# Disposition Hearing

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A dependency disposition order is intended to provide a parent with a program designed to alleviate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parent, guardian, or legal custodian ("the parent"[2]) so that the child will not be endangered in the future.[3] The disposition order should include the following: a service plan for parents and the child; the placement of the child; and a visitation plan for the child and the parents and for the child and their siblings.[4] The disposition order may also include a permanency plan.[5]

# Procedure

The disposition hearing must be held immediately after the fact-finding hearing if dependency is established; however, it may be continued upon a showing of good cause.[6] If the hearing is continued, notice of the time and place of the disposition hearing may be given in open court.[7] If a party is not given notice in open court, that party must be notified by certified mail of the time and place of the continued hearing.[8] Further, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the Department of Children, Youth, and Families ("the Department")[9] to notify adults who:

1. Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt;
2. Are known to the Department as having been in contact with the family or child within the past twelve months; and
3. Would be an appropriate placement for the child.[10]

Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.[11]

The Department must prepare a social study to aid the court in its decision on disposition.[12] The social study shall include all social files and may also include facts relating to the child's cultural heritage.[13] The Department must mail its social study, and proposed service plan, to the parent and their attorney at least 10 working days prior to the disposition hearing. The social study and proposed service plan shall be in writing or in a form understandable to the parent.[14] The Department shall provide an opportunity for parents to review and comment on the plan at the local office closest to the parent's residence.[15] If the parent disagrees with the Department's plan, the parent shall submit to the court at least 24 hours before the hearing, in writing, an alternative plan to correct the problems which led to the finding of dependency.[16] Even if the parent does not respond in writing, the parent retains the right to provide oral argument regarding the disposition plan at the disposition hearing.[17]

The Guardian ad Litem (GAL)/Court-Appointed Special Advocate (CASA)[18] shall file their report with both the court and the parties prior to the hearing in accordance with local court rules.[19] Other parties may file written responses to the GAL/CASA report with

the court and deliver responses to the other parties at a reasonable time or pursuant to court rule before the hearing.[20]

The rules of evidence do not apply at the disposition hearing.[21] In addition to the social study and social file, the court shall consider evidence produced at the dependency trial and any testimony and evidence produced by the parties at the disposition hearing.[22] Any party shall have the right to be heard at the disposition hearing.[23] A disposition order is appealable as a matter of right.[24]

Parties may stipulate, or agree, to entry of a disposition order.[25] Stipulated or agreed orders are subject to approval by the court, and the court must receive and review a social study and consider whether a disposition order is consistent with the allegations in the dependency petition and the problems that necessitated the child's out-of-home placement.[26]

# Parties Present

All dependency hearings must be public, unless the judge finds that it is in the best interests of the child to exclude the public.[27] Whether courtroom proceedings should be closed to the public requires the court to make an individualized determination based upon five factors:

1. The proponent of closure must make some showing of the need to do so, and the need involves a serious and imminent risk;
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure;
3. The proposed method for curtailing open access must be the least restrictive means available to protect the threatened interest;
4. The court must weigh the competing interest of the closure proponent and the public; and
5. The order must be no broader in its application or duration than necessary to serve its purpose.[28]

Either parent, the child's attorney, or the GAL/CASA may move the court to exclude the public.[29] The statute is silent as to whether the Department or the Attorney General's Office can seek to close a hearing.[30]

Any party shall have the right to be heard at the disposition hearing.[31] Geography and other logistics may dictate many practical considerations in conducting a disposition hearing, including the court's use of telephone testimony and video testimony for parents and witnesses who are incarcerated, out-of-state, or otherwise inaccessible.[32]

## Persons Who Should Always Be Present:

1. Judge or Court Commissioner;
2. Parents[33];

3. Guardians[34] or Legal Custodians;
4. Assigned Caseworker;
5. Assistant Attorney General;
6. Attorney or Attorneys for Parent(s);
7. GAL/CASA;
8. Attorney for Child (if appointed);
9. Tribal Representative[35], if the child is or may be an Indian child;

# Persons Who May Also Be Present:

1. Age appropriate children;
2. Extended family members and relatives;
3. Foster Parents, Preadoptive Parents, or Other Caregivers (Including Relative Placements);[36]
4. An Interpreter;
5. Judicial case management staff;
6. Therapists, Counselors, and other service providers;
7. Domestic Violence Advocate;
8. Other witnesses as may be identified

The parties need not appear at the disposition hearing if all parties, counsel, and the GAL/CASA are in agreement.[37]

# Placement with a Parent or Parents

RCW 13.34.130(1) provides that the court shall order one of the following: a disposition that maintains the child in the home and provides a program designed to alleviate immediate danger to the child, mitigate or cure damage already suffered, and aid the parents so that the child will not be endangered in the future, or a disposition for the child to be removed from their home and into the custody, control, and care of a relative, other suitable person, or the Department .[38]

The priority placement option for a dependent child is with the child's parent or parents.[39] The placement decision at disposition is a "highly fact-specific inquiry that cannot be reduced to a mathematical equation."[40] Factors such as a parent's criminal history, substance use issues, and mental health issues do not automatically disqualify the parent from having placement of their child, but these issues may be relevant to the extent that these issues reflect upon parental fitness or their effect upon the child's welfare.[41] A parent and child cannot be denied reunification solely on the basis of poverty or homelessness.[42]

