

2 **ESHB 1556** - S AMD - 278

3 By Senators Kohl, Hargrove, Long, Smith and Thibaudeau

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5 On page 3, after line 13, insert the following:

6 "NEW SECTION. **Sec. 2.** A new section is added to chapter 11.88 RCW  
7 to read as follows:

8 A guardianship for a minor may not be entered under this chapter if  
9 a dependency action is currently pending under chapter 13.34 RCW for  
10 the minor, unless the guardian and guardianship have been approved in  
11 the permanency plan by the juvenile court.

12 **Sec. 3.** RCW 13.34.030 and 1995 c 311 s 23 are each amended to read  
13 as follows:

14 For purposes of this chapter:

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

17 (2) "Current placement episode" means the period of time that  
18 begins with the most recent date that the child was removed from the  
19 home of the parent, guardian, or legal custodian for purposes of  
20 placement in out-of-home care and continues until the child returns  
21 home, an adoption decree, a permanent custody order, or guardianship  
22 order is entered, or the dependency is dismissed, whichever occurs  
23 soonest. If the most recent date of removal occurred prior to the  
24 filing of a dependency petition under this chapter or after filing but  
25 prior to entry of a disposition order, such time periods shall be  
26 included when calculating the length of a child's current placement  
27 episode.

28 (3) "Dependency guardian" means the person, nonprofit corporation,  
29 or Indian tribe appointed by the court pursuant to RCW 13.34.232 for  
30 the limited purpose of assisting the court in the supervision of the  
31 dependency.

32 (4) "Dependent child" means any child:

33 (a) Who has been abandoned; that is, where the child's parent,  
34 guardian, or other custodian has expressed either by statement or  
35 conduct, an intent to forego, for an extended period, parental rights

1 or parental responsibilities despite an ability to do so. If the court  
2 finds that the petitioner has exercised due diligence in attempting to  
3 locate the parent, no contact between the child and the child's parent,  
4 guardian, or other custodian for a period of three months creates a  
5 rebuttable presumption of abandonment, even if there is no expressed  
6 intent to abandon;

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

9 (c) Who has no parent, guardian, or custodian capable of adequately  
10 caring for the child, such that the child is in circumstances which  
11 constitute a danger of substantial damage to the child's psychological  
12 or physical development; or

13 (d) Who has a developmental disability, as defined in RCW  
14 71A.10.020 and whose parent, guardian, or legal custodian together with  
15 the department determines that services appropriate to the child's  
16 needs can not be provided in the home. However, (a), (b), and (c) of  
17 this subsection may still be applied if other reasons for removal of  
18 the child from the home exist.

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

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

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

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

5 (9) "Preventive services" means preservation services, as defined  
6 in chapter 74.14C RCW, and other reasonably available services capable  
7 of preventing the need for out-of-home placement while protecting the  
8 child.

9 **Sec. 4.** RCW 13.34.130 and 1995 c 313 s 2, 1995 c 311 s 19, and  
10 1995 c 53 s 1 are each reenacted and amended to read as follows:

11 If, after a fact-finding hearing pursuant to RCW 13.34.110, it has  
12 been proven by a preponderance of the evidence that the child is  
13 dependent within the meaning of RCW 13.34.030; after consideration of  
14 the predisposition report prepared pursuant to RCW 13.34.110 and after  
15 a disposition hearing has been held pursuant to RCW 13.34.110, the  
16 court shall enter an order of disposition pursuant to this section.

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

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

26 (b) Order that the child be removed from his or her home and  
27 ordered into the custody, control, and care of a relative or the  
28 department of social and health services or a licensed child placing  
29 agency for placement in a foster family home or group care facility  
30 licensed pursuant to chapter 74.15 RCW or in a home not required to be  
31 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
32 cause to believe that the safety or welfare of the child would be  
33 jeopardized or that efforts to reunite the parent and child will be  
34 hindered, such child shall be placed with a person who is related to  
35 the child as defined in RCW 74.15.020(4)(a) and with whom the child has  
36 a relationship and is comfortable, and who is willing and available to  
37 care for the child. Placement of the child with a relative under this  
38 subsection shall be given preference by the court. An order for out-

1 of-home placement may be made only if the court finds that reasonable  
2 efforts have been made to prevent or eliminate the need for removal of  
3 the child from the child's home and to make it possible for the child  
4 to return home, specifying the services that have been provided to the  
5 child and the child's parent, guardian, or legal custodian, and that  
6 preventive services have been offered or provided and have failed to  
7 prevent the need for out-of-home placement, unless the health, safety,  
8 and welfare of the child cannot be protected adequately in the home,  
9 and that:

