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NO. 81714-6

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SUPREME COURT OF THE STATE OF WASHINGTON

R. J.
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KENT DUCOTE,

Petitioner,

v.

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL & HEALTH SERVICES,

Respondent.

SUPPLEMENTAL BRIEF OF RESPONDENT

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ORIGINAL

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I. STATEMENT OF THE CASE¹

This case involves a family that had a history of numerous prior reports to Child Protective Services (CPS) alleging an ongoing history of domestic violence, physical abuse, emotional abuse, and exposure to domestic violence. CP at 119.² Some of these referrals came from the mother, Dixie Ducote. Yet, Mrs. Ducote indicated that she had not reported numerous instances when Kent Ducote was physically abusive to her and her children “out of concern for repercussions.” CP at 126.

This lawsuit arises from a referral on March 28, 2000, in which Brittney Maxey (1/21/86), then 14 years of age, the oldest of the three stepchildren living in the Ducote home, told a middle school educator that her stepfather, Kent Ducote, comes into the bathroom when she is using the bathroom and watches her. CP at 67 (App. A). “He makes her sit on his lap and touches her butt.” Also, that he had been abusive and was hitting her younger brother Cole. Upon investigation, Brittney confirmed her initial complaint to CPS about

¹ DSHS incorporates by reference its prior pleadings in this case and requests that this Court consider the responsive brief filed in the court of appeals, the answer to Mr. Ducote’s petition for review, and all of the documentation identified in support of those briefs, as part of the facts and argument filed in response to Mr. Ducote’s petition to this Court.

This Statement of the Case is generally based upon four attached appendices: Appendix A (Findings of Fact and Conclusions of Law in the Maxey dependency proceedings, CP at 64-77); Appendix B (Dependency Petition and Shelter Care Order for Brittney L. Maxey, CP at 117-22); Appendix C (Minute Entry / Oral Ruling, San Juan County Superior Court, 11/27/00, CP at 58-62); Appendix D (Motion, Affidavit and Order of Dismissal of Voyeurism Charge without Prejudice, 1/29/01, CP at 141-45).

² San Juan County erred in numbering the Clerk’s Papers for this case. The numbers CP 105-118 were used in numbering the Clerk’s Papers (filed on 3/26/07) and repeated in numbering the Supplemental Clerk’s Papers (filed on 4/25/07).

inappropriate touching and added that Mr. Ducote made her undress in her bedroom but would not allow her to completely close the curtains on her bedroom window, and that when she was unclothed, she saw her stepfather looking at her through the window. She also stated that he was always teasing her about her “private parts.” In addition, she stated that she had not spoken to her mother because she did not think she would believe her. Brittney stated she is not allowed to talk to anyone about what goes on in the home, and that she fears repercussions if she has to go home. She feared for her safety when her parents learned of her disclosure and was also concerned about the safety of her younger siblings. CP at 67 (App. A); CP at 117-22 (App. B); CP at 58-62 (App. C). Based on this information, the Department of Social and Health Services (DSHS) placed Brittney in an emergency shelter care and initiated dependency proceedings.³ CP at 117-22 (App. B).

The San Juan County Sheriff’s Office conducted an independent investigation of Brittney’s allegations that resulted in Mr. Ducote being charged with voyeurism. CP at 141-45 (App. D). Ultimately, after three trial continuances, the San Juan County Prosecutor’s Office dismissed this voyeurism charge without prejudice, citing the pressure and isolation Brittney had received from her family as the reason. CP at 141-45 (App. D).

³ DSHS subsequently initiated dependency proceedings for Brittney’s siblings Morgan (11/27/92) and Cole (3/18/91). The San Juan County Superior Court entered an order barring Mr. Ducote from his home pending the investigation. CP at 24-29.

Brittney never waived in expressing her dislike for her stepfather. She expressed a desire to live elsewhere, and she wanted Kent Ducote to be out of the household. As the dependency court found, “there was a lack of bonding between Brittney and Kent.” CP at 74-75 (App. A).

Following a 14-day dependency hearing, in which three of the San Juan County detectives testified as part of DSHS’s case in chief, the San Juan County Superior Court concluded:

Although DSHS established a *prima facie* case in its case in chief, the petitions for dependency has not been proven by a preponderance of the evidence, and all petitions in this matter should be dismissed.

CP at 77 (App. A); CP at 60 (App. C).

Throughout this case, Kent Ducote was not the children’s father, either biological or adoptive, nor had he become their legal custodian or guardian. He acknowledged that the children’s biological fathers paid support, albeit through garnishment by the State. CP at 112.

II. ARGUMENT SUMMARY

As a stepparent, Kent Ducote is not within the narrow, circumscribed class identified in RCW 26.44.010, and therefore does not have a cause of action for negligent investigation under RCW 26.44.050.

The determination of the dependency court that a *prima facie* case existed for the dependency proceeding initiated by DSHS should preclude

liability, just as the existence of probable cause negates a claim for malicious prosecution.

Public policy does not support the recognition of a cause of action for negligent investigation in favor of a stepfather when the complaint of sexual abuse is made directly against him by the alleged child victim. In such a situation, requiring DSHS to represent the interest of the child accuser and the accused in how it gathers and evaluates facts creates an irreconcilable conflict of interest.

III. ISSUES PRESENTED FOR REVIEW

1. Is a stepfather who chose not to adopt his stepchildren or accept the responsibilities of being a “legal custodian” or “guardian” within the particular, circumscribed class to which DSHS owes a tort duty under RCW 26.44.010 and .050?

2. Should the finding of the dependency court that DSHS established a *prima facie* case preclude liability?

3. When an unambiguous complaint of sexual abuse is made directly by the alleged child victim, is it in the child’s best interest to recognize a tort cause of action against DSHS in favor of the accused?

IV. ARGUMENT

A. Recognizing A Cause Of Action For Negligent Investigation In Favor Of A Stepparent Against DSHS Would Be Contrary To Statutory And Common Law.

1. Washington Does Not Recognize A Common Law Cause Of Action For Negligent Investigation.

Washington common law does not recognize a cause of action for negligent investigation. *M.W. v. Dep't of Soc. & Health Servs.*, 110 Wn. App. 233, 247-48, 39 P.3d 993 (2002) (Morgan J. dissenting) (*collecting cases*). *Reversed*, 149 Wn.2d 589, 70 P.3d 954 (2003). The public policy underpinning this rule is clear:

The reason courts have refused to create a cause of action for negligent investigation is that holding investigators liable for their negligent acts would impair vigorous prosecution and have a chilling effect upon law enforcement.

Dever v. Fowler, 63 Wn. App. 35, 46, 816 P.2d 1237 (1991), *review denied*, 118 Wn.2d 1028, 828 P.2d 563 (1992). *See also Pettis v. State*, 98 Wn. App. 553, 558, 990 P.2d 453 (1999) (a general claim for negligent investigation does not exist because of the chilling effect such claims would have on investigations).

2. The Implied Statutory Cause Of Action That This Court Recognized In *Tyner* Is Limited To A "Parent, Custodian, Or Guardian," And Does Not Include A Stepparent.

In *Tyner v. Dep't of Soc. & Health Servs.*, 141 Wn.2d 68, 76, 1 P.3d 1148 (2000), a majority of this Court determined that an implied

statutory cause of action for negligent investigation should be recognized in favor of a parent who is suspected of child abuse. The Court reached this conclusion by first noting that the State clearly had a statutorily mandated duty to investigate child abuse allegations brought to its attention based on RCW 26.44.050:

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.

Then, under *Bennett v. Hardy*, 113 Wn.2d 912, 919, 784 P.2d 1258 (1990), the court looked to RCW 26.44.010 to determine the scope of the duty and whether the plaintiff was within the class for whose “a special benefit that statute was enacted.” RCW 26.44.010 provides:

The Washington State Legislature finds and declares: The bond between a child and his or her *parent, custodian, or guardian* is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the *parent, custodian, or guardian*; however, instances of non-accidental injury, neglect, death, sexual abuse, and cruelty to

children *by their parents, custodian, or guardians* have occurred, and in instances where the child is deprived of his or her right to conditions of minimal nurture, health, and safety, the State is justified in emergency intervention based upon verified information; and therefore, the Washington State Legislature hereby provides for the reporting of such cases to the appropriate public authorities. (Emphasis added.)

Tyner, 141Wn.2d at 78.

Application of the *Bennett* test to Mr. Ducote's negligent investigation claim reveals that unlike David Tyner, a biological father, Mr. Ducote is not within the narrow, circumscribed class for whose especial benefit the statute was enacted. By its explicit terms, RCW 26.44.010 is focused on "The bond between a child and his or her *parent, custodian, or guardian . . .*"

RCW 26.44 and RCW 13.34 interrelate. The former sets forth the authority and obligation of DSHS to investigate child abuse, and the latter sets forth the procedures for taking steps to protect children during the course of child abuse investigations, through shelter care hearings, dependency hearings, guardianships, and potentially the termination of the parent-child relationship.

Accordingly, the most pertinent definitions for the terms "parent," "custodian," and "guardian" are found in RCW 13.04.011 and 13.34.030

"Parent" or "parents" as used in Chapter 13.34 RCW, means the biological or adoptive parents of a child . . . ;

RCW 13.04.011(5).

“Custodian” means that person who has the legal right to custody of the child.

RCW 13.04.011(6).

“Guardian” means the person or agency that (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term “guardian” shall not include a “dependency guardian” appointed pursuant to a proceeding under this chapter.

RCW 13.34.030(7). Under the plain language of these statutes, the Legislature specifically excluded stepparents.⁴

In *Tyner* this Court clearly delineated the statutorily defined, circumscribed class for whose benefit RCW 26.44.050 was enacted and to whom a duty is owed:

An implied tort remedy in favor of a *parent* is also consistent with the underlying purposes of RCW 26.44.050, thereby satisfying the third prong of the *Bennett* test. (Emphasis added.)

Tyner, 141 Wn.2d at 80

* * *

We conclude that under RCW 26.44.050, CPS owes the duty of care to a child’s *parents*, even those suspected of abusing their own children, when investigating allegations of child abuse. (Emphasis added.)

Id. at 82.

⁴ See also, RCW 13.32A, the Family Reconciliation Act, which provides the following definition: “‘Parent’ means the parent or parents who have the legal right to custody of the child. ‘Parent’ includes custodian or guardian.” RCW 13.32A.030(14).

There is no basis for implying a negligent investigation cause of action from RCW 26.44.010 and .050 to benefit Mr. Ducote. Nor is there any foundation for recognizing such a duty to stepparents at common law.

3. Under Common And Statutory Law The Rights And Obligations Of Stepparents Are Less Than Those Of Parents, Guardians, And Legal Custodians.

The statutory distinction between the rights of parents, custodians, and guardians (herein after referred to collectively as “parents”) and non-parents is replete throughout the Revised Code of Washington. Under RCW 13.34, which deals with dependency and termination of the parent child relationship, the Legislature has found that the children are best cared for by other family members only when they cannot be with their “parents.” RCW 13.34.060. When a child is taken into custody by CPS, only the “parents” are required to be given notice of their rights and the reason why the child was taken into custody. RCW 13.34.062. Only “parents” are entitled to notice and the right to attend the shelter care hearing. RCW 13.34.065. Only “parents” are required to be given notice of dependency proceedings. RCW 13.34.080⁵. The right to be represented by appointed counsel in a dependency proceeding is only provided to “parents.” RCW 13.34.090.

⁵ Indeed, Mr. Ducote contends he was brought into the dependency process involuntarily. CP at 84. The reason he was given a summons to attend the hearing was because the State was seeking a restraining order to bar him from his home pending the investigation. CP at 24-29.

The process the Legislature has delineated for participation in dependency hearings demonstrates that when it wants to include stepparents, as opposed to “parents” the Legislature does so explicitly. While only “parents” have the right to participate during a dependency hearing RCW 13.34.110(1), other relatives, including a stepparent, may be required to be given notice of the dispositional phase of the hearing. RCW 13.34.110(3)(a).

Additional statutes that provide rights and benefits for “parents,” but not non-parents, include RCW 13.34.130 that specifies in the situation of an out-of-home placement, services must be provided to the child and the child’s “parents.” The agreement of “parents” is required to establish a permanent custody order. RCW 13.34.155. Only “parents” are required to be given notice of a petition seeking to terminate a parent-child relationship. RCW 13.34.180. Under RCW 13.40, the Juvenile Justice Act, only “parents,” along with the child, can waive the privilege against self-incrimination, agree to comply with a youth court disposition, and are required to accompany the youth when appearing before youth court. RCW 13.34.600-.630. Similarly, under RCW 26.44, consistent with RCW 13.34.062, only “parents” are required to be given notice of an allegation of child abuse or neglect that has been made against them. *See* RCW 26.44.100(2).⁶ Next, RCW 74.13.350

⁶ In 2005, RCW 26.44.100(2) was amended to clarify that the notice was required to be given to the “parent, guardian, or legal custodian of a child of any allegations of child abuse or neglect made against such person . . .” and, the Legislature

specifies that if DSHS does not accept a voluntary out-of-home placement for a developmentally disabled child, then DSHS must inform the “parents” in writing of their right to a civil action under RCW 13.34.