If the parent resides out of state, an approved Interstate Compact on the Placement of Children (ICPC) home study from the state of the parent's residence is not required prior to placement of the child with the parent[43]; however, the court has the authority to order the parent to comply with an ICPC home study as part of a disposition order, as long as the discretionary decision of the child's placement remains with the court.[44]

# Reasonable Efforts

Before out-of-home placement may be ordered[45], the court must find:

1. Reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent;
2. Prevention services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home[46]

"Reasonable efforts" is not defined in chapter 13.34 RCW. However, the United States Department of Health and Human Services (DHHS) has offered overarching considerations to help guide the reasonable efforts, which includes:

1. Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?
2. Was the service plan customized to the individual needs of the family or was it a standard package of services?
3. Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?
4. Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?[47]

The court must find that reasonable efforts have been to prevent or eliminate the need for the child's removal and to make it possible for the child to return home, specifying the services that have been provided to the child and the parent, including housing assistance.[48] In determining whether reasonable efforts have been made, the court should consider the facts and circumstances of each parent.[49] Each parent must be considered individually, and reasonable efforts should be made for both parents before the Department considers other options.[50] While the reasonable efforts standard is flexible, this flexible standard does not permit the Department to make no efforts to maintain placement with a parent.[51] If the court concludes the Department has made reasonable efforts, it must make findings on the record to support its conclusion; checking a box is not sufficient to protect the important interests involved or to provide information necessary for review.[52]

The court must also find that prevention services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home.[53] Prevention services means preservation services as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.[54] Prevention services also includes prevention and family services and programs.[55] Prevention and family services and programs is defined as specific mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs that qualify for federal funding under the federal family first prevention services act.[56] Prevention and family services and programs are not remedial services, which are services defined in the federal adoption and safe families act as family reunification services that facilitate the reunification of the child safely and timely.[57]

The court has the authority to order the Department to provide families some form of housing assistance in cases where homelessness or lack of adequate housing is the primary reason for out-of-home placement.[58] However, the court does not have the authority to determine what type of housing assistance should be offered in each case; the *type* of housing assistance offered to the family is a determination made by the Department, and the *reasonableness* of the Department's effort in offering housing assistance is a determination to be made by the court.[59]

In cases in which aggravated circumstances have been established by clear, cogent, and convincing evidence, reasonable efforts to unify the family are not required unless such efforts are determined to be in the best interests of the child.[60] If reasonable efforts are not ordered, the court shall set a permanency planning hearing within 30 days of the disposition order.[61]

# Out-of-Home Placement – Basis and Burden of Proof

To place a child in out-of-home care, in addition to a finding of reasonable efforts pursuant to the section above, the court must also find:

1. There is no parent or guardian available to care for such child[62];
2. The parent, guardian, or legal custodian is not willing to take custody of the child; or
3. The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home[63] and an order under RCW 26.44.063 would not protect the child from danger. The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids, including fentanyl, when deciding whether a manifest danger exists.[64]

In order to place a child out of the home of a parent under the "available" or "manifest danger" prongs of the statute, the Department must provide evidence satisfying a clear, cogent, and convincing standard.[65]

If the court places the child out of the care of the parent, the Department shall follow the wishes of the parent concerning out-of-home placement of the child, absent good cause.[66] If the court orders that the child be placed with a caregiver over the objections of the parent or the Department, the court must articulate, on the record, its reasons for ordering the placement.[67] Parental authority is appropriate in areas that are not connected with abuse or neglect which resulted in the dependency, and parents should be a part of the foster care team that includes the child's caregiver and the Department social worker.[68]

## Placement with Relative

If a child is placed out of the home, placement with a relative shall be given preference by the court.[69] Persons related to the child are broadly defined as:

1. Any blood relative, including those of half-blood, first and second cousins, nephews, nieces, and persons of preceding generations prefixed with grand or great-grand;
2. Stepfather, stepmother, stepbrother, or stepsister;
3. A person who has legally adopted the child or child's parent, as well as the natural or other legally adopted children of such persons, and other relatives of the adoptive parents;
4. Spouses of any of the aforementioned relatives, even after marriage is terminated;
5. Relatives of any half-sibling of the child; or
6. Extended family members as defined by the law or custom of the Indian child's tribe.[70]

Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child must be placed with a person who is willing, appropriate, and available to care for the child, and who is either (1) a relative of the child with whom the child has a relationship and is comfortable, or (2) a suitable person, as described in the section below.[71] The Department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed, as long as the person has completed background checks and otherwise appears to the Department to be competent to provide care for the child.[72]

The Washington State Supreme Court has held that "relational stability," meaning placement with safe and appropriate relatives, can be just as important, if not more

important, than legal permanency.[73] Consistent with this, the Department may only place a child with someone who is not a relative when the court finds that the placement is in the best interest of the child.[74] Further, the court is required to consider the child's existing relationships and attachments when determining placement.[75]

