 department. Two agencies must be headquartered in western Washington  
15 and two must be headquartered in eastern Washington. Two agencies must  
16 have an annual budget of at least one million state-contracted dollars  
17 and two must have an annual budget of less than one million state-  
18 contracted dollars;

19 (iii) The assistant secretary of the children's administration in  
20 the department;

21 (iv) Two regional administrators in the children's administration  
22 selected by the assistant secretary, one from one of the department's  
23 administrative regions one or two, and one from one of the department's  
24 administrative regions three, four, five, or six;

25 (v) The administrator for the division of licensed resources in the  
26 children's administration;

27 (vi) Two nationally recognized experts in performance-based  
28 contracts;

29 (vii) The attorney general or the attorney general's designee;

30 (viii) A representative of the collective bargaining unit that  
31 represents the largest number of employees in the children's  
32 administration;

33 (ix) A representative from the office of the family and children's  
34 ombudsman;

35 (x) Four representatives from the Indian policy advisory committee  
36 convened by the department's office of Indian policy and support  
37 services;

1 (xi) Two currently elected or former superior court judges with  
2 significant experience in dependency matters, selected by the superior  
3 court judges' association;

4 (xii) One representative from partners for our children affiliated  
5 with the University of Washington school of social work;

6 (xiii) A member of the Washington state racial disproportionality  
7 advisory committee;

8 (xiv) A foster parent;

9 (xv) A youth currently in or a recent alumnus of the Washington  
10 state foster care system, to be designated by the cochairs of the  
11 committee; and

12 (xvi) A parent representative who has had personal experience with  
13 the dependency system.

14 (b) The president of the senate and the speaker of the house of  
15 representatives shall jointly appoint the members under (a)(ii), (xiv),  
16 and (xvi) of this subsection.

17 (c) The representative from partners for our children shall convene  
18 the initial meeting of the committee no later than June 15, 2009.

19 (d) The cochairs of the committee shall be the assistant secretary  
20 for the children's administration and another member selected by a  
21 majority vote of those members present at the initial meeting.

22 (2) The committee shall establish a transition plan containing  
23 recommendations to the legislature and the governor consistent with  
24 this section for the provision of child welfare services by supervising  
25 agencies pursuant to RCW 74.13.360.

26 (3) The plan shall include the following:

27 (a) A model or framework for performance-based contracts to be used  
28 by the department that clearly defines:

29 (i) The target population;

30 (ii) The referral and exit criteria for the services;

31 (iii) The child welfare services including the use of evidence-  
32 based services and practices to be provided by contractors;

33 (iv) The roles and responsibilities of public and private agency  
34 workers in key case decisions;

35 (v) Contract performance and outcomes, including those related to  
36 eliminating racial disparities in child outcomes;

37 (vi) That supervising agencies will provide culturally competent  
38 service;

1 (vii) How to measure whether each contractor has met the goals  
2 listed in RCW 74.13.360(~~(5)~~) (4); and  
3 (viii) Incentives to meet performance outcomes;  
4 (b) (~~A method by which the department will substantially reduce~~  
5 ~~its current number of contracts for child welfare services;~~  
6 ~~(e)~~) A method or methods by which clients will access community-  
7 based services, how private supervising agencies will engage other  
8 services or form local service networks, develop subcontracts, and  
9 share information and supervision of children;  
10 (~~(d)~~) (c) Methods to address the effects of racial  
11 disproportionality, as identified in the 2008 Racial Disproportionality  
12 Advisory Committee Report published by the Washington state institute  
13 for public policy in June 2008;  
14 (~~(e)~~) (d) Methods for inclusion of the principles and  
15 requirements of the centennial accord executed in November 2001,  
16 executed between the state of Washington and federally recognized  
17 tribes in Washington state;  
18 (~~(f)~~) (e) Methods for assuring performance-based contracts adhere  
19 to the letter and intent of the federal Indian child welfare act;  
20 (~~(g)~~) (f) Contract monitoring and evaluation procedures that will  
21 ensure that children and families are receiving timely and quality  
22 services and that contract terms are being implemented;  
23 (~~(h)~~) (g) A method or methods by which to ensure that the  
24 children's administration has sufficiently trained and experienced  
25 staff to monitor and manage performance-based contracts;  
26 (~~(i)~~) (h) A process by which to expand the capacity of  
27 supervising and other private agencies to meet the service needs of  
28 children and families in a performance-based contractual arrangement;  
29 (~~(j)~~) (i) A method or methods by which supervising and other  
30 private agencies can expand services in underserved areas of the state;  
31 (~~(k)~~) (j) The appropriate amounts and procedures for the  
32 reimbursement of supervising agencies given the proposed services  
33 restructuring;  
34 (~~(l)~~) (k) A method by which to access and enhance existing data  
35 systems to include contract performance information;  
36 (~~(m)~~) (l) A financing arrangement for the contracts that  
37 examines:



1 (i) The use of case rates or performance-based fee-for-service  
2 contracts that include incentive payments or payment schedules that  
3 link reimbursement to outcomes; and

4 (ii) Ways to reduce a contractor's financial risk that could  
5 jeopardize the solvency of the contractor, including consideration of  
6 the use of a risk-reward corridor that limits risk of loss and  
7 potential profits or the establishment of a statewide risk pool;

8 ~~((n))~~ (m) A description of how the transition will impact the  
9 state's ability to obtain federal funding and examine options to  
10 further maximize federal funding opportunities and increased  
11 flexibility;

12 ~~((o))~~ (n) A review of whether current administrative staffing  
13 levels in the regions should be continued when the majority of child  
14 welfare services are being provided by supervising agencies;

15 ~~((p))~~ (o) A description of the costs of the transition, the  
16 initial start-up costs and the mechanisms to periodically assess the  
17 overall adequacy of funds and the fiscal impact of the changes, and the  
18 feasibility of the plan and the impact of the plan on department  
19 employees during the transition; and

20 ~~((q))~~ (p) Identification of any statutory and regulatory  
21 revisions necessary to accomplish the transition.

22 (4)(a) The committee, with the assistance of the department, shall  
23 select two demonstration sites within which to implement chapter 520,  
24 Laws of 2009. One site must be located on the eastern side of the  
25 state. The other site must be located on the western side of the  
26 state. Neither site must be wholly located in any of the department's  
27 administrative regions.

28 (b) The committee shall develop two sets of performance outcomes to  
29 be included in the performance-based contracts the department enters  
30 into with supervising agencies. The first set of outcomes shall be  
31 used for those cases transferred to a supervising agency over time.  
32 The second set of outcomes shall be used for new entrants to the child  
33 welfare system.

34 (c) The committee shall also identify methods for ensuring that  
35 comparison of performance between supervising agencies and the existing  
36 service delivery system takes into account the variation in the  
37 characteristics of the populations being served as well as historical  
38 trends in outcomes for those populations.

1 (5) The committee shall determine the appropriate size of the child  
2 and family populations to be provided services under performance-based  
3 contracts with supervising agencies. The committee shall also identify  
4 the time frame within which cases will be transferred to supervising  
5 agencies. The performance-based contracts entered into with  
6 supervising agencies shall encompass the provision of child welfare  
7 services to enough children and families in each demonstration site to  
8 allow for the assessment of whether there are meaningful differences,  
9 to be defined by the committee, between the outcomes achieved in the  
10 demonstration sites and the comparison sites or populations. To ensure  
11 adequate statistical power to assess these differences, the populations  
12 served shall be large enough to provide a probability greater than  
13 seventy percent that meaningful difference will be detected and a  
14 ninety-five percent probability that observed differences are not due  
15 to chance alone.

16 (6) The committee shall also prepare as part of the plan a  
17 recommendation as to how to implement chapter 520, Laws of 2009 so that  
18 full implementation of chapter 520, Laws of 2009 is achieved no later  
19 than December 30, (~~2012~~) 2015.

20 (7) The committee shall prepare the plan to manage the delivery of  
21 child welfare services in a manner that achieves coordination of the  
22 services and programs that deliver primary prevention services.

23 (8) Beginning June 30, 2009, the committee shall report quarterly  
24 to the governor and the legislative children's oversight committee  
25 established in RCW 44.04.220. From June 30, 2012, until (~~January 1~~)  
26 December 30, 2015, the committee need only report twice a year. The  
27 committee shall report on its progress in meeting its duties under  
28 subsections (2) and (3) of this section and on any other matters the  
29 committee or the legislative children's oversight committee or the  
30 governor deems appropriate. The portion of the plan required in  
31 subsection (6) of this section shall be due to the legislative  
32 children's oversight committee on or before June 1, 2010. The reports  
33 shall be in written form.

34 (9) The committee, by majority vote, may establish advisory  
35 committees as it deems necessary.

36 (10) All state executive branch agencies and the agencies with whom  
37 the department contracts for child welfare services shall cooperate  
38 with the committee and provide timely information as the chair or

1 cochairs may request. Cooperation by the children's administration  
2 must include developing and scheduling training for supervising  
3 agencies to access data and information necessary to implement and  
4 monitor the contracts.

5 (11) It is expected that the administrative costs for the committee  
6 will be supported through private funds.

7 ~~(12) ((Staff support for the committee shall be provided jointly by  
8 partners for our children and legislative staff.~~

9 ~~(13))~~ The committee is subject to chapters 42.30 (open public  
10 meetings act) and 42.52 (ethics in public service) RCW.

11 ~~((14))~~ (13) This section expires July 1, ~~((2015))~~ 2016.

12 **Sec. 11.** RCW 74.13.372 and 2009 c 520 s 10 are each amended to  
13 read as follows:

14 Not later than June 1, ~~((2015))~~ 2018, the governor shall, based on  
15 the report by the Washington state institute for public policy,  
16 determine whether to expand chapter 520, Laws of 2009 to the remainder  
17 of the state or terminate chapter 520, Laws of 2009. The governor  
18 shall inform the legislature of his or her decision within seven days  
19 of the decision. The department shall, regardless of the decision of  
20 the governor regarding the delivery of child welfare services, continue  
21 to purchase services through the use of performance-based contracts.

22 **Sec. 12.** RCW 74.13.020 and 2011 c 330 s 4 are each reenacted and  
23 amended to read as follows:

24 For purposes of this chapter:

25 (1) "Case management" means ~~((the management of services delivered  
26 to children and families in the child welfare system, including  
27 permanency services, caseworker child visits, family visits, the  
28 convening of family group conferences, the development and revision of  
29 the case plan, the coordination and monitoring of services needed by  
30 the child and family,))~~ convening family meetings, developing,  
31 revising, and monitoring implementation of any case plan or individual  
32 service and safety plan, coordinating and monitoring services needed by  
33 the child and family, caseworker-child visits, family visits, and the  
34 assumption of court-related duties, excluding legal representation,  
35 including preparing court reports, attending judicial hearings and

1 permanency hearings, and ensuring that the child is progressing toward  
2 permanency within state and federal mandates, including the Indian  
3 child welfare act.

4 (2) "Child" means:

5 (a) A person less than eighteen years of age; or

6 (b) A person age eighteen to twenty-one years who is eligible to  
7 receive the extended foster care services authorized under RCW  
8 74.13.031.

9 (3) "Child protective services" has the same meaning as in RCW  
10 26.44.020.

11 (4) "Child welfare services" means social services including  
12 voluntary and in-home services, out-of-home care, case management, and  
13 adoption services which strengthen, supplement, or substitute for,  
14 parental care and supervision for the purpose of:

15 (a) Preventing or remedying, or assisting in the solution of  
16 problems which may result in families in conflict, or the neglect,  
17 abuse, exploitation, or criminal behavior of children;

18 (b) Protecting and caring for dependent, abused, or neglected  
19 children;

20 (c) Assisting children who are in conflict with their parents, and  
21 assisting parents who are in conflict with their children, with  
22 services designed to resolve such conflicts;

23 (d) Protecting and promoting the welfare of children, including the  
24 strengthening of their own homes where possible, or, where needed;

25 (e) Providing adequate care of children away from their homes in  
26 foster family homes or day care or other child care agencies or  
27 facilities.

