

Beyond Best Interests: What must be proven to terminate parental rights?

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- We will examine:
 - Statutes (chapter 13.34 RCW)
 - Cases
- This presentation will provide:
 - An overview of the law governing termination of parental rights
 - Questions as time allows
- Due to time constraints, this presentation does not include:
 - Aggravated circumstances cases
 - Presumptions under element (1)(e)
 - Additional requirements for ICWA cases



Termination of Parental Rights

Two step process:

1. Prove all 6 of the elements in RCW 13.34.180(1)(a-f) and that the parent is currently unfit; AND
 - By clear, cogent, and convincing evidence
2. Prove termination of parental rights is in the child's best interests
 - By a preponderance of the evidence



TPR – Step 1

Summary of the six elements of RCW 13.34.180(1):

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. . . ; and
- (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.



The first three elements of RCW 13.34.180(1) are usually uncontested:

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

Superior Court of Washington County of _____ Juvenile Court	No:
Dependency of:	Order of Dependency (OROD)
D.O.B.:	<input type="checkbox"/> Agreed as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Contested as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Default as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Dismissed (ORDYMT) 4.1 <input type="checkbox"/> Disposition Order (ORDD) Included <input type="checkbox"/> Clerk's Action Required. Paragraphs 4.1, 4.3, 4.6 (EDL), 4.7, and the boxes below.

TPR – Step 1

The first three elements of RCW 13.34.180(1) are usually uncontested:

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

Superior Court of Washington County of _____ Juvenile Court	No: Order of Dependency (OROD) <input type="checkbox"/> Agreed as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Contested as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Default as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Dismissed (ORDYMT) 4.1 <input type="checkbox"/> Disposition Order (ORDD) Included <input type="checkbox"/> Clerk's Action Required. Paragraphs 4.1, 4.3, 4.6 (EDL), 4.7, and the boxes below.
Dependency of:	
D.O.B.:	

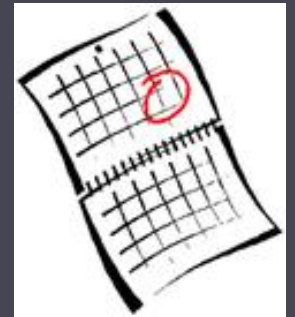
or

No: Order of Disposition on Dependency (ORDD) <input type="checkbox"/> Agreed as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Contested as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Default as to <input type="checkbox"/> mother <input type="checkbox"/> father <input type="checkbox"/> other <input type="checkbox"/> Clerk's Action Required. Para. 3.3 (EDL), 3.4, 3.9, 3.11, and the boxes below.



The first three elements of RCW 13.34.180(1) are usually uncontested:

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



The fourth element of RCW 13.34.180(1):

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



Breaking this element down...

That the services ordered under RCW 13.34.136

13.34.136

Permanency plan of care.

have been expressly and understandably offered or provided

and



all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

- Futility
- *In re Matter of B.P.*, 186 Wn.2d 292, 376 P.3d 350 (2016)



- Where the Department has reason to believe that a parent may have an intellectual disability, it must make reasonable efforts to ascertain whether the parent does in fact have a disability and, if so, how the disability could interfere with the parent’s capacity to understand the Department’s offer of services.
 - Reasonable efforts are evaluated from the perspective of an “objective observer who is aware of the nature and extent of the parent’s intellectual disability and the current professional guidelines for communication with people who have similar disabilities.”
 - The Department must tailor its offer of services to the parent in a way that is reasonably understandable and informed by current professional guidelines.

In re M.A.S.C., 197 Wn.2d 685, 486 P.3d 886 (2021)



The fifth element of RCW 13.34.180(1):

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future

- What is the near future and how is this measured?
- How can GALs/CASAs give testimony related to this element?



➤ What have the courts upheld on this element?

- **Six months is not the near future for a fifteen-month-old**
(*In re Dependency of P.D.*, 58 Wn. App. 18, 27 (1990))
- **One year is not in the near future of a three-year-old**
(*In re A.W.*, 53 Wn. App. 22, 27, 32 (1988))
- **Eight months is not in the foreseeable future for a four-year-old**
(*In re Hall*, 99 Wn.2d 842, 850-51) (1983))
- **One year not in the near future for a six-year-old**
(*In re Dependency of T.R.*, 108 Wn. App. 149, 165-66 (2001))
- **Eighteen months not in the near future for an almost four-year-old**
(*Dependency of D.A.*, 124 Wn. App. 644, 656-57 (2004))



The sixth element of RCW 13.34.180(1):

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home

- Relates to the child at issue – not children in general
- What is the parent-child relationship?
- Stable v. permanent
- Why is adoption the best permanent plan for this child?



Under the sixth element, if the parent is incarcerated, the court shall consider:

- whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(5)(b);
- whether the department or supervising agency made reasonable efforts as defined in this chapter; and
- whether particular barriers existed as described in RCW 13.34.145(5)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.



➤ What is “is incarcerated”?

- *In re the Dependency of D.L.B.*, 186 Wn.2d 103, 376 P.3d 1099 (2016)

➤ What does it mean to “consider”?

- *Matter of K.J.B.*, 187 Wn.2d 592, 387 P.3d 1072 (2017)
- *Matter of Welfare of E.D.*, 195 Wn. App. 673, 381 P.3d 1230 (2016)



- What are the non-exclusive factors in RCW 13.34.145(5)(b)?
 - Parent's expressions or acts of manifesting concern for the child (ex: letters, phone calls, visits, other forms of communication)
 - Parent's efforts to communication and work with DCYF or others to comply with services and to repair, maintain or build the parent-child relationship
 - Parent's positive response to DCYF's reasonable efforts
 - Other information provided by individuals/agencies in a reasonable position to assist the court (ex: parent's attorney, correctional personnel, mental health personnel, service providers)
 - Limitations on the parent's access to family support programs, therapeutic services, visitation opportunities, phone/mail services, participation in foster care planning meetings, attorney, meaningful participation in court proceedings
 - Whether continued involvement of the parent in the child's life is in the child's best interest

Current Parental Unfitness

- Not expressly in the statute but required by due process
- Not unfitness in general but unfitness to parent this child
- Includes the child's needs
- Not about whether biological parent is better than foster parent
- *In re the Matter of K.M.M.*, 186 Wn.2d 466, 379 P.3d 75 (2016)



End of Step 1



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TPR – Step 2

- This element is very flexible and open compared to the rest of the termination statute
- Paramount concern is the child's welfare
- Children have a right to a safe, stable, permanent home
- “When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail.” RCW 13.34.020.
- How can GAL/CASAs provide testimony related to best interests?



Thank you!
(for all you do and for coming!)