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HOUSE BILL 1276

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By Representatives Boldt, Tokuda, Kastama and D. Sommers; by request of Department of Social and Health Services

Read first time 01/20/1999. Referred to Committee on Children & Family Services.

1 AN ACT Relating to technical amendments concerning the notice  
2 provisions in the adoption and safe families act; amending RCW  
3 74.13.280; and reenacting and amending RCW 13.34.130 and 13.34.145.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 74.13.280 and 1997 c 272 s 7 are each amended to read  
6 as follows:

7 (1) Except as provided in RCW 70.24.105, whenever a child is placed  
8 in out-of-home care by the department or a child-placing agency, the  
9 department or agency shall, within available resources, share  
10 information about the child and the child's family with the care  
11 provider and shall, within available resources, consult with the care  
12 provider regarding the child's case plan. (~~If the child is dependent  
13 pursuant to a proceeding under chapter 13.34 RCW, the department or  
14 agency shall keep the care provider informed regarding the dates and  
15 location of dependency review and permanency planning hearings  
16 pertaining to the child.~~) The supervising agency shall provide a  
17 foster parent, preadoptive parent, or relative with notice of, and  
18 their right to an opportunity to be heard in, any hearing pertaining to  
19 the child, but only if the child is residing with the foster parent,

1 preadoptive parent, or relative at the time of the hearing. This  
2 provision shall not be construed to grant party status to any person  
3 who has been provided an opportunity to be heard.

4 (2) Any person who receives information about a child or a child's  
5 family pursuant to this section shall keep the information confidential  
6 and shall not further disclose or disseminate the information except as  
7 authorized by law.

8 (3) Nothing in this section shall be construed to limit the  
9 authority of the department or child-placing agencies to disclose  
10 client information or to maintain client confidentiality as provided by  
11 law.

12 (4) The department is authorized to adopt rules to implement this  
13 section.

14 **Sec. 2.** RCW 13.34.130 and 1998 c 314 s 2 and 1998 c 130 s 2 are  
15 each reenacted and amended to read as follows:

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

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

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

31 (b) Order that the child be removed from his or her home and  
32 ordered into the custody, control, and care of a relative or the  
33 department of social and health services or a licensed child placing  
34 agency for placement in a foster family home or group care facility  
35 licensed pursuant to chapter 74.15 RCW or in a home not required to be  
36 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable  
37 cause to believe that the safety or welfare of the child would be  
38 jeopardized or that efforts to reunite the parent and child will be

1 hindered, such child shall be placed with a person who is related to  
2 the child as defined in RCW 74.15.020(~~((4)(a))~~) (2)(a) and with whom  
3 the child has a relationship and is comfortable, and who is willing and  
4 available to care for the child. Placement of the child with a  
5 relative under this subsection shall be given preference by the court.  
6 An order for out-of-home placement may be made only if the court finds  
7 that reasonable efforts have been made to prevent or eliminate the need  
8 for removal of the child from the child's home and to make it possible  
9 for the child to return home, specifying the services that have been  
10 provided to the child and the child's parent, guardian, or legal  
11 custodian, and that preventive services have been offered or provided  
12 and have failed to prevent the need for out-of-home placement, unless  
13 the health, safety, and welfare of the child cannot be protected  
14 adequately in the home, and that:

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

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

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

23 (iv) The extent of the child's disability is such that the parent,  
24 guardian, or legal custodian is unable to provide the necessary care  
25 for the child and the parent, guardian, or legal custodian has  
26 determined that the child would benefit from placement outside of the  
27 home.

28 (2) If the court has ordered a child removed from his or her home  
29 pursuant to subsection (1)(b) of this section, the court may order that  
30 a petition seeking termination of the parent and child relationship be  
31 filed if the court finds: (a) Termination is recommended by the  
32 supervising agency; (b) termination is in the best interests of the  
33 child; and (c) that because of the existence of aggravated  
34 circumstances, reasonable efforts to unify the family are not required.  
35 Notwithstanding the existence of aggravated circumstances, reasonable  
36 efforts may be required if the court or department determines it is in  
37 the best interest of the child. In determining whether aggravated  
38 circumstances exist, the court shall consider one or more of the  
39 following:

1 (i) Conviction of the parent of rape of the child in the first,  
2 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
3 9A.44.079;

