
HOUSE BILL 1891

State of Washington

68th Legislature

2024 Regular Session

By Representative Eslick

Prefiled 12/06/23.

1 AN ACT Relating to maintaining the safety of children when a
2 parent has a substance use disorder; amending RCW 13.34.145; and
3 reenacting and amending RCW 13.34.138.

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

5 **Sec. 1.** RCW 13.34.138 and 2021 c 208 s 3 and 2021 c 67 s 5 are
6 each reenacted and amended to read as follows:

7 (1) The status of all children found to be dependent shall be
8 reviewed by the court at least every six months from the beginning
9 date of the placement episode or the date dependency is established,
10 whichever is first. The purpose of the hearing shall be to review the
11 progress of the parties and determine whether court supervision
12 should continue.

13 (a) The initial review hearing shall be an in-court review and
14 shall be set six months from the beginning date of the placement
15 episode or no more than 90 days from the entry of the disposition
16 order, whichever comes first. The requirements for the initial review
17 hearing, including the in-court review requirement, shall be
18 accomplished within existing resources.

19 (b) The initial review hearing may be a permanency planning
20 hearing when necessary to meet the time frames set forth in RCW
21 13.34.145(1)(a) or 13.34.134.

1 (2) (a) A child shall not be returned home at the review hearing
2 unless the court finds that a reason for removal as set forth in RCW
3 13.34.130 no longer exists. The parents, guardian, or legal custodian
4 shall report to the court the efforts they have made to correct the
5 conditions which led to removal. If a child is returned, casework
6 supervision by the department shall continue for a period of (~~six~~
7 ~~months~~) time determined under RCW 13.34.145, at which time there
8 shall be a hearing on the need for continued intervention.

9 (b) Prior to the child returning home, the department must
10 complete the following:

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

13 (ii) Identify any persons who may act as a caregiver for the
14 child in addition to the parent with whom the child is being placed
15 and determine whether such persons are in need of any services in
16 order to ensure the safety of the child, regardless of whether such
17 persons are a party to the dependency. The department may recommend
18 to the court and the court may order that placement of the child in
19 the parent's home be contingent on or delayed based on the need for
20 such persons to engage in or complete services to ensure the safety
21 of the child prior to placement. If services are recommended for the
22 caregiver, and the caregiver fails to engage in or follow through
23 with the recommended services, the department must promptly notify
24 the court; and

25 (iii) Notify the parent with whom the child is being placed that
26 he or she has an ongoing duty to notify the department of all persons
27 who reside in the home or who may act as a caregiver for the child
28 both prior to the placement of the child in the home and subsequent
29 to the placement of the child in the home as long as the court
30 retains jurisdiction of the dependency proceeding or the department
31 is providing or monitoring either remedial services to the parent or
32 services to ensure the safety of the child to any caregivers.

33 Caregivers may be required to engage in services under this
34 subsection solely for the purpose of ensuring the present and future
35 safety of a child who is a ward of the court. This subsection does
36 not grant party status to any individual not already a party to the
37 dependency proceeding, create an entitlement to services or a duty on
38 the part of the department to provide services, or create judicial
39 authority to order the provision of services to any person other than
40 for the express purposes of this section or RCW 13.34.025 or if the

1 services are unavailable or unsuitable or the person is not eligible
2 for such services.

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

5 (i) Whether the department is making reasonable efforts to
6 provide services to the family and eliminate the need for placement
7 of the child. If additional services, including housing assistance,
8 are needed to facilitate the return of the child to the child's
9 parents, the court shall order that reasonable services be offered
10 specifying such services;

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

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

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

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

20 (vi) Within 60 days of the placement of a child in a qualified
21 residential treatment program as defined in this chapter, and at each
22 review hearing thereafter if the child remains in such a program, the
23 following:

24 (A) Whether ongoing assessment of the child's strengths and needs
25 continues to support the determination that the child's needs cannot
26 be met through placement in a foster family home;

27 (B) Whether the child's placement provides the most effective and
28 appropriate level of care in the least restrictive environment;

29 (C) Whether the placement is consistent with the child's
30 permanency plan;

31 (D) What specific treatment or service needs will be met in the
32 placement, and how long the child is expected to need the treatment
33 or services; and