10 (i) There is no parent or guardian available to care for such  
11 child;

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

14 (iii) A manifest danger exists that the child will suffer serious  
15 abuse or neglect if the child is not removed from the home and an order  
16 under RCW 26.44.063 would not protect the child from danger; or

17 (iv) The extent of the child's disability is such that the parent,  
18 guardian, or legal custodian is unable to provide the necessary care  
19 for the child and the parent, guardian, or legal custodian has  
20 determined that the child would benefit from placement outside of the  
21 home.

22 (2) If the court has ordered a child removed from his or her home  
23 pursuant to subsection (1)(b) of this section, the court may order that  
24 a petition seeking termination of the parent and child relationship be  
25 filed if the court finds it is recommended by the supervising agency,  
26 that it is in the best interests of the child and that it is not  
27 reasonable to provide further services to reunify the family because  
28 the existence of aggravated circumstances make it unlikely that  
29 services will effectuate the return of the child to the child's parents  
30 in the near future. In determining whether aggravated circumstances  
31 exist, the court shall consider one or more of the following:

32 (a) Conviction of the parent of rape of the child in the first,  
33 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
34 9A.44.079;

35 (b) Conviction of the parent of criminal mistreatment of the child  
36 in the first or second degree as defined in RCW 9A.42.020 and  
37 9A.42.030;

38 (c) Conviction of the parent of one of the following assault  
39 crimes, when the child is the victim: Assault in the first or second

1 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child  
2 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

3 (d) Conviction of the parent of murder, manslaughter, or homicide  
4 by abuse of the child's other parent, sibling, or another child;

5 (e) A finding by a court that a parent is a sexually violent  
6 predator as defined in RCW 71.09.020;

7 (f) Failure of the parent to complete available treatment ordered  
8 under this chapter or the equivalent laws of another state, where such  
9 failure has resulted in a prior termination of parental rights to  
10 another child and the parent has failed to effect significant change in  
11 the interim.

12 (3) Whenever a child is ordered removed from the child's home, the  
13 agency charged with his or her care shall provide the court with:

14 (a) A permanency plan of care that shall identify one of the  
15 following outcomes as a primary goal and may identify additional  
16 outcomes as alternative goals: Return of the child to the home of the  
17 child's parent, guardian, or legal custodian; adoption; guardianship;  
18 permanent legal custody; or long-term relative or foster care, until  
19 the child is age eighteen, with a written agreement between the parties  
20 and the care provider; and independent living, if appropriate and if  
21 the child is age sixteen or older. Whenever a permanency plan  
22 identifies independent living as a goal, the plan shall also  
23 specifically identify the services that will be provided to assist the  
24 child to make a successful transition from foster care to independent  
25 living. Before the court approves independent living as a permanency  
26 plan of care, the court shall make a finding that the provision of  
27 services to assist the child in making a transition from foster care to  
28 independent living will allow the child to manage his or her financial  
29 affairs and to manage his or her personal, social, educational, and  
30 nonfinancial affairs. The department shall not discharge a child to an  
31 independent living situation before the child is eighteen years of age  
32 unless the child becomes emancipated pursuant to chapter 13.64 RCW.

33 (b) Unless the court has ordered, pursuant to subsection (2) of  
34 this section, that a termination petition be filed, a specific plan as  
35 to where the child will be placed, what steps will be taken to return  
36 the child home, and what actions the agency will take to maintain  
37 parent-child ties. All aspects of the plan shall include the goal of  
38 achieving permanence for the child.

1 (i) The agency plan shall specify what services the parents will be  
2 offered in order to enable them to resume custody, what requirements  
3 the parents must meet in order to resume custody, and a time limit for  
4 each service plan and parental requirement.

5 (ii) The agency shall be required to encourage the maximum parent-  
6 child contact possible, including regular visitation and participation  
7 by the parents in the care of the child while the child is in  
8 placement. Visitation may be limited or denied only if the court  
9 determines that such limitation or denial is necessary to protect the  
10 child's health, safety, or welfare.

11 (iii) A child shall be placed as close to the child's home as  
12 possible, preferably in the child's own neighborhood, unless the court  
13 finds that placement at a greater distance is necessary to promote the  
14 child's or parents' well-being.

