HOUSE BILL REPORT
E2SSB 6109

As Reported by House Committee On:
Human Services, Youth, & Early Learning

Title: An act relating to supporting children, families, and child welfare workers by improving services and clarifying the child removal process in circumstances involving high-potency synthetic opioids.

Brief Description: Supporting children and families.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wilson, C., Boehnke, Braun, Gildon, Hasegawa, Kuderer, Liias, Lovelett, Lovick, Nguyen, Nobles, Saldaña, Short, Warnick and Wilson, J.).

Brief History:

Committee Activity:

Human Services, Youth, & Early Learning: 2/14/24, 2/16/24 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by Committee)

- Requires courts to give great weight to the lethality of and public heath guidance from the Department of Health (DOH) regarding high-potency synthetic opioids during certain stages of child welfare proceedings where the court is determining whether a child should be removed from a parent.
- Includes child abuse or neglect resulting from a high-potency synthetic opioid in a nonexhaustive list of what may establish the basis for a determination of imminent physical harm when a child is removed from a parent by court order, law enforcement, or a hospital.
- Expands various services for families, requires the DOH to develop information regarding the risks of fentanyl exposure to children, expands training for professionals involved with the child welfare court process, and adds positions within the Department of Children, Youth, and

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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.

Families.

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: Do pass as amended. Signed by 9 members: Representatives Senn, Chair; Cortes, Vice Chair; Rule, Vice Chair; Eslick, Ranking Minority Member; Couture, Assistant Ranking Minority Member; Callan, Goodman, Ortiz-Self and Taylor.

Minority Report: Do not pass. Signed by 1 member: Representative Walsh.

Minority Report: Without recommendation. Signed by 1 member: Representative Dent.

Staff: Luke Wickham (786-7146).

Background:

Removal of a Child from a Parent.
There are three methods that allow a child to be removed from a parent, guardian, or legal custodian, including:

- pursuant to a court order directing that a child be taken into custody;
- by a physician or hospital; and
- by law enforcement.

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

- a petition is filed with sufficient corroborating evidence to establish that the child is "dependent;"
- the allegation in the petition, if true, establishes that there are reasonable grounds to believe that removal is necessary to prevent imminent physical harm to the child due to child abuse or neglect; and
- 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 insufficient time to hold a hearing before removal.

A hospital, a physician, and law enforcement may detain a child if there is probable cause to believe that detaining the child is necessary to prevent imminent physical harm due to child abuse or neglect.

Child Welfare 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: abandonment, abuse or 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 hearing 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 hold a dispositional hearing to determine whether the child may remain in the home or be removed from the home and be cared for by a relative, another suitable person, or the DCYF. The child may only be placed out of the parent's care if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal, that prevention services have been offered or provided, and that:

- there is no parent or guardian available to care for the child;
- the parent, guardian, or legal custodian is not willing to take custody of the child; or
- the court finds by clear, cogent, and convincing evidence that a manifest danger exists and the child will suffer serious abuse or neglect if the child is not removed from the home.

Following a fact-finding and dispositional hearing, 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.

If the court orders a child returned home during a dependency proceeding, casework supervision by the DCYF must continue for at least six months, at which time a review hearing must be held and the court must determine the need for continued intervention.

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. The court must order the DCYF to file a petition seeking termination of parental rights if the child has been in out-of-home care for 15 of the last 22 months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not

appropriate.

Family and Juvenile Court Improvement Grant Program.
A superior court may apply for grants from the Family and Juvenile Court Improvement Grant Program (Grant Program) by submitting a local improvement plan with the Administrative Office of the Courts (AOC). To be eligible for grant funds, a superior court's local improvement plan must meet the criteria developed by the AOC and be approved by the Board for Judicial Administration.

At a minimum, the criteria must require that the court's local improvement plan meet the following requirements:

- commit to a chief judge assignment to the family and juvenile court for a minimum of two years;
- implement the principle of one judicial team hearing all of the proceedings in a case involving one family, especially in dependency cases;
- require court commissioners and judges assigned to family and juvenile courts to receive a minimum of 30 hours of specialized training in topics related to family and juvenile matters within six months of assuming duties in a family and juvenile court; and
- submit a spending proposal.

The Grant Program was established in 2008 and there are currently 10 counties that receive funding through the program: Chelan, Clallam, Island, Jefferson, King, Kitsap, Pierce, Snohomish, Spokane, and Thurston.

