



Legal Standards Comparison Chart

Product of the Family Well-Being Community Collaborative
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	Shelter Care Proceedings	Post Fact-Finding Proceedings
Event Trigger	<p>Begins with Removal or Request for Removal of an Allegedly Dependent Child</p> <p>RCW 13.34.050 – Court Order RCW 13.34.055 – Protective Custody RCW 26.44.050 – Hospital Hold RCW 13.34.040 – Dependency Petition</p> <p>RCW 13.34.030(24) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed...</p>	<p>Begins When/If Dependency is Established</p> <p>RCW 13.34.110 – Fact Finding & Disposition</p>
Dependency	<p>RCW 13.34.040(1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter.</p> <p>RCW 13.34.030(6) "Dependent child" means any child who: (a) Has been abandoned; (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; <u>OR</u> (d) Is receiving extended foster care services...</p>	<p>RCW 13.34.110(1) The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.</p> <p>RCW 13.34.030(6) "Dependent child" means any child who: (a) Has been abandoned; (b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; (c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; <u>OR</u> (d) Is receiving extended foster care services...</p>

Removal

RCW 13.34.065(5)(a): Removing Allegedly Dependent Child From Parent/Guardian/Custodian

The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is **reasonable cause** to believe that:

(i) After consideration of the specific services that have been provided, **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; AND

(ii)(A) The **child has no parent, guardian, or legal custodian** to provide supervision and care for such child; OR

(B)(I) Removal of the child is **necessary to prevent imminent physical harm** due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, notwithstanding an order entered pursuant to RCW 26.44.063. The **evidence must show a causal relationship between the particular conditions in the home and imminent physical harm to the child**. The existence of community or family poverty, isolation, single parenthood, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child, or nonconforming social behavior does not by itself constitute imminent physical harm;

(II) It is **contrary to the welfare of the child** to be returned home; and

(III) After considering the particular circumstances of the child, **any imminent physical harm to the child outweighs the harm the child will experience as a result of removal**; OR

RCW 13.34.130(6): Placing Adjudicated Dependent Child Out of the Home

Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that **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, guardian, or legal custodian, and 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**, AND that:

(a) There is **no parent or guardian** available to care for such child;

(b) The parent, guardian, or legal custodian is **not willing to take custody** of the child; OR

(c) 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 and an order under **RCW 26.44.063 would not protect** the child from danger.

	<p>(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.</p>	
<p>Additional Shelter Care Hearing</p>	<p>RCW 13.34.065(1)(a) The court shall hold an additional shelter care hearing within 72 hours, excluding Saturdays, Sundays, and holidays if the child is removed from the care of a parent, guardian, or legal custodian at any time after an initial shelter care hearing under this section.</p> <p>RCW 13.34.065(7)(a)(i) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.</p>	<p>RCW 13.34.138(3)(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.</p> <p><i>There IS NOT consensus as to whether the requirement for an additional Shelter Care Hearing under RCW 13.34.065(1)(a) applies when an ex parte order for removal is granted post-disposition and what legal standards for removal and placement decisions would apply at such a hearing (13.34.030 or 13.34.130).</i></p> <p><i>While there is not consensus about what standard applies when a child is removed from a parent after a dispositional hearing, there is general agreement that, if the Department intends to remove a child from a parent after dependency is established and the parent does not agree to the removal, the best practice is to have a hearing in court to address the removal as soon as is practical.</i></p>

<p>Placement</p>	<p>RCW 13.34.065(5)(c)(i) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless the petitioner establishes that there is reasonable cause to believe that:</p> <p>(A) Placement in licensed foster care is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, because no relative or other suitable person is capable of ensuring the basic safety of the child;</p> <p><u>OR</u></p> <p>(B) The efforts to reunite the parent and child will be hindered.</p> <p>RCW 13.34.065(5)(c)(ii)(B) Give great weight to the stated preference of the parent, guardian, or legal custodian, and the child</p>	<p>RCW 13.34.130(2) Absent good cause, the department shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.</p> <p>RCW 13.34.130(3) The department may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds that such placement is in the best interest of the child. 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 shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.</p> <p>RCW 13.34.130(6) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that 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, guardian, or legal custodian, and 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</p>
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child cannot be protected adequately in the home, AND that:

(a) There is **no parent or guardian available** to care for such child;

(b) The parent, guardian, or legal custodian is **not willing to take custody** of the child;

OR

(c) 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 and an order under RCW 26.44.063 would not protect the child from danger.

RCW 13.34.130(10)

If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears **otherwise suitable and competent to provide care and treatment**, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

		<p>RCW 13.34.145(1)(b) Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.</p>
<p>Return Home</p>	<p>RCW 13.34.065(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that: (i) After consideration of the specific services that have been provided, reasonable efforts have been made... <u>AND</u> (ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; <u>OR</u> (B)(I) Removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect...<u>OR</u> (C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.</p> <p><i>There <u>IS</u> consensus that if a child remains home or is returned home before dependency is established the 6-month timeline requirement <u>DOES NOT</u> apply.</i></p>	<p>RCW 13.34.138(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision by the department shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.</p> <p><i>There <u>IS</u> consensus among system partners that if the child is placed in-home at disposition and was never removed, the 6-month minimum timeline <u>DOES NOT</u> apply. If the child is removed from the home (or remains out-of-home) at the dispositional hearing and a trial return home starts at a subsequent review hearing, the 6-month minimum <u>DOES</u> apply.</i></p> <p><i>Whether the 6-month minimum applies, dismissal is NOT required at the end of 6-months. The court shall assess the need for continued intervention.</i></p>

Text in red refers to work done by the cross-system Family Well-Being Community Collaborative (FWCC) Legal Standards Workgroup, which included state-level representation from courts, Attorney General's Office, Office of Public Defense, Office of Civil Legal Aid, Department of Children, Youth & Families, Washington Association for Child Advocate Programs and other system partners.