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**HOUSE BILL 1808**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Representatives Doglio, Griffey, Couture, Volz, Duerr, and Graham

AN ACT Relating to proceedings to preclude establishment of parentage when a parent alleges that a person committed a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child; amending RCW 26.26A.465, 13.34.136, and 13.34.155; reenacting and amending RCW 13.34.030 and 13.34.065; adding a new section to chapter 2.53 RCW; and adding a new section to chapter 13.34 RCW.

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

**Sec.**  RCW 26.26A.465 and 2019 c 46 s 4001 are each amended to read as follows:

(1) For the purposes of this section, "sexual assault" means nonconsensual sexual penetration that results in pregnancy.

(2) In a proceeding in which a parent alleges that a person committed a sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child, the parent may seek to preclude the person from establishing or maintaining the person's parentage of the child. A parent who alleges that a child was born as a result of sexual assault may also seek additional relief as described in this section.

(3) This section does not apply if the person described in subsection (2) of this section has previously been adjudicated in a proceeding brought under RCW 26.26A.400 to be a parent of the child, except as may be specifically permitted under subsection (4) of this section.

(4) Unless RCW 26.26A.240 or 26.26A.430 applies, a parent must file a pleading making an allegation under subsection (2) of this section not later than ((~~four~~)) 10 years after the birth of the child, except that for a period of one year after January 1, 2019, a court may waive the time bar in cases in which a presumed, acknowledged, or adjudicated parent was found in a criminal or separate civil proceeding to have committed a sexual assault against the parent alleging that the child was born as a result of the sexual assault.

(5) If a parent makes an allegation under subsection (2) of this section and subsection (3) of this section does not apply, the court must conduct a fact-finding hearing on the allegation within 75 days of the filing of the petition, unless exceptional circumstances require additional time.

(a) The court may not enter any temporary orders providing residential time or decision making to the alleged perpetrator prior to the fact-finding hearing on the sexual assault allegation unless both of the following criteria are satisfied: (i) The alleged perpetrator has a bonded and dependent relationship with the child that is parental in nature; and (ii) the court specifically finds that it would be in the best interest of the child if such temporary orders are entered.

(b) Prior to the fact-finding hearing, the court may order genetic testing to determine whether the alleged perpetrator is biologically related to the child. If genetic testing reveals that the alleged perpetrator is not biologically related to the child, the fact-finding hearing must be stricken.

(c) Fourteen days prior to the fact-finding hearing, the parent alleging that the child was born as a result of a sexual assault shall submit affidavits setting forth facts supporting the allegation and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. Opposing affidavits must be submitted and served to other parties to the proceeding five days prior to the fact-finding hearing.

(d) The court shall determine on the record whether affidavits and documents submitted for the fact-finding hearing should be sealed.

(6) An allegation under subsection (2) of this section may be proved by:

(a) Evidence that the person was convicted of or pleaded guilty to a sexual assault under RCW 9A.44.040, 9A.44.050, or 9A.44.060, or a comparable crime of sexual assault, including child rape of any degree, in this state or any other jurisdiction, against the child's parent and the child was born within three hundred twenty days after the sexual assault; or

(b) Clear, cogent, and convincing evidence that the person committed sexual assault, as defined in this section, against the child's parent and the child was born within three hundred twenty days after the sexual assault.

(7) Subject to subsections (1) through (5) of this section, if the court determines that an allegation has been proved under subsection (6) of this section at the fact-finding hearing or after a bench trial, the court shall:

(a) Adjudicate that the person described in subsection (2) of this section is not a parent of the child, has no right to residential time or decision-making responsibilities for the child, has no right to inheritance from the child, and has no right to notification of, or standing to object to, the adoption of the child. If the parent who was the victim of the sexual assault expressly consents in writing for the court to decline to enter one or more of these restrictions or limitations, the court may do so;

(b) Require the state registrar of vital statistics to amend the birth record if requested by the parent and the court determines that the amendment is in the best interest of the child; and

(c) Require the person pay to child support, birth-related costs, or both, unless the parent requests otherwise and the court determines that granting the request is in the best interest of the child.

(8) The child's parent or guardian may decline an order for child support or birth-related costs. If the child's parent or guardian declines an order for child support, and is either currently receiving public assistance or later applies for it for the child born as a result of the sexual assault, support enforcement agencies as defined in this chapter shall not file administrative or court proceedings to establish or collect child support, including medical support, from the person described in subsection (2) of this section.

