
SUBSTITUTE HOUSE BILL 1295

State of Washington

68th Legislature

2023 Regular Session

By House Human Services, Youth, & Early Learning (originally sponsored by Representatives Ortiz-Self, Eslick, Lekanoff, Reeves, and Reed)

1 AN ACT Relating to providing legal counsel for parents before the
2 filing of a dependency petition, including when the department of
3 children, youth, and families proposes a voluntary placement
4 agreement; amending RCW 2.70.020; reenacting and amending RCW
5 13.34.030 and 13.34.090; and providing an effective date.

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

7 **Sec. 1.** RCW 2.70.020 and 2021 c 328 s 3 are each amended to read
8 as follows:

9 ~~((The director shall:~~

10 ~~(1) Administer))~~ The director shall administer all state-funded
11 services in the following program areas:

12 ~~((a))~~ (1) Trial court criminal indigent defense, as provided in
13 chapter 10.101 RCW;

14 ~~((b))~~ (2) Appellate indigent defense, as provided in this
15 chapter;

16 ~~((c))~~ (3) Representation of indigent parents qualified for
17 appointed counsel in dependency and termination cases, as provided in
18 RCW 13.34.090 and 13.34.092;

19 ~~((d))~~ (4) Extraordinary criminal justice cost petitions, as
20 provided in RCW 43.330.190;

1 ~~((e))~~ (5) Compilation of copies of DNA test requests by persons
2 convicted of felonies, as provided in RCW 10.73.170;

3 ~~((f))~~ (6) Representation of indigent respondents qualified for
4 appointed counsel in sexually violent predator civil commitment
5 cases, as provided in chapter 71.09 RCW; ~~(and~~

6 ~~(g))~~ (7) Provide access to attorneys for juveniles contacted by
7 a law enforcement officer for whom a legal consultation is required
8 under RCW 13.40.740;

9 ~~((2))~~ (8) Submit a biennial budget for all costs related to the
10 office's program areas;

11 ~~((3))~~ (9) Establish administrative procedures, standards, and
12 guidelines for the office's program areas, including cost-efficient
13 systems that provide for authorized recovery of costs;

14 ~~((4))~~ (10) Provide oversight and technical assistance to ensure
15 the effective and efficient delivery of services in the office's
16 program areas;

17 ~~((5))~~ (11) Recommend criteria and standards for determining and
18 verifying indigency. In recommending criteria for determining
19 indigency, the director shall compile and review the indigency
20 standards used by other state agencies and shall periodically submit
21 the compilation and report to the legislature on the appropriateness
22 and consistency of such standards;

23 ~~((6))~~ (12) Collect information regarding indigent defense
24 services funded by the state and report annually to the advisory
25 committee, the legislature, and the supreme court;

26 ~~((7))~~ (13) Coordinate with the supreme court and the judges of
27 each division of the court of appeals to determine how appellate
28 attorney services should be provided;

29 (14) Within available resources, provide legal counsel for
30 parents, guardians, or legal custodians when the department of
31 children, youth, and families proposes a voluntary placement
32 agreement when there is no pending dependency proceeding under
33 chapter 13.34 RCW pursuant to RCW 13.34.090(4).

34 The office of public defense shall not provide direct
35 representation of clients.

36 **Sec. 2.** RCW 13.34.030 and 2021 c 304 s 1 and 2021 c 67 s 2 are
37 each reenacted and amended to read as follows:

38 The definitions in this section apply throughout this chapter
39 unless the context clearly requires otherwise.

1 (1) "Abandoned" means when the child's parent, guardian, or other
2 custodian has expressed, either by statement or conduct, an intent to
3 forego, for an extended period, parental rights or responsibilities
4 despite an ability to exercise such rights and responsibilities. If
5 the court finds that the petitioner has exercised due diligence in
6 attempting to locate the parent, no contact between the child and the
7 child's parent, guardian, or other custodian for a period of three
8 months creates a rebuttable presumption of abandonment, even if there
9 is no expressed intent to abandon.

10 (2) "Child," "juvenile," and "youth" mean:

11 (a) Any individual under the age of eighteen years; or

12 (b) Any individual age eighteen to twenty-one years who is
13 eligible to receive and who elects to receive the extended foster
14 care services authorized under RCW 74.13.031. A youth who remains
15 dependent and who receives extended foster care services under RCW
16 74.13.031 shall not be considered a "child" under any other statute
17 or for any other purpose.