28 "Child welfare services" does not include child protection  
29 services.

30 (5) "Committee" means the child welfare transformation design  
31 committee.

32 (6) "Department" means the department of social and health  
33 services.

34 (7) "Extended foster care services" means residential and other  
35 support services the department is authorized to provide to foster  
36 children. These services include, but are not limited to, placement in  
37 licensed, relative, or otherwise approved care, or supervised

1 independent living settings; assistance in meeting basic needs;  
2 independent living services; medical assistance; and counseling or  
3 treatment.

4 (8) "Measurable effects" means a statistically significant change  
5 which occurs as a result of the service or services a supervising  
6 agency is assigned in a performance-based contract, in time periods  
7 established in the contract.

8 (9) "Out-of-home care services" means services provided after the  
9 shelter care hearing to or for children in out-of-home care, as that  
10 term is defined in RCW 13.34.030, and their families, including the  
11 recruitment, training, and management of foster parents, the  
12 recruitment of adoptive families, and the facilitation of the adoption  
13 process, family reunification, independent living, emergency shelter,  
14 residential group care, and foster care, including relative placement.

15 (10) "Performance-based contracting" means the structuring of all  
16 aspects of the procurement of services around the purpose of the work  
17 to be performed and the desired results with the contract requirements  
18 set forth in clear, specific, and objective terms with measurable  
19 outcomes. Contracts shall also include provisions that link the  
20 performance of the contractor to the level and timing of reimbursement.

21 (11) "Permanency services" means long-term services provided to  
22 secure a child's safety, permanency, and well-being, including foster  
23 care services, family reunification services, adoption services, and  
24 preparation for independent living services.

25 (12) "Primary prevention services" means services which are  
26 designed and delivered for the primary purpose of enhancing child and  
27 family well-being and are shown, by analysis of outcomes, to reduce the  
28 risk to the likelihood of the initial need for child welfare services.

29 (13) "Supervising agency" means an agency licensed by the state  
30 under RCW 74.15.090, or licensed by a federally recognized Indian tribe  
31 located in this state under RCW 74.15.190, that has entered into a  
32 performance-based contract with the department to provide case  
33 management for the delivery and documentation of child welfare  
34 services, as defined in this section. This definition is applicable on  
35 or after December 30, 2015.

1        NEW SECTION.    **Sec. 13.**    Sections 1 through 7 of this act constitute  
2    a new chapter in Title 74 RCW.

      Passed by the House March 7, 2012.

      Passed by the Senate March 7, 2012.

      Approved by the Governor March 30, 2012.

      Filed in Office of Secretary of State March 30, 2012.

# FINAL BILL REPORT

## E2SHB 2536

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C 232 L 12  
Synopsis as Enacted

**Brief Description:** Concerning the use of evidence-based practices for the delivery of services to children and juveniles.

**Sponsors:** House Committee on Ways & Means (originally sponsored by Representatives Dickerson, Johnson, Goodman, Hinkle, Kretz, Pettigrew, Warnick, Cody, Harris, Kenney, Kagi, Darneille, Orwall, Condotta, Ladenburg, Appleton, Jinkins and Maxwell).

**House Committee on Early Learning & Human Services**  
**House Committee on Ways & Means**  
**Senate Committee on Human Services & Corrections**  
**Senate Committee on Ways & Means**

### **Background:**

Evidence-based practices are generally defined as those programs or policies that are supported by a rigorous outcome evaluation clearly demonstrating effectiveness. Since the mid-1990s, the Washington State Institute for Public Policy (WSIPP), the research arm of the Legislature, has undertaken comprehensive reviews of evidence-based programs. It has examined programs and policies in the juvenile and adult criminal justice arenas, as well as in other public policy areas, including early childhood education, child welfare, children's and adult mental health, and substance abuse. A "research-based" practice has some research demonstrating effectiveness, but it does not yet meet the standard of an evidence-based practice. A "promising practice" does not meet evidence-based standards but presents potential for becoming a research-based practice.

In 2007 the Legislature established the University of Washington Evidence Based Practice Institute (EBPI) which collaborates with the WSIPP and other entities to improve the implementation of evidence-based and research-based practices by providing training and consultation to mental health providers and agencies that serve the needs of children. The EBPI also provides oversight of implementation of evidence-based practices to ensure fidelity to program models.

Medicaid.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

In 2011 the Health Care Authority (HCA) was designated as the single state agency for the administration and supervision of Washington's Medicaid program.

### **Summary:**

A new chapter is created in Title 43 regarding the use of evidence-based and research-based prevention and intervention services in the areas of children's mental health, juvenile rehabilitation, and child welfare. "Prevention and intervention services" are defined as services and programs for children and youth and their families that are specifically directed to address behaviors that have resulted or may result in truancy, abuse or neglect, out-of-home placements, chemical dependency, substance abuse, sexual aggressiveness, or mental or emotional disorders.

### Description and Inventory of Practices.

By September 30, 2012, the Department of Social and Health Services (Department), in consultation with the WSIPP, the EBPI, a university-based child welfare partnership and research entity, other national experts in the delivery of evidence-based services, and organizations representing Washington practitioners, is required to publish descriptive definitions for and prepare an inventory of evidence-based, research-based, and promising practices for prevention and intervention services in the areas of child welfare, juvenile rehabilitation, and children's mental health services. The inventory must be periodically updated as more practices are identified.

In the identification of evidence-based and research-based services, the WSIPP and the EBPI must consider available systemic evidence-based assessment of a program's efficacy and cost effectiveness and attempt to identify assessments that use valid and reliable evidence. The Department must prioritize the assessment of promising practices that it has identified with the goal of increasing the number of promising practices that meet the standards for evidence-based or research-based practices.

### Baseline Assessment of Utilization.

By June 30, 2013, the Department and the HCA must complete a baseline assessment of the utilization of evidence-based and research-based practices in the areas of child welfare, juvenile rehabilitation, and children's mental health services. The assessment must include prevention and intervention services provided through Medicaid fee-for-service and Healthy Options managed care contracts. The assessments of services must include estimates of:

- the number of children receiving each service;
- the total amount of state and federal funds expended for juvenile rehabilitation and child welfare services;
- the number and percentage of encounters for children's mental health services provided to children served by the Regional Support Networks and for children receiving services through Medicaid fee-for-service or Healthy Options;
- the relative availability of the service in different regions in the state; and
- the unmet need for each service, to the extent it can be assessed.

### Coordinated Care and Monitoring Procedures.



The Department must develop strategies to use unified and coordinated case plans for children, youth, and their families who are or will likely be involved in multiple systems within the Department. It must also use monitoring and quality control procedures designed to measure fidelity with evidence-based and research-based prevention and treatment services, including the use of existing data reporting and system of quality management processes at the state and local levels. The Department must carry out these responsibilities in consultation with:

- a university-based evidence-based practice institute entity in Washington;
- the Washington Partnership Council on Juvenile Justice;
- the Child Mental Health Systems of Care Planning Committee;
- the Children, Youth, and Family Advisory Committee;
- a university-based Child Welfare entity in Washington;
- Regional Support Networks;
- the Washington Association of Juvenile Court Administrators; and
- the WSIPP.

#### Matching Funds.

The Department and the HCA must identify components of evidence-based practices for which federal funds might be claimed and seek federal matching funds for such components.

#### Training.

The Department must efficiently use funds to coordinate training across program areas, and training for child welfare employees must be delivered by the University of Washington School of Social Work in Coordination with the EBPI.

#### Implementation of Act.

The Department and the HCA, in implementing this act, are not required to take actions that are in conflict with Presidential Executive Order 13175 or that adversely impact tribal-state consultation protocols or contractual relations. The Department and the HCA are not required to redirect funds in a manner that conflicts with the Department's Section 1915(b) Medicaid mental health waiver or that would substantially reduce Medicaid funding or impair access to services for a substantial number of Medicaid clients.

The Department is not required to take actions inconsistent with its obligations or authority pursuant to a court order or agreement in the context of a lawsuit.

#### Reports.

By December 30, 2013, the Department and the HCA must report to the Governor and to the Legislature regarding recommended strategies, timelines, and costs for increasing the use of evidence-based and research-based practices. The report must include recommendations for substantial increases above the baseline assessment for the 2015-2017 and the 2017-2019 biennia. The recommendations for increases must be relative to the estimates of the number of persons served, service encounters, availability of services, unmet need, and funding

expenditures contained in the June 2013 report. They must also include strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments and experts within diverse communities.

The report must distinguish between a reallocation of existing funding to support recommended strategies and new funding necessary to effect increases in the use of evidence-based and research-based practices. Subsequent reports with updated recommendations are required by December 30, 2014, and by December 30, 2015.

If the Department or the HCA anticipates that it will not meet the levels recommended in the reports to the Governor and the Legislature, the relevant entity must report to the Legislature by November 1 of the year preceding the biennium. The report must include identified impediments, current and anticipated performance levels, and strategies to improve performance.

**Votes on Final Passage:**

House	97	1	
Senate	48	0	(Senate amended)
House			(House refused to concur)
Senate	48	0	(Senate amended)
House	98	0	(House concurred)

**Effective:** June 7, 2012

CERTIFICATION OF ENROLLMENT

**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2536**

Chapter 232, Laws of 2012

62nd Legislature  
2012 Regular Session

CHILDREN AND JUVENILE SERVICES--EVIDENCE-BASED PRACTICES

EFFECTIVE DATE: 06/07/12

Passed by the House March 8, 2012  
Yeas 98 Nays 0

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

Passed by the Senate March 8, 2012  
Yeas 48 Nays 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Approved March 30, 2012, 1:05 p.m.

CHRISTINE GREGOIRE

\_\_\_\_\_  
**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 **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2536** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

\_\_\_\_\_  
**Chief Clerk**

FILED

March 30, 2012

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2536

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AS AMENDED BY THE SENATE

Passed Legislature - 2012 Regular Session

**State of Washington**                      **62nd Legislature**                      **2012 Regular Session**

**By** House Ways & Means (originally sponsored by Representatives Dickerson, Johnson, Goodman, Hinkle, Kretz, Pettigrew, Warnick, Cody, Harris, Kenney, Kagi, Darneille, Orwall, Condotta, Ladenburg, Appleton, Jinkins, and Maxwell)

READ FIRST TIME 02/07/12.

1            AN ACT Relating to the use of evidence-based practices for the  
2 delivery of services to children and juveniles; and adding a new  
3 chapter to Title 43 RCW.

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

5            NEW SECTION.    **Sec. 1.**    (1) The legislature intends that prevention  
6 and intervention services delivered to children and juveniles in the  
7 areas of mental health, child welfare, and juvenile justice be  
8 primarily evidence-based and research-based, and it is anticipated that  
9 such services will be provided in a manner that is culturally  
10 competent.

11            (2) The legislature also acknowledges that baseline information is  
12 not presently available regarding the extent to which evidence-based  
13 and research-based practices are presently available and in use in the  
14 areas of children's mental health, child welfare, and juvenile justice;  
15 the cost of those practices; and the most effective strategies and  
16 appropriate time frames for expecting their broader use. Thus, it  
17 would be wise to establish baseline data regarding the use and  
18 availability of evidence-based and research-based practices.

1 (3) It is the intent of the legislature that increased use of  
2 evidence-based and research-based practices be accomplished to the  
3 extent possible within existing resources by coordinating the purchase  
4 of evidence-based services, the development of a trained workforce, and  
5 the development of unified and coordinated case plans to provide  
6 treatment in a coordinated and consistent manner.

7 (4) The legislature recognizes that in order to effectively provide  
8 evidence-based and research-based practices, contractors should have a  
9 workforce trained in these programs, and outcomes from the use of these  
10 practices should be monitored.

