

SENATE BILL REPORT

E2SHB 1227

As of March 12, 2021

Title: An act relating to protecting the rights of families responding to allegations of abuse or neglect of a child.

Brief Description: Protecting the rights of families responding to allegations of abuse or neglect of a child.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Ortiz-Self, Callan, Senn, Dolan, Fitzgibbon, Ramos, Davis, Santos, Macri, Gregerson, Young and Ormsby).

Brief History: Passed House: 3/4/21, 89-9.

Committee Activity: Human Services, Reentry & Rehabilitation: 3/12/21.

Brief Summary of Bill

- Requires hospitals, law enforcement, and courts to find the removal or detention of a child is necessary to prevent imminent physical harm due to child abuse or neglect before authorizing removal or detention of the child.
- Requires the Department of Children, Youth, and Families to make continuing efforts to place children with relatives and requires such placement unless there is no relative capable of ensuring the basic safety of the child.
- Requires the court to release a child to a parent unless the court finds reasonable cause to believe removal of the child is necessary to prevent imminent physical harm and the evidence shows a causal relationship between the conditions in the home and imminent physical harm to the child.

SENATE COMMITTEE ON HUMAN SERVICES, REENTRY & REHABILITATION

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Alison Mendiola (786-7488)

Background: Removal of a Child from a Parent. In specific circumstances, a court may order a child be taken into custody, or a physician or hospital and law enforcement may detain or take into custody children based on concerns about the child's safety, for example:

- a hospital or physician may detain a child if the circumstances or conditions of the child are such that there is reasonable cause to believe permitting the child to continue in the care of a parent would present an imminent danger to the child's safety; or
- law enforcement may take a child into custody if there is probable cause to believe the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order.

A court may enter an order directing a child be taken into custody if:

- a petition is filed alleging the child is dependent and the child will be seriously endangered if not taken into custody;
- an affidavit or declaration is filed by the Department of Children, Youth, and Families (DCYF) supporting the petition setting forth specific factual information evidencing reasonable grounds the child's health, safety, and welfare will be seriously endangered if not taken into custody, and at least one of the grounds set forth demonstrates a risk of imminent harm to the child; and
- the court finds reasonable grounds to believe the child is dependent and the child's health, safety, and welfare will be seriously endangered if not taken into custody.

Dependency Court Proceedings—Child Welfare. Anyone, including DCYF, may file a petition in court alleging a child should be a dependent of the state due to abuse, neglect, or because there is no parent, guardian, or custodian capable of adequately caring for the child. These petitions must be verified and contain a statement of facts that constitute a dependency and the names and residence of the parents, if known.

When a child is taken into custody, the court is to hold a shelter care hearing within 72 hours. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the dependency case is being resolved.

If a court finds the need to maintain a child out of the home, the shelter care status remains until a dependency fact-finding hearing is held or the parties enter an agreed order of dependency. The fact finding must be held within 75 days after the filing of the petition, unless exceptional reasons for a continuance are found.

If a court determines a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, the provision of services by DCYF, compliance of the parents, and whether progress has been made by the parents.

DCYF must develop a permanency plan within 60 days from the date DCYF assumes responsibility for the child which must identify primary outcome goals for the case. DCYF

must submit this permanency plan to the parties and the court at least 14 days before a permanency planning court hearing. A permanency planning hearing must be held in all cases where the child has remained in out-of-home care for at least nine months, but no later than 12 months following out-of-home placement.

Under certain circumstances after a child has been removed from the custody of a parent for at least six months pursuant to a finding of dependency, a petition may be filed seeking termination of parental rights.

Relative Placement. If the court does not release a child to a parent after a shelter care hearing, the court must place the child with a relative or other suitable person unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or the efforts to reunite the parent and child will be hindered. The term "other suitable person" is defined as someone the child or family has a preexisting relationship with who has completed all required background checks and appears to DCYF to be suitable and competent to provide care for the child. If a relative or other suitable person appears otherwise suitable and competent to provide care and treatment, the fingerprint-based background check need not be completed before placement, but as soon as possible after placement.

Summary of Bill: The Keeping Families Together Act is established. It is the Legislature's stated intent to safely reduce the number of children in foster care and reduce racial bias in the system by applying a standard criteria for determining whether to remove a child from a parent when necessary to prevent imminent physical harm to a child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect.

Standards Related to Removal of a Child from a Parent. The standard for removal for an administrator of a hospital, or any physician, and for law enforcement is modified to require probable cause to believe detaining the child is necessary to prevent imminent physical harm, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, and the child would be seriously injured or could not be taken into custody if it were necessary to obtain a court order.

The standard by which a court may enter an order directing a child be taken into custody is modified to require:

- sufficient corroborating evidence;
- the allegations contained in the petition, if true, establish there are reasonable grounds to believe removal is necessary to prevent imminent physical harm, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect to the child due to abuse or neglect; and
- an affidavit or declaration setting forth insufficient time to serve a parent with a dependency petition and hold a hearing prior to removal.

