
Children, Youth & Families Committee

HB 1227

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

Sponsors: Representatives Ortiz-Self, Callan, Senn, Dolan, Fitzgibbon, Ramos, Davis, Santos, Macri, Gregerson, Young and Ormsby.

Brief Summary of Bill

- Modifies the standard used by hospitals, law enforcement, and courts to authorize detention or removal of a child from a parent.
- 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 by a preponderance of the evidence that removal of the child is necessary to prevent imminent physical harm and that the evidence show a causal relationship between the conditions in the home and imminent physical harm to the child.

Hearing Date: 1/20/21

Staff: Luke Wickham (786-7146).

Background:

Removal of a Child From a Parent.

Under certain circumstances, a court may order that a child be taken into custody or a physician/hospital and law enforcement may detain or take into custody children based on

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.

concerns about the child's safety.

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 that permitting the child to continue in the care of a parent would present an imminent danger to the child's safety.

Law enforcement may take a child into custody if there is probable cause to believe that 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 that a child be taken into custody if:

- a petition is filed alleging that 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) in support of the petition setting forth specific factual information evidencing reasonable grounds that 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 that the child's health, safety, and welfare will be seriously endangered if not taken into custody.

Child Welfare (Dependency) Court Proceedings.

Anyone, including the DCYF, may file a petition in court alleging that 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 that a child is dependent, the court will conduct periodic reviews and make determinations regarding the child's placement, the provision of services by the DCYF, compliance of the parents, and whether progress has been made by the parents.

The DCYF must develop a permanency plan within 60 days from the date that the DCYF assumes responsibility for the child which must identify primary outcome goals for the case. The 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 that the health, safety, or welfare of the child would be jeopardized or that 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 the 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:

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 that detaining the child is necessary to prevent imminent physical harm 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;
- that the allegations contained in the petition, if true, establish by a preponderance of the evidence that removal is necessary to prevent imminent physical harm 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 that 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 not initially placed with a relative, the 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 by a preponderance of the evidence that:

- placement in licensed foster care is necessary to prevent imminent physical harm due to child abuse or neglect because no relative or suitable other 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 (licensed foster care versus relative) the court must make certain inquiries.

The following must not prevent placement with a relative or other suitable person:

- an incomplete background check;
- uncertainty on the part of the relative regarding potential adoption;
- disbelief that the parent presents a danger; or
- the conditions of the home are not sufficient to meet the requirements of a licensed foster home.

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

If the court places with a relative and that person indicates an interest in becoming a licensed foster parent, the court shall order the DCYF to commence an investigation of the home within 24 hours and expedite licensure. If licensed, the foster care subsidy shall be paid to the relative retroactive to the date of placement. If the home is unqualified, the 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, the 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 certain criteria by a preponderance of the evidence, instead of reasonable cause. The court must find that removal of the child is necessary to prevent imminent physical harm and that 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:

- That 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.

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

The 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 parent.

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

Appropriation: None.

Fiscal Note: Requested on January 14, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.