
HOUSE BILL 2028

State of Washington

66th Legislature

2019 Regular Session

By Representatives Corry, McCaslin, Dent, Griffey, and Graham

1 AN ACT Relating to bonding and best interest assessments for
2 children in foster care; and amending RCW 13.34.145.

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

4 **Sec. 1.** RCW 13.34.145 and 2018 c 284 s 15 are each amended to
5 read as follows:

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

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

16 (b) Whenever a child is removed from the home of a dependency
17 guardian or long-term relative or foster care provider, and the child
18 is not returned to the home of the parent, guardian, or legal
19 custodian but is placed in out-of-home care, a permanency planning
20 hearing shall take place no later than twelve months, as provided in
21 this section, following the date of removal unless, prior to the

1 hearing, the child returns to the home of the dependency guardian or
2 long-term care provider, the child is placed in the home of the
3 parent, guardian, or legal custodian, an adoption decree,
4 guardianship order, or a permanent custody order is entered, or the
5 dependency is dismissed. Every effort shall be made to provide
6 stability in long-term placement, and to avoid disruption of
7 placement, unless the child is being returned home or it is in the
8 best interest of the child.

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

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

20 (3) When the youth is at least age seventeen years but not older
21 than seventeen years and six months, the department shall provide the
22 youth with written documentation which explains the availability of
23 extended foster care services and detailed instructions regarding how
24 the youth may access such services after he or she reaches age
25 eighteen years.

26 (4) At the permanency planning hearing, the court shall conduct
27 the following inquiry:

28 (a) If a goal of long-term foster or relative care has been
29 achieved prior to the permanency planning hearing, the court shall
30 review the child's status to determine whether the placement and the
31 plan for the child's care remain appropriate. The court shall find,
32 as of the date of the hearing, that the child's placement and plan of
33 care is the best permanency plan for the child and provide compelling
34 reasons why it continues to not be in the child's best interest to
35 (i) return home; (ii) be placed for adoption; (iii) be placed with a
36 legal guardian; or (iv) be placed with a fit and willing relative. If
37 the child is present at the hearing, the court should ask the child
38 about his or her desired permanency outcome.

39 (b) In cases where the primary permanency planning goal has not
40 been achieved, the court shall inquire regarding the reasons why the

1 primary goal has not been achieved and determine what needs to be
2 done to make it possible to achieve the primary goal. The court shall
3 review the permanency plan prepared by the agency and make explicit
4 findings regarding each of the following:

5 (i) The continuing necessity for, and the safety and
6 appropriateness of, the placement;

7 (ii) The extent of compliance with the permanency plan by the
8 department and any other service providers, the child's parents, the
9 child, and the child's guardian, if any;

10 (iii) The extent of any efforts to involve appropriate service
11 providers in addition to department staff in planning to meet the
12 special needs of the child and the child's parents;

13 (iv) The progress toward eliminating the causes for the child's
14 placement outside of his or her home and toward returning the child
15 safely to his or her home or obtaining a permanent placement for the
16 child;

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

20 (vi) If the child has been placed outside of his or her home for
21 fifteen of the most recent twenty-two months, not including any
22 period during which the child was a runaway from the out-of-home
23 placement or the first six months of any period during which the
24 child was returned to his or her home for a trial home visit, the
25 appropriateness of the permanency plan, whether reasonable efforts
26 were made by the department to achieve the goal of the permanency
27 plan, and the circumstances which prevent the child from any of the
28 following:

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

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

32 (C) Being placed for adoption;

33 (D) Being placed with a guardian;

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

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

38 (5) Following this inquiry, at the permanency planning hearing,
39 the court shall order the department to file a petition seeking
40 termination of parental rights if the child has been in out-of-home

1 care for fifteen of the last twenty-two months since the date the
2 dependency petition was filed unless the court makes a good cause
3 exception as to why the filing of a termination of parental rights
4 petition is not appropriate. Any good cause finding shall be reviewed
5 at all subsequent hearings pertaining to the child.

6 (a) For purposes of this subsection, "good cause exception"
7 includes but is not limited to the following:

8 (i) The child is being cared for by a relative;

9 (ii) The department has not provided to the child's family such
10 services as the court and the department have deemed necessary for
11 the child's safe return home;

12 (iii) The department has documented in the case plan a compelling
13 reason for determining that filing a petition to terminate parental
14 rights would not be in the child's best interests;

15 (iv) The parent is incarcerated, or the parent's prior
16 incarceration is a significant factor in why the child has been in
17 foster care for fifteen of the last twenty-two months, the parent
18 maintains a meaningful role in the child's life, and the department
19 has not documented another reason why it would be otherwise
20 appropriate to file a petition pursuant to this section;

21 (v) Where a parent has been accepted into a dependency treatment
22 court program or long-term substance abuse or dual diagnoses
23 treatment program and is demonstrating compliance with treatment
24 goals; or

25 (vi) Where a parent who has been court ordered to complete
26 services necessary for the child's safe return home files a
27 declaration under penalty of perjury stating the parent's financial
28 inability to pay for the same court-ordered services, and also
29 declares the department was unwilling or unable to pay for the same
30 services necessary for the child's safe return home.

