
SUBSTITUTE SENATE BILL 5460

State of Washington

63rd Legislature

2013 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Darneille, Rivers, Harper, Mullet, Kohl-Welles, Kline, Billig, and Hobbs)

READ FIRST TIME 02/20/13.

1 AN ACT Relating to the rights of parents who are incarcerated;
2 amending RCW 13.34.067, 13.34.132, 13.34.136, and 13.34.145; and
3 reenacting and amending RCW 13.34.030 and 13.34.180.

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

5 **Sec. 1.** RCW 13.34.030 and 2011 1st sp.s. c 36 s 13 are each
6 reenacted and amended to read as follows:

7 For purposes of this chapter:

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

17 (2) "Child," "juvenile," and "youth" means:

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

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

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

13 (4) "Department" means the department of social and health
14 services.

15 (5) "Dependency guardian" means the person, nonprofit corporation,
16 or Indian tribe appointed by the court pursuant to this chapter for the
17 limited purpose of assisting the court in the supervision of the
18 dependency.

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

20 (a) Has been abandoned;

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

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

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

29 (7) "Developmental disability" means a disability attributable to
30 intellectual disability, cerebral palsy, epilepsy, autism, or another
31 neurological or other condition of an individual found by the secretary
32 to be closely related to an intellectual disability or to require
33 treatment similar to that required for individuals with intellectual
34 disabilities, which disability originates before the individual attains
35 age eighteen, which has continued or can be expected to continue
36 indefinitely, and which constitutes a substantial limitation to the
37 individual.

1 (8) "Extended foster care services" means residential and other
2 support services the department is authorized to provide under RCW
3 74.13.031.

4 (9) "Guardian" means the person or agency that: (a) Has been
5 appointed as the guardian of a child in a legal proceeding, including
6 a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the
7 legal right to custody of the child pursuant to such appointment. The
8 term "guardian" does not include a "dependency guardian" appointed
9 pursuant to a proceeding under this chapter.

10 (10) "Guardian ad litem" means a person, appointed by the court to
11 represent the best interests of a child in a proceeding under this
12 chapter, or in any matter which may be consolidated with a proceeding
13 under this chapter. A "court-appointed special advocate" appointed by
14 the court to be the guardian ad litem for the child, or to perform
15 substantially the same duties and functions as a guardian ad litem,
16 shall be deemed to be guardian ad litem for all purposes and uses of
17 this chapter.

18 (11) "Guardian ad litem program" means a court-authorized volunteer
19 program, which is or may be established by the superior court of the
20 county in which such proceeding is filed, to manage all aspects of
21 volunteer guardian ad litem representation for children alleged or
22 found to be dependent. Such management shall include but is not
23 limited to: Recruitment, screening, training, supervision, assignment,
24 and discharge of volunteers.

25 (12) "Housing assistance" means appropriate referrals by the
26 department or other supervising agencies to federal, state, local, or
27 private agencies or organizations, assistance with forms, applications,
28 or financial subsidies or other monetary assistance for housing. For
29 purposes of this chapter, "housing assistance" is not a remedial
30 service or time-limited family reunification service as described in
31 RCW 13.34.025(2).

32 (13) "Indigent" means a person who, at any stage of a court
33 proceeding, is:

34 (a) Receiving one of the following types of public assistance:
35 Temporary assistance for needy families, aged, blind, or disabled
36 assistance benefits, medical care services under RCW 74.09.035,
37 pregnant women assistance benefits, poverty-related veterans' benefits,

1 food stamps or food stamp benefits transferred electronically, refugee
2 resettlement benefits, medicaid, or supplemental security income; or

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

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

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

9 (14) "Out-of-home care" means placement in a foster family home or
10 group care facility licensed pursuant to chapter 74.15 RCW or placement
11 in a home, other than that of the child's parent, guardian, or legal
12 custodian, not required to be licensed pursuant to chapter 74.15 RCW.

13 (15) "Preventive services" means preservation services, as defined
14 in chapter 74.14C RCW, and other reasonably available services,
15 including housing assistance, capable of preventing the need for out-
16 of-home placement while protecting the child.