In addition to not having the same rights as parents, guardians, or legal custodians, a stepparent does not have the same legal obligations. Mr. Ducote has not satisfied the criteria to establish a father-child relationship under the Uniform Parentage Act. By its explicit terms, RCW 26.26 governs every determination of parentage in this state and is controlling. *See* RCW 26.26.021. There are several ways under the Act to establish a father-child relationship. *See* RCW 26.26.101(2). However, Mr. Ducote meets none of those criteria. He is not a presumed father under the definition of RCW 26.26.116. The only means available to Mr. Ducote to establish a father-child relationship would have been through adoption. RCW 26.26.101(2)(d). It is undisputed that at the time of the dependency proceedings in this case he had not adopted any of his stepchildren. Notably, since Brittney was 14 years of age, her consent to adoption would have been required. RCW 26.33.160. Given the fact that she strongly disliked her stepfather and did not want to live in the same house with him, that is unlikely to have occurred. *See* n.7, *infra*.

added a provision specifying that: “Investigations of child abuse and neglect should be conducted in a manner that will not jeopardize the safety or protection of the child or the integrity of the investigation process.” Laws of 2005, Ch. 512, § 1.

Moreover, as a stepparent, Mr. Ducote's obligation to support the stepchildren terminates as a matter of law upon death, dissolution, or a legal separation. RCW 26.16.205. At common law, as noted in this Court's recent decision in *Zellmer v. Zellmer*, __ Wn.2d __, 188 P.3d 497 (2008), as a stepparent, Mr. Ducote would not be entitled to parental immunity because he was not in *loco parentis* status.⁷

Finally, this Court's decision in *In re Custody of Shields*, 157 Wn.2d 126, 127-29, 136 P.3d 117 (2006), makes it clear that the interests of a parent are superior to those of a stepparent. A biological parent can only be deprived of custody in favor of a stepparent if placing the child with the biological parent will cause actual detriment to the child. *Id.* See also RCW 26.10.030(1).

Here again, because Mr. Ducote was not the biological parent of Dixie Ducote's three children, nor had he made any effort to adopt them or become their guardian or legal custodian, he did not fall within the particular circumscribed class to which DSHS owes a duty under RCW 26.44.010 and .050. The court of appeals correctly concluded that the plain language of RCW 26.44.010 does not include stepparents, and that the omission was

⁷ As the dependency court held, Brittney and her stepfather had not bonded. In fact, she strongly disliked him and did not wish to be in the same household. CP at 74-75 (App. A). See *Harmon v. Dep't of Soc. & Health Servs.*, 134 Wn.2d 523, 951 P.2d 770 (1998) (the common law status of one standing in *loco parentis* is voluntary and temporary and may be abrogated either at the will of the person standing in *loco parentis* or by the child).

rationality based on the fact that parents (including adoptive parents), guardians, and custodians have legal obligations to children that are more enduring than the obligations of stepparents to stepchildren. *Ducote v. State*, 144 Wn. App. 531, 535-37, 186 P.3d 1081 (2008), *review granted* (Sep. 3, 2008). The decision granting summary judgment in favor of the State should be affirmed.

B. Mr. Ducote's Claim To Be A *De Facto* Parent Is Not Properly Before The Court.

In opposition to the State's Motion for Summary Judgment, Mr. Ducote did not argue *de facto* parentage. CP at 78-88. That claim was raised for the first time in his Motion for Reconsideration. CP at 100-12. The trial court denied the motion as untimely. CP 117-18. The court of appeals concluded that Mr. Ducote could have raised his *de facto* parentage argument in response to the State's Motion for Summary Judgment and the trial court did not abuse its discretion in denying the Motion for Reconsideration that was based on a new theory of the case. *Ducote*, 144 Wn. App. at 537.

Mr. Ducote did not challenge that ruling of the court of appeals in his Petition for Review. However, at the end of his Petition for Review, Mr. Ducote paradoxically states that:

Regardless whether the trial court had the discretionary ability to reconsider its decision, the court of appeals' refusal to consider whether Kent's status as

a *de facto* parent provided him standing to sue for negligent investigation was error.

Pet. for Review at 15.

This is an improper, back-door attempt to get an issue before this Court. Issues, whether primary or ancillary, must be stated in the petition or they are waived. RAP 13.4(c)(5), 13.7(b); *In re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d 1174 (2003); *State v. Buchanan*, 138 Wn.2d 186, 196, 978 P.2d 1070 (1999), *cert. denied*, 528 U.S. 1154, 120 S. Ct. 1158, 145 L. Ed. 2d 1070 (2000); *State v. Collins*, 121 Wn.2d 168, 178-79, 847 P.2d 919 (1993).

Even if Mr. Ducote had properly stated this issue in his petition, he has offered no argument as to why the trial court abused its discretion in rejecting the *de facto* parentage claim as untimely. An issue in a petition for review that is not supported by argument is waived. RAP 13.4(c)(7), (d); 10.3(a)(5); *See In re Detention of A.S.*, 138 Wn.2d 898, 922, n. 10, 982 P.2d 1156 (1999). Mr. Ducote's *de facto* parent claim is not properly before the court.

As a legal matter, in *In re Custody of Shields*, 157 Wn.2d at 127, this Court unequivocally indicated that it has not recognized "a *de facto* family" as a legal status. Furthermore, as this court is undoubtedly aware, in *In re Parentage of M.F.*, 141 Wn. App. 558, 170 P.3d 601 (2007), the court of appeals held that given the adequacy of the existing statutory framework,

which enables a stepparent to assert a right to residential time with a former stepchild, there was no common law cause of action of *de facto* parentage for a stepparent. See RCW 26.09.240, 26.10.030. Review of the *M.F.* decision has been granted and that issue of whether a stepparent has a common law cause of action for *de facto* parentage is currently pending before this Court. *In re Parentage of Frazier*, 163 Wn.2d 1052, 187 P.3d 752 (2008).

As a practical matter, even if a stepparent has a common law claim for *de facto* parentage and could satisfy all of the elements set forth in *In re the Parentage of L.B.*, 155 Wn.2d, 679, 122 P.3d 161 (2005), *de facto* parentage status should not be deemed to exist until there has been a judicial determination that it does. See *A.H. v. M.P.*, 447 Mass. 828, 857 N.E.2d 1061 (2006) (in the context of a *de facto* parent claim, the best interests standard comes into play only after a judge has determined that the elements of *de facto* parentage exists). Absent notice of a judicial determination of *de facto* parentage, DSHS would have no way of knowing to whom it owes this ethereal tort duty for which the petitioner argues⁸.

⁸ Mr. Ducote actually asserts that a tort duty should extend far beyond parents, *de facto* parents, and legal guardians, to include grandparents, sisters, brothers, stepparents, and anyone else who is in a “family unit.” See Pet. for Review at 12. Yet, no test is articulated for determining who qualifies for this amorphous “family unit” status.

C. The Dependency Court's Finding That Facts Existed To Support A *Prima Facie* Case Of Child Abuse Should Preclude Liability.

In contrast to the specific and continuous allegations of abuse made by 14-year-old Brittney Maxey in this case, *Tyner* involved DSHS's investigation of the one-time statement by a four-year-old son that "sometimes his dad 'pulls [his] penis too hard,' *Id.* and poked him in the bottom with his finger." When first questioned about alleged abuse, both of the Tyner children indicated that their father has never touched their private parts. When first interviewed by CPS, both children denied that their father had sexually abused them. The family pediatrician found no physical signs of abuse. Mr. Tyner passed a polygraph examination and CPS did not contact collateral sources including Mr. Tyner's former wife, his four grown children, the children's daycare provider, neighbors, the children's teachers, or a local registered nurse who drove the children to school on a regular basis. Most importantly, the fact that a CPS caseworker had indicated on a form that the allegations against Mr. Tyner were unfounded was not provided to the court, Mr. Tyner, or his attorney. *Tyner*, 141 Wn.2d at 72-74. Accordingly, this court concluded that DSHS could be subjected to liability for negligent initiation and continuation of dependency proceedings that caused Mr. Tyner to be unnecessarily separated from his children. *Id.* at 82.

Although the court of appeals had concluded that the court's no contact orders cut off legal causation for Mr. Tyner's separation from his children, *Tyner v. Dep't of Soc. & Health Servs*, 92 Wn. App. 504, 963 P.2d 215 (1998), this Court reversed because DSHS caseworkers controlled the information that went to the court, and in fact possessed information that was not given to the court that might have tipped the scales in favor of relaxing the no contact orders. *Tyner*, 141 Wn.2d at 84-8. In reaching its conclusion, this Court looked to its prior analysis in *Babcock v. State*, 116 Wn.2d 596, 607, 809 P.2d 143 (1991), which had ruled the decision in *Bender v. City of Seattle*, 99 Wn.2d 582, 596, 607, 664 P.2d 492 (1983), was controlling. *Tyner*, 141 Wn.2d at 86-7. *Bender* dealt with an allegation that law enforcement had not given information to the prosecutor that negated the existence of probable cause. *Bender*, 99 Wn.2d at 593. Absence of probable cause is an element in a malicious prosecution claim, whether from a civil or a criminal action. *Clark v. Baines*, 150 Wn.2d 905, 912, 84 P.3d 245 (2004).

In this case, after hearing all the facts in a 14-day dependency hearing, the San Juan County Supreme Court concluded that DSHS had established a *prima facie* case but had not proven the petitions for dependency by a preponderance of the evidence. CP at 77 (App. A); CP at 60 (App. C). Just as in a claim for malicious prosecution, in a claim of negligent initiation or continuation of a dependency proceeding, a judicial determination of the

existence of probable cause (a *prima facie* case) should negate that element of the plaintiff's case. In *Babcock*, 116 Wn.2d at 608, this Court acknowledged that if there had been a full hearing in which the caseworker did not control the flow of information to the court [a pre-placement adversarial hearing in which a predisposition study is entered into evidence], like the 14-day dependency trial that occurred in this case, the court's decision would be controlling on the issue of whether there was probable cause for DSHS's investigation.

It would be contrary to public policy to subject the state to liability for acting to protect children when probable cause exists to believe that they were abused. If probable cause exists to believe a child has been abused, as the dependency court found here, then the statutory paradigm requires that conflicting testimony and credibility issues be presented for judicial resolution. RCW 13.34.110. Encouraging anything less would not be in the best interest of protecting children from abuse⁹. See RCW 26.10.100 (court shall determine custody in accordance with the best interest of the child); RCW 26.44.100(2) (investigations of child abuse and neglect should be conducted in a manner

⁹ Although the arguments contained in § C and D of this supplemental brief were not specifically argued below, the State did argue that Mr. Ducote had failed to state a claim. In *Roberson v. Perez*, 156 Wn.2d 33, 123 P.3d 844 (2005), which specifically addressed the same issue that is before the court in this case, the scope of the tort duty under RCW 26.44.010 and .050, this court held that the party may raise failure to establish facts upon which relief can be granted for the first time in an appellate court, citing RAP 2.5(a)(2).

that will not jeopardize the safety or protection of the child or the integrity of the investigation process).

D. In Cases Where The Complaint Of Child Sexual Abuse Is Unambiguous, And Made Directly By The Alleged Child Victim, It Is Not In The Child's Best Interest To Recognize A Tort Cause Of Action Against DSHS In Favor Of The Accused.

Here again, this Court's decision in *Tyner* did not deal with a direct accusation of child abuse of 14-year-old child victim, but instead involved the extrapolation of a claim of possible abuse from statements by a four-year-old boy that his dad pulled on his penis too hard and poked him in the bottom—a statement that he only made once. In this case, 14 year old Brittney made repeated accusations of inappropriate sexual touching, voyeurism, and other abuse by her stepfather to a middle school educator, to a CPS investigator, to law enforcement, and finally to the court during the dependency hearing. CP at 67-77, 118-19, 126 (App. A & B).

In *Tyner*, this Court stated:

By implying a cause of action for negligent investigation in favor of a parent, all that is required is that the State act reasonably, not that it act in a flawless manner. There would never arise a situation in which the State owes a duty to both initiate and not initiate a dependency, only to act reasonably in its determination.

Tyner, 141 Wn2d at 81.

The State respectfully submits that this case presents exactly that situation. When the legal rights of the parents are in conflict of the rights and

safety of the child, the rights of the child should prevail. *See* RCW 13.34.020. The purpose of Washington's child abuse reporting laws, RCW 26.44, is to protect children. *State v. Warner*, 125 Wn.2d 876, 891, 889 P.2d 479 (1995).

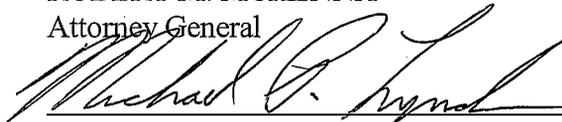
DSHS's role in responding to a complaint of child abuse is to gather facts and make recommendations. It is not DSHS's function to resolve credibility disputes between the alleged child abuse victim and the alleged abuser—that is the role of the court. RCW 13.34.110¹⁰. Yet, when faced with irreconcilable versions of the facts, as existed in this case, the statutory default goes to the protection of the child.

V. CONCLUSION

DSHS respectfully requests that this Court affirm the dismissal of Mr. Ducote's negligent investigation claim.

RESPECTFULLY SUBMITTED this 4th day of November, 2008.

ROBERT M. MCKENNA
Attorney General



MICHAEL P. LYNCH, WSBA #10913
Assistant Attorney General

CATHERINE HENDRICKS, WSBA #16311
Assistant Attorney General

Attorneys for the State of Washington
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¹⁰ *See*, Judge Hancock's 11/30/2000 Minute Entry – “As to voyeurism: certainly on its face quite plausible; State had made prima facia case. Quite understandable and thought Brittany[sic] on the face of it quite believable and only when looking at evidence as a whole is there reason for doubt.” CP 60, lines. 31-33 (App. C).

