

SB 5692 - H COMM AMD

By Committee on Early Learning & Human Services

ADOPTED 4/9/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 13.34.136 and 2014 c 163 s 2 are each amended to
4 read as follows:

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

13 (2) The agency supervising the dependency shall submit a written
14 permanency plan to all parties and the court not less than fourteen
15 days prior to the scheduled hearing. Responsive reports of parties
16 not in agreement with the department's or supervising agency's
17 proposed permanency plan must be provided to the department or
18 supervising agency, all other parties, and the court at least seven
19 days prior to the hearing.

20 The permanency plan shall include:

21 (a) A permanency plan of care that shall identify one of the
22 following outcomes as a primary goal and may identify additional
23 outcomes as alternative goals: Return of the child to the home of the
24 child's parent, guardian, or legal custodian; adoption, including a
25 tribal customary adoption as defined in RCW 13.38.040; guardianship;
26 permanent legal custody; long-term relative or foster care, (~~until~~)
27 if the child is between ages sixteen and eighteen, with a written
28 agreement between the parties and the care provider; successful
29 completion of a responsible living skills program; or independent
30 living, if appropriate and if the child is age sixteen or older.
31 Although a permanency plan of care may only identify long-term
32 relative or foster care for children between ages sixteen and
33 eighteen, children under sixteen may remain placed with relatives or

1 in foster care. The department or supervising agency shall not
2 discharge a child to an independent living situation before the child
3 is eighteen years of age unless the child becomes emancipated
4 pursuant to chapter 13.64 RCW;

5 (b) Unless the court has ordered, pursuant to RCW 13.34.130(8),
6 that a termination petition be filed, a specific plan as to where the
7 child will be placed, what steps will be taken to return the child
8 home, what steps the supervising agency or the department will take
9 to promote existing appropriate sibling relationships and/or
10 facilitate placement together or contact in accordance with the best
11 interests of each child, and what actions the department or
12 supervising agency will take to maintain parent-child ties. All
13 aspects of the plan shall include the goal of achieving permanence
14 for the child.

15 (i) The department's or supervising agency's plan shall specify
16 what services the parents will be offered to enable them to resume
17 custody, what requirements the parents must meet to resume custody,
18 and a time limit for each service plan and parental requirement.

19 (A) If the parent is incarcerated, the plan must address how the
20 parent will participate in the case conference and permanency
21 planning meetings and, where possible, must include treatment that
22 reflects the resources available at the facility where the parent is
23 confined. The plan must provide for visitation opportunities, unless
24 visitation is not in the best interests of the child.

25 (B) If a parent has a developmental disability according to the
26 definition provided in RCW 71A.10.020, and that individual is
27 eligible for services provided by the developmental disabilities
28 administration, the department shall make reasonable efforts to
29 consult with the developmental disabilities administration to create
30 an appropriate plan for services. For individuals who meet the
31 definition of developmental disability provided in RCW 71A.10.020 and
32 who are eligible for services through the developmental disabilities
33 administration, the plan for services must be tailored to correct the
34 parental deficiency taking into consideration the parent's disability
35 and the department shall also determine an appropriate method to
36 offer those services based on the parent's disability.

37 (ii)(A) Visitation is the right of the family, including the
38 child and the parent, in cases in which visitation is in the best
39 interest of the child. Early, consistent, and frequent visitation is
40 crucial for maintaining parent-child relationships and making it

1 possible for parents and children to safely reunify. The supervising
2 agency or department shall encourage the maximum parent and child and
3 sibling contact possible, when it is in the best interest of the
4 child, including regular visitation and participation by the parents
5 in the care of the child while the child is in placement.

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

10 (C) Visitation may be limited or denied only if the court
11 determines that such limitation or denial is necessary to protect the
12 child's health, safety, or welfare. When a parent or sibling has been
13 identified as a suspect in an active criminal investigation for a
14 violent crime that, if the allegations are true, would impact the
15 safety of the child, the department shall make a concerted effort to
16 consult with the assigned law enforcement officer in the criminal
17 case before recommending any changes in parent/child or child/sibling
18 contact. In the event that the law enforcement officer has
19 information pertaining to the criminal case that may have serious
20 implications for child safety or well-being, the law enforcement
21 officer shall provide this information to the department during the
22 consultation. The department may only use the information provided by
23 law enforcement during the consultation to inform family visitation
24 plans and may not share or otherwise distribute the information to
25 any person or entity. Any information provided to the department by
26 law enforcement during the consultation is considered investigative
27 information and is exempt from public inspection pursuant to RCW
28 42.56.240. The results of the consultation shall be communicated to
29 the court.