11 NEW SECTION. **Sec. 2.** For the purposes of this chapter:

12 (1) "Contractors" does not include county probation staff that  
13 provide evidence-based or research-based programs.

14 (2) "Prevention and intervention services" means services and  
15 programs for children and youth and their families that are  
16 specifically directed to address behaviors that have resulted or may  
17 result in truancy, abuse or neglect, out-of-home placements, chemical  
18 dependency, substance abuse, sexual aggressiveness, or mental or  
19 emotional disorders.

20 NEW SECTION. **Sec. 3.** The department of social and health services  
21 shall accomplish the following in consultation and collaboration with  
22 the Washington state institute for public policy, the evidence-based  
23 practice institute at the University of Washington, a university-based  
24 child welfare partnership and research entity, other national experts  
25 in the delivery of evidence-based services, and organizations  
26 representing Washington practitioners:

27 (1) By September 30, 2012, the Washington state institute for  
28 public policy, the University of Washington evidence-based practice  
29 institute, in consultation with the department shall publish  
30 descriptive definitions of evidence-based, research-based, and  
31 promising practices in the areas of child welfare, juvenile  
32 rehabilitation, and children's mental health services.

33 (a) In addition to descriptive definitions, the Washington state  
34 institute for public policy and the University of Washington evidence-  
35 based practice institute must prepare an inventory of evidence-based,  
36 research-based, and promising practices for prevention and intervention

1 services that will be used for the purpose of completing the baseline  
2 assessment described in subsection (2) of this section. The inventory  
3 shall be periodically updated as more practices are identified.

4 (b) In identifying evidence-based and research-based services, the  
5 Washington state institute for public policy and the University of  
6 Washington evidence-based practice institute must:

7 (i) Consider any available systemic evidence-based assessment of a  
8 program's efficacy and cost-effectiveness; and

9 (ii) Attempt to identify assessments that use valid and reliable  
10 evidence.

11 (c) Using state, federal, or private funds, the department shall  
12 prioritize the assessment of promising practices identified in (a) of  
13 this subsection with the goal of increasing the number of such  
14 practices that meet the standards for evidence-based and research-based  
15 practices.

16 (2) By June 30, 2013, the department and the health care authority  
17 shall complete a baseline assessment of utilization of evidence-based  
18 and research-based practices in the areas of child welfare, juvenile  
19 rehabilitation, and children's mental health services. The assessment  
20 must include prevention and intervention services provided through  
21 medicaid fee-for-service and healthy options managed care contracts.  
22 The assessment shall include estimates of:

23 (a) The number of children receiving each service;

24 (b) For juvenile rehabilitation and child welfare services, the  
25 total amount of state and federal funds expended on the service;

26 (c) For children's mental health services, the number and  
27 percentage of encounters using these services that are provided to  
28 children served by regional support networks and children receiving  
29 mental health services through medicaid fee-for-service or healthy  
30 options;

31 (d) The relative availability of the service in the various regions  
32 of the state; and

33 (e) To the extent possible, the unmet need for each service.

34 (3)(a) By December 30, 2013, the department and the health care  
35 authority shall report to the governor and to the appropriate fiscal  
36 and policy committees of the legislature on recommended strategies,  
37 timelines, and costs for increasing the use of evidence-based and

1 research-based practices. The report must distinguish between a  
2 reallocation of existing funding to support the recommended strategies  
3 and new funding needed to increase the use of the practices.

4 (b) The department shall provide updated recommendations to the  
5 governor and the legislature by December 30, 2014, and by December 30,  
6 2015.

7 (4)(a) The report required under subsection (3) of this section  
8 must include recommendations for the reallocation of resources for  
9 evidence-based and research-based practices and substantial increases  
10 above the baseline assessment of the use of evidence-based and  
11 research-based practices for the 2015-2017 and the 2017-2019 biennia.  
12 The recommendations for increases shall be consistent with subsection  
13 (2) of this section.

14 (b) If the department or health care authority anticipates that it  
15 will not meet its recommended levels for an upcoming biennium as set  
16 forth in its report, it must report to the legislature by November 1st  
17 of the year preceding the biennium. The report shall include:

- 18 (i) The identified impediments to meeting the recommended levels;
- 19 (ii) The current and anticipated performance level; and
- 20 (iii) Strategies that will be undertaken to improve performance.

21 (5) Recommendations made pursuant to subsections (3) and (4) of  
22 this section must include strategies to identify programs that are  
23 effective with ethnically diverse clients and to consult with tribal  
24 governments, experts within ethnically diverse communities, and  
25 community organizations that serve diverse communities.

26 NEW SECTION. **Sec. 4.** The department of social and health  
27 services, in consultation with a university-based evidence-based  
28 practice institute entity in Washington, the Washington partnership  
29 council on juvenile justice, the child mental health systems of care  
30 planning committee, the children, youth, and family advisory committee,  
31 the Washington state racial disproportionality advisory committee, a  
32 university-based child welfare research entity in Washington state,  
33 regional support networks, the Washington association of juvenile court  
34 administrators, and the Washington state institute for public policy,  
35 shall:

- 36 (1) Develop strategies to use unified and coordinated case plans

1 for children, youth, and their families who are or are likely to be  
2 involved in multiple systems within the department;

3 (2) Use monitoring and quality control procedures designed to  
4 measure fidelity with evidence-based and research-based prevention and  
5 treatment programs; and

6 (3) Utilize any existing data reporting and system of quality  
7 management processes at the state and local level for monitoring the  
8 quality control and fidelity of the implementation of evidence-based  
9 and research-based practices.

10 NEW SECTION. **Sec. 5.** (1) The department of social and health  
11 services and the health care authority shall identify components of  
12 evidence-based practices for which federal matching funds might be  
13 claimed and seek such matching funds to support implementation of  
14 evidence-based practices.

15 (2) The department shall efficiently use funds to coordinate  
16 training in evidence-based and research-based practices across the  
17 programs areas of juvenile justice, children's mental health, and child  
18 welfare.

19 (3) Any child welfare training related to implementation of this  
20 chapter must be delivered by the University of Washington school of  
21 social work in coordination with the University of Washington evidence-  
22 based practices institute.

23 (4) Nothing in this act requires the department or the health care  
24 authority to:

25 (a) Take actions that are in conflict with presidential executive  
26 order 13175 or that adversely impact tribal-state consultation  
27 protocols or contractual relations; or

28 (b) Redirect funds in a manner that:

29 (i) Conflicts with the requirements of the department's section  
30 1915(b) medicaid mental health waiver; or

31 (ii) Would substantially reduce federal medicaid funding for mental  
32 health services or impair access to appropriate and effective services  
33 for a substantial number of medicaid clients; or

34 (c) Undertake actions that, in the context of a lawsuit against the  
35 state, are inconsistent with the department's obligations or authority  
36 pursuant to a court order or agreement.



1        NEW SECTION.    **Sec. 6.**    Sections 1 through 5 of this act constitute  
2    a new chapter in Title 43 RCW.

      Passed by the House March 8, 2012.

      Passed by the Senate March 8, 2012.

      Approved by the Governor March 30, 2012.

      Filed in Office of Secretary of State March 30, 2012.

# FINAL BILL REPORT

## ESSB 6555

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C 259 L 12  
Synopsis as Enacted

**Brief Description:** Implementing provisions relating to child protection.

**Sponsors:** Senate Committee on Human Services & Corrections (originally sponsored by Senators Hargrove, Shin and Roach).

**Senate Committee on Human Services & Corrections**  
**Senate Committee on Ways & Means**  
**House Committee on Early Learning & Human Services**  
**House Committee on Ways & Means**

**Background:** Child Protective Services (CPS) in Washington. CPS are services provided by the Department of Social and Health Services (DSHS) designed to protect children from child abuse and neglect, safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. CPS includes a referral to services to ameliorate conditions that endanger the welfare of children; the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect; and services to children to ensure that each child has a permanent home.

Duty to Investigate. A number of professionals who regularly work with children are mandated reporters in Washington State. If they have reasonable cause to suspect that a child has been abused or neglected they must report that fact to DSHS or law enforcement. DSHS must investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation or that present an imminent risk of serious harm. On the basis of the findings of such investigation, DSHS or law enforcement must offer child welfare services in relation to the problem to such parents, legal custodian or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of non-accidental injuries that are clearly not the result of a lack of care or supervision by the child's parents, legal custodian, or persons serving in loco parentis. If the investigation reveals that a crime against a child may be committed, the DSHS must notify the appropriate law enforcement agency.

Appeal of a Finding of Child Abuse or Neglect. A person named as an alleged perpetrator in a founded allegation of child abuse or neglect has the right to seek review and amendment of the finding. Within 20 days of receiving notice that the person has been named as a

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

perpetrator in an allegation of abuse or neglect, the person must provide written notice to DSHS that he or she wishes to contest the finding. If the request is not made within the time period, the person has no right to agency review or further administrative or court review of the finding. After receiving notification of the results of DSHS's review, the person has 30 days within which to ask for an adjudicative hearing with an administrative law judge. If the request is not made within the 30-day period, the person has no right to further review.

Alternative Response System in Washington. In 1997 the Legislature authorized an alternative response system (ARS). ARS was voluntary family-centered service provided by a contracted entity with the intention to increase the strength and cohesiveness of families that DSHS has determined to present a low risk of child abuse or neglect. The families that were referred to ARS were families that would not have been screened in for investigation. In 2006 DSHS redesigned ARS program because a study of ARS determined that it was not producing good outcomes. The new program was called Early Family Support Services (EFSS). The stated goals of this program included the implementation of a standardized assessment tool, development of service delivery standards, and integration of promising or evidence-based programs. Again, the families referred to this program were those not likely to be screened in for an investigation.

Consideration of Differential Response in Washington. In 2008 DSHS issued a legislative report regarding its consideration of a differential response system. The report described pros and cons associated with implementing differential response, which are summarized below.

*Pros:*

1. Social workers could concentrate on family assessment and case planning rather than the outcome of an investigation.
2. Investigative findings may become more consistent, due to a narrower focus.
3. Families that are chronically reported to CPS may receive more therapeutic interventions that are motivational in nature.

*Cons:*

1. In order for change to succeed the total agenda must be staged and doable, organizational capacity must be addressed given the number of change initiatives underway.
2. Funding, service levels, and ability to meet the basic needs of families would limit the outcomes of a differential response system.
3. The CA would likely not have the ability to respond to families in an assessment track with immediate services to meet their basic living needs and if Washington prioritized services for the most at-risk children, then lower risk families in the assessment track would receive fewer services paid by the DSHS/CA.
4. All social work staff must be trained in engaging families and assessing safety and risk factors.
5. Implementation of non-contracted differential response system would require further specialization of staff and additional categorization of families.
6. Agencies serving vulnerable adults and children would not learn about some potential CPS concerns regarding persons applying to be employed or licensed since CPS investigative findings on some cases involving maltreatment would no longer occur for families diverted to the assessment track.

7. Research did not clearly indicate that referring moderate risk families to differential response will improve outcomes (some states limit an alternate response to low risk cases).

Differential Response In Other States. A number of other states have implemented a differential response system. Minnesota is the state with the longest running differential response system. Approximately 18 other states have similar systems. In the differential response system, cases that would normally be screened in and investigated are placed in the differential response system where the families strengths and weaknesses and child safety are assessed and no investigation is conducted nor are findings of child abuse made. If the family does not wish to participate, unless the case presents no child safety issues, the case is referred for investigation.

Under the state's child abuse statutes, DSHS is responsible for investigating and responding to allegations of child abuse or neglect. In some cases of alleged abuse or neglect, a child may be immediately removed from a parent or guardian and taken into protective custody.