15 (iv) The agency charged with supervising a child in placement shall  
16 provide all reasonable services that are available within the agency,  
17 or within the community, or those services which the department of  
18 social and health services has existing contracts to purchase. It  
19 shall report to the court if it is unable to provide such services.

20 (c) If the court has ordered, pursuant to subsection (2) of this  
21 section, that a termination petition be filed, a specific plan as to  
22 where the child will be placed, what steps will be taken to achieve  
23 permanency for the child, services to be offered or provided to the  
24 child, and, if visitation would be in the best interests of the child,  
25 a recommendation to the court regarding visitation between parent and  
26 child pending a fact-finding hearing on the termination petition. The  
27 agency shall not be required to develop a plan of services for the  
28 parents or provide services to the parents.

29 (4) If there is insufficient information at the time of the  
30 disposition hearing upon which to base a determination regarding the  
31 suitability of a proposed placement with a relative, the child shall  
32 remain in foster care and the court shall direct the supervising agency  
33 to conduct necessary background investigations as provided in chapter  
34 74.15 RCW and report the results of such investigation to the court  
35 within thirty days. However, if such relative appears otherwise  
36 suitable and competent to provide care and treatment, the criminal  
37 history background check need not be completed before placement, but as  
38 soon as possible after placement. Any placements with relatives,  
39 pursuant to this section, shall be contingent upon cooperation by the

1 relative with the agency case plan and compliance with court orders  
2 related to the care and supervision of the child including, but not  
3 limited to, court orders regarding parent-child contacts and any other  
4 conditions imposed by the court. Noncompliance with the case plan or  
5 court order shall be grounds for removal of the child from the  
6 relative's home, subject to review by the court.

7 (5) Except for children whose cases are reviewed by a citizen  
8 review board under chapter 13.70 RCW, the status of all children found  
9 to be dependent shall be reviewed by the court at least every six  
10 months from the beginning date of the placement episode or the date  
11 dependency is established, whichever is first, at a hearing in which it  
12 shall be determined whether court supervision should continue. The  
13 review shall include findings regarding the agency and parental  
14 completion of disposition plan requirements, and if necessary, revised  
15 permanency time limits.

16 (a) A child shall not be returned home at the review hearing unless  
17 the court finds that a reason for removal as set forth in this section  
18 no longer exists. The parents, guardian, or legal custodian shall  
19 report to the court the efforts they have made to correct the  
20 conditions which led to removal. If a child is returned, casework  
21 supervision shall continue for a period of six months, at which time  
22 there shall be a hearing on the need for continued intervention.

23 (b) If the child is not returned home, the court shall establish in  
24 writing:

25 (i) Whether reasonable services have been provided to or offered to  
26 the parties to facilitate reunion, specifying the services provided or  
27 offered;

28 (ii) Whether the child has been placed in the least-restrictive  
29 setting appropriate to the child's needs, including whether  
30 consideration and preference has been given to placement with the  
31 child's relatives;

32 (iii) Whether there is a continuing need for placement and whether  
33 the placement is appropriate;

34 (iv) Whether there has been compliance with the case plan by the  
35 child, the child's parents, and the agency supervising the placement;

36 (v) Whether progress has been made toward correcting the problems  
37 that necessitated the child's placement in out-of-home care;

38 (vi) Whether the parents have visited the child and any reasons why  
39 visitation has not occurred or has been infrequent;

1 (vii) Whether additional services are needed to facilitate the  
2 return of the child to the child's parents; if so, the court shall  
3 order that reasonable services be offered specifying such services; and

4 (viii) The projected date by which the child will be returned home  
5 or other permanent plan of care will be implemented.

6 (c) The court at the review hearing may order that a petition  
7 seeking termination of the parent and child relationship be filed.

8 **Sec. 5.** RCW 13.34.145 and 1995 c 311 s 20 and 1995 c 53 s 2 are  
9 each reenacted and amended to read as follows:

10 (1) A permanency plan shall be developed no later than sixty days  
11 from the time the supervising agency assumes responsibility for  
12 providing services, including placing the child, or at the time of a  
13 hearing under RCW 13.34.130, whichever occurs first. The permanency  
14 planning process continues until a permanency planning goal is achieved  
15 or dependency is dismissed. The planning process shall include  
16 reasonable efforts to return the child to the parent's home.