18 (3) "Current placement episode" means the period of time that
19 begins with the most recent date that the child was removed from the
20 home of the parent, guardian, or legal custodian for purposes of
21 placement in out-of-home care and continues until: (a) The child
22 returns home; (b) an adoption decree, a permanent custody order, or
23 guardianship order is entered; or (c) the dependency is dismissed,
24 whichever occurs first.

25 (4) "Department" means the department of children, youth, and
26 families.

27 (5) "Dependency guardian" means the person, nonprofit
28 corporation, or Indian tribe appointed by the court pursuant to this
29 chapter for the limited purpose of assisting the court in the
30 supervision of the dependency.

31 (6) "Dependent child" means any child who:

32 (a) Has been abandoned;

33 (b) Is abused or neglected as defined in chapter 26.44 RCW by a
34 person legally responsible for the care of the child;

35 (c) Has no parent, guardian, or custodian capable of adequately
36 caring for the child, such that the child is in circumstances which
37 constitute a danger of substantial damage to the child's
38 psychological or physical development; or

39 (d) Is receiving extended foster care services, as authorized by
40 RCW 74.13.031.

1 (7) "Developmental disability" means a disability attributable to
2 intellectual disability, cerebral palsy, epilepsy, autism, or another
3 neurological or other condition of an individual found by the
4 secretary of the department of social and health services to be
5 closely related to an intellectual disability or to require treatment
6 similar to that required for individuals with intellectual
7 disabilities, which disability originates before the individual
8 attains age eighteen, which has continued or can be expected to
9 continue indefinitely, and which constitutes a substantial limitation
10 to the individual.

11 (8) "Educational liaison" means a person who has been appointed
12 by the court to fulfill responsibilities outlined in RCW 13.34.046.

13 (9) "Experiencing homelessness" means lacking a fixed, regular,
14 and adequate nighttime residence, including circumstances such as
15 sharing the housing of other persons due to loss of housing, economic
16 hardship, fleeing domestic violence, or a similar reason as described
17 in the federal McKinney-Vento homeless assistance act (Title 42
18 U.S.C., chapter 119, subchapter I) as it existed on January 1, 2021.

19 (10) "Extended foster care services" means residential and other
20 support services the department is authorized to provide under RCW
21 74.13.031. These services may include placement in licensed,
22 relative, or otherwise approved care, or supervised independent
23 living settings; assistance in meeting basic needs; independent
24 living services; medical assistance; and counseling or treatment.

25 (11) "Guardian" means the person or agency that: (a) Has been
26 appointed as the guardian of a child in a legal proceeding, including
27 a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the
28 legal right to custody of the child pursuant to such appointment. The
29 term "guardian" does not include a "dependency guardian" appointed
30 pursuant to a proceeding under this chapter.

31 (12) "Guardian ad litem" means a person, appointed by the court
32 to represent the best interests of a child in a proceeding under this
33 chapter, or in any matter which may be consolidated with a proceeding
34 under this chapter. A "court-appointed special advocate" appointed by
35 the court to be the guardian ad litem for the child, or to perform
36 substantially the same duties and functions as a guardian ad litem,
37 shall be deemed to be guardian ad litem for all purposes and uses of
38 this chapter.

39 (13) "Guardian ad litem program" means a court-authorized
40 volunteer program, which is or may be established by the superior

1 court of the county in which such proceeding is filed, to manage all
2 aspects of volunteer guardian ad litem representation for children
3 alleged or found to be dependent. Such management shall include but
4 is not limited to: Recruitment, screening, training, supervision,
5 assignment, and discharge of volunteers.

6 (14) "Guardianship" means a guardianship pursuant to chapter
7 13.36 RCW or a limited guardianship of a minor pursuant to RCW
8 11.130.215 or equivalent laws of another state or a federally
9 recognized Indian tribe.

10 (15) "Housing assistance" means appropriate referrals by the
11 department or other agencies to federal, state, local, or private
12 agencies or organizations, assistance with forms, applications, or
13 financial subsidies or other monetary assistance for housing. For
14 purposes of this chapter, "housing assistance" is not a remedial
15 service or family reunification service as described in RCW
16 13.34.025(2).

