

Chapter 13.36 RCW
GUARDIANSHIP

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RCW 13.36.010 Finding—Intent. The legislature finds that a guardianship is an appropriate permanent plan for a child who has been found to be dependent under chapter 13.34 RCW and who cannot safely be reunified with his or her parents. The legislature is concerned that parents not be pressured by the department into agreeing to the entry of a guardianship when further services would increase the chances that the child could be reunified with his or her parents. The legislature intends to create a separate guardianship chapter to establish permanency for children in foster care through the appointment of a guardian and dismissal of the dependency. [2010 c 272 § 1.]

RCW 13.36.020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Child" means any individual under the age of eighteen years.

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

(3) "Dependent child" means a child who has been found by a court to be dependent in a proceeding under chapter 13.34 RCW.

(4) "Guardian" means a person who: (a) Has been appointed by the court as the guardian of a child in a legal proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to court order. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under chapter 13.34 RCW for the purpose of assisting the court in supervising the dependency.

(5) "Relative" means a person related to the 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);

(6) "Suitable person" means a nonrelative with whom the child or the child's family has a preexisting relationship; who has completed all required criminal history background checks and otherwise appears to be suitable and competent to provide care for the child; and with whom the child has been placed pursuant to RCW 13.34.130.

(7) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2017 3rd sp.s. c 6 § 419; 2017 3rd sp.s. c 6 § 310. Prior: 2010 c 272 § 2.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

RCW 13.36.030 Guardianship petition—Requirements—Contents—Application of Indian child welfare act, federal servicemembers civil relief act, Washington service members' civil relief act. (1) Any party to a dependency proceeding under chapter 13.34 RCW may request a guardianship be established for a dependent child by filing a petition in juvenile court under this chapter. All parties to the dependency and the proposed guardian must receive adequate notice of all proceedings under this chapter. Service of the notice and summons may be made under direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department employee. For purposes of this chapter, a dependent child age twelve years or older is a party to the proceedings. A proposed guardian has the right to intervene in proceedings under this chapter.

(2) To be designated as a proposed guardian in a petition under this chapter, a person must be age twenty-one or over and must meet the minimum requirements to care for children as established by the department under RCW 74.15.030, including but not limited to licensed foster parents, relatives, and suitable persons.

(3) Every petition filed in proceedings under this chapter shall contain: (a) A statement alleging whether the child is or may be an

Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of that act shall apply; (b) a statement alleging whether the federal servicemembers civil relief act of 2003, 50 U.S.C. Sec. 501 et seq. applies to the proceeding; and (c) a statement alleging whether the Washington service members' civil relief act, chapter 38.42 RCW, applies to the proceeding.

(4) Every order or decree entered in any proceeding under this chapter shall contain: (a) A finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied; (b) a finding that the federal servicemembers civil relief act of 2003 does or does not apply; and (c) a finding that the Washington service members' civil relief act, chapter 38.42 RCW, does or does not apply. [2019 c 470 § 2; 2010 c 272 § 3.]

RCW 13.36.040 Hearing—Establishing guardianship—Exceptions—Conversion of dependency guardianship to guardianship. (1) At the hearing on a guardianship petition, all parties have the right to present evidence and cross-examine witnesses. The rules of evidence apply to the conduct of the hearing. The hearing under this section to establish a guardianship or convert an existing dependency guardianship to a guardianship under this section is a stage of the dependency proceedings for purposes of RCW 13.34.090(2).

(2) A guardianship shall be established if:

(a) The court finds by a preponderance of the evidence that it is in the child's best interests to establish a guardianship, rather than to terminate the parent-child relationship and proceed with adoption, or to continue efforts to return custody of the child to the parent; and

(b) All parties agree to entry of the guardianship order and the proposed guardian is qualified, appropriate, and capable of performing the duties of guardian under RCW 13.36.050; or

(c) (i) The child has been found to be a dependent child under RCW 13.34.030;

(ii) A dispositional order has been entered pursuant to RCW 13.34.130;

(iii) At the time of the hearing on the guardianship petition, the child has or will have been removed from the custody of the parent for at least six consecutive months following a finding of dependency under RCW 13.34.030;

(iv) The services ordered under RCW 13.34.130 and 13.34.136 have been offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been offered or provided;

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

(vi) The proposed guardian has signed a statement acknowledging the guardian's rights and responsibilities toward the child and affirming the guardian's understanding and acceptance that the guardianship is a commitment to provide care for the child until the child reaches age eighteen.

(3) The court may not establish a guardianship for a child who has no legal parent unless the court, in addition to making the required findings set forth in subsection (2) of this section, finds one or more exceptional circumstances exist and the benefits for the child of establishing the guardianship outweigh any potential disadvantage to the child of having no legal parent. Exceptional circumstances may include but are not limited to:

(a) The child has special needs and a suitable guardian is willing to accept custody and able to meet the needs of the child to an extent unlikely to be achieved through adoption; or

(b) The proposed guardian has demonstrated a commitment to provide for the long-term care of the child and: (i) Is a relative of the child; (ii) has been a long-term caregiver for the child and has acted as a parent figure to the child and is viewed by the child as a parent figure; or (iii) the child's family has identified the proposed guardian as the preferred guardian, and, if the child is age twelve years or older, the child also has identified the proposed guardian as the preferred guardian.

(4) Upon the request of a dependency guardian appointed under chapter 13.34 RCW and the department or supervising agency, the court shall convert a dependency guardianship established under chapter 13.34 RCW to a guardianship under this chapter. [2010 c 272 § 4.]

RCW 13.36.050 Court order to establish guardianship—Contents—Custody, rights, and duties—Funds, benefits—Dismissal of dependency—Letter.