The court has the authority to place a child in the care of a relative without a background check if the relative appears otherwise suitable and competent to provide care and treatment, provided that the background check is provided as soon as possible after placement.[76] The Washington State Supreme Court has warned against overreliance on factors in placement decisions that can serve as proxies for race and class. Without more, criminal history, immigration status, and prior involvement with the child welfare system can serve as proxies for race or class. [77]

Any placement with a relative is expressly contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to care and supervision of the child, including parent-child contacts, sibling contacts, and any other conditions imposed by the court.[78] Noncompliance with the case plan or court order grounds for removal of the child from the relative's home, subject to review by the court.[79]

# Other Suitable Person Placement

Subject to review and approval by the court, the Department has authority to place a child in the home of an "other suitable person" if (a) the child or family has a preexisting relationship with that person; (b) that person has completed all required criminal history background checks; and (c) that person appears to the Department to be suitable and competent to provide care for the child.[80] The court must find that placement with an other suitable person is in the best interests of the child.[81] Placement of the child with an other suitable person shall be given preference over placement of the child in foster care.[82]

# Foster Care Placement

The court may place a child in a licensed foster care placement only when the court finds that the placement is in the child's best interest.[83] In matching children to foster homes, the Department should consider family constellation, sibling relationships, ethnicity, and religious practice or preference.[84] If the court places a child into foster care, the court shall order a placement that allows the child to remain in the same school they attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.[85] Contact between the foster parent and the birth parents is to be encouraged, including assistance in understanding the needs of the child, participation in educational activities, and transportation for visitation.[86]

Depending upon the needs of the child, the court may also place a child in a qualified residential treatment program (QRTP).[87] A QRTP must:

1. Use a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances; and
2. Be able to implement treatment for the child that is identified in an assessment that:
    a. Is completed by a trained professional or licensed clinician who is a “qualified individual” as defined under the federal family first prevention act;
    b. Assesses the strengths and needs of the child; and
    c. Determines whether the child's needs can be met with family members or through placement in a foster family home or, if not, which available placement setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the child's permanency plan.[88]

If the child is placed in a QRTP, the court shall, within 60 days of placement, hold a hearing to:

1. Consider the assessment required under RCW 13.34.420 and submitted as part of the Department's social study, and any related documentation;
2. Determine whether placement in foster care can meet the child's needs or if placement in another available placement setting best meets the child's needs in the least restrictive environment; and
3. Approve or disapprove the child's placement in the qualified residential treatment program.[89]

The court may not order a dependent child to be placed in a locked facility, even if the child agrees to the placement.[90]

# Notice – Jurisdiction - ICWA

If the Department knows or has reason to know the child is or may be an Indian child as defined in the federal Indian Child Welfare Act (ICWA) or Washington State Indian Child Welfare Act (WICWA), the provisions of the ICWA and WICWA apply.[91] The Department must provide notice of the proceeding to the parents, the Indian custodian, and the Indian child's tribe or tribes.[92] Notice must occur by certified mail, return receipt requested, and by use of a mandatory Indian Child Welfare Act notice addressed to the tribal agent designated by the Indian child's tribe or tribes for receipt of Indian Child Welfare Act notice, as published by the Bureau of Indian Affairs in the federal register.[93] If the identity or location of the parents or Indian custodian and the tribe cannot be determined, notice must be given to the secretary of the interior by registered mail, return receipt requested, in accordance with the regulations of the bureau of Indian affairs.[94] Copies of the notices, with return receipts or other proof of service must be filed with the court; copies of the tribes' responses should also be filed with the court.[95] No foster care placement[96] can be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe.[97] Further, the parent or Indian custodian, or the tribe, shall, upon request, be granted up to twenty additional days to prepare for the proceeding.[98] Failure to provide proper notice under the Indian Child Welfare Act is error.[99]

The Indian child, the Indian child's tribe or tribes, and the Indian custodian have the right to intervene at any point in any child custody proceeding involving the Indian child, including at the disposition hearing.[100]

# Determination of Indian Status - ICWA

The determination of the Indian status of a child shall be made as soon as practicable in order to serve the best interests of the Indian child and protect the interest of the child's tribe.[101] A written determination by an Indian tribe that a child is a member of, or eligible for membership in, that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is an Indian child.[102] Conversely, a written determination by an Indian tribe that a child is not a member of, or eligible for membership in that tribe, or testimony by the tribe attesting to such status shall be conclusive that the child is not a member or eligible for membership in that tribe.[103] Where a tribe provides no response to proper notice, such nonresponse shall not be considered evidence that the child is not a member or eligible for membership; however, the party asserting application of ICWA or WICWA will have the burden of proving, by a preponderance of the evidence, that the child is an Indian child.[104] Where a child has been determined not to be an Indian child, any party to the proceeding, or an Indian tribe that subsequently determines the child is a member, may move the court for redetermination of the child's Indian status based upon new evidence, redetermination by the child's tribe, or newly conferred federal recognition of the tribe.[105]

# Placement Preferences - ICWA

When a foster care placement of an Indian child is necessary, a good faith effort must be made to place the Indian child:

1. In the least restrictive setting;
2. Which most approximates a family situation;
3. Which is in reasonable proximity to the Indian child's home; and
4. In which the Indian child's special needs, if any, will be met.[106]

