
SENATE BILL 6255

State of Washington

53rd Legislature

1994 Regular Session

By Senators Talmadge, Wojahn, Haugen, Winsley and McAuliffe; by request of Attorney General

Read first time 01/18/94. Referred to Committee on Health & Human Services.

1 AN ACT Relating to permanency planning and guardianship for
2 dependent children; and amending RCW 13.34.130, 13.34.145, 13.04.011,
3 13.34.231, 13.34.232, 13.34.233, 13.34.234, and 13.34.236.

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

5 **Sec. 1.** RCW 13.34.130 and 1992 c 145 s 14 are each amended to read
6 as follows:

7 If, after a fact-finding hearing pursuant to RCW 13.34.110, (~~as~~
8 ~~now or hereafter amended,~~) it has been proven by a preponderance of
9 the evidence that the child is dependent within the meaning of RCW
10 13.34.030(2); after consideration of the predisposition report prepared
11 pursuant to RCW 13.34.110 and after a disposition hearing has been held
12 pursuant to RCW 13.34.110, the court shall enter an order of
13 disposition pursuant to this section.

14 (1) The court shall order one of the following dispositions of the
15 case:

16 (a) Order a disposition other than removal of the child from his or
17 her home, which shall provide a program designed to alleviate the
18 immediate danger to the child, to mitigate or cure any damage the child
19 has already suffered, and to aid the parents so that the child will not

1 be endangered in the future. In selecting a program, the court should
2 choose those services that least interfere with family autonomy,
3 provided that the services are adequate to protect the child.

4 (b) Order that the child be removed from his or her home and
5 ordered into the custody, control, and care of a relative or the
6 department of social and health services or a licensed child placing
7 agency for placement in a foster family home or group care facility
8 licensed pursuant to chapter 74.15 RCW or in a home not required to be
9 licensed pursuant to chapter 74.15 RCW. Unless there is reasonable
10 cause to believe that the safety or welfare of the child would be
11 jeopardized or that efforts to reunite the parent and child will be
12 hindered, such child shall be placed with a grandparent, brother,
13 sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom
14 the child has a relationship and is comfortable, and who is willing and
15 available to care for the child. An order for out-of-home placement
16 may be made only if the court finds that reasonable efforts have been
17 made to prevent or eliminate the need for removal of the child from the
18 child's home and to make it possible for the child to return home,
19 specifying the services that have been provided to the child and the
20 child's parent, guardian, or legal custodian, and that:

21 (i) There is no parent or guardian available to care for such
22 child;

23 (ii) The parent, guardian, or legal custodian is not willing to
24 take custody of the child;

25 (iii) A manifest danger exists that the child will suffer serious
26 abuse or neglect if the child is not removed from the home and an order
27 under RCW 26.44.063 would not protect the child from danger; or

28 (iv) The extent of the child's disability is such that the parent,
29 guardian, or legal custodian is unable to provide the necessary care
30 for the child and the parent, guardian, or legal custodian has
31 determined that the child would benefit from placement outside of the
32 home.

33 (2) If the court has ordered a child removed from his or her home
34 pursuant to subsection (1)(b) of this section, the court may order that
35 a petition seeking termination of the parent and child relationship be
36 filed if the court finds it is recommended by the supervising agency,
37 that it is in the best interests of the child and that it is not
38 reasonable to provide further services to reunify the family because
39 the existence of aggravated circumstances make it unlikely that

1 services will effectuate the return of the child to the child's parents
2 in the near future. In determining whether aggravated circumstances
3 exist, the court shall consider one or more of the following:

4 (a) Conviction of the parent of rape of the child in the first,
5 second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and
6 9A.44.079;

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

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

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

16 (e) A finding by a court that a parent is a sexually violent
17 predator as defined in RCW 71.09.020;

18 (f) Failure of the parent to complete available treatment ordered
19 under this chapter or the equivalent laws of another state, where such
20 failure has resulted in a prior termination of parental rights to
21 another child and the parent has failed to effect significant change in
22 the interim.

23 (3) Whenever a child is ordered removed from the child's home, the
24 agency charged with his or her care shall provide the court with:

25 (a) ~~((A permanent plan of care that may include one of the
26 following: Return of the child to the home of the child's parent,
27 adoption, guardianship, or long-term placement with a relative or in
28 foster care with a written agreement.))~~ A permanency plan of care that
29 shall identify one of the following outcomes as a primary goal and may
30 identify additional outcomes as alternative goals: Return of the child
31 to the home of the child's parent, guardian, or legal custodian;
32 adoption; guardianship; 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; and independent living, if appropriate and if the
35 child is age sixteen or older. The goal of independent living cannot
36 be fully achieved before the child is eighteen years of age unless the
37 child becomes emancipated pursuant to chapter 13.64 RCW. Whenever a
38 permanency plan identifies independent living as a goal, the plan shall
39 also specifically identify the services that will be provided to assist

1 the child to make a successful transition from foster care to
2 independent living.

