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SENATE BILL 5460

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State of Washington

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By Senators Darneille, Rivers, Harper, Mullet, Kohl-Welles, Kline, Billig, and Hobbs

Read first time 01/31/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to the rights of parents who are incarcerated or in  
2 residential substance abuse treatment; amending RCW 13.34.067,  
3 13.34.132, 13.34.136, and 13.34.145; and reenacting and amending RCW  
4 13.34.030 and 13.34.180.

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

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

8 For purposes of this chapter:

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

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

19 (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 or participating in a residential  
24 substance abuse treatment program, visitation must be facilitated  
25 unless it is not in the best interests of the child.

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

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

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

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

1 (b) A description of the specific services and activities, for both  
2 the parents and child, that are needed in order to prevent serious harm  
3 to the child; the reasons why such services and activities are likely  
4 to be useful; the availability of any proposed services; and the  
5 agency's overall plan for ensuring that the services will be delivered.  
6 The description shall identify the services chosen and approved by the  
7 parent;

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

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

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

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

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

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

34 (1)(a) Following shelter care and no later than thirty days prior  
35 to fact-finding, the department or supervising agency shall convene a  
36 case conference as required in the shelter care order to develop and

1 specify in a written service agreement the expectations of both the  
2 department or supervising agency and the parent regarding voluntary  
3 services for the parent.

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

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

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

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

27 (3) If a case conference is convened pursuant to subsection (1) or  
28 (2) of this section and the parent is unable to participate in person  
29 due to incarceration or participation in a residential substance abuse  
30 treatment program, the parent must have the option to participate  
31 through the use of a teleconference or videoconference.

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

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

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

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

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

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

11 (a) Conviction of the parent of rape of the child in the first,  
12 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and  
13 9A.44.079;

14 (b) Conviction of the parent of criminal mistreatment of the child  
15 in the first or second degree as defined in RCW 9A.42.020 and  
16 9A.42.030;

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

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

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

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

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

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

37 (i) Conviction of the parent, when a child has been born of the

1 offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest  
2 under RCW 9A.64.020.

3 (5) The court shall consider the constraints experienced by a  
4 parent's current or prior incarceration or current or prior  
5 participation in a residential substance abuse treatment program when  
6 determining whether a parent has failed to complete court-ordered  
7 treatment. Such consideration must include, but not be limited to,  
8 delays in or barriers to accessing court-mandated services.

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

11 (1) Whenever a child is ordered removed from the home, a permanency  
12 plan shall be developed no later than sixty days from the time the  
13 supervising agency assumes responsibility for providing services,  
14 including placing the child, or at the time of a hearing under RCW  
15 13.34.130, whichever occurs first. The permanency planning process  
16 continues until a permanency planning goal is achieved or dependency is  
17 dismissed. The planning process shall include reasonable efforts to  
18 return the child to the parent's home.

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

26 The permanency plan shall include:

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



1 discharge a child to an independent living situation before the child  
2 is eighteen years of age unless the child becomes emancipated pursuant  
3 to chapter 13.64 RCW;

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

13 (i) The department's or supervising agency's plan shall specify  
14 what services the parents will be offered to enable them to resume  
15 custody, what requirements the parents must meet to resume custody, and  
16 a time limit for each service plan and parental requirement. If the  
17 parent is incarcerated or residing in a residential substance abuse  
18 treatment facility, the plan must address the special circumstances and  
19 needs of the child and the family.

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

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

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

8 (v) Unless it is not in the best interests of the child, whenever  
9 practical, the plan should ensure the child remains enrolled in the  
10 school the child was attending at the time the child entered foster  
11 care.