A court can order law enforcement or CPS to take a child into custody where the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. A child may be taken into custody without a court order when law enforcement has probable cause to believe that the child has been abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order. A child can also be detained and taken into custody without a court order where a hospital administrator has reasonable cause to believe that allowing the child to return home would present an imminent danger to the child's safety.

A shelter-care hearing must be held within 72 hours of a child being taken into custody and placed under state care, excluding Saturdays, Sundays, and holidays. At the shelter-care hearing, the court determines whether the child can safely be returned home while the dependency is being adjudicated, or whether there is further need for an out-of-home placement of the child.

Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. In *Tyner v. DSHS*, the Washington Supreme Court found that the child abuse investigation statute creates a duty not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse. The court based this holding in part on legislative intent statements in the child abuse statutes describing the importance of the family unit and the parent-child bond. There are three types of negligent investigation claims recognized by the courts: (1) wrongful removal of a child from a non-abusive home; (2) placement of a child in an abusive home; and (3) failure to remove a child from an abusive home.

Witness immunity is a common law doctrine that provides witnesses in judicial proceedings with immunity from suit based on their testimony. The purpose of witness immunity is to preserve the integrity of the judicial process by encouraging full and frank disclosure of all pertinent information within the witness's knowledge. The rule is based on the safeguards in judicial proceedings that help to ensure reliable testimony, such as the witness's oath, the hazards of cross examination, and the threat of prosecution for perjury.

**Summary:**

Family Assessment Response (FAR). When DSHS receives a report of child abuse or neglect, it must use one of two responses for reports that are screened in and accepted for response: an investigation or a family assessment. A family assessment is defined as a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. The assessment does not include a determination as to whether child abuse or neglect occurred but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment. FAR is defined as a way of responding to certain reports of child abuse or neglect using a differential response approach to child protective services. FAR is to focus on the safety of the child, the integrity and preservation of the family, and is to assess the status of the child and family in terms of risk of abuse and neglect including a parent's or guardian's capacity and willingness to protect the child. No one is named as a perpetrator and no investigative finding is entered in DSHS's database as a result of the FAR.

In responding to a report of child abuse or neglect, DSHS must:

1. use a method by which to assign cases to investigation or family assessment that are based on an array of factors that may include the presence of imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics.
2. allow for a change in response assignment based on new information that alters risk or safety level;
3. allow families assigned to FAR to choose to receive an investigation rather than a family assessment;
4. provide a full investigation if a family refuses the initial family assessment;
5. provide voluntary services to families based upon the results of the initial family assessment; however, if the family refuses the services and DSHS cannot identify specific facts related to risk or safety that warrant assignment to an investigation, and there is no history of child abuse or neglect reports related to the family, then DSHS must close the case; or
6. conduct an investigation on response to allegations that:
  - a. pose a risk of imminent harm to the child;
  - b. pose a serious threat of substantial harm to the child;
  - c. constitute conduct that is a criminal offense and the child is the victim; or
  - d. the child is an abandoned or adjudicated dependent child.

DSHS must develop a plan to implement FAR in consultation with stakeholders, including tribes. The plan is to be submitted to the appropriate legislative committees by December 31, 2012. The following must be developed before implementation and submitted in the report to the legislature:

1. description of the FAR practice model;
2. identification of possible additional non-investigative responses or pathways;
3. development of an intake and family assessment tool specifically to use for FAR;
4. delineation of staff training requirements;
5. development of strategies to reduce disproportionality;
6. development of strategies to assist and connect families with the appropriate private- or public-housing support agencies;

7. identification of methods by which to involve community partners in the development of community-based resources to meet families' needs;
8. delineation of procedures to ensure continuous quality assurance;
9. identification of current DSHS expenditures for services appropriate to FAR;
10. identification of philanthropic funding available to supplement public resources;
11. mechanisms to involve the child's Washington state tribe, if any, in FAR;
12. creation of a potential phase-in schedule, if proposed; and
13. recommendations for legislative action necessary to implement the plan.

DSHS is not liable in using FAR to respond to an allegation of child abuse or neglect unless the response choice was made with reckless disregard.

DSHS must implement FAR no later than December 1, 2013. DSHS may implement FAR on a phased-in basis by geographic area. DSHS must develop an implementation plan in consultation with stakeholders including the tribes. DSHS must submit an implementation plan report to the Legislature by December 31, 2012.

For reports that are placed in FAR, DSHS must:

1. provide the family with a written explanation of the procedure for assessment of the child and family and its purpose;
2. collaborate with the family to identify family strengths, resources and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;
3. complete the family assessment within 45 days of receiving the report. Upon parental agreement, this time period can be extended to 90 days;
4. offer services to the family in a manner that makes it clear acceptance of the services is voluntary;
5. implement the family assessment response in a consistent and cooperative manner;
6. conduct an interview with the child's parent, guardian, or other adult residing in the child's home who serves in a parental role. The interview is to focus on ensuring the immediate safety of the child and mitigating future risk of harm to the child in the home environment.
7. conduct an interview with other persons suggested by the family or persons DSHS believes has valuable information.
8. conduct an evaluation of the safety of the child and any other children living in the same home. The evaluation may include an interview with or observation of the child.

The Washington State Institute for Public Policy (WSIPP) must conduct an evaluation of the implementation of FAR. WSIPP is to define the data to be gathered and maintained. At a minimum, the evaluation is to address child safety measures, out of home placement rates, re-referral rates and caseload sizes and demographics. WSIPP's first report is due December 1, 2014, and its final report is due December 1, 2016.

DSHS must conduct two client satisfaction surveys of families that have been placed in FAR. The first survey results are to be reported by December 1, 2014, and the second survey results by December 1, 2016.

Appeal of a Finding of Child Abuse or Neglect. A person named as an alleged perpetrator in a founded allegation of child abuse or neglect has the right to seek review and amendment of the finding. Within 30 days of receiving notice from DSHS that the person has been named as a perpetrator in an allegation of abuse or neglect, the person must provide written notice to DSHS that the person wishes to contest the finding. The written notice provided by DSHS to the perpetrator must contain the following:

1. information about DSHS's investigative finding as it relates to the alleged perpetrator;
2. sufficient factual information to apprise the alleged perpetrator of the date and nature of the founded allegation;
3. the alleged perpetrator has the right to submit a written response regarding the finding which DSHS must file in the records;
4. that information in DSHS's records may be considered in a later investigation or proceeding related to a different allegation of child abuse or neglect;
5. that founded allegations of abuse or neglect may be used in determining:
  - a. whether the person is qualified to be licensed or approved to care for children or vulnerable adults;
  - b. whether the person is qualified to be employed by DSHS in a position having unsupervised access to children or vulnerable adults.
6. that the alleged perpetrator has the right to challenge the founded allegation of abuse or neglect.

If the request is not made within the time period, the person has no right to agency review or further administrative or court review of the finding, unless the person can show that DSHS did not comply with the notice requirements of RCW 26.44.100. After receiving notification of the results of DSHS's review, the person has 30 days within which to ask for an adjudicative hearing with an administrative law judge. If the request is not made within the 30-day period, the person has no right to further review.

Government Liability. The purpose section of the child abuse or neglect statute is amended to provide that a child's health and safety interests should prevail over conflicting legal rights of a parent and that the safety of the child is DSHS's paramount concern when determining whether a parent and child should be separated during or immediately following investigation of alleged abuse or neglect.

Governmental entities, and their officers, agents, employees, and volunteers, are not liable for acts or omissions in emergent placement investigations of child abuse or neglect unless the act or omission constitutes gross negligence. Emergent placement investigations are those conducted prior to a shelter care hearing. A new section is added to the child abuse or neglect statute stating that the liability of governmental entities to parents, custodians, or guardians accused of abuse or neglect is limited as provided in the bill, consistent with the paramount concern of DSHS to protect the child's health and safety interest of basic nurture, health, and safety and the requirement that the child's interests prevail over conflicting legal interests of a parent, custodian, or guardian.

DSHS and its employees must comply with orders of the court, including shelter care and other dependency orders, and are not liable for acts performed to comply with such court orders. In providing reports and recommendations to the court, DSHS employees are entitled to the same witness immunity as would be provided to any other witness.

**Votes on Final Passage:**

Senate	46	0	
House	97	0	(House amended)
Senate			(Senate refused)
House	80	17	(House receded/amended)
Senate	49	0	(Senate concurred)

**Effective:** June 7, 2012  
December 1, 2013 (Sections 1 and 3-10)



CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 6555**

Chapter 259, Laws of 2012

62nd Legislature  
2012 Regular Session

CHILD PROTECTIVE SERVICES

EFFECTIVE DATE: 06/07/12 - Except sections 1 and 3 through 10,  
which become effective 12/01/13.

Passed by the Senate March 7, 2012  
YEAS 49 NAYS 0

BRAD OWEN

\_\_\_\_\_  
**President of the Senate**

Passed by the House March 6, 2012  
YEAS 80 NAYS 17

FRANK CHOPP

\_\_\_\_\_  
**Speaker of the House of Representatives**

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6555** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
**Secretary**

Approved March 30, 2012, 1:47 p.m.

FILED

March 30, 2012

CHRISTINE GREGOIRE

\_\_\_\_\_  
**Governor of the State of Washington**

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 6555**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2012 Regular Session

**State of Washington                      62nd Legislature                      2012 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by  
Senators Hargrove, Shin, and Roach)

READ FIRST TIME 02/03/12.

1            AN ACT Relating to child protective services; amending RCW  
2 26.44.030, 26.44.031, 26.44.050, and 26.44.125, and 26.44.010;  
3 reenacting and amending RCW 26.44.020, 74.13.020, and 74.13.031; adding  
4 new sections to chapter 26.44 RCW; adding a new section to chapter 4.24  
5 RCW; creating new sections; and providing an effective date.

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

7            **Sec. 1.** RCW 26.44.020 and 2010 c 176 s 1 are each reenacted and  
8 amended to read as follows:

9            The definitions in this section apply throughout this chapter  
10 unless the context clearly requires otherwise.

11            (1) "Abuse or neglect" means sexual abuse, sexual exploitation, or  
12 injury of a child by any person under circumstances which cause harm to  
13 the child's health, welfare, or safety, excluding conduct permitted  
14 under RCW 9A.16.100; or the negligent treatment or maltreatment of a  
15 child by a person responsible for or providing care to the child. An  
16 abused child is a child who has been subjected to child abuse or  
17 neglect as defined in this section.

18            (2) "Child" or "children" means any person under the age of  
19 eighteen years of age.

1 (3) "Child protective services" means those services provided by  
2 the department designed to protect children from child abuse and  
3 neglect and safeguard such children from future abuse and neglect, and  
4 conduct investigations of child abuse and neglect reports.  
5 Investigations may be conducted regardless of the location of the  
6 alleged abuse or neglect. Child protective services includes referral  
7 to services to ameliorate conditions that endanger the welfare of  
8 children, the coordination of necessary programs and services relevant  
9 to the prevention, intervention, and treatment of child abuse and  
10 neglect, and services to children to ensure that each child has a  
11 permanent home. In determining whether protective services should be  
12 provided, the department shall not decline to provide such services  
13 solely because of the child's unwillingness or developmental inability  
14 to describe the nature and severity of the abuse or neglect.

15 (4) "Child protective services section" means the child protective  
16 services section of the department.

17 (5) "Children's advocacy center" means a child-focused facility in  
18 good standing with the state chapter for children's advocacy centers  
19 and that coordinates a multidisciplinary process for the investigation,  
20 prosecution, and treatment of sexual and other types of child abuse.  
21 Children's advocacy centers provide a location for forensic interviews  
22 and coordinate access to services such as, but not limited to, medical  
23 evaluations, advocacy, therapy, and case review by multidisciplinary  
24 teams within the context of county protocols as defined in RCW  
25 26.44.180 and 26.44.185.

26 (6) "Clergy" means any regularly licensed or ordained minister,  
27 priest, or rabbi of any church or religious denomination, whether  
28 acting in an individual capacity or as an employee or agent of any  
29 public or private organization or institution.