(1) If the court has made the findings required under RCW 13.36.040, the court shall issue an order establishing a guardianship for the child. If the guardian has not previously intervened, the guardian shall be made a party to the guardianship proceeding upon entry of the guardianship order. The order shall:

(a) Appoint a person to be the guardian for the child;

(b) Specify the guardian's rights and responsibilities concerning the care, custody, control, and nurturing of the child;

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

(d) Specify an appropriate frequency and type of contact between the parent or parents and the child, if applicable, and between the child and his or her siblings, if applicable; and

(e) Specify the need for and scope of continued oversight by the court, if any.

(2) The guardian shall maintain physical and legal custody of the child and have the following rights and duties under the guardianship:

(a) Duty to protect, nurture, discipline, and educate the child;

(b) Duty to provide food, clothing, shelter, education as required by law, and health care for the child, including but not limited to, medical, dental, mental health, psychological, and psychiatric care and treatment;

(c) Right to consent to health care for the child and sign a release authorizing the sharing of health care information with appropriate authorities, in accordance with state law;

(d) Right to consent to the child's participation in social and school activities; and

(e) Duty to notify the court of a change of address of the guardian and the child. Unless specifically ordered by the court, however, the standards and requirements for relocation in chapter

26.09 RCW do not apply to guardianships established under this chapter.

(3) If the child has independent funds or other valuable property under the control of the guardian, the guardian shall provide an annual written accounting, supported with appropriate documentation, to the court regarding receipt and expenditure by the guardian of any such funds or benefits. This subsection shall not be construed to require a guardian to account for any routine funds or benefits received from a public social service agency on behalf of the child.

(4) The guardianship shall remain in effect until the child reaches the age of eighteen years or until the court terminates the guardianship, whichever occurs sooner.

(5) Once the dependency has been dismissed pursuant to RCW 13.36.070, the court shall not order the department or other supervising agency to supervise or provide case management services to the guardian or the child as part of the guardianship order.

(6) The court shall issue a letter of guardianship to the guardian upon the entry of the court order establishing the guardianship under this chapter. [2010 c 272 § 5.]

RCW 13.36.060 Guardianship modification—Attorneys' fees, court costs. (1) A guardian or a parent of the child may petition the court to modify the visitation provisions of a guardianship order by:

(a) Filing with the court a motion for modification and an affidavit setting forth facts supporting the requested modification; and

(b) Providing notice and a copy of the motion and affidavit to all other parties. The nonmoving parties may file and serve opposing affidavits.

(2) The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested modification should not be granted.

(3) If the court finds that a motion to modify a guardianship order has been brought in bad faith, the court may assess attorneys' fees and court costs of the nonmoving party against the moving party. [2010 c 272 § 6.]

RCW 13.36.070 Guardianship termination—Petition, affidavit.

(1) Any party to a guardianship proceeding may request termination of the guardianship by filing a petition and supporting affidavit alleging a substantial change has occurred in the circumstances of the child or the guardian and that the termination is necessary to serve the best interests of the child. The petition and affidavit must be served on the department or supervising agency and all parties to the guardianship.

(2) Except as provided in subsection (3) of this section, the court shall not terminate a guardianship unless it finds, upon the basis of facts that have arisen since the guardianship was established or that were unknown to the court at the time the guardianship was established, that a substantial change has occurred in the circumstances of the child or the guardian and that termination of the guardianship is necessary to serve the best interests of the child. The effect of a guardian's duties while serving in the military

potentially impacting guardianship functions shall not, by itself, be a substantial change of circumstances justifying termination of a guardianship.

(3) The court may terminate a guardianship on the agreement of the guardian, the child, if the child is age twelve years or older, and a parent seeking to regain custody of the child if the court finds by a preponderance of the evidence and on the basis of facts that have arisen since the guardianship was established that:

(a) The parent has successfully corrected the parenting deficiencies identified by the court in the dependency action, and the circumstances of the parent have changed to such a degree that returning the child to the custody of the parent no longer creates a risk of harm to the child's health, welfare, and safety;

(b) The child, if age twelve years or older, agrees to termination of the guardianship and the return of custody to the parent; and

(c) Termination of the guardianship and return of custody of the child to the parent is in the child's best interests.

(4) Upon the entry of an order terminating a guardianship, the court shall enter an order:

(a) Granting the child's parent with legal and physical custody of the child;

(b) Granting a substitute guardian with legal and physical custody of the child; or

(c) Directing the child to be temporarily placed in the custody of the department for placement with a relative or other suitable person as defined in RCW 13.34.130(1)(b), if available, or in an appropriate licensed out-of-home placement, and directing that the department file a dependency petition on behalf of the child. [2010 c 272 § 7.]

RCW 13.36.080 Appointment of guardian ad litem or attorney for the child. In all proceedings to establish, modify, or terminate a guardianship order, the court shall appoint a guardian ad litem or attorney for the child. The court may appoint a guardian ad litem or attorney who represented the child in a prior proceeding under this chapter or under chapter 13.34 RCW, or may appoint an attorney to supersede an existing guardian ad litem. [2010 c 272 § 8.]

RCW 13.36.090 Guardianship subsidies—Relative guardianship subsidy—Rules—Licensed foster parent eligibility. (1) A relative guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a relative guardianship subsidy on behalf of the child. The department may establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines for expenditure of federal funds.

(2) Within amounts appropriated for this specific purpose, a guardian who is a licensed foster parent at the time a guardianship is established under this chapter and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a guardianship subsidy on behalf of the child. [2010 c 272 § 9.]