12 (vi) The supervising agency or department shall provide all  
13 reasonable services that are available within the department or  
14 supervising agency, or within the community, or those services which  
15 the department has existing contracts to purchase. It shall report to  
16 the court if it is unable to provide such services. If the parent is  
17 incarcerated or participating in a residential substance abuse  
18 treatment program or if a prior incarceration or participation in a  
19 residential substance abuse program has prevented the parent from  
20 accessing services, the department or the supervising agency shall  
21 notify the parent in writing of his or her legal rights and obligations  
22 and of services available in the community in which the parent resides  
23 or plans to reside upon release that may aid in the development of a  
24 meaningful relationship between the parent and child. When possible,  
25 information regarding available services must include services for  
26 reentry and family support; and

27 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+6)~~) (8),  
28 that a termination petition be filed, a specific plan as to where the  
29 child will be placed, what steps will be taken to achieve permanency  
30 for the child, services to be offered or provided to the child, and, if  
31 visitation would be in the best interests of the child, a  
32 recommendation to the court regarding visitation between parent and  
33 child pending a fact-finding hearing on the termination petition. The  
34 department or supervising agency shall not be required to develop a  
35 plan of services for the parents or provide services to the parents if  
36 the court orders a termination petition be filed. However, reasonable  
37 efforts to ensure visitation and contact between siblings shall be made

1 unless there is reasonable cause to believe the best interests of the  
2 child or siblings would be jeopardized.

3 (3) Permanency planning goals should be achieved at the earliest  
4 possible date. If the child has been in out-of-home care for fifteen  
5 of the most recent twenty-two months, and the court has not made a good  
6 cause exception, the court shall require the department or supervising  
7 agency to file a petition seeking termination of parental rights in  
8 accordance with RCW 13.34.145(3)(b)(vi). In cases where parental  
9 rights have been terminated, the child is legally free for adoption,  
10 and adoption has been identified as the primary permanency planning  
11 goal, it shall be a goal to complete the adoption within six months  
12 following entry of the termination order.

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

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

21 (6) The court shall consider the child's relationships with the  
22 child's siblings in accordance with RCW 13.34.130(~~((4))~~) (6). Whenever  
23 the permanency plan for a child is adoption, the court shall encourage  
24 the prospective adoptive parents, birth parents, foster parents,  
25 kinship caregivers, and the department or other supervising agency to  
26 seriously consider the long-term benefits to the child adoptee and his  
27 or her siblings of providing for and facilitating continuing  
28 postadoption contact between the siblings. To the extent that it is  
29 feasible, and when it is in the best interests of the child adoptee and  
30 his or her siblings, contact between the siblings should be frequent  
31 and of a similar nature as that which existed prior to the adoption.  
32 If the child adoptee or his or her siblings are represented by an  
33 attorney or guardian ad litem in a proceeding under this chapter or in  
34 any other child custody proceeding, the court shall inquire of each  
35 attorney and guardian ad litem regarding the potential benefits of  
36 continuing contact between the siblings and the potential detriments of  
37 severing contact. This section does not require the department of  
38 social and health services or other supervising agency to agree to any

1 specific provisions in an open adoption agreement and does not create  
2 a new obligation for the department to provide supervision or  
3 transportation for visits between siblings separated by adoption from  
4 foster care.

5 (7) For purposes related to permanency planning:

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

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

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

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

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

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

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

1 disruption of placement, unless the child is being returned home or it  
2 is in the best interest of the child.

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

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

14 (3) At the permanency planning hearing, the court shall conduct the  
15 following inquiry:

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

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

26 (i) The continuing necessity for, and the safety and  
27 appropriateness of, the placement;

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

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

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

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

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

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

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

15 (C) Being placed for adoption;

16 (D) Being placed with a guardian;

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

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

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

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

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

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

37 (IV) The parent is incarcerated or participating in a residential  
38 substance abuse treatment program, or the parent's prior incarceration

1 or participation in a residential substance abuse treatment program is  
2 a significant factor in why the child has been in foster care for  
3 fifteen of the last twenty-two months, provided that the parent  
4 maintains a meaningful role in the child's life based on the criteria  
5 set forth in subsection (3)(c)(i) of this section, and the department  
6 has not documented a reason why it would otherwise be appropriate to  
7 file a petition pursuant to this section.