17 (a) Whenever a child is placed in out-of-home care pursuant to RCW  
18 13.34.130, the agency that has custody of the child shall provide the  
19 court with a written permanency plan of care directed towards securing  
20 a safe, stable, and permanent home for the child as soon as possible.  
21 The plan shall identify one of the following outcomes as the primary  
22 goal and may also identify additional outcomes as alternative goals:  
23 Return of the child to the home of the child's parent, guardian, or  
24 legal custodian; adoption; guardianship; permanent legal custody; or  
25 long-term relative or foster care, until the child is age eighteen,  
26 with a written agreement between the parties and the care provider; and  
27 independent living, if appropriate and if the child is age sixteen or  
28 older and the provisions of subsection (2) of this section are met.

29 (b) The identified outcomes and goals of the permanency plan may  
30 change over time based upon the circumstances of the particular case.

31 (c) Permanency planning goals should be achieved at the earliest  
32 possible date, preferably before the child has been in out-of-home care  
33 for fifteen months. In cases where parental rights have been  
34 terminated, the child is legally free for adoption, and adoption has  
35 been identified as the primary permanency planning goal, it shall be a  
36 goal to complete the adoption within six months following entry of the  
37 termination order.

38 (d) For purposes related to permanency planning:



1        (i) "Guardianship" means a dependency guardianship pursuant to this  
2 chapter or a legal guardianship pursuant to chapter 11.88 RCW or  
3 equivalent laws of another state or a federally recognized Indian  
4 tribe.

5        (ii) "Permanent legal custody" or "permanent custody" means legal  
6 custody of a relative child pursuant to chapter 26.10 RCW or equivalent  
7 laws of another state or of a federally recognized Indian tribe.

8        (2) Whenever a permanency plan identifies independent living as a  
9 goal, the plan shall also specifically identify the services that will  
10 be provided to assist the child to make a successful transition from  
11 foster care to independent living. Before the court approves  
12 independent living as a permanency plan of care, the court shall make  
13 a finding that the provision of services to assist the child in making  
14 a transition from foster care to independent living will allow the  
15 child to manage his or her financial affairs and to manage his or her  
16 personal, social, educational, and nonfinancial affairs. The  
17 department shall not discharge a child to an independent living  
18 situation before the child is eighteen years of age unless the child  
19 becomes emancipated pursuant to chapter 13.64 RCW.

20        (3)(a) For children ten and under, a permanency planning hearing  
21 shall be held in all cases where the child has remained in out-of-home  
22 care for at least nine months and an adoption decree ~~((or))~~,  
23 guardianship order, or permanent custody order has not previously been  
24 entered. The hearing shall take place no later than twelve months  
25 following commencement of the current placement episode.

26        (b) For children over ten, a permanency planning hearing shall be  
27 held in all cases where the child has remained in out-of-home care for  
28 at least fifteen months and an adoption decree ~~((or))~~,  
29 guardianship order, or permanent custody order has not previously been entered. The  
30 hearing shall take place no later than eighteen months following  
31 commencement of the current placement episode.

32        (4) Whenever a child is removed from the home of a dependency  
33 guardian or long-term relative or foster care provider, and the child  
34 is not returned to the home of the parent, guardian, or legal custodian  
35 but is placed in out-of-home care, a permanency planning hearing shall  
36 take place no later than twelve or eighteen months, as provided in  
37 subsection (3) of this section, following the date of removal unless,  
38 prior to the hearing, the child returns to the home of the dependency  
39 guardian or long-term care provider, the child is placed in the home of

1 the parent, guardian, or legal custodian, an adoption decree ((or)),  
2 guardianship order, or permanent custody order is entered, or the  
3 dependency is dismissed.

4 (5) No later than ten working days prior to the permanency planning  
5 hearing, the agency having custody of the child shall submit a written  
6 permanency plan to the court and shall mail a copy of the plan to all  
7 parties and their legal counsel, if any.