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CERTIFICATE OF SERVICE ²⁰⁰⁸ NOV -4 P 3: 22

I certify under penalty of perjury in accordance with the laws of the State of Washington, that on the undersigned date the original and one copy of the preceding Supplemental Brief was personally filed by Michael P. Lynch, Assistant Attorney General, in the Washington State Supreme Court at the following address:

Washington State Supreme Court
Temple of Justice
415 12th Avenue SW
Olympia, WA 98504

That one copy of the preceding Supplemental Brief was served by hand delivery on appellate counsel for appellant Ducote at the following address:

Catherine W. Smith
Edwards, Sieh, Smith & Goodfriend, P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101-2988

And, that one copy of the preceding Supplemental Brief was served by electronic mail on trial counsel for appellant Ducote at the following address:

Carla J. Higginson, Attorney at Law, at carlah@higginsonlaw.com.

DATED this 4th day of November, 2008, at Tumwater, WA.


Merrie Brumfield



APPENDIX A
(CP 64-77)

COUNTY CLERKS OFFICE
FILED
FEB - 5 2001
MARY JEAN CAHILL
SAN JUAN COUNTY, WASHINGTON

SUPERIOR COURT OF WASHINGTON FOR SAN JUAN COUNTY
JUVENILE COURT

In Re Dependencies of:

BRITTNEY L. MAXEY,
D.O.B.: 1-21-86

COLE MAXEY,
D.O.B.: 3-18-91

MORGAN MAXEY
D.O.B.: 11-27-92

NO. 00-7-05002-9 ✓
00-7-05003-7
00-7-05004-5

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER having come on for trial, commencing on the 17th day of October, 2000 before the undersigned Court upon three Petitions for Dependency, the Department of Social and Health Services appearing both in person through caseworker David Parks and through its counsel of record KATHERINE E. BLAINE, the Guardian ad Litem for the minor children Sarah Forster appearing both in person and by and through her counsel of record FRANK V. LASALATA, the minor child Brittney L. Maxey appearing by and through her counsel of record JOAN ELIZABETH PEDRICK, and the mother and step-father of the minor children Dixie Lee Ducote and Kent Ducote appearing both in person and by and through their counsel of record Carla J. Higginson of HIGGINSON LAW OFFICES, and the Court having heard testimony and argument of counsel and being otherwise fully informed in the premises, makes the following:

Findings of Fact and
Conclusions of Law - 1

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1 FINDINGS OF FACT

2 1. All parties hereto are residents of San Juan County or a Washington State
3 agency doing business in San Juan County, and subject to the jurisdiction of this
4 court.

5 2. Kent and Dixie Ducote were married in 1994. Dixie has three children
6 from previous relationships: Brittney, age 14, Cole, age 9, and Morgan, age 8.

7 3. The Department of Social and Health Services ("DSHS") has alleged that
8 Brittney is a dependent child under RCW 13.34.030(4)(b) and (c). DSHS has alleged
9 that Cole and Morgan are dependent children under RCW 13.34.030(4)(c). RCW
10 13.34.030(4)(b) provides that a dependent child is one who is abused or neglected as
11 defined in Chapter 26.44 RCW by a person legally responsible for the care of the
12 child. RCW 13.34.030(4)(c) provides that a dependent child is one who has no
13 parent, guardian, or custodian capable of adequately caring for the child, such that the
14 child is in circumstances which constitute a danger of substantial damage to the child's
15 psychological or physical development.

16 4. DSHS has provided services to the family off and on since 1989, primarily
17 in the form of home support services. Since their marriage, Kent and Dixie
18 experienced occasional problems in their relationship with each other and in their
19 relationships with the children. These led to various referrals and allegations:

20 (a) In March 1998, there were two referrals from DSHS, one from Dixie and
21 one from her counselor involving allegations of Kent's anger toward Dixie and the
22 children, but not necessarily at a dangerous level;

23 (b) There were allegations that Morgan was coming in to sleep with Kent in the
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27 Findings of Fact and
Conclusions of Law - 2

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1 bed of Kent and Dixie, although there were no allegations of any sexual misconduct;

2 (c) In November 1998, Dixie reported that Kent had spanked Cole with a
3 wooden spoon leaving a mark. A police report was made, and DSHS followed up
4 with further investigation and discussion with both Dixie and Kent. DSHS found that
5 Kent was genuinely interested in resolving the ongoing differences with Dixie and the
6 children;

7 (d) In August 1999, Brittney wrote a note indicating possible suicidal ideation
8 or a concern about possible harm to her by Kent;

9 (e) Sometime shortly before September 22, 1999, there was an incident in
10 which Kent barged into the bathroom while Brittney was in the bathroom. Although
11 Brittney claimed that she was sitting on the toilet at the time, the Court finds she was
12 not in fact on the toilet but was standing at the mirror "picking her zits;"

13 (f) In October 1999, there was a referral regarding an incident in which it was
14 alleged that Kent pulled Cole out of the car by his coat and scruff of the neck, and
15 shook him. DSHS investigated, but no finding of abuse was made, and there was no
16 family intervention;

17 (g) In December 1999, there were additional referrals with allegations that Cole
18 was being verbally abused by Kent and that Dixie was unable to protect the children
19 1999. There was also mention of Brittney's note, of Brittney wanting Dixie to leave
20 Kent, and of the bathroom incident;

21 (h) During about the same time, Dixie was receiving support from Anita
22 Castle, of the local domestic violence support agency;

23 (i) Some time later, Brittney reported that Cole had placed a knife to his throat
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Findings of Fact and
Conclusions of Law - 3

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1 in about February 2000. Brittney described it as a very serious incident in which Cole
2 was using a sharp knife and actually drew blood. However, Dixie disputed Brittney's
3 account, testifying that she had been present during the incident. She stated that Cole
4 had used a butter knife, did not break the skin, and that the Cole had not been
5 threatening any significant harm.

6 5. On March 28, 2000, Brittney met with middle school counselor Gail
7 Leschine, reiterating allegations of Kent striking Cole, the knife incident, and the
8 bathroom incident. Brittney also told Ms. Leschine that Kent had made her sit on his
9 lap and had touched her buttocks. Brittney expressed fear of repercussions at home
10 for revealing this information.

11 6. In connection with this referral, David Parks of DSHS interviewed Brittney,
12 and during the course of this interview, she alleged the voyeurism incident by Kent,
13 stating that she had recently seen Kent watching her through her bedroom window
14 while she disrobed to shower. Based on her allegations, Brittney was placed in
15 emergency temporary shelter care, and these dependency proceedings were
16 commenced.

17 7. At trial, Elizabeth Nyblade, Ph.D., testified as an expert regarding the
18 psychological testing she performed on both Kent and Dixie. David Parks provided
19 the initial information regarding this case to Dr. Nyblade. This skewed Dr.
20 Nyblade's interpretation of the test results.

21 8. Dr. Nyblade diagnosed Kent as having a Personality Disorder Not
22 Otherwise Specified with antisocial features under Axis II of the Diagnostic and
23 Statistical Manual, Fourth Edition (DSM-IV). It was her opinion that Kent had a 45
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27 Findings of Fact and
Conclusions of Law - 4

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1 Global Assessment of Functioning in daily functioning which indicated severe
2 difficulty in functioning, and that he had other possible psychological diagnoses or
3 problems. She recommended a full psychosexual evaluation be performed on Kent.
4 However the results of Kent's tests were essentially within normal limits and he was
5 very cooperative in the test taking. His scores on the Child Abuse Potential Inventory
6 were within the normal range, indicating no resemblance between Kent and child
7 abusers, and his validity scales were within the normal range in connection with that
8 test.

9 9. Dr. Nyblade diagnosed Dixie as having Major Affective Disorder,
10 recurrent; major depression, on Axis I of the DSM with four other possible acute
11 mental illness diagnoses. Dr. Nyblade diagnosed Borderline Personality Disorder on
12 Axis II , and it was her opinion that Dixie had a 35 Global Assessment of
13 Functioning. Dr. Nyblade also was concerned that Dixie did not feel adequate to the
14 burden of parenting; that her parenting models growing up were poor, and that she is
15 impaired in her perception of reality, and that she is too submissive to Kent, along
16 with other concerns. Dr. Nyblade did state her opinion that Dixie does have the
17 ability to parent her children, although she has problems doing so.

18 10. Dr. David Eden testified as an expert on behalf of Kent and Dixie, after he
19 had reviewed the same raw test data analyzed by Dr. Nyblade. He testified that there
20 was nothing in the test data to conclude that Kent and Dixie had lied, and that the
21 information that Dr. Nyblade had obtained from Mr. Parks beforehand had likely
22 made her biased against the Ducotes.

23 11. Dr. Eden took issue with Dr. Nyblade's Axis II diagnosis for Kent, and
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27 Findings of Fact and
Conclusions of Law - 5

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1 did not see anything in the data that would call for a psychosexual evaluation of Kent.
2 Dr. Eden pointed out some of the obvious innocent explanations for some of the
3 concerns about Kent's allegedly inappropriate sexual behavior, and Dr. Eden
4 diagnosed a generalized anxiety disorder for Kent and testified that it was
5 understandable given what he has been through over the last few months. It was Dr.
6 Eden's opinion that Kent's Global Assessment for Functioning was more likely in the
7 61 to 70 range and that the Global Assessment for Functioning for Dixie was more
8 likely in the 51 to 60 range. The Court finds Dr. Eden's opinions to be credible in
9 light of the evidence in this case as a whole.

10 12. Dr. Eden testified that Dixie was suffering from depression but not that
11 she was suffering from some Major Affective Disorder under Axis I. It was his
12 opinion that there was no dissociative or thought disorder on the part of Dixie. He
13 testified there was perhaps a histrionic disorder under Axis II for Dixie. Those
14 diagnoses are not as serious as the diagnoses of Dr. Nyblade.

15 13. Dr. Eden further testified that assuming Kent was in counseling (as Kent
16 testified he was), that there was no history of violence or arrests (and there was not,
17 other than the referrals that implicated him in some allegedly inappropriate physical
18 discipline of the children), and assuming that neither Kent nor Dixie had a thought
19 disorder that required medication (which they do not) and that neither was abusing
20 alcohol or drugs (which they are not), that there was no likelihood of abuse or neglect
21 in the household with regard to the children.

22 14. Brittney has presented allegations of a series of circumstances that appear
23 to have led her to the conclusion that Kent was viewing her through her bedroom
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26 Findings of Fact and
27 Conclusions of Law - 6

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1 window in a voyeuristic way. These allegations included that Kent required her to
2 undress in her bedroom before showering, that he required her to shower at night, and
3 that he required her to keep the curtain on her window above the bottom of the
4 window, leaving a few inches of glass exposed. It was alleged that there was a
5 discernible path around the house that ended at about the location of her window.
6 Brittney testified about an incident on April 3, 2000, in which Kent had told her to
7 take a shower, and that while she undressed in her room, she saw Kent's face outside
8 the window. She further testified that it was dark outside at the time, that the light
9 was on in the room, that she left the bedroom wearing a towel or blanket around her
10 and that she was scared and confused.

11 15. With regard to Brittney's claim that Kent was watching her through her
12 bedroom window, Brittney alleged that the curtain on her window was required to be
13 left up, and that she was required to take her showers at night. She stated that on
14 April 3, 2000, Kent told to her to take a shower, and that as she undressed, she saw
15 Kent's face in her window. However, there is also a conflict in the evidence as to
16 whether Brittney was undressed and standing at the mirror, tending to her acne, or
17 whether she was disrobing.

18 16. The curtain was put up five to six months prior to the date of Brittney's
19 allegations. She testified that she had originally put up the curtain and that Kent had
20 changed it so the glass was exposed. She said that clear plastic had been put on the
21 window by Kent to keep the moisture off, but that there was a rip in the plastic and
22 she had no problem seeing out of the window. She stated that she was certain that she
23 saw Kent's face in the window.

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27 Findings of Fact and
Conclusions of Law - 7

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1 17. Brittney testified that the day after she thought she saw Kent's face in the
2 window, he told her to take a shower or go to her room, and that he was going out to
3 talk to Eleanor, who was living in a trailer on the Ducote property. Brittney said she
4 was suspicious and watched out the laundry room window, but she did not see Kent
5 go to the trailer. She went to her room, got her clothes and changed in the bathroom.

6 18. There were incidents which were not voyeuristic or sexual in nature:

- 7 (a) Kent entered the bathroom while Brittney occupied it;
- 8 (b) On the evening of the bathroom incident, Kent gave Brittney what she
9 characterized as a "bear hug." She told him to get off and called him by his first
10 name, which he did not like. He became angry, and according to Brittney, threatened
11 to kill her.

12 (c) Kent made various crude remarks to Brittney in the presence of Brittney
13 and her friends Paula and Beth Leggett;

14 (d) Brittney stated that she found Playboy magazines under Kent and Dixie's
15 mattress when she was required to flip the mattress.

16 19. Other evidence reveals problems with the voyeurism theory and the theory
17 that Kent was grooming Brittney, and perhaps Morgan, for sexual abuse:

18 (a) Brittney is nearsighted, and she was not wearing her glasses at the time she
19 claimed to have seen Kent at her window;

20 (b) Brittney was jealous of the relationship between Kent and Morgan, and
21 thought it was unfair that Morgan could do certain things she could not, and that this
22 was a way of getting back at Kent and Dixie;

23 (c) In spite of the evidence presented by Kent and Dixie that a number of items
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27 Findings of Fact and
Conclusions of Law - 8

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1 had been scorched from the heater in her room (a stuffed bear, dolls clothes, and
2 pillow) to indicate the fire hazard of the curtain being close to the heater, Brittney
3 denied that the doll was scorched and that the other items were hers. The Court finds
4 that Brittney was incorrect in her testimony.