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

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

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

16 (B) Efforts by the parent to communicate and work with the  
17 department or supervising agency, legal guardian, foster parent, the  
18 court, and the parent's attorney or other individuals providing  
19 services to the parent, including correctional mental health and  
20 substance abuse treatment program personnel, for the purpose of  
21 complying with the service plan and repairing, maintaining, or building  
22 the parent-child relationship;

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

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

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

32 (iii) The department shall gather information from individuals and  
33 agencies in a reasonable position to help make this assessment. Such  
34 individuals and agencies may include, but are not limited to, the  
35 supervising agency, legal guardian, parent, child, foster parent, or  
36 other individuals of importance in the child's life. Sources of  
37 information may also include the parent's attorney, correctional mental

1 health and substance abuse treatment program personnel, or other  
2 individuals providing services to the parent.

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

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

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

18 (iii) The department or supervising agency shall not discharge a  
19 child to an independent living situation before the child is eighteen  
20 years of age unless the child becomes emancipated pursuant to chapter  
21 13.64 RCW.

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

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

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

32 (4) In all cases, at the permanency planning hearing, the court  
33 shall:

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

36 (ii) Modify the permanency plan, and order implementation of the  
37 modified plan; and



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

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

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

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

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

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

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

35 (10) Nothing in this chapter may be construed to limit the ability  
36 of the agency that has custody of the child to file a petition for  
37 termination of parental rights or a guardianship petition at any time  
38 following the establishment of dependency. Upon the filing of such a

1 petition, a fact-finding hearing shall be scheduled and held in  
2 accordance with this chapter unless the department or supervising  
3 agency requests dismissal of the petition prior to the hearing or  
4 unless the parties enter an agreed order terminating parental rights,  
5 establishing guardianship, or otherwise resolving the matter.

6 (11) The approval of a permanency plan that does not contemplate  
7 return of the child to the parent does not relieve the supervising  
8 agency of its obligation to provide reasonable services, under this  
9 chapter, intended to effectuate the return of the child to the parent,  
10 including but not limited to, visitation rights. The court shall  
11 consider the child's relationships with siblings in accordance with RCW  
12 13.34.130.

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

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

18 (1) A petition seeking termination of a parent and child  
19 relationship may be filed in juvenile court by any party, including the  
20 supervising agency, to the dependency proceedings concerning that  
21 child. Such petition shall conform to the requirements of RCW  
22 13.34.040, shall be served upon the parties as provided in RCW  
23 13.34.070(8), and shall allege all of the following unless subsection  
24 (2) or (3) of this section applies:

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

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

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

31 (d) That the services ordered under RCW 13.34.136 have been  
32 expressly and understandably offered or provided and all necessary  
33 services, reasonably available, capable of correcting the parental  
34 deficiencies within the foreseeable future have been expressly and  
35 understandably offered or provided;

36 (e) That there is little likelihood that conditions will be  
37 remedied so that the child can be returned to the parent in the near

1 future. A parent's failure to substantially improve parental  
2 deficiencies within twelve months following entry of the dispositional  
3 order shall give rise to a rebuttable presumption that there is little  
4 likelihood that conditions will be remedied so that the child can be  
5 returned to the parent in the near future. The presumption shall not  
6 arise unless the petitioner makes a showing that all necessary services  
7 reasonably capable of correcting the parental deficiencies within the  
8 foreseeable future have been clearly offered or provided. In  
9 determining whether the conditions will be remedied the court may  
10 consider, but is not limited to, the following factors:

11 (i) Use of intoxicating or controlled substances so as to render  
12 the parent incapable of providing proper care for the child for  
13 extended periods of time or for periods of time that present a risk of  
14 imminent harm to the child, and documented unwillingness of the parent  
15 to receive and complete treatment or documented multiple failed  
16 treatment attempts;