(9) If the court enters an order under subsection (8) of this section providing that no child support obligation may be established or collected from the person described in subsection (2) of this section, the court shall forward a copy of the order to the Washington state support registry.

(10) The court may order an award of attorneys' fees under this section on the same basis as attorneys' fees are awarded under RCW 26.09.140.

(11) Any party may move to close the fact-finding hearing and any related proceedings under this section to the public. If no party files such a motion, the court shall determine on its own initiative whether the fact-finding hearing and any related proceedings under this section should be closed to the public. Upon finding good cause for closing the proceeding, and if consistent with Article I, section 10 of the state Constitution, the court may:

(a) Restrict admission to only those persons whom the court finds to have a direct interest in the case or in the work of the court, including witnesses deemed necessary to the disposition of the case; and

(b) Restrict persons who are admitted from disclosing any information obtained at the hearing that would identify the parties involved or the child.

(12) The court must appoint an attorney for an indigent petitioner and respondent in a proceeding under this section. The office of civil legal aid is responsible for implementing this subsection, and the state shall pay the costs of legal services provided by an attorney appointed under this subsection. For the purposes of this subsection, "indigent" means any person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance:

(i) Temporary assistance for needy families;

(ii) Aged, blind, or disabled assistance benefits;

(iii) Medical care services under RCW 74.09.035;

(iv) Pregnant women assistance benefits;

(v) Poverty-related veterans' benefits;

(vi) Food stamps or food stamp benefits transferred electronically;

(vii) Refugee resettlement benefits;

(viii) Medicaid; or

(ix) Supplemental security income; or

(b) Receiving an annual income, after taxes, of 200 percent or less of the current federally established poverty level.

NEW SECTION. **Sec.**  A new section is added to chapter 2.53 RCW to read as follows:

Moneys appropriated by the legislature for legal services provided by an attorney appointed pursuant to RCW 26.26A.465 must be administered by the office of civil legal aid created under RCW 2.53.020. The office of civil legal aid must enter into contracts with attorneys and agencies for the provision of legal services under RCW 26.26A.465 to remain within appropriated amounts.

**Sec.**  RCW 13.34.030 and 2021 c 304 s 1 and 2021 c 67 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Child," "juvenile," and "youth" mean:

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

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

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

(4) "Department" means the department of children, youth, and families.

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

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

(a) Has been abandoned;

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

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

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

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

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in RCW 13.34.046.

(9) "Experiencing homelessness" means lacking a fixed, regular, and adequate nighttime residence, including circumstances such as sharing the housing of other persons due to loss of housing, economic hardship, fleeing domestic violence, or a similar reason as described in the federal McKinney-Vento homeless assistance act (Title 42 U.S.C., chapter 119, subchapter I) as it existed on January 1, 2021.

(10) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

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

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

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

(14) "Guardianship" means a guardianship pursuant to chapter 13.36 RCW or a limited guardianship of a minor pursuant to RCW 11.130.215 or equivalent laws of another state or a federally recognized Indian tribe.

(15) "Housing assistance" means appropriate referrals by the department or other agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or family reunification service as described in RCW 13.34.025(2).

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

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

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

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

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

(17) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

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

(19) "Parent" means the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26A.100, unless ((~~the~~)):

(a) The legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian tribe; or

(b) A court has entered a final order precluding the person from establishing or maintaining the person's parentage of the child entered under RCW 26.26A.465.

(20) "Prevention and family services and programs" means specific mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs that qualify for federal funding under the federal family first prevention services act, P.L. 115-123. For purposes of this chapter, prevention and family services and programs are not remedial services or family reunification services as described in RCW 13.34.025(2).

(21) "Prevention services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child. Prevention services include, but are not limited to, prevention and family services and programs as defined in this section.

(22) "Qualified residential treatment program" means a program that meets the requirements provided in RCW 13.34.420, qualifies for funding under the family first prevention services act under 42 U.S.C. Sec. 672(k), and, if located within Washington state, is licensed as a group care facility under chapter 74.15 RCW.

