
SUBSTITUTE HOUSE BILL 2616

State of Washington

63rd Legislature

2014 Regular Session

By House Early Learning & Human Services (originally sponsored by Representatives Freeman, Walsh, Kagi, Roberts, Smith, Orwall, Tarleton, and Pollet)

READ FIRST TIME 02/05/14.

1 AN ACT Relating to parents with intellectual or developmental
2 disabilities involved in dependency proceedings; reenacting and
3 amending RCW 13.34.136 and 13.34.138; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature intends to assure that for
6 parents with intellectual or developmental disabilities, the department
7 of social and health services takes into consideration the parent's
8 disability when offering services to correct parental deficiencies. To
9 do so, the legislature finds that the department must contact the
10 developmental disabilities administration. The legislature further
11 intends to allow the court to apply an active efforts standard to the
12 department at dependency review hearings involving parents with
13 intellectual or developmental disabilities.

14 **Sec. 2.** RCW 13.34.136 and 2013 c 316 s 2, 2013 c 254 s 2, and 2013
15 c 173 s 2 are each reenacted and amended to read as follows:

16 (1) Whenever a child is ordered removed from the home, a permanency
17 plan shall be developed no later than sixty days from the time the
18 supervising agency assumes responsibility for providing services,

1 including placing the child, or at the time of a hearing under RCW
2 13.34.130, whichever occurs first. The permanency planning process
3 continues until a permanency planning goal is achieved or dependency is
4 dismissed. The planning process shall include reasonable efforts to
5 return the child to the parent's home.

6 (2) The agency supervising the dependency shall submit a written
7 permanency plan to all parties and the court not less than fourteen
8 days prior to the scheduled hearing. Responsive reports of parties not
9 in agreement with the department's or supervising agency's proposed
10 permanency plan must be provided to the department or supervising
11 agency, all other parties, and the court at least seven days prior to
12 the hearing.

13 The permanency plan shall include:

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, including a
18 tribal customary adoption as defined in RCW 13.38.040; guardianship;
19 permanent legal custody; long-term relative or foster care, until the
20 child is age eighteen, with a written agreement between the parties and
21 the care provider; successful completion of a responsible living skills
22 program; or independent living, if appropriate and if the child is age
23 sixteen or older. The department or supervising agency shall not
24 discharge a child to an independent living situation before the child
25 is eighteen years of age unless the child becomes emancipated pursuant
26 to chapter 13.64 RCW;

27 (b) Unless the court has ordered, pursuant to RCW 13.34.130(8),
28 that a termination petition be filed, a specific plan as to where the
29 child will be placed, what steps will be taken to return the child
30 home, what steps the supervising agency or the department will take to
31 promote existing appropriate sibling relationships and/or facilitate
32 placement together or contact in accordance with the best interests of
33 each child, and what actions the department or supervising agency will
34 take to maintain parent-child ties. All aspects of the plan shall
35 include the goal of achieving permanence for the child.

36 (i) The department's or supervising agency's plan shall specify
37 what services the parents will be offered to enable them to resume

1 custody, what requirements the parents must meet to resume custody, and
2 a time limit for each service plan and parental requirement.

3 (A) If the parent is incarcerated, the plan must address how the
4 parent will participate in the case conference and permanency planning
5 meetings and, where possible, must include treatment that reflects the
6 resources available at the facility where the parent is confined. The
7 plan must provide for visitation opportunities, unless visitation is
8 not in the best interests of the child.

9 (B) If a parent has a developmental disability according to the
10 definition provided in RCW 71A.10.020, and that individual is eligible
11 for services provided by the developmental disabilities administration,
12 the department shall make reasonable efforts to consult with the
13 developmental disabilities administration to create an appropriate plan
14 for services. For individuals who meet the definition of developmental
15 disability provided in RCW 71A.10.020 whether eligible for services
16 through the developmental disabilities administration or not, the plan
17 for services must be tailored to correct the parental deficiency taking
18 into consideration the parent's disability and the department shall
19 also determine an appropriate method to offer those services based on
20 the parent's disability.

21 (ii)(A) Visitation is the right of the family, including the child
22 and the parent, in cases in which visitation is in the best interest of
23 the child. Early, consistent, and frequent visitation is crucial for
24 maintaining parent-child relationships and making it possible for
25 parents and children to safely reunify. The supervising agency or
26 department shall encourage the maximum parent and child and sibling
27 contact possible, when it is in the best interest of the child,
28 including regular visitation and participation by the parents in the
29 care of the child while the child is in placement.