17 (ii) Psychological incapacity or mental deficiency of the parent  
18 that is so severe and chronic as to render the parent incapable of  
19 providing proper care for the child for extended periods of time or for  
20 periods of time that present a risk of imminent harm to the child, and  
21 documented unwillingness of the parent to receive and complete  
22 treatment or documentation that there is no treatment that can render  
23 the parent capable of providing proper care for the child in the near  
24 future; or

25 (iii) Failure of the parent to have contact with the child for an  
26 extended period of time after the filing of the dependency petition if  
27 the parent was provided an opportunity to have a relationship with the  
28 child by the department or the court and received documented notice of  
29 the potential consequences of this failure, except that the actual  
30 inability of a parent to have visitation with the child including, but  
31 not limited to, mitigating circumstances such as a parent's current or  
32 prior incarceration, current or prior participation in a residential  
33 treatment program for substance abuse, or service in the military does  
34 not in and of itself constitute failure to have contact with the child;  
35 and

36 (f) That continuation of the parent and child relationship clearly  
37 diminishes the child's prospects for early integration into a stable  
38 and permanent home. The court shall consider whether a parent

1 maintains a meaningful role in his or her child's life based on  
2 information gathered pursuant to RCW 13.34.145(3)(c); whether the  
3 department or supervising agency made reasonable efforts as defined in  
4 this chapter; and whether particular barriers existed pursuant to RCW  
5 13.34.145(3)(c) including, but not limited to, delays or barriers  
6 experienced in keeping the agency apprised of his or her location and  
7 in accessing visitation or other meaningful contact with the child.

8 (g) The department may not move to terminate the parent-child  
9 relationship of a parent who is incarcerated or participating in a  
10 residential substance abuse treatment program if the incarceration or  
11 participation is the primary reason for the determination that the  
12 child is dependent and there is no independent reason for termination.

13 (2) As evidence of rebuttal to any presumption established pursuant  
14 to subsection (1)(e) of this section, the court may consider the  
15 particular constraints of a parent's current or prior incarceration or  
16 current or prior participation in a residential substance abuse  
17 treatment program. Such evidence may include, but is not limited to,  
18 delays or barriers a parent may experience in keeping the agency  
19 apprised of his or her location and in accessing visitation or other  
20 meaningful contact with the child.

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

26 ~~((+3))~~ (4) In lieu of the allegations in subsection (1)(b) through  
27 (f) of this section, the petition may allege that the parent has been  
28 convicted of:

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

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

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

37 (d) Assault in the first or second degree, as defined in chapter  
38 9A.36 RCW, against the surviving child or another child of the parent.

1 ((+4)) (5) Notice of rights shall be served upon the parent,  
2 guardian, or legal custodian with the petition and shall be in  
3 substantially the following form:

4 "NOTICE

5 A petition for termination of parental rights has been filed  
6 against you. You have important legal rights and you must take  
7 steps to protect your interests. This petition could result in  
8 permanent loss of your parental rights.

9 1. You have the right to a fact-finding hearing before  
10 a judge.

11 2. You have the right to have a lawyer represent you at  
12 the hearing. A lawyer can look at the files in your case, talk  
13 to the department of social and health services or the  
14 supervising agency and other agencies, tell you about the law,  
15 help you understand your rights, and help you at hearings. If  
16 you cannot afford a lawyer, the court will appoint one to  
17 represent you. To get a court-appointed lawyer you must  
18 contact: (explain local procedure).

19 3. At the hearing, you have the right to speak on your  
20 own behalf, to introduce evidence, to examine witnesses, and to  
21 receive a decision based solely on the evidence presented to  
22 the judge.

23 You should be present at this hearing.

24 You may call (insert agency) for more information  
25 about your child. The agency's name and telephone number are  
26 (insert name and telephone number)."

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