17 (16) "Reasonable efforts" means good faith attempts by an
18 authorized agency to assist, develop, and encourage a meaningful
19 relationship between the parent and child including, but not limited
20 to, consultation and cooperation with the parent in developing a plan
21 for appropriate services, facilitating appropriate visitation, and
22 providing remedial services required under RCW 13.34.025. In the case
23 of a parent who is incarcerated, visitation must be facilitated unless
24 it is not in the best interests of the child.

25 (17) "Shelter care" means temporary physical care in a facility
26 licensed pursuant to RCW 74.15.030 or in a home not required to be
27 licensed pursuant to RCW 74.15.030.

28 ((+17)) (18) "Sibling" means a child's birth brother, birth
29 sister, adoptive brother, adoptive sister, half-brother, or half-
30 sister, or as defined by the law or custom of the Indian child's tribe
31 for an Indian child as defined in RCW 13.38.040.

32 ((+18)) (19) "Social study" means a written evaluation of matters
33 relevant to the disposition of the case and shall contain the following
34 information:

35 (a) A statement of the specific harm or harms to the child that
36 intervention is designed to alleviate;

37 (b) A description of the specific services and activities, for both
38 the parents and child, that are needed in order to prevent serious harm

1 to the child; the reasons why such services and activities are likely
2 to be useful; the availability of any proposed services; and the
3 agency's overall plan for ensuring that the services will be delivered.
4 The description shall identify the services chosen and approved by the
5 parent;

6 (c) If removal is recommended, a full description of the reasons
7 why the child cannot be protected adequately in the home, including a
8 description of any previous efforts to work with the parents and the
9 child in the home; the in-home treatment programs that have been
10 considered and rejected; the preventive services, including housing
11 assistance, that have been offered or provided and have failed to
12 prevent the need for out-of-home placement, unless the health, safety,
13 and welfare of the child cannot be protected adequately in the home;
14 and the parents' attitude toward placement of the child;

15 (d) A statement of the likely harms the child will suffer as a
16 result of removal;

17 (e) A description of the steps that will be taken to minimize the
18 harm to the child that may result if separation occurs including an
19 assessment of the child's relationship and emotional bond with any
20 siblings, and the agency's plan to provide ongoing contact between the
21 child and the child's siblings if appropriate; and

22 (f) Behavior that will be expected before determination that
23 supervision of the family or placement is no longer necessary.

24 ~~((+19))~~ (20) "Supervising agency" means an agency licensed by the
25 state under RCW 74.15.090, or licensed by a federally recognized Indian
26 tribe located in this state under RCW 74.15.190, that has entered into
27 a performance-based contract with the department to provide case
28 management for the delivery and documentation of child welfare services
29 as defined in RCW 74.13.020.

30 **Sec. 2.** RCW 13.34.067 and 2009 c 520 s 23 are each amended to read
31 as follows:

32 (1)(a) Following shelter care and no later than thirty days prior
33 to fact-finding, the department or supervising agency shall convene a
34 case conference as required in the shelter care order to develop and
35 specify in a written service agreement the expectations of both the
36 department or supervising agency and the parent regarding voluntary
37 services for the parent.

1 (b) The case conference shall include the parent, counsel for the
2 parent, caseworker, counsel for the state, guardian ad litem, counsel
3 for the child, and any other person agreed upon by the parties. Once
4 the shelter care order is entered, the department or supervising agency
5 is not required to provide additional notice of the case conference to
6 any participants in the case conference.

7 (c) The written service agreement expectations must correlate with
8 the court's findings at the shelter care hearing. The written service
9 agreement must set forth specific services to be provided to the
10 parent.

11 (d) The case conference agreement must be agreed to and signed by
12 the parties. The court shall not consider the content of the
13 discussions at the case conference at the time of the fact-finding
14 hearing for the purposes of establishing that the child is a dependent
15 child, and the court shall not consider any documents or written
16 materials presented at the case conference but not incorporated into
17 the case conference agreement, unless the documents or written
18 materials were prepared for purposes other than or as a result of the
19 case conference and are otherwise admissible under the rules of
20 evidence.

21 (2) At any other stage in a dependency proceeding, the department
22 or supervising agency, upon the parent's request, shall convene a case
23 conference.

24 (3) If a case conference is convened pursuant to subsection (1) or
25 (2) of this section and the parent is unable to participate in person
26 due to incarceration, the parent must have the option to participate
27 through the use of a teleconference or videoconference.