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

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

39 (B) Any exceptions, limitation, or denial of contacts or
40 visitation must be approved by the supervisor of the department

1 caseworker and documented. The child, parent, department, guardian ad
2 litem, or court-appointed special advocate may challenge the denial
3 of visits in court.

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

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

11 (vi) Unless it is not in the best interests of the child,
12 whenever practical, the plan should ensure the child remains enrolled
13 in the school the child was attending at the time the child entered
14 foster care.

15 (vii) The supervising agency or department shall provide all
16 reasonable services that are available within the department or
17 supervising agency, or within the community, or those services which
18 the department has existing contracts to purchase. It shall report to
19 the court if it is unable to provide such services; and

20 (c) If the court has ordered, pursuant to RCW 13.34.130(8), that
21 a termination petition be filed, a specific plan as to where the
22 child will be placed, what steps will be taken to achieve permanency
23 for the child, services to be offered or provided to the child, and,
24 if visitation would be in the best interests of the child, a
25 recommendation to the court regarding visitation between parent and
26 child pending a fact-finding hearing on the termination petition. The
27 department or supervising agency shall not be required to develop a
28 plan of services for the parents or provide services to the parents
29 if the court orders a termination petition be filed. However,
30 reasonable efforts to ensure visitation and contact between siblings
31 shall be made unless there is reasonable cause to believe the best
32 interests of the child or siblings would be jeopardized.

33 (3) Permanency planning goals should be achieved at the earliest
34 possible date. If the child has been in out-of-home care for fifteen
35 of the most recent twenty-two months, and the court has not made a
36 good cause exception, the court shall require the department or
37 supervising agency to file a petition seeking termination of parental
38 rights in accordance with RCW 13.34.145(4)(b)(vi). In cases where
39 parental rights have been terminated, the child is legally free for
40 adoption, and adoption has been identified as the primary permanency

1 planning goal, it shall be a goal to complete the adoption within six
2 months following entry of the termination order.

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

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

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

34 (7) For purposes related to permanency planning:

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

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

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

4 **Sec. 2.** RCW 13.34.145 and 2013 c 332 s 3, 2013 c 206 s 1, and
5 2013 c 173 s 3 are each reenacted and amended to read as follows:

6 (1) The purpose of a permanency planning hearing is to review the
7 permanency plan for the child, inquire into the welfare of the child
8 and progress of the case, and reach decisions regarding the permanent
9 placement of the child.

10 (a) A permanency planning hearing shall be held in all cases
11 where the child has remained in out-of-home care for at least nine
12 months and an adoption decree, guardianship order, or permanent
13 custody order has not previously been entered. The hearing shall take
14 place no later than twelve months following commencement of the
15 current placement episode.

16 (b) Whenever a child is removed from the home of a dependency
17 guardian or long-term relative or foster care provider, and the child
18 is not returned to the home of the parent, guardian, or legal
19 custodian but is placed in out-of-home care, a permanency planning
20 hearing shall take place no later than twelve months, as provided in
21 this section, following the date of removal unless, prior to the
22 hearing, the child returns to the home of the dependency guardian or
23 long-term care provider, the child is placed in the home of the
24 parent, guardian, or legal custodian, an adoption decree,
25 guardianship order, or a permanent custody order is entered, or the
26 dependency is dismissed. Every effort shall be made to provide
27 stability in long-term placement, and to avoid disruption of
28 placement, unless the child is being returned home or it is in the
29 best interest of the child.

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

37 (2) No later than ten working days prior to the permanency
38 planning hearing, the agency having custody of the child shall submit

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

3 (3) When the youth is at least age seventeen years but not older
4 than seventeen years and six months, the department shall provide the
5 youth with written documentation which explains the availability of
6 extended foster care services and detailed instructions regarding how
7 the youth may access such services after he or she reaches age
8 eighteen years.

9 (4) At the permanency planning hearing, the court shall conduct
10 the following inquiry:

11 (a) If a goal of long-term foster or relative care has been
12 achieved prior to the permanency planning hearing, the court shall
13 review the child's status to determine whether the placement and the
14 plan for the child's care remain appropriate. The court shall find,
15 as of the date of the hearing, that the child's placement and plan of
16 care is the best permanency plan for the child and provide compelling
17 reasons why it continues to not be in the child's best interest to
18 (i) return home; (ii) be placed for adoption; (iii) be placed with a
19 legal guardian; or (iv) be placed with a fit and willing relative. If
20 the child is present at the hearing, the court should ask the child
21 about his or her desired permanency outcome.