Dependency Petition. Every dependency petition must include a statement regarding whether there is a reason to know the child is an Indian child and a specific statement as to the harm that will occur if the child remains in the care of the parent.

If the court orders a child be taken into custody, the petition and supporting documentation must be served on the parents at the time of removal unless, after diligent efforts, the parents cannot be located.

Relative Placement. If a child is removed from a parent and not initially placed with a relative, DCYF must make continuing efforts to place the child with a relative or other suitable person.

If a child is not released to a parent during a shelter care hearing, the court must order placement with a relative unless the court finds reasonable cause to believe that placement in licensed foster care is necessary to prevent imminent physical harm due to child abuse or neglect because no relative or other suitable person is capable of ensuring the basic safety of the child, or that efforts to reunite the parent will be hindered.

In making a placement determination for licensed foster care versus relative care, the court must make certain inquiries.

Placement with a relative or other suitable person must not be prevented because of the following:

- an incomplete background check;
- uncertainty on the part of the relative regarding potential adoption;
- disbelief that the parent presents a danger, provided the caregiver will protect the safety of the child and comply with court orders regarding contact with a parent, guardian, or legal custodian; or
- the conditions of the home are not sufficient to meet the requirements of a licensed foster home.

The court may order DCYF to provide financial or other support to the relative or other suitable person necessary to ensure safe conditions in the home.

If the court places a child with a relative and that person indicates an interest in becoming a licensed foster parent, the court shall order DCYF to start an assessment of the home within 72 hours and issue an initial license. Relatives seeking licensure will receive a foster care maintenance payment starting on the first day the person agrees to begin the licensing process. If the home is unqualified, DCYF must report that fact to the court within one week of the determination.

If the court places a child in licensed foster care following a shelter care hearing, DCYF must disclose the location of the foster placement and the court must make certain inquiries.

Releasing a Child to a Parent During a Shelter Care Hearing. The court must release a child to a parent unless the court finds removal of the child is necessary to prevent imminent physical harm and the evidence shows a causal relationship between the 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.

The court must also make the following findings if not releasing a child to a parent:

- it is contrary to the welfare of the child to be returned home; and
- 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.

If the court makes findings requiring removal of the child, the court must also consider:

- whether services would eliminate the need for removal, and inquire of the parent whether they are willing to participate in these services; and
- whether the issuance of a temporary protection order directing the removal of a person or persons from the residence would prevent the need for removal.

Other Provisions. DCYF must make every effort to provide discoverable material to a child's parent or legal counsel before a shelter care hearing.

DCYF must make diligent, instead of reasonable, efforts to inform the parent of the fact that child has been taken into custody, and advise the parent of the time and place of any shelter care hearing or subsequent hearings.

The child's parent, guardian, or legal custodian must be informed of necessary medical evaluations and care of the child and given the opportunity to attend these appointments.

The court must hold a subsequent shelter care hearing within 72 hours if the child is removed from the care of a parent.

A child's attorney, parent, guardian, or legal custodian may request the initial shelter care be continued if there is good cause shown the person is unable to attend or adequately prepare for the shelter care hearing.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available. New fiscal note requested on March 9, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on July 1, 2023.

Staff Summary of Public Testimony: PRO: This bill had overwhelming support in the House. The goal should always be to keep families together when possible, and safe for the child. Many people would not qualify for a standard foster care license, so in this instance family is not disqualified but can get support for caring for the child. The disability community is strongly in support of this bill which has been needed for some time. There are too many instances of children being removed, even at birth, merely because of a parent's intellectual disability, not their inability to parent a child. We need to shrink the funnel of who gets into the child welfare system. The Indian Child Welfare Act accomplished this, and this bill will help. Twenty-one percent of kids who were removed were discharged from the system within 30 days. Those children should have never entered the system. We have the third highest removal rate in the nation. We need to be bold in our vision, families of color are more likely to be involved in dependency. Kinship care is race and equity. This bill helps us reimagine the culture and removal of children in child welfare. In reality only a small number of children need to be removed due to physical, including sexual, abuse. This bill sets the standard of imminent physical harm versus biases against families of color and those with disabilities.

Persons Testifying: PRO: Representative Lillian Ortiz-Self, Prime Sponsor; Ivanova Smith, Self Advocates In Leadership; Diana Stadden, The Arc of Washington State; Tara Urs, King County Department of Public Defense; Shrounda Selivanoff, Children Home Society of Washington; Dre Thornock, The Mockingbird Society; Jill May, Washington Association for Children and Families; Renee Jones; Noah Seidel, Office of Developmental Disabilities Ombuds; Darya Farivar, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: No one.