5 (d) Brittney had problems living in the household: she resented picking up
6 Morgan from day care as she was required to do from time to time; she did not get
7 along with Kent and wanted Dixie to leave Kent; she believed Kent and Dixie were
8 too strict in their punishments and chores they required of her. She told her friends
9 that she did want to leave the house and wanted to live with them (the friends). She
10 also talked about the possibility of running away.

11 (e) The search warrant that the police obtained to search the Ducote household
12 failed to produce anything to indicate that Kent had an interest in child pornography or
13 that there were any lewd or sexually inappropriate pictures in the residence. The only
14 items discovered were a few Playboy magazines, which in and of themselves are not
15 evidence of anything.

16 (f) Evidence from the photographs, among other testimony, of the pinholes
17 along side the window where the curtain was tacked did not indicate that the curtain
18 was tacked in any particular position, but that it had been tacked a number of times
19 over the course of months. This undermines the idea that Kent had a rule that the
20 curtain had to be tacked at a certain level so that some of the window was exposed.

21 (h) Brittney alleged that she was afraid of Kent because of statements made by
22 him that indicated he was a dangerous person. There is no credible evidence to
23 support any such allegation.

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Findings of Fact and
Conclusions of Law - 9

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1 20. The evidence as a whole does not support Brittney's allegation that Kent
2 had masturbated in her presence. Brittney testified about an incident where she came
3 into the room where Kent was watching television, and made a statement to him to
4 stop or other words to that effect. She was accompanied at the time by her friends
5 Paula and Beth Leggett, who testified that they did not see anything being done by
6 Kent, and that they thought Brittney was joking. Brittney also testified in her
7 deposition, which was reiterated at trial, that Kent was watching the Discovery or
8 History Channel at the time, which is an unlikely scenario for masturbation.

9 21. The evidence as a whole does not support Brittney's allegations of Kent's
10 voyeurism:

11 (a) Brad Welch provided significant and un rebutted testimony relating to the
12 voyeurism allegation. He testified about demonstrations he had conducted to
13 determine the visibility of a person outside Brittney's window. With no curtain on the
14 window, at a time when it was dark outside and light inside the room, a person
15 standing inside the room, particularly at a point where Brittney was likely to be
16 standing, could not see a person standing outside three feet from the window. He also
17 testified that under the same circumstances, with the curtain at a level that exposed the
18 glass as alleged by Brittney, a person standing outside as close as possible to the
19 window could not be seen. This significantly undermines the idea that Brittney would
20 have been able to see Kent's face on the evening in question.

21 (b) Kent testified that he stored construction materials from time to time
22 behind the house, in the vicinity of the children's bedroom windows. This is
23 supported by photographs introduced into evidence showing construction materials in
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Findings of Fact and
Conclusions of Law - 10

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1 that vicinity. The path to the back of the house is not a well-worn path and is
2 consistent with the idea that a person would have gone back there to place materials.

3 (c) Brittney's allegation that Kent imposed a rule that required her to dress and
4 undress in her bedroom is not supported by the evidence. Brittney acknowledged that
5 she did tend to leave her clothes in the bathroom. Both Kent and Dixie testified that
6 there had been a statement to the children not to leave the clothes in the bathroom.
7 Dixie testified that she had been the one to impose the rule about dressing in
8 bedrooms so that clothes did not get left in the bathroom. Dixie also testified as to her
9 awareness of the need to keep the curtain off the heater, but that there was no rule that
10 the curtain had to be kept a certain distance above the bottom of the window such that
11 glass would be exposed.

12 22. Dixie testified that Brittney had given away or thrown away many of her
13 clothes shortly before she was removed from the family home; that she had taken
14 down posters, given away some of her memorabilia, and had generally left her room
15 in a stark condition just before her removal. Dixie testified that this was very
16 unusual. This was an indication that Brittney may have been planning to leave the
17 home under circumstances that would cause authorities to believe that she needed to
18 be taken out of the home.

19 23. Adolescent girls such as Brittney are generally extremely concerned about
20 their personal appearance and privacy, sometimes becoming hypersensitive about it.
21 There is evidence that such is the situation with Brittney.

22 24. Brittney had a motive to prevaricate, or at least read things into various
23 situations that were not warranted. She did not like Kent, and she did not like
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27 Findings of Fact and
Conclusions of Law - 11

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1 living with Kent and Dixie. There was a lack of bonding between Brittney and Kent.
2 She thought Kent and Dixie were unfair and overly strict with their discipline and
3 rules for behavior. She had expressed her desire to live elsewhere, and she wanted
4 Kent to be out of the household. The Court recognizes that adolescent girls are
5 capable of prevaricating and devising schemes to get what they want.

6 25. The other allegations against Kent with regard to Brittney have equally
7 persuasive explanations that Kent was not acting in a sexually inappropriate way
8 towards her:

9 (a) With regard to Kent placing his hand on Brittney's buttocks while she was
10 sitting on his lap, Kent and Dixie testified that it was rare that Brittney would do that.
11 This may have been Kent's crude attempt to develop rapport with Brittney, especially
12 after having gotten angry with her. The hand on or near her buttocks could certainly
13 have been an innocent part of holding her up on his lap. Photographs were introduced
14 into evidence showing pictures of Kent with the children on his lap, as well as a
15 photograph of Brittney sitting on the lap of Kent's brother, Keith.

16 (b) Dixie testified that following the bathroom incident, Brittney had disclosed
17 to her that she wasn't really on the toilet at the time it occurred. Brittney testified that
18 Kent was angry when he came into the bathroom, and Kent's testimony agreed,
19 indicating that he and the others were waiting to use the bathroom, and that Brittney
20 tended to dominate the bathroom. The anger in this context is not consistent with the
21 grooming of a young girl for sexual abuse. Brittney also testified that Kent had asked
22 her during the incident why she always looked into the mirror, which would be more
23 consistent with the idea that Brittney was not on the toilet when Kent came in. It is
24

25

26

27

Findings of Fact and
Conclusions of Law - 12

HIGGINSON LAW OFFICES
A Professional Services Corporation
175 SECOND STREET NORTH
FRIDAY HARBOR, WASHINGTON 98250
TELEPHONE: (360) 378-2185
FACSIMILE: (360) 378-3935

Exhibit
F

000075

1 unlikely that Kent went into the bathroom for reasons of sexual gratification.

2 (c) With regard to the crude remarks made by Kent, the evidence as a whole
3 indicates that Brittney and her friends were discussing another girl's sexual
4 orientation, and that Kent joined in the conversation. Kent acknowledged in his
5 testimony that this was inappropriate, but that he did so in an effort to agree with
6 Brittney about her remarks about another. The Court finds such remarks were not
7 part of an ongoing pattern of grooming Brittney or other adolescent girls by Kent.

8 (d) Any crude remarks that Kent may have made about Brittney's body, as
9 alleged, would have been inappropriate in the context of a developing adolescent girl,
10 but were not done for the purpose of present or future sexual gratification.

11 (e) With regard to the bear hug incident, there is no evidence that indicates
12 that it was for the purpose of grooming her for sexual abuse.

13 (f) After the bear hug, if Kent threatened to kill Brittney as she alleged, such a
14 statement would not be consistent with sexual grooming behavior.

15 (g) The evidence as a whole does not show or establish that Kent was actually
16 masturbating at any of the times as alleged by Brittney. If Kent was in fact moving
17 his hands in the vicinity of his abdomen, it may have been to alleviate pain he was
18 experiencing as referred to in the medical reports regarding Kent.

19 (h) There is no evidence whatsoever that any sexual improprieties were
20 committed by Kent upon Morgan as a result of her sleeping in the bed with him.
21 Dixie had expressed her concern and reported it to the authorities. This indicates her
22 concern and shows that she is capable of making reports when she thinks it is in the
23 best interests of her children. It does not, however, show any inappropriate or illicit
24

25
26
27 Findings of Fact and
Conclusions of Law - 13

HIGGINSON LAW OFFICES
A Professional Services Corporation
175 SECOND STREET NORTH
FRIDAY HARBOR, WASHINGTON 98250
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FACSIMILE: (360) 378-3935

Exhibit
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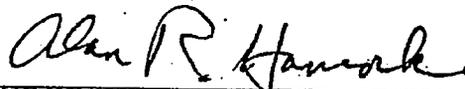
1 sexual desire for Morgan by Kent, and these were merely innocent incidents when
2 looked at as a whole.

3 CONCLUSIONS OF LAW

4 Based on the foregoing, the court makes the following conclusions of law:

- 5 1. Kent Ducote has not engaged in any act of voyeurism with regard to
6 Brittney Maxey;
- 7 2. Neither Brittney Maxey, Cole Maxey and Morgan Maxey are an abused or
8 neglected child as that term is defined by the law;
- 9 3. Dixie Ducote is capable of adequately caring for her three children, and the
10 Court cannot find that the children are in circumstances which constitute a danger of
11 substantial damage to their psychological or physical development;
- 12 4. Although DSHS established a prima facie case in its case in chief, the
13 petitions for dependency have not been proven by a preponderance of the evidence,
14 and all petitions in this matter should be dismissed.

15 DONE IN OPEN COURT this 25th day of January, 2001.

16
17 
18 ALAN R. HANCOCK
19 JUDGE

20 Presented by:

21 HIGGINSON LAW OFFICES

22 
23 Carla J. Higginson
24 WSBA #10653
25 Attorney for Kent Ducote and
26 Dixie Lee Ducote

27 Findings of Fact and
Conclusions of Law - 14

HIGGINSON LAW OFFICES
A Professional Services Corporation
175 SECOND STREET NORTH
FRIDAY HARBOR, WASHINGTON 98250
TELEPHONE: (360) 378-2183
FACSIMILE: (360) 378-3935

Exhibit
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APPENDIX B
(CP 117-122)

COUNTY CLERKS OFFICE
FILED
APR -7 2000
MARY JEAN CAHILL
SAN JUAN COUNTY, WASHINGTON

SUPERIOR COURT OF WASHINGTON
COUNTY OF SAN JUAN
JUVENILE COURT

Dependency of
BRITTNEY L. MAXEY

NO 00 7 05002 9

DEPENDENCY PETITION
(DPP)

DOB 1-21-86

I. BASIS

I represent to the Court the following

1.1 Information about the child

Name: Brittney L. Maxey
Date of Birth 1-21-86 Age 14 yrs Sex Female
Address 270 Dougherty
Friday Harbor, WA 98250

1.2 The child

[X] is not an Indian child as defined in 25 U S C 1901 et seq

1.3 Information about the parent(s), guardian or custodian

(a) Name of father unknown
Address

Name of mother Dixie Ducote
Address 270 Dougherty
Friday Harbor, WA 98250
(360) 378-8642

(c) Marital status of parents.

(d) Name of legal guardian/custodian Dixie Ducote
Address 270 Dougherty
Friday Harbor, WA 2825

EXHIBIT NO. 1
5/26/2000

1 1 4 The child is dependent according to RCW 13 34.030(2) in that

- 2 (a) [] the child has been abandoned, that is, the child's parent, guardian or
3 other custodian has displayed/shown, either by statement or conduct, an
4 intention to forego, for an extended period, all parental rights or
5 responsibilities despite an ability to exercise such,
6 (b) [X] the child is abused or neglected as defined in Chapter 26 44 RCW,
7 (c) [X] the child has no parent, guardian or custodian capable of adequately
8 caring for the child, such that the child is in circumstances which
9 constitute a danger of substantial damage to the child's psychological or
10 physical development, or

11 1 5 The allegation of dependency is based on the following facts

- 12 a The child's step-father, Kent Ducote, resides in the family home
13
14 b On 4-6-00, the child states to social worker that Kent Ducote demands that she sit
15 on his lap and that he puts his hand on her "butt" She states that it makes her feel
16 like a "slut" Recently, Kent Ducote made her undress in her bedroom before
17 showering, claiming that she always leaves her clothes in the bathroom He refuses
18 to allow her to completely close the curtains on her bedroom window because it is
19 situated over a heater and the curtains could catch fire She states that on at least
20 one incident, when she was unclothed, she saw Kent Ducote outside looking at her
21 through her window and that he saw her without her clothing She states that he is
22 always teasing her about her "private parts"
23
24 c Also on 4-6-00, the child states that she has not spoken to her mother about this
25 because she doesn't think she will believe her Both parents have told Brittney that
26 she may not talk to anyone about what goes on in the home and she fears
repercussions if she has to go home. She is uncomfortable and frightened by Kent
Ducote's sexual attention to her, does not feel safe in the home because her mother
cannot protect her and she fears for her safety when the parents learn of this
disclosure. She is also concerned about the safety of younger siblings
d On 3-28-00, the child states to educator that Kent Ducote comes into the bathroom
when she is using the bathroom and watches her He will not leave the room when
she asks He makes her sit on his lap and touches her "butt" The child is also
concerned about younger brother, Cole Recently, Kent Ducote was hitting Cole
and treating him badly As a result, Cole cut his leg and nicked his neck He asked

DEPENDENCY PETITION (DPP)

WPF JU 03 0100 (2/97)