31 (b) The court's assessment of whether a parent who is
32 incarcerated maintains a meaningful role in the child's life may
33 include consideration of the following:

34 (i) The parent's expressions or acts of manifesting concern for
35 the child, such as letters, telephone calls, visits, and other forms
36 of communication with the child;

37 (ii) The parent's efforts to communicate and work with the
38 department or other individuals for the purpose of complying with the
39 service plan and repairing, maintaining, or building the parent-child
40 relationship;

1 (iii) A positive response by the parent to the reasonable efforts
2 of the department;

3 (iv) Information provided by individuals or agencies in a
4 reasonable position to assist the court in making this assessment,
5 including but not limited to the parent's attorney, correctional and
6 mental health personnel, or other individuals providing services to
7 the parent;

8 (v) Limitations in the parent's access to family support
9 programs, therapeutic services, and visiting opportunities,
10 restrictions to telephone and mail services, inability to participate
11 in foster care planning meetings, and difficulty accessing lawyers
12 and participating meaningfully in court proceedings; and

13 (vi) Whether the continued involvement of the parent in the
14 child's life is in the child's best interest.

15 (c) The constraints of a parent's current or prior incarceration
16 and associated delays or barriers to accessing court-mandated
17 services may be considered in rebuttal to a claim of aggravated
18 circumstances under RCW 13.34.132(4)(h) for a parent's failure to
19 complete available treatment.

20 (6)(a) If the permanency plan identifies independent living as a
21 goal, the court at the permanency planning hearing shall make a
22 finding that the provision of services to assist the child in making
23 a transition from foster care to independent living will allow the
24 child to manage his or her financial, personal, social, educational,
25 and nonfinancial affairs prior to approving independent living as a
26 permanency plan of care. The court will inquire whether the child has
27 been provided information about extended foster care services.

28 (b) The permanency plan shall also specifically identify the
29 services, including extended foster care services, where appropriate,
30 that will be provided to assist the child to make a successful
31 transition from foster care to independent living.

32 (c) The department shall not discharge a child to an independent
33 living situation before the child is eighteen years of age unless the
34 child becomes emancipated pursuant to chapter 13.64 RCW.

35 (7) If the child has resided in the home of a foster parent or
36 relative for more than six months prior to the permanency planning
37 hearing, the court shall:

38 (a) Enter a finding regarding whether the foster parent or
39 relative was informed of the hearing as required in RCW 74.13.280,
40 13.34.215(6), and 13.34.096; and

1 (b) If the department is recommending a placement other than the
2 child's current placement with a foster parent, relative, or other
3 suitable person, enter a finding as to the reasons for the
4 recommendation for a change in placement.

5 (8) In all cases, at the permanency planning hearing, the court
6 shall:

7 (a) (i) Order the permanency plan prepared by the department to be
8 implemented; or

9 (ii) Modify the permanency plan, and order implementation of the
10 modified plan; and

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

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

17 (9) Following the first permanency planning hearing, the court
18 shall hold a further permanency planning hearing in accordance with
19 this section at least once every twelve months until a permanency
20 planning goal is achieved or the dependency is dismissed, whichever
21 occurs first.

22 (10) Prior to the second permanency planning hearing, the agency
23 that has custody of the child shall consider whether to file a
24 petition for termination of parental rights. Prior to the second
25 permanency planning hearing, the department shall also contract with
26 a mental health professional to conduct a bonding and best interest
27 assessment. For purposes of this section, a "bonding and best
28 interest assessment" means an assessment of a child's behavior and
29 interactions with the current placement provider and any proposed
30 placement provider to determine the effect on the child of a change
31 in the child's placement.

32 (11) If the court orders the child returned home, casework
33 supervision by the department shall continue for at least six months,
34 at which time a review hearing shall be held pursuant to RCW
35 13.34.138, and the court shall determine the need for continued
36 intervention.

37 (12) The juvenile court may hear a petition for permanent legal
38 custody when: (a) The court has ordered implementation of a
39 permanency plan that includes permanent legal custody; and (b) the
40 party pursuing the permanent legal custody is the party identified in

1 the permanency plan as the prospective legal custodian. During the
2 pendency of such proceeding, the court shall conduct review hearings
3 and further permanency planning hearings as provided in this chapter.
4 At the conclusion of the legal guardianship or permanent legal
5 custody proceeding, a juvenile court hearing shall be held for the
6 purpose of determining whether dependency should be dismissed. If a
7 guardianship or permanent custody order has been entered, the
8 dependency shall be dismissed.

9 (13) Continued juvenile court jurisdiction under this chapter
10 shall not be a barrier to the entry of an order establishing a legal
11 guardianship or permanent legal custody when the requirements of
12 subsection (12) of this section are met.

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

22 (15) The approval of a permanency plan that does not contemplate
23 return of the child to the parent does not relieve the department of
24 its obligation to provide reasonable services, under this chapter,
25 intended to effectuate the return of the child to the parent,
26 including but not limited to, visitation rights. The court shall
27 consider the child's relationships with siblings in accordance with
28 RCW 13.34.130.

29 (16) Nothing in this chapter may be construed to limit the
30 procedural due process rights of any party in a termination or
31 guardianship proceeding filed under this chapter.

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