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**SUBSTITUTE HOUSE BILL 1284**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** House Early Learning & Human Services (originally sponsored by Representatives Roberts, Walsh, Kagi, Sawyer, Goodman, Freeman, Farrell, Appleton, Ryu, Reykdal, Santos, and Habib)

READ FIRST TIME 02/20/13.

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

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

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

8 For purposes of this chapter:

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

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

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

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

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

13 (4) "Department" means the department of social and health  
14 services.

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

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

20 (a) Has been abandoned;

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

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

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

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

1 (8) "Extended foster care services" means residential and other  
2 support services the department is authorized to provide under RCW  
3 74.13.031.

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

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

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

25 (12) "Housing assistance" means appropriate referrals by the  
26 department or other supervising agencies to federal, state, local, or  
27 private agencies or organizations, assistance with forms, applications,  
28 or financial subsidies or other monetary assistance for housing. For  
29 purposes of this chapter, "housing assistance" is not a remedial  
30 service or time-limited family reunification service as described in  
31 RCW 13.34.025(2).

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

34 (a) Receiving one of the following types of public assistance:  
35 Temporary assistance for needy families, aged, blind, or disabled  
36 assistance benefits, medical care services under RCW 74.09.035,  
37 pregnant women assistance benefits, poverty-related veterans' benefits,

1 food stamps or food stamp benefits transferred electronically, refugee  
2 resettlement benefits, medicaid, or supplemental security income; or

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

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

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

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

13 (15) "Preventive services" means preservation services, as defined  
14 in chapter 74.14C RCW, and other reasonably available services,  
15 including housing assistance, capable of preventing the need for out-  
16 of-home placement while protecting the child.

17 (16) "Reasonable efforts" means good faith attempts by an  
18 authorized agency to assist, develop, and encourage a meaningful  
19 relationship between the parent and child including, but not limited  
20 to, consultation and cooperation with the parent in developing a plan  
21 for appropriate services, facilitating appropriate visitation, and  
22 providing remedial services required under RCW 13.34.025. This extends  
23 to parents who are incarcerated or participating in a residential  
24 substance abuse treatment program.

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

28 ((+17)) (18) "Sibling" means a child's birth brother, birth  
29 sister, adoptive brother, adoptive sister, half-brother, or half-  
30 sister, or as defined by the law or custom of the Indian child's tribe  
31 for an Indian child as defined in RCW 13.38.040.

32 ((+18)) (19) "Social study" means a written evaluation of matters  
33 relevant to the disposition of the case and shall contain the following  
34 information:

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

37 (b) A description of the specific services and activities, for both  
38 the parents and child, that are needed in order to prevent serious harm

1 to the child; the reasons why such services and activities are likely  
2 to be useful; the availability of any proposed services; and the  
3 agency's overall plan for ensuring that the services will be delivered.  
4 The description shall identify the services chosen and approved by the  
5 parent;

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

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

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

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

24 ((+19)) (20) "Supervising agency" means an agency licensed by the  
25 state under RCW 74.15.090, or licensed by a federally recognized Indian  
26 tribe located in this state under RCW 74.15.190, that has entered into  
27 a performance-based contract with the department to provide case  
28 management for the delivery and documentation of child welfare services  
29 as defined in RCW 74.13.020.

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

32 (1)(a) Following shelter care and no later than thirty days prior  
33 to fact-finding, the department or supervising agency shall convene a  
34 case conference as required in the shelter care order to develop and  
35 specify in a written service agreement the expectations of both the  
36 department or supervising agency and the parent regarding voluntary  
37 services for the parent.

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

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

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

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

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

29 **Sec. 3.** RCW 13.34.136 and 2011 c 309 s 29 are each amended to read  
30 as follows:

31 (1) Whenever a child is ordered removed from the home, a permanency  
32 plan shall be developed no later than sixty days from the time the  
33 supervising agency assumes responsibility for providing services,  
34 including placing the child, or at the time of a hearing under RCW  
35 13.34.130, whichever occurs first. The permanency planning process  
36 continues until a permanency planning goal is achieved or dependency is

1 dismissed. The planning process shall include reasonable efforts to  
2 return the child to the parent's home.