28 **Sec. 3.** RCW 13.34.132 and 2011 c 309 s 28 are each amended to read
29 as follows:

30 A court may order that a petition seeking termination of the parent
31 and child relationship be filed if the following requirements are met:

32 (1) The court has removed the child from his or her home pursuant
33 to RCW 13.34.130;

34 (2) Termination is recommended by the department or the supervising
35 agency;

36 (3) Termination is in the best interests of the child; and

1 (4) Because of the existence of aggravated circumstances,
2 reasonable efforts to unify the family are not required.
3 Notwithstanding the existence of aggravated circumstances, reasonable
4 efforts may be required if the court or department determines it is in
5 the best interests of the child. In determining whether aggravated
6 circumstances exist by clear, cogent, and convincing evidence, the
7 court shall consider one or more of the following:

8 (a) Conviction of the parent of rape of the child in the first,
9 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
10 9A.44.079;

11 (b) Conviction of the parent of criminal mistreatment of the child
12 in the first or second degree as defined in RCW 9A.42.020 and
13 9A.42.030;

14 (c) Conviction of the parent of one of the following assault
15 crimes, when the child is the victim: Assault in the first or second
16 degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child
17 in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

18 (d) Conviction of the parent of murder, manslaughter, or homicide
19 by abuse of the child's other parent, sibling, or another child;

20 (e) Conviction of the parent of attempting, soliciting, or
21 conspiring to commit a crime listed in (a), (b), (c), or (d) of this
22 subsection;

23 (f) A finding by a court that a parent is a sexually violent
24 predator as defined in RCW 71.09.020;

25 (g) Failure of the parent to complete available treatment ordered
26 under this chapter or the equivalent laws of another state, where such
27 failure has resulted in a prior termination of parental rights to
28 another child and the parent has failed to effect significant change in
29 the interim. In the case of a parent of an Indian child, as defined in
30 RCW 13.38.040, the court shall also consider tribal efforts to assist
31 the parent in completing treatment and make it possible for the child
32 to return home;

33 (h) An infant under three years of age has been abandoned;

34 (i) Conviction of the parent, when a child has been born of the
35 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest
36 under RCW 9A.64.020.

37 (5) The court shall consider the constraints experienced by a
38 parent's current or prior incarceration when determining whether a

1 parent has failed to complete court-ordered treatment. Such
2 consideration must include, but not be limited to, delays in or
3 barriers to accessing court-mandated services.

4 **Sec. 4.** RCW 13.34.136 and 2011 c 309 s 29 are each amended to read
5 as follows:

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

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

21 The permanency plan shall include:

22 (a) A permanency plan of care that shall identify one of the
23 following outcomes as a primary goal and may identify additional
24 outcomes as alternative goals: Return of the child to the home of the
25 child's parent, guardian, or legal custodian; adoption, including a
26 tribal customary adoption as defined in RCW 13.38.040; guardianship;
27 permanent legal custody; long-term relative or foster care, until the
28 child is age eighteen, with a written agreement between the parties and
29 the care provider; successful completion of a responsible living skills
30 program; or independent living, if appropriate and if the child is age
31 sixteen or older. The department or supervising agency shall not
32 discharge a child to an independent living situation before the child
33 is eighteen years of age unless the child becomes emancipated pursuant
34 to chapter 13.64 RCW;

35 (b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(+6)~~)
36 (8), that a termination petition be filed, a specific plan as to where
37 the child will be placed, what steps will be taken to return the child

1 home, what steps the supervising agency or the department will take to
2 promote existing appropriate sibling relationships and/or facilitate
3 placement together or contact in accordance with the best interests of
4 each child, and what actions the department or supervising agency will
5 take to maintain parent-child ties. All aspects of the plan shall
6 include the goal of achieving permanence for the child.

7 (i) The department's or supervising agency's plan shall specify
8 what services the parents will be offered to enable them to resume
9 custody, what requirements the parents must meet to resume custody, and
10 a time limit for each service plan and parental requirement. If the
11 parent is incarcerated, the plan must address the special circumstances
12 and needs of the child and the family.

