**Selected Legislation from the 2017 Legislative Session**

**WaCASA Conference: November 3, 2018**

**Presented by Carissa Greenberg, AAG, Office of the Attorney General**

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| **Bill****Number**  | **Statutes****Impacted** | **Description** |
| [ESSB 6037](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6453-S2.SL.pdf#page=1)Eff. 01/01/2019 | Ch. 26.26 RCW +Creates new statutes | Revises various provisions regarding establishing and challenging parentage under the Uniform Parentage Act (UPA). Addresses parentage in surrogacy, assisted reproduction, de facto parentage, competing claims of parentage, and assisted reproduction |
| [2SSB 6453](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6453-S2.SL.pdf#page=1) | RCW 74.13.031(19) | Authorizes, but does not require, DCYF to purchase legal representation (within its appropriations) for kinship caregivers to secure orders establishing civil legal relationships when necessary for the child’s safety, permanence, or well-being |
| [HB 1790](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/1790.SL.pdf#page=1) | RCW 13.34.040(2) | Probation officer approval no longer required on dependency petitions when the DCYF is the petitioner |
| [HB 2785](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2785.SL.pdf) | RCW 43.216.015  | Modifies the requirement that DCYF provide foster parents with a list of foster parent rights and responsibilities on the DCYF website and in writing at the time of licensure to also require the list be provided to foster parents at orientation before licensure and at license renewal. |
| [ESHB 2700](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2700-S.SL.pdf#page=1) | RCW 26.44.020RCW 26.44.185RCW 42.56.240Adds sections to Ch. 26.44 RCW | * Adds disclosure protections for audio and visual recordings of child forensic interviews
* Adds discovery protections for these recordings by requiring that they be subject to a protective order (absent good cause finding) in all civil and criminal proceedings.
* Requires local protocol addressing child sexual abuse, fatality, physical abuse, and criminal neglect investigations include provisions for handling these recordings.
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| [SSB 6222](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6222-S.SL.pdf#page=1) | RCW 13.34.267RCW 13.34.268RCW 74.13.020RCW 74.13.031RCW 74.13.336 | * Removes the requirement for a youth to be in foster care on their 18th birthday to be eligible for EFC
* Removes the requirement for a youth to enroll in EFC for the first time before the youth’s 19th birthday
* Removes the one-time limitation on entering EFC through a VPA
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| [EHB 2008](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/House/2008.SL.pdf) | New section added to ch. 74.13 and 43.88 RCW, amends RCW 43.88C.010 | * DCYF must facilitate a workgroup to design a BRS rate payment methodology based on actual costs of care and must report to the Legislature by November 2018.
* The caseload forecast council must forecast the number of youth expected to receive BRS in foster care and the number of screened-in reports of child abuse or neglect, and court-ordered parent-child and sibling visits delivered by contractors must be forecasted and budgeted as maintenance level costs.
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| [SSB 6309](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6309-S.SL.pdf#page=1) | RCW 26.44.030 | * Allows the Department 120 days to complete FAR response (previously 90 days), with agreement of the parent
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| [SB 5598](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/5598.SL.pdf#page=1) | Creates new statutes | * Provides a statutory basis for non-parent relatives to petition for court-ordered visitation if: (1) the relative and the child have an ongoing and substantial relationship, and (2) denying visitation risks harm to the child
* If the petition is granted, the court shall order the petitioner to pay all transportation costs associated with visitation
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| [2SSB 6274](http://lawfilesext.leg.wa.gov/biennium/2017-18/Pdf/Bills/Session%20Laws/Senate/6274-S2.SL.pdf#page=1) | Ch. 28B.117 RCW | * Creates the Passport to Careers program with two pathways: (1) Passport to College Promise scholarship program, and (2) Passport to Apprenticeship Opportunities program.
* The Passport to Careers program must provide financial support and assistance to former foster and unaccompanied homeless youth in pursuing postsecondary options in higher education or a registered apprenticeship.
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**Selected Case Law Update**

**WaCASA Conference: November 3, 2018**

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**Published Washington State Supreme Court Decisions**

*State v. James-Buhl*, \_\_ P.3d. \_\_ (2018 WL 1867150) (April 19, 2018).

A teacher does not have a duty to report child abuse or neglect under chapter 26.44 RCW unless there is some connection between the child abuse or neglect and the teacher’s professional identity.

*In re Dependency of E.H. (consolidated with In the Matter of S.K.-P.)*, \_\_ P.3d \_\_, 2018 WL 4783412 (October 4, 2018)

The discretionary standard for appointment in RCW 13.34.100(7)(a) meets constitutional requirements (Owens, Fairhurst, Wiggins, and Johnson, lead opinion; Stephens and Gordon McCloud, concurring in part; Yu, Gonzales and Madsen, dissenting in part). The lead opinion endorses a case-by-case *Mathews* analysis to determine whether appointment of an attorney is required, at an early practicable time in the dependency case, with findings supporting the court’s ruling made on the record. In deciding whether appointment is required, trial courts should consider at least: the age of the child, whether the child is in the legal or physical custody of the State (versus a parent), whether the child’s stated interests are aligned with the GAL’s assessment of the child’s best interests or with another represented party’s desires, whether the child disputes the facts that form a basis for the dependency, whether the child presents a complex argument against the State’s proposed action, and the issues that are actually disputed or to be addressed in the hearing. Decision, at 21-22. In addition, the court’s basis for the denial of a request should be stated succinctly on the record. *Id.* at 16. The burden for a motion seeking appointment is preponderance of the evidence with no presumption against appointment. *Id.* at 17.

**Published Court of Appeals Decisions**

*In re Dependency of J.E.R.C*., 1 Wn. App. 2d 765, 406 P.3d 1187 (2017).

When the appellate court is considering discretionary review of an interlocutory order entered in a dependency proceeding, appellate counsel may move to withdraw when there is no meritorious issue regarding which to seek review, and need not continue pursuing moot or frivolous issues.

*In re Dependency of J.E.D.A. Jr.*, 2 Wn. App. 2d 764, 413 P.3d 574 (2018).

Trial court was required to ensure that interpreter was qualified as required in RCW 2.43.030 in dependency proceedings concerning minor child, whose aunt, the child’s purported guardian, spoke only Chuukese, a language native to Micronesia.

*In re Dependency of M.-A.F.-S.*, 4 Wn. App. 2d 425, 421 P.3d 482 (2018) (motion for discretionary review pending)

The termination statutes are facially constitutional and survive strict scrutiny because they are narrowly tailored to achieve the State’s compelling interest in preventing harm to children. “[W]hen terminating parental rights, the court has necessarily found by clear, cogent, and convincing evidence that continuation of the parental relationship is harmful to the child. At this point, continuation of the dependency rather than termination of parental rights would impede, not facilitate, the goal of permanency by effectively prolonging the ‘limbo’ of foster care.” As the state Supreme Court has repeatedly held, the termination statutes do not require the existence of an adoptive family or permanent placement for the child.