In any foster care placement, a preference shall be given, in the absence of good cause to the contrary, to the child's placement with one of the following:

1. A member of the child's extended family;
2. A foster home licensed, approved, or specified by the child's tribe;
3. An Indian foster home licensed or approved by an authorized non-Indian licensing authority;
4. A child foster care agency approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs;
5. A non-Indian child foster care agency approved by the child's tribe
6. A non-Indian family that is committed to:
    a. Promoting and allowing appropriate extended family visitation;
    b. Establishing, maintaining, and strengthening the child's relationship with his or her tribe or tribes; and
    c. Participating in the cultural and ceremonial events of the child's tribe.[107]

Notwithstanding the placement preferences set forth above, if a different order of placement preference is established by the child's tribe, the court or Department effecting the placement shall follow the order of preference established by the tribe so long as the placement is in the least restrictive setting appropriate to the particular needs of the child.[108] The standards to be applied in meeting the preference requirements shall be the prevailing social and cultural standards of the Indian community in which the parent or extended family members of an Indian child reside or with which the parent or extended family members maintain social and cultural ties.[109] Where appropriate, the preference of the Indian child or his or her parent shall be considered by the court.[110]

# Active Efforts - ICWA

If the child is an Indian Child for purposes of ICWA and/or WICWA, and if the Department is seeking to place the child out of the home of the parent or Indian custodian, the Department must satisfy the court that active efforts have been made to

provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful.[111] ICWA's regulations define active efforts as "affirmative, active, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family."[112] WICWA defines active efforts as "timely and diligent efforts to provide or procure such services, including engaging the parent…in reasonably available and culturally appropriate preventative, remedial, or rehabilitative services. This shall include those services offered by tribes and Indian organizations whenever possible."[113]

When the Department is seeking continued out-of-home placement of an Indian child, the Department must show to the court that it has actively worked with the parent beyond simply providing referrals to services.[114] Active efforts must involve assisting the parent through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.[115] Active efforts are to be tailored to the facts and circumstances of the case.[116]

Active efforts requires the Department to help the parent overcome barriers, including barriers to court-ordered services and all barriers to reunification.[117] If a parent is resistant to, or unwilling to engage, in services, the Department is not excused from providing active efforts; the active efforts requirement cannot be fulfilled based upon a finding that efforts to reunify might be "futile."[118] Instead, rather than repeating unsuccessful strategies with the hope of a different result, active efforts requires that the Department brainstorm new strategies, tailored to the specific needs of the family.[119]

The Department has an obligation to begin active efforts to prevent the breakup of the Indian family as soon as possible.[120] The Department must be consistent in its provision of active efforts throughout the dependency, and is not relieved of its duty to provide active efforts simply because it made sufficient efforts at another time during the dependency case.[121]

Active efforts should be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe, and should be conducted in partnership with the Indian child and the Indian child's parents, extended family members, Indian custodians, and Tribe.[122]

ICWA and WICWA require the court to evaluate the Department's provision of active efforts at every proceeding where the child is placed out of the home.[123] As part of the court's duty to meaningfully evaluate the Department's active efforts, the court must make a clear record of the efforts made by the Department and document those efforts in detail.[124] It is the Department's responsibility to clearly document its efforts in the record so that the court may reach an informed conclusion about the Department's provision of active efforts.[125]

If the court is not satisfied that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and these efforts have proved unsuccessful, the remedy is to return the child

home unless doing so would subject the child to a substantial and immediate danger or threat of such danger.[126]

# Burden of Proof - ICWA

To order a foster care placement in a case where ICWA or ICWA applies, the court must find, by clear and convincing evidence, including the testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.[127] Any harm that may result from interfering with the bond or attachment between the foster parent and the child shall not be the sole basis or primary reason for the child continuing in foster care.[128]

The evidence supporting the court's determination must include the testimony of qualified expert witnesses.[129] In any proceeding in which the child's Indian tribe has intervened or if the Department and the child's tribe have entered into a local agreement with the Department, the Department shall contact the tribe and ask the tribe to identify a tribal member or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices.[130] The Department shall notify the child's Indian tribe of the need to provide a "qualified expert witness" at least twenty days prior to any evidentiary hearing in which the testimony of the witness will be required.[131] If the child's Indian tribe does not identify a "qualified expert witness" for the proceeding on a timely basis, the Department may proceed to identify such a witness as set forth below:

1. A member of the child's Indian tribe or other person of the tribe's choice who is recognized by the tribe as knowledgeable regarding tribal customs as they pertain to family organization or child rearing practices for this purpose;
2. Any person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe;
3. Any person having substantial experience in the delivery of child and family services to Indians, and knowledge of prevailing social and cultural standards and child rearing practices in Indian tribes with cultural similarities to the Indian child's tribe; or
4. A professional person having substantial education and experience in the area of his or her specialty.[132]

The currently assigned Department caseworker or the caseworker's supervisor may not testify as a "qualified expert witness".[133]