13 (ii) Visitation is the right of the family, including the child and
14 the parent, in cases in which visitation is in the best interest of the
15 child. Early, consistent, and frequent visitation is crucial for
16 maintaining parent-child relationships and making it possible for
17 parents and children to safely reunify. The supervising agency or
18 department shall encourage the maximum parent and child and sibling
19 contact possible, when it is in the best interest of the child,
20 including regular visitation and participation by the parents in the
21 care of the child while the child is in placement. Visitation shall
22 not be limited as a sanction for a parent's failure to comply with
23 court orders or services where the health, safety, or welfare of the
24 child is not at risk as a result of the visitation. Visitation may be
25 limited or denied only if the court determines that such limitation or
26 denial is necessary to protect the child's health, safety, or welfare.
27 The court and the department or supervising agency should rely upon
28 community resources, relatives, foster parents, and other appropriate
29 persons to provide transportation and supervision for visitation to the
30 extent that such resources are available, and appropriate, and the
31 child's safety would not be compromised.

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

36 (iv) The plan shall state whether both in-state and, where
37 appropriate, out-of-state placement options have been considered by the
38 department or supervising agency.

1 (v) Unless it is not in the best interests of the child, whenever
2 practical, the plan should ensure the child remains enrolled in the
3 school the child was attending at the time the child entered foster
4 care.

5 (vi) The supervising agency or department shall provide all
6 reasonable services that are available within the department or
7 supervising agency, or within the community, or those services which
8 the department has existing contracts to purchase. It shall report to
9 the court if it is unable to provide such services. If the parent is
10 incarcerated or if a prior incarceration has prevented the parent from
11 accessing services, the department or the supervising agency shall
12 notify the parent in writing of his or her legal rights and obligations
13 and of services available in the community in which the parent resides
14 or plans to reside upon release that may aid in the development of a
15 meaningful relationship between the parent and child. When possible,
16 information regarding available services must include services for
17 reentry and family support; and

18 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+6)~~) (8),
19 that a termination petition be filed, a specific plan as to where the
20 child will be placed, what steps will be taken to achieve permanency
21 for the child, services to be offered or provided to the child, and, if
22 visitation would be in the best interests of the child, a
23 recommendation to the court regarding visitation between parent and
24 child pending a fact-finding hearing on the termination petition. The
25 department or supervising agency shall not be required to develop a
26 plan of services for the parents or provide services to the parents if
27 the court orders a termination petition be filed. However, reasonable
28 efforts to ensure visitation and contact between siblings shall be made
29 unless there is reasonable cause to believe the best interests of the
30 child or siblings would be jeopardized.

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

1 and adoption has been identified as the primary permanency planning
2 goal, it shall be a goal to complete the adoption within six months
3 following entry of the termination order.

4 (4) If the court determines that the continuation of reasonable
5 efforts to prevent or eliminate the need to remove the child from his
6 or her home or to safely return the child home should not be part of
7 the permanency plan of care for the child, reasonable efforts shall be
8 made to place the child in a timely manner and to complete whatever
9 steps are necessary to finalize the permanent placement of 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(~~(+4)~~) (6). Whenever
14 the 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 his
18 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 and
21 his or her siblings, contact between the siblings should be frequent
22 and of a similar nature as that which existed prior to the adoption.
23 If the child adoptee or his or her siblings are represented by an
24 attorney or guardian ad litem in a proceeding under this chapter or in
25 any other child custody proceeding, the court shall inquire of each
26 attorney and guardian ad litem regarding the potential benefits of
27 continuing contact between the siblings and the potential detriments of
28 severing contact. This section does not require the department of
29 social and health services or other supervising agency to agree to any
30 specific provisions in an open adoption agreement and does not create
31 a new obligation for the department to provide supervision or
32 transportation for visits between siblings separated by adoption from
33 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.