22 (b) In cases where the primary permanency planning goal has not
23 been achieved, the court shall inquire regarding the reasons why the
24 primary goal has not been achieved and determine what needs to be
25 done to make it possible to achieve the primary goal. The court shall
26 review the permanency plan prepared by the agency and make explicit
27 findings regarding each of the following:

28 (i) The continuing necessity for, and the safety and
29 appropriateness of, the placement;

30 (ii) The extent of compliance with the permanency plan by the
31 department or supervising agency and any other service providers, the
32 child's parents, the child, and the child's guardian, if any;

33 (iii) The extent of any efforts to involve appropriate service
34 providers in addition to department or supervising agency staff in
35 planning to meet the special needs of the child and the child's
36 parents;

37 (iv) The progress toward eliminating the causes for the child's
38 placement outside of his or her home and toward returning the child
39 safely to his or her home or obtaining a permanent placement for the
40 child;

1 (v) The date by which it is likely that the child will be
2 returned to his or her home or placed for adoption, with a guardian
3 or in some other alternative permanent placement; and

4 (vi) If the child has been placed outside of his or her home for
5 fifteen of the most recent twenty-two months, not including any
6 period during which the child was a runaway from the out-of-home
7 placement or the first six months of any period during which the
8 child was returned to his or her home for a trial home visit, the
9 appropriateness of the permanency plan, whether reasonable efforts
10 were made by the department or supervising agency to achieve the goal
11 of the permanency plan, and the circumstances which prevent the child
12 from any of the following:

13 (A) Being returned safely to his or her home;

14 (B) Having a petition for the involuntary termination of parental
15 rights filed on behalf of the child;

16 (C) Being placed for adoption;

17 (D) Being placed with a guardian;

18 (E) Being placed in the home of a fit and willing relative of the
19 child; or

20 (F) Being placed in some other alternative permanent placement,
21 including independent living or long-term foster care.

22 (5) Following this inquiry, at the permanency planning hearing,
23 the court shall order the department or supervising agency to file a
24 petition seeking termination of parental rights if the child has been
25 in out-of-home care for fifteen of the last twenty-two months since
26 the date the dependency petition was filed unless the court makes a
27 good cause exception as to why the filing of a termination of
28 parental rights petition is not appropriate. Any good cause finding
29 shall be reviewed at all subsequent hearings pertaining to the child.

30 (a) For purposes of this subsection, "good cause exception"
31 includes but is not limited to the following:

32 (i) The child is being cared for by a relative;

33 (ii) The department has not provided to the child's family such
34 services as the court and the department have deemed necessary for
35 the child's safe return home;

36 (iii) The department has documented in the case plan a compelling
37 reason for determining that filing a petition to terminate parental
38 rights would not be in the child's best interests; ((~~or~~))

39 (iv) The parent is incarcerated, or the parent's prior
40 incarceration is a significant factor in why the child has been in

1 foster care for fifteen of the last twenty-two months, the parent
2 maintains a meaningful role in the child's life, and the department
3 has not documented another reason why it would be otherwise
4 appropriate to file a petition pursuant to this section;

5 (v) Until June 30, 2015, where a parent has been accepted into a
6 dependency treatment court program or long-term substance abuse or
7 dual diagnoses treatment program and is demonstrating compliance with
8 treatment goals; or

9 (vi) Until June 30, 2015, where a parent who has been court
10 ordered to complete services necessary for the child's safe return
11 home files a declaration under penalty of perjury stating the
12 parent's financial inability to pay for the same court-ordered
13 services, and also declares the department was unwilling or unable to
14 pay for the same services necessary for the child's safe return home.

15 (b) The court's assessment of whether a parent who is
16 incarcerated maintains a meaningful role in the child's life may
17 include consideration of the following:

18 (i) The parent's expressions or acts of manifesting concern for
19 the child, such as letters, telephone calls, visits, and other forms
20 of communication with the child;

21 (ii) The parent's efforts to communicate and work with the
22 department or supervising agency or other individuals for the purpose
23 of complying with the service plan and repairing, maintaining, or
24 building the parent-child relationship;

25 (iii) A positive response by the parent to the reasonable efforts
26 of the department or the supervising agency;

27 (iv) Information provided by individuals or agencies in a
28 reasonable position to assist the court in making this assessment,
29 including but not limited to the parent's attorney, correctional and
30 mental health personnel, or other individuals providing services to
31 the parent;

32 (v) Limitations in the parent's access to family support
33 programs, therapeutic services, and visiting opportunities,
34 restrictions to telephone and mail services, inability to participate
35 in foster care planning meetings, and difficulty accessing lawyers
36 and participating meaningfully in court proceedings; and

37 (vi) Whether the continued involvement of the parent in the
38 child's life is in the child's best interest.