# Visitation

Visitation is a right of the family, in cases in which it is in the best interest of the child.[134] Early, consistent, and frequent visitation is crucial for maintaining parent-child

relationships and allowing family reunification.[135] Visitation is not a service capable of correcting a parent's deficiencies.[136] If the court orders that a child should be removed from their home, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.[137]

Visitation must occur in the least restrictive setting and be unsupervised unless the presence of threats or danger to the child requires the constant presence of an adult to ensure the safety of the child.[138] Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety or welfare. The risk of harm must be an actual risk, not speculative, and the statute does not require parents to prove the absence of risk.[139] Visitation shall not be limited as a sanction for a parent's failure to comply with recommended services.[140]

If the court previously ordered that visitation between a parent and child be supervised or monitored, there shall be a presumption that such supervision or monitoring will no longer be necessary when the permanency plan is entered.[141] To overcome this presumption, a party must provide a report to the court, including evidence, establishing that removing visit supervision or monitoring would create a risk to the child's safety.[142] Then, the court shall make a determination as to whether visit supervision or monitoring must continue.[143]

There shall be a presumption that such placement, contact, or visits with sibling(s) are in the best interests of the child provided that:

The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation, or the parents of a child for whom there is no jurisdiction are willing to agree; and there is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized, or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.[144]

The court and the Department should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that resources are available, and appropriate, and the child's safety would not be compromised.[145] The court shall advise the Department that the failure to provide court-ordered visitation may result in a finding that the Department failed to make reasonable efforts to finalize the permanency plan. The lack of sufficient contracted visitation providers will not excuse the failure to provide court-ordered visitation.[146]

Any exceptions, limitation, or denial of contacts or visitation must be approved by the supervisor of the Department caseworker and documented.[147] The child, parent, Department, guardian ad litem, or court-appointed special advocate may challenge the denial of visits in court.[148]

If a parent is incarcerated, the parent's disposition plan must provide for visitation opportunities, unless visitation is not in the best interests of the child.[149]

# Permanency Plan

Whenever a child is ordered to be removed from the home, a permanency plan must be developed no later than 60 days from (1) the time the Department assumes responsibility for providing services, including placing the child; or (2) at the time of the disposition hearing, whichever occurs first.[150] The permanency plan shall identify one of the following as a primary goal, and may identify additional outcomes as alternative goals:

1. Return of the child to the home of the child's parent;
2. Adoption (including a tribal customary adoption as identified in RCW 13.38.040);
3. Guardianship pursuant to chapter 13.36 RCW;
4. Guardianship of a minor pursuant to RCW 11.130.215;
5. Long-term relative or foster care (if the child is between the ages of 16 and 18);
6. Successful completion of a responsible living skills program;
7. Independent living (if appropriate and if the child is 16 or older).[151]

Unless the court has ordered that a termination petition be filed, the permanency plan shall include a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the Department will take to promote existing sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the Department will take to maintain parent-child ties.[152]

# Services

If the court places the child in the home of a parent at the dispositional hearing, the court shall provide a program designed to alleviate immediate danger to the child, mitigate or cure any damages the child has already suffered, and to aid the parents so that the child will not be endangered in the future. The court should choose dispositional services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.[153]

If the child is placed out of the parent's home, the Department's permanency plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.[154]

The Department must provide all reasonable services that are available within the Department, or available within the community; or those services which the Department has existing contracts to purchase.[155] The Department shall coordinate to ensure that parents in dependency proceedings receive priority access to remedial services

recommended by the Department or ordered by the court for the purpose of correcting parental deficiencies capable of being corrected in the foreseeable future.[156]

Remedial services are those services defined in the federal adoption and safe families act as family reunification services that facilitate the reunification of the child safely and appropriately within a timely fashion.[157] They include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.[158]

The Department shall provide funds for remedial services if a parent is unable to pay to the extent funding is appropriated in the operating budget or is otherwise available to the Department for such specific services.[159] As a condition of receiving funded remedial services, the court may inquire into the parent's ability to pay for all or part of services, or may require the parent to seek alternative funding sources for such services.[160]

If the parent is incarcerated, the plan must address how the parent will participate in case conferences and permanency planning meetings and, where possible, must include services that reflects the resources available at the facility where the parent is confined.[161]

If a parent has a developmental disability according to the definition provided in RCW 71A.10.020, and that parents is eligible for services provided by the Department of Social and Health Services Developmental Disabilities Administration (DDA), the Department shall make reasonable efforts to consult with the DDA to create an appropriate plan for services.[162] For parents who meet the definition of developmental disability provided in RCW 71A.10.020 and who are eligible for services through the DDA, the plan for services must be tailored to correct the parental deficiency, taking into consideration the parent's disability, and the Department shall also determine an appropriate method to offer those services based on the parent's disability.[163]

If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the Department must promptly notify the court that the parent is unable to engage in the service due to the inability to access the service.[164]

# Court-Ordered Termination Petition

Under very specific and limited circumstances, the court may order that the Department file a petition for termination of the parent and child relationship during the disposition hearing.[165] Those limited circumstances require that the court has (1) ordered removal of the child; (2) termination is recommended by DCYF; (3) the court finds that termination is in the best interests of the child; and (4) by clear, cogent, and convincing evidence the court finds aggravated circumstances exist.[166]

