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HOUSE BILL 1295

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State of Washington

68th Legislature

2023 Regular Session

By Representatives Ortiz-Self, Eslick, Lekanoff, Reeves, and Reed

Read first time 01/13/23. Referred to Committee on Human Services, Youth, & Early Learning.

1 AN ACT Relating to providing legal counsel for parents before the  
2 filing of a dependency petition, including when the department of  
3 children, youth, and families proposes a voluntary placement  
4 agreement; amending RCW 2.70.020; reenacting and amending RCW  
5 13.34.030 and 13.34.090; and providing an effective date.

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

7 **Sec. 1.** RCW 2.70.020 and 2021 c 328 s 3 are each amended to read  
8 as follows:

9 ~~((The director shall:~~

10 ~~(1) Administer))~~ The director shall administer all state-funded  
11 services in the following program areas:

12 ~~((a))~~ (1) Trial court criminal indigent defense, as provided in  
13 chapter 10.101 RCW;

14 ~~((b))~~ (2) Appellate indigent defense, as provided in this  
15 chapter;

16 ~~((c))~~ (3) Representation of indigent parents qualified for  
17 appointed counsel in dependency and termination cases, as provided in  
18 RCW 13.34.090 and 13.34.092;

19 ~~((d))~~ (4) Extraordinary criminal justice cost petitions, as  
20 provided in RCW 43.330.190;

1       ~~((e))~~ (5) Compilation of copies of DNA test requests by persons  
2 convicted of felonies, as provided in RCW 10.73.170;

3       ~~((f))~~ (6) Representation of indigent respondents qualified for  
4 appointed counsel in sexually violent predator civil commitment  
5 cases, as provided in chapter 71.09 RCW; ~~(and~~

6       ~~(g))~~ (7) Provide access to attorneys for juveniles contacted by  
7 a law enforcement officer for whom a legal consultation is required  
8 under RCW 13.40.740;

9       ~~((2))~~ (8) Submit a biennial budget for all costs related to the  
10 office's program areas;

11       ~~((3))~~ (9) Establish administrative procedures, standards, and  
12 guidelines for the office's program areas, including cost-efficient  
13 systems that provide for authorized recovery of costs;

14       ~~((4))~~ (10) Provide oversight and technical assistance to ensure  
15 the effective and efficient delivery of services in the office's  
16 program areas;

17       ~~((5))~~ (11) Recommend criteria and standards for determining and  
18 verifying indigency. In recommending criteria for determining  
19 indigency, the director shall compile and review the indigency  
20 standards used by other state agencies and shall periodically submit  
21 the compilation and report to the legislature on the appropriateness  
22 and consistency of such standards;

23       ~~((6))~~ (12) Collect information regarding indigent defense  
24 services funded by the state and report annually to the advisory  
25 committee, the legislature, and the supreme court;

26       ~~((7))~~ (13) Coordinate with the supreme court and the judges of  
27 each division of the court of appeals to determine how appellate  
28 attorney services should be provided;

29       (14) Within available resources, provide legal counsel for  
30 parents under investigation by the department of children, youth, and  
31 families, including when the department of children, youth, and  
32 families proposes a voluntary placement agreement when there is no  
33 pending dependency proceeding under chapter 13.34 RCW pursuant to RCW  
34 13.34.090(4).

35       The office of public defense shall not provide direct  
36 representation of clients.

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

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

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

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

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

14 (b) Any individual age eighteen to twenty-one years who is  
15 eligible to receive and who elects to receive the extended foster  
16 care services authorized under RCW 74.13.031. A youth who remains  
17 dependent and who receives extended foster care services under RCW  
18 74.13.031 shall not be considered a "child" under any other statute  
19 or for any other purpose.

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

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

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

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

34 (a) Has been abandoned;

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

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

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

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

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

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

21 (10) "Extended foster care services" means residential and other  
22 support services the department is authorized to provide under RCW  
23 74.13.031. These services may include placement in licensed,  
24 relative, or otherwise approved care, or supervised independent  
25 living settings; assistance in meeting basic needs; independent  
26 living services; medical assistance; and counseling or treatment.

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

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

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

8 (14) "Guardianship" means a guardianship pursuant to chapter  
9 13.36 RCW or a limited guardianship of a minor pursuant to RCW  
10 11.130.215 or equivalent laws of another state or a federally  
11 recognized Indian tribe.

12 (15) "Housing assistance" means appropriate referrals by the  
13 department or other agencies to federal, state, local, or private  
14 agencies or organizations, assistance with forms, applications, or  
15 financial subsidies or other monetary assistance for housing. For  
16 purposes of this chapter, "housing assistance" is not a remedial  
17 service or family reunification service as described in RCW  
18 13.34.025(2).

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

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

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

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

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

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

39 (18) "Out-of-home care" means placement in a foster family home  
40 or group care facility licensed pursuant to chapter 74.15 RCW or

1 placement in a home, other than that of the child's parent, guardian,  
2 or legal custodian, not required to be licensed pursuant to chapter  
3 74.15 RCW.