4 (ii) Conviction of the parent of criminal mistreatment of the child  
5 in the first or second degree as defined in RCW 9A.42.020 and  
6 9A.42.030;

7 (iii) Conviction of the parent of one of the following assault  
8 crimes, when the child is the victim: Assault in the first or second  
9 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child  
10 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

11 (iv) Conviction of the parent of murder, manslaughter, or homicide  
12 by abuse of the child's other parent, sibling, or another child;

13 (v) Conviction of the parent of attempting, soliciting, or  
14 conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of  
15 this subsection;

16 (vi) A finding by a court that a parent is a sexually violent  
17 predator as defined in RCW 71.09.020;

18 (vii) Failure of the parent to complete available treatment ordered  
19 under this chapter or the equivalent laws of another state, where such  
20 failure has resulted in a prior termination of parental rights to  
21 another child and the parent has failed to effect significant change in  
22 the interim. In the case of a parent of an Indian child, as defined in  
23 the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. (~~{Sec.}~~)) Sec.  
24 1903), the court shall also consider tribal efforts to assist the  
25 parent in completing treatment and make it possible for the child to  
26 return home;

27 (viii) An infant under three years of age has been abandoned as  
28 defined in RCW 13.34.030(4)(a);

29 (ix) The mother has given birth to three or more drug-affected  
30 infants, resulting in the department filing a petition under section 23  
31 of this act.

32 (3) If reasonable efforts are not ordered under subsection (2) of  
33 this section a permanency (~~{plan-planning}~~) planning hearing shall be  
34 held within thirty days. Reasonable efforts shall be made to place the  
35 child in a timely manner in accordance with the permanency plan, and to  
36 complete whatever steps are necessary to finalize the permanent  
37 placement of the child.

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

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

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

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

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

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

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

6 (c) If the court has ordered, pursuant to subsection (2) of this  
7 section, that a termination petition be filed, a specific plan as to  
8 where the child will be placed, what steps will be taken to achieve  
9 permanency for the child, services to be offered or provided to the  
10 child, and, if visitation would be in the best interests of the child,  
11 a recommendation to the court regarding visitation between parent and  
12 child pending a fact-finding hearing on the termination petition. The  
13 agency shall not be required to develop a plan of services for the  
14 parents or provide services to the parents.

15 (5) If the court determines that the continuation of reasonable  
16 efforts to prevent or eliminate the need to remove the child from his  
17 or her home or to safely return the child home should not be part of  
18 the permanency plan of care for the child, reasonable efforts shall be  
19 made to place the child in a timely manner and to complete whatever  
20 steps are necessary to finalize the permanent placement of the child.

21 (6) If there is insufficient information at the time of the  
22 disposition hearing upon which to base a determination regarding the  
23 suitability of a proposed placement with a relative, the child shall  
24 remain in foster care and the court shall direct the supervising agency  
25 to conduct necessary background investigations as provided in chapter  
26 74.15 RCW and report the results of such investigation to the court  
27 within thirty days. However, if such relative appears otherwise  
28 suitable and competent to provide care and treatment, the criminal  
29 history background check need not be completed before placement, but as  
30 soon as possible after placement. Any placements with relatives,  
31 pursuant to this section, shall be contingent upon cooperation by the  
32 relative with the agency case plan and compliance with court orders  
33 related to the care and supervision of the child including, but not  
34 limited to, court orders regarding parent-child contacts and any other  
35 conditions imposed by the court. Noncompliance with the case plan or  
36 court order shall be grounds for removal of the child from the  
37 relative's home, subject to review by the court.

38 (7) Except for children whose cases are reviewed by a citizen  
39 review board under chapter 13.70 RCW, the status of all children found

1 to be dependent shall be reviewed by the court at least every six  
2 months from the beginning date of the placement episode or the date  
3 dependency is established, whichever is first, at a hearing in which it  
4 shall be determined whether court supervision should continue. The  
5 review shall include findings regarding the agency and parental  
6 completion of disposition plan requirements, and if necessary, revised  
7 permanency time limits. The supervising agency shall provide a foster  
8 parent, preadoptive parent, or relative with notice of, and their right  
9 to an opportunity to be heard in, a review hearing pertaining to the  
10 child, but only if the child is residing with that person (~~is~~  
11 ~~currently providing care to that child~~) at the time of the hearing.  
12 This section shall not be construed to grant party status to any person  
13 who has been provided an opportunity to be heard.