30 (B) Visitation shall not be limited as a sanction for a parent's
31 failure to comply with court orders or services where the health,
32 safety, or welfare of the child is not at risk as a result of the
33 visitation.

34 (C) Visitation may be limited or denied only if the court
35 determines that such limitation or denial is necessary to protect the
36 child's health, safety, or welfare. When a parent or sibling has been
37 identified as a suspect in an active criminal investigation for a
38 violent crime that, if the allegations are true, would impact the

1 safety of the child, the department shall make a concerted effort to
2 consult with the assigned law enforcement officer in the criminal case
3 before recommending any changes in parent/child or child/sibling
4 contact. In the event that the law enforcement officer has information
5 pertaining to the criminal case that may have serious implications for
6 child safety or well-being, the law enforcement officer shall provide
7 this information to the department during the consultation. The
8 department may only use the information provided by law enforcement
9 during the consultation to inform family visitation plans and may not
10 share or otherwise distribute the information to any person or entity.
11 Any information provided to the department by law enforcement during
12 the consultation is considered investigative information and is exempt
13 from public inspection pursuant to RCW 42.56.240. The results of the
14 consultation shall be communicated to the court.

15 (D) The court and the department or supervising agency should rely
16 upon community resources, relatives, foster parents, and other
17 appropriate persons to provide transportation and supervision for
18 visitation to the extent that such resources are available, and
19 appropriate, and the child's safety would not be compromised.

20 (iii)(A) The department, court, or caregiver in the out-of-home
21 placement may not limit visitation or contact between a child and
22 sibling as a sanction for a child's behavior or as an incentive to the
23 child to change his or her behavior.

24 (B) Any exceptions, limitation, or denial of contacts or visitation
25 must be approved by the supervisor of the department caseworker and
26 documented. The child, parent, department, guardian ad litem, or
27 court-appointed special advocate may challenge the denial of visits in
28 court.

29 (iv) A child shall be placed as close to the child's home as
30 possible, preferably in the child's own neighborhood, unless the court
31 finds that placement at a greater distance is necessary to promote the
32 child's or parents' well-being.

33 (v) The plan shall state whether both in-state and, where
34 appropriate, out-of-state placement options have been considered by the
35 department or supervising agency.

36 (vi) Unless it is not in the best interests of the child, whenever
37 practical, the plan should ensure the child remains enrolled in the

1 school the child was attending at the time the child entered foster
2 care.

3 (vii) The supervising agency or department shall provide all
4 reasonable services that are available within the department or
5 supervising agency, or within the community, or those services which
6 the department has existing contracts to purchase. It shall report to
7 the court if it is unable to provide such services; and

8 (c) If the court has ordered, pursuant to RCW 13.34.130(8), that a
9 termination petition be filed, a specific plan as to where the child
10 will be placed, what steps will be taken to achieve permanency for the
11 child, services to be offered or provided to the child, and, if
12 visitation would be in the best interests of the child, a
13 recommendation to the court regarding visitation between parent and
14 child pending a fact-finding hearing on the termination petition. The
15 department or supervising agency shall not be required to develop a
16 plan of services for the parents or provide services to the parents if
17 the court orders a termination petition be filed. However, reasonable
18 efforts to ensure visitation and contact between siblings shall be made
19 unless there is reasonable cause to believe the best interests of the
20 child or siblings would be jeopardized.

21 (3) Permanency planning goals should be achieved at the earliest
22 possible date. If the child has been in out-of-home care for fifteen
23 of the most recent twenty-two months, and the court has not made a good
24 cause exception, the court shall require the department or supervising
25 agency to file a petition seeking termination of parental rights in
26 accordance with RCW 13.34.145(~~(+3)~~)(4)(b)(vi). In cases where
27 parental rights have been terminated, the child is legally free for
28 adoption, and adoption has been identified as the primary permanency
29 planning goal, it shall be a goal to complete the adoption within six
30 months following entry of the termination order.

31 (4) If the court determines that the continuation of reasonable
32 efforts to prevent or eliminate the need to remove the child from his
33 or her home or to safely return the child home should not be part of
34 the permanency plan of care for the child, reasonable efforts shall be
35 made to place the child in a timely manner and to complete whatever
36 steps are necessary to finalize the permanent placement of the child.

37 (5) The identified outcomes and goals of the permanency plan may
38 change over time based upon the circumstances of the particular case.