4 (19) "Parent" means the biological or adoptive parents of a  
5 child, or an individual who has established a parent-child  
6 relationship under RCW 26.26A.100, unless the legal rights of that  
7 person have been terminated by a judicial proceeding pursuant to this  
8 chapter, chapter 26.33 RCW, or the equivalent laws of another state  
9 or a federally recognized Indian tribe.

10 (20) "Prevention and family services and programs" means specific  
11 mental health prevention and treatment services, substance abuse  
12 prevention and treatment services, and in-home parent skill-based  
13 programs that qualify for federal funding under the federal family  
14 first prevention services act, P.L. 115-123. For purposes of this  
15 chapter, prevention and family services and programs are not remedial  
16 services or family reunification services as described in RCW  
17 13.34.025(2).

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (28) "Voluntary placement agreement" means, for the purposes of  
28 extended foster care services, a written voluntary agreement between  
29 a nonminor dependent who agrees to submit to the care and authority  
30 of the department for the purposes of participating in the extended  
31 foster care program. For the purposes of placing youth in out-of-home  
32 care when a dependency petition under this chapter has not been  
33 filed, "voluntary placement agreement" means a voluntary agreement  
34 between the department and the child's parent, guardian, or legal  
35 custodian approving the child's placement in the care and temporary  
36 legal custody of the department.

37 **Sec. 3.** RCW 13.34.090 and 2021 c 211 s 10 and 2021 c 210 s 2 are  
38 each reenacted and amended to read as follows:

1 (1) Any party has a right to be represented by an attorney in all  
2 proceedings under this chapter, to introduce evidence, to be heard in  
3 his or her own behalf, to examine witnesses, to receive a decision  
4 based solely on the evidence adduced at the hearing, and to an  
5 unbiased fact finder.

6 (2) At all stages of a proceeding in which a child is alleged to  
7 be dependent, the child's parent, guardian, or legal custodian has  
8 the right to be represented by counsel, and if indigent, to have  
9 counsel appointed for him or her by the court. Unless waived in  
10 court, counsel shall be provided to the child's parent, guardian, or  
11 legal custodian, if such person (a) has appeared in the proceeding or  
12 requested the court to appoint counsel and (b) is financially unable  
13 to obtain counsel because of indigency.

14 (3) At all stages of a proceeding in which a child is alleged to  
15 be dependent, the child has the right to be represented by counsel.  
16 Counsel shall be provided at public expense subject to the phase-in  
17 schedule as provided in RCW 13.34.212.

18 (4) When the department proposes a voluntary placement agreement  
19 when there is no pending dependency proceeding, the child's parent,  
20 guardian, or legal custodian has the right to:

21 (a) Consult with counsel by telephone or video conference,  
22 provided through contract with the office of public defense; and

23 (b) If after consulting with counsel, the child's parent, legal  
24 guardian, or legal custodian requests to have an attorney assigned,  
25 they shall receive representation by counsel, provided through  
26 contract with the office of public defense and according to the  
27 implementation schedule included in this subsection. The office of  
28 public defense shall develop and administer an implementation  
29 schedule that provides assignment of counsel for:

30 (i) At least one-third of anticipated requests for attorneys  
31 under this subsection by July 1, 2024;

32 (ii) At least two-thirds of anticipated requests for attorneys  
33 under this subsection by July 1, 2025; and

34 (iii) Full statewide implementation by July 1, 2026.

35 (5) If a party to an action under this chapter is represented by  
36 counsel, no order shall be provided to that party for his or her  
37 signature without prior notice and provision of the order to counsel.

38 ~~((+5))~~ (6) Copies of department records to which the child and  
39 the child's parents have legal access pursuant to chapter 13.50 RCW  
40 shall be given to the child or child's counsel, and the parents,

1 guardian, legal custodian, or his or her legal counsel, prior to any  
2 shelter care hearing and within 15 days after the department receives  
3 a written request for such records from the child or child's counsel,  
4 and the parents, guardian, legal custodian, or his or her legal  
5 counsel. These records shall be provided to the child's parents,  
6 guardian, legal custodian, or legal counsel a reasonable period of  
7 time prior to the shelter care hearing in order to allow an  
8 opportunity to review the records prior to the hearing. These records  
9 shall be legible and shall be provided at no expense to the child or  
10 child's counsel, and the parents, guardian, legal custodian, or his  
11 or her counsel. When the records are served on legal counsel, legal  
12 counsel shall have the opportunity to review the records with the  
13 client and shall review the records with the client prior to the  
14 shelter care hearing. The department shall make every effort to  
15 provide all other discoverable material to the child's parent,  
16 guardian, legal custodian, or his or her legal counsel prior to any  
17 shelter care hearing.

18 NEW SECTION. **Sec. 4.** Section 3 of this act takes effect July 1,  
19 2024.

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