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

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

6 **Sec. 5.** RCW 13.34.145 and 2011 c 330 s 6 are each amended to read
7 as follows:

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

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

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

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

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

5 (3) At the permanency planning hearing, the court shall conduct the
6 following inquiry:

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

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

17 (i) The continuing necessity for, and the safety and
18 appropriateness of, the placement;

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

22 (iii) The extent of any efforts to involve appropriate service
23 providers in addition to department or supervising agency staff in
24 planning to meet the special needs of the child and the child's
25 parents;

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

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

33 (vi) If the child has been placed outside of his or her home for
34 fifteen of the most recent twenty-two months, not including any period
35 during which the child was a runaway from the out-of-home placement or
36 the first six months of any period during which the child was returned
37 to his or her home for a trial home visit, the appropriateness of the

1 permanency plan, whether reasonable efforts were made by the department
2 or supervising agency to achieve the goal of the permanency plan, and
3 the circumstances which prevent the child from any of the following:

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

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

7 (C) Being placed for adoption;

8 (D) Being placed with a guardian;

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

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

13 At this hearing, the court shall order the department or
14 supervising agency to file a petition seeking termination of parental
15 rights if the child has been in out-of-home care for fifteen of the
16 last twenty-two months since the date the dependency petition was filed
17 unless the court makes a good cause exception as to why the filing of
18 a termination of parental rights petition is not appropriate. Any good
19 cause finding shall be reviewed at all subsequent hearings pertaining
20 to the child. For purposes of this section, "good cause exception"
21 includes but is not limited to the following:

22 (I) The child is being cared for by a relative;

23 (II) The department has not provided to the child's family such
24 services as the court and the department have deemed necessary for the
25 child's safe return home; (~~or~~)

26 (III) The department has documented in the case plan a compelling
27 reason for determining that filing a petition to terminate parental
28 rights would not be in the child's best interests; or

29 (IV) The parent is incarcerated or the parent's prior incarceration
30 is a significant factor in why the child has been in foster care for
31 fifteen of the last twenty-two months, provided that the parent
32 maintains a meaningful role in the child's life based on the criteria
33 set forth in subsection (3)(c)(i) of this section, and the department
34 has not documented a reason why it would otherwise be appropriate to
35 file a petition pursuant to this section.

36 (c) Whether a parent maintains a meaningful role in his or her
37 child's life.

1 (i) The court's assessment of whether a parent maintains a
2 meaningful role in his or her child's life may include, but is not
3 limited to, the following:

4 (A) A parent's expressions or acts of manifesting concern for the
5 child, such as letters, telephone calls, visits, and other forms of
6 communication with the child;

7 (B) Efforts by the parent to communicate and work with the
8 department or supervising agency, legal guardian, foster parent, the
9 court, and the parent's attorney or other individuals providing
10 services to the parent, including correctional mental health and
11 substance abuse treatment program personnel, for the purpose of
12 complying with the service plan and repairing, maintaining, or building
13 the parent-child relationship;

14 (C) A positive response by the parent to the reasonable efforts of
15 the department or the supervising agency; and

16 (D) Whether the continued involvement of the parent in the child's
17 life is in the child's best interest.

18 (ii) The court shall consider the parent's limited access to family
19 support programs, therapeutic services, and visiting opportunities;
20 highly restricted telephone and mail services; inability to participate
21 in foster care planning meetings; and difficulty accessing lawyers and
22 participating meaningfully in court proceedings.

23 (iii) The department shall gather information from individuals and
24 agencies in a reasonable position to help make this assessment. Such
25 individuals and agencies may include, but are not limited to, the
26 supervising agency, legal guardian, parent, child, foster parent, or
27 other individuals of importance in the child's life. Sources of
28 information may also include the parent's attorney, correctional mental
29 health and substance abuse treatment program personnel, or other
30 individuals providing services to the parent.

31 (iv) The court may direct the department or the supervising agency
32 to undertake further steps to aid it in completing the court's
33 assessment.

34 ~~((e))~~ (d)(i) If the permanency plan identifies independent living
35 as a goal, the court shall make a finding that the provision of
36 services to assist the child in making a transition from foster care to
37 independent living will allow the child to manage his or her financial,
38 personal, social, educational, and nonfinancial affairs prior to

1 approving independent living as a permanency plan of care. The court
2 will inquire whether the child has been provided information about
3 extended foster care services.

4 (ii) The permanency plan shall also specifically identify the
5 services, including extended foster care services, where appropriate,
6 that will be provided to assist the child to make a successful
7 transition from foster care to independent living.

8 (iii) The department or supervising agency shall not discharge a
9 child to an independent living situation before the child is eighteen
10 years of age unless the child becomes emancipated pursuant to chapter
11 13.64 RCW.