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

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

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

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

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

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

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

36 (vi) Whether the parents have visited the child and any reasons why  
37 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. 3.** RCW 13.34.145 and 1998 c 314 s 3 and 1998 c 130 s 3 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, 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 custody order" means a custody order entered  
6 pursuant to chapter 26.10 RCW.

7 (iii) "Permanent legal custody" means legal custody pursuant to  
8 chapter 26.10 RCW or equivalent laws of another state or of a federally  
9 recognized Indian tribe.

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

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

28 (4) Whenever a child is removed from the home of a dependency  
29 guardian or long-term relative or foster care provider, and the child  
30 is not returned to the home of the parent, guardian, or legal custodian  
31 but is placed in out-of-home care, a permanency planning hearing shall  
32 take place no later than twelve months, as provided in subsection (3)  
33 of this section, following the date of removal unless, prior to the  
34 hearing, the child returns to the home of the dependency guardian or  
35 long-term care provider, the child is placed in the home of the parent,  
36 guardian, or legal custodian, an adoption decree, guardianship order,  
37 or permanent custody order is entered, or the dependency is dismissed.

38 (5) No later than ten working days prior to the permanency planning  
39 hearing, the agency having custody of the child shall submit a written

1 permanency plan to the court and shall mail a copy of the plan to all  
2 parties and their legal counsel, if any.

3 (6) At the permanency planning hearing, the court shall enter  
4 findings as required by RCW 13.34.130(7) and shall review the  
5 permanency plan prepared by the agency. (~~(If the child has resided in~~  
6 ~~the home of a foster parent or relative for more than six months prior~~  
7 ~~to the permanency planning hearing,)~~) The court shall also enter a  
8 finding regarding whether the foster parent or relative was informed of  
9 the hearing as required in RCW 74.13.280 and 13.34.130(7). If a goal  
10 of long-term foster or relative care has been achieved prior to the  
11 permanency planning hearing, the court shall review the child's status  
12 to determine whether the placement and the plan for the child's care  
13 remain appropriate. In cases where the primary permanency planning  
14 goal has not yet been achieved, the court shall inquire regarding the  
15 reasons why the primary goal has not been achieved and determine what  
16 needs to be done to make it possible to achieve the primary goal. In  
17 all cases, the court shall:

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

20 (ii) Modify the permanency plan, and order implementation of the  
21 modified plan; and

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

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

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

31 (8) Continued juvenile court jurisdiction under this chapter shall  
32 not be a barrier to the entry of an order establishing a legal  
33 guardianship or permanent legal custody when, (a) the court has ordered  
34 implementation of a permanency plan that includes legal guardianship or  
35 permanent legal custody, and (b) the party pursuing the legal  
36 guardianship or permanent legal custody is the party identified in the  
37 permanency plan as the prospective legal guardian or custodian. During  
38 the pendency of such proceeding, juvenile court shall conduct review  
39 hearings and further permanency planning hearings as provided in this

1 chapter. At the conclusion of the legal guardianship or permanent  
2 legal custody proceeding, a juvenile court hearing shall be held for  
3 the purpose of determining whether dependency should be dismissed. If  
4 a guardianship or permanent custody order has been entered, the  
5 dependency shall be dismissed.

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

11 (10) Except as otherwise provided in RCW 13.34.235, the status of  
12 all dependent children shall continue to be reviewed by the court at  
13 least once every six months, in accordance with RCW 13.34.130(7), until  
14 the dependency is dismissed. Prior to the second permanency planning  
15 hearing, the agency that has custody of the child shall consider  
16 whether to file a petition for termination of parental rights.

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

26 (12) The approval of a permanency plan that does not contemplate  
27 return of the child to the parent does not relieve the supervising  
28 agency of its obligation to provide reasonable services, under this  
29 chapter, intended to effectuate the return of the child to the parent,  
30 including but not limited to, visitation rights.

31 (13) Nothing in this chapter may be construed to limit the  
32 procedural due process rights of any party in a termination or  
33 guardianship proceeding filed under this chapter.

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