

NO. 49612-7

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

JESSICA L. WRIGLEY, individual and as Personal Representative for the
Estate of A.C.A., Deceased, and O.K.P., a minor child, and I.T.W., a
minor child, by and through their Biological Mother, Jessica Wrigley,

Appellants/
Cross Respondents,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL & HEALTH
SERVICES, DONALD WATSON & "JANE DOE" WATSON, husband
and wife, individually and the marital community thereof,
ALESSANDRO LAROSA, & "JANE DOE" LAROSA, husband and
wife, individually and the marital community thereof, RACHEL
WHITNEY & "JOHN DOE" WHITNEY, husband and wife, individually
and the marital community thereof, JENNIFER GORDER & "JOHN
DOE" GORDER, husband and wife, individually and the marital
community thereof; "JOHN DOE" Social Worker & "JANE DOE", Social
Worker husband & wife individually and the marital community thereof,
1, through 5,

Respondents/
Cross Appellants.

BRIEF OF RESPONDENTS

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I. INTRODUCTION

A parent has a fundamental, constitutionally-protected right to maintain the parent-child relationship. The privileged status of the parent-child relationship is reflected in how Washington's child welfare statutes and jurisprudence treat child custody requests by parents as opposed to relatives and non-relatives. It is within this constitutional context that the events underlying this tort case occurred.

In October 2011, the Department of Social and Health Services (DSHS) removed Afton Allison from his mother, Jessica Wrigley, based on her suspected abuse and neglect of Afton. Afton's biological father, Anthony Viles, an Idaho resident, indicated he was interested in taking custody of Afton. Mrs. Wrigley objected to DSHS that Mr. Viles had been violent towards her during their brief relationship seven years earlier and she knew him to have an extensive criminal history. She did not allege that Mr. Viles had ever abused or neglected Afton or any other child. On January 31, 2012, the court granted Mr. Viles's motion for custody of Afton. For the next month, Afton's DSHS social worker and his therapist checked on his progress in his new Idaho home. On February 21, 2012, the court found that placement with Mr. Viles was in Afton's best interest and dismissed the dependency petition, thereby severing any involvement by the Washington DSHS system with Afton. Tragically, Mr. Viles killed Afton in April 2012.

Now Mrs. Wrigley, her other minor children, and Afton's estate (collectively Plaintiffs) seek compensation from DSHS for Afton's death. On appeal from summary judgment, Plaintiffs claim that DSHS had a duty to prevent Afton's placement with Mr. Viles. However, under Plaintiffs' only cognizable cause of action, RCW 26.44.050 negligent investigation, DSHS's duty to investigate Mr. Viles was never triggered because DSHS never received a referral alleging that he had abused or neglected Afton, or any other child. As to Plaintiffs' motion to amend their complaint to add a general negligence claim, the trial court acted within its discretion when it denied the motion and this Court should not disturb that decision.

In cross-appeal, DSHS raises two issues. First, DSHS is entitled to summary judgment as a matter of law because Plaintiffs failed to create an issue of material fact on proximate cause. Second, the trial court abused its discretion when it failed to strike opinions offered by Plaintiffs' standard of care expert that she based on inadmissible evidence and legally inapplicable procedures from the Interstate Compact on the Placement of Children.

II. RESTATEMENT OF ISSUES ON APPEAL

1. Under the RCW 26.44.050 negligent investigation cause of action, DSHS has a duty to investigate when it receives a referral that a child has possibly suffered abuse or neglect. Did DSHS have a duty under RCW 26.44.050 to prevent placement of the child, Afton, with his biological father Mr. Viles where DSHS received no referral that Mr. Viles had engaged in abuse or neglect of Afton or any other child?

2. The dependency court’s shelter care order directed DSHS to “make reasonable efforts to locate and investigate an appropriate relative” to care for Afton. CP 180. Did the shelter care order impose a duty on DSHS to prevent placement of Afton with his biological father Mr. Viles where a parent does not constitute a “relative” under the child welfare statutes?

3. This Court recently announced that DSHS “owes a duty of reasonable care to investigate the health and safety of children it places in foster homes” based on the special relationship recognized in *Restatement (Second) of Torts* § 315(b) (1965). Did DSHS owe this special relationship duty to Afton while he resided with his biological father Mr. Viles?

4. Did the trial court abuse its discretion when it denied Plaintiffs’ motion to amend their Amended Complaint for Damages to add a general negligence claim, where the motion was filed after the court had dismissed “all of Plaintiffs’ negligence-based claims” on summary judgment (CP 1598); after DSHS had moved for summary judgment on all remaining claims; after the discovery cutoff had passed; and after the pretrial conference at which the pending trial date was stricken solely based on a court scheduling conflict?

III. ASSIGNMENTS OF ERROR AND STATEMENT OF ISSUES ON CROSS-APPEAL

A. Assignments of Error

1. The trial court erred in denying summary judgment for lack of proximate cause because Plaintiffs failed to show the existence of any evidence that, if presented to the dependency judge, would have on a more probable than not basis caused the judge to not place Afton in his father Mr. Viles’s custody.

2. The trial court erred in failing to grant DSHS’s motion to strike opinions offered by the Plaintiffs’ expert that she based on inadmissible evidence and legally inapplicable procedures from the Interstate Compact on the Placement of Children (ICPC).

B. Statement of Issues on Cross-Appeal

1. Do Plaintiffs' claims fail as a matter of law based on lack of proximate cause, where Plaintiffs failed to show the existence of any evidence that, if presented to the dependency judge, would have on a more probable than not basis caused the judge to not place Afton in his father Mr. Viles's custody?

2. Did the trial court err in failing to strike opinions offered by Plaintiffs' expert that she based on inadmissible evidence and legally inapplicable procedures from the Interstate Compact on the Placement of Children?

IV. RESTATEMENT OF THE CASE

A. DSHS Received Multiple Referrals Alleging Abuse and Neglect of Afton by His Mother, Jessica Wrigley, and Her Husband

Afton Allison was born in October 2005 to Jessica Wrigley and Anthony Viles. CP 7. Five years later the Wrigley family (Afton, his mother Jessica, stepfather Jared Wrigley, and younger half-brother I.W.), relocated to Washington State from Idaho. CP 274.

Afton's first contact with DSHS came in the summer of 2011, when his Catholic Community Services individual mentor made four referrals¹ to DSHS alleging that Afton was being physically abused and neglected by the Wrigleys. CP 356, 370, 381, 387. Under RCW 26.44, certain individuals who work with children must report when they have "reasonable cause to

¹ This brief uses the terms "referral" and "report" interchangeably. RCW 26.44.050 requires DSHS to investigate "[u]pon the receipt of a *report* concerning the possible occurrence of abuse or neglect." (Emphasis added). DSHS Policy and Procedure Manual 2000 indicates that one of Child Protective Services' purposes is to "[r]eceive and assess *referrals* from the community alleging child abuse and neglect."

believe that a child has suffered abuse or neglect.” RCW 26.44.030(1)(a) (2010). When DSHS receives “a report concerning the possible occurrence of abuse or neglect” it must investigate and provide a report to child protective services. RCW 26.44.050 (2010). The referrals, which alleged that Afton had bruising consistent with abuse, were assigned to Child Protective Services (CPS) investigator, Kim Karu. CP 351, 356.

Ms. Karu interviewed five-year-old Afton, the Wrigleys, and the mentor, and reviewed the Wrigleys’ history with Idaho’s CPS agency, Idaho Child and Family Services.² CP 362-68. Ultimately, Ms. Karu made findings of “unfounded” on all referrals she investigated. CP 405-06, 438. An unfounded finding means “following an investigation by [DSHS] . . . available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged abuse did or did not occur.” RCW 26.44.020(26).

However, Ms. Karu continued to be concerned about Afton’s safety in the Wrigley home. CP 395. She suggested to the Wrigleys that they

² When interviewed, five-year-old Afton made no disclosures of abuse. CP 405, 438. The referent, Afton’s mentor, indicated the Wrigleys tended to exaggerate Afton’s behaviors and had difficulty responding appropriately to them. CP 364. The Idaho CPS records revealed multiple reports of inappropriate discipline by Mrs. Wrigley as well as a pattern of behavior regarding cleanliness in the home and not following through with Afton’s medical and mental health needs. CP 366.

engage in Family Voluntary Services in order to receive continued assistance and monitoring from DSHS.³ CP 396-97. The Wrigleys agreed and their case was transferred to Family Voluntary Services worker Rachel Whitney at the end of August 2011. CP 352.

On September 29, 2011, Ms. Whitney made a routine health and safety visit, traveling to the Wrigley home after she discovered Afton was not at school.⁴ CP 127. Ms. Whitney observed that Afton was shaking, his eyes were watery, his lips and mouth area appeared red, and there was bruising on his jaw and cheek that had not been there during her visit a week earlier. CP 136. Mrs. Wrigley explained Afton's mouth was red because she had just dosed him with hot pepper water for calling her a name. CP 136. Ms. Whitney asked Afton what happened and he said that when Mrs. Wrigley "opened his mouth with her fingers to put in the hot sauce he screamed because it hurt so bad." CP 139. Afton also said that Mr. Wrigley spanked him with his hand or a belt for wetting the bed. CP 139.

According to Ms. Whitney, Mrs. Wrigley seemed very frustrated and stated that she wanted to put Afton up for adoption. CP 128, 139. At

³ Family Voluntary Services may be put in place with the agreement of the parent(s) and includes ongoing assessment of safety and risk to children in their homes, regular home visits, collateral contacts and family monitoring services. CP 127, 352.

⁴ Ms. Whitney found the Wrigley home in disarray, with "bags of garbage, old pizza boxes, empty beer bottles, pieces of bread, tampons, and assorted bits of paper and other debris on the floors." CP 139. The bed in Afton's room had urine and urine stains on it. CP 136.

Ms. Whitney's suggestion, Mrs. Wrigley agreed to put Afton into voluntary out-of-home placement for two weeks. CP 128.

Ms. Whitney asked Mrs. Wrigley if she had contact information for Afton's biological father, Anthony Viles. CP 136. Mrs. Wrigley said Mr. Viles lived in Pocatello, Idaho, and that she would attempt to contact one of Mr. Viles's "baby mamas" to get his contact information. CP 136-37. There is no evidence that Mrs. Wrigley mentioned anything at that time about Mr. Viles's alleged violent tendencies.