12 (~~(d)~~) (e) If the child has resided in the home of a foster parent
13 or relative for more than six months prior to the permanency planning
14 hearing, the court shall:

15 (i) Enter a finding regarding whether the foster parent or relative
16 was informed of the hearing as required in RCW 74.13.280, 13.34.215(6),
17 and 13.34.096; and

18 (ii) If the department or supervising agency is recommending a
19 placement other than the child's current placement with a foster
20 parent, relative, or other suitable person, enter a finding as to the
21 reasons for the recommendation for a change in placement.

22 (4) In all cases, at the permanency planning hearing, the court
23 shall:

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

26 (ii) Modify the permanency plan, and order implementation of the
27 modified plan; and

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

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

33 (5) Following the first permanency planning hearing, the court
34 shall hold a further permanency planning hearing in accordance with
35 this section at least once every twelve months until a permanency
36 planning goal is achieved or the dependency is dismissed, whichever
37 occurs first.

1 (6) Prior to the second permanency planning hearing, the agency
2 that has custody of the child shall consider whether to file a petition
3 for termination of parental rights.

4 (7) If the court orders the child returned home, casework
5 supervision by the department or supervising agency shall continue for
6 at least six months, at which time a review hearing shall be held
7 pursuant to RCW 13.34.138, and the court shall determine the need for
8 continued intervention.

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

21 (9) Continued juvenile court jurisdiction under this chapter shall
22 not be a barrier to the entry of an order establishing a legal
23 guardianship or permanent legal custody when the requirements of
24 subsection (8) of this section are met.

25 (10) Nothing in this chapter may be construed to limit the ability
26 of the agency that has custody of the child to file a petition for
27 termination of parental rights or a guardianship petition at any time
28 following the establishment of dependency. Upon the filing of such a
29 petition, a fact-finding hearing shall be scheduled and held in
30 accordance with this chapter unless the department or supervising
31 agency requests dismissal of the petition prior to the hearing or
32 unless the parties enter an agreed order terminating parental rights,
33 establishing guardianship, or otherwise resolving the matter.

34 (11) The approval of a permanency plan that does not contemplate
35 return of the child to the parent does not relieve the supervising
36 agency of its obligation to provide reasonable services, under this
37 chapter, intended to effectuate the return of the child to the parent,

1 including but not limited to, visitation rights. The court shall
2 consider the child's relationships with siblings in accordance with RCW
3 13.34.130.

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

7 **Sec. 6.** RCW 13.34.180 and 2009 c 520 s 34 and 2009 c 477 s 5 are
8 each reenacted and amended to read as follows:

9 (1) A petition seeking termination of a parent and child
10 relationship may be filed in juvenile court by any party, including the
11 supervising agency, to the dependency proceedings concerning that
12 child. Such petition shall conform to the requirements of RCW
13 13.34.040, shall be served upon the parties as provided in RCW
14 13.34.070(8), and shall allege all of the following unless subsection
15 (2) or (3) of this section applies:

16 (a) That the child has been found to be a dependent child;

17 (b) That the court has entered a dispositional order pursuant to
18 RCW 13.34.130;

19 (c) That the child has been removed or will, at the time of the
20 hearing, have been removed from the custody of the parent for a period
21 of at least six months pursuant to a finding of dependency;

22 (d) That the services ordered under RCW 13.34.136 have been
23 expressly and understandably offered or provided and all necessary
24 services, reasonably available, capable of correcting the parental
25 deficiencies within the foreseeable future have been expressly and
26 understandably offered or provided;

27 (e) That there is little likelihood that conditions will be
28 remedied so that the child can be returned to the parent in the near
29 future. A parent's failure to substantially improve parental
30 deficiencies within twelve months following entry of the dispositional
31 order shall give rise to a rebuttable presumption that there is little
32 likelihood that conditions will be remedied so that the child can be
33 returned to the parent in the near future. The presumption shall not
34 arise unless the petitioner makes a showing that all necessary services
35 reasonably capable of correcting the parental deficiencies within the
36 foreseeable future have been clearly offered or provided. In

1 determining whether the conditions will be remedied the court may
2 consider, but is not limited to, the following factors:

3 (i) Use of intoxicating or controlled substances so as to render
4 the parent incapable of providing proper care for the child for
5 extended periods of time or for periods of time that present a risk of
6 imminent harm to the child, and documented unwillingness of the parent
7 to receive and complete treatment or documented multiple failed
8 treatment attempts;