Summary of Amended Bill:

Child Welfare Process.
A court must give great weight to the lethality of high-potency synthetic opioids and public health guidance from the Department of Health (DOH) related to high-potency synthetic opioids when considering whether the child may remain in the home of a parent when considering:

- whether to issue a pickup order;
- whether placing or maintaining a child in shelter care is necessary to prevent imminent physical harm to a child;
- whether a parent, guardian, or legal custodian's participation in any prevention services would prevent or eliminate the need for the child's removal; and
- whether a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home during a dispositional hearing.

The child abuse or neglect establishing the basis for a determination of imminent physical harm during a request for a pickup order, law enforcement removal, and hospital hold may include, but is not limited to, child abuse or neglect resulting from a high-potency synthetic

opioid.

"High-potency synthetic opioid" is defined to mean an unprescribed synthetic opioid classified as a Schedule II Controlled Substance or Controlled Substance Analog in state law or by the Pharmacy Quality Assurance Commission in rule including, but not limited to, fentanyl.

Training and information.
The list of topics that must be included in the required judicial training for Family and Juvenile Court Improvement Grant recipients are expanded to include:

- substance use disorder, including the risk and danger to children;
- how to apply the child safety framework to crucial aspects of dependency cases, including safety assessment, safety planning and case planning; and
- the legal standards for removal of a child based on abuse or neglect.

The Administrative Office of the Courts must develop, deliver, and regularly update training for judicial officers and dependency court system partners regarding child safety and the risk and danger presented to children and youth by high-potency synthetic opioids and other substances impacting families.

The DOH, in collaboration with the DCYF, must convene a work group on children and exposure to fentanyl to provide information for child welfare workers, juvenile courts, and families regarding the risks of fentanyl exposure for children and child welfare workers in child protective services investigations. The information must be made available to child welfare court professionals.

Services and Staff Positions.
Legal liaison positions within the DCYF are established in at least one of each of the six DCYF regions to work with both the DCYF and the Office of the Attorney General for the purpose of assisting with the preparation of child abuse and neglect court cases.

The DCYF must establish a pilot program for contracted child care slots for infants in child protective services in places with the historically highest rates of child welfare screened-in intake due to exposure or presence of high-potency synthetic opioids in the home.

The DCYF must enter into targeted contracts with existing home-visiting programs in locales with the historically highest rates of child welfare screened-in intake to serve families.

The Health Care Authority must expand specific treatment and services to children and youth with prenatal substance exposure who would benefit from evidence-based services impacting their behavioral and physical health.

The DCYF must provide funding and support for two pilot programs to implement an

evidence-based, comprehensive, intensive, in-home parenting services support model to serve children and families from birth to age 18 who are involved in child welfare, children's mental health, or juvenile justice systems.

The DOH must provide funding to support promotoras in at least two communities. These promotoras must provide culturally sensitive, lay health education for the Latinx community, and act as liaisons between their community, health professionals, and human and social service organizations.

The DCYF must establish a pilot program to include third-party safety plan participants and public health nurses in child protective services safety planning.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill modifies the intent section in a manner that is consistent with other provisions of the bill.

The amended bill specifies that the great weight that the court is required to give when a pick-up order is requested or out-of-home placement is requested during a shelter care hearing applies to the court's determination of whether removal is necessary to prevent imminent physical harm to the child due to child abuse or neglect.

The amended bill includes "high-potency synthetic opioid" in the nonexhaustive list of what constitutes "imminent physical harm" in two instances where that term was not added, which is consistent with the addition of that term added in other places describing what constitutes "imminent physical harm."

The amended bill specifies that to the extent possible, the workload of legal liaisons must be geographically divided to reflect where the highest risk and most vulnerable child abuse and neglect cases are filed.

The amended bill modifies the work group convened by the Department of Health to include collaboration with poison information centers, specifies that the work group is focused on exposure of children to fentanyl, adds caregivers to the groups this information is intended to provide information for, specifies that the fentanyl exposure is for children receiving child welfare services or child protective services, and requires that the information developed be publicly available.

The amended bill modifies the components of the required judicial training for counties receiving Family and Juvenile Court Improvement funding to include training on: (1) substance use disorder, including the risk and danger to children; and (2) how to apply the child safety framework to crucial aspects of dependency cases, including safety assessment, safety planning, and case planning.