17 (16) "Indigent" means a person who, at any stage of a court
18 proceeding, is:

19 (a) Receiving one of the following types of public assistance:
20 Temporary assistance for needy families, aged, blind, or disabled
21 assistance benefits, medical care services under RCW 74.09.035,
22 pregnant women assistance benefits, poverty-related veterans'
23 benefits, food stamps or food stamp benefits transferred
24 electronically, refugee resettlement benefits, medicaid, or
25 supplemental security income; or

26 (b) Involuntarily committed to a public mental health facility;
27 or

28 (c) Receiving an annual income, after taxes, of one hundred
29 twenty-five percent or less of the federally established poverty
30 level; or

31 (d) Unable to pay the anticipated cost of counsel for the matter
32 before the court because his or her available funds are insufficient
33 to pay any amount for the retention of counsel.

34 (17) "Nonminor dependent" means any individual age eighteen to
35 twenty-one years who is participating in extended foster care
36 services authorized under RCW 74.13.031.

37 (18) "Out-of-home care" means placement in a foster family home
38 or group care facility licensed pursuant to chapter 74.15 RCW or
39 placement in a home, other than that of the child's parent, guardian,

1 or legal custodian, not required to be licensed pursuant to chapter
2 74.15 RCW.

3 (19) "Parent" means the biological or adoptive parents of a
4 child, or an individual who has established a parent-child
5 relationship under RCW 26.26A.100, unless the legal rights of that
6 person have been terminated by a judicial proceeding pursuant to this
7 chapter, chapter 26.33 RCW, or the equivalent laws of another state
8 or a federally recognized Indian tribe.

9 (20) "Prevention and family services and programs" means specific
10 mental health prevention and treatment services, substance abuse
11 prevention and treatment services, and in-home parent skill-based
12 programs that qualify for federal funding under the federal family
13 first prevention services act, P.L. 115-123. For purposes of this
14 chapter, prevention and family services and programs are not remedial
15 services or family reunification services as described in RCW
16 13.34.025(2).

17 (21) "Prevention services" means preservation services, as
18 defined in chapter 74.14C RCW, and other reasonably available
19 services, including housing assistance, capable of preventing the
20 need for out-of-home placement while protecting the child. Prevention
21 services include, but are not limited to, prevention and family
22 services and programs as defined in this section.

23 (22) "Qualified residential treatment program" means a program
24 that meets the requirements provided in RCW 13.34.420, qualifies for
25 funding under the family first prevention services act under 42
26 U.S.C. Sec. 672(k), and, if located within Washington state, is
27 licensed as a group care facility under chapter 74.15 RCW.

28 (23) "Relative" includes persons related to a child in the
29 following ways:

30 (a) Any blood relative, including those of half-blood, and
31 including first cousins, second cousins, nephews or nieces, and
32 persons of preceding generations as denoted by prefixes of grand,
33 great, or great-great;

34 (b) Stepfather, stepmother, stepbrother, and stepsister;

35 (c) A person who legally adopts a child or the child's parent as
36 well as the natural and other legally adopted children of such
37 persons, and other relatives of the adoptive parents in accordance
38 with state law;

39 (d) Spouses of any persons named in (a), (b), or (c) of this
40 subsection, even after the marriage is terminated;

1 (e) Relatives, as named in (a), (b), (c), or (d) of this
2 subsection, of any half sibling of the child; or

3 (f) Extended family members, as defined by the law or custom of
4 the Indian child's tribe or, in the absence of such law or custom, a
5 person who has reached the age of eighteen and who is the Indian
6 child's grandparent, aunt or uncle, brother or sister, brother-in-law
7 or sister-in-law, niece or nephew, first or second cousin, or
8 stepparent who provides care in the family abode on a twenty-four
9 hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4).

10 (24) "Shelter care" means temporary physical care in a facility
11 licensed pursuant to RCW 74.15.030 or in a home not required to be
12 licensed pursuant to RCW 74.15.030.

13 (25) "Sibling" means a child's birth brother, birth sister,
14 adoptive brother, adoptive sister, half-brother, or half-sister, or
15 as defined by the law or custom of the Indian child's tribe for an
16 Indian child as defined in RCW 13.38.040.