3 (2) The agency supervising the dependency shall submit a written  
4 permanency plan to all parties and the court not less than fourteen  
5 days prior to the scheduled hearing. Responsive reports of parties not  
6 in agreement with the department's or supervising agency's proposed  
7 permanency plan must be provided to the department or supervising  
8 agency, all other parties, and the court at least seven days prior to  
9 the hearing.

10 The permanency plan shall include:

11 (a) A permanency plan of care that shall identify one of the  
12 following outcomes as a primary goal and may identify additional  
13 outcomes as alternative goals: Return of the child to the home of the  
14 child's parent, guardian, or legal custodian; adoption, including a  
15 tribal customary adoption as defined in RCW 13.38.040; guardianship;  
16 permanent legal custody; long-term relative or foster care, until the  
17 child is age eighteen, with a written agreement between the parties and  
18 the care provider; successful completion of a responsible living skills  
19 program; or independent living, if appropriate and if the child is age  
20 sixteen or older. The department or supervising agency shall not  
21 discharge a child to an independent living situation before the child  
22 is eighteen years of age unless the child becomes emancipated pursuant  
23 to chapter 13.64 RCW;

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

33 (i) The department's or supervising agency's plan shall specify  
34 what services the parents will be offered to enable them to resume  
35 custody, what requirements the parents must meet to resume custody, and  
36 a time limit for each service plan and parental requirement. If the  
37 parent is incarcerated or residing in a residential substance abuse  
38 treatment facility, the plan must address how the parent will

1 participate in the case conference and permanency planning meetings  
2 and, where possible, must include treatment that reflects the resources  
3 available at the facility where the parent is confined. The plan must  
4 provide for visitation opportunities, unless visitation is not in the  
5 best interests of the child.

6 (ii) Visitation is the right of the family, including the child and  
7 the parent, in cases in which visitation is in the best interest of the  
8 child. Early, consistent, and frequent visitation is crucial for  
9 maintaining parent-child relationships and making it possible for  
10 parents and children to safely reunify. The supervising agency or  
11 department shall encourage the maximum parent and child and sibling  
12 contact possible, when it is in the best interest of the child,  
13 including regular visitation and participation by the parents in the  
14 care of the child while the child is in placement. Visitation shall  
15 not be limited as a sanction for a parent's failure to comply with  
16 court orders or services where the health, safety, or welfare of the  
17 child is not at risk as a result of the visitation. Visitation may be  
18 limited or denied only if the court determines that such limitation or  
19 denial is necessary to protect the child's health, safety, or welfare.  
20 The court and the department or supervising agency should rely upon  
21 community resources, relatives, foster parents, and other appropriate  
22 persons to provide transportation and supervision for visitation to the  
23 extent that such resources are available, and appropriate, and the  
24 child's safety would not be compromised.

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

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

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

36 (vi) The supervising agency or department shall provide all  
37 reasonable services that are available within the department or



1 supervising agency, or within the community, or those services which  
2 the department has existing contracts to purchase. It shall report to  
3 the court if it is unable to provide such services; and

4 (c) If the court has ordered, pursuant to RCW 13.34.130(~~(+6+)~~) (8),  
5 that a termination petition be filed, a specific plan as to where the  
6 child will be placed, what steps will be taken to achieve permanency  
7 for the child, services to be offered or provided to the child, and, if  
8 visitation would be in the best interests of the child, a  
9 recommendation to the court regarding visitation between parent and  
10 child pending a fact-finding hearing on the termination petition. The  
11 department or supervising agency shall not be required to develop a  
12 plan of services for the parents or provide services to the parents if  
13 the court orders a termination petition be filed. However, reasonable  
14 efforts to ensure visitation and contact between siblings shall be made  
15 unless there is reasonable cause to believe the best interests of the  
16 child or siblings would be jeopardized.