34 (E) What efforts the department has made to prepare the child to
35 return home or be placed with a fit and willing relative as defined
36 in RCW 13.34.030, a Title 13 RCW legal guardian, an adoptive parent,
37 or in a foster family home;

38 (vii) Whether a parent's experiencing homelessness or lack of
39 suitable housing is a significant factor delaying permanency for the
40 child by preventing the return of the child to the home of the

1 child's parent and whether housing assistance should be provided by
2 the department;

3 (viii) Whether the child is in an appropriate placement which
4 adequately meets all physical, emotional, and educational needs;

5 (ix) Whether preference has been given to placement with the
6 child's relatives if such placement is in the child's best interests;

7 (x) Whether both in-state and, where appropriate, out-of-state
8 placements have been considered;

9 (xi) Whether the parents have visited the child and any reasons
10 why visitation has not occurred or has been infrequent;

11 (xii) Whether terms of visitation need to be modified. If the
12 court previously ordered that visitation between a parent and child
13 must be supervised or monitored, there shall be a presumption that
14 such supervision or monitoring will no longer be necessary after the
15 review hearing. To overcome this presumption, a party must provide a
16 report to the court including evidence establishing that removing
17 visit supervision or monitoring would create a risk to the child's
18 safety, and the court shall make a determination as to whether visit
19 supervision or monitoring must continue;

20 (xiii) Whether the court-approved long-term permanent plan for
21 the child remains the best plan for the child;

22 (xiv) Whether any additional court orders need to be made to move
23 the case toward permanency; and

24 (xv) The projected date by which the child will be returned home
25 or other permanent plan of care will be implemented.

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

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

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

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

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

1 (i) Noncompliance by the parents with the department's case plan
2 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
8 substantially complete available services or treatment for themselves
9 or the child, including substance abuse treatment if a parent's
10 substance abuse was 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
14 days from the date of removal to determine whether the permanency
15 plan should be changed, a termination petition should be filed, or
16 other action is warranted. The best interests of the child shall be
17 the 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 experiencing
20 homelessness or lack of suitable housing is a significant factor
21 delaying permanency for the child and housing assistance would aid
22 the parent in providing an appropriate home for the child; and (b)
23 subject to the availability of funds appropriated for this specific
24 purpose. Nothing in this chapter shall be construed to create an
25 entitlement to housing assistance nor to create judicial authority to
26 order the provision of such assistance to any person or family if the
27 assistance or funding are unavailable or the child or family are not
28 eligible for such assistance.

29 (5) The court shall consider the child's relationship with
30 siblings in accordance with RCW 13.34.130(7).

31 (6) The court shall advise the petitioner that the failure to
32 provide court-ordered visitation may result in a finding that the
33 petitioner failed to make reasonable efforts to finalize the
34 permanency plan. The lack of sufficient contracted visitation
35 providers will not excuse the failure to provide court-ordered
36 visitation.

37 **Sec. 2.** RCW 13.34.145 and 2022 c 127 s 1 are each amended to
38 read as follows:

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

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

11 (b) Whenever a child is removed from the home of a dependency
12 guardian or long-term relative or foster care provider, and the child
13 is not returned to the home of the parent, guardian, or legal
14 custodian but is placed in out-of-home care, a permanency planning
15 hearing shall take place no later than 12 months, as provided in this
16 section, following the date of removal unless, prior to the hearing,
17 the child returns to the home of the dependency guardian or long-term
18 care provider, the child is placed in the home of the parent,
19 guardian, or legal custodian, an adoption decree, guardianship order,
20 or a permanent custody order is entered, or the dependency is
21 dismissed. Every effort shall be made to provide stability in long-
22 term placement, and to avoid disruption of placement, unless the
23 child is being returned home or it is in the best interest of the
24 child.

25 (c) Permanency planning goals should be achieved at the earliest
26 possible date, preferably before the child has been in out-of-home
27 care for 15 months. In cases where parental rights have been
28 terminated, the child is legally free for adoption, and adoption has
29 been identified as the primary permanency planning goal, it shall be
30 a goal to complete the adoption within six months following entry of
31 the termination order.

32 (2) No later than 10 working days prior to the permanency
33 planning hearing, the agency having custody of the child shall submit
34 a written permanency plan to the court and shall mail a copy of the
35 plan to all parties and their legal counsel, if any.