30 (7) "Court" means the superior court of the state of Washington,  
31 juvenile department.

32 (8) "Department" means the state department of social and health  
33 services.

34 (9) "Family assessment" means a comprehensive assessment of child  
35 safety, risk of subsequent child abuse or neglect, and family strengths  
36 and needs that is applied to a child abuse or neglect report. Family  
37 assessment does not include a determination as to whether child abuse

1 or neglect occurred, but does determine the need for services to  
2 address the safety of the child and the risk of subsequent  
3 maltreatment.

4 (10) "Family assessment response" means a way of responding to  
5 certain reports of child abuse or neglect made under this chapter using  
6 a differential response approach to child protective services. The  
7 family assessment response shall focus on the safety of the child, the  
8 integrity and preservation of the family, and shall assess the status  
9 of the child and the family in terms of risk of abuse and neglect  
10 including the parent's or guardian's or other caretaker's capacity and  
11 willingness to protect the child and, if necessary, plan and arrange  
12 the provision of services to reduce the risk and otherwise support the  
13 family. No one is named as a perpetrator, and no investigative finding  
14 is entered in the record as a result of a family assessment.

15 (11) "Founded" means the determination following an investigation  
16 by the department that, based on available information, it is more  
17 likely than not that child abuse or neglect did occur.

18 ~~((+10+))~~ (12) "Inconclusive" means the determination following an  
19 investigation by the department, prior to October 1, 2008, that based  
20 on available information a decision cannot be made that more likely  
21 than not, child abuse or neglect did or did not occur.

22 ~~((+11+))~~ (13) "Institution" means a private or public hospital or  
23 any other facility providing medical diagnosis, treatment, or care.

24 ~~((+12+))~~ (14) "Law enforcement agency" means the police department,  
25 the prosecuting attorney, the state patrol, the director of public  
26 safety, or the office of the sheriff.

27 ~~((+13+))~~ (15) "Malice" or "maliciously" means an intent, wish, or  
28 design to intimidate, annoy, or injure another person. Such malice may  
29 be inferred from an act done in willful disregard of the rights of  
30 another, or an act wrongfully done without just cause or excuse, or an  
31 act or omission of duty betraying a willful disregard of social duty.

32 ~~((+14+))~~ (16) "Negligent treatment or maltreatment" means an act or  
33 a failure to act, or the cumulative effects of a pattern of conduct,  
34 behavior, or inaction, that evidences a serious disregard of  
35 consequences of such magnitude as to constitute a clear and present  
36 danger to a child's health, welfare, or safety, including but not  
37 limited to conduct prohibited under RCW 9A.42.100. When considering  
38 whether a clear and present danger exists, evidence of a parent's

1 substance abuse as a contributing factor to negligent treatment or  
2 maltreatment shall be given great weight. The fact that siblings share  
3 a bedroom is not, in and of itself, negligent treatment or  
4 maltreatment. Poverty, homelessness, or exposure to domestic violence  
5 as defined in RCW 26.50.010 that is perpetrated against someone other  
6 than the child does not constitute negligent treatment or maltreatment  
7 in and of itself.

8 ~~((+15+))~~ (17) "Pharmacist" means any registered pharmacist under  
9 chapter 18.64 RCW, whether acting in an individual capacity or as an  
10 employee or agent of any public or private organization or institution.

11 ~~((+16+))~~ (18) "Practitioner of the healing arts" or "practitioner"  
12 means a person licensed by this state to practice podiatric medicine  
13 and surgery, optometry, chiropractic, nursing, dentistry, osteopathic  
14 medicine and surgery, or medicine and surgery or to provide other  
15 health services. The term "practitioner" includes a duly accredited  
16 Christian Science practitioner. A person who is being furnished  
17 Christian Science treatment by a duly accredited Christian Science  
18 practitioner will not be considered, for that reason alone, a neglected  
19 person for the purposes of this chapter.

20 ~~((+17+))~~ (19) "Professional school personnel" include, but are not  
21 limited to, teachers, counselors, administrators, child care facility  
22 personnel, and school nurses.

23 ~~((+18+))~~ (20) "Psychologist" means any person licensed to practice  
24 psychology under chapter 18.83 RCW, whether acting in an individual  
25 capacity or as an employee or agent of any public or private  
26 organization or institution.

27 ~~((+19+))~~ (21) "Screened-out report" means a report of alleged child  
28 abuse or neglect that the department has determined does not rise to  
29 the level of a credible report of abuse or neglect and is not referred  
30 for investigation.

31 ~~((+20+))~~ (22) "Sexual exploitation" includes: (a) Allowing,  
32 permitting, or encouraging a child to engage in prostitution by any  
33 person; or (b) allowing, permitting, encouraging, or engaging in the  
34 obscene or pornographic photographing, filming, or depicting of a child  
35 by any person.

36 ~~((+21+))~~ (23) "Sexually aggressive youth" means a child who is  
37 defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

1       (~~(22)~~) (24) "Social service counselor" means anyone engaged in a  
2 professional capacity during the regular course of employment in  
3 encouraging or promoting the health, welfare, support, or education of  
4 children, or providing social services to adults or families, including  
5 mental health, drug and alcohol treatment, and domestic violence  
6 programs, whether in an individual capacity, or as an employee or agent  
7 of any public or private organization or institution.

8       (~~(23)~~) (25) "Supervising agency" means an agency licensed by the  
9 state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that  
10 has entered into a performance-based contract with the department to  
11 provide child welfare services.

12       (~~(24)~~) (26) "Unfounded" means the determination following an  
13 investigation by the department that available information indicates  
14 that, more likely than not, child abuse or neglect did not occur, or  
15 that there is insufficient evidence for the department to determine  
16 whether the alleged child abuse did or did not occur.

17       NEW SECTION. Sec. 2. A new section is added to chapter 26.44 RCW  
18 to read as follows:

19       (1) No later than December 1, 2013, the department shall implement  
20 the family assessment response. The department may implement the  
21 family assessment response on a phased-in basis, by geographical area.

22       (2) The department shall develop an implementation plan in  
23 consultation with stakeholders, including tribes. The department shall  
24 submit a report of the implementation plan to the appropriate  
25 committees of the legislature by December 31, 2012. At a minimum, the  
26 following must be developed before implementation and included in the  
27 report to the legislature:

28       (a) Description of the family assessment response practice model;

29       (b) Identification of possible additional noninvestigative  
30 responses or pathways;

31       (c) Development of an intake screening tool and a family assessment  
32 tool specifically to be used in the family assessment response. The  
33 family assessment tool must, at minimum, evaluate the safety of the  
34 child and determine services needed by the family to improve or restore  
35 family well-being;

36       (d) Delineation of staff training requirements;

37       (e) Development of strategies to reduce disproportionality;

1 (f) Development of strategies to assist and connect families with  
2 the appropriate private or public housing support agencies, for those  
3 parents whose inability to obtain or maintain safe housing creates a  
4 risk of harm to the child, risk of out-of-home placement of the child,  
5 or a barrier to reunification;

6 (g) Identification of methods to involve local community partners  
7 in the development of community-based resources to meet families'  
8 needs. Local community partners may include, but are not limited to:  
9 Alumni of the foster care system and veteran parents, local private  
10 service delivery agencies, schools, local health departments and other  
11 health care providers, juvenile court, law enforcement, office of  
12 public defense social workers or local defense attorneys, domestic  
13 violence victims advocates, and other available community-based  
14 entities;

15 (h) Delineation of procedures to assure continuous quality  
16 assurance;

17 (i) Identification of current departmental expenditures for  
18 services appropriate for the family assessment response, to the  
19 greatest practicable extent;

20 (j) Identification of philanthropic funding and other private  
21 funding available to supplement public resources in response to  
22 identified family needs;

23 (k) Mechanisms to involve the child's Washington state tribe, if  
24 any, in any family assessment response, when the child subject to the  
25 family assessment response is an Indian child, as defined in RCW  
26 13.38.040;

27 (l) A potential phase-in schedule if proposed; and

28 (m) Recommendations for legislative action required to implement  
29 the plan.

30 **Sec. 3.** RCW 26.44.030 and 2009 c 480 s 1 are each amended to read  
31 as follows:

32 (1)(a) When any practitioner, county coroner or medical examiner,  
33 law enforcement officer, professional school personnel, registered or  
34 licensed nurse, social service counselor, psychologist, pharmacist,  
35 employee of the department of early learning, licensed or certified  
36 child care providers or their employees, employee of the department,  
37 juvenile probation officer, placement and liaison specialist,

1 responsible living skills program staff, HOPE center staff, or state  
2 family and children's ombudsman or any volunteer in the ombudsman's  
3 office has reasonable cause to believe that a child has suffered abuse  
4 or neglect, he or she shall report such incident, or cause a report to  
5 be made, to the proper law enforcement agency or to the department as  
6 provided in RCW 26.44.040.

7 (b) When any person, in his or her official supervisory capacity  
8 with a nonprofit or for-profit organization, has reasonable cause to  
9 believe that a child has suffered abuse or neglect caused by a person  
10 over whom he or she regularly exercises supervisory authority, he or  
11 she shall report such incident, or cause a report to be made, to the  
12 proper law enforcement agency, provided that the person alleged to have  
13 caused the abuse or neglect is employed by, contracted by, or  
14 volunteers with the organization and coaches, trains, educates, or  
15 counsels a child or children or regularly has unsupervised access to a  
16 child or children as part of the employment, contract, or voluntary  
17 service. No one shall be required to report under this section when he  
18 or she obtains the information solely as a result of a privileged  
19 communication as provided in RCW 5.60.060.

20 Nothing in this subsection (1)(b) shall limit a person's duty to  
21 report under (a) of this subsection.

22 For the purposes of this subsection, the following definitions  
23 apply:

24 (i) "Official supervisory capacity" means a position, status, or  
25 role created, recognized, or designated by any nonprofit or for-profit  
26 organization, either for financial gain or without financial gain,  
27 whose scope includes, but is not limited to, overseeing, directing, or  
28 managing another person who is employed by, contracted by, or  
29 volunteers with the nonprofit or for-profit organization.

30 (ii) "Regularly exercises supervisory authority" means to act in  
31 his or her official supervisory capacity on an ongoing or continuing  
32 basis with regards to a particular person.

33 (c) The reporting requirement also applies to department of  
34 corrections personnel who, in the course of their employment, observe  
35 offenders or the children with whom the offenders are in contact. If,  
36 as a result of observations or information received in the course of  
37 his or her employment, any department of corrections personnel has  
38 reasonable cause to believe that a child has suffered abuse or neglect,



1 he or she shall report the incident, or cause a report to be made, to  
2 the proper law enforcement agency or to the department as provided in  
3 RCW 26.44.040.

4 (d) The reporting requirement shall also apply to any adult who has  
5 reasonable cause to believe that a child who resides with them, has  
6 suffered severe abuse, and is able or capable of making a report. For  
7 the purposes of this subsection, "severe abuse" means any of the  
8 following: Any single act of abuse that causes physical trauma of  
9 sufficient severity that, if left untreated, could cause death; any  
10 single act of sexual abuse that causes significant bleeding, deep  
11 bruising, or significant external or internal swelling; or more than  
12 one act of physical abuse, each of which causes bleeding, deep  
13 bruising, significant external or internal swelling, bone fracture, or  
14 unconsciousness.

15 (e) The reporting requirement also applies to guardians ad litem,  
16 including court-appointed special advocates, appointed under Titles 11,  
17 13, and 26 RCW, who in the course of their representation of children  
18 in these actions have reasonable cause to believe a child has been  
19 abused or neglected.

20 (f) The report must be made at the first opportunity, but in no  
21 case longer than forty-eight hours after there is reasonable cause to  
22 believe that the child has suffered abuse or neglect. The report must  
23 include the identity of the accused if known.