Ms. Whitney made a referral regarding what she had observed at the Wrigley home, which was assigned to CPS worker Jennifer Gorder. CP 65, 127, 139. Ms. Gorder interviewed Afton the next day at his school. CP 65. When Ms. Gorder asked Afton questions about his parents and discipline, Afton's hands visibly began to shake. CP 70. When Ms. Gorder changed the subject, the shaking lessened. CP 70. Afton indicated he was spanked with hands and a belt for wetting his pants. CP 71. Ms. Gorder noted and photographed bruises on Afton's spine, side, face, and above his buttocks. CP 70-71. Ms. Gorder noted that the bruises on Afton's back and forearm were linear, which indicates they may have been made with a belt. CP 71.

Over the next few days, Ms. Gorder talked to several collateral sources including Mrs. Wrigley's friend, Mrs. Wrigley's former father-in-law, and the father of Mrs. Wrigley's oldest child. CP 75-79. All expressed

concern regarding Jessica and Jared Wrigley. CP 75-79. Ms. Gorder also reviewed the Wrigleys' CPS history from Idaho, where there had been similar allegations of abuse and neglect. CP 82-83.

On October 4, 2011, a Family Team Decision Meeting was held, at which Mrs. Wrigley described her methods of discipline as locking kids in their room, spanking, and putting hot sauce in their mouths. CP 151-54. Mrs. Wrigley also indicated she previously had a restraining order against Mr. Viles because of threats he made against her. CP 65.

B. After DSHS Filed for Dependency on Afton, His Biological Father Anthony Viles Sought Custody

On October 5, 2011, DSHS filed a dependency petition regarding Afton, based on Ms. Gorder's investigation. CP 85-91. The dependency petition informed the court of the restraining order between Mrs. Wrigley and Mr. Viles. CP 90. Ms. Gorder also sought to remove Afton's younger brother, I.W., from the Wrigley home because of concerns for his safety. CP 93-98. The Clark County Superior Court ordered I.W. be taken into custody that day.⁵ CP 100-01. Ms. Gorder eventually made founded findings for maltreatment against both of the Wrigleys and for physical abuse by Mrs. Wrigley. CP 66, 103-25.

Meanwhile, Ms. Gorder located Mr. Viles, who indicated that he

⁵ Afton was already out of the home by Mrs. Wrigley's agreement. CP 87.

was interested in having custody of Afton. CP 81. Mr. Viles communicated the same desire to Ms. Whitney. CP 64. Ms. Gorder asked that a National Crime Information Center (NCIC) background check be run on Mr. Viles.⁶ CP 66. According to Ms. Gorder, there were no concerning issues on Mr. Viles's background check.⁷ CP 66.

On October 11, 2011, Mr. Viles agreed to shelter care for Afton. CP 176-83. Mrs. Wrigley did not agree, and a contested shelter care hearing regarding Mrs. Wrigley was set for October 25, 2011. CP 176-83. Shelter care is "temporary physical care" of a child somewhere other than his home. RCW 13.34.030(15) (2010). While a hearing on a child's shelter care status is typically held within 72 hours of the child being placed in shelter care, a parent may request the hearing be continued. RCW 13.34.065(1) (2010). The purpose of the hearing is to determine whether the child can be safely returned home or must remain in out-of-home care while adjudication of the dependency is pending. RCW 13.34.065(1)(a) (2010). Thus, at the shelter care hearing the court does not determine whether the child is dependent. RCW 13.34.065(4) (2010). Dependency is determined at a formal fact-

⁶ Ms. Gorder ran a "Purpose C" check on Mr. Viles through NCIC, which requests criminal history information from the FBI. CP 66, 210.

⁷ Mr. Viles's Idaho Repository Case History was reviewed by DSHS Centralized Services Administrator Chris Parvin, who is responsible for overseeing all DSHS Background Check Programs. CP 210-11. Mr. Parvin asserts that none of the information, crimes, or infractions on Mr. Viles's Case History prior to April 2012 (Afton's killing) are disqualifying according to the federal Adoption and Safe Family Act. CP 211.

finding hearing on the petition later in the process. RCW 13.34.110 (2010).

In this matter, Mrs. Wrigley, through her assigned counsel, Eric Johnson, agreed to multiple continuances of the shelter care hearing over the next three months. CP 185-201, 284-85. Throughout that time Afton remained in shelter care status and was not determined dependent as to either parent. CP 185-201. A dependent child is one who has been abandoned, is abused or neglected, or has no parent capable of adequately caring for him. RCW 13.34.030(6).

During this time, Mr. Viles continued to make it known, both personally and through his attorney, Ms. Staples, that he wanted Afton placed with him. CP 236, 245-47. DSHS social worker Don Watson, to whom the case had been transferred, conducted some initial investigation of this potential arrangement, calling several references provided by Mr. Viles and speaking to Mr. Viles directly.⁸ CP 249-50. However, because Afton was not dependent, and because there were no allegations of abuse or neglect against Mr. Viles, DSHS's position was that it could not rely on the Interstate Compact on the Placement of Children⁹ (ICPC) to

⁸ Plaintiffs emphasize that Mrs. Wrigley told Mr. Watson on October 24, 2011, that "Viles had an extensive criminal history[.]" App'nts Br. 5. Notably, Plaintiffs omit the fact that Mr. Viles's last conviction for violence dated from when he was a juvenile 11 years earlier. CP 211-19, 1024.

⁹ The ICPC is a statutory agreement among all 50 states, the District of Columbia, and the U.S. Virgin Islands, that governs the placements of children between states "in substitute arrangements for parental care." *In re Dependency of D.F.-M.*, 157 Wn. App.

conduct a more thorough assessment.¹⁰ CP 237, 299-301.

C. On Mr. Viles’s Motion, the Court Released Afton From Shelter Care and Placed Him with Mr. Viles

On January 30, 2012, the court heard Mr. Viles’s motion to have Afton released from shelter care and placed with him in Idaho.¹¹ CP 203-04, 291-321. As Mr. Viles’s attorney, Ms. Staples, explained: “[t]here was absolutely no allegations about him [Mr. Viles] in the [dependency] petition. The only problem was that he hadn’t had contact with the child [Afton],” and he had been addressing that. CP 293-94. DSHS, through its Assistant Attorney General (AAG) Ms. Collins, indicated that because Afton was not dependent and therefore not within the ICPC, DSHS “c[ould]n’t make a fully informed recommendation” as to Afton’s placement.¹² CP 299-300. However, AAG Collins and social worker Mr. Watson did provide to the court what limited background information

179, 187-91, 236 P.3d 961, 966 (2010). Washington State enacted the ICPC in 1971. *Id.* at 188 n.18; RCW 26.34.010.

¹⁰ Counsel for DSHS, AAG Collins, explained this position at the January 30, 2012, hearing on Mr. Viles’s motion to have Afton placed with him. CP 299-301.

¹¹ The court heard testimony from counsel for Mr. Viles, Ms. Staples; Mr. Viles himself; Afton’s therapist, Mr. Miriello; Afton’s CASA, Ms. Gomes; counsel for DSHS, AAG Ms. Collins; DSHS social worker Donald Watson; counsel for Mrs. Wrigley, Mr. Johnson; and counsel for non-party Mr. Wrigley, Ms. Cloutier. CP 292-93.

¹² As authority for this position, Ms. Collins cited *In re D.F.-M.*, 157 Wn. App. at 192-93 (emphasis added) (“Placement with an unfit parent is obviously not in a child’s best interests, and courts *can* and *should* demand information about the absent parent’s fitness. However, courts, *not administrative agencies or individual social workers*, are the ultimate evaluators of a parent’s ability to care for his child, and the *ultimate decision-makers* as to whether placement with a fit parent is in the child’s best interests . . . The ICPC does not require sister state approval of parental placements.”). CP 299-300.

Mr. Watson had gathered, including that Mr. Viles had a clean criminal history check.¹³ CP 300-03.

Mrs. Wrigley did not appear for the hearing. CP 324. Her attorney, Eric Johnson, represented to the court that Mrs. Wrigley “ha[d] no strong position either way” on Afton’s placement with Mr. Viles. CP 305. He also told the court that her “separation from Mr. Viles and apparently at least some of their relationship was pretty rocky.” CP 306. Mr. Wrigley represented through his counsel, Ms. Cloutier, that he had heard from Mrs. Wrigley that Mr. Viles was violent, and that he had “grave concern regarding Afton’s well-being.” CP 304.

The court questioned Afton’s therapist, Mr. Miriello, about the challenges Afton would face transitioning to a new environment with three new siblings. CP 295-96, 307-09. It then asked Mr. Viles directly “Are you aware of all this stuff, sir?” CP 309. Mr. Viles said he was, and responded to the court’s concerns.

As far as one-on-one time and him [Afton] getting the attention he needs, the way we work in our home with three kids is there’s time that we all do things together and then there’s times that I’ll just take one of them to a football game and then the next week I’ll take another one fishing to where we get that one-on-one independent time. Working with

¹³ At this time, social workers were prohibited by federal and state law from sharing the details of a Purpose Code C background check beyond whether or not the information in that report was disqualifying. CP 210-11. In addition, DSHS social workers did not have authority to release non-conviction data. CP 210-11. Mr. Viles’s criminal history did not contain any disqualifying crimes. CP 66, 211.

siblings, it's going to be hard for all of us, but we're willing to do it. Nothing's going to be easy.

We have it set up to where we can have counseling. We have a lady, Mrs. Clayton, that retired social worker, with the parenting plan to where we would all sit down in our home once or twice a week, sit down and talk, try to come up with better ways of doing things if somebody's not working. It's going to be a big learning process for all of us.

CP 309-10. At the conclusion of the testimony, the court ordered Afton released from shelter care and placed with his father "for a visit" for 30 days, and indicated Mr. Viles could take Afton home that day. CP 203-04, 312. The court set another hearing for late February, directing that both Mr. Watson and Mr. Miriello should check in on Afton during the intervening weeks. CP 314.

Between the two court hearings, Mr. Watson checked in with Afton several times, as did Mr. Miriello. CP 237-38, 254, 260-62, 267-68. Mr. Watson learned that Afton was having some trouble at school, and sent Afton's most recent Individualized Education Program to the school. CP 237, 261. Mr. Watson also spoke directly with Afton and Mr. Viles, as well as with Beverly Clayton, the retired licensed social worker in Idaho who was working with Mr. Viles and his family on a Love and Logic course. CP 237-38, 261, 268.

In mid-February, Mrs. Wrigley contacted Mr. Watson and expressed her concerns, telling him she "did not want Afton to be placed with

Mr. Viles.” CP 238. Mrs. Wrigley was told of the upcoming February hearing, which she could attend to voice those concerns. CP 238.