39 (c) The constraints of a parent's current or prior incarceration
40 and associated delays or barriers to accessing court-mandated

1 services may be considered in rebuttal to a claim of aggravated
2 circumstances under RCW 13.34.132(4)((~~g~~)) (h) for a parent's
3 failure to complete available treatment.

4 (6)(a) If the permanency plan identifies independent living as a
5 goal, the court at the permanency planning hearing shall make a
6 finding that the provision of services to assist the child in making
7 a transition from foster care to independent living will allow the
8 child to manage his or her financial, personal, social, educational,
9 and nonfinancial affairs prior to approving independent living as a
10 permanency plan of care. The court will inquire whether the child has
11 been provided information about extended foster care services.

12 (b) The permanency plan shall also specifically identify the
13 services, including extended foster care services, where appropriate,
14 that will be provided to assist the child to make a successful
15 transition from foster care to independent living.

16 (c) The department or supervising agency shall not discharge a
17 child to an independent living situation before the child is eighteen
18 years of age unless the child becomes emancipated pursuant to chapter
19 13.64 RCW.

20 (7) If the child has resided in the home of a foster parent or
21 relative for more than six months prior to the permanency planning
22 hearing, the court shall:

23 (a) Enter a finding regarding whether the foster parent or
24 relative was informed of the hearing as required in RCW 74.13.280,
25 13.34.215(6), and 13.34.096; and

26 (b) If the department or supervising agency is recommending a
27 placement other than the child's current placement with a foster
28 parent, relative, or other suitable person, enter a finding as to the
29 reasons for the recommendation for a change in placement.

30 (8) In all cases, at the permanency planning hearing, the court
31 shall:

32 (a)(i) Order the permanency plan prepared by the supervising
33 agency to be implemented; or

34 (ii) Modify the permanency plan, and order implementation of the
35 modified plan; and

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

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

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

9 (10) Prior to the second permanency planning hearing, the agency
10 that has custody of the child shall consider whether to file a
11 petition for termination of parental rights.

12 (11) If the court orders the child returned home, casework
13 supervision by the department or supervising agency shall continue
14 for at least six months, at which time a review hearing shall be held
15 pursuant to RCW 13.34.138, and the court shall determine the need for
16 continued intervention.

17 (12) The juvenile court may hear a petition for permanent legal
18 custody when: (a) The court has ordered implementation of a
19 permanency plan that includes permanent legal custody; and (b) the
20 party pursuing the permanent legal custody is the party identified in
21 the permanency plan as the prospective legal custodian. During the
22 pendency of such proceeding, the court shall conduct review hearings
23 and further permanency planning hearings as provided in this chapter.
24 At the conclusion of the legal guardianship or permanent legal
25 custody proceeding, a juvenile court hearing shall be held for the
26 purpose of determining whether dependency should be dismissed. If a
27 guardianship or permanent custody order has been entered, the
28 dependency shall be dismissed.

29 (13) Continued juvenile court jurisdiction under this chapter
30 shall not be a barrier to the entry of an order establishing a legal
31 guardianship or permanent legal custody when the requirements of
32 subsection (12) of this section are met.

33 (14) Nothing in this chapter may be construed to limit the
34 ability of the agency that has custody of the child to file a
35 petition for termination of parental rights or a guardianship
36 petition at any time following the establishment of dependency. Upon
37 the filing of such a petition, a fact-finding hearing shall be
38 scheduled and held in accordance with this chapter unless the
39 department or supervising agency requests dismissal of the petition
40 prior to the hearing or unless the parties enter an agreed order

1 terminating parental rights, establishing guardianship, or otherwise
2 resolving the matter.

3 (15) The approval of a permanency plan that does not contemplate
4 return of the child to the parent does not relieve the supervising
5 agency of its obligation to provide reasonable services, under this
6 chapter, intended to effectuate the return of the child to the
7 parent, including but not limited to, visitation rights. The court
8 shall consider the child's relationships with siblings in accordance
9 with RCW 13.34.130.

10 (16) Nothing in this chapter may be construed to limit the
11 procedural due process rights of any party in a termination or
12 guardianship proceeding filed under this chapter."

13 Correct the title.

EFFECT: Makes the following changes to the underlying bill:

Provides that although a permanency plan of care may only identify long-term relative or foster care for a child between ages 16 and 18, children under 16 may remain placed with relatives or in foster care.

Clarifies that if the goal of long-term foster or relative care has been achieved before a permanency planning hearing, the court shall find that the child's placement and plan of care is the best permanency plan for the child.

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