(23) "Relative" includes persons related to a child in the following ways:

(a) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(b) Stepfather, stepmother, stepbrother, and stepsister;

(c) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(d) Spouses of any persons named in (a), (b), or (c) of this subsection, even after the marriage is terminated;

(e) Relatives, as named in (a), (b), (c), or (d) of this subsection, of any half sibling of the child; or

(f) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4).

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

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

(26) "Social study" means a written evaluation of matters relevant to the disposition of the case that contains the information required by RCW 13.34.430.

(27) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the department or the court.

(28) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

**Sec.**  RCW 13.34.065 and 2021 c 211 s 9, 2021 c 208 s 1, and 2021 c 67 s 4 are each reenacted and amended to read as follows:

(1)(a) When a child is removed or when the petitioner is seeking the removal of a child from the child's parent, guardian, or legal custodian, the court shall hold a shelter care hearing within 72 hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending. The court shall hold an additional shelter care hearing within 72 hours, excluding Saturdays, Sundays, and holidays if the child is removed from the care of a parent, guardian, or legal custodian at any time after an initial shelter care hearing under this section.

(b) Any child's attorney, parent, guardian, or legal custodian who for good cause is unable to attend or adequately prepare for the shelter care hearing may request that the initial shelter care hearing be continued or that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the child's attorney, parent, guardian, or legal custodian, the court shall schedule the hearing within 72 hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means. If the parent, guardian, or legal custodian is not represented by counsel, the clerk shall provide information to the parent, guardian, or legal custodian regarding how to obtain counsel.

(2)(a) If it is likely that the child will remain in shelter care longer than 72 hours, the department shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the 72 hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court, in person, or by remote means, and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make diligent efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that experiencing homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in RCW 13.38.040, whether the provisions of the federal Indian child welfare act or chapter 13.38 RCW apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.38 RCW, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B)(I) Removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, notwithstanding an order entered pursuant to RCW 26.44.063. The evidence must show a causal relationship between the particular conditions in the home and imminent physical harm to the child. The existence of community or family poverty, isolation, single parenthood, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child, or nonconforming social behavior does not by itself constitute imminent physical harm;

(II) It is contrary to the welfare of the child to be returned home; and

(III) After considering the particular circumstances of the child, any imminent physical harm to the child outweighs the harm the child will experience as a result of removal; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court finds that the elements of (a)(ii)(B) of this subsection require removal of the child, the court shall further consider:

(i) Whether participation by the parents, guardians, or legal custodians in any prevention services would prevent or eliminate the need for removal and, if so, shall inquire of the parent whether they are willing to participate in such services. If the parent agrees to participate in the prevention services identified by the court that would prevent or eliminate the need for removal, the court shall place the child with the parent. The court shall not order a parent to participate in prevention services over the objection of the parent, however, parents shall have the opportunity to consult with counsel prior to deciding whether to agree to proposed prevention services as a condition of having the child return to or remain in the care of the parent; and

(ii) Whether the issuance of a temporary order of protection directing the removal of a person or persons from the child's residence would prevent the need for removal of the child.

(c)(i) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless the petitioner establishes that there is reasonable cause to believe that:

(A) Placement in licensed foster care is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, because no relative or other suitable person is capable of ensuring the basic safety of the child; or

(B) The efforts to reunite the parent and child will be hindered.

(ii) In making the determination in (c)(i) of this subsection, the court shall:

(A) Inquire of the petitioner and any other person present at the hearing for the child whether there are any relatives or other suitable persons who are willing to care for the child. This inquiry must include whether any relative or other suitable person:

(I) Has expressed an interest in becoming a caregiver for the child;

(II) Is able to meet any special needs of the child;

(III) Is willing to facilitate the child's sibling and parent visitation if such visitation is ordered by the court; and

(IV) Supports reunification of the parent and child once reunification can safely occur; and

(B) Give great weight to the stated preference of the parent, guardian, or legal custodian, and the child.