9 (ii) Psychological incapacity or mental deficiency of the parent
10 that is so severe and chronic as to render the parent incapable of
11 providing proper care for the child for extended periods of time or for
12 periods of time that present a risk of imminent harm to the child, and
13 documented unwillingness of the parent to receive and complete
14 treatment or documentation that there is no treatment that can render
15 the parent capable of providing proper care for the child in the near
16 future; or

17 (iii) Failure of the parent to have contact with the child for an
18 extended period of time after the filing of the dependency petition if
19 the parent was provided an opportunity to have a relationship with the
20 child by the department or the court and received documented notice of
21 the potential consequences of this failure, except that the actual
22 inability of a parent to have visitation with the child including, but
23 not limited to, mitigating circumstances such as a parent's current or
24 prior incarceration or service in the military does not in and of
25 itself constitute failure to have contact with the child; and

26 (f) That continuation of the parent and child relationship clearly
27 diminishes the child's prospects for early integration into a stable
28 and permanent home. The court shall consider whether a parent
29 maintains a meaningful role in his or her child's life based on
30 information gathered pursuant to RCW 13.34.145(3)(c); whether the
31 department or supervising agency made reasonable efforts as defined in
32 this chapter; and whether particular barriers existed pursuant to RCW
33 13.34.145(3)(c) including, but not limited to, delays or barriers
34 experienced in keeping the agency apprised of his or her location and
35 in accessing visitation or other meaningful contact with the child.

36 (g) The department may not move to terminate the parent-child
37 relationship of a parent who is incarcerated if the incarceration is

1 the primary reason for the determination that the child is dependent
2 and there is no independent reason for termination.

3 (2) As evidence of rebuttal to any presumption established pursuant
4 to subsection (1)(e) of this section, the court may consider the
5 particular constraints of a parent's current or prior incarceration.
6 Such evidence may include, but is not limited to, delays or barriers a
7 parent may experience in keeping the agency apprised of his or her
8 location and in accessing visitation or other meaningful contact with
9 the child.

10 (3) In lieu of the allegations in subsection (1) of this section,
11 the petition may allege that the child was found under such
12 circumstances that the whereabouts of the child's parent are unknown
13 and no person has acknowledged paternity or maternity and requested
14 custody of the child within two months after the child was found.

15 ((+3)) (4) In lieu of the allegations in subsection (1)(b) through
16 (f) of this section, the petition may allege that the parent has been
17 convicted of:

18 (a) Murder in the first degree, murder in the second degree, or
19 homicide by abuse as defined in chapter 9A.32 RCW against another child
20 of the parent;

21 (b) Manslaughter in the first degree or manslaughter in the second
22 degree, as defined in chapter 9A.32 RCW against another child of the
23 parent;

24 (c) Attempting, conspiring, or soliciting another to commit one or
25 more of the crimes listed in (a) or (b) of this subsection; or

26 (d) Assault in the first or second degree, as defined in chapter
27 9A.36 RCW, against the surviving child or another child of the parent.

28 ((+4)) (5) Notice of rights shall be served upon the parent,
29 guardian, or legal custodian with the petition and shall be in
30 substantially the following form:

31 "NOTICE

32 A petition for termination of parental rights has been filed
33 against you. You have important legal rights and you must take
34 steps to protect your interests. This petition could result in
35 permanent loss of your parental rights.

36 1. You have the right to a fact-finding hearing before
37 a judge.

38 2. You have the right to have a lawyer represent you at

1 the hearing. A lawyer can look at the files in your case, talk
2 to the department of social and health services or the
3 supervising agency and other agencies, tell you about the law,
4 help you understand your rights, and help you at hearings. If
5 you cannot afford a lawyer, the court will appoint one to
6 represent you. To get a court-appointed lawyer you must
7 contact: (explain local procedure).

8 3. At the hearing, you have the right to speak on your
9 own behalf, to introduce evidence, to examine witnesses, and to
10 receive a decision based solely on the evidence presented to
11 the judge.

12 You should be present at this hearing.

13 You may call (insert agency) for more information
14 about your child. The agency's name and telephone number are
15 (insert name and telephone number)."

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