On February 21, 2012, the court held a hearing on whether Afton should continue in placement in Idaho. Mr. Watson and Mr. Miriello reported on their contacts with Afton and other collaterals. CP 334. Mrs. Wrigley did not attend the hearing. CP 326. Her counsel, Mr. Johnson, indicated they were in agreement with dismissing the dependency petition, which would leave Afton in Mr. Viles’s custody. CP 286-87, 336. It was his and Mrs. Wrigley’s plan to have the dependency dismissed at this hearing, as that would benefit Mrs. Wrigley. CP 286-87. Mrs. Wrigley could also then go to family court to get visitation with Afton or try to get custody of him back from Mr. Viles. CP 280-81. The court specifically made a finding that placement with Mr. Viles was in Afton’s best interest. CP 206-08.

After the dependency was dismissed, DSHS had no more authority to contact Afton or to intervene in Afton’s life. Tragically, Mr. Viles killed Afton in April 2012.

D. Procedural History of the Case

Plaintiffs (Mrs. Wrigley, Afton’s estate, and her other children) filed this lawsuit on December 3, 2014. The Amended Complaint for Damages, filed two weeks later, pled negligent investigation, wrongful death, negligent supervision, outrage, loss of consortium, negligent

misrepresentation, survival action, and publication of private facts. CP 4-18. The amended complaint did not plead common law negligence. CP 14-17. Both the complaint and the amended complaint listed Mr. Preble's name and were filed on his firm's pleading paper. CP 4-18.

In April 2016, the State moved for partial summary judgment on all negligence claims. CP 37-63. The court granted the State's motion on August 24, 2016. CP 1595-99.

The State then filed a second partial motion for summary judgment on all remaining claims, noted for September 16, 2016. CP 1575. On September 2, 2016, a scheduling conference was held with the court to discuss the impending trial date of October 3, 2016. CP 1928. The trial date was continued due to the court's congested trial calendar. CP 1928. One week later, on September 9, 2016, Plaintiffs moved for leave to amend their complaint again to add a claim of general negligence. CP 1634-54. On September 16, 2016, the court denied Plaintiffs' motion to amend and granted the State's motion for summary judgment on all remaining claims. CP 1712-14. Plaintiffs' motion for reconsideration was denied. CP 1735-36. This appeal followed.

V. STANDARD OF REVIEW

Plaintiffs appeal the trial court's summary judgment ruling dismissing "all of Plaintiffs' negligence-based claims . . . as Defendants

[DSHS] did not owe a duty to Plaintiffs.” CP 1598. DSHS appeals the court’s summary judgment ruling that “[a]ssuming the existence of a duty owed to Plaintiffs by [DSHS] under RCW 26.44,” a genuine issue of material fact exists as to proximate cause. CP 1598. Determinations on summary judgment are reviewed *de novo*. *M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d 589, 595, 601, 70 P.3d 954 (2003). For that reason, the trial court’s “findings” in its order on summary judgment (CP 1596-98) are superfluous and legally irrelevant. *See Hill v. Cox*, 110 Wn. App. 394, 41 P.3d 495 (2002) (findings are superfluous in summary judgment orders, given the *de novo* nature of review, and will not be considered on review).

DSHS also appeals the trial court’s denial of its motion to strike as inadmissible certain opinions offered by Plaintiffs’ expert on summary judgment. This ruling is also reviewed *de novo*. *Keck v. Collins*, 184 Wn.2d 358, 368, 357 P.3d 1080, 1085 (2015) (trial court’s evidentiary rulings on admissibility are reviewed *de novo*) (citing *Folsom v. Burger King*, 135 Wn.2d 658, 662-63, 958 P.2d 301 (1998)).

However, Plaintiffs’ appeal of the trial court’s denial of their motion to amend their amended complaint is reviewed for abuse of discretion. *Wilson v. Horsley*, 137 Wn.2d 500, 505, 974 P.2d 316 (1999).

VI. ARGUMENT IN RESPONSE ON PLAINTIFFS' APPEAL

A. Plaintiffs' Only Cognizable Cause of Action, Negligent Investigation, Was Properly Dismissed as a Matter of Law Because DSHS Had No Duty to Investigate Mr. Viles

1. DSHS's duty to investigate under RCW 26.44.050 is triggered by a referral of abuse or neglect, but the only referrals DSHS received regarded the Wrigleys

The negligent investigation cause of action originates from RCW 26.44.050, which requires DSHS to investigate referrals of child abuse or neglect. *M.W.*, 149 Wn.2d at 595. "Because the cause of action of negligent investigation originates from the statute, it is necessarily limited to remedying the injuries the statute was meant to address." *M.W.*, 149 Wn.2d at 598.

Washington courts have expressly declined to expand the cause of action for negligent investigation beyond the narrow confines of RCW 26.44.050, because the statute does not contemplate other types of harms. *M.W.*, 149 Wn.2d at 599, 602 (rejecting argument that "DSHS has a general duty of care to act reasonably when investigating child abuse" and dismissing claim alleging child was injured by DSHS during examination for sexual abuse because the statute was not enacted to remedy all harms resulting from the investigation itself); *Roberson v. Perez*, 156 Wn.2d 33, 46-48, 123 P.3d 844 (2005) (rejecting request to enlarge negligent investigation cause of action to include harms caused by "constructive placement decisions").

To prevail on a claim of negligent investigation, a plaintiff must

establish that: (1) DSHS received a report of child abuse or neglect; (2) DSHS conducted an incomplete or biased investigation regarding that report; and (3) the incomplete or biased information resulted in the harmful placement of the child. *Albertson v. State*, 191 Wn. App. 284, 301-02, 361 P.3d 808 (2015) (absent a biased or incomplete investigation leading to a harmful placement decision, DSHS is not liable for alleged negligent investigation). DSHS’s duty to investigate arises when the first element is met, *i.e.*, “upon the receipt of a report concerning the possible occurrence of abuse or neglect [by] the law enforcement agency or the [DSHS].” RCW 26.44.050; *see also Albertson*, 191 Wn. App. at 301.

Here, DSHS did not have a duty to investigate Mr. Viles because DSHS never received a report of child abuse or neglect against him. In this matter, the only referrals of child abuse or neglect that DSHS received—and thus DSHS’s only duty to investigate—related to Mrs. Wrigley and her husband Jared Wrigley. CP 351-52. Based on DSHS’s investigation of those referrals, DSHS removed Afton from the Wrigley home. CP 66, 127-28. DSHS received no referrals that Anthony Viles had abused or neglected Afton, or for that matter, any other child. Thus, no duty for DSHS to investigate Mr. Viles was ever triggered.

Accordingly, Plaintiffs’ negligent investigation claim fails as a matter of law for lack of duty. This Court should affirm dismissal.

2. Mrs. Wrigley’s allegations of past violence towards herself and speculations of future harm to Afton were not referrals triggering DSHS’s duty to investigate

Plaintiffs erroneously contend that DSHS had a duty under RCW 26.44.050 to investigate Mr. Viles based on Mrs. Wrigley’s allegations of Mr. Viles’s past domestic violence towards her and her speculations of his future violence towards Afton. Brief of Appellants (App’nts Br.) 12-15. But their arguments fail on the plain language of RCW 26.44, which makes clear that “a report concerning the possible occurrence of abuse or neglect” refers to allegations regarding events a child has allegedly already experienced. Neither allegations of past harm to an adult nor speculations of future harm to a child—even where later tragically proven correct—trigger DSHS’s investigatory duty. Plaintiffs’ arguments regarding the meanings of the terms “abuse or neglect,” “possible occurrence,” and “report,” (App’nts Br. 11) do not change this result.

The fundamental objective in construing a statute is to ascertain and carry out the Legislature’s intent: if the statute’s meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). “[T]hat meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 11.

The plain language in RCW 26.44 confirms that “a report concerning the possible occurrence of abuse or neglect” in RCW 26.44.050 regards events allegedly experienced by a child in the past or in the present—not hypothetical events that a reporter speculates may occur to the child in the future.

The definitions of “abuse or neglect” establish this distinction. ““Abuse or neglect”” is defined as “sexual abuse, sexual exploitation, or injury of a *child* . . . which *causes* harm to the child . . . An abused child is a child *who has been subjected* to child abuse or neglect[.]” RCW 26.44.020(1) (emphasis added). ““Negligent treatment or maltreatment”” is defined as “an act or failure to act, or the cumulative effects of a pattern of conduct” that “constitutes a clear and *present* danger to the child’s health, welfare, or safety[.]” RCW 26.44.020(16) (emphasis added). Notably, “exposure to domestic violence . . . that is perpetrated against someone other than the child” is specifically excluded from negligent treatment or maltreatment. *Id.* These definitions refer to past or present conditions, not hypothetical future circumstances.

Further confirmation that a “report concerning the possible occurrence of abuse or neglect” regards past or present, but not speculative future, events is found in the statutes establishing when a report must be made and what information the report must provide. A report is made when

there is “reasonable cause to believe that a child *has suffered* abuse or neglect.” RCW 26.44.030(1)(a), (b), (c), and (3) (emphasis added); *see also* RCW 26.44.030(1)(d) (requiring report by “any adult who has reasonable cause to believe that a child who resides with them, *has suffered* severe abuse”). The statute’s use of the past tense “has suffered” indicates that reports must concern child “abuse or neglect” that has allegedly already occurred. Reports must contain the nature and extent of “the alleged injury or injuries;” “the alleged neglect;” and “the alleged sexual abuse,” if known. RCW 26.44.040. The description requirement also indicates the expectation that reports will reflect allegations of events that have already occurred.

By the plain language of RCW 26.44, a report that triggers DSHS’s duty to investigate under RCW 26.44.050—a “report concerning the possible occurrence of abuse or neglect”—must regard events that allegedly have already occurred, or are currently occurring, to the child. Neither Mrs. Wrigley’s allegations of Mr. Viles’s past domestic violence toward her nor her speculations of his future violence toward Afton constituted such a report. Accordingly, her allegations did not trigger a duty for DSHS to investigate Mr. Viles.

This conclusion is not altered by Plaintiffs’ arguments regarding the meanings of the terms “abuse or neglect,” “possible occurrence,” and “report.” App’nts Br. 12-15. Plaintiffs argue that the meaning of “abuse or

neglect” is broad and that “if Viles *failed to act* in some regard such that it posed a clear and present danger to A.A., that would constitute abuse or neglect even though there was no physical harm.” App’nts Br. 12 (emphasis added). They also argue that “inaction” constituting neglect may “come within the meaning of ‘possible occurrence.’” App’nts Br. 13. While accurate, these points are irrelevant because Mrs. Wrigley did not allege to DSHS that Mr. Viles had “failed to act” in some way that *currently* posed a clear and present danger to Afton—she only speculated that Mr. Viles might do so in the future. Future speculations do not constitute a report under RCW 26.44.050. Likewise, accurate but irrelevant is Plaintiffs’ argument that “she [Mrs. Wrigley] may verbally report abuse or neglect” to DSHS. App’nts Br. 13. She may. But she did not.