(iii) If a relative or other suitable person expressed an interest in caring for the child, can meet the child's special needs, can support parent-child reunification, and will facilitate court-ordered sibling or parent visitation, the following must not prevent the child's placement with such relative or other suitable person:

(A) An incomplete department or fingerprint-based background check, if such relative or other suitable person appears otherwise suitable and competent to provide care and treatment, but the background checks must be completed as soon as possible after placement;

(B) Uncertainty on the part of the relative or other suitable person regarding potential adoption of the child;

(C) Disbelief on the part of the relative or other suitable person that the parent, guardian, or legal custodian presents a danger to the child, provided the caregiver will protect the safety of the child and comply with court orders regarding contact with a parent, guardian, or legal custodian; or

(D) The conditions of the relative or other suitable person's home are not sufficient to satisfy the requirements of a licensed foster home. The court may order the department to provide financial or other support to the relative or other suitable person necessary to ensure safe conditions in the home.

(d) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the department shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1).

(e) If the court does not order placement with a relative or other suitable person, the court shall place the child in licensed foster care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(f) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(g) If the child is placed in a qualified residential treatment program as defined in this chapter, the court shall, within 60 days of placement, hold a hearing to:

(i) Consider the assessment required under RCW 13.34.420 and submitted as part of the department's social study, and any related documentation;

(ii) Determine whether placement in foster care can meet the child's needs or if placement in another available placement setting best meets the child's needs in the least restrictive environment; and

(iii) Approve or disapprove the child's placement in the qualified residential treatment program.

(h) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (c) of this subsection.

(i) If the court places with a relative or other suitable person, and that person has indicated a desire to become a licensed foster parent, the court shall order the department to commence an assessment of the home of such relative or other suitable person within 10 days and thereafter issue an initial license as provided under RCW 74.15.120 for such relative or other suitable person, if qualified, as a foster parent. The relative or other suitable person shall receive a foster care maintenance payment, starting on the date the department approves the initial license. If such home is found to be unqualified for licensure, the department shall report such fact to the court within one week of that determination. The department shall report on the status of the licensure process during the entry of any dispositional orders in the case.

(j) If the court places the child in licensed foster care:

(i) The petitioner shall report to the court, at the shelter care hearing, the location of the licensed foster placement the petitioner has identified for the child and the court shall inquire as to whether:

(A) The identified placement is the least restrictive placement necessary to meet the needs of the child;

(B) The child will be able to remain in the same school and whether any orders of the court are necessary to ensure educational stability for the child;

(C) The child will be placed with a sibling or siblings, and whether court-ordered sibling contact would promote the well-being of the child;

(D) The licensed foster placement is able to meet the special needs of the child;

(E) The location of the proposed foster placement will impede visitation with the child's parent or parents;

(ii) The court may order the department to:

(A) Place the child in a less restrictive placement;

(B) Place the child in a location in closer proximity to the child's parent, home, or school;

(C) Place the child with the child's sibling or siblings;

(D) Take any other necessary steps to ensure the child's health, safety, and well-being;

(iii) The court shall advise the petitioner that:

(A) Failure to comply with court orders while a child is in shelter care will be considered when determining whether reasonable efforts have been made by the department during a hearing under RCW 13.34.110; and

(B) Placement moves while a child is in shelter care will be considered when determining whether reasonable efforts have been made by the department during a hearing under RCW 13.34.110.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than 30 days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a)(i) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(ii) If the court previously ordered that visitation between a parent and child be supervised or monitored, there shall be a presumption that such supervision or monitoring will no longer be necessary following a continued shelter care order under (a)(i) of this subsection. To overcome this presumption, a party must provide a report to the court including evidence establishing that removing visit supervision or monitoring would create a risk to the child's safety, and the court shall make a determination as to whether visit supervision or monitoring must continue.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8) The department and its employees shall not be held liable in any civil action for complying with an order issued under this section for placement: With a parent who has agreed to accept services, a relative, or a suitable person.

(9)(a) If a child is placed out of the home of a parent, guardian, or legal custodian following a shelter care hearing, the court shall order the petitioner to provide regular visitation with the parent, guardian, or legal custodian, and siblings. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and allowing family reunification. The court shall order a visitation plan individualized to the needs of the family with a goal of providing the maximum parent, child, and sibling contact possible.

(b) Visitation under this subsection shall not be limited as a sanction for a parent's failure to comply with recommended services during shelter care.

(c) ((~~Visitation~~)) Except as provided under (f) of this subsection, visitation under this subsection may only be limited where necessary to ensure the health, safety, or welfare of the child.

(d) The first visit must take place within 72 hours of the child being delivered into the custody of the department, unless the court finds that extraordinary circumstances require delay.