The amended bill adds a requirement that the Administrative Office of the Courts develops, delivers, and regularly updates training for judicial officers and dependency court system partners regarding child safety and the risk and danger presented to children and youth by high-potency synthetic opioids and other substances impacting families.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill does not perpetuate the disproportionate impact of child welfare on marginalized communities. Our systems were designed to keep people where they are.

This bill is a response to the public health fentanyl crisis. There has never been a crisis like this resulting in child deaths like this one. This bill provides tools for court partners. This bill increases the services available to families.

This bill involves the smallest victims and the ones impacted the most. This version of the bill specifies that this bill applies the public health guidance established by the Department of Health (DOH), and not anecdotal information.

There are fewer services provided in this bill.

The Department of Children, Youth and Families (DCYF) has a responsibility to train their own staff, and that role should not be removed from them.

A third-party safety planning piece is included in this bill. The DOH is happy to provide the information required by the bill.

In the last few years critical incidents have quadrupled from eight incidents in 2021 to at least 35 in 2023. Around 93 percent of those incidents involved children 2 years old and under. There are harmful and risky situations in the home in these incidents related to high-potency synthetic opioids.

There just are not enough services available to support parents and families. Services being provided do not always mean safety for children in the home. Both the language around synthetic opioids and education within the court system will help address this disparity.

This bill strengthens the language and statute around the dangers of synthetic opioids and is

also a greatly needed first step towards increasing the services available for families, especially those struggling with substance use.

Regarding fentanyl testing strips, these are a crucial safety tool for families to use as a mechanism to test whether fentanyl is present in existing substance users, but should not be used to determine whether a child should be removed. Caseworkers currently use these fentanyl testing strips to safely test families who may be using other substances for fentanyl, not for any additional reasons. These testing strips are already available to caseworkers in King County and should be made available in other places. Caseworkers use water-soluble testing strips, which require a powder to be dissolved in water and then the strip is dunked in that.

Between 2017 and 2022 the number of dependency petitions filed in Washington declined by over 50 percent, and between July 1 and December 1, 2023, we saw approximately 23 percent fewer children coming into care with the largest reduction being among the youngest children. But at the same time, we are seeing a large increase in fentanyl-related critical incidents primarily among children age 0 to 2.

A parent's willingness to even participate in services does not automatically make a child safe, and providing education to the court about what services are available and what those services entail will help the court better understand both the opportunities and the limitations of those services as they relate to child safety. Senate Bill 6109 recognizes the lethality of fentanyl and prioritizes child safety.

(Opposed) Resources related to opioid use disorder are difficult to find. This bill would perpetuate harm to black and brown individuals mirroring the war on drugs. Resources and support are more effective than threatening to remove children. Fentanyl test strips should not be included in this bill and should either not be used by DCYF employees or used only in very narrow circumstances.

The language in this bill also does not differentiate between methadone and fentanyl as a high-potency opioid, effectively further stigmatizing and criminalizing people, and limiting access to one of the most effective treatments for opioid-use disorder. This bill limits its focus to unprescribed highly potent synthetic opioids, but it is hard to get access to those medications and sometimes people take medication that has been diverted from another person in order to try and stabilize and not end up in an overdose situation when they are parenting. So the unintended consequence of this could be that people will not understand that methadone does not trigger the components of the bill and they will not engage in treatment.

Placing children in state custody and foster care and incarcerating their parents is not a meaningful response to accidental overdose. It will perpetuate the trauma, instability, poverty, and stigma that contribute to overdose mortality. It is difficult for individuals to obtain medication-assisted treatment, and this bill could create fear among those receiving

medication-assisted treatment and cause them to decrease that treatment. The impact of bills like this decreases the use of treatment and emergency services.

This bill will disproportionately impact black and brown people. Removing children stigmatizes parents. Restoring people requires equitable access to treatment and taking the time to understand this issue. Over the past two sessions, efforts have been made toward criminalization of people as opposed to restoring them.

(Other) This bill strikes the right balance in responding to this public health crisis. The bill provides clarity in the law related to the safety of children, resources to families, and guidance to courts. Courts have applied laws regarding the removal of children differently across the state.