1 (6) The court shall consider the child's relationships with the
2 child's siblings in accordance with RCW 13.34.130(6). Whenever the
3 permanency plan for a child is adoption, the court shall encourage the
4 prospective adoptive parents, birth parents, foster parents, kinship
5 caregivers, and the department or other supervising agency to seriously
6 consider the long-term benefits to the child adoptee and his or her
7 siblings of providing for and facilitating continuing postadoption
8 contact between the siblings. To the extent that it is feasible, and
9 when it is in the best interests of the child adoptee and his or her
10 siblings, contact between the siblings should be frequent and of a
11 similar nature as that which existed prior to the adoption. If the
12 child adoptee or his or her siblings are represented by an attorney or
13 guardian ad litem in a proceeding under this chapter or in any other
14 child custody proceeding, the court shall inquire of each attorney and
15 guardian ad litem regarding the potential benefits of continuing
16 contact between the siblings and the potential detriments of severing
17 contact. This section does not require the department of social and
18 health services or other supervising agency to agree to any specific
19 provisions in an open adoption agreement and does not create a new
20 obligation for the department to provide supervision or transportation
21 for visits between siblings separated by adoption from foster care.

22 (7) For purposes related to permanency planning:

23 (a) "Guardianship" means a dependency guardianship or a legal
24 guardianship pursuant to chapter 11.88 RCW or equivalent laws of
25 another state or a federally recognized Indian tribe.

26 (b) "Permanent custody order" means a custody order entered
27 pursuant to chapter 26.10 RCW.

28 (c) "Permanent legal custody" means legal custody pursuant to
29 chapter 26.10 RCW or equivalent laws of another state or a federally
30 recognized Indian tribe.

31 **Sec. 3.** RCW 13.34.138 and 2009 c 520 s 29, 2009 c 491 s 3, 2009 c
32 397 s 4, and 2009 c 152 s 1 are each reenacted and amended to read as
33 follows:

34 (1) The status of all children found to be dependent shall be
35 reviewed by the court at least every six months from the beginning date
36 of the placement episode or the date dependency is established,

1 whichever is first. The purpose of the hearing shall be to review the
2 progress of the parties and determine whether court supervision should
3 continue.

4 (a) The initial review hearing shall be an in-court review and
5 shall be set six months from the beginning date of the placement
6 episode or no more than ninety days from the entry of the disposition
7 order, whichever comes first. The requirements for the initial review
8 hearing, including the in-court review requirement, shall be
9 accomplished within existing resources.

10 (b) The initial review hearing may be a permanency planning hearing
11 when necessary to meet the time frames set forth in RCW 13.34.145(1)(a)
12 or 13.34.134.

13 (2)(a) A child shall not be returned home at the review hearing
14 unless the court finds that a reason for removal as set forth in RCW
15 13.34.130 no longer exists. The parents, guardian, or legal custodian
16 shall report to the court the efforts they have made to correct the
17 conditions which led to removal. If a child is returned, casework
18 supervision by the supervising agency or department shall continue for
19 a period of six months, at which time there shall be a hearing on the
20 need for continued intervention.

21 (b) Prior to the child returning home, the department or
22 supervising agency must complete the following:

23 (i) Identify all adults residing in the home and conduct background
24 checks on those persons;

25 (ii) Identify any persons who may act as a caregiver for the child
26 in addition to the parent with whom the child is being placed and
27 determine whether such persons are in need of any services in order to
28 ensure the safety of the child, regardless of whether such persons are
29 a party to the dependency. The department or supervising agency may
30 recommend to the court and the court may order that placement of the
31 child in the parent's home be contingent on or delayed based on the
32 need for such persons to engage in or complete services to ensure the
33 safety of the child prior to placement. If services are recommended
34 for the caregiver, and the caregiver fails to engage in or follow
35 through with the recommended services, the department or supervising
36 agency must promptly notify the court; and

37 (iii) Notify the parent with whom the child is being placed that he
38 or she has an ongoing duty to notify the department or supervising

1 agency of all persons who reside in the home or who may act as a
2 caregiver for the child both prior to the placement of the child in the
3 home and subsequent to the placement of the child in the home as long
4 as the court retains jurisdiction of the dependency proceeding or the
5 department is providing or monitoring either remedial services to the
6 parent or services to ensure the safety of the child to any caregivers.

7 Caregivers may be required to engage in services under this
8 subsection solely for the purpose of ensuring the present and future
9 safety of a child who is a ward of the court. This subsection does not
10 grant party status to any individual not already a party to the
11 dependency proceeding, create an entitlement to services or a duty on
12 the part of the department or supervising agency to provide services,
13 or create judicial authority to order the provision of services to any
14 person other than for the express purposes of this section or RCW
15 13.34.025 or if the services are unavailable or unsuitable or the
16 person is not eligible for such services.