ENDNOTES

[1] Marci Comeau (she/her) is a Managing Attorney for the Washington State Office of Public Defense (OPD) Parents Representation Program. Prior to joining OPD, Marci served as an Administrative Law Judge for the Washington State Office of Administrative Hearings, both in the Social and Health Services and Employment Security Divisions. From 2012 to 2020, Marci worked for the King County Department of Public Defense for 8 years, representing parents and children in dependency proceedings. From 2006 to 2012, Marci worked as an Assistant Attorney General, representing DSHS in dependency proceedings. Throughout her career, Marci has enjoyed providing local, statewide, and national trainings to stakeholders in the juvenile dependency system on various topics, including dependency practice and procedure, discovery, the harm of removal, the mental health of dependency practitioners, and anti-racist dependency practice. Marci received her undergraduate degree, magna cum laude, from the University of Washington in 2001, and her Juris Doctorate, summa cum laude, from Seattle University in 2006.
[2] Parents, guardians, and legal custodians may all be respondents to a dependency petition. For purposes of brevity, clarity, and consistency, this chapter will refer to these respondents as "the parent" or "the parents."
[3] RCW 13.34.130(1).
[4] RCW 13.34.130.
[5] *See* RCW 13.34.136(1) (indicating that a permanency plan shall be developed no later than 60 days from the time the Department of Children, Youth, and Families (DCYF) assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first.)
[6] RCW 13.34.110(4).
[7] RCW 13.34.110(4).
[8] RCW 13.34.110(4).
[9] Generally, the Department is the petitioner in a dependency action, but "any person" may file a dependency petition. RCW 13.34.040(1); *see also In re Dependency of E.H.*, 191 Wn.2d 872 (2010) ("[T]he State is not always a party, let alone represented by counsel. Dependency petitions may be brought by "[a]ny person." RCW 13.34.040(1). Family members can petition a court to find a child dependent in order to be granted guardianship over the child. Juveniles themselves may initiate dependency actions in order to gain a predicate order to obtain special juvenile immigrant status and the resulting relief from removability. 8 U.S.C. § 1101(a)(27)(J)."). Because privately-filed cases represent a small fraction of dependency actions brought in Washington State, and for consistency and clarity, this chapter will refer to the petitioner as "the Department."
[10] RCW 13.34.110(4).
[11] RCW 13.34.110(4).
[12] RCW 13.34.120(1).
[13] RCW 13.34.120(1).
[14] RCW 13.34.120(1).
[15] RCW 13.34.120(1).
[16] RCW 13.34.120(1).
[17] RCW 13.34.120(1).
[18] RCW 13.34.030(12) ("Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be a guardian ad litem for all purposes and uses of this chapter.)
[19] RCW 13.34.120(2)(a).
[20] RCW 13.34.120(2)(b).
[21] ER 1101(c)(3).
[22] *See* JuCR 3.8.
[23] JuCR 3.8.
[24] RAP 2.2(a)(5).
[25] RCW 13.34.110(3)(c).
[26] RCW 13.34.110(2)(b).

[27] RCW 13.34.115(1).
[28] *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30 (1982).
[29] RCW 13.34.115(2).
[30] RCW 13.34.115(2).
[31] JuCR 3.8(c).
[32] *See* CR 43(a)(1); *see also In re Marriage of Swaka*, 319 P.3d 69 (2014) (trial court did not err in finding good cause in compelling circumstances to justify permitting parent's remote contemporaneous testimony in family law matter by live video chat and long-distance voice calling service).
[33] RCW 13.34.030(19) (meaning "the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26A.100, unless the legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian tribe.")
[34] RCW 13,34.030(11) (meaning "the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment.")
[35] *See* RCW 13.38.090.
[36] *See* RCW 13.34.096 (requiring the Department to provide timely and adequate notice, and an opportunity to be heard, to the child's foster parents, preadoptive parents, and other caregivers prior to each proceeding).
[37] RCW 13.34.110(4).
[38] RCW 13.34.130(1)(a), (b)(i).
[39] RCW 13.34.130(1)(a); RCW 13.34.130(6).
[40] *In re Dependency of J.B.S.*, 863 P.2d 1344 (1993).
[41] *See In re Dependency of J.B.S.*, 863 P.2d 1344 (1993) (criminal history does not, in and of itself, disqualify a parent from having placement, but may be a relevant consideration as to parental fitness and child's welfare); *see also In re S.F.*, 308 Cal.Rptr.3d 573 (2023) (evidence insufficient to establish substantial danger to child and no reasonable means to protect child without removal when there was no evidence of risk from parent's past substance misuse); *see also In re Dependency of T.L.G.*, 108 P.3d 156 (2005) (finding that mental illness is not, in and of itself, proof that a parent is unfit or incapable, and that the court must examine the relationship between the mental condition and parenting ability).
[42] *In re Dependency of Q.S.*, 515 P.3d978 (2022); *Washington State Coalition for the Homeless v. Department of Social and Health Services*, 949 P.2d 1291 (1997).
[43] *In re Dependency of D.F.-M.*, 236 P.3d 961 (2010).
[44] *In re Welfare of Ca.R.*, 365 P.3d 186 (2015).
[45] The Department is not required to prove its reasonable efforts at the dependency trial; it is required to prove its reasonable efforts at the disposition hearing if it is requesting out-of-home placement. *See Matter of Welfare of C.W.M.*, 533 P.3d 1199 (2023).
[46] RCW 13.34.130(6).
[47] *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022) (footnote 4 omitted).
[48] RCW 13.34.130(6).
[49] *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022).
[50] *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022).
[51] *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022).
[52] *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022).
[53] RCW 13.34.130(6).
[54] RCW 13.34.030(21).
[55] RCW 13.34.030(21).
[56] RCW 13.34.030(20).
[57] RCW 13.34.030(20); RCW 13.34.025(2)(a).
[58] *Washington State Coalition for the Homeless v. Department of Social and Health Services*, 949 P.2d 1291 (1997).
[59] *Washington State Coalition for the Homeless v. Department of Social and Health Services*, 949 P.2d 1291 (1997).
[60] RCW 13.34.132(4).
[61] RCW 13.34.134.