3 (b) Unless the court has ordered, pursuant to subsection (2) of
4 this section, that a termination petition be filed, a specific plan as
5 to where the child will be placed, what steps will be taken to return
6 the child home, and what actions the agency will take to maintain
7 parent-child ties. All aspects of the plan shall include the goal of
8 achieving permanence for the child.

9 (i) The agency plan shall specify what services the parents will be
10 offered in order to enable them to resume custody, what requirements
11 the parents must meet in order to resume custody, and a time limit for
12 each service plan and parental requirement.

13 (ii) The agency shall be required to encourage the maximum parent-
14 child contact possible, including regular visitation and participation
15 by the parents in the care of the child while the child is in
16 placement. Visitation may be limited or denied only if the court
17 determines that such limitation or denial is necessary to protect the
18 child's health, safety, or welfare.

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

23 (iv) The agency charged with supervising a child in placement shall
24 provide all reasonable services that are available within the agency,
25 or within the community, or those services which the department of
26 social and health services has existing contracts to purchase. It
27 shall report to the court if it is unable to provide such services.

28 (c) If the court has ordered, pursuant to subsection (2) of this
29 section, that a termination petition be filed, a specific plan as to
30 where the child will be placed, what steps will be taken to achieve
31 permanency for the child, services to be offered or provided to the
32 child, and, if visitation would be in the best interests of the child,
33 a recommendation to the court regarding visitation between parent and
34 child pending a fact-finding hearing on the termination petition. The
35 agency shall not be required to develop a plan of services for the
36 parents or provide services to the parents.

37 (4) If there is insufficient information at the time of the
38 disposition hearing upon which to base a determination regarding the
39 suitability of a proposed placement with a relative, the child shall

1 remain in foster care and the court shall direct the supervising agency
2 to conduct necessary background investigations as provided in chapter
3 74.15 RCW and report the results of such investigation to the court
4 within thirty days. However, if such relative appears otherwise
5 suitable and competent to provide care and treatment, the criminal
6 history background check need not be completed before placement, but as
7 soon as possible after placement. Any placements with relatives,
8 pursuant to this section, shall be contingent upon cooperation by the
9 relative with the agency case plan and compliance with court orders
10 related to the care and supervision of the child including, but not
11 limited to, court orders regarding parent-child contacts and any other
12 conditions imposed by the court. Noncompliance with the case plan or
13 court order shall be grounds for removal of the child from the
14 relative's home, subject to review by the court.

15 (5) Except for children whose cases are reviewed by a citizen
16 review board under chapter 13.70 RCW, the status of all children found
17 to be dependent shall be reviewed by the court at least every six
18 months from the beginning date of the placement episode or the date
19 dependency is established, whichever is first, at a hearing in which it
20 shall be determined whether court supervision should continue. The
21 review shall include findings regarding the agency and parental
22 completion of disposition plan requirements, and if necessary, revised
23 permanency time limits.

24 (a) A child shall not be returned home at the review hearing unless
25 the court finds that a reason for removal as set forth in this section
26 no longer exists. The parents, guardian, or legal custodian shall
27 report to the court the efforts they have made to correct the
28 conditions which led to removal. If a child is returned, casework
29 supervision shall continue for a period of six months, at which time
30 there shall be a hearing on the need for continued intervention.

31 (b) If the child is not returned home, the court shall establish in
32 writing:

33 (i) Whether reasonable services have been provided to or offered to
34 the parties to facilitate reunion, specifying the services provided or
35 offered;

36 (ii) Whether the child has been placed in the least-restrictive
37 setting appropriate to the child's needs, including whether
38 consideration has been given to placement with the child's relatives;

1 (iii) Whether there is a continuing need for placement and whether
2 the placement is appropriate;

3 (iv) Whether there has been compliance with the case plan by the
4 child, the child's parents, and the agency supervising the placement;

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

7 (vi) Whether the parents have visited the child and any reasons why
8 visitation has not occurred or has been infrequent;

9 (vii) Whether additional services are needed to facilitate the
10 return of the child to the child's parents; if so, the court shall
11 order that reasonable services be offered specifying such services; and

12 (viii) The projected date by which the child will be returned home
13 or other permanent plan of care will be implemented.