Finally, Plaintiffs quote *In re Welfare of Frederiksen*, 25 Wn. App. 726, 733, 610 P.2d 371 (1979), for the proposition that RCW 26.44 does not require DSHS to ““stay its hand until actual damage to the endangered child has resulted.”” App’nts Br. 14-15. *Frederiksen* is inapposite. In that case, DSHS removed an infant from her parents at birth, based on the parents’ known abuse and neglect of two older siblings, which established “the clear and present danger to [the infant] unless she was removed from her parents’ custody.” *Frederiksen*, 25 Wn. App. at 732. No such pattern of child abuse or neglect existed as to Mr. Viles.

The allegations made by Mrs. Wrigley were not made based on any knowledge of Mr. Viles's current actions or behaviors. Mrs. Wrigley's concerns were based solely on her own past history with Mr. Viles. None of Mrs. Wrigley's allegations involved Mr. Viles abusing or neglecting children. Nor is there evidence that Mrs. Wrigley had any contact with Afton or Mr. Viles after Afton's placement with Mr. Viles in January 2012. CP 880. Without knowledge of what was occurring in the Viles home, Mrs. Wrigley could not have been aware of any "possible occurrence of abuse and neglect." Indeed, DSHS never received any reports of abuse by Mr. Viles of Afton, or any other child.¹⁴ Mrs. Wrigley's allegations regarding Mr. Viles simply do not rise to the level of referral under RCW 26.44.050.

3. Elsewhere in their appeal, Plaintiffs appear to concede that DSHS's duty under RCW 26.44.050 does not extend to Mr. Viles

In support of their appeal on a different issue (the trial court's denial of their motion to add a general negligence claim to their amended complaint) Plaintiffs appear to concede that DSHS's duty to investigate under RCW 26.44.050 does not extend to Mr. Viles.

Plaintiffs argue: "with the other negligence claims dismissed on summary judgment *because of the narrow scope of DSHS' duty with respect*

¹⁴ In fact, just the opposite. The mother of Mr. Viles's youngest child indicated he was a good father. CP 250. The school also reported to Mr. Watson that Mr. Viles seemed very concerned and involved in Afton's progress at school. CP 261.

to non-subject parents under RCW 26.44.050, this [general negligence claim] would be the *only* negligence-related claim presented to the jury.” App’nts Br. 18 (emphasis added). By arguing that the claim they wish to add would be the only negligence-related claim presented to the jury, Plaintiffs tacitly acknowledge that their negligent investigation claim under RCW 26.44.050 was properly dismissed based on the narrow scope of DSHS’s duty with respect to non-subject parent Mr. Viles.

For this reason and those discussed above, Plaintiffs’ negligent investigation claim fails as a matter of law for lack of duty. This Court should affirm its dismissal.

B. The Dependency Court’s Shelter Care Order Did Not Impose a Duty on DSHS to Investigate Mr. Viles

For the first time on appeal, Plaintiffs argue that the October 2011 shelter care order created an independent duty to investigate Mr. Viles as a suitable placement for Afton. App’nts Br. 15. Plaintiffs’ failure to raise this issue to the trial court below provides an independent basis for this Court to dismiss the issue. RAP 9.12. The issue also fails on the merits.

Plaintiffs argue that DSHS placed Afton with Mr. Viles as a “relative care provider,” whereupon the shelter care order’s boilerplate language imposed an independent duty on DSHS to investigate Mr. Viles. App’nts Br. 15 (quoting CP 180, Shelter Care order’s boilerplate language:

“to locate *and investigate* an appropriate relative . . . and . . . determine their *suitability* and willingness as placement for the child.”). This argument fails for at least four reasons.

First, Mr. Viles, as Afton’s biological father, was not a “relative care provider.” Washington’s dependency statutes, RCW 13.34, plainly differentiate between parents and relatives. *See, e.g.*, RCW 13.34.060 (discussing placement of child “with a relative or other suitable person requested by the parent”); RCW 13.34.065 (court shall ask “the parents whether the department discussed with them the placement of the child with a relative”).

Plaintiffs’ contention that a letter written by social worker Mr. Watson establishes Mr. Viles as a relative care provider takes the letter out of context. App’nts Br. 15 (quoting CP 614). The genesis of the letter was the dependency court’s concern that Mr. Viles have some official documentation while traveling back to Idaho with Afton. CP 319. The hearing record shows the letter was simply intended to provide Mr. Viles with that travel documentation. CP 318-20.

Second, because Mr. Viles was Afton’s parent, DSHS had limited authority to investigate. Absent evidence that Mr. Viles presented a serious threat of substantial harm to Afton, Mr. Viles was presumptively a fit parent with a constitutional right to Afton’s custody. RCW 13.34.065(5); *In re*

Custody of ALD, 191 Wn. App. 474, 478, 363 P.3d 604, 606 (2015) (“Due process demands that a parent receive custody of a child unless the parent is unfit or custody of the parent would cause actual detriment to the child’s growth and development.”). RCW 74.15.030 makes clear that DSHS does not have unlimited authority to investigate parents, authorizing DSHS to “investigate any person, including relatives by blood or marriage *except for parents*, for character, suitability, and competence in the care and treatment of children[.]” RCW 74.15.030(3) (emphasis added). This distinction is rooted in the constitutionally protected status of the parent-child relationship. Indeed, even the dependency court’s authority is limited when it comes to keeping a child out of a parent’s custody.

Families have a “well-elaborated constitutional right to live together without governmental interference. That right is an essential liberty interest protected by the Fourteenth Amendment’s guarantee that parents and children will not be separated by the state without due process of law except in an emergency.” *Wallis v. Spencer*, 202 F.3d 1126, 1136-37 (9th Cir. 2000). Washington State law recognizes such a right: “The legislature declares that the family unit is a fundamental resource of American life which should be nurtured.” RCW 13.34.020. Thus, the law requires that the court *shall* release a child in shelter care status to his parent unless it has

reasonable cause to believe the release would “present a serious threat of substantial harm to such child[.]” RCW 13.34.065(5)(a)(ii)(B).

Third, if Mrs. Wrigley had believed that DSHS was failing to comply with the shelter care order by failing to properly investigate Mr. Viles, her opportunity to raise that issue was in the context of the dependency hearing. Not only did she fail to contest Afton’s placement with Mr. Viles, her attorney agreed to the order of dismissal finding that placement with Mr. Viles was in Afton’s best interest. CP 286-87, 336-37.

Fourth and finally, Plaintiffs contend that Mr. Viles admitted he was not an appropriate placement for Afton by agreeing to shelter care in October 2011. App’nts Br. 15 n.3. However, what Mr. Viles “admitted” was that he was not capable of caring for Afton *at that time*. CP 176, 178. Indeed, at that time Mr. Viles had never met Afton. CP 295. Once he was alerted to Afton’s situation, he started contacting Afton and making preparations for Afton’s potential placement in his home. CP 295, 302-03, 306, 309-10. Three months after agreeing to shelter care, Mr. Viles then filed his motion requesting Afton to be placed with him. CP 293-94. Mr. Viles’s position that he was not able to care for Afton in October 2011, does not preclude his position almost four months later that he felt ready to care for Afton, after talking to Afton’s social worker, therapist, and to Afton himself.

C. DSHS Did Not Have a Duty to Afton Based on Special Relationship

Also for the first time on appeal, Plaintiffs argue that DSHS owed “a duty because of special relationship,” relying on *HBH v. State*, 197 Wn. App. 77, 387 P.3d 1093 (2016), *as amended on reconsideration* (Apr. 18, 2017).¹⁵ App’nts Br. 16. Plaintiffs’ failure to raise this issue to the trial court below provides an independent basis for this Court to dismiss the issue.¹⁶ RAP 9.12. The issue also fails on the merits.

HBH held for the first time under Washington law that “DSHS has a duty of reasonable care to protect children it places in foster homes based on a special relationship” with those children. *HBH*, 197 Wn. App. at 80. By its plain terms this *HBH* duty did not apply to Afton residing with Mr. Viles because it was not a foster home situation. While the *HBH* duty would arguably apply while Afton was in foster care from October 2011 to January 2012, there is neither evidence nor allegation that Afton was injured while in foster care. Rather, Afton was released from shelter care status into the custody of his parent, Mr. Viles, on Mr. Viles’s motion. CP 203-04, 312. Given the absence of any allegations against Mr. Viles in the dependency

¹⁵ The State’s petition seeking review of the *HBH v. State* decision was filed on May 18, 2017, and is currently pending at the Washington State Supreme Court.

¹⁶ Plaintiffs also did not plead general negligence as a cause of action in their amended complaint. CP 14-17.

petition,¹⁷ and the fundamental, constitutionally protected nature of the parent-child relationship, it is difficult to see how the court could have done otherwise.

Without authority, Plaintiffs contend that “[b]ecause of the special relationship, it was incumbent upon the Department to at least advise Mr. Viles that his son’s behavioral issues were significant.” App’nts Br. 16. Not only is *HBH* inapposite to Plaintiffs’ proposition, but their unsupported implication that DSHS failed to inform Mr. Viles is belied by his testimony at the shelter care hearing. There, following extensive discussion of Afton’s behavioral issues, the court specifically asked Mr. Viles: “Are you aware of all this stuff, sir?” to which he replied, “Yes, I am, Your Honor.” CP 309.

Plaintiffs also contend that the “fact that Viles was the father rather than the foster parent is not a relevant difference because . . . [DSHS] was still retaining custody and merely delegating authority to Viles.” App’nts Br. 17. Plaintiffs ignore the constitutional magnitude of Mr. Viles’s right to parent his child.

But even if the Court were to consider the time between January 31 and February 21, 2012, when Plaintiffs argue Afton was still under DSHS supervision, Plaintiffs have presented no evidence that Afton was being

¹⁷ As his attorney explained at the hearing: “[t]here was absolutely no allegations about him [Mr. Viles] in the [dependency] petition. The only problem was that he hadn’t had contact with the child [Afton],” and he had been addressing that. CP 293-94.

abused during that time. Indeed, all evidence points to the contrary. Afton's social worker, Don Watson, called and checked on Afton's progress several times. CP 237-38. Mr. Watson also checked in with Afton's therapist, Afton's school, and Beverly Clayton, who was providing parenting support to Mr. Viles. CP 237-38. These check-ins were positive, which is what Mr. Watson reported to the trial court at the February hearing. CP 334. The trial court also heard directly from Afton's therapist, who had spoken to Afton and Mr. Viles once or twice a week and agreed that as far as he could tell Afton was feeling okay about being there and it was a positive transition. CP 334-36.