24 (2) The reporting requirement of subsection (1) of this section  
25 does not apply to the discovery of abuse or neglect that occurred  
26 during childhood if it is discovered after the child has become an  
27 adult. However, if there is reasonable cause to believe other children  
28 are or may be at risk of abuse or neglect by the accused, the reporting  
29 requirement of subsection (1) of this section does apply.

30 (3) Any other person who has reasonable cause to believe that a  
31 child has suffered abuse or neglect may report such incident to the  
32 proper law enforcement agency or to the department of social and health  
33 services as provided in RCW 26.44.040.

34 (4) The department, upon receiving a report of an incident of  
35 alleged abuse or neglect pursuant to this chapter, involving a child  
36 who has died or has had physical injury or injuries inflicted upon him  
37 or her other than by accidental means or who has been subjected to  
38 alleged sexual abuse, shall report such incident to the proper law

1 enforcement agency. In emergency cases, where the child's welfare is  
2 endangered, the department shall notify the proper law enforcement  
3 agency within twenty-four hours after a report is received by the  
4 department. In all other cases, the department shall notify the law  
5 enforcement agency within seventy-two hours after a report is received  
6 by the department. If the department makes an oral report, a written  
7 report must also be made to the proper law enforcement agency within  
8 five days thereafter.

9 (5) Any law enforcement agency receiving a report of an incident of  
10 alleged abuse or neglect pursuant to this chapter, involving a child  
11 who has died or has had physical injury or injuries inflicted upon him  
12 or her other than by accidental means, or who has been subjected to  
13 alleged sexual abuse, shall report such incident in writing as provided  
14 in RCW 26.44.040 to the proper county prosecutor or city attorney for  
15 appropriate action whenever the law enforcement agency's investigation  
16 reveals that a crime may have been committed. The law enforcement  
17 agency shall also notify the department of all reports received and the  
18 law enforcement agency's disposition of them. In emergency cases,  
19 where the child's welfare is endangered, the law enforcement agency  
20 shall notify the department within twenty-four hours. In all other  
21 cases, the law enforcement agency shall notify the department within  
22 seventy-two hours after a report is received by the law enforcement  
23 agency.

24 (6) Any county prosecutor or city attorney receiving a report under  
25 subsection (5) of this section shall notify the victim, any persons the  
26 victim requests, and the local office of the department, of the  
27 decision to charge or decline to charge a crime, within five days of  
28 making the decision.

29 (7) The department may conduct ongoing case planning and  
30 consultation with those persons or agencies required to report under  
31 this section, with consultants designated by the department, and with  
32 designated representatives of Washington Indian tribes if the client  
33 information exchanged is pertinent to cases currently receiving child  
34 protective services. Upon request, the department shall conduct such  
35 planning and consultation with those persons required to report under  
36 this section if the department determines it is in the best interests  
37 of the child. Information considered privileged by statute and not

1 directly related to reports required by this section must not be  
2 divulged without a valid written waiver of the privilege.

3 (8) Any case referred to the department by a physician licensed  
4 under chapter 18.57 or 18.71 RCW on the basis of an expert medical  
5 opinion that child abuse, neglect, or sexual assault has occurred and  
6 that the child's safety will be seriously endangered if returned home,  
7 the department shall file a dependency petition unless a second  
8 licensed physician of the parents' choice believes that such expert  
9 medical opinion is incorrect. If the parents fail to designate a  
10 second physician, the department may make the selection. If a  
11 physician finds that a child has suffered abuse or neglect but that  
12 such abuse or neglect does not constitute imminent danger to the  
13 child's health or safety, and the department agrees with the  
14 physician's assessment, the child may be left in the parents' home  
15 while the department proceeds with reasonable efforts to remedy  
16 parenting deficiencies.

17 (9) Persons or agencies exchanging information under subsection (7)  
18 of this section shall not further disseminate or release the  
19 information except as authorized by state or federal statute.  
20 Violation of this subsection is a misdemeanor.

21 (10) Upon receiving a report of alleged abuse or neglect, the  
22 department shall make reasonable efforts to learn the name, address,  
23 and telephone number of each person making a report of abuse or neglect  
24 under this section. The department shall provide assurances of  
25 appropriate confidentiality of the identification of persons reporting  
26 under this section. If the department is unable to learn the  
27 information required under this subsection, the department shall only  
28 investigate cases in which:

29 (a) The department believes there is a serious threat of  
30 substantial harm to the child;

31 (b) The report indicates conduct involving a criminal offense that  
32 has, or is about to occur, in which the child is the victim; or

33 (c) The department has a prior founded report of abuse or neglect  
34 with regard to a member of the household that is within three years of  
35 receipt of the referral.

36 (11)(a) Upon receiving a report of alleged abuse or neglect, the  
37 department shall use one of the following discrete responses to reports

1 of child abuse or neglect that are screened in and accepted for  
2 departmental response:

3 (i) Investigation; or

4 (ii) Family assessment.

5 (b) In making the response in (a) of this subsection the department  
6 shall:

7 (i) Use a method by which to assign cases to investigation or  
8 family assessment which are based on an array of factors that may  
9 include the presence of: Imminent danger, level of risk, number of  
10 previous child abuse or neglect reports, or other presenting case  
11 characteristics, such as the type of alleged maltreatment and the age  
12 of the alleged victim. Age of the alleged victim shall not be used as  
13 the sole criterion for determining case assignment;

14 (ii) Allow for a change in response assignment based on new  
15 information that alters risk or safety level;

16 (iii) Allow families assigned to family assessment to choose to  
17 receive an investigation rather than a family assessment;

18 (iv) Provide a full investigation if a family refuses the initial  
19 family assessment;

20 (v) Provide voluntary services to families based on the results of  
21 the initial family assessment. If a family refuses voluntary services,  
22 and the department cannot identify specific facts related to risk or  
23 safety that warrant assignment to investigation under this chapter, and  
24 there is not a history of reports of child abuse or neglect related to  
25 the family, then the department must close the family assessment  
26 response case. However, if at any time the department identifies risk  
27 or safety factors that warrant an investigation under this chapter,  
28 then the family assessment response case must be reassigned to  
29 investigation;

30 (vi) Conduct an investigation, and not a family assessment, in  
31 response to an allegation that, the department determines based on the  
32 intake assessment:

33 (A) Poses a risk of "imminent harm" consistent with the definition  
34 provided in RCW 13.34.050, which includes, but is not limited to,  
35 sexual abuse and sexual exploitation as defined in this chapter;

36 (B) Poses a serious threat of substantial harm to a child;

37 (C) Constitutes conduct involving a criminal offense that has, or  
38 is about to occur, in which the child is the victim;

1 (D) The child is an abandoned child as defined in RCW 13.34.030;

2 (E) The child is an adjudicated dependent child as defined in RCW  
3 13.34.030, or the child is in a facility that is licensed, operated, or  
4 certified for care of children by the department under chapter 74.15  
5 RCW, or by the department of early learning.

6 (c) The department may not be held civilly liable for the decision  
7 to respond to an allegation of child abuse or neglect by using the  
8 family assessment response under this section unless the state or its  
9 officers, agents, or employees acted with reckless disregard.

10 (12)(a) For reports of alleged abuse or neglect that are accepted  
11 for investigation by the department, the investigation shall be  
12 conducted within time frames established by the department in rule. In  
13 no case shall the investigation extend longer than ninety days from the  
14 date the report is received, unless the investigation is being  
15 conducted under a written protocol pursuant to RCW 26.44.180 and a law  
16 enforcement agency or prosecuting attorney has determined that a longer  
17 investigation period is necessary. At the completion of the  
18 investigation, the department shall make a finding that the report of  
19 child abuse or neglect is founded or unfounded.

20 (b) If a court in a civil or criminal proceeding, considering the  
21 same facts or circumstances as are contained in the report being  
22 investigated by the department, makes a judicial finding by a  
23 preponderance of the evidence or higher that the subject of the pending  
24 investigation has abused or neglected the child, the department shall  
25 adopt the finding in its investigation.

26 ((+12+)) (13) For reports of alleged abuse or neglect that are  
27 responded to through family assessment response, the department shall:

28 (a) Provide the family with a written explanation of the procedure  
29 for assessment of the child and the family and its purposes;

30 (b) Collaborate with the family to identify family strengths,  
31 resources, and service needs, and develop a service plan with the goal  
32 of reducing risk of harm to the child and improving or restoring family  
33 well-being;

34 (c) Complete the family assessment response within forty-five days  
35 of receiving the report; however, upon parental agreement, the family  
36 assessment response period may be extended up to ninety days;

37 (d) Offer services to the family in a manner that makes it clear  
38 that acceptance of the services is voluntary;

1 (e) Implement the family assessment response in a consistent and  
2 cooperative manner;

3 (f) Have the parent or guardian sign an agreement to participate in  
4 services before services are initiated that informs the parents of  
5 their rights under family assessment response, all of their options,  
6 and the options the department has if the parents do not sign the  
7 consent form.

8 (14) In conducting an investigation or family assessment of alleged  
9 abuse or neglect, the department or law enforcement agency:

10 (a) May interview children. If the department determines that the  
11 response to the allegation will be family assessment response, the  
12 preferred practice is to request a parent's, guardian's, or custodian's  
13 permission to interview the child before conducting the child interview  
14 unless doing so would compromise the safety of the child or the  
15 integrity of the assessment. The interviews may be conducted on school  
16 premises, at day-care facilities, at the child's home, or at other  
17 suitable locations outside of the presence of parents. If the  
18 allegation is investigated, parental notification of the interview must  
19 occur at the earliest possible point in the investigation that will not  
20 jeopardize the safety or protection of the child or the course of the  
21 investigation. Prior to commencing the interview the department or law  
22 enforcement agency shall determine whether the child wishes a third  
23 party to be present for the interview and, if so, shall make reasonable  
24 efforts to accommodate the child's wishes. Unless the child objects,  
25 the department or law enforcement agency shall make reasonable efforts  
26 to include a third party in any interview so long as the presence of  
27 the third party will not jeopardize the course of the investigation;  
28 and

29 (b) Shall have access to all relevant records of the child in the  
30 possession of mandated reporters and their employees.

31 ~~((+13))~~ (15) If a report of alleged abuse or neglect is founded  
32 and constitutes the third founded report received by the department  
33 within the last twelve months involving the same child or family, the  
34 department shall promptly notify the office of the family and  
35 children's ombudsman of the contents of the report. The department  
36 shall also notify the ombudsman of the disposition of the report.

37 ~~((+14))~~ (16) In investigating and responding to allegations of

1 child abuse and neglect, the department may conduct background checks  
2 as authorized by state and federal law.

3 ~~((+15+))~~ (17)(a) The department shall maintain investigation  
4 records and conduct timely and periodic reviews of all founded cases of  
5 abuse and neglect. The department shall maintain a log of screened-out  
6 nonabusive cases.

7 (b) In the family assessment response, the department shall not  
8 make a finding as to whether child abuse or neglect occurred. No one  
9 shall be named as a perpetrator and no investigative finding shall be  
10 entered in the department's child abuse or neglect database.

11 ~~((+16+))~~ (18) The department shall use a risk assessment process  
12 when investigating alleged child abuse and neglect referrals. The  
13 department shall present the risk factors at all hearings in which the  
14 placement of a dependent child is an issue. Substance abuse must be a  
15 risk factor. ~~((The department shall, within funds appropriated for~~  
16 ~~this purpose, offer enhanced community based services to persons who~~  
17 ~~are determined not to require further state intervention.~~

18 ~~(+17+))~~ (19) Upon receipt of a report of alleged abuse or neglect  
19 the law enforcement agency may arrange to interview the person making  
20 the report and any collateral sources to determine if any malice is  
21 involved in the reporting.