14 (c) The court at the review hearing may order that a petition
15 seeking termination of the parent and child relationship be filed.

16 **Sec. 2.** RCW 13.34.145 and 1993 c 412 s 1 are each amended to read
17 as follows:

18 ~~(1) ((In all cases where a child has been placed in substitute care
19 for at least fifteen months, the agency having custody of the child
20 shall prepare a permanency plan and present it in a hearing held before
21 the court no later than eighteen months following commencement of the
22 placement episode.~~

23 ~~(2) At the permanency planning hearing, the court shall enter
24 findings as required by RCW 13.34.130(5). In addition the court shall:~~

25 ~~(a) Approve a permanency plan which shall include one of the following:
26 Adoption, guardianship, placement of the child in the home of the
27 child's parent, relative placement with written permanency plan, or
28 family foster care with written permanency agreement; (b) require
29 filing of a petition for termination of parental rights; or (c) dismiss
30 the dependency, unless the court finds, based on clear, cogent, and
31 convincing evidence, that it is in the best interest of the child to
32 continue the dependency beyond eighteen months, based on the permanency
33 plan. Extensions may only be granted in increments of twelve months or
34 less.)) Permanency planning is a process that should begin at the time
35 that child welfare services are initially provided to the child and
36 family and should continue whenever a child is removed from parental
37 custody until a permanency planning goal is achieved or dependency is
38 dismissed. Whenever a child is placed in out-of-home care pursuant to~~

1 RCW 13.34.130, the agency that has custody of the child shall provide
2 the court with a written permanency plan of care directed towards
3 securing a safe, stable, and permanent home for the child as soon as
4 possible. The plan shall identify one of the following outcomes as the
5 primary goal and may also identify additional outcomes as alternative
6 goals: Return of the child to the home of the child's parent,
7 guardian, or legal custodian; adoption; guardianship; long-term
8 relative or foster care, until the child is age eighteen, with a
9 written agreement between the parties and the care provider; and
10 independent living, if appropriate and if the child is age sixteen or
11 older. The identified outcomes and goals of the permanency plan may
12 change over time based upon the circumstances of the particular case.
13 Permanency planning goals should be achieved at the earliest possible
14 date, preferably before the child has been in out-of-home care for
15 fifteen months.

16 (2) The goal of independent living cannot be fully achieved before
17 the child is eighteen years of age unless the child becomes emancipated
18 pursuant to chapter 13.64 RCW. Whenever a permanency plan identifies
19 independent living as a goal, the plan shall also specifically identify
20 the services that will be provided to assist the child to make a
21 successful transition from foster care to independent living.

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

27 (a) For purposes of this chapter, "current placement episode" means
28 the period of time that begins with the most recent date that the child
29 was removed from the home of the parent, guardian, or legal custodian
30 for purposes of placement in out-of-home care and continues until the
31 child returns home, an adoption decree or guardianship order is
32 entered, or the dependency is dismissed, whichever occurs soonest. For
33 purposes of this chapter, "out-of-home care" means placement in a
34 foster family home or group care facility licensed pursuant to chapter
35 74.15 RCW or placement in a home, other than that of the child's
36 parent, guardian, or legal custodian, not required to be licensed
37 pursuant to chapter 74.15 RCW.

38 (i) If the most recent date of removal occurred prior to the filing
39 of a dependency petition under this chapter or after filing but prior

1 to entry of a disposition order, such time periods shall be included
2 when calculating the length of a child's current placement episode.

3 (ii) Whenever a child is removed from the home of a dependency
4 guardian or long-term relative or foster care provider, and the child
5 is not returned to the home of the parent, guardian, or legal custodian
6 but is placed in out-of-home care, the current placement episode shall
7 begin with the date of such removal and shall continue until the child
8 returns to the home of the dependency guardian or long-term care
9 provider, the child is placed in the home of the parent, guardian, or
10 legal custodian, an adoption decree or guardianship order is entered,
11 or the dependency is dismissed, whichever occurs soonest.