Plaintiffs have presented no evidence, aside from rank speculation, that Afton was abused between January 30, 2012, and the dismissal of the dependency on February 21, 2012. When the trial court dismissed the dependency, it severed any special relationship that could have existed between Afton and DSHS because Afton was no longer within the sphere of DSHS's influence. Thus, no special relationship existed two months later at the time of Afton's death. Because Plaintiffs' appeal on this issue fails both as untimely and on the merits, this Court should dismiss it.

D. The Trial Court Acted Within Its Discretion When It Denied Plaintiffs' Motion to Amend Their Complaint

Plaintiffs ask this Court to reverse the trial court's discretionary

decision denying their motion to add a claim for general negligence to their amended complaint. App'nts Br. 17-21. Plaintiffs sought to amend their complaint after the trial court had dismissed "all of Plaintiffs' negligence-based claims" on summary judgment; after DSHS had moved for summary judgment on all remaining claims; after the discovery cutoff had passed; and after the pretrial conference, at which the pending trial date was stricken based solely on a court scheduling conflict. CP 1575, 1598, 1938; Report of Proceedings (RP) 9/16/16 at 10, 22-23. Considering this context in light of the applicable legal standard, the trial court "den[ied] the motion to amend and f[ou]nd that justice does not require the adding of this [claim]." RP 9/16/16 at 37. The trial court acted within its discretion and this Court should affirm that decision.

1. Having analyzed the requisite factors, the trial court denied Plaintiffs permission to amend their complaint because allowing amendment would prejudice DSHS

After a responsive pleading has been filed, a party may amend its pleadings "only by leave of the court or by written consent of the adverse party." CR 15(a). "[L]eave to amend shall be freely given when justice so requires." CR 15(a). This rule serves "to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of the pleadings

except where amendment would result in prejudice to the opposing party.” *Wilson*, 137 Wn.2d at 505.

“Factors which may be considered in determining whether permitting amendment would cause prejudice include undue delay, unfair surprise, and jury confusion.” *Wilson*, 137 Wn.2d at 505-06. A trial court may also consider “whether the new claim is futile or untimely.” *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154, *amended*, 943 P.2d 1358 (1997). The “touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party.” *Wilson*, 137 Wn.2d at 505 (concluding trial court did not abuse its discretion in denying motion to amend, based on review of the reasons for its decision).

Ultimately, the decision whether to grant or deny leave to amend pleadings lies within the sound discretion of the trial court. *Bank of Am. NT & SA v. Hubert*, 153 Wn.2d 102, 122, 101 P.3d 409 (2004) (finding no abuse of discretion by trial court, which denied motion to amend based on the “late point” at which the amendment was offered, the day of the hearing on cross-motions for summary judgment). The “trial court’s action in passing on a motion for leave to amend will not be disturbed on appeal except for a manifest abuse of discretion or a failure to exercise discretion.” *Del Guzzi Const. Co., Inc. v. Global Nw., Ltd., Inc.*, 105 Wn.2d 878, 888, 719 P.2d

120 (1986) (internal quotation omitted) (finding no abuse of discretion because trial court based denial of motion to amend on prejudice).

Here, the trial court exercised its sound discretion when, considering potential prejudice to non-moving party DSHS under the requisite factors, it twice denied Plaintiffs' motion to amend. On both the motion to amend and on reconsideration the trial court considered written responsive briefing and held oral argument. CP 1634-54, 1712-36, 1926-33; RP 9/16/16, 10/7/16. The court's oral rulings demonstrate the sound basis of its decision to deny Plaintiffs' request. RP 9/16/16, 10/7/16.

The September 16, 2016, hearing on the motion to amend shows that the trial court based its decision on the requisite factors. The court considered undue delay, explaining:

This is a case that was filed in 2014. The complaint was amended in late 2014. The parties have been engaged in discovery and motion practice for quite some time, and the court heard [a] comprehensive motion for summary judgment this summer on the negligence claim under the statute that had been pled. And but for the court's schedule and another case that was older, this case would be going to trial in a few weeks.

. . . I don't find that there is a justification for why this claim could not have been brought sooner.

RP 9/16/16 at 36-37.

As for unfair surprise and futility, the court considered how two months earlier Plaintiffs' counsel had confirmed in open court that their

negligence theory was based solely on negligent investigation under RCW 26.44.050. “[O]ver the summer, it was clear that the negligence focus, the legal theory of the plaintiffs, had been throughout the entire case the statutory theory [of negligent investigation under RCW 26.44.050], and the plaintiffs confirmed that in July.” RP 9/16/16 at 37 (trial court’s statement); *see also* RP 9/16/16 at 19-20 (colloquy between court and Plaintiffs’ counsel). The court also heard argument from DSHS that the July dismissal on summary judgment of “all of Plaintiffs’ negligence-based claims” made the proposed amendment futile. RP 9/16/16 at 17; CP 1929-30.¹⁸

Ultimately, considering these factors, the trial court denied Plaintiffs leave to amend based on prejudice to DSHS, “find[ing] that justice d[id] not require the adding of this [claim]. . . . I’m finding that there is prejudice to defendant if the court allows at this late stage in the case an amendment of this sort.” RP 9/16/16 at 37; *see also* CP 1714. Because the trial court’s ruling demonstrates that its decision was a proper exercise of its discretion, there is no basis for this Court to reverse it.

The October 7, 2016, hearing on Plaintiffs’ motion for reconsideration further demonstrates that the court’s decision was a sound exercise of its discretion. The court first took the opportunity to clarify that

¹⁸ The lack of a special relationship duty between DSHS and Afton, *see* Section VI.C *supra*, further reinforces the futility of Plaintiffs’ request to amend their pleading.

its earlier denial was not based solely on undue delay, explaining:

I know the primary argument that the plaintiff made in the motion for reconsideration is that the court's decision a few weeks ago was based only on the concept of further delay. And I did look back at the arguments and my analysis, and I don't believe that my consideration was only based upon delay, but based upon the timeliness of the issue being raised, the fact that, in July, counsel for the plaintiff indicated the only theory was the statutory-based theory, the opportunity for the plaintiff to have raised it earlier and, from this court's perspective, ultimately the question of prejudice as well.

RP 10/6/16 at 11. The trial court acknowledged the case involved “seriously troubling facts” but explained “[t]hat doesn't mean that it changes the court's legal analysis in applying the court rule and considering all of those factors and ultimately making a decision in this case[.]” RP 10/6/16 at 11. Finally, for the reasons it had explained, the trial court denied the request for reconsideration. RP 10/6/16 at 11; CP 1735-36. This ruling, too, demonstrates that denial was a proper exercise of the trial court's discretion.

Because the trial court's denial of Plaintiffs' motion to amend was neither “a manifest abuse of discretion” nor “a failure to exercise discretion,” its decision should be affirmed. *Del Guzzi*, 105 Wn.2d at 888.

2. Plaintiffs cannot show that the trial court manifestly abused its discretion in denying their motion to amend

Ignoring the abuse of discretion standard applicable to the trial court's decision, Plaintiffs argue that none of the factors weigh against

granting their motion. App'nts Br. 18. They are incorrect.

First, on the factor of unfair surprise, Plaintiffs argue that “DSHS has been on notice of Plaintiffs’ negligence claims from the outset” of the case. App’nts Br. 18. This ignores what the trial court found relevant—that two months earlier during the summary judgment hearing Plaintiffs’ counsel had confirmed that their negligence theory was based solely on a negligent investigation claim under RCW 26.44.050.

THE COURT: . . . I just asked him [Plaintiffs’ counsel Mr. Moffitt] to confirm his complaint, your complaint, was solely — the negligence theory was based solely on the specific statute that the State was addressing in their motion, and he confirmed that that was the case. And then I was surprised to see a motion to add a different theory, because I thought, “Why didn’t that come up when the court was hearing about the negligence topic on summary judgment this summer?”

MR. PREBLE: It should have. It should have. That’s all I can say, and I’m regretful. . . .

RP 9/16/16 at 20. After Plaintiffs’ counsel confirmed in open court that they were not pursuing any other negligence theories, DSHS was entitled to rely on that position. Like the trial court, which was “surprised to see a motion to add a different theory [of negligence]” (RP 9/16/16 at 20), DSHS was unfairly surprised by Plaintiffs’ reversal.

Second, Plaintiffs argue there can be no jury confusion, since “with the other negligence claims dismissed on summary judgment because of the

narrow scope of DSHS' duty with respect to non-subject parents under RCW 26.44.050, this [new general negligence claim] would be the only negligence-related claim presented to the jury." App'nts Br. 18. But Plaintiffs are challenging the dismissal of their RCW 26.44.050 negligence claims on summary judgment. App'nts Br. 11-15 (arguing DSHS owed a duty under RCW 26.44.050). Unless they are conceding that issue,¹⁹ they are advocating for a remand involving multiple negligence claims.

Third, Plaintiffs argue that undue delay is an insufficient basis to deny their motion to amend, erroneously inviting this Court to conclude *de novo* that "DSHS cannot show that they will be prejudiced . . . [because] with the October 3 trial continued, DSHS will have an opportunity to bring a [third] dispositive motion related to Plaintiffs' claim for negligence." App'nts Br. 19. But the trial court already made this evaluation, recognizing that "the defense was ready to go to trial in October, and we would have gone to trial except for there was an older case that took precedence. All the other deadlines in the case have come and gone, and, basically, the case is ready for trial." RP 9/16/16 at 23. The trial court found "that there is prejudice to the defendant if the court allows at this late stage in the case an

¹⁹ As DSHS has argued above, Plaintiffs' RCW 26.44.050 negligent investigation claims are properly dismissed on summary judgment as a matter of law because there was no referral alleging possible abuse or neglect of Afton by Mr. Viles to trigger DSHS's duty. *See supra* Section VI.A.

amendment of this sort.” RP 9/16/16 at 37. And that decision was within the trial court’s discretion to make.

Plaintiffs are correct that “[u]ndue delay ‘must be accompanied by prejudice to the nonmoving party.’” App’nts Br. 18 (quoting *Evergreen Moneysource Mortg. Co. v. Shannon*, 167 Wn. App 242, 262, 274 P.3d 375 (2012)). But *Evergreen* does not support this Court concluding *de novo* that no prejudice exists here. *Evergreen* instead illustrates the deference with which appellate courts review a trial court’s assessment that prejudice exists. In *Evergreen*, the court of appeals affirmed the trial court’s denial of Evergreen’s motion to add a new claim to its complaint. The decision recites the facts before the trial court: that Evergreen sought to amend based on documents it had received nine months earlier, that its motion came after discovery cutoff but before there was a ruling on summary judgment or a trial date set, and that defendants argued they would be prejudiced by having to conduct additional discovery. *Evergreen*, 167 Wn. App at 263.

