
HOUSE BILL 2140

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By Representatives Kagi, Orwall, Johnson, Walsh, Sells, Clibborn, Tarleton, Appleton, Ortiz-Self, Hargrove, Zeiger, Senn, Ormsby, Kilduff, Walkinshaw, and Goodman

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1 AN ACT Relating to good cause exceptions during permanency
2 hearings; reenacting and amending RCW 13.34.145; providing and
3 effective date; and declaring an emergency.

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

5 **Sec. 1.** RCW 13.34.145 and 2013 c 332 s 3, 2013 c 206 s 1, and
6 2013 c 173 s 3 are each reenacted and amended to read as follows:

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

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

17 (b) Whenever a child is removed from the home of a dependency
18 guardian or long-term relative or foster care provider, and the child
19 is not returned to the home of the parent, guardian, or legal
20 custodian but is placed in out-of-home care, a permanency planning
21 hearing shall take place no later than twelve months, as provided in

1 this section, following the date of removal unless, prior to the
2 hearing, the child returns to the home of the dependency guardian or
3 long-term care provider, the child is placed in the home of the
4 parent, guardian, or legal custodian, an adoption decree,
5 guardianship order, or a permanent custody order is entered, or the
6 dependency is dismissed. Every effort shall be made to provide
7 stability in long-term placement, and to avoid disruption of
8 placement, unless the child is being returned home or it is in the
9 best interest of the child.

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

17 (2) No later than ten working days prior to the permanency
18 planning hearing, the agency having custody of the child shall submit
19 a written permanency plan to the court and shall mail a copy of the
20 plan to all parties and their legal counsel, if any.

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

27 (4) At the permanency planning hearing, the court shall conduct
28 the following inquiry:

29 (a) If a goal of long-term foster or relative care has been
30 achieved prior to the permanency planning hearing, the court shall
31 review the child's status to determine whether the placement and the
32 plan for the child's care remain appropriate.

33 (b) In cases where the primary permanency planning goal has not
34 been achieved, the court shall inquire regarding the reasons why the
35 primary goal has not been achieved and determine what needs to be
36 done to make it possible to achieve the primary goal. The court shall
37 review the permanency plan prepared by the agency and make explicit
38 findings regarding each of the following:

39 (i) The continuing necessity for, and the safety and
40 appropriateness of, the placement;

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

4 (iii) The extent of any efforts to involve appropriate service
5 providers in addition to department or supervising agency staff in
6 planning to meet the special needs of the child and the child's
7 parents;

8 (iv) The progress toward eliminating the causes for the child's
9 placement outside of his or her home and toward returning the child
10 safely to his or her home or obtaining a permanent placement for the
11 child;

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

15 (vi) If the child has been placed outside of his or her home for
16 fifteen of the most recent twenty-two months, not including any
17 period during which the child was a runaway from the out-of-home
18 placement or the first six months of any period during which the
19 child was returned to his or her home for a trial home visit, the
20 appropriateness of the permanency plan, whether reasonable efforts
21 were made by the department or supervising agency to achieve the goal
22 of the permanency plan, and the circumstances which prevent the child
23 from any of the following:

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

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

27 (C) Being placed for adoption;

28 (D) Being placed with a guardian;

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

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

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

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

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

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

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

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

16 (v) ((~~Until June 30, 2015,~~)) Where a parent has been accepted
17 into a dependency treatment court program or long-term substance
18 abuse or dual diagnoses treatment program and is demonstrating
19 compliance with treatment goals; or

20 (vi) ((~~Until June 30, 2015,~~)) Where a parent who has been court
21 ordered to complete services necessary for the child's safe return
22 home files a declaration under penalty of perjury stating the
23 parent's financial inability to pay for the same court-ordered
24 services, and also declares the department was unwilling or unable to
25 pay for the same services necessary for the child's safe return home.

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

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

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

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

38 (iv) Information provided by individuals or agencies in a
39 reasonable position to assist the court in making this assessment,
40 including but not limited to the parent's attorney, correctional and

1 mental health personnel, or other individuals providing services to
2 the parent;

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

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

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

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

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

27 (c) The department or supervising agency shall not discharge a
28 child to an independent living situation before the child is eighteen
29 years of age unless the child becomes emancipated pursuant to chapter
30 13.64 RCW.

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

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

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

1 (8) In all cases, at the permanency planning hearing, the court
2 shall:

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

5 (ii) Modify the permanency plan, and order implementation of the
6 modified plan; and

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

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

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

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

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

26 (12) The juvenile court may hear a petition for permanent legal
27 custody when: (a) The court has ordered implementation of a
28 permanency plan that includes permanent legal custody; and (b) the
29 party pursuing the permanent legal custody is the party identified in
30 the permanency plan as the prospective legal custodian. During the
31 pendency of such proceeding, the court shall conduct review hearings
32 and further permanency planning hearings as provided in this chapter.
33 At the conclusion of the legal guardianship or permanent legal
34 custody proceeding, a juvenile court hearing shall be held for the
35 purpose of determining whether dependency should be dismissed. If a
36 guardianship or permanent custody order has been entered, the
37 dependency shall be dismissed.

38 (13) Continued juvenile court jurisdiction under this chapter
39 shall not be a barrier to the entry of an order establishing a legal

1 guardianship or permanent legal custody when the requirements of
2 subsection (12) of this section are met.

3 (14) Nothing in this chapter may be construed to limit the
4 ability of the agency that has custody of the child to file a
5 petition for termination of parental rights or a guardianship
6 petition at any time following the establishment of dependency. Upon
7 the filing of such a petition, a fact-finding hearing shall be
8 scheduled and held in accordance with this chapter unless the
9 department or supervising agency requests dismissal of the petition
10 prior to the hearing or unless the parties enter an agreed order
11 terminating parental rights, establishing guardianship, or otherwise
12 resolving the matter.

13 (15) The approval of a permanency plan that does not contemplate
14 return of the child to the parent does not relieve the supervising
15 agency of its obligation to provide reasonable services, under this
16 chapter, intended to effectuate the return of the child to the
17 parent, including but not limited to, visitation rights. The court
18 shall consider the child's relationships with siblings in accordance
19 with RCW 13.34.130.

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

23 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of
25 the state government and its existing public institutions, and takes
26 effect June 30, 2015.

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