[62] *See In re Dependency of W.W.S.*, 469 P.3d 1190 (2020) ("[A] parent is not "available" if she has deficiencies that jeopardize the child's rights of basic nurture, physical and mental health, and safety."); *Matter of Dependency of Z.A.*, 540 P.3d 173 (2023), (review granted; decision from Washington State Supreme Court forthcoming) (finding that a parent is not "available," for purposes of the statute, if the parent's deficiencies jeopardize the child's rights of basic nurture, physical and mental health, and safety, in circumstances where an in-home placement would pose a manifest danger to the child.)
[63] *See, e.g. In re Dependency of Chubb*, 762 P.2d 352 (1988).
[64] RCW 13.34.130(6).
[65] *Matter of Dependency of Z.A.*, 540 P.3d 173 (2023) (review granted; decision from Washington State Supreme Court forthcoming); RCW 13.34.130(6)(c).
[66] RCW 13.34.130(1)(b); RCW 13.34.260(1).
[67] RCW 13.34.130(1)(b)(i).
[68] RCW 13.34.260(1).
[69] RCW 13.34.130(3).
[70] RCW 74.15.020(2)(a).
[71] RCW 13.34.130(3).
[72] RCW 13.34.130(1)(b)(iii).
[73] *In re Dependency of K.W.*, 504 P.3d 207 (2022); *see also* WA E2SSB 6068 (relating to reporting on child well-being and relational permanency).
[74] RCW 13.34.130(3).
[75] RCW 13.34.130(3).
[76] RCW 13.34.130(10).
[77] *In re Dependency of K.W.*, 504 P.3d 207 (2022).
[78] RCW 13.34.130(10).
[79] RCW 13.34.130(10).
[80] RCW 13.34.130(1)(b)(ii).
[81] RCW 13.34.130(3).
[82] RCW 13.34.130(6).
[83] RCW 13.34.130(3).
[84] RCW 13.34.260(1).
[85] RCW 13.34.130(8).
[86] RCW 13.34.260.
[87] RCW 13.34.130(4).
[88] RCW 13.34.420.
[89] RCW 13.34.130(4).
[90] *In re Dependency of A.N.*, 973 P.2d 1 (1998)
[91] 23 C.F.R. § 23.11; RCW 13.38.070(1); *see also Matter of Dependency of Z.J.G.*, 471 P.3d 853 (2020).
[92] RCW 13.34.070(10); RCW 13.38.070; *see also Matter of Dependency of Z.J.G.*, 471 P.3d 853 (2020) (describing importance of broad interpretation of "reason to know" in order to trigger formal notification to tribes for child custody proceedings; "Lack of notice repeats the historical harms that predicated the passage of ICWA and WICWA: Indian children are more likely to be taken and then lost in the system, often adopted when legally free, primarily to non-Native homes; tribes are denied the opportunity to make membership determinations; and tribes are unable to intervene in the case or exercise jurisdiction.")
[93] RCW 13.38.070(1).
[94] RCW 13.38.070(1).
[95] 25 C.F.R. § 23.111(a)(2); s*ee also In re Dependency of E.S.*, 92 Wn. App. 762 (1998) (finding that the court strongly encourages the State to file evidence of its compliance with ICWA notice requirements because "the burden of proving notice is on the State" and "filing of proof of service in the trial court's file would be the most efficient way of meeting that burden of proof.").
[96] RCW 13.38.040(3)(a) (defining "foster care placement" as "any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home, institution, or with a relative, guardian, conservator, or suitable other person where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.")
[97] RCW 13.38.070(1).
[98] RCW 13.38.070(1).