Notably, the *Evergreen* court did not then make an independent assessment of whether the defendants were prejudiced. Instead, because the trial court had heard arguments of counsel, had reviewed the submitted pleadings, and had not abused its discretion, the *Evergreen* court left the trial court’s decision undisturbed. *Id.* Here, too, the trial court, on the arguments of counsel and the pleadings, reasonably concluded that DSHS

would be prejudiced and denied Plaintiffs' motion to amend. As in *Evergreen*, this Court should not disturb that decision.

No different result is compelled by *Caruso v. Local Union No. 690 Int'l Bhd. of Teamsters*, 100 Wn.2d 343, 670 P.2d 240 (1983). In *Caruso*, the Union asked the supreme court to reverse the trial court, which had permitted Caruso to add a new claim five years and four months after he had filed his original complaint. *Id.* at 349. After reviewing the trial court's actions, the supreme court affirmed that court's decision, stating "[a] trial court's action in passing on a motion for leave to amend will not be disturbed on appeal except for a manifest abuse of discretion or a failure to exercise discretion. We find no abuse." *Id.* at 351 (internal citations omitted). Here, too, the record shows the trial court considered the proper factors, found prejudice, and acted within its discretion when it denied Plaintiffs' leave to amend.

Finally, Plaintiffs beseech this Court to reverse the trial court's decision, contending that any prejudice to the state must be balanced against "the justice of a child's death due to the possible negligence of the state." App'nts Br. 20. As the trial court correctly recognized, that is not the test: "[T]here are serious troubling facts here. That doesn't mean that it changes the court's legal analysis in applying the court rule and considering all of those factors and ultimately making a decision in this case, is amendment

of the complaint at this time proper under CR 15.” RP 10/7/16 at 11. The trial court applied the proper rule when it considered those factors and decided to deny Plaintiffs’ motion to amend. This Court should leave that decision undisturbed and affirm.

VII. ARGUMENT IN SUPPORT OF DSHS’S CROSS-APPEAL

In its cross-appeal, DSHS raises two issues. First, DSHS is entitled to summary judgment as a matter of law because Plaintiffs fail to create an issue of material fact on proximate cause. Second, the trial court abused its discretion when it failed to strike opinions offered by Plaintiffs’ standard of care expert, Ms. Ulrich, that were based on inadmissible evidence and legally inapplicable ICPC procedures.

A. Cause in Fact is Absent as a Matter of Law Because Plaintiffs Offered No Evidence That a Judge, on a More Probable Than Not Basis, Would Have Denied Mr. Viles Custody of Afton

In its motion for summary judgment, DSHS argued that Plaintiffs could not establish and had not established proximate cause. CP 1028-29. To establish cause in fact requires evidence that some act or omission of the defendant produced injury to the plaintiff in a direct, unbroken sequence under circumstances where the injury would not have occurred “but for the defendant’s act or omission.” *See 6 Washington Practice: Pattern Jury Instructions: Civil* 15.01, at 196 (6th ed. 2012); *Hartley v. State*, 103 Wn.2d 768, 778, 698 P.2d 77 (1985). Cause in fact “does not exist if the connection

between an act and the later injury is indirect and speculative.” *Estate of Bordon v. Dep’t of Corr.*, 122 Wn. App. 227, 240, 95 P.3d 764 (2004), *review denied*, 154 Wn.2d 1003 (2005) (finding reversible error in submitting speculative causation theory to the jury).²⁰

Here, proximate cause is not established because Plaintiffs failed to present any evidence that, under the legal standard applicable to denying a parent custody of a child, a judge would have denied Mr. Viles custody of Afton. Consequently, the existence of proximate cause is wholly speculative. Therefore, DSHS is entitled to summary judgment as a matter of law based upon lack of any evidence of cause in fact.

1. The constitutionally protected nature of the parent-child relationship sets the threshold for denying a parent the custody of his child

Parents have a constitutional right to the custody and familial association of their children. *In re Custody of Smith*, 137 Wn.2d 1, 13, 969 P.2d 21 (1998) (it is undisputed that parents have a fundamental right to autonomy in child-rearing decisions) (citing *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944) (“custody care and

²⁰ See also *Ma’ele v. Arrington*, 111 Wn. App. 557, 564, 45 P.3d 557 (2002) (testimony that something *could* have been a cause forces the jury to impermissibly speculate); *Miller v. Likins*, 109 Wn. App. 140, 146-47, 34 P.3d 835 (2001) (evidence that defendant’s actions *might* have caused plaintiff’s harm can only be characterized as speculation or conjecture); and, *Rasmussen v. Bendotti*, 107 Wn. App. 947, 959, 29 P.3d 56 (2001) (speculation is not sufficient to establish proximate cause).

nurture of the child reside first in the parents . . . it is in recognition of this that [our] decisions have respected the private realm of family life in which the state cannot enter”); *see also* RCW 13.32A.010 (“absent abuse or neglect, parents have the right to exercise control over their children”).

The constitutional protections afforded the parent-child relationship make this case fundamentally different from a court-ordered placement of a dependent child with a relative or foster parent. There a court has much greater discretion in determining whether a placement is in the best interests of a child. By contrast, a parent is presumed to be fit and capable of parenting. *In re Brown*, 153 Wn.2d 646, 650, 105 P.3d 991 (2005).

Because of this constitutional interest, a state can deprive a parent of custody of a child only by proving that the child is dependent, either because the parent has abused or neglected the child, or for other reasons that are inapposite to this case. *See* RCW 13.34.030(6) (defining the bases for a child being dependent). Even if a child is found to be dependent, courts are generally required to offer services and make efforts to reunite the parent with the child. *See* RCW 13.34.020 (the family unit is a fundamental resource of American life which should be nurtured); RCW 74.14C.005(1) (efforts to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system); RCW 13.32A.150(1) (a family

assessment or plan of services shall be aimed at family reunification in avoidance of out-of-home placement of a child).

During the shelter care phase—Afton’s status when the court placed him with Mr. Viles—the threshold is likewise high for a court to deny a parent custody of a child. The court “shall release a child” to the custody of the parent unless it “finds there is reasonable cause to believe” that either there is no parent able to care for the child or the release of the child to the parent would present “a serious threat of substantial harm to such child[.]” RCW 13.34.065(5)(a).²¹ Thus, to lawfully deny Mr. Viles custody of Afton, the court would have had to have found that Mr. Viles was incapable of caring for Afton or that placement with Mr. Viles posed a “serious threat of substantial harm” to Afton. *Id.*

2. Plaintiffs offered no evidence to establish that, had DSHS provided other information to the court, it would have denied Mr. Viles placement of Afton

In response to DSHS’s summary judgment motion, Plaintiffs offered no evidence to establish that any of the relevant shelter care criteria were met as between Afton and Mr. Viles. As far as was known in January 2012, Mr. Viles was capable of adequately caring for Afton. And there was no evidence that Mr. Viles had abused or neglected Afton or any other child.

²¹ There are other impediments to custody, which are not relevant in this case. *See* RCW 13.34.065(5)(a).

The evidence shows that the judge knew about the domestic violence restraining order obtained by Mrs. Wrigley (CP 90) as well as Mr. and Mrs. Wrigley's concern about Mr. Viles's "violent past" (CP 304). However, the judge was also presented with evidence that the dependency petition made no allegations of abuse or neglect against Mr. Viles, but only alleged that he and Afton currently had no relationship, which Mr. Viles had been addressing (CP 293-94); that Mrs. Wrigley "ha[d] no strong position either way" on Afton's placement with Mr. Viles (CP 305); and that Mr. Viles testified he was aware of Afton's issues and was taking steps to address those challenges (CP 309-10). On this evidence, the judge chose not to inquire further into Mr. Viles's parental fitness or ask DSHS to do so.

Plaintiffs failed to show what weight, if any, a judge would have given to the evidence they claimed DSHS should have discovered and presented to the dependency court, nor did they provide any evidence or expert testimony that a judge would have made a different decision had such information been provided. While Mr. Viles had a criminal history, his last conviction for violence dated from when he was a juvenile 11 years earlier. CP 211-18, 1024. While he also had a history of methamphetamine use, there was no evidence that he was using methamphetamine immediately prior to or during the time Afton was in his custody. Quite simply, the fact that Mr. Viles had a conviction for disturbing the peace and an ex-girlfriend

who criticized him did not establish reasonable cause to believe either that he was not capable of adequately caring for Afton or that he posed a substantial threat of serious harm to Afton—the basis on which the court could deny placement with a parent.

Indeed, Plaintiffs failed to show there existed any evidence that, on a more probable than not basis, could have established reasonable cause for a court to believe Mr. Viles was incapable of caring for Afton or that on February 21, 2012, he posed a substantial risk of serious harm to Afton. Consequently, it would require pure speculation and conjecture by the finder of fact to conclude actions or inactions of DSHS were a proximate cause of the judge's decision to place Afton in Mr. Viles's custody.

In opposition to DSHS's motion for summary judgment, the only expert witness Plaintiffs offered was Ms. Sonja Ulrich, who did not even address proximate cause. Instead she focused on ICPC procedures that were inapplicable and asserted DSHS should have gotten Mr. Viles's Idaho CPS records. CP 965-84. The ICPC procedures were inapplicable because the ICPC does not apply to a biological parent as to whom the child has not been found to be dependent. *In re D.F.-M.*, 157 Wn. App. 179; *see also* CP 299-300. As for the Idaho CPS records, Plaintiffs presented no evidence

that Mr. Viles had any relevant, disqualifying CPS history in Idaho.²²

The only authority cited by Plaintiffs below on the issue of proximate cause was *Babcock v. State*, 116 Wn.2d 596, 809 P.2d 143 (1991), which involved claims DSHS had placed children with a relative who had a criminal history that included rape and sexual assault charges. CP 1006. The *Babcock* decision is inapplicable and distinguishable. First, *Babcock* did not address proximate cause, but rather the issue of immunity from liability, as noted in *Ducote v. Dep't of Soc. & Health Servs.*, 167 Wn.2d 697, 705, 222 P.3d 785 (2009). Second, *Babcock* involved a relative placement, not refusal to place with a parent who had a right to custody of his child absent proof of the elements required under RCW 13.34.

As far as causation, the analogous context is negligent parole supervision cases, in which Washington courts have routinely granted dismissal as a matter of law when there is no evidence that the perpetrator of the harm would have been incarcerated on the date the harm occurred. Causation in such cases is determined by the actions of the judicial officer. *Bordon*, 122 Wn. App. at 240-41 (trial court erred in denying defendant's CR 50 motion when plaintiffs presented no evidence suggesting the court would have sentenced the offender to additional jail time or the jail time

²² In deposition, Mr. Viles testified that Idaho's CPS records on him related solely to child support. CP 1358-59.

would have encompassed the date of the injury); *Hungerford v. State*, 135 Wn. App. 240, 253, 139 P.3d 1131 (2006) (unsupported assertion that a court would have revoked probation had it known of the probation violation is not sufficient to defeat summary judgment).