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

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

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

35 (6) The court shall consider the child's relationships with the  
36 child's siblings in accordance with RCW 13.34.130(~~(+4+)~~) (6). Whenever  
37 the permanency plan for a child is adoption, the court shall encourage  
38 the prospective adoptive parents, birth parents, foster parents,

1 kinship caregivers, and the department or other supervising agency to  
2 seriously consider the long-term benefits to the child adoptee and his  
3 or her siblings of providing for and facilitating continuing  
4 postadoption contact between the siblings. To the extent that it is  
5 feasible, and when it is in the best interests of the child adoptee and  
6 his or her siblings, contact between the siblings should be frequent  
7 and of a similar nature as that which existed prior to the adoption.  
8 If the child adoptee or his or her siblings are represented by an  
9 attorney or guardian ad litem in a proceeding under this chapter or in  
10 any other child custody proceeding, the court shall inquire of each  
11 attorney and guardian ad litem regarding the potential benefits of  
12 continuing contact between the siblings and the potential detriments of  
13 severing contact. This section does not require the department of  
14 social and health services or other supervising agency to agree to any  
15 specific provisions in an open adoption agreement and does not create  
16 a new obligation for the department to provide supervision or  
17 transportation for visits between siblings separated by adoption from  
18 foster care.

19 (7) For purposes related to permanency planning:

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

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

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

28 **Sec. 4.** RCW 13.34.145 and 2011 c 330 s 6 are each amended to read  
29 as follows:

30 (1) The purpose of a permanency planning hearing is to review the  
31 permanency plan for the child, inquire into the welfare of the child  
32 and progress of the case, and reach decisions regarding the permanent  
33 placement of the child.

34 (a) A permanency planning hearing shall be held in all cases where  
35 the child has remained in out-of-home care for at least nine months and  
36 an adoption decree, guardianship order, or permanent custody order has

1 not previously been entered. The hearing shall take place no later  
2 than twelve months following commencement of the current placement  
3 episode.

4 (b) Whenever a child is removed from the home of a dependency  
5 guardian or long-term relative or foster care provider, and the child  
6 is not returned to the home of the parent, guardian, or legal custodian  
7 but is placed in out-of-home care, a permanency planning hearing shall  
8 take place no later than twelve months, as provided in this section,  
9 following the date of removal unless, prior to the hearing, the child  
10 returns to the home of the dependency guardian or long-term care  
11 provider, the child is placed in the home of the parent, guardian, or  
12 legal custodian, an adoption decree, guardianship order, or a permanent  
13 custody order is entered, or the dependency is dismissed. Every effort  
14 shall be made to provide stability in long-term placement, and to avoid  
15 disruption of placement, unless the child is being returned home or it  
16 is in the best interest of the child.

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

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

28 (3) At the permanency planning hearing, the court shall conduct the  
29 following inquiry:

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

34 (b) In cases where the primary permanency planning goal has not  
35 been achieved, the court shall inquire regarding the reasons why the  
36 primary goal has not been achieved and determine what needs to be done  
37 to make it possible to achieve the primary goal. The court shall

1 review the permanency plan prepared by the agency and make explicit  
2 findings regarding each of the following:

3 (i) The continuing necessity for, and the safety and  
4 appropriateness of, the placement;

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

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

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

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

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

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

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

30 (C) Being placed for adoption;

31 (D) Being placed with a guardian;

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

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

36 At this hearing, the court shall order the department or  
37 supervising agency to file a petition seeking termination of parental  
38 rights if the child has been in out-of-home care for fifteen of the

1 last twenty-two months since the date the dependency petition was filed  
2 unless the court makes a good cause exception as to why the filing of  
3 a termination of parental rights petition is not appropriate. Any good  
4 cause finding shall be reviewed at all subsequent hearings pertaining  
5 to the child. For purposes of this section, "good cause exception"  
6 includes but is not limited to the following:

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

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

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

14 (IV) The parent is incarcerated or participating in a residential  
15 substance abuse treatment program, or the parent's prior incarceration  
16 or participation in a residential substance abuse treatment program is  
17 a significant factor in why the child has been in foster care for  
18 fifteen of the last twenty-two months, provided that the parent  
19 maintains a meaningful role in the child's life based on the criteria  
20 set forth in (c)(i) of this subsection, and the department has not  
21 documented a reason why it would otherwise be appropriate to file a  
22 petition pursuant to this section; or

23 (V) Where aggravated circumstances are determined to exist under  
24 RCW 13.34.132(4)(g) for an incarcerated parent's failure to complete  
25 available treatment, and the parent's failure is due to the constraints  
26 of a current or prior incarceration or current or prior participation  
27 in a residential substance abuse treatment program. Such consideration  
28 must include, but not be limited to, delays in or barriers to accessing  
29 court-mandated services.