[99] *In re Dependency of T.L.G.*, 126 Wn.App. 181 (2005) (violation of notice requirements of Indian Child Welfare Act warranted remand to trial court for the giving of proper notice).
[100] RCW 13.38.090.
[101] RCW 13.38.070(2).
[102] RCW 13.38.070(3)(a).
[103] RCW 13.38.070(3)(b).
[104] RCW 13.38.070(3)(c).
[105] RCW 13.38.070(4)(a).
[106] RCW 13.38.180(1).
[107] RCW 13.38.180(2).
[108] RCW 13.38.180(4).
[109] RCW 13.38.180(6).
[110] RCW 13.38.180(5).
[111] 25 U.S.C. § 1912(d); RCW 13.38.130(1).
[112] 25 C.F.R. § 23.2.
[113] RCW 13.38.040(1)(a).
[114] RCW 13.38.040(1)(a)(ii).
[115] 25 C.F.R. § 23.2.
[116] *In re Dependency of G.J.A.*, 489 P.3d 631 (2021); *see also* 25 C.F.R. § 23.2 (active efforts may include (1) conducting a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal; (2) identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services; (3) identifying, notifying, and inviting representatives of the Indian child's Tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning, and resolution of placement issues; (4) conducting or causing to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents; (5) offering and employing all available and culturally appropriate family preservation strategies and facilitating the use of remedial and rehabilitative services provided by the child's Tribe; (6) taking steps to keep siblings together whenever possible; (7) supporting regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child; (8) identifying community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the Indian child's parents or, when appropriate, the child's family, in utilizing and accessing those resources; (9) monitoring progress and participation in services; (10) considering alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available; and (11) providing post-reunification services and monitoring.
[117] *In re Dependency of G.J.A.*, 489 P.3d 631 (2021).
[118] *In re Dependency of G.J.A.*, 489 P.3d 631 (2021); *Dependency of R.D.*, Wn. App. 2d 219 (2023); *Dependency of A.T.*, 541 P.3d 1079 (2024).
[119] *Dependency of A.T.*, 541 P.3d 1079 (2024).
[120] *In re Dependency of J.M.W.*, 514 P.3d 186 (2022).
[121] *In re Dependency of G.J.A.*, 489 P.3d 631 (2021); *Dependency of A.T.*, 541 P.3d 1079 (2024).
[122] 25 C.F.R. § 23.2.
[123] *In re Dependency of J.M.W.*, 514 P.3d 186 (2022).
[124] *In re Dependency of G.J.A.*, 489 P.3d 631 (2021).
[125] *In re Dependency of G.J.A.*, 489 P.3d 631 (2021).
[126] 25 U.S.C. § 1920; RCW 13.38.160; *see also In re Welfare of A.L.C.*, 439 P.3d 694 (2019); *Dependency of A.T.*, 541 P.3d 1079 (2024).
[127] 25 U.S.C. § 1912(e); RCW 13.38.130(2).
[128] RCW 13.38.130(2).
[129] RCW 13.38.130(2).
[130] RCW 13.38.130(4)(a).
[131] RCW 13.38.130(4)(a).
[132] RCW 13.34.130(4)(a).

[133] RCW 13.34.130(4)(c).
[134] RCW 13.34.136(2)(b)(ii)(A).
[135] RCW 13.34.136(2)(b)(ii)(A).
[136] *In re Dependency of T.H.*, 162 P.3d 1141 (2007).
[137] RCW 13.34.130(7).
[138] RCW 13.34.136(2)(b)(ii)(C).
[139] *In re Dependency of T.L.G.*, 156 P.3d 222 (2007); *see also In re Dependency of Tyler L.*, 208 P.3d 1287 (2009).
[140] RCW 13.34.136(2)(b)(ii)(B).
[141] RCW 13.34.136(2)(b)(ii)(E).
[142] RCW 13.34.136(2)(b)(ii)(E).
[143] RCW 13.34.136(2)(b)(ii)(E).
[144] RCW 13.34.130(7)(a); *see also In re Dependency of M.J.L.*96 P.3d 996 (2004); *see also* RCW 13.34.130(7)(b) (the court may also order placement, contact, or visitation of with child with a stepbrother or stepsister provided that, in addition to factors in RCW 13.34.130(7)(a), the child has a relationship and is comfortable with stepsibling.)
[145] RCW 13.34.136(2)(b)(ii)(D).
[146] RCW 13.34.136(2)(b)(ii)(F).
[147] RCW 13.34.136(2)(b)(iii)(B).
[148] RCW 13.34.136(2)(b)(iii)(B).
[149] RCW 13.34.136(2)(b)(i)(A).
[150] RCW 13.34.136(1).
[151] RCW 13.34.136(2)(a).
[152] RCW 13.34.136(2)(b).
[153] RCW 13.34.130(1)(a).
[154] RCW 13.34.136(2)(b)(i).
[155] RCW 13.34.136(2)(b)(vii).
[156] RCW 13.34.025(2).
[157] RCW 13.34.025(2)(a).
[158] RCW 13.34.025(2)(a).
[159] RCW 13.34.025(2)(b).
[160] RCW 13.34.025(2)(b).
[161] RCW 13.34.136(2)(b)(i)(A).
[162] RCW 13.34.136(2)(b)(i)(B).
[163] RCW 13.34.136(2)(b)(i)(B); *see also In re M.A.S.C.*, 486 P.3d 886 (2021); *Matter of Welfare of D.H.*, 523 P.3d 255 (2023).
[164] RCW 13.34.025(2)(c).
[165] RCW 13.34.130(9); RCW 13.34.132.
[166] RCW 13.34.130(9); RCW 13.34.132.