8 (6) At the permanency planning hearing, the court shall enter  
9 findings as required by RCW 13.34.130(5) and shall review the  
10 permanency plan prepared by the agency. If the child has resided in  
11 the home of a foster parent or relative for more than six months prior  
12 to the permanency planning hearing, the court shall also enter a  
13 finding regarding whether the foster parent or relative was informed of  
14 the hearing as required in RCW 74.13.280. If a goal of long-term  
15 foster or relative care has been achieved prior to the permanency  
16 planning hearing, the court shall review the child's status to  
17 determine whether the placement and the plan for the child's care  
18 remain appropriate. In cases where the primary permanency planning  
19 goal has not yet been achieved, the court shall inquire regarding the  
20 reasons why the primary goal has not been achieved and determine what  
21 needs to be done to make it possible to achieve the primary goal. In  
22 all cases, the court shall:

23 (a)(i) Order the permanency plan prepared by the agency to be  
24 implemented; or

25 (ii) Modify the permanency plan, and order implementation of the  
26 modified plan; and

27 (b)(i) Order the child returned home only if the court finds that  
28 a reason for removal as set forth in RCW 13.34.130 no longer exists; or

29 (ii) Order the child to remain in out-of-home care for a limited  
30 specified time period while efforts are made to implement the  
31 permanency plan.

32 (7) If the court orders the child returned home, casework  
33 supervision shall continue for at least six months, at which time a  
34 review hearing shall be held pursuant to RCW 13.34.130(5), and the  
35 court shall determine the need for continued intervention.

36 (8) If a dependency action is pending under this chapter and the  
37 dependent child is the subject of a legal guardianship proceeding or a  
38 permanent legal custody proceeding, juvenile court jurisdiction will  
39 prevent the entry of an order establishing a legal guardianship or

1 permanent legal custody unless, (a) the juvenile court has ordered  
2 implementation of a permanency plan that includes legal guardianship or  
3 permanent legal custody, and (b) the party pursuing the legal  
4 guardianship or permanent legal custody is a relative identified in the  
5 permanency plan as the prospective legal guardian or custodian. During  
6 the pendency of the guardianship or legal custody proceedings, juvenile  
7 court shall conduct review hearings and further permanency planning  
8 hearings as provided in this chapter. At the conclusion of the legal  
9 guardianship or permanent legal custody proceeding, a juvenile court  
10 review hearing shall be held for the purpose of determining whether  
11 dependency should be dismissed.

12 (9) Following the first permanency planning hearing, the court  
13 shall hold a further permanency planning hearing in accordance with  
14 this section at least once every twelve months until a permanency  
15 planning goal is achieved or the dependency is dismissed, whichever  
16 occurs first.

17 (~~(9)~~) (10) Except as otherwise provided in RCW 13.34.235, the  
18 status of all dependent children shall continue to be reviewed by the  
19 court at least once every six months, in accordance with RCW  
20 13.34.130(5), until the dependency is dismissed. Prior to the second  
21 permanency planning hearing, the agency that has custody of the child  
22 shall consider whether to file a petition for termination of parental  
23 rights.

24 (~~(10)~~) (11) Nothing in this chapter may be construed to limit the  
25 ability of the agency that has custody of the child to file a petition  
26 for termination of parental rights or a guardianship petition at any  
27 time following the establishment of dependency. Upon the filing of  
28 such a petition, a fact-finding hearing shall be scheduled and held in  
29 accordance with this chapter unless the agency requests dismissal of  
30 the petition prior to the hearing or unless the parties enter an agreed  
31 order terminating parental rights, establishing guardianship, or  
32 otherwise resolving the matter.

33 (~~(11)~~) (12) The approval of a permanency plan that does not  
34 contemplate return of the child to the parent does not relieve the  
35 supervising agency of its obligation to provide reasonable services,  
36 under this chapter, intended to effectuate the return of the child to  
37 the parent, including but not limited to, visitation rights.

1        (~~(12)~~) (13) Nothing in this chapter may be construed to limit the  
2 procedural due process rights of any party in a termination or  
3 guardianship proceeding filed under this chapter.

4        NEW SECTION.    **Sec. 6.**    A new section is added to chapter 26.10 RCW  
5 to read as follows:

6        A custody decree for a minor may not be entered under this chapter  
7 if a dependency action is currently pending under chapter 13.34 RCW for  
8 the minor, unless the custodian and legal custody have been approved in  
9 the permanency plan by the juvenile court."

10    **ESHB 1556** - S AMD - 278

11        By Senators Kohl, Hargrove, Long, Smith and Thibaudeau

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13        On page 1, line 1 of the title, after "visitation;" strike the  
14 remainder of the title and insert "amending RCW 26.09.240 and  
15 13.34.030; reenacting and amending RCW 13.34.130 and 13.34.145; adding  
16 a new section to chapter 11.88 RCW; and adding a new section to chapter  
17 26.10 RCW."

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