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

16 (4) At the permanency planning hearing, the court shall enter
17 findings as required by RCW 13.34.130(5) and shall review the
18 permanency plan prepared by the agency. If a goal of long-term foster
19 or relative care has been achieved prior to the permanency planning
20 hearing, the court shall review the child's status to determine whether
21 the placement and the plan for the child's care remain appropriate. In
22 cases where the primary permanency planning goal has not yet been
23 achieved, the court shall inquire regarding the reasons why the primary
24 goal has not been achieved and determine what needs to be done to make
25 it possible to achieve the primary goal. In all cases, the court shall
26 either:

27 (a) Order the permanency plan prepared by the agency to be
28 implemented; or

29 (b) Modify the permanency plan, order implementation of the
30 modified plan, and order one of the following:

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

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

36 (5) If the court orders the child returned home, casework
37 supervision shall continue for at least six months, at which time a
38 review hearing shall be held pursuant to RCW 13.34.130(5), and the
39 court shall determine the need for continued intervention.

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

6 (7) Except as otherwise provided in RCW 13.34.235, the status of
7 all dependent children shall continue to be reviewed by the court at
8 least once every six months, in accordance with RCW 13.34.130(5), until
9 the dependency is dismissed.

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

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

22 **Sec. 3.** RCW 13.04.011 and 1992 c 205 s 119 are each amended to
23 read as follows:

24 For purposes of this title:

25 (1) Except as specifically provided in RCW 13.40.020 and chapter
26 13.24 RCW, (~~as now or hereafter amended,~~) "juvenile," "youth," and
27 "child" mean any individual who is under the chronological age of
28 eighteen years;

29 (2) "Juvenile offender" and "juvenile offense" have the meaning
30 ascribed in RCW 13.40.020;

31 (3) "Court" when used without further qualification means the
32 juvenile court judge(s) or commissioner(s);

33 (4) "Parent" or "parents," except as used in chapter 13.34 RCW,
34 (~~as now or hereafter amended,~~) means that parent or parents who have
35 the right of legal custody of the child. "Parent" or "parents" as used
36 in chapter 13.34 RCW, means the biological or adoptive parents of a
37 child unless the legal rights of that person have been terminated by
38 judicial proceedings;

1 (5) "Custodian" means that person who has the legal right to
2 custody of the child;

3 (6) "Dependency guardian" means the person, nonprofit corporation,
4 or Indian tribe appointed by the court pursuant to RCW 13.34.232 for
5 the limited purpose of assisting the court in the supervision of the
6 dependency;

7 (7) "Guardian" means the person or agency that: (a) Has been
8 appointed as the guardian of a child in a legal proceeding other than
9 a proceeding under chapter 13.34 RCW; and (b) has the legal right to
10 custody of the child pursuant to such appointment. The term "guardian"
11 shall not include a "dependency guardian" appointed pursuant to a
12 proceeding under chapter 13.34 RCW.

13 **Sec. 4.** RCW 13.34.231 and 1981 c 195 s 2 are each amended to read
14 as follows:

15 At the hearing on a guardianship petition, all parties have the
16 right to present evidence and cross examine witnesses. The rules of
17 evidence apply to the conduct of the hearing. A guardianship ((may))
18 shall be established if the court finds by a preponderance of the
19 evidence that:

20 (1) The child has been found to be a dependent child under RCW
21 13.34.030(2);

22 (2) A dispositional order has been entered pursuant to RCW
23 13.34.130;

24 (3) The child has been removed or will, at the time of the hearing,
25 have been removed from the custody of the parent for a period of at
26 least six months pursuant to a finding of dependency under RCW
27 13.34.030(2);

28 (4) The services ordered under RCW 13.34.130 have been offered or
29 provided and all necessary services, reasonably available, capable of
30 correcting the parental deficiencies within the foreseeable future have
31 been offered or provided;

32 (5) There is little likelihood that conditions will be remedied so
33 that the child can be returned to the parent in the near future; and

34 (6) A guardianship rather than termination of the parent-child
35 relationship or continuation of ~~((the child's current dependent~~
36 ~~status))~~ efforts to return the child to the custody of the parent would
37 be in the best interest of the ((family)) child.

1 **Sec. 5.** RCW 13.34.232 and 1993 c 412 s 4 are each amended to read
2 as follows:

3 (1) If the court has made a finding under RCW 13.34.231, it shall
4 enter an order establishing a guardianship for the child. The order
5 shall:

6 ~~((1))~~ (a) Appoint a person or agency to serve as dependency
7 guardian for the limited purpose of assisting the court to supervise
8 the dependency;

9 ~~((2))~~ (b) Specify the dependency guardian's rights and
10 responsibilities concerning the care, custody, and control of the
11 child. A dependency guardian shall not have the authority to consent
12 to the child's adoption;

13 ~~((3))~~ (c) Specify the dependency guardian's authority, if any,
14 to receive, invest, and expend funds, benefits, or property belonging
15 to the child;

16 (d) Specify an appropriate frequency of visitation between the
17 parent and the child; and

18 ~~((4))~~ (e) Specify the need for any continued involvement of the
19 supervising agency and the nature of that involvement, if any.