17 (c) If the child is not returned home, the court shall establish in
18 writing:

19 (i) Whether the supervising agency or the department is making
20 reasonable efforts to provide services to the family and eliminate the
21 need for placement of the child. If additional services, including
22 housing assistance, are needed to facilitate the return of the child to
23 the child's parents, the court shall order that reasonable services be
24 offered specifying such services;

25 (ii) Whether there has been compliance with the case plan by the
26 child, the child's parents, and the agency supervising the placement;

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

29 (iv) Whether the services set forth in the case plan and the
30 responsibilities of the parties need to be clarified or modified due to
31 the availability of additional information or changed circumstances;

32 (v) Whether there is a continuing need for placement;

33 (vi) Whether a parent's homelessness or lack of suitable housing is
34 a significant factor delaying permanency for the child by preventing
35 the return of the child to the home of the child's parent and whether
36 housing assistance should be provided by the department or supervising
37 agency;

1 (vii) Whether the child is in an appropriate placement which
2 adequately meets all physical, emotional, and educational needs;

3 (viii) Whether preference has been given to placement with the
4 child's relatives if such placement is in the child's best interests;

5 (ix) Whether both in-state and, where appropriate, out-of-state
6 placements have been considered;

7 (x) Whether the parents have visited the child and any reasons why
8 visitation has not occurred or has been infrequent;

9 (xi) Whether terms of visitation need to be modified;

10 (xii) Whether the court-approved long-term permanent plan for the
11 child remains the best plan for the child;

12 (xiii) Whether any additional court orders need to be made to move
13 the case toward permanency; (~~and~~)

14 (xiv) The projected date by which the child will be returned home
15 or other permanent plan of care will be implemented; and

16 (xv) Whether active efforts are necessary to assist a parent with
17 either an intellectual or developmental disability or both in
18 compliance and progress with the case plan. Active efforts as applied
19 to parents with either an intellectual or developmental disability or
20 both is defined as a showing to the court that the department has
21 actively worked with the parent or parents pursuant to existing court
22 orders and the individual services plan to engage them in remedial
23 services and rehabilitative programs to prevent the breakup of the
24 family beyond simply providing referrals to such services.

25 (d) The court at the review hearing may order that a petition
26 seeking termination of the parent and child relationship be filed.

27 (3)(a) In any case in which the court orders that a dependent child
28 may be returned to or remain in the child's home, the in-home placement
29 shall be contingent upon the following:

30 (i) The compliance of the parents with court orders related to the
31 care and supervision of the child, including compliance with the
32 supervising agency's case plan; and

33 (ii) The continued participation of the parents, if applicable, in
34 available substance abuse or mental health treatment if substance abuse
35 or mental illness was a contributing factor to the removal of the
36 child.

37 (b) The following may be grounds for removal of the child from the
38 home, subject to review by the court:

1 (i) Noncompliance by the parents with the department's or
2 supervising agency's case plan or court order;

3 (ii) The parent's inability, unwillingness, or failure to
4 participate in available services or treatment for themselves or the
5 child, including substance abuse treatment if a parent's substance
6 abuse was a contributing factor to the abuse or neglect; or

7 (iii) The failure of the parents to successfully and substantially
8 complete available services or treatment for themselves or the child,
9 including substance abuse treatment if a parent's substance abuse was
10 a contributing factor to the abuse or neglect.

11 (c) In a pending dependency case in which the court orders that a
12 dependent child may be returned home and that child is later removed
13 from the home, the court shall hold a review hearing within thirty days
14 from the date of removal to determine whether the permanency plan
15 should be changed, a termination petition should be filed, or other
16 action is warranted. The best interests of the child shall be the
17 court's primary consideration in the review hearing.

18 (4) The court's authority to order housing assistance under this
19 chapter is: (a) Limited to cases in which a parent's homelessness or
20 lack of suitable housing is a significant factor delaying permanency
21 for the child and housing assistance would aid the parent in providing
22 an appropriate home for the child; and (b) subject to the availability
23 of funds appropriated for this specific purpose. Nothing in this
24 chapter shall be construed to create an entitlement to housing
25 assistance nor to create judicial authority to order the provision of
26 such assistance to any person or family if the assistance or funding
27 are unavailable or the child or family are not eligible for such
28 assistance.

29 (5) The court shall consider the child's relationship with siblings
30 in accordance with RCW 13.34.130(~~(+3)~~)(6).

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