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

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

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

1       (B) Efforts by the parent to communicate and work with the  
2 department or supervising agency, legal guardian, foster parent, the  
3 court, and the parent's attorney or other individuals providing  
4 services to the parent, including correctional mental health and  
5 substance abuse treatment program personnel, for the purpose of  
6 complying with the service plan and repairing, maintaining, or building  
7 the parent-child relationship;

8       (C) A positive response by the parent to the reasonable efforts of  
9 the department or the supervising agency;

10       (D) Whether the continued involvement of the parent in the child's  
11 life is in the child's best interest; and

12       (E) Information obtained from individuals and agencies in a  
13 reasonable position to help make this assessment. Such individuals and  
14 agencies may include, but are not limited to, the supervising agency,  
15 legal guardian, parent, child, foster parent, or other individuals of  
16 importance in the child's life. Sources of information may also  
17 include the parent's attorney, correctional mental health and substance  
18 abuse treatment program personnel, or other individuals providing  
19 services to the parent.

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

25       ~~((e))~~ (d)(i) If the permanency plan identifies independent living  
26 as a goal, the court shall make a finding that the provision of  
27 services to assist the child in making a transition from foster care to  
28 independent living will allow the child to manage his or her financial,  
29 personal, social, educational, and nonfinancial affairs prior to  
30 approving independent living as a permanency plan of care. The court  
31 will inquire whether the child has been provided information about  
32 extended foster care services.

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

37       (iii) The department or supervising agency shall not discharge a

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

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

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

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

14 (4) In all cases, at the permanency planning hearing, the court  
15 shall:

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

18 (ii) Modify the permanency plan, and order implementation of the  
19 modified plan; and

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

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

25 (5) Following the first permanency planning hearing, the court  
26 shall hold a further permanency planning hearing in accordance with  
27 this section at least once every twelve months until a permanency  
28 planning goal is achieved or the dependency is dismissed, whichever  
29 occurs first.

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

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

1 (8) The juvenile court may hear a petition for permanent legal  
2 custody when: (a) The court has ordered implementation of a permanency  
3 plan that includes permanent legal custody; and (b) the party pursuing  
4 the permanent legal custody is the party identified in the permanency  
5 plan as the prospective legal custodian. During the pendency of such  
6 proceeding, the court shall conduct review hearings and further  
7 permanency planning hearings as provided in this chapter. At the  
8 conclusion of the legal guardianship or permanent legal custody  
9 proceeding, a juvenile court hearing shall be held for the purpose of  
10 determining whether dependency should be dismissed. If a guardianship  
11 or permanent custody order has been entered, the dependency shall be  
12 dismissed.

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

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

26 (11) The approval of a permanency plan that does not contemplate  
27 return of the child to the parent does not relieve the supervising  
28 agency of its obligation to provide reasonable services, under this  
29 chapter, intended to effectuate the return of the child to the parent,  
30 including but not limited to, visitation rights. The court shall  
31 consider the child's relationships with siblings in accordance with RCW  
32 13.34.130.

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

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



1 (1) A petition seeking termination of a parent and child  
2 relationship may be filed in juvenile court by any party, including the  
3 supervising agency, to the dependency proceedings concerning that  
4 child. Such petition shall conform to the requirements of RCW  
5 13.34.040, shall be served upon the parties as provided in RCW  
6 13.34.070(8), and shall allege all of the following unless subsection  
7 (~~((2) or~~) (3) or (4) of this section applies:

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

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

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

14 (d) That the services ordered under RCW 13.34.136 have been  
15 expressly and understandably offered or provided and all necessary  
16 services, reasonably available, capable of correcting the parental  
17 deficiencies within the foreseeable future have been expressly and  
18 understandably offered or provided;

19 (e) That there is little likelihood that conditions will be  
20 remedied so that the child can be returned to the parent in the near  
21 future. A parent's failure to substantially improve parental  
22 deficiencies within twelve months following entry of the dispositional  
23 order shall give rise to a rebuttable presumption that there is little  
24 likelihood that conditions will be remedied so that the child can be  
25 returned to the parent in the near future. The presumption shall not  
26 arise unless the petitioner makes a showing that all necessary services  
27 reasonably capable of correcting the parental deficiencies within the  
28 foreseeable future have been clearly offered or provided. In  
29 determining whether the conditions will be remedied the court may  
30 consider, but is not limited to, the following factors:

31 (i) Use of intoxicating or controlled substances so as to render  
32 the parent incapable of providing proper care for the child for  
33 extended periods of time or for periods of time that present a risk of  
34 imminent harm to the child, and documented unwillingness of the parent  
35 to receive and complete treatment or documented multiple failed  
36 treatment attempts;

37 (ii) Psychological incapacity or mental deficiency of the parent  
38 that is so severe and chronic as to render the parent incapable of

1 providing proper care for the child for extended periods of time or for  
2 periods of time that present a risk of imminent harm to the child, and  
3 documented unwillingness of the parent to receive and complete  
4 treatment or documentation that there is no treatment that can render  
5 the parent capable of providing proper care for the child in the near  
6 future; or

7 (iii) Failure of the parent to have contact with the child for an  
8 extended period of time after the filing of the dependency petition if  
9 the parent was provided an opportunity to have a relationship with the  
10 child by the department or the court and received documented notice of  
11 the potential consequences of this failure, except that the actual  
12 inability of a parent to have visitation with the child including, but  
13 not limited to, mitigating circumstances such as a parent's current or  
14 prior incarceration, current or prior participation in a residential  
15 treatment program for substance abuse, or service in the military does  
16 not in and of itself constitute failure to have contact with the child;  
17 and

18 (f) That continuation of the parent and child relationship clearly  
19 diminishes the child's prospects for early integration into a stable  
20 and permanent home. The court shall consider whether a parent  
21 maintains a meaningful role in his or her child's life based on factors  
22 identified in RCW 13.34.145(3)(c); whether the department or  
23 supervising agency made reasonable efforts as defined in this chapter;  
24 and whether particular barriers existed as described in RCW  
25 13.34.145(3)(c) including, but not limited to, delays or barriers  
26 experienced in keeping the agency apprised of his or her location and  
27 in accessing visitation or other meaningful contact with the child.

28 (2) As evidence of rebuttal to any presumption established pursuant  
29 to subsection (1)(e) of this section, the court may consider the  
30 particular constraints of a parent's current or prior incarceration or  
31 current or prior participation in a residential substance abuse  
32 treatment program. Such evidence may include, but is not limited to,  
33 delays or barriers a parent may experience in keeping the agency  
34 apprised of his or her location and in accessing visitation or other  
35 meaningful contact with the child.

36 (3) In lieu of the allegations in subsection (1) of this section,  
37 the petition may allege that the child was found under such

1 circumstances that the whereabouts of the child's parent are unknown  
2 and no person has acknowledged paternity or maternity and requested  
3 custody of the child within two months after the child was found.

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

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

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

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

15 (d) Assault in the first or second degree, as defined in chapter  
16 9A.36 RCW, against the surviving child or another child of the parent.

17 ~~((4))~~ (5) When a parent has been sentenced to a long-term  
18 incarceration and has met the criteria provided in RCW  
19 13.34.145(3)(c)(i), the department must seek a permanent placement that  
20 allows the parent to maintain a relationship with his or her child,  
21 such as a guardianship pursuant to chapter 13.36 RCW, rather than a  
22 termination of parental rights.

23 (6) Notice of rights shall be served upon the parent, guardian, or  
24 legal custodian with the petition and shall be in substantially the  
25 following form:

26 "NOTICE

27 A petition for termination of parental rights has been filed  
28 against you. You have important legal rights and you must take  
29 steps to protect your interests. This petition could result in  
30 permanent loss of your parental rights.

31 1. You have the right to a fact-finding hearing before  
32 a judge.

33 2. You have the right to have a lawyer represent you at  
34 the hearing. A lawyer can look at the files in your case, talk  
35 to the department of social and health services or the  
36 supervising agency and other agencies, tell you about the law,  
37 help you understand your rights, and help you at hearings. If

1 you cannot afford a lawyer, the court will appoint one to  
2 represent you. To get a court-appointed lawyer you must  
3 contact:  (explain local procedure) .

4 3. At the hearing, you have the right to speak on your  
5 own behalf, to introduce evidence, to examine witnesses, and to  
6 receive a decision based solely on the evidence presented to  
7 the judge.

8 You should be present at this hearing.

9 You may call  (insert agency)  for more information  
10 about your child. The agency's name and telephone number are  
11  (insert name and telephone number) ."

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