36 (3) When the youth is at least age 17 years but not older than 17
37 years and six months, the department shall provide the youth with
38 written documentation which explains the availability of extended
39 foster care services and detailed instructions regarding how the
40 youth may access such services after he or she reaches age 18 years.

1 (4) At the permanency planning hearing, the court shall conduct
2 the following inquiry:

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

14 (b) In cases where the primary permanency planning goal has not
15 been achieved, the court shall inquire regarding the reasons why the
16 primary goal has not been achieved and determine what needs to be
17 done to make it possible to achieve the primary goal. The court shall
18 review the permanency plan prepared by the agency and make explicit
19 findings regarding each of the following:

20 (i) The continuing necessity for, and the safety and
21 appropriateness of, the placement;

22 (ii) The extent of compliance with the permanency plan by the
23 department and any other service providers, the child's parents, the
24 child, and the child's guardian, if any;

25 (iii) The extent of any efforts to involve appropriate service
26 providers in addition to department staff in planning to meet the
27 special needs of the child and the child's parents;

28 (iv) The progress toward eliminating the causes for the child's
29 placement outside of his or her home and toward returning the child
30 safely to his or her home or obtaining a permanent placement for the
31 child;

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

35 (vi) If the child has been placed outside of his or her home for
36 15 of the most recent 22 months, not including any period during
37 which the child was a runaway from the out-of-home placement or the
38 first six months of any period during which the child was returned to
39 his or her home for a trial home visit, the appropriateness of the
40 permanency plan, whether reasonable efforts were made by the

1 department to achieve the goal of the permanency plan, and the
2 circumstances which prevent the child from any of the following:

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

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

6 (C) Being placed for adoption;

7 (D) Being placed with a guardian;

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

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

12 (c) Regardless of whether the primary permanency planning goal
13 has been achieved, for a child who remains placed in a qualified
14 residential treatment program as defined in this chapter for at least
15 60 days, and remains placed there at subsequent permanency planning
16 hearings, the court shall establish in writing:

17 (i) Whether ongoing assessment of the child's strengths and needs
18 continues to support the determination that the child's needs cannot
19 be met through placement in a foster family home;

20 (ii) Whether the child's placement provides the most effective
21 and appropriate level of care in the least restrictive environment;

22 (iii) Whether the placement is consistent with the child's short
23 and long-term goals as stated in the child's permanency plan;

24 (iv) What specific treatment or service needs will be met in the
25 placement, and how long the child is expected to need the treatment
26 or services; and

27 (v) What efforts the department has made to prepare the child to
28 return home or be placed with a fit and willing relative as defined
29 in RCW 13.34.030, a Title 13 RCW guardian, a guardian pursuant to RCW
30 11.130.215, an adoptive parent, or in a foster family home.

31 (5) Following this inquiry, at the permanency planning hearing,
32 the court shall order the department to file a petition seeking
33 termination of parental rights if the child has been in out-of-home
34 care for 15 of the last 22 months since the date the dependency
35 petition was filed unless the court makes a good cause exception as
36 to why the filing of a termination of parental rights petition is not
37 appropriate. Any good cause finding shall be reviewed at all
38 subsequent hearings pertaining to the child.

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

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

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

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

8 (iv) The parent is incarcerated, or the parent's prior
9 incarceration is a significant factor in why the child has been in
10 foster care for 15 of the last 22 months, the parent maintains a
11 meaningful role in the child's life, and the department has not
12 documented another reason why it would be otherwise appropriate to
13 file a petition pursuant to this section;

14 (v) Where a parent has been accepted into a dependency treatment
15 court program or long-term substance abuse or dual diagnoses
16 treatment program and is demonstrating compliance with treatment
17 goals;

18 (vi) Where a parent who has been court ordered to complete
19 services necessary for the child's safe return home files a
20 declaration under penalty of perjury stating the parent's financial
21 inability to pay for the same court-ordered services, and also
22 declares the department was unwilling or unable to pay for the same
23 services necessary for the child's safe return home; or

24 (vii) The department has not yet met with the caregiver for the
25 child to discuss guardianship as an alternative to adoption or the
26 court has determined that guardianship is an appropriate permanent
27 plan.