In short, summary judgment is warranted based upon the absence of cause in fact because Plaintiffs offered absolutely no evidence to establish that a judge, on a more probable than not basis, would have found Mr. Viles was incapable of caring for Afton or that he posed a substantial risk of serious harm to Afton. *See Bordon*, 122 Wn. App. at 240; *Hungerford*, 135 Wn. App. at 253. Accordingly, because cause in fact is based upon pure conjecture and speculation, DSHS is entitled to summary judgment as a matter of law based on lack of factual causation.

3. Plaintiffs offered no evidence that DSHS’s investigation of Mrs. Wrigley’s allegations would have uncovered abuse or neglect

Cause in fact is also absent with respect to Plaintiffs’ RCW 26.44.050 negligent investigation cause of action. Even if Plaintiffs established that DSHS had a duty to investigate Mrs. Wrigley’s vague allegations, they offered no evidence that an investigation while Afton was with Mr. Viles would have revealed that any abuse or neglect was occurring. Nor could they, as none existed.

“To prevail, the claimant must prove that the allegedly faulty

investigation was the proximate cause of the harmful placement.” *Petcu v. State*, 121 Wn. App. 36, 56, 86 P.3d 1234 (2004) (citing *M.W.*, 149 Wn.2d at 597). There is no evidence in this case that if DSHS had conducted further investigation it would have found any evidence of abuse occurring between January 31, 2012, and February 21, 2012, the period during which DSHS was still involved with Afton while he resided with Mr. Viles.

Once the court placed Afton in his father’s custody, Afton’s social worker, Don Watson, called and checked on Afton’s progress several times. In addition, Mr. Watson checked in with Afton’s therapist, who was having weekly phone contact with Afton and Mr. Viles, Afton’s school, and Beverly Clayton, who was providing parenting support to Mr. Viles. All of these check-ins were positive, which is what Mr. Watson reported to the trial court on February 21, 2012. CP 333-34. Plaintiffs have provided no evidence that an investigation by DSHS between January 31 and February 21, 2012, would have revealed that Afton was being abused.

Thus, even if DSHS had investigated Mrs. Wrigley’s allegations, there is no evidence that abuse of Afton would have been discovered prior to the dismissal of the dependency action on February 21, 2012, as there is no evidence that abuse was in fact occurring. For this reason, too, DSHS is entitled to dismissal on summary judgment as a matter of law on causation.

B. The Trial Court Erred in Failing to Strike Opinions Offered by Plaintiffs' Expert, Ms. Ulrich, That Were Based on Legally Inapplicable ICPC Procedures and Inadmissible Evidence

The only expert testimony Plaintiffs offered was that of Ms. Ulrich. Her opinions did not address proximate cause, but instead focused on breach of the standard of care. CP 965-84. While DSHS's objections below were much more comprehensive, in this appeal only two specific errors are addressed. First, the trial court erred in failing to strike the opinions offered by Ms. Ulrich that related to DSHS's non-compliance with procedures set forth in the ICPC. The ICPC did not apply to Mr. Viles, a biological parent, because Afton had not been found to be dependent. *See In re D.F.-M.*, 157 Wn. App. 179 (procedures of ICPC are inapplicable to a biological parent as to whom the child has not been found to be dependent).

Second, the trial court erred in failing to strike Ms. Ulrich's opinions regarding DSHS's failure to contact Idaho to obtain any records regarding Mr. Viles. There is no statute, regulation, policy or standard that would have required DSHS to do so. And the record shows that Mr. Viles did not have any interaction with CPS in Idaho other than for child support. CP 1358-59.

Quite simply, the opinions of Ms. Ulrich about DSHS's interactions with Idaho are legally and factually incorrect and should have been stricken by the trial court. In any event, the opinions offered by Ms. Ulrich do not go to proximate cause and therefore summary judgment should be affirmed

based upon lack of cause in fact.

VIII. CONCLUSION

This Court should affirm dismissal of Plaintiffs' claims as a matter of law. DSHS did not have a duty to prevent placement of Afton with Mr. Viles. No duty was triggered under the only cognizable cause of action, RCW 26.44.050 negligent investigation, because there was no referral that Mr. Viles had engaged in abuse or neglect of Afton or any other child. Nor was a duty imposed by the shelter care order or a special relationship.

This Court should affirm the trial court's denial of Plaintiffs' motion to amend their amended complaint because the trial court, having properly considered the requisite factors, acted within its discretion when it determined that DSHS would be prejudiced if amendment were permitted.

On cross appeal, this Court should dismiss Plaintiffs' claims as a matter of law for lack of proximate cause because Plaintiffs failed to show the existence of any evidence that, if presented to the dependency judge, would have caused the judge to not place Afton in Mr. Viles's custody. DSHS's motion to strike should also be granted.

RESPECTFULLY SUBMITTED this 22nd day of May, 2017.

s/Allyson Zipp

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APPENDIX - RCWs FOR 2010

Out-of-home care—Social study required: RCW 74.13.065.

Out-of-home placement: RCW 13.32A.140 through 13.32A.190.

Procedures for families in conflict, interstate compact to apply, when: RCW 13.32A.110.

Therapeutic family home program for youth in custody under chapter 13.34
RCW: RCW 74.13.170.

Transitional living programs for youth in the process of being emancipated:
RCW 74.13.037.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship". [1977 ex.s. c 291 § 29.]

Additional notes found at www.leg.wa.gov

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter. [1998 c 314 § 1; 1990 c 284 § 31; 1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

13.34.025 Child dependency cases—Coordination of services—Remedial services. (1) The department and supervising agencies shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department and supervising agencies must:

(a) Coordinate and integrate services to children and families, using service plans and activities that address the children's and families' multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;

(b) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and

(c) Access training for department and supervising agency staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

(2) The department shall coordinate within the administrations of the department, and with contracted service providers including supervising agencies, to ensure that parents in dependency proceedings under this chapter receive priority access to remedial services recommended by the department or supervising agency in its social study or ordered by the court for the purpose of correcting any parental deficiencies identified in the dependency proceeding that are capable of

(2010 Ed.)

being corrected in the foreseeable future. Services may also be provided to caregivers other than the parents as identified in RCW 13.34.138.

(a) For purposes of this chapter, remedial services are those services defined in the federal adoption and safe families act as time-limited family reunification services. Remedial services include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.

(b) The department shall provide funds for remedial services if the parent is unable to pay to the extent funding is appropriated in the operating budget or otherwise available to the department for such specific services. As a condition for receiving funded remedial services, the court may inquire into the parent's ability to pay for all or part of such services or may require that the parent make appropriate applications for funding to alternative funding sources for such services.

(c) If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department or supervising agency shall promptly notify the court that the parent is unable to engage in the treatment due to the inability to access such services.

(d) This section does not create an entitlement to services and does not create judicial authority to order the provision of services except for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding under this chapter. [2009 c 520 § 20; 2007 c 410 § 2; 2002 c 52 § 2; 2001 c 256 § 2.]

Short title—2007 c 410: See note following RCW 13.34.138.

Intent—2002 c 52: "It is the intent of the legislature to recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention." [2002 c 52 § 1.]

Finding—2001 c 256: "The department of social and health services serves parents and children with multiple needs, which cannot be resolved in isolation. Further, the complexity of service delivery systems is a barrier for families in crisis when a child is removed or a parent is removed from the home. The department must undertake efforts to streamline the delivery of services." [2001 c 256 § 1.]

13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

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

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and

continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

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

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

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

(a) Has been abandoned;

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

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

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

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

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

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

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

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

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

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

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

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

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

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

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

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

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

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

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

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

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

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emo-

tional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

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

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6. Prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Reviser's note: This section was amended by 2010 c 94 § 6, 2010 c 272 § 10, and by 2010 1st sp.s. c 8 § 13, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution. (1) The administrative office of the courts shall develop standard court forms and format rules for mandatory use by parties in dependency matters commenced under this chapter or chapter 26.44 RCW. Forms shall be developed not later than November 1, 2009, and the mandatory use requirement shall be effective January 1, 2010. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) According to rules established by the administrative office of the courts, a party may delete unnecessary portions of the forms and may supplement the mandatory forms with additional material.

(3) Failure by a party to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. The court may, however, require the party to submit a corrected pleading and may

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impose terms payable to the opposing party or payable to the court, or both.

(4) The administrative office of the courts shall distribute a master copy of the mandatory forms to all county court clerks. Upon request, the administrative office of the courts and county clerks must distribute the forms to the public and may charge for the cost of production and distribution of the forms. Private vendors also may distribute the forms. Distribution of forms may be in printed or electronic form. [2009 c 491 § 6.]

13.34.040 Petition to court to deal with dependent child—Application of Indian child welfare act. (1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

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

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied. [2004 c 64 § 3; 2000 c 122 § 2; 1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Additional notes found at www.leg.wa.gov

13.34.050 Court order to take child into custody, when—Hearing. (1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody; (b) an affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child's health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, sexual exploitation as defined in RCW 26.44.020, and a parent's failure to perform basic parental functions, obligations, and duties as the result of substance abuse; and (c) the court finds reasonable grounds to believe the child is dependent and that the child's health,

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present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used. [2009 c 477 § 2. Prior: 2007 c 413 § 4; 2007 c 409 § 5; 2004 c 147 § 2; 2001 c 332 § 2; 2000 c 122 § 5.]

Findings—Intent—2009 c 477: "The legislature finds that when children have been found dependent and placed in out-of-home care, the likelihood of reunification with their parents diminishes significantly after fifteen months. The legislature also finds that early and consistent parental engagement in services and participation in appropriate parent-child contact and visitation increases the likelihood of successful reunifications. The legislature intends to promote greater awareness among parents in dependency cases of the importance of active participation in services, visitation, and case planning for the child, and the risks created by failure to participate in their child's case over the long term." [2009 c 477 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—2004 c 147: See note following RCW 13.34.067.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 397). (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

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

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

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

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

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

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

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

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

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights

required under (a) of this subsection and make the finding required under subsection (4) of this section.

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

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

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

(c) What efforts have been made to place the child with a relative;

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

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

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

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

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

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

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

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

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

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

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

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

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

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

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

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

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

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

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

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

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

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

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

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

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

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

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

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 477). (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

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

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

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

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

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

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

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

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

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

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

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

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

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

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

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

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

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

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

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

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

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

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

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

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

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

- (i) Care for the child and be able to meet any special needs of the child;
- (ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and
- (iii) Cooperate with the department in providing necessary background checks and home studies.