JuCR 3 3, RCW 13 34 030(2), 040 - Page 2 of 2

000118

1 Brittny to stop and stated that he wanted to die. She states Kent Ducote slaps
2 them

3 e The family has numerous prior reports to child protective services alleging an
4 ongoing history of domestic violence, physical abuse, emotional abuse, and
5 exposure to domestic violence

6 The following services have been provided

7 None, due to the emergent nature of situation

8
9 **II. RELIEF REQUESTED**

10 I request that the Court inquire into this matter and make such order as the Court finds to be
11 in the best interest of the child and justice

12 Dated: 4-7-00

Katherine E Blaine
13 Katherine E Blaine
14 Special Deputy Prosecutor for DSHS
15 P O Box 399
16 Eastsound, WA 98245
17 (360) 376-3299
18 WSBA #20187

19 **III. CERTIFICATION**

20 I certify under penalty of perjury under the laws of the State of Washington that the foregoing
21 representations are true and correct

22 Signed 4-7-00 at Friday Harbor Washington on
23 (Place) (Date)

24 David Parks
25 David Parks
26 Social Worker, DCFS/DSHS

REVIEWED BY Thomas [Signature]
4/7/00

SUPERIOR COURT OF WASHINGTON
COUNTY OF San Juan
JUVENILE COURT

COUNTY CLERKS OFFICE
FILED
APR 10 2000
MARY JEAN CAHILL
SAN JUAN COUNTY WASHINGTON

Dependency of:

BRITTNEY L. MAXEY

DOB: 1-21-86

NO. 00-7-05002-9

SHELTER CARE HEARING ORDER
 AGREED
(SCOR)

L HEARING

- 1.1 A dependency petition was filed in this matter and a hearing was held on 4-10-00 (Date)
- 1.2 Persons appearing at the hearing were—see clerk's minutes
- 1.3 ~~Testimony was taken—see clerk's minutes~~
- 1.4 The parties have received and/or have been told the contents of the dependency petition and have been informed of their basic rights including the right to be represented by a lawyer for all proceedings, to be appointed a lawyer if they could not afford one, to introduce evidence, to testify, to cross-examine witnesses, and to receive a decision by the Court based upon evidence

1.5 *The parent and step-parent waive their right to a shelter care hearing with II FINDINGS 72 hours. The waiver was knowing & voluntary.*

The Court FINDS that.

- 2.1 The notice required under RCW 13.34.060 (2) and (3) was was not given to the parent, guardian or legal custodian, *and to the step-parent, Kent Ducote. No information concerning the father's whereabouts is available at this time.* Dixie Ducote
- 2.2 Indian status:
 The child is Indian, as defined in 25 U.S.C. 1903(4)
 The child is not Indian as defined in 25 U.S.C. 1903(4).
 It has not been determined whether the child is Indian as defined in 25 U.S.C. 1903(4).
Based on the allegations contained in the Dependency Petition,
- 2.3 It is currently contrary to the child's best welfare to return home and there is reasonable cause to believe that:
(a) 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.
(b) the child is in need of shelter care because:
 the child has no parent, guardian, or legal custodian to provide supervision and care for such child;
 the release of the child would present a serious threat of substantial harm to such child,
 the parent, guardian or custodian to whom the child could be released is alleged to have violated RCW 9A 40 060 or 9A 40 070,
 other:
- 2.4 There is not reasonable cause to believe that shelter care is needed.

SHELTER CARE HEARING ORDER (SCOR)

WPF JU 02 0200 (2/97)

RCW 13.34.060 Page 1 of 3

000120

25 There are reasonable grounds to believe that an incident of sexual or physical abuse has occurred and that a restraining order is necessary pursuant to RCW 26 44 063 (2)

26 Other *It is contrary to the child's welfare to return home because the child is experiencing emotional distress that will be intensified by returning home. Reasonable efforts were made under the circumstances to prevent or eliminate the need for removal of the child from the child's home given the emergent nature of the III ORDER child's allegations and anxiety regarding returning home. The Department was not required to provide additional services*
IT IS ORDERED that

31 The child is released to the child's parent(s) or legal guardian or custodian:

Name(s) _____

Address _____

32 The child is placed in or will remain in shelter care with

- relative
 other suitable person.
 licensed care
 other

The placement will be supervised by DCFS / DSHS [Supervising Agency], which may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care.

33 The following conditions apply

34 _____ is restrained from
(Name)

- (a) molesting the child or disturbing the child's peace
(b) entering the family home of the child except as specifically authorized by the Court.
(c) having any contact with the child, except as specifically authorized by the Court.
(d) other:

VIOLATION OF THIS RESTRAINING ORDER IS A CRIMINAL OFFENSE UNDER CHAPTER 26.44 RCW AND WILL SUBJECT A VIOLATOR TO ARREST

35 A _____ hearing shall be held

On May 10, 00 at 2:30 pm
(Date) (Time)

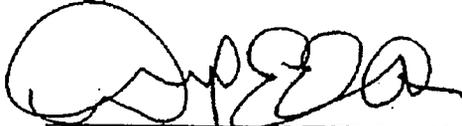
At San Juan County Superior Court, Room/Department _____

Address: 350 COURT ST. No 7
Friday, Auker WA 98252

3.6 DC75/DSHS and Kent Ducote
[Supervising Agency or DSHS] shall make reasonable efforts to advise the child's mother father legal guardian or custodian of the status of this case, including the date and time of the hearing scheduled above and their rights under RCW 13.34.090

3.7 Other: Dixie Ducote and Kent Ducote do not stipulate to the findings contained herein

Dated 4/10/00


JUDGE/COMMISSIONER OF THE SUPERIOR COURT

PRESENTED BY:

Katherine Blaine
Signature
Katherine Blaine
Print or Type Name S.D.P.A. for DC75/DSHS #2018

AGREED TO BY:

Child	_____	Date: _____
Mother:	<u>D. J. Ducote</u>	Date: <u>4-10-00</u>
^{step} Father:	<u>[Signature]</u>	Date: <u>4-10-00</u>
Agency Worker	<u>[Signature]</u>	Date: <u>4-10-00</u>
Agency Lawyer:	_____	Date: _____
Other Parties:	<u>Care of [Signature]</u>	Date: <u>4-10-00</u> Attorney for <u>parents</u>
	_____	Date: _____ / Attorney for _____

RECEIVED

MAY 18 2007

ATTORNEY GENERAL'S OFFICE
TORTS DIVISION
SEATTLE

APPENDIX C
(58-62)

1
2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

3
4 IN AND FOR THE COUNTY OF SAN JUAN

COUNTY CLERK'S OFFICE
FILED
NOV 30 2000
MARY JEAN CAPAIL
SAN JUAN COUNTY, WASHINGTON

5
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7
8
9 In re the Dependency of:)

MINUTE ENTRY

10 BRITTNEY L. MAXEY,)

November 27, 2000

11 COLE MAXEY,)

No.00 7 05002 9 ✓

12 MORGAN MAXEY,)

No. 00 7 05003 7

No. 00 7 05004 5

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Judge Alan R. Hancock
Court Reporter Jeanne Wells
Court Clerk Joan White

Time: 2:30 PM

This matter came on for

The State appeared through Counsel Katherine Blaine.

The Parents appeared and through Counsel Carla J. Higginson.

Also present:

Dave Parks of DSHS

Joan Pedrick representing Brittney Maxey not present.

Frank LaSalata representing GAL not present.

Sarah Ross Forster, GAL

All parties have no objection to Charles Silverman and Tom Pacher being present during Court's Oral Decision.

Ms. Blaine: wishes Court to know Ms. Pedrick could not be present; nor could Mr. LaSalata.

Court: spent great deal of time balancing and weigh the evidence. It has been the most challenging. The State has the burden of proof. Abused or neglected by person legally responsible to the child or if child has no parent or guardian to care for the child. 26.44.020 Sub12 Defines abuse and neglect: injury, sexual abuse exploitation, mal- treatment indicating child's health and safety harmed. 26.44.020 sub 15 - negligent - act or omission... 13.34.020 policy of the dependency statutes. Reviews briefly. Rights of the child...and speedy resolution under this chapter. Welfare of three children at stake in this matter.

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000058

1
Exhibit
E

1 Court concerned about Brittany; utmost importance be treated with compassion and
2 understanding. She is a troubled child; more so than Cole or Morgan. She felt
3 alienated and needed to be separated from them. (Mr and Mom). That person needs
4 to examine his or her conduct that lead to Brittany's removal from the home. To
5 provide love to her. She too is responsible but is in her formative years and needs
6 guidance, understanding, role models to adulthood.

7 Dr. Eden's testimony relevant.
8

9
10 In a nut shell Department's case: Kent in the Departments' case physically &
11 verbally abusive to Dixie. That Kent committed voyeurism and other improprieties.
12 Further that Morgan is being groomed for sexual assault down the road and Dixie
13 not taking care of them, but taken Kent's side. Kent's abuse overblown ; that
14 voyeurism did not occur and other improprieties that Kent did not receive sexual ...
15 and they are not at risk. That Dixie can protect her children. Brief background:
16 Department provided services to household since 1989. Brittany was 3, department
17 home support services for a number of years to household. Counseling in 91, in 92
18 meant Kent and Morgan born. In 93 Dixie hospitalized, 94 for Depression and
19 married Kent in 94. Problems in their relationship with each other and with the
20 children; 98 March; two referrals to the department Dixie and her children. Kent's
21 anger toward Dixie and to the children - not necessarily to a dangerous level. Kent
22 sleeping with Morgan. No allegation of sexual conduct but Dixie expressed
23 concerns. Nov 98, Dixie reported Kent spanked Cole with wooden spoon. Left mark,
24 Police report made. Mr. Parks followed with further investigation with Dixie, and
25 Kent, and that Kent trying to resolve. In August 99, Brittany wrote the note into
26 Evidence 153, suicide note, variously interpreted, possible harm to her by Kent and
27 it speaks for itself. Incident before Sept 2 99 involving Kent barging into the
28 bathroom Brittany said she was sitting on the toilet, Kent testified, he did do that
29 but she was not on the toilet. Brittany told her Mother she had not in fact be on the
30 toilet... Sept 99 additional referrals: allegations Cole being verbally abused by
31 Kent; Dixie couldn't protect the children; suicide note mentioned in referrals;
32 mention of Brittany wanting Kent to leave Dixie; and bathroom incident in
33 referrals. In Oct 99 a referral when Kent pulled Cole out of the car shook him.
34 Various safe guards for Children exploited; investigation by Mr. Parks and
35 ultimately no intervention but investigation undertaken and binding of abuse not
36 made by dept at that time. Dixie at that time receiving support from Ms. Castile,
37 DV person as to her relationship with Kent.
38 Feb 2000 Brittany described serious incident; Cole put knife to throat and drew
39 blood. Dixie said it was a butter knife; no breaking of the skin; not significant
40 incident. March 28, 2000 referral after school counselor talked with Brittany.
41 Brittany reiterated allegations of Kent striking Cole; holding knife to throat; Kent
42 walking into bathroom; touching her buttocks; her fear of Kent.
43 March 28, 2000 referral: Mr. Parks interviewed Brittany and disclosed the
44 voyeurism incident by Mr. Ducote.
45 Various times of conflict in the house by Kent; but vigorously disputed of its
46 intensity.
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1
2 At this point, to review expert testimony.

3 Dr. Nyblade: extremely lengthy testimony; suffice it to say – mindful of clinical
4 interview process but examiner's preconceived...

5
6 Kent: personality disorders DSM4; opined he had 45 in daily functioning and other
7 possible diagnosis and problems. Recommended full psycho evaluation.

8 Court has great respect for Dr. Nyblade; I do believe it is likely in this case, Parks
9 information , scored her results. Court notes his scores within normal range – no
10 resemblance to child abusive characteristics.

11 As to Dixie: major depression, acute mental illness diagnosis – borderline
12 personality disorder and opined a 35 daily functioning. Dr. concerned Dixie not
13 adequate to parenting; too submissive to Kent and other concerns. Also opined
14 Dixie can parent but has problems doing so. This was all critiqued by Dr. Eden.
15 She might have been biased after receiving information from David Parks. Dr.
16 Eden did not see anything for Kent's psycho testing and/or treatment. Diagnosed
17 general anxiety disorder for Kent. Dr. Eden opined that for Kent more likely in the
18 61-70 range and for Dixie 51-60 range. Dr. Eden's opinions are closer to the truth
19 given the evidence in this case. That Dixie was suffering from depression but no
20 disshociative or thought disorder. None are as serious as to what Dr. Nyblade came
21 up with. No history or violence or arrests. Only the referrals = physical discipline
22 of the children. Neither abusing alcohol and drugs. No abuse or neglect in the
23 household. He did note good directive family therapy would be beneficial.
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30 As to specific allegations:

31 As to voyeurism: certainly on its face quite plausible; State had made prima facia
32 case. Quite understandable and thought Brittany on the face of it quite believable
33 and only when looking evidence as a whole there is reason for doubt. Theory is that
34 a series of circumstances and facts that Kent was viewing Brittany through her BR
35 window in a voyeuristic way. That she had to undress in the bedroom; showers at
36 night and required curtain above the bottom – leaving 3 inches of glass to view her
37 through the window. Discernable path around the side and back of house and
38 ended at Brittany's window. And then there was the incident on April 3, Mr.
39 Ducote told her to take a shower; undressed in her room and saw his face in the
40 window. That she was scared and confused. As further evidence of this theory,
41 department alleged curtain put up 5 to 6 months before and arranged for Kent to
42 look in the window. That there was clear plastic on the window ; rip in plastic ; but
43 no problem seeing out and certain it was his face in the window. Next day he told
44 her to do same; that he was going to talk to lady; suspicious he was going to look at
45 her; she went to LR window, couldn't see him. Other incidents alleged against Kent
46 , in department's theory, that he did engage in voyeurism. Bathroom incident-bear
47 hug laying down on her- that Kent became angry and threatened to kill her. Also
48 evidence of crude remarks to Brittany and her friends; that she found Playboy
49 magazines under marital bed. Find it hard to believe that she could lift and change
50 mattress as she described. That Mom wasn't present when she took showers.