22 ~~((+18+))~~ (20) Upon receiving a report of alleged abuse or neglect  
23 involving a child under the court's jurisdiction under chapter 13.34  
24 RCW, the department shall promptly notify the child's guardian ad litem  
25 of the report's contents. The department shall also notify the  
26 guardian ad litem of the disposition of the report. For purposes of  
27 this subsection, "guardian ad litem" has the meaning provided in RCW  
28 13.34.030.

29 **Sec. 4.** RCW 26.44.031 and 2007 c 220 s 3 are each amended to read  
30 as follows:

31 (1) To protect the privacy in reporting and the maintenance of  
32 reports of nonaccidental injury, neglect, death, sexual abuse, and  
33 cruelty to children by their parents, and to safeguard against  
34 arbitrary, malicious, or erroneous information or actions, the  
35 department shall not disclose or maintain information related to  
36 reports of child abuse or neglect except as provided in this section or  
37 as otherwise required by state and federal law.

1 (2) The department shall destroy all of its records concerning:

2 (a) A screened-out report, within three years from the receipt of  
3 the report; and

4 (b) An unfounded or inconclusive report, within six years of  
5 completion of the investigation, unless a prior or subsequent founded  
6 report has been received regarding the child who is the subject of the  
7 report, a sibling or half-sibling of the child, or a parent, guardian,  
8 or legal custodian of the child, before the records are destroyed.

9 (3) The department may keep records concerning founded reports of  
10 child abuse or neglect as the department determines by rule.

11 (4) ~~((An))~~ No unfounded, screened-out, or inconclusive report or  
12 information about a family's participation or nonparticipation in the  
13 family assessment response may ~~((not))~~ be disclosed to a child-placing  
14 agency, private adoption agency, or any other provider licensed under  
15 chapter 74.15 RCW without the consent of the individual who is the  
16 subject of the report or family assessment, unless:

17 (a) The individual seeks to become a licensed foster parent or  
18 adoptive parent; or

19 (b) The individual is the parent or legal custodian of a child  
20 being served by one of the agencies referenced in this subsection.

21 (5)(a) If the department fails to comply with this section, an  
22 individual who is the subject of a report may institute proceedings for  
23 injunctive or other appropriate relief for enforcement of the  
24 requirement to purge information. These proceedings may be instituted  
25 in the superior court for the county in which the person resides or, if  
26 the person is not then a resident of this state, in the superior court  
27 for Thurston county.

28 (b) If the department fails to comply with subsection (4) of this  
29 section and an individual who is the subject of the report or family  
30 assessment response information is harmed by the disclosure of  
31 information, in addition to the relief provided in (a) of this  
32 subsection, the court may award a penalty of up to one thousand dollars  
33 and reasonable attorneys' fees and court costs to the petitioner.

34 (c) A proceeding under this subsection does not preclude other  
35 methods of enforcement provided for by law.

36 (6) Nothing in this section shall prevent the department from  
37 retaining general, nonidentifying information which is required for  
38 state and federal reporting and management purposes.





1 ~~permanency services, caseworker-child visits, family visits, the~~  
2 ~~convening of family group conferences, the development and revision of~~  
3 ~~the case plan, the coordination and monitoring of services needed by~~  
4 ~~the child and family, and the assumption of court-related duties,~~  
5 ~~excluding legal representation, including preparing court reports,~~  
6 ~~attending judicial hearings and permanency hearings, and ensuring that~~  
7 ~~the child is progressing toward permanency within state and federal~~  
8 ~~mandates, including the Indian child welfare act)) convening family~~  
9 ~~meetings, developing, revising, and monitoring implementation of any~~  
10 ~~case plan or individual service and safety plan, coordinating and~~  
11 ~~monitoring services needed by the child and family, caseworker-child~~  
12 ~~visits, family visits, and the assumption of court-related duties,~~  
13 ~~excluding legal representation, including preparing court reports,~~  
14 ~~attending judicial hearings and permanency hearings, and ensuring that~~  
15 ~~the child is progressing toward permanency within state and federal~~  
16 ~~mandates, including the Indian child welfare act.~~

17 (2) "Child" means:

18 (a) A person less than eighteen years of age; or

19 (b) A person age eighteen to twenty-one years who is eligible to  
20 receive the extended foster care services authorized under RCW  
21 74.13.031.

22 (3) "Child protective services" has the same meaning as in RCW  
23 26.44.020.

24 (4) "Child welfare services" means social services including  
25 voluntary and in-home services, out-of-home care, case management, and  
26 adoption services which strengthen, supplement, or substitute for,  
27 parental care and supervision for the purpose of:

28 (a) Preventing or remedying, or assisting in the solution of  
29 problems which may result in families in conflict, or the neglect,  
30 abuse, exploitation, or criminal behavior of children;

31 (b) Protecting and caring for dependent, abused, or neglected  
32 children;

33 (c) Assisting children who are in conflict with their parents, and  
34 assisting parents who are in conflict with their children, with  
35 services designed to resolve such conflicts;

36 (d) Protecting and promoting the welfare of children, including the  
37 strengthening of their own homes where possible, or, where needed;

1 (e) Providing adequate care of children away from their homes in  
2 foster family homes or day care or other child care agencies or  
3 facilities.

4 "Child welfare services" does not include child protection  
5 services.

6 (5) "Committee" means the child welfare transformation design  
7 committee.

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

10 (7) "Extended foster care services" means residential and other  
11 support services the department is authorized to provide to foster  
12 children. These services include, but are not limited to, placement in  
13 licensed, relative, or otherwise approved care, or supervised  
14 independent living settings; assistance in meeting basic needs;  
15 independent living services; medical assistance; and counseling or  
16 treatment.

17 (8) "Family assessment" means a comprehensive assessment of child  
18 safety, risk of subsequent child abuse or neglect, and family strengths  
19 and needs that is applied to a child abuse or neglect report. Family  
20 assessment does not include a determination as to whether child abuse  
21 or neglect occurred, but does determine the need for services to  
22 address the safety of the child and the risk of subsequent  
23 maltreatment.

24 (9) "Measurable effects" means a statistically significant change  
25 which occurs as a result of the service or services a supervising  
26 agency is assigned in a performance-based contract, in time periods  
27 established in the contract.

28 ((+9)) (10) "Out-of-home care services" means services provided  
29 after the shelter care hearing to or for children in out-of-home care,  
30 as that term is defined in RCW 13.34.030, and their families, including  
31 the recruitment, training, and management of foster parents, the  
32 recruitment of adoptive families, and the facilitation of the adoption  
33 process, family reunification, independent living, emergency shelter,  
34 residential group care, and foster care, including relative placement.

35 ((+10)) (11) "Performance-based contracting" means the structuring  
36 of all aspects of the procurement of services around the purpose of the  
37 work to be performed and the desired results with the contract  
38 requirements set forth in clear, specific, and objective terms with

1 measurable outcomes. Contracts shall also include provisions that link  
2 the performance of the contractor to the level and timing of  
3 reimbursement.

4 ~~((+11+))~~ (12) "Permanency services" means long-term services  
5 provided to secure a child's safety, permanency, and well-being,  
6 including foster care services, family reunification services, adoption  
7 services, and preparation for independent living services.

8 ~~((+12+))~~ (13) "Primary prevention services" means services which  
9 are designed and delivered for the primary purpose of enhancing child  
10 and family well-being and are shown, by analysis of outcomes, to reduce  
11 the risk to the likelihood of the initial need for child welfare  
12 services.

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

19 **Sec. 8.** RCW 74.13.031 and 2011 c 330 s 5 and 2011 c 160 s 2 are  
20 each reenacted and amended to read as follows:

21 (1) The department and supervising agencies shall develop,  
22 administer, supervise, and monitor a coordinated and comprehensive plan  
23 that establishes, aids, and strengthens services for the protection and  
24 care of runaway, dependent, or neglected children.

25 (2) Within available resources, the department and supervising  
26 agencies shall recruit an adequate number of prospective adoptive and  
27 foster homes, both regular and specialized, i.e. homes for children of  
28 ethnic minority, including Indian homes for Indian children, sibling  
29 groups, handicapped and emotionally disturbed, teens, pregnant and  
30 parenting teens, and the department shall annually report to the  
31 governor and the legislature concerning the department's and  
32 supervising agency's success in: (a) Meeting the need for adoptive and  
33 foster home placements; (b) reducing the foster parent turnover rate;  
34 (c) completing home studies for legally free children; and (d)  
35 implementing and operating the passport program required by RCW  
36 74.13.285. The report shall include a section entitled "Foster Home  
37 Turn-Over, Causes and Recommendations."

1 (3) The department shall investigate complaints of any recent act  
2 or failure to act on the part of a parent or caretaker that results in  
3 death, serious physical or emotional harm, or sexual abuse or  
4 exploitation, or that presents an imminent risk of serious harm, and on  
5 the basis of the findings of such investigation, offer child welfare  
6 services in relation to the problem to such parents, legal custodians,  
7 or persons serving in loco parentis, and/or bring the situation to the  
8 attention of an appropriate court, or another community agency. An  
9 investigation is not required of nonaccidental injuries which are  
10 clearly not the result of a lack of care or supervision by the child's  
11 parents, legal custodians, or persons serving in loco parentis. If the  
12 investigation reveals that a crime against a child may have been  
13 committed, the department shall notify the appropriate law enforcement  
14 agency.

15 (4) As provided in RCW 26.44.030(11), the department may respond to  
16 a report of child abuse or neglect by using the family assessment  
17 response.

18 (5) The department or supervising agencies shall offer, on a  
19 voluntary basis, family reconciliation services to families who are in  
20 conflict.

21 ((+5)) (6) The department or supervising agencies shall monitor  
22 placements of children in out-of-home care and in-home dependencies to  
23 assure the safety, well-being, and quality of care being provided is  
24 within the scope of the intent of the legislature as defined in RCW  
25 74.13.010 and 74.15.010. Under this section children in out-of-home  
26 care and in-home dependencies and their caregivers shall receive a  
27 private and individual face-to-face visit each month. The department  
28 and the supervising agencies shall randomly select no less than ten  
29 percent of the caregivers currently providing care to receive one  
30 unannounced face-to-face visit in the caregiver's home per year. No  
31 caregiver will receive an unannounced visit through the random  
32 selection process for two consecutive years. If the caseworker makes  
33 a good faith effort to conduct the unannounced visit to a caregiver and  
34 is unable to do so, that month's visit to that caregiver need not be  
35 unannounced. The department and supervising agencies are encouraged to  
36 group monthly visits to caregivers by geographic area so that in the  
37 event an unannounced visit cannot be completed, the caseworker may

1 complete other required monthly visits. The department shall use a  
2 method of random selection that does not cause a fiscal impact to the  
3 department.

4 The department or supervising agencies shall conduct the monthly  
5 visits with children and caregivers to whom it is providing child  
6 welfare services.

7 ~~((+6+))~~ (7) The department and supervising agencies shall have  
8 authority to accept custody of children from parents and to accept  
9 custody of children from juvenile courts, where authorized to do so  
10 under law, to provide child welfare services including placement for  
11 adoption, to provide for the routine and necessary medical, dental, and  
12 mental health care, or necessary emergency care of the children, and to  
13 provide for the physical care of such children and make payment of  
14 maintenance costs if needed. Except where required by Public Law 95-  
15 608 (25 U.S.C. Sec. 1915), no private adoption agency which receives  
16 children for adoption from the department shall discriminate on the  
17 basis of race, creed, or color when considering applications in their  
18 placement for adoption.

19 ~~((+7+))~~ (8) The department and supervising agency shall have  
20 authority to provide temporary shelter to children who have run away  
21 from home and who are admitted to crisis residential centers.

22 ~~((+8+))~~ (9) The department and supervising agency shall have  
23 authority to purchase care for children.