Courts need clarity related to the standard for the removal of children when fentanyl is present, and the application of great weight is appropriate. The DCYF believes this bill strikes the right balance in responding to the crisis that you have heard about today, in prioritizing support for our families, as well as the safety of children. Substance use alone is not and should not be a reason to remove a child. Parents navigating the complexities of addiction need support, and interventions that focus on recovery, while keeping their family together and their children safe. In the past year we have seen in courtrooms inconsistent application around the harm and realities of fentanyl, and again, feel the language adds clarity that our social workers as well as the judicial branch need to create some consistency. The great weight established in this bill indicates to the court that more likely than not the thing you are giving great weight to, in this case the lethality and the potency of synthetic opioid, causes or can cause imminent physical harm. Other conditions still need to be considered, so it does not mean it automatically establishes that imminent physical harm, but the DCYF believes that having the language in court around great weight feels sufficient to clarify this issue without causing unintended consequence or putting undue burden on it. The key difference between this and a rebuttal presumption, which is what the DCYF initially proposed, is that rebuttal presumption puts the burden on the other party to defend or rebut that presumption, which at a shelter care phase is within 72 hours, and that is really fast. That burden could have unintended consequences and perhaps goes too far, whereas great weight says the court must consider that and think about the fact that the lethality of the substance more likely than not can cause imminent physical harm. The DCYF supports where the bill is at now.

When parents have access to medications for opioid disorder, housing, residential substance use disorder treatment, outpatient treatment, peer support, home visiting, and other services and supports, children are safer.

An ounce of prevention is worth a pound of cure. Our concern with this current bill is that instead of funding downstream education for guardians ad litem, there needs to be rapid assistance provided to families before they are systemically involved. Providers working with families refer to a golden hour where a parent's willingness to go to treatment can be

matched with an available treatment bed date for optimal success. But too often, there are not enough beds and the trend we see is treatment beds closing across the state.

A flexible fund should be created to support families to avoid unnecessary removal. Families need transportation vouchers, concrete goods, hotel vouchers, the ability to get to treatment, and other things that allow families to remain together. It can be something as simple as concrete goods, which could be a car seat, baby formula, and other things that are necessary in order for a baby to be safely discharged.

Medications to manage opiate withdrawal are rarely given adequately and often not given at all. Mothers need extra time after giving birth to stabilize and move forward with recovery. Effective treatment for fentanyl use disorder is used for other substances. Methadone and Buprenorphines save lives and preserve families. Access to methadone is difficult for people and can involve a commitment of 4 to 6 hours a day. Mobile methadone clinics and better transportation would help with that issue.

Lack of safe, sober housing makes it impossible to move forward. Washington has been a leader with the six-month residential mother-and-baby Pregnant and Parenting Women Program, but low funding rates make it very hard for these programs to provide enough capacity. A hospital-based program has had literally the same reimbursement with no inflation adjustment for 20 years. Hospitals are taking a loss for every single patient they admit and this has kept the number of admissions low and there is a long waiting list for people.

Reimbursement rates make it very difficult for treatment providers to remain in business as the reimbursement rates are often not enough to cover the cost for a provider.

There is an effort to expand services in this bill, but honestly, most of the services seem to live in the DCYF and court area, whereas patients really need direct services so they can move forward effectively.

The court-training component that was removed should be added back to the bill. Asking the DOH to create and distribute materials related to children and fentanyl is not enough. Training is needed for child welfare professionals to maintain the safety of children and keep families together. Without this training, there will be different approaches taken throughout the state.

The language in section 108 should be modified to be consistent with the American Bar Association standards.

Generating guidance from the DOH is critical. Accurate public health information available to guide decision-makers from the system will result in the best outcomes for children. There is not sufficient access to treatment services for families now, and that really should be the primary focus, particularly family-based treatment and family-based

residential treatment.

The term "substance abuse" is not defined in law. The preferred terminology is "substance use disorder".

The child welfare statute is incredibly complex. Adding additional complexity to this statute has consequences. Every change that that is made requires a lot from all the players in the system to understand what is intended.

Persons Testifying: (In support) Senator Claire Wilson, prime sponsor; and Chelsea Burroughs and Kati Durkin, Washington Federation of State Employees.

(Opposed) Courteney Wettemann; and Malika Lamont and Deaunte Damper, Voices of Community Activists and Leaders—Washington.

(Other) Adam Ballout, ABC Law Group; Allison Krutsinger, Department of Children, Youth, and Families; Amethyst Lenz; Jim Walsh; Tara Urs; Laurie Lippold; Kelly Warner-King, Washington State Administrative Office of the Courts; and Ryan Murrey, Washington Association of Child Advocate Programs.

Persons Signed In To Testify But Not Testifying: None.