1 Other State's evidence, that Kent was grooming Brittany and Morgan for later
2 sexual abuse. Denied scorch marks. Chocolate stains not believable. I would
3 believe Ms. Ducote's testimony in that regard. Brittany didn't get along with Kent;
4 wanted Dixie to leave him; they were too strict; told her friends she wanted to leave
5 house; possibly run away and indicated that Brittany (she) or Kent should leave the
6 home. Other problems with voyeurism, Search Warrant failed to turn up anything.
7 Nothing was found other than playboy magazines. There were pictures with
8 pinholes where curtain was tacked. Brittany also alleged she was afraid of Kent
9 following alleged statements made by him that he was a dangerous person. No
10 evidence to support that. No shady history. Allegations that he had masturbated.
11 Don't think evidence supports that. Leggets testified they did not see anything;
12 thought Brittany was joking at that time. Welch testimony not rebutted as to
13 person in the window. This would undermine Brittany's testimony. His testimony
14 about construction material located in rear - pix show that. Discernable path
15 ending under Brittany's window is questionable in the view of the Court.
16 If you look at incidents, there is a theory plausible but if you analyze as a whole
17 they don't make out the case that he was using position to look into Brittany's
18 window at her.

19 Kent's rule to dress in Bedroom does not hold up when you look at all evidence.
20 Dixie stated she made the rule. Probably a situation blown out of proportion by
21 Brittany. Also that Dixie stated Brittany threw away clothes, taken down posters,
22 and left room stark before being removed from home. Indicates she may have
23 planned to leave the home.

24 No evidence of improper desire on part of Kent in SW.

25 Brittany concerned about appearance and privacy - likely become hyper sensitive;
26 no difficult to imagine why Brittany came to believe he was spying on her. Brittany
27 did have a motivation to read into things that were not warranted. She didn't like
28 Kent; didn't like living at home; they were unfair with discipline; desired to live
29 elsewhere; and wanted Kent out of the house.

30 Adolescent girls are capable to make up and get what they want; court prefers to
31 give her benefit of the doubt but this is a viable explanation for some of things that
32 happened in this case. Equally persuasive explanations he wasn't acting in a
33 sexual way against Brittany. Exhibit 144 kids on lap o Keith. And Exhibit 146 with
34 children on his lap.

35 As to Kent coming into bathroom - Dixie testified that after Brittany made
36 disclosure, Brittany had confided to Dixie she really wasn't on toilet. Also that
37 Kent was angry when he went in; and he stated he was angry at the time. The
38 anger in that context would not be grooming a girl for sexual abuse. Stacey's
39 remark: that Kent joined in the conversation inappropriately; perhaps to agree
40 with Brittany; and court not find this was part of grooming. If he did make remarks
41 about her body, that would be very inappropriate but don't find it be Kent's part of
42 grooming.

43 Bear hug allegation - not a grooming behavior by Kent.

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If he made statement of killing her, doubt he did, would not be made if he was grooming.
Suffice it to say evidence as a whole does not establish he was masturbating as in subject of the evidence. Exhibit 104 would be relevant here. Perhaps he did make motion to relieve his pain.
As to Morgan sleeping with Kent – has an innocent explanation: she was ill a lot, not uncommon for children to go into their parent's bed; not uncommon to comfort Morgan before she went to sleep. Dixie was concerned; reported it to authorities; that she is capable of making reports for the best interest of her children. Innocent incidences.
To summarize evidence:
Very carefully considered evidence.
Rocky relationship and has implied her parenting tactics. Kent difficult stepparent role with Brittany. If the Court were to find Kent engaged in voyeurism with Brittany, would find Brittany an abused child and find her to be dependent. But the evidence does not support this; that Kent has not engaged in voyeurism as to Brittany. She is not an abused child as defined in the law. Dixie is capable of adequately to care for three children. No damage to their development. Dixie has shown she is capable of seeking help when she needs to and taken action to protect her children. Despite extremely stress of .. they have genuine affection and love to each other and better their relationship with their children. Take steps to improve theirs and with their children as they are in fact doing. No court intervention.
Cases dismissed; not any of three are dependent.
Court would hope that Brittany would stay in voluntary foster care or that she be in another placement until she is able to return to the family home.
That concludes the court's ruling

Ms. Higginson will prepare appropriate paper work.

3:30 PM


Joan White
Court Clerk

EXHIBIT E

APPENDIX D
(CP 141-145)

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COUNTY CLERKS OFFICE
- FILED

JAN 29 2001

MARY JEAN CAHILL ✓
SAN JUAN COUNTY WASHINGTON

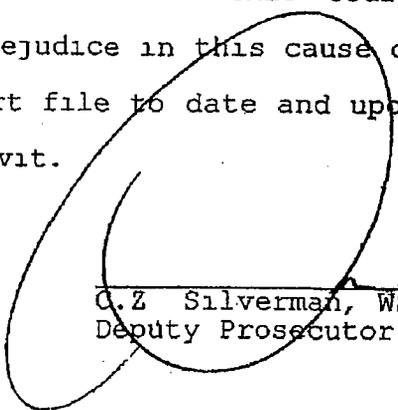
IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SAN JUAN

STATE OF WASHINGTON,) CASE NO. 00 1 05021 3
)
Plaintiff,) MOTION, AFFIDAVIT AND ORDER
) OF DISMISSAL WITHOUT
v.) PREJUDICE
) CrR 8.3(a)
KENT DUCOTE,)
)
Defendant.)

MOTION

Comes now the Plaintiff, State of Washington, through its deputy prosecuting attorney, and moves this court for an order dismissing charges without prejudice in this cause of action. This motion is based upon the court file to date and upon the facts set forth in the following affidavit.

Date 01/29/01


G.Z. Silverman, WSBA # 8654
Deputy Prosecutor

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MOTION, AFFIDAVIT AND ORDER OF
DISMISSAL WITHOUT PREJUDICE - 1

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SAN JUAN COUNTY
PROSECUTING ATTORNEY
350 COURT STREET • P O BOX 760
FRIDAY HARBOR, WA 98250
TEL (360) 378-4101 • FAX (360) 378-3180

1 until "I go in & pick her up to take her to bed;" (2) that the
2 defendant refused her requests that he wear underwear that she had
3 purchased for him; (3) that this younger daughter was displaying
4 regressive behavior, such as "starting to suck a pacifier again
5 & not wanting to get out of diapers," causing the mother concern
6 as to whether the child would develop in a healthy and age-
7 appropriate manner; (4) that the defendant was sabotaging the
8 wife's ability to parent the children, and (5) that defendant was
9 using excessive force in disciplining the children. The wife also
10 expressed fear, lest the defendant should learn that she had
11 reported his inappropriate conduct

12 3. The trial in this matter has been continued three times.
13 During this time, the complainant's mother has isolated the
14 complainant from open contacts with her siblings, she has indicated
15 to the complainant that she does not support her or believe her,
16 she has testified against the complainant in another proceeding,
17 and has shipped the complainant to California to live with a
18 grandmother who has openly stated she does not believe or support
19 the child and who has kept the child isolated at home --even
20 preventing the child from attending school.

21 4. The pressure and delays have taken their toll: the complainant
22 has now provided a statement, witnessed by the grandmother,
23 indicating that on the night of the incident in question, she just
24 might not have seen what she clearly indicated numerous times in
25 the past that she has seen -- the face of her step father looking
26 into her window.

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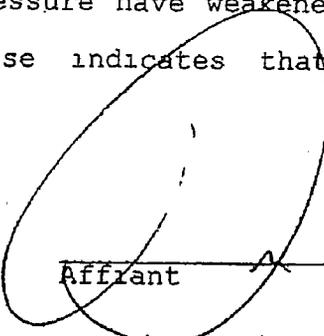
MOTION, AFFIDAVIT AND ORDER OF
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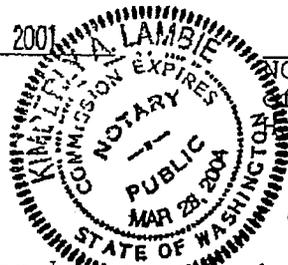
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1 5. Delays and family pressure have weakened the State's case, a
2 re-evaluation of the case indicates that the case should be
3 dismissed at this time.

4
5
6 Affiant 

7 SUBSCRIBED AND SWORN:

8 DATE: JAN 29 2001



Kimberly A Lambie
9 NOTARY PUBLIC in and for the State
10 of Washington, residing at Friday
11 Harbor. My commission expires:
12 3/28/04

11 ORDER

12 This matter has come before the court on the motion of the
13 plaintiff for an order of dismissal of the charges herein, and the
14 court having reviewed the file and the motion and affidavit of the
15 deputy prosecutor and finding that good cause has been shown, now,
16 therefore, it is hereby

17 ORDERED that the charge of Voyeurism contained in this cause
18 of action is hereby dismissed without prejudice.

19
20 DONE IN OPEN COURT THIS 29 DAY OF January, 2001.

21
22 Mary Jean Cahill
23 Judge/Commissioner of the Superior Court
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MOTION, AFFIDAVIT AND ORDER OF
DISMISSAL WITHOUT PREJUDICE - 4

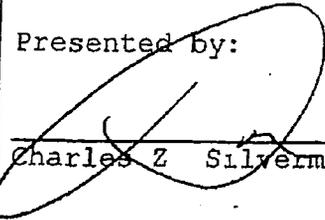
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Presented by:


Charles Z Silverman, WSBA # 8654

Approved for entry/copy received:

Attorney for Defendant, WSBA #

MOTION, AFFIDAVIT AND ORDER OF
DISMISSAL WITHOUT PREJUDICE - 5

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RCW 13.04.011

Definitions.

For purposes of this title:

(1) "Adjudication" has the same meaning as "conviction" in RCW 9.94A.030, and the terms must be construed identically and used interchangeably;

(2) Except as specifically provided in RCW 13.40.020 and chapter 13.24 RCW, "juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years;

(3) "Juvenile offender" and "juvenile offense" have the meaning ascribed in RCW 13.40.020;

(4) "Court" when used without further qualification means the juvenile court judge(s) or commissioner(s);

(5) "Parent" or "parents," except as used in chapter 13.34 RCW, means that parent or parents who have the right of legal custody of the child. "Parent" or "parents" as used in chapter 13.34 RCW, means the biological or adoptive parents of a child unless the legal rights of that person have been terminated by judicial proceedings;

(6) "Custodian" means that person who has the legal right to custody of the child.

[1997 c 338 § 6; 1992 c 205 § 119; 1979 c 155 § 1; 1977 ex.s. c 291 § 2.]

NOTES:

Finding -- Evaluation -- Report -- 1997 c 338: See note following RCW 13.40.0357.

Severability -- Effective dates -- 1997 c 338: See notes following RCW 5.60.060.

Part headings not law -- Severability -- 1992 c 205: See notes following RCW 13.40.010.

Effective date -- 1979 c 155: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1979]." [1979 c 155 § 89.]

Severability -- 1979 c 155: "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." [1979 c 155 § 88.]

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.32A.030

Definitions -- Regulating leave from semi-secure facility.

As used in this chapter the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Administrator" means the individual who has the daily administrative responsibility of a crisis residential center, or his or her designee.

(3) "At-risk youth" means a juvenile:

(a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent;

(b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or

(c) Who has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

(4) "Child," "juvenile," and "youth" mean any unemancipated individual who is under the chronological age of eighteen years.

(5) "Child in need of services" means a juvenile:

(a) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person;

(b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours on two or more separate occasions from the home of either parent, a crisis residential center, an out-of-home placement, or a court-ordered placement; and

(i) Has exhibited a serious substance abuse problem; or

(ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or

(c)(i) Who is in need of: (A) Necessary services, including food, shelter, health care, clothing, or education; or (B) services designed to maintain or reunite the family;

- (ii) Who lacks access to, or has declined to utilize, these services; and
 - (iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure.
- (6) "Child in need of services petition" means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child.
- (7) "Crisis residential center" means a secure or semi-secure facility established pursuant to chapter 74.13 RCW.
- (8) "Custodian" means the person or entity who has the legal right to the custody of the child.
- (9) "Department" means the department of social and health services.
- (10) "Extended family member" means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable, and who is willing and available to care for the child.
- (11) "Guardian" means that person or agency that (a) has been appointed as the guardian of a child in a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the right to legal custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW.
- (12) "Multidisciplinary team" means a group formed to provide assistance and support to a child who is an at-risk youth or a child in need of services and his or her parent. The team shall include the parent, a department case worker, a local government representative when authorized by the local government, and when appropriate, members from the mental health and substance abuse disciplines. The team may also include, but is not limited to, the following persons: Educators, law enforcement personnel, probation officers, employers, church persons, tribal members, therapists, medical personnel, social service providers, placement providers, and extended family members. The team members shall be volunteers who do not receive compensation while acting in a capacity as a team member, unless the member's employer chooses to provide compensation or the member is a state employee.
- (13) "Out-of-home placement" means a 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) "Parent" means the parent or parents who have the legal right to custody of the child. "Parent" includes custodian or guardian.
- (15) "Secure facility" means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff.

