

# **Overview of Child Welfare Statutes and Regulations**

## **(Prepared by Sheila Huber, AAG, October 2009)**

The child welfare system<sup>1</sup> – which provides child protective services, family support services, foster care, kinship care, and which governs dependency and termination actions, guardianships, adoptions and adoption support – involves a complex interweaving of state and federal laws. This outline is intended to provide a brief overview of those laws.

### **Federal Statutes**

The federal government's entry into the child welfare arena is relatively recent. It has only been during the past 40 years that Congress has addressed child welfare issues (although it provided assistance to children living in poverty before then). Since the mid-1970s, through a number of federal-funding statutes, Congress has shaped the public policy of the child welfare system, and has established the parameters of juvenile dependency and termination law in all 50 states.

#### **Child Abuse Prevention and Treatment Act (CAPTA)**

First passed in 1974 to provide funding to assist states in developing Child Protective Services (CPS) systems, CAPTA was amended in 1996 (PL. 104-235) to require states to develop and implement procedures for reporting suspected child abuse and neglect, for investigating such reports, and for taking steps to protect children found to be at risk of harm. It also mandates that individuals found to have committed child abuse or neglect have the opportunity for a hearing to challenge the finding.

#### **Adoption Assistance and Child Welfare Act of 1980 (Creating Titles IV-B and IV-E of the Social Security Act)**

This law, which is part of the Social Security Act, requires states that receive federal foster care and adoption support funds to provide “reasonable efforts” to keep families together and to reunite them when children are placed out of home. It requires individual case planning, permanency planning, and, when appropriate, placement with relatives. It also establishes the federal adoption support program.

#### **Family Preservation and Family Support Program/Promoting Safe and Stable Families**

First passed in 1993, and then reauthorized in 1997 as part of the Adoption and Safe Families Act of 1997, this law provides funding for family preservation and community-based family support services.

#### **Adoption and Safe Families Act of 1997 (Amending Titles IV-B and IV-E of the Social Security Act)**

This act (ASFA), amended the Adoption Assistance and Child Welfare Act, and

- Requires that a child's safety must be the paramount consideration when family preservation or family reunification is the goal;
- Provides certain exceptions to the reasonable efforts requirement, shorter timelines and less stringent conditions for seeking termination of parental rights;
- Requires a 12-month time frame for permanency hearings and a definitive permanent plan for the child;
- Requires background checks for all prospective foster and adoptive parents;
- Requires reasonable efforts be made to place children in a timely manner when adoption is the permanent plan.

---

<sup>1</sup> The system includes courts, tribal and private agencies, DSHS, foster parents, relative and other caregivers, attorneys, CASAs and other guardians ad litem, counselors, educators and many other providers.

**Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act)**

This law impacts children in the Child Welfare System by significantly limiting the funds available to undocumented aliens and by limiting the TANF grants available to parents and relatives.

**Indian Child Welfare Act**

Enacted in 1978 this law recognizes the importance of maintaining a child's connections with his or her Indian cultural heritage in the provision of foster care and adoption services. The law sets standards for the removal of Indian children, as defined in the Act, from their families and sets standards establishing priorities for placement of Indian children in foster or adoptive homes. It also requires notice of juvenile dependency or termination proceedings to the tribe of an Indian child.

**Multiethnic Placement Act and Interethnic Placement Act**

Together these two laws prohibit agencies that receive federal funding under Titles IV-B and IV-E of the Social Security Act from delaying or denying a child's foster or adoptive placement on the basis of a child's or the prospective foster or adoptive parent's race, color, or national origin.

**Foster Care Independence Act of 1999 (Chafee Act)**

This law requires states to provide transition services to youths aging out of foster care. The services are intended to aid the youths in achieving independence and may include education, employment-related training or services, personal and emotional support services, financial assistance and housing.

**Special Immigrant Juvenile Status**

Part of the immigration statute, this law provides an avenue for undocumented children, who are dependent because of abuse, neglect or abandonment and who are likely to remain in long-term care, to obtain a permanent residency permit to remain in the United States. The status must be sought while the child is "dependent."

**Adam Walsh Child Protection and Safety Act (Amending Title IV-E of the SSA)**

Passed in 2006 and effective in Washington in July 2007, the law amends Title IV-E to require additional criminal and child abuse/neglect background checks of prospective foster, relative and adoptive parents, as well as of adults living in the homes of those persons.

**Safe and Timely Interstate Placement of Foster children Act of 2006 (Amending Titles IV-B and IV-E of the SSA)**

Passed in 2006 and effective in Washington in July 2007, this law amends Titles IV-B and IV-E and sets a 60-day time frame for completing interstate home studies; gives foster caregivers a right to notice and an opportunity to be heard in juvenile court proceedings regarding a child in their care; requires medical and education records be provided to foster caregivers and to youths who exit foster care at age 18.

**Fostering Connections to Success and Increasing Adoptions Act of 2008 (Amending Titles IV-B and IV-E of the SSA)**

Passed in October 2008 the law makes dramatic changes in Titles IV-B and IV-E. The law creates an opportunity for states to provide continued funding for youth who age out of foster care (to age 21) or who achieve permanency through adoption or relative guardianship after age 15; provides for a federally subsidized relative guardianship program (similar to adoption support); mandates increased requirements for a search and notification of adult relatives of foster children; requires an emphasis on collaboration and coordination with regard to health care for foster children; provides an opportunity for tribes to directly access Title IV-E funds.