(e) If the first visit under (d) of this subsection occurs in an in-person format, this first visit must be supervised unless the department determines that visit supervision is not necessary.

(f) Visitation may not be provided to an alleged perpetrator of sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child following the filing of a petition under RCW 26.26A.465 before a fact-finding hearing has occurred on that petition or the petition has been dismissed unless both of the following criteria are satisfied: (i) The alleged perpetrator has a bonded and dependent relationship with the child that is parental in nature; and (ii) the court finds that it would be in the best interest of the child for such visitation to occur.

**Sec.**  RCW 13.34.136 and 2021 c 208 s 2 are each amended to read as follows:

(1) Whenever a child is ordered to be removed from the home, a permanency plan shall be developed no later than 60 days from the time the department assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The department shall submit a written permanency plan to all parties and the court not less than 14 days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's proposed permanency plan must be provided to the department, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship pursuant to chapter 13.36 RCW; guardianship of a minor pursuant to RCW 11.130.215; long-term relative or foster care, if the child is between ages 16 and 18, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age 16 or older. Although a permanency plan of care may only identify long-term relative or foster care for children between ages 16 and 18, children under 16 may remain placed with relatives or in foster care. The department shall not discharge a child to an independent living situation before the child is 18 years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

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

(i) The department's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(A) If the parent is incarcerated, the plan must address how the parent will participate in the case conference and permanency planning meetings and, where possible, must include treatment that reflects the resources available at the facility where the parent is confined. The plan must provide for visitation opportunities, unless visitation is not in the best interests of the child.

(B) If a parent has a developmental disability according to the definition provided in RCW 71A.10.020, and that individual is eligible for services provided by the department of social and health services developmental disabilities administration, the department shall make reasonable efforts to consult with the department of social and health services developmental disabilities administration to create an appropriate plan for services. For individuals who meet the definition of developmental disability provided in RCW 71A.10.020 and who are eligible for services through the developmental disabilities administration, the plan for services must be tailored to correct the parental deficiency taking into consideration the parent's disability and the department shall also determine an appropriate method to offer those services based on the parent's disability.

(ii)(A) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement.

(B) Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation.

(C) ((~~Visitation~~)) Except as provided in (b)(ii)(G) of this subsection, visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. Visitation must occur in the least restrictive setting and be unsupervised unless the presence of threats or danger to the child requires the constant presence of an adult to ensure the safety of the child. When a parent or sibling has been identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child, the department shall make a concerted effort to consult with the assigned law enforcement officer in the criminal case before recommending any changes in parent/child or child/sibling contact. In the event that the law enforcement officer has information pertaining to the criminal case that may have serious implications for child safety or well-being, the law enforcement officer shall provide this information to the department during the consultation. The department may only use the information provided by law enforcement during the consultation to inform family visitation plans and may not share or otherwise distribute the information to any person or entity. Any information provided to the department by law enforcement during the consultation is considered investigative information and is exempt from public inspection pursuant to RCW 42.56.240. The results of the consultation shall be communicated to the court.

(D) The court and the department should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(E) If the court previously ordered that visitation between a parent and child be supervised or monitored, there shall be a presumption that such supervision or monitoring will no longer be necessary when the permanency plan is entered. To overcome this presumption, a party must provide a report to the court including evidence establishing that removing visit supervision or monitoring would create a risk to the child's safety, and the court shall make a determination as to whether visit supervision or monitoring must continue.

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

(G) Visitation may not be provided to an alleged perpetrator of sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child following the filing of a petition under RCW 26.26A.465 before a fact-finding hearing has occurred on that petition or the petition has been dismissed unless both of the following criteria are satisfied: (I) The alleged perpetrator has a bonded and dependent relationship with the child that is parental in nature; and (II) the court finds that it would be in the best interest of the child for such visitation to occur.

(iii)(A) The department, court, or caregiver in the out-of-home placement may not limit visitation or contact between a child and sibling as a sanction for a child's behavior or as an incentive to the child to change his or her behavior.

(B) Any exceptions, limitation, or denial of contacts or visitation must be approved by the supervisor of the department caseworker and documented. The child, parent, department, guardian ad litem, or court-appointed special advocate may challenge the denial of visits in court.

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

(v) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department.