(16) "Semi-secure facility" means any facility, including but not limited to crisis residential centers or specialized foster family homes, operated in a manner to reasonably assure that youth placed there will not run away. Pursuant to rules established by the department, the facility administrator shall establish reasonable hours for residents to come and go from the facility such that no residents are free to come and go at all hours of the day and night. To prevent residents from taking unreasonable actions, the facility administrator, where appropriate, may condition a resident's leaving the facility upon the resident being accompanied by the administrator or the administrator's designee and the resident may be required to notify the administrator or the administrator's designee of any intent to leave, his or her intended destination, and the probable time of his or her return to the center.

(17) "Staff secure facility" means a structured group care facility licensed under rules adopted by the department with a ratio of at least one adult staff member to every two children.

(18) "Temporary out-of-home placement" means an out-of-home placement of not more than fourteen days ordered by the court at a fact-finding hearing on a child in need of services petition.

[2000 c 123 § 2; 1997 c 146 § 1; 1996 c 133 § 9; 1995 c 312 § 3; 1990 c 276 § 3; 1985 c 257 § 6; 1979 c 155 § 17.]

NOTES:

Findings -- Short title -- Intent -- Construction -- 1996 c 133: See notes following RCW 13.32A.197.

Short title -- 1995 c 312: See note following RCW 13.32A.010.

Intent -- 1990 c 276: See RCW 13.32A.015.

Conflict with federal requirements -- Severability -- 1990 c 276: See notes following RCW 13.32A.020.

Severability -- 1985 c 257: See note following RCW 13.34.165.

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

RCW 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.]

NOTES:

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 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.]

NOTES:

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

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 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) "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.

(5) "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.

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

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

(8) "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.

(9) "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.

(10) "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, general assistance, 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.

(11) "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.

(12) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing services, capable of preventing the need for out-of-home placement while protecting the child. Housing services may include, but are not limited to, referrals to federal, state, local, or private agencies or organizations, assistance with forms and applications, or financial subsidies for housing.

(13) "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.

(14) "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).

(15) "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 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 emotional 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.

[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.]

NOTES:

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.

Conflict with federal requirements -- 1993 c 241: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 241 § 5.]

Severability -- 1988 c 176: See RCW 71A.10.900.

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.]

Severability -- 1982 c 129: See note following RCW 9A.04.080.

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.34.060

Shelter care -- Placement -- Custody -- Duties of parties.

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays, and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility.

(2) Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered, priority placement for a child in shelter care, pending a court hearing, shall be with any person described in RCW 74.15.020(2)(a) or 13.34.130(1)(b). The person must be willing and available to care for the child and be able to meet any special needs of the child and the court must find that such placement is in the best interests of the child. The person must be willing to facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court. If a child is not initially placed with a relative or other suitable person requested by the parent pursuant to this section, the supervising agency shall make an effort within available resources to place the child with a relative or other suitable person requested by the parent on the next business day after the child is taken into custody. The supervising agency shall document its effort to place the child with a relative or other suitable person requested by the parent pursuant to this section. Nothing within this subsection (2) establishes an entitlement to services or a right to a particular placement.

(3) Whenever a child is taken into custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care.

[2007 c 413 § 3; 2002 c 52 § 4; 2000 c 122 § 4; 1999 c 17 § 2; 1998 c 328 § 2; 1990 c 246 § 1; 1987 c 524 § 4. Prior: 1984 c 188 § 3; 1984 c 95 § 5; 1983 c 246 § 1; 1982 c 129 § 5; 1979 c 155 § 39; 1977 ex.s. c 291 § 34.]

NOTES:

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

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

Finding -- 1999 c 17: "The legislature has found that any intervention into the life of a child is also an intervention in the life of the parent, guardian, or legal custodian, and that the bond between child and parent is a critical element of child development. The legislature now also finds that children who cannot be with their parents, guardians, or legal custodians are best cared for, whenever possible and appropriate by family members with whom they have a relationship. This is particularly important when a child cannot be in the care of a parent, guardian, or legal custodian as a result of a court intervention." [1999 c 17 § 1.]

Severability -- 1990 c 246: "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." [1990 c 246 § 11.]

Severability -- 1984 c 95: See note following RCW 9A.40.060.

Severability -- 1982 c 129: See note following RCW 9A.04.080.

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.34.062

Shelter care -- Notice of custody and rights.

(1)(a) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parent, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title, including the right to a shelter care hearing, as soon as possible. Notice must be provided in an understandable manner and take into consideration the parent's, guardian's, or legal custodian's primary language, level of education, and cultural issues.

(b) In no event shall the notice required by this section be provided to the parent, guardian, or legal custodian more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody.

(2)(a) The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

(b) The written notice of custody and rights required by this section shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. Your right to representation continues after the shelter care hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision

of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number).

5. You have a right to a case conference to develop a written service agreement following the shelter care hearing. The service agreement may not conflict with the court's order of shelter care. You may request that a multidisciplinary team, family group conference, or prognostic staffing be convened for your child's case. You may participate in these processes with your counsel present.

6. If your child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, the court will enter an order granting the department or other supervising agency the right to inspect and copy all health, medical, mental health, and education records of the child, directing health care providers to release such information without your further consent, and granting the department or supervising agency or its designee the authority and responsibility, where applicable, to:

- (1) Notify the child's school that the child is in out-of-home placement;
- (2) Enroll the child in school;
- (3) Request the school transfer records;
- (4) Request and authorize evaluation of special needs;
- (5) Attend parent or teacher conferences;
- (6) Excuse absences;
- (7) Grant permission for extracurricular activities;
- (8) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and
- (9) Complete or update school emergency records."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the

receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be 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 legal 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.

[2007 c 413 § 4; 2007 c 409 § 5; 2004 c 147 § 2; 2001 c 332 § 2; 2000 c 122 § 5.]

NOTES:

Reviser's note: This section was amended by 2007 c 409 § 5 and by 2007 c 413 § 4, each without reference to the other. Both 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).

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.

RCW 13.34.065

Shelter care -- Hearing -- Recommendation as to further need -- Release.

(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).

(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.

[2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

NOTES:

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

RCW 13.34.080

Summons when petition filed -- Publication of notice.

(1) The court shall direct the clerk to publish notice in a legal newspaper printed in the county, qualified to publish summons, once a week for three consecutive weeks, with the first publication of the notice to be at least twenty-five days prior to the date fixed for the hearing when it appears by the petition or verified statement that:

(a)(i) The parent or guardian is a nonresident of this state; or

(ii) The name or place of residence or whereabouts of the parent or guardian is unknown; and

(b) After due diligence, the person attempting service of the summons or notice provided for in RCW 13.34.070 has been unable to make service, and a copy of the notice has been deposited in the post office, postage prepaid, directed to such person at his or her last known place of residence. If the parent, guardian, or legal custodian is believed to be a resident of another state or a county other than the county in which the petition has been filed, notice also shall be published in the county in which the parent, guardian, or legal custodian is believed to reside.

(2) Publication may proceed simultaneously with efforts to provide service in person or by mail, when the court determines there is reason to believe that service in person or by mail will not be successful. Notice shall be directed to the parent, parents, or other person claiming the right to the custody of the child, if their names are known. If their names are unknown, the phrase "To whom it may concern" shall be used, apply to, and be binding upon, those persons whose names are unknown. The name of the court, the name of the child (or children if of one family), the date of the filing of the petition, the date of hearing, and the object of the proceeding in general terms shall be set forth. There shall be filed with the clerk an affidavit showing due publication of the notice. The cost of publication shall be paid by the county at a rate not greater than the rate paid for other legal notices. The publication of notice shall be deemed equivalent to personal service upon all persons, known or unknown, who have been designated as provided in this section.

[2000 c 122 § 9; 1990 c 246 § 3; 1988 c 201 § 1; 1979 c 155 § 41; 1977 ex.s. c 291 § 36; 1961 c 302 § 4; 1913 c 160 § 7; RRS § 1987-7. Formerly RCW 13.04.080.]

NOTES:

Severability -- 1990 c 246: See note following RCW 13.34.060.

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.34.090

Rights under chapter proceedings.

(1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent, the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing.

[2000 c 122 § 10. Prior: 1998 c 328 § 3; 1998 c 141 § 1; 1990 c 246 § 4; 1979 c 155 § 42; 1977 ex.s. c 291 § 37.]

NOTES:

Severability -- 1990 c 246: See note following RCW 13.34.060.

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

Notice of rights: RCW 26.44.105.

RCW 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.]

NOTES:

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

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.34.130

Order of disposition for a dependent child, alternatives -- Petition seeking termination of parent-child relationship -- Contact with siblings -- Placement with relatives, foster family home, group care facility, or other suitable persons.

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

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

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose those services, including housing assistance, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or the department or a licensed child placing agency for supervision of the child's placement. The department or agency supervising the child's placement has the authority to place the child, subject to review and approval by the court (i) with a relative as defined in RCW 74.15.020(2)(a), (ii) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW, or (iii) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is: (A) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; and (B) willing and available to care for the child.

(2) Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that 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, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services 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 that:

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

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

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

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

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

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

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

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

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

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

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with

relatives, pursuant to this section, shall be contingent upon cooperation by the relative 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 shall be grounds for removal of the child from the relative's home, subject to review by the court.

[2007 c 413 § 6; 2007 c 412 § 2; 2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15. Prior: 1999 c 267 § 16; 1999 c 267 § 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

NOTES:

Reviser's note: This section was amended by 2007 c 412 § 2 and by 2007 c 413 § 6, each without reference to the other. Both 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).

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

Intent -- 2003 c 227: "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

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

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.

Severability -- 1999 c 173: See note following RCW 13.34.125.

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

Severability -- 1990 c 246: See note following RCW 13.34.060.

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

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.34.155

Concurrent jurisdiction over nonparental actions for child custody.

(1) The court hearing the dependency petition may hear and determine issues related to chapter 26.10 RCW in a dependency proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. This agreed order may have the concurrence of the other parties to the dependency including the supervising agency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a custody order under chapter 26.10 RCW is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a custody order. Once an order is entered under chapter 26.10 RCW, and the dependency petition dismissed, the department shall not continue to supervise the placement.

(2) Any court order determining issues under chapter 26.10 RCW is subject to modification upon the same showing and standards as a court order determining Title 26 RCW issues.

(3) Any order entered in the dependency court establishing or modifying a permanent legal custody order under chapter 26.10 RCW shall also be filed in the chapter 26.10 RCW action by the prevailing party. Once filed, any order establishing or modifying permanent legal custody shall survive dismissal of the dependency proceeding.

[2000 c 135 § 1.]

RCW 13.34.180

Order terminating parent and child relationship -- Petition -- Filing -- Allegations.

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)." ."

[2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

NOTES:

Severability -- 1990 c 246: See note following RCW 13.34.060.

Effective date -- Severability -- 1979 c 155: See notes following RCW 13.04.011.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

RCW 13.40.600

Youth court jurisdiction.

(1) Youth courts have authority over juveniles ages eight through seventeen who:

(a) Along with their parent, guardian, or legal custodian, voluntarily and in writing request youth court involvement;

(b) Admit they have committed the offense they are referred for;

(c) Along with their parent, guardian, or legal custodian, waive any privilege against self-incrimination concerning the offense; and

(d) Along with their parent, guardian, or legal custodian, agree to comply with the youth court disposition of the case.

(2) Youth courts shall not exercise authority over youth who are under the continuing jurisdiction of the juvenile court for law violations, including a youth with a matter pending before the juvenile court but which has not yet been adjudicated.

(3) Youth courts may decline to accept a youth for youth court disposition for any reason and may terminate a youth from youth court participation at any time.

(4) A youth or his or her parent, guardian, or legal custodian may withdraw from the youth court process at any time.

(5) Youth courts shall give any victims of a juvenile the opportunity to be notified, present, and heard in any youth court proceeding.

[2002 c 237 § 11.]

RCW 13.40.610

Youth court notification of satisfaction of conditions.

Youth court may not notify the juvenile court of satisfaction of conditions until all ordered restitution has been paid.

[2002 c 237 § 12.]

RCW 13.40.620

Appearance before youth court with parent, guardian, or legal custodian.

Every youth appearing before a youth court shall be accompanied by his or her parent, guardian, or legal custodian.

[2002 c 237 § 13.]

RCW 13.40.630

Youth court dispositions.

(1) Youth court dispositional options include those delineated in RCW 13.40.080, and may also include:

(a) Participating in law-related education classes, appropriate counseling, treatment, or other education [educational] programs;

(b) Providing periodic reports to the youth court;

(c) Participating in mentoring programs;

(d) Serving as a participant in future youth court proceedings;

(e) Writing apology letters; or

(f) Writing essays.

(2) Youth courts shall not impose a term of confinement or detention. Youth courts may require that the youth pay reasonable fees to participate in youth court and in classes, counseling, treatment, or other educational programs that are the disposition of the youth court.

(3) A youth court disposition shall be completed within one hundred eighty days from the date of referral.

(4) Pursuant to RCW 13.40.080(1), a youth court disposition shall be reduced to writing and signed by the youth and his or her parent, guardian, or legal custodian accepting the disposition terms.

(5) [A] youth court shall notify the juvenile court upon successful or unsuccessful completion of the disposition.