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

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

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

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

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

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

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

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

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

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

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

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 477 § 3; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 491). (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

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

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

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

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

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

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

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

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

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

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

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

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

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

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

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

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

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

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

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

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

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

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

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

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

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

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

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

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1).

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

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

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

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

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

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

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

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

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

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

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 491 § 1; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

13.34.065 Shelter care—Hearing—Recommendation as to further need—Case management by supervising agency, when appropriate—Release (as amended by 2009 c 520).

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

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

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

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

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

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

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

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

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

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

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

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW

13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order ~~((the supervising agency or))~~ the department ~~((of social and health services))~~ to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

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

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

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

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

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

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

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

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

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

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

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

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

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

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

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

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

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

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

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

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

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or

court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

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

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

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

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

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

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

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

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

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 520 § 22; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Reviser's note: RCW 13.34.065 was amended four times during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—2007 c 413: See note following RCW 13.34.215.

13.34.067 Shelter care—Case conference—Service agreement. (1)(a) Following shelter care and no later than thirty days prior to fact-finding, the department or supervising agency shall convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department or supervising agency and the parent regarding voluntary services for the parent.

(b) The case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the parties. Once the shelter care order is entered, the department or supervising agency is not required to provide additional notice of the case conference to any participants in the case conference.

(c) The written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific services to be provided to the parent.

(d) The case conference agreement must be agreed to and signed by the parties. The court shall not consider the

ceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2005 c 282 § 26; 2000 c 124 § 3; 1997 c 41 § 6; 1996 c 249 § 17.]

Intent—1996 c 249: See note following RCW 2.56.030.

13.34.105 Guardian ad litem—Duties—Immunity—Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

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

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

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

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

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

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

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

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

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or

guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

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

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100. [2010 c 180 § 3; 2008 c 267 § 13; 2000 c 124 § 4; 1999 c 390 § 2; 1993 c 241 § 3.]

Findings—2010 c 180: See note following RCW 13.34.100.

Additional notes found at www.leg.wa.gov

13.34.107 Guardian ad litem—Ex parte communications—Removal. A guardian ad litem or court-appointed special advocate shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem or court-appointed special advocate who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case. [2000 c 124 § 11.]

13.34.108 Guardian ad litem—Fees. The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule. [2000 c 124 § 14.]

13.34.110 Hearings—Fact-finding and disposition—Time and place, notice. (1) The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, or legal custodian of the child shall have all of the rights provided in RCW 13.34.090(1). The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.

(2) The court in a fact-finding hearing may consider the history of past involvement of child protective services or law enforcement agencies with the family for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child on the part of the child's parent, guardian, or legal custodian, or for the purpose of establishing that reasonable efforts have been made by the department to prevent or eliminate the need for removal of the child from the child's home. No report of

child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes.

(3)(a) The parent, guardian, or legal custodian of the child may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030. The parent, guardian, or legal custodian may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent, guardian, or legal custodian and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney, guardian ad litem, or court-appointed special advocate for the child, if any. If the department of social and health services is not the petitioner and is required by the order to supervise the placement of the child or provide services to any party, the department must also agree to and sign the order.

(b) Entry of any stipulated or agreed order of dependency or disposition is subject to approval by the court. The court shall receive and review a social study before entering a stipulated or agreed order and shall consider whether the order is consistent with the allegations of the dependency petition and the problems that necessitated the child's placement in out-of-home care. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence.

(c) Prior to the entry of any stipulated or agreed order of dependency, the parent, guardian, or legal custodian of the child and his or her attorney must appear before the court and the court within available resources must inquire and establish on the record that:

(i) The parent, guardian, or legal custodian understands the terms of the order or orders he or she has signed, including his or her responsibility to participate in remedial services as provided in any disposition order;

(ii) The parent, guardian, or legal custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his or her relationship with the child within the time frames required by state and federal law if he or she fails to comply with the terms of the dependency or disposition orders or fails to substantially remedy the problems that necessitated the child's placement in out-of-home care;

(iii) The parent, guardian, or legal custodian understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent within the meaning of RCW 13.34.030 and shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent, guardian, or legal custodian shall not have the right in any subsequent proceeding for termination of parental rights or dependency guardianship pursuant to this chapter or nonparental custody pursuant to chapter 26.10 RCW to challenge or dispute the fact that the child was found to be dependent; and

(iv) The parent, guardian, or legal custodian knowingly and willingly stipulated and agreed to and signed the order or orders, without duress, and without misrepresentation or fraud by any other party.

If a parent, guardian, or legal custodian fails to appear before the court after stipulating or agreeing to entry of an order of dependency, the court may enter the order upon a finding that the parent, guardian, or legal custodian had actual notice of the right to appear before the court and chose not to do so. The court may require other parties to the order, including the attorney for the parent, guardian, or legal custodian, to appear and advise the court of the parent's, guardian's, or legal custodian's notice of the right to appear and understanding of the factors specified in this subsection. A parent, guardian, or legal custodian may choose to waive his or her presence at the in-court hearing for entry of the stipulated or agreed order of dependency by submitting to the court through counsel a completed stipulated or agreed dependency fact-finding/disposition statement in a form determined by the Washington state supreme court pursuant to General Rule GR 9.

(4) Immediately after the entry of the findings of fact, the court shall hold a disposition hearing, unless there is good cause for continuing the matter for up to fourteen days. If good cause is shown, the case may be continued for longer than fourteen days. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by certified mail of the time and place of any continued hearing. Unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (a) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt; (b) are known to the department as having been in contact with the family or child within the past twelve months; and (c) would be an appropriate placement for the child. Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.

The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. [2007 c 220 § 9; 2001 c 332 § 7; 2000 c 122 § 11. Prior: 1995 c 313 § 1; 1995 c 311 § 27; 1993 c 412 § 7; 1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5; prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Additional notes found at www.leg.wa.gov

13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings. (1) All hearings shall be public, and conducted at any time or place within the limits of the county, except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Findings—1997 c 132: "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process. (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

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

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

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

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

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

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employ-

ment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

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

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

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

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

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

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or

injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

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

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

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

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

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

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

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

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

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

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

(12) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

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

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

(14) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(15) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(16) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals.

The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

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

(18) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030. [2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008). Prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Effective date—2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

Expiration date—2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 417 § 2.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW 74.15.900 and 74.15.901.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

(2010 Ed.)

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

26.44.031 Records—Maintenance and disclosure—Destruction of screened-out, unfounded, or inconclusive reports—Rules—Proceedings for enforcement. (1) To protect the privacy in reporting and the maintenance of reports of nonaccidental injury, neglect, death, sexual abuse, and cruelty to children by their parents, and to safeguard against arbitrary, malicious, or erroneous information or actions, the department shall not disclose or maintain information related to reports of child abuse or neglect except as provided in this section or as otherwise required by state and federal law.

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

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

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

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

(4) An unfounded, screened-out, or inconclusive report may not be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under chapter 74.15 RCW.

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

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

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

(6) Nothing in this section shall prevent the department from retaining general, nonidentifying information which is required for state and federal reporting and management purposes. [2007 c 220 § 3; 1997 c 282 § 1.]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW 26.44.020.

26.44.032 Legal defense of public employee. In cases in which a public employee subject to RCW 26.44.030 acts in

good faith and without gross negligence in his or her reporting duty, and if the employee's judgment as to what constitutes reasonable cause to believe that a child has suffered abuse or neglect is being challenged, the public employer shall provide for the legal defense of the employee. [1999 c 176 § 31; 1988 c 87 § 1.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

26.44.035 Response to complaint by more than one agency—Procedure—Written records. (1) If the department or a law enforcement agency responds to a complaint of alleged child abuse or neglect and discovers that another agency has also responded to the complaint, the agency shall notify the other agency of their presence, and the agencies shall coordinate the investigation and keep each other apprised of progress.

(2) The department, each law enforcement agency, each county prosecuting attorney, each city attorney, and each court shall make as soon as practicable a written record and shall maintain records of all incidents of suspected child abuse reported to that person or agency.

(3) Every employee of the department who conducts an interview of any person involved in an allegation of abuse or neglect shall retain his or her original written records or notes setting forth the content of the interview unless the notes were entered into the electronic system operated by the department which is designed for storage, retrieval, and preservation of such records.

(4) Written records involving child sexual abuse shall, at a minimum, be a near verbatim record for the disclosure interview. The near verbatim record shall be produced within fifteen calendar days of the disclosure interview, unless waived by management on a case-by-case basis.

(5) Records kept under this section shall be identifiable by means of an agency code for child abuse. [1999 c 389 § 7; 1997 c 386 § 26; 1985 c 259 § 3.]

Legislative findings—1985 c 259: See note following RCW 26.44.030.

Additional notes found at www.leg.wa.gov

26.44.040 Reports—Oral, written—Contents. An immediate oral report must be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, must be followed by a report in writing. Such reports must contain the following information, if known:

- (1) The name, address, and age of the child;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and

(7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators. [1999 c 176 § 32; 1997 c 386 § 27; 1993 c 412 § 14; 1987 c 206 §

4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

26.44.050 Abuse or neglect of child—Duty of law enforcement agency or department of social and health services—Taking child into custody without court order, when. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child. [1999 c 176 § 33. Prior: 1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Additional notes found at www.leg.wa.gov

26.44.053 Guardian ad litem, appointment—Examination of person having legal custody—Hearing—Procedure. (1) In any judicial proceeding under this chapter or chapter 13.34 RCW in which it is alleged that a child has been subjected to child abuse or neglect, the court shall appoint a guardian ad litem for the child as provided in chapter 13.34 RCW. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by counsel in the proceedings.

(2) At any time prior to or during a hearing in such a case, the court may, on its own motion, or the motion of the guardian ad litem, or other parties, order the examination by a physician, psychologist, or psychiatrist, of any parent or child or other person having custody of the child at the time of the alleged child abuse or neglect, if the court finds such an examination is necessary to the proper determination of the case. The hearing may be continued pending the completion of such examination. The physician, psychologist, or psychiatrist conducting such an examination may be required to testify concerning the results of such examination and may be asked to give his or her opinion as to whether the protection of the child requires that he or she not be returned to the custody of his or her parents or other persons having custody of him or her at the time of the alleged child abuse or neglect. Persons so testifying shall be subject to cross-examination as

DECLARATION OF FILING AND SERVICE

I declare that on May 22, 2017, I electronically filed the foregoing document in the Washington Court of Appeals, Division II and served a copy of the foregoing on:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

s/Jodi Elliott

JODI ELLIOTT, Legal Assistant

WASHINGTON STATE ATTORNEY GENERAL
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