17 (26) "Social study" means a written evaluation of matters
18 relevant to the disposition of the case that contains the information
19 required by RCW 13.34.430.

20 (27) "Supervised independent living" includes, but is not limited
21 to, apartment living, room and board arrangements, college or
22 university dormitories, and shared roommate settings. Supervised
23 independent living settings must be approved by the department or the
24 court.

25 (28) "Voluntary placement agreement" means, for the purposes of
26 extended foster care services, a written voluntary agreement between
27 a nonminor dependent who agrees to submit to the care and authority
28 of the department for the purposes of participating in the extended
29 foster care program. For the purposes of placing a child in out-of-
30 home care when a dependency petition under this chapter has not been
31 filed, "voluntary placement agreement" means a voluntary agreement,
32 entered into pursuant to RCW 74.13.031, between the department and
33 the child's parent, guardian, or legal custodian approving the
34 child's placement in the care and temporary legal custody of the
35 department.

36 **Sec. 3.** RCW 13.34.090 and 2021 c 211 s 10 and 2021 c 210 s 2 are
37 each reenacted and amended to read as follows:

38 (1) Any party has a right to be represented by an attorney in all
39 proceedings under this chapter, to introduce evidence, to be heard in

1 his or her own behalf, to examine witnesses, to receive a decision
2 based solely on the evidence adduced at the hearing, and to an
3 unbiased fact finder.

4 (2) At all stages of a proceeding in which a child is alleged to
5 be dependent, the child's parent, guardian, or legal custodian has
6 the right to be represented by counsel, and if indigent, to have
7 counsel appointed for him or her by the court. Unless waived in
8 court, counsel shall be provided to the child's parent, guardian, or
9 legal custodian, if such person (a) has appeared in the proceeding or
10 requested the court to appoint counsel and (b) is financially unable
11 to obtain counsel because of indigency.

12 (3) At all stages of a proceeding in which a child is alleged to
13 be dependent, the child has the right to be represented by counsel.
14 Counsel shall be provided at public expense subject to the phase-in
15 schedule as provided in RCW 13.34.212.

16 (4) When the department proposes a voluntary placement agreement
17 when there is no pending dependency proceeding, the child's parent,
18 guardian, or legal custodian has the right to:

19 (a) Consult with counsel by telephone or video conference,
20 provided through contract with the office of public defense; and

21 (b) If after consulting with counsel, the child's parent, legal
22 guardian, or legal custodian requests to have an attorney assigned,
23 they shall receive representation by counsel, provided through
24 contract with the office of public defense and according to the
25 implementation schedule included in this subsection. The office of
26 public defense shall develop and administer an implementation
27 schedule that provides assignment of counsel for:

28 (i) At least one-third of anticipated requests for attorneys
29 under this subsection by July 1, 2024;

30 (ii) At least two-thirds of anticipated requests for attorneys
31 under this subsection by July 1, 2025; and

32 (iii) Full statewide implementation by July 1, 2026.

33 (5) If a party to an action under this chapter is represented by
34 counsel, no order shall be provided to that party for his or her
35 signature without prior notice and provision of the order to counsel.

36 ~~((+5))~~ (6) Copies of department records to which the child and
37 the child's parents have legal access pursuant to chapter 13.50 RCW
38 shall be given to the child or child's counsel, and the parents,
39 guardian, legal custodian, or his or her legal counsel, prior to any
40 shelter care hearing and within 15 days after the department receives

1 a written request for such records from the child or child's counsel,
2 and the parents, guardian, legal custodian, or his or her legal
3 counsel. These records shall be provided to the child's parents,
4 guardian, legal custodian, or legal counsel a reasonable period of
5 time prior to the shelter care hearing in order to allow an
6 opportunity to review the records prior to the hearing. These records
7 shall be legible and shall be provided at no expense to the child or
8 child's counsel, and the parents, guardian, legal custodian, or his
9 or her counsel. When the records are served on legal counsel, legal
10 counsel shall have the opportunity to review the records with the
11 client and shall review the records with the client prior to the
12 shelter care hearing. The department shall make every effort to
13 provide all other discoverable material to the child's parent,
14 guardian, legal custodian, or his or her legal counsel prior to any
15 shelter care hearing.

16 NEW SECTION. **Sec. 4.** Section 3 of this act takes effect July 1,
17 2024.

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