24 ~~((+9+))~~ (10) The department shall establish a children's services  
25 advisory committee with sufficient members representing supervising  
26 agencies which shall assist the secretary in the development of a  
27 partnership plan for utilizing resources of the public and private  
28 sectors, and advise on all matters pertaining to child welfare,  
29 licensing of child care agencies, adoption, and services related  
30 thereto. At least one member shall represent the adoption community.

31 ~~((+10+))~~ (11) The department and supervising agencies shall have  
32 authority to provide continued extended foster care services to youth  
33 ages eighteen to twenty-one years to participate in or complete a  
34 secondary education program or a secondary education equivalency  
35 program.

36 ~~((+11+))~~ (12) The department~~((+has))~~ shall have authority to  
37 provide adoption support benefits, or relative guardianship subsidies  
38 on behalf of youth ages eighteen to twenty-one years who achieved

1 permanency through adoption or a relative guardianship at age sixteen  
2 or older and who meet the criteria described in subsection (~~(10)~~)  
3 (11) of this section.

4 (~~(12)~~) (13) The department shall refer cases to the division of  
5 child support whenever state or federal funds are expended for the care  
6 and maintenance of a child, including a child with a developmental  
7 disability who is placed as a result of an action under chapter 13.34  
8 RCW, unless the department finds that there is good cause not to pursue  
9 collection of child support against the parent or parents of the child.  
10 Cases involving individuals age eighteen through twenty shall not be  
11 referred to the division of child support unless required by federal  
12 law.

13 (~~(13)~~) (14) The department and supervising agencies shall have  
14 authority within funds appropriated for foster care services to  
15 purchase care for Indian children who are in the custody of a federally  
16 recognized Indian tribe or tribally licensed child-placing agency  
17 pursuant to parental consent, tribal court order, or state juvenile  
18 court order; and the purchase of such care shall be subject to the same  
19 eligibility standards and rates of support applicable to other children  
20 for whom the department purchases care.

21 Notwithstanding any other provision of RCW 13.32A.170 through  
22 13.32A.200 and 74.13.032 through 74.13.036, or of this section all  
23 services to be provided by the department under subsections (4), (~~(6)~~,  
24 ~~and~~) (7), and (8) of this section, subject to the limitations of these  
25 subsections, may be provided by any program offering such services  
26 funded pursuant to Titles II and III of the federal juvenile justice  
27 and delinquency prevention act of 1974.

28 (~~(14)~~) (15) Within amounts appropriated for this specific  
29 purpose, the supervising agency or department shall provide preventive  
30 services to families with children that prevent or shorten the duration  
31 of an out-of-home placement.

32 (~~(15)~~) (16) The department and supervising agencies shall have  
33 authority to provide independent living services to youths, including  
34 individuals who have attained eighteen years of age, and have not  
35 attained twenty-one years of age who are or have been in foster care.

36 (~~(16)~~) (17) The department and supervising agencies shall consult  
37 at least quarterly with foster parents, including members of the foster  
38 parent association of Washington state, for the purpose of receiving

1 information and comment regarding how the department and supervising  
2 agencies are performing the duties and meeting the obligations  
3 specified in this section and RCW 74.13.250 and 74.13.320 regarding the  
4 recruitment of foster homes, reducing foster parent turnover rates,  
5 providing effective training for foster parents, and administering a  
6 coordinated and comprehensive plan that strengthens services for the  
7 protection of children. Consultation shall occur at the regional and  
8 statewide levels.

9 (18)(a) The department shall, within current funding levels, place  
10 on its public web site a document listing the duties and  
11 responsibilities the department has to a child subject to a dependency  
12 petition including, but not limited to, the following:

13 (i) Reasonable efforts, including the provision of services, toward  
14 reunification of the child with his or her family;

15 (ii) Sibling visits subject to the restrictions in RCW  
16 13.34.136(2)(b)(ii);

17 (iii) Parent-child visits;

18 (iv) Statutory preference for placement with a relative or other  
19 suitable person, if appropriate; and

20 (v) Statutory preference for an out-of-home placement that allows  
21 the child to remain in the same school or school district, if practical  
22 and in the child's best interests.

23 (b) The document must be prepared in conjunction with a community-  
24 based organization and must be updated as needed.

25 NEW SECTION. **Sec. 9.** The Washington state institute for public  
26 policy shall conduct an evaluation of the implementation of the family  
27 assessment response. The institute shall define the data to be  
28 gathered and maintained. At a minimum, the evaluations must address  
29 child safety measures, out-of-home placement rates, re-referral rates,  
30 and caseload sizes and demographics. The institute shall deliver its  
31 first report no later than December 1, 2014, and its final report by  
32 December 1, 2016.

33 NEW SECTION. **Sec. 10.** The department of social and health  
34 services shall conduct two client satisfaction surveys of families that  
35 have been placed in the family assessment response. The first survey



1 results shall be reported no later than December 1, 2014. The second  
2 survey results shall be reported no later than December 1, 2016.

3 **Sec. 11.** RCW 26.44.125 and 1998 c 314 s 9 are each amended to read  
4 as follows:

5 (1) A person who is named as an alleged perpetrator after October  
6 1, 1998, in a founded report of child abuse or neglect has the right to  
7 seek review and amendment of the finding as provided in this section.

8 (2) Within ~~((twenty))~~ thirty calendar days after ~~((receiving~~  
9 ~~written notice from the department))~~ the department has notified the  
10 alleged perpetrator under RCW 26.44.100 that ~~((a))~~ the person is named  
11 as an alleged perpetrator in a founded report of child abuse or  
12 neglect, he or she may request that the department review the finding.  
13 The request must be made in writing. The written notice provided by  
14 the department must contain at least the following information in plain  
15 language:

16 (a) Information about the department's investigative finding as it  
17 relates to the alleged perpetrator;

18 (b) Sufficient factual information to apprise the alleged  
19 perpetrator of the date and nature of the founded reports;

20 (c) That the alleged perpetrator has the right to submit to child  
21 protective services a written response regarding the child protective  
22 services finding which, if received, shall be filed in the department's  
23 records;

24 (d) That information in the department's records, including  
25 information about this founded report, may be considered in a later  
26 investigation or proceeding related to a different allegation of child  
27 abuse or neglect or child custody;

28 (e) That founded allegations of child abuse or neglect may be used  
29 by the department in determining:

30 (i) If a perpetrator is qualified to be licensed or approved to  
31 care for children or vulnerable adults; or

32 (ii) If a perpetrator is qualified to be employed by the department  
33 in a position having unsupervised access to children or vulnerable  
34 adults;

35 (f) That the alleged perpetrator has a right to challenge a founded  
36 allegation of child abuse or neglect.

1       (3) If a request for review is not made as provided in this  
2 subsection, the alleged perpetrator may not further challenge the  
3 finding and shall have no right to agency review or to an adjudicative  
4 hearing or judicial review of the finding, unless he or she can show  
5 that the department did not comply with the notice requirements of RCW  
6 26.44.100.

7       (~~(3)~~) (4) Upon receipt of a written request for review, the  
8 department shall review and, if appropriate, may amend the finding.  
9 Management level staff within the children's administration designated  
10 by the secretary shall be responsible for the review. The review must  
11 be completed within thirty days after receiving the written request for  
12 review. The review must be conducted in accordance with procedures the  
13 department establishes by rule. Upon completion of the review, the  
14 department shall notify the alleged perpetrator in writing of the  
15 agency's determination. The notification must be sent by certified  
16 mail, return receipt requested, to the person's last known address.

17       (~~(4)~~) (5) If, following agency review, the report remains  
18 founded, the person named as the alleged perpetrator in the report may  
19 request an adjudicative hearing to contest the finding. The  
20 adjudicative proceeding is governed by chapter 34.05 RCW and this  
21 section. The request for an adjudicative proceeding must be filed  
22 within thirty calendar days after receiving notice of the agency review  
23 determination. If a request for an adjudicative proceeding is not made  
24 as provided in this subsection, the alleged perpetrator may not further  
25 challenge the finding and shall have no right to agency review or to an  
26 adjudicative hearing or judicial review of the finding.

27       (~~(5)~~) (6) Reviews and hearings conducted under this section are  
28 confidential and shall not be open to the public. Information about  
29 reports, reviews, and hearings may be disclosed only in accordance with  
30 federal and state laws pertaining to child welfare records and child  
31 protective services reports.

32       (~~(6)~~) (7) The department may adopt rules to implement this  
33 section.

34       **Sec. 12.** RCW 26.44.010 and 1999 c 176 s 27 are each amended to  
35 read as follows:

36       The Washington state legislature finds and declares: The bond  
37 between a child and his or her parent, custodian, or guardian is of

1 paramount importance, and any intervention into the life of a child is  
2 also an intervention into the life of the parent, custodian, or  
3 guardian; however, instances of nonaccidental injury, neglect, death,  
4 sexual abuse and cruelty to children by their parents, custodians or  
5 guardians have occurred, and in the instance where a child is deprived  
6 of his or her right to conditions of minimal nurture, health, and  
7 safety, the state is justified in emergency intervention based upon  
8 verified information; and therefore the Washington state legislature  
9 hereby provides for the reporting of such cases to the appropriate  
10 public authorities. It is the intent of the legislature that, as a  
11 result of such reports, protective services shall be made available in  
12 an effort to prevent further abuses, and to safeguard the general  
13 welfare of such children(~~(: PROVIDED, That such)~~). When the child's  
14 physical or mental health is jeopardized, or the safety of the child  
15 conflicts with the legal rights of a parent, custodian, or guardian,  
16 the health and safety interests of the child should prevail. When  
17 determining whether a child and a parent, custodian, or guardian should  
18 be separated during or immediately following an investigation of  
19 alleged child abuse or neglect, the safety of the child shall be the  
20 department's paramount concern. Reports of child abuse and neglect  
21 shall be maintained and disseminated with strictest regard for the  
22 privacy of the subjects of such reports and so as to safeguard against  
23 arbitrary, malicious or erroneous information or actions(~~(: PROVIDED~~  
24 ~~FURTHER, That)~~). This chapter shall not be construed to authorize  
25 interference with child- raising practices, including reasonable  
26 parental discipline, which are not proved to be injurious to the  
27 child's health, welfare and safety.

28 NEW SECTION. Sec. 13. A new section is added to chapter 4.24 RCW  
29 to read as follows:

30 (1) Governmental entities, and their officers, agents, employees,  
31 and volunteers, are not liable in tort for any of their acts or  
32 omissions in emergent placement investigations of child abuse or  
33 neglect under chapter 26.44 RCW including, but not limited to, any  
34 determination to leave a child with a parent, custodian, or guardian,  
35 or to return a child to a parent, custodian, or guardian, unless the  
36 act or omission constitutes gross negligence. Emergent placement

1 investigations are those conducted prior to a shelter care hearing  
2 under RCW 13.34.065.

3 (2) The department of social and health services and its employees  
4 shall comply with the orders of the court, including shelter care and  
5 other dependency orders, and are not liable for acts performed to  
6 comply with such court orders. In providing reports and  
7 recommendations to the court, employees of the department of social and  
8 health services are entitled to the same witness immunity as would be  
9 provided to any other witness.

10 NEW SECTION. **Sec. 14.** A new section is added to chapter 26.44 RCW  
11 to read as follows:

12 Consistent with the paramount concern of the department to protect  
13 the child's interests of basic nurture, physical and mental health, and  
14 safety, and the requirement that the child's health and safety  
15 interests prevail over conflicting legal interests of a parent,  
16 custodian, or guardian, the liability of governmental entities, and  
17 their officers, agents, employees, and volunteers, to parents,  
18 custodians, or guardians accused of abuse or neglect is limited as  
19 provided in section 13 of this act.

20 NEW SECTION. **Sec. 15.** Sections 1 and 3 through 10 of this act  
21 take effect December 1, 2013.

Passed by the Senate March 7, 2012.

Passed by the House March 6, 2012.

Approved by the Governor March 30, 2012.

Filed in Office of Secretary of State March 30, 2012.