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

(vii) The department shall provide all reasonable services that are available within the department, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(9), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for 15 of the most recent 22 months, and the court has not made a good cause exception, the court shall require the department to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(4)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

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

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

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(7). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department or other agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning, "guardianship" means a guardianship pursuant to chapter 13.36 RCW or a guardianship of a minor pursuant to RCW 11.130.215, or equivalent laws of another state or a federally recognized Indian tribe.

**Sec.**  RCW 13.34.155 and 2020 c 312 s 119 are each amended to read as follows:

(1) The court hearing the dependency petition may hear and determine issues related to a guardianship of a minor under RCW 11.130.215 in a dependency proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child. Any modification or establishment of a guardianship of a minor must be made in conformity with the standards in chapter 11.130 RCW. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish or modify a guardianship of a minor, but the court may decide any contested issues implementing the guardianship. This agreed guardianship of a minor may have the concurrence of the other parties to the dependency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a guardianship of a minor order under RCW 11.130.215 is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a guardianship of a minor. Once a guardianship of a minor order is entered under RCW 11.130.215, and the dependency petition dismissed, the department shall not continue to supervise the placement.

(2)(a) The court hearing the dependency petition may establish or modify a parenting plan under chapter 26.09, 26.26A, or 26.26B RCW as part of a disposition order or at a review hearing when doing so will implement a permanent plan of care for the child and result in dismissal of the dependency.

(b) The dependency court shall adhere to procedural requirements under chapter 26.09 RCW and must make a written finding that the parenting plan established or modified by the dependency court under this section is in the child's best interests.

(c) Unless the whereabouts of one of the parents is unknown to either the department or the court, the parents must agree, subject to court approval, to establish the parenting plan or modify an existing parenting plan.

(d) Whenever the court is asked to establish or modify a parenting plan, the child's residential schedule, the allocation of decision-making authority, and dispute resolution under this section, the dependency court may:

(i) Appoint a guardian ad litem to represent the interests of the child when the court believes the appointment is necessary to protect the best interests of the child; and

(ii) Appoint an attorney to represent the interests of the child with respect to provisions for the parenting plan.

(e) The dependency court must make a written finding that the parenting plan established or modified by the dependency court under this section is in the child's best interests.

(f) The dependency court may interview the child in chambers to ascertain the child's wishes as to the child's residential schedule in a proceeding for the entry or modification of a parenting plan under this section. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to become part of the court record of the dependency case and the case under chapter 26.09, 26.26A, or 26.26B RCW.

(g) In the absence of agreement by a parent, guardian, or legal custodian of the child to allow the juvenile court to hear and determine issues related to the establishment or modification of a parenting plan under chapter 26.09, 26.26A, or 26.26B RCW, a party may move the court to transfer such issues to the family law department of the superior court for further resolution. The court may only grant the motion upon entry of a written finding that it is in the best interests of the child.

(h) In any parenting plan agreed to by the parents and entered or modified in juvenile court under this section, all issues pertaining to child support and the division of marital property shall be referred to or retained by the family law department of the superior court.

(3) Any order entered in the dependency court establishing or modifying a guardianship of a minor under RCW 11.130.215, parenting plan, or residential schedule under chapter 26.09, 26.26A, or 26.26B RCW shall also be filed in the chapter 11.130, 26.09, 26.26A, or 26.26B RCW action by the moving or prevailing party. If the petitioning or moving party has been found indigent and appointed counsel at public expense in the dependency proceeding, no filing fees shall be imposed by the clerk. Once filed, any guardianship of a minor order, parenting plan, or residential schedule establishing or modifying permanent legal custody of a child shall survive dismissal of the dependency proceeding.

(4) The court hearing the dependency petition shall grant any request for concurrent jurisdiction to allow a parent to file a petition under RCW 26.26A.465 alleging that a person committed sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child.

NEW SECTION. **Sec.**  A new section is added to chapter 13.34 RCW to read as follows:

If a parent filed a petition under RCW 26.26A.465 alleging that a person committed sexual assault that resulted in the parent becoming pregnant and subsequently giving birth to a child, the court shall require the alleged perpetrator to appear remotely in the proceedings under this chapter to minimize the trauma for the parent who filed the petition under RCW 26.26A.465 until the court holds a fact-finding hearing on the petition or the petition is dismissed.

**--- END ---**