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

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

34 (ii) The parent's efforts to communicate and work with the
35 department or other individuals for the purpose of complying with the
36 service plan and repairing, maintaining, or building the parent-child
37 relationship;

38 (iii) A positive response by the parent to the reasonable efforts
39 of the department;

1 (iv) Information provided by individuals or agencies in a
2 reasonable position to assist the court in making this assessment,
3 including but not limited to the parent's attorney, correctional and
4 mental health personnel, or other individuals providing services to
5 the parent;

6 (v) Limitations in the parent's access to family support
7 programs, therapeutic services, and visiting opportunities,
8 restrictions to telephone and mail services, inability to participate
9 in foster care planning meetings, and difficulty accessing lawyers
10 and participating meaningfully in court proceedings; and

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

13 (c) The constraints of a parent's current or prior incarceration
14 and associated delays or barriers to accessing court-mandated
15 services may be considered in rebuttal to a claim of aggravated
16 circumstances under RCW 13.34.132(4)(h) for a parent's failure to
17 complete available treatment.

18 (6)(a) If the permanency plan identifies independent living as a
19 goal, the court at the permanency planning hearing shall make a
20 finding that the provision of services to assist the child in making
21 a transition from foster care to independent living will allow the
22 child to manage his or her financial, personal, social, educational,
23 and nonfinancial affairs prior to approving independent living as a
24 permanency plan of care. The court will inquire whether the child has
25 been provided information about extended foster care services.

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

30 (c) The department shall not discharge a child to an independent
31 living situation before the child is eighteen years of age unless the
32 child becomes emancipated pursuant to chapter 13.64 RCW.

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

36 (a) Enter a finding regarding whether the foster parent or
37 relative was informed of the hearing as required in RCW 74.13.280,
38 13.34.215(6), and 13.34.096; and

39 (b) Instruct the department to discuss guardianship as a
40 permanent option for the child with the child's parents and caregiver

1 as an alternative to termination of parental rights and adoption. No
2 child who is placed with a relative or other suitable person may be
3 moved, unless, pursuant to the criteria established in RCW 13.34.130,
4 the court finds that a change in circumstances necessitates a change
5 in placement.

6 (8) In all cases, at the permanency planning hearing, the court
7 shall:

8 (a) (i) Order the permanency plan prepared by the department to be
9 implemented; or

10 (ii) Modify the permanency plan, and order implementation of the
11 modified plan; and

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

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

18 (9) Following the first permanency planning hearing, the court
19 shall hold a further permanency planning hearing in accordance with
20 this section at least once every 12 months until a permanency
21 planning goal is achieved or the dependency is dismissed, whichever
22 occurs first.

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

26 (11) (~~(11)~~) (a) Except as provided in (b) of this subsection, if
27 the court orders the child returned home, casework supervision by the
28 department shall continue for at least six months, at which time a
29 review hearing shall be held pursuant to RCW 13.34.138, and the court
30 shall determine the need for continued intervention.

31 (b) For cases involving substance use disorder on the part of a
32 parent that contributed to the removal of the child or that occurred
33 during the dependency, if the court orders the child returned home,
34 casework supervision must continue for at least 12 months, at which
35 time a review hearing must be held pursuant to RCW 13.34.138, and the
36 court shall determine the need for continued intervention.

37 (12) The juvenile court may hear a petition for permanent legal
38 custody when: (a) The court has ordered implementation of a
39 permanency plan that includes permanent legal custody; and (b) the
40 party pursuing the permanent legal custody is the party identified in

1 the permanency plan as the prospective legal custodian. During the
2 pendency of such proceeding, the court shall conduct review hearings
3 and further permanency planning hearings as provided in this chapter.
4 At the conclusion of the legal guardianship or permanent legal
5 custody proceeding, a juvenile court hearing shall be held for the
6 purpose of determining whether dependency should be dismissed. If a
7 guardianship or permanent custody order has been entered, the
8 dependency shall be dismissed.

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

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

22 (15) The approval of a permanency plan that does not contemplate
23 return of the child to the parent does not relieve the department of
24 its obligation to provide reasonable services, under this chapter,
25 intended to effectuate the return of the child to the parent,
26 including but not limited to, visitation rights. The court shall
27 consider the child's relationships with siblings in accordance with
28 RCW 13.34.130.

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

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