(6) [A] youth court shall notify the prosecutor or probation counselor of a failure to successfully complete the youth court disposition.

[2002 c 237 § 14.]

RCW 26.09.240

Visitation rights -- Person other than parent -- Grandparents' visitation rights.

(1) A person other than a parent may petition the court for visitation with a child at any time or may intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding. A person other than a parent may not petition for visitation under this section unless the child's parent or parents have commenced an action under this chapter.

(2) A petition for visitation with a child by a person other than a parent must be filed in the county in which the child resides.

(3) A petition for visitation or a motion to intervene pursuant to this section shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the child with whom visitation is sought. If the petition or motion is dismissed for failure to establish the existence of a significant relationship, the petitioner or intervenor shall be ordered to pay reasonable attorney's fees and costs to the parent, parents, other custodian, or representative of the child who responds to this petition or motion.

(4) The court may order visitation between the petitioner or intervenor and the child between whom a significant relationship exists upon a finding supported by the evidence that the visitation is in the child's best interests.

(5)(a) Visitation with a grandparent shall be presumed to be in the child's best interests when a significant relationship has been shown to exist. This presumption may be rebutted by a preponderance of evidence showing that visitation would endanger the child's physical, mental, or emotional health.

(b) If the court finds that reasonable visitation by a grandparent would be in the child's best interest except for hostilities that exist between the grandparent and one or both of the parents or person with whom the child lives, the court may set the matter for mediation under RCW 26.09.015.

(6) The court may consider the following factors when making a determination of the child's best interests:

(a) The strength of the relationship between the child and the petitioner;

(b) The relationship between each of the child's parents or the person with whom the child is residing and the petitioner;

(c) The nature and reason for either parent's objection to granting the petitioner visitation;

(d) The effect that granting visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;

(e) The residential time sharing arrangements between the parents;

(f) The good faith of the petitioner;

(g) Any criminal history or history of physical, emotional, or sexual abuse or neglect by the petitioner; and

(h) Any other factor relevant to the child's best interest.

(7) The restrictions of RCW 26.09.191 that apply to parents shall be applied to a petitioner or intervenor who is not a parent. The nature and extent of visitation, subject to these restrictions, is in the discretion of the court.

(8) The court may order an investigation and report concerning the proposed visitation or may appoint a guardian ad litem as provided in RCW 26.09.220.

(9) Visitation granted pursuant to this section shall be incorporated into the parenting plan for the child.

(10) The court may modify or terminate visitation rights granted pursuant to this section in any subsequent modification action upon a showing that the visitation is no longer in the best interest of the child.

[1996 c 177 § 1; 1989 c 375 § 13; 1987 c 460 § 18; 1977 ex.s. c 271 § 1; 1973 1st ex.s. c 157 § 24.]

NOTES:

Reviser's note: This section was declared unconstitutional and invalid by the Washington State Supreme Court in "*In re Parentage of C.A.M.A.*," No. 75262-1, April 7, 2005.

RCW 26.10.030

Child custody proceeding -- Commencement -- Notice -- Intervention.

(1) Except as authorized for proceedings brought under chapter 13.34 RCW, or chapter 26.50 RCW in district or municipal courts, a child custody proceeding is commenced in the superior court by a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian. In proceedings in which the juvenile court has not exercised concurrent jurisdiction and prior to a child custody hearing, the court shall determine if the child is the subject of a pending dependency action.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

(3) The petitioner shall include in the petition the names of any adult members of the petitioner's household.

[2003 c 105 § 3; 2000 c 135 § 3; 1998 c 130 § 4; 1987 c 460 § 27.]

RCW 26.10.100

Determination of custody -- Child's best interests.

The court shall determine custody in accordance with the best interests of the child.

[1987 c 460 § 38.]

RCW 26.16.205

Liability for family support -- Support obligation of stepparent.

The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both spouses or both domestic partners, or either of them, and they may be sued jointly or separately. When a petition for dissolution of marriage or state registered domestic partnership or a petition for legal separation is filed, the court may, upon motion of the stepparent, terminate the obligation to support the stepchildren. The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death.

[2008 c 6 § 618; 1990 1st ex.s. c 2 § 13; 1969 ex.s. c 207 § 1; Code 1881 § 2407; RRS § 6906. Formerly RCW 26.20.010.]

NOTES:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

Effective dates -- Severability -- 1990 1st ex.s. c 2: See notes following RCW 26.09.100.

RCW 26.26.021

Scope of act -- Choice of law -- Surrogate parentage contracts.

(1) This chapter governs every determination of parentage in this state.

(2) The court shall apply the law of this state to adjudicate the parent-child relationship. The applicable law does not depend on:

(a) The place of birth of the child; or

(b) The past or present residence of the child.

(3) This chapter does not create, enlarge, or diminish parental rights or duties under other law of this state.

(4) If a birth results under a surrogate parentage contract that is unenforceable under the law of this state, the parent-child relationship is determined as provided in RCW 26.26.101 through 26.26.116.

[2002 c 302 § 103.]

RCW 26.26.101

Establishment of parent-child relationship.

(1) The mother-child relationship is established between a child and a woman by:

- (a) The woman's having given birth to the child, except as otherwise provided in RCW 26.26.210 through 26.26.260;
- (b) An adjudication of the woman's maternity;
- (c) Adoption of the child by the woman;
- (d) A valid surrogate parentage contract, under which the mother is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260; or
- (e) An affidavit and physician's certificate in a form prescribed by the department of health wherein the donor of ovum or surrogate gestation carrier sets forth her intent to be legally bound as the parent of a child or children born through alternative reproductive medical technology by filing the affidavit and physician's certificate with the registrar of vital statistics within ten days after the date of the child's birth pursuant to RCW 26.26.735.

(2) The father-child relationship is established between a child and a man by:

- (a) An un rebutted presumption of the man's paternity of the child under RCW 26.26.116;
- (b) The man's having signed an acknowledgment of paternity under RCW 26.26.300 through 26.26.375, unless the acknowledgment has been rescinded or successfully challenged;
- (c) An adjudication of the man's paternity;
- (d) Adoption of the child by the man;
- (e) The man's having consented to assisted reproduction by his wife under RCW 26.26.700 through 26.26.730 that resulted in the birth of the child; or
- (f) A valid surrogate parentage contract, under which the father is an intended parent of the child, as provided in RCW 26.26.210 through 26.26.260.

RCW 26.26.116

Presumption of paternity in context of marriage.

(1) A man is presumed to be the father of a child if:

(a) He and the mother of the child are married to each other and the child is born during the marriage;

(b) He and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, dissolution of marriage, legal separation, or declaration of invalidity;

(c) Before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is, or could be, declared invalid and the child is born during the invalid marriage or within three hundred days after its termination by death, annulment, dissolution of marriage, legal separation, or declaration of invalidity; or

(d) After the birth of the child, he and the mother of the child have married each other in apparent compliance with law, whether or not the marriage is, or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

(i) The assertion is in a record filed with the state registrar of vital statistics;

(ii) Agreed to be and is named as the child's father on the child's birth certificate; or

(iii) Promised in a record to support the child as his own.

(2) A presumption of paternity established under this section may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630.

[2002 c 302 § 204.]

RCW 26.33.160

Consent to adoption -- When revocable -- Procedure.

(1) Except as otherwise provided in RCW 26.33.170, consent to an adoption shall be required of the following if applicable:

(a) The adoptee, if fourteen years of age or older;

(b) The parents and any alleged father of an adoptee under eighteen years of age;

(c) An agency or the department to whom the adoptee has been relinquished pursuant to RCW 26.33.080; and

(d) The legal guardian of the adoptee.

(2) Except as otherwise provided in subsection (4)(h) of this section, consent to adoption is revocable by the consenting party at any time before the consent is approved by the court. The revocation may be made in either of the following ways:

(a) Written revocation may be delivered or mailed to the clerk of the court before approval; or

(b) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written.

(3) Except as provided in subsections (2)(b) and (4)(h) of this section and in this subsection, a consent to adoption may not be revoked after it has been approved by the court. Within one year after approval, a consent may be revoked for fraud or duress practiced by the person, department, or agency requesting the consent, or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court.

(4) Except as provided in (h) of this subsection, the written consent to adoption shall be signed under penalty of perjury and shall state that:

(a) It is given subject to approval of the court;

(b) It has no force or effect until approved by the court;

(c) The birth parent is or is not of Native American or Alaska native ancestry;

(d) The consent will not be presented to the court until forty-eight hours after it is signed or forty-eight hours after the birth of the child, whichever occurs later;

(e) It is revocable by the consenting party at any time before its approval by the court. It may

be revoked in either of the following ways:

(i) Written revocation may be delivered or mailed to the clerk of the court before approval of the consent by the court; or

(ii) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written;

(f) The address of the clerk of court where the consent will be presented is included;

(g) Except as provided in (h) of this subsection, after it has been approved by the court, the consent is not revocable except for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court;

(h) In the case of a consent to an adoption of an Indian child, no consent shall be valid unless the consent is executed in writing more than ten days after the birth of the child and unless the consent is recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). Consent may be withdrawn for any reason at any time prior to the entry of the final decree of adoption. Consent may be withdrawn for fraud or duress within two years of the entry of the final decree of adoption. Revocation of the consent prior to a final decree of adoption, may be delivered or mailed to the clerk of the court or made orally to the court which shall certify such revocation. Revocation of the consent is effective if received by the clerk of the court prior to the entry of the final decree of adoption or made orally to the court at any time prior to the entry of the final decree of adoption. Upon withdrawal of consent, the court shall return the child to the parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130; and

(i) The following statement has been read before signing the consent:

I understand that my decision to relinquish the child is an extremely important one, that the legal effect of this relinquishment will be to take from me all legal rights and obligations with respect to the child, and that an order permanently terminating all of my parental rights to the child will be entered. I also understand that there are social services and counseling services available in the community, and that there may be financial assistance available through state and local governmental agencies.

(5) A written consent to adoption which meets all the requirements of this chapter but which does not name or otherwise identify the adopting parent is valid if it contains a statement that it is voluntarily executed without disclosure of the name or other identification of the adopting parent.

(6) There must be a witness to the consent of the parent or alleged father. The witness must be at least eighteen years of age and selected by the parent or alleged father. The consent document shall contain a statement identifying by name, address, and relationship the witness selected by the parent or alleged father.

[1991 c 136 § 2; 1990 c 146 § 2; 1987 c 170 § 7; 1985 c 421 § 5; 1984 c 155 § 16.]

NOTES:

Severability -- 1987 c 170: See note following RCW 13.04.030.

RCW 26.44.010

Declaration of purpose.

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER, That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

[1999 c 176 § 27; 1987 c 206 § 1; 1984 c 97 § 1; 1977 ex.s. c 80 § 24; 1975 1st ex.s. c 217 § 1; 1969 ex.s. c 35 § 1; 1965 c 13 § 1.]

NOTES:

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

Severability -- 1984 c 97: See RCW 74.34.900.

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

RCW 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.]

NOTES:

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

Severability -- 1984 c 97: See RCW 74.34.900.

Effective dates -- Severability -- 1977 ex.s. c 291: See notes following RCW 13.04.005.

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

Severability -- 1971 ex.s. c 302: See note following RCW 9.41.010.

RCW 26.44.100

Information about rights -- Legislative purpose -- Notification of investigation, report, and findings.

(1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action.

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

Whenever the department completes an investigation of a child abuse or neglect report under chapter 26.44 RCW, the department shall notify the subject of the report of the department's investigative findings. The notice shall also advise the subject of the report that:

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

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

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

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

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

(4) The duty of notification created by this section is subject to the ability of the department to ascertain the location of the person to be notified. The department shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.

(5) The department shall provide training to all department personnel who conduct investigations under this section that shall include, but is not limited to, training regarding the

legal duties of the department from the initial time of contact during investigation through treatment in order to protect children and families.

[2005 c 512 § 1; 1998 c 314 § 8; 1997 c 282 § 2; 1993 c 412 § 17; 1985 c 183 § 1.]

NOTES:

Finding -- Intent -- 2005 c 512: "The legislature finds that whenever possible, children should remain in the home of their parents. It is only when the safety of the child is in jeopardy that the child should be removed from the home.

It is the intent of the legislature that the department of social and health services be permitted to intervene in cases of chronic neglect where the health, welfare, or safety of the child is at risk. One incident of neglect may not rise to the level requiring state intervention; however, a pattern of neglect has been shown to cause damage to the health and well-being of the child subject to the neglect.

It is the intent of the legislature that, when chronic neglect has been found to exist in a family, the legal system reinforce the need for the parent's early engagement in services that will decrease the likelihood of future neglect. However, if the parents fail to comply with the offered necessary and available services, the state has the authority to intervene to protect the children who are at risk. If a parent fails to engage in available substance abuse or mental health services necessary to maintain the safety of a child or a parent fails to correct substance abuse deficiencies that jeopardize the safety of a child, the state has the authority to intervene to protect a child." [2005 c 512 § 2.]

Effective date -- 2005 c 512: "This act takes effect January 1, 2007." [2005 c 512 § 10.]

Short title -- 2005 c 512: "This act may be known and cited as the Justice and Raisen Act." [2005 c 512 § 11.]

RCW 74.13.350

Developmentally disabled children -- Out-of-home placement -- Voluntary placement agreement.

It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.245. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents.

[2004 c 183 § 4; 1998 c 229 § 1; 1997 c 386 § 16.]

NOTES:

Effective date -- 2004 c 183: See note following RCW 13.34.160.