## State Statutes

There are many Washington statutes that affect children involved in the child welfare system. Some of these statutes are the following.

### RCW title 13

Title 13 of the Revised Code of Washington contains laws affecting juveniles and juvenile courts. The chapters which most often affect the Department of Social and Health Services' cases are the following:

- **RCW 13.04** is the Basic Juvenile Court Act. It contains some definitions used throughout title 13, defines the juvenile court, and describes its jurisdiction and administration, etc. It also contains some general provisions regarding juvenile offenders.
- **RCW 13.32A** is the Family Reconciliation Act (Becca Bill). This chapter governs At-Risk Youth and CHINS (Child in Need of Services) proceedings.
- **RCW 13.34** is the Dependency and Termination statute. It governs dependency actions from shelter care through termination or guardianship.
- **RCW 13.40** is the Juvenile Justice Act, the statute that governs criminal actions against juveniles.
- **RCW 13.50** governs the disclosure of confidential child and family records created and maintained the Department. [There are a number of other statutes that require the Department to protect the confidentiality of certain kinds of records, such as medical, drug/alcohol treatment.]
- **RCW 13.64** is the Emancipation of Minors statute.

### RCW title 9A

Title 9A is Washington's criminal code.

- **RCW 9A.16.100** sets the parameters of the "reasonable force" defense to a crime of assault against a child.
- **RCW 9A.44.120** is the child hearsay statute applicable to sexual abuse cases in criminal and dependency/termination proceedings.
- **RCW 9A.64.020** is the incest statute.
- **RCW 9A.64.030** prohibits child buying and selling.

### RCW title 26

Title 26 is entitled "Domestic Relations" and contains Washington's family law statutes. Many of these statutes require that pattern forms be used. The forms (and instructions for using them), for parenting plans and third-party custody actions are available online, on the court's website, at <http://www.courts.wa.gov/forms/>.

- **RCW 26.09** is the marriage dissolution chapter. It contains provisions governing parenting obligations and parenting plans.
- **RCW 26.10** is the third-party (non-parent) custody statute.
- **RCW 26.26** is the Uniform Parentage Act and is used to establish or disestablish an alleged or presumed father's paternity.
- **RCW 26.27** is the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and governs disputes over which court has jurisdiction (or which is the most appropriate forum) to hear an action in which a child's custody is at issue.
- **RCW 26.33** is the Adoption Statute. In addition to governing the process for adoption, this statute governs relinquishments (voluntary termination of parental rights), disclosure of the birth family's medical and social history to adoptive parents, and open adoption agreements.
- **RCW 26.34** is the Interstate Compact on Placement of Children (ICPC), the law that must be followed to ensure cooperation between states when a child is placed by the court or the Department in another state.

- **RCW 26.44** is Washington’s “CAPTA” statute. It contains the mandatory reporting requirements as well as sets out the Department’s responsibilities and authority in investigating child abuse and neglect allegations.

### **RCW title 74**

Title 74 creates and governs all public assistance programs, including DSHS programs relating to children.

- **RCW 74.04.060** prohibits disclosure of records and files of applicants and recipients of public assistance benefits, except where disclosure is directly connected with the administration of a public assistance program.
- **RCW 74.13** is the chapter that establishes the nature and scope of child welfare services in Washington. The chapter includes general provisions, as well as provisions relating to foster care, the adoption support program (this section will become its own chapter soon), disclosure of child fatality records, and independent living services program.
- **RCW 74.14A, .14B, and .14C** establish various programs for providing services to children and their families.
- **RCW 74.15** is the statute authorizing and directing the Department to license foster homes, and agencies that receive children for care, control or maintenance outside their own homes, or which arrange, place or assist in the placement of children in foster or adoptive homes. This statute also establishes which relatives are not agencies (and therefore not subject to licensing).

### **RCW chapter 43.20A**

This chapter creates the Department of Social and Health Services.

- **RCW 43.20A.205** governs the notice and hearing procedures applicable to the denial of an application for a license issued by DSHS, as well as the suspension, revocation, or modification of a license.

The RCWs are online at <http://apps.leg.wa.gov/rcw/default.aspx>.

## **Department Regulations**

The DSHS regulations are contained in title 388 of the Washington Administrative Code (WAC). Some of the chapters that are applicable to children’s cases are the following:

- **WAC 388-01** – DSHS organization and disclosure of public records
- **WAC 388-02** – Rules governing administrative hearings
- **WAC 388-03** – Rules governing use of interpreters
- **WAC 388-06** – Criminal Background Checks
- **WAC 388-15** – Investigation of child abuse and neglect allegations (CAPTA rules)
- **WAC 388-25** – Regulations relating to foster care placement and payment, relative placement, and foster parent liability fund.
- **WAC 388-27** – Regulations governing adoptions and adoption support
- **WAC 388-148** – Minimum licensing standards for foster homes, group homes, agencies

The Department’s WACs are online at <http://apps.leg.wa.gov/WAC/default.aspx?cite=388>.

## **Court Rules**

The Supreme Court has passed a rule setting out the role and responsibilities of guardians ad litem (including CASAs) who represent the best interest of children in judicial proceedings. The rules can be found online at

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=sup&set=GALR](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=GALR)