20 ~~((The order shall not affect the child's status as a dependent~~
21 ~~child, and the child shall remain dependent for the duration of the~~
22 ~~guardianship.))~~

23 (2) Unless the court specifies otherwise in the guardianship order,
24 the dependency guardian shall have the following rights and duties to:

25 (a) Maintain the physical custody of the child;

26 (b) Protect, discipline, and educate the child;

27 (c) Provide food, clothing, shelter, education as required by law,
28 and routine health care for the child;

29 (d) Consent to necessary health and surgical care and to sign a
30 release of health care information to appropriate authorities, pursuant
31 to law;

32 (e) Consent to social, school, and religious activities of the
33 child; and

34 (f) Provide an annual written accounting to the court regarding
35 receipt by the guardian of any funds, benefits, or property belonging
36 to the child and expenditures made therefrom.

37 (3) As used in this section, the term "health care" includes, but
38 is not limited to, medical, dental, psychological, and psychiatric care
39 and treatment.

1 (4) The child shall remain dependent for the duration of the
2 guardianship. While the guardianship remains in effect, the dependency
3 guardian shall be a party to any dependency proceedings pertaining to
4 the child.

5 (5) The guardianship shall remain in effect only until the child is
6 eighteen years of age or until the court terminates the guardianship
7 order, whichever occurs sooner.

8 **Sec. 6.** RCW 13.34.233 and 1981 c 195 s 4 are each amended to read
9 as follows:

10 (1) Any party may ((seek a modification of)) request the court to
11 modify or terminate the guardianship order under RCW 13.34.150. Notice
12 of any motion to modify or terminate the guardianship shall be served
13 on all other parties, including any agency that was responsible for
14 supervising the child's placement at the time the guardianship petition
15 was filed. Notice shall in all cases be served upon the department of
16 social and health services. If the department was not previously a
17 party to the guardianship proceeding, the department shall nevertheless
18 have the right to initiate a proceeding to modify or terminate a
19 guardianship and the right to intervene at any stage of such a
20 proceeding.

21 (2) The guardianship may be modified or terminated upon the motion
22 of any party or the department if the court finds by a preponderance of
23 the evidence that there has been a change of circumstances subsequent
24 to the establishment of the guardianship and that it is in the child's
25 best interest to modify or terminate the guardianship. Unless all
26 parties agree to entry of an order modifying or terminating the
27 guardianship, the court shall hold a hearing on the motion.

28 (3) Upon entry of an order terminating the guardianship, the
29 dependency guardian shall not have any rights or responsibilities with
30 respect to the child and shall not have legal standing to participate
31 as a party in further dependency proceedings pertaining to the child.

32 (4) Upon entry of an order terminating the guardianship, the child
33 shall remain dependent and the court shall either return the child to
34 the child's parent or order the child into the custody, control, and
35 care of the department of social and health services or a licensed
36 child- placing agency for placement in a foster home or group care
37 facility licensed pursuant to chapter 74.15 RCW or in a home not
38 required to be licensed pursuant to such chapter. The court shall not

1 place a child in the custody of the child's parent unless the court
2 finds that a reason for removal as set forth in RCW 13.34.130 no longer
3 exists and that such placement is in the child's best interest. The
4 court shall thereafter conduct reviews as provided in RCW 13.34.130(5)
5 and, where applicable, shall hold a permanency planning hearing in
6 accordance with RCW 13.34.145.

7 **Sec. 7.** RCW 13.34.234 and 1981 c 195 s 5 are each amended to read
8 as follows:

9 Establishment of a guardianship under RCW 13.34.231 and 13.34.232
10 does not preclude a dependency guardian from receiving foster care
11 payments.

12 **Sec. 8.** RCW 13.34.236 and 1981 c 195 s 7 are each amended to read
13 as follows:

14 Any person over the age of twenty-one years who is not otherwise
15 disqualified by this section, any nonprofit corporation, or any Indian
16 tribe may be appointed the dependency guardian of a child under RCW
17 13.34.232. No person is qualified to serve as a dependency guardian
18 who: (1) Is of unsound mind; (2) has been convicted of a felony or
19 misdemeanor involving moral turpitude; or (3) is a person whom the
20 court finds unsuitable.

--- END ---