SENATE BILL REPORT
SB 6109

As of January 29, 2024

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: 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: 1/18/24, 1/22/24 [DPS-WM, w/oRec]. Ways & Means: 1/29/24.

Brief Summary of First Substitute Bill

- Establishes that the basis for the determination of imminent risk of physical harm may include, but is not limited to, endangerment with high-potency synthetic opioids which occurs when a parent, guardian, or legal custodian knowingly or intentionally creates a risk that a child will be harmed from exposure, ingestion, inhalation, or contact with high potency synthetic opioids which occurs when a parent, guardian, or legal custodian knowingly or intentionally creates a risk that a child will be harmed from exposure, ingestion, inhalation, or contact with high potency synthetic opioids
- Allows law enforcement to take a child into custody without a court order if there is probable cause to believe that taking the child into custody is necessary to prevent imminent physical harm to the child due to child abuse or neglect resulting from endangerment with high-potency synthetic opioids.
- Allows an administrator of a hospital or a physician to detain a child

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without consent of a person legally responsible for the child if there is probable cause to believe that detaining the child is necessary to prevent imminent physical harm to the child due to abuse or neglect resulting from endangerment with high-potency synthetic opioids.

- Directs the provision of services to children impacted by high-potency synthetic opioids.
- Defines high-potency synthetic opioids.

SENATE COMMITTEE ON HUMAN SERVICES

Majority Report: That Substitute Senate Bill No. 6109 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Wilson, C., Chair; Kauffman, Vice Chair; Frame, Nguyen, Warnick and Wilson, J..

Minority Report: That it be referred without recommendation.

Signed by Senator Boehnke, Ranking Member.

Staff: Alison Mendiola (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Joshua Hinman

Background: Dependency and Shelter Care Hearing. Anyone, including the Department of Children, Youth, and Families (DCYF), may file a petition in court alleging a child should be a dependent of the state due to abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe 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. The court must release a child to a parent unless the court finds 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.

Law Enforcement. A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe taking the child into custody 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, and the child would be seriously injured or could not be taken into custody if it were necessary to first obtain a court order.

Hospitals. An administrator of a hospital or similar institution or licensed physician may detain a child without consent of a person legally responsible for the child whether or not medical treatment is required, if there is probable cause to believe detaining the child 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, and the child would be seriously injured or could not be taken into custody if it were necessary to first obtain a court order provided that such administrator or physician shall notify or cause to be notified the appropriate law enforcement agency or child protective services.

Family and Juvenile Court Improvement Grant Program. A superior court may apply for grants from the Family and Juvenile Court Improvement Grant Program by submitting a local improvement plan with the administrator for the courts. To be eligible for grant funds, a superior court's local improvement plan must meet the criteria developed by the administrator for the courts and approved by the board for judicial administration. The criteria must be consistent with the principles adopted for unified family courts. 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;
- implementation of 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 court to receive a minimum of 30 hours specialized training in topics related to family and juvenile matters within six months of assuming duties in family and juvenile court. Where possible, courts should utilize local, statewide, and national training forums. A judicial officer's recorded educational history may be applied toward the 30-hour requirement. The topics for training must include parentage, adoption, domestic relations, dependency and termination of parental rights, child development, the impact of child abuse and neglect, domestic violence, substance abuse, mental health, juvenile status offenses, and juvenile offenders; self-representation issues, cultural competency, or roles of family and juvenile court judges and commissioners.

Courts receiving grant money must use the funds to improve and support family and juvenile court operations based on standards developed by the administrator for the courts and approved by the board for judicial administration. The standards may allow courts to use the funds to:

- pay for family and juvenile court training of commissioners and judges or pay for pro tem commissioners and judges to assist the court while the commissioners and judges receive training;

- increase judicial and nonjudicial staff, including administrative staff to improve case coordination and referrals in family and juvenile cases, guardian ad litem volunteers or court appointed special advocates, security, and other staff; and
- improve the court facility to better meet the needs of children and families; among other approved uses.

Home Visiting. Home visiting is a voluntary, family-centered service offered to expectant parents and families with new babies and young children to support the physical, social, and emotional health and development of the child.

Pregnant and Parenting Women. Pregnant and Parenting Women (PPW) services offered through the Health Care Authority (HCA) are designed to meet the needs of pregnant and parenting women who are seeking services. PPW offers substance use disorder residential treatment services for women and their children under the age of six for up to six months. Services may include a focus on domestic violence, childhood sexual abuse, mental health issues, employment skills and education, linkages to pre- and post-natal medical care, legal advocacy, and safe affordable housing.

Summary of Bill (First Substitute): Child Abuse or Neglect: Establishing the Basis for a Determination of Imminent Physical Harm, Establishing the basis for the determination of imminent risk of physical harm may include, but is not limited to, child abuse or neglect resulting from endangerment with potency synthetic opioids. Endangerment with high potency synthetic opioids occurs when a parent, guardian, or legal custodian knowingly or intentionally creates a risk that a child will be harmed from exposure, ingestion, inhalation, or contact with high potency synthetic opioids. When evaluating whether endangerment with high potency synthetic opioids necessities removal of the child to prevent imminent physical harm due to child abuse or neglect, the court shall consider at a minimum the following factors:

- public health guidelines and best practices;
- age of the child or children in the home; and
- whether the child is particularly vulnerable given the child's medical or developmental conditions.

Shelter Care Hearing. At a shelter care hearing, if the court has reasonable cause to believe that removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect, including that which results from endangerment with high-potency synthetic opioids as described above, the child shall not be released to the parent, guardian, or legal custodian.

Law Enforcement. A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe taking the child into custody is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from endangerment with a high-potency synthetic opioids , in addition to reasons already permitted by law, and the child would be seriously

injured or could not be taken into custody if it were necessary to first obtain a court order.

Hospitals. An administrator of a hospital or similar institution or any duly licensed physician, may detain a child without consent of a person legally responsible for the child whether or not medical treatment is required, if there is probable cause to believe detaining the child is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from endangerment with a high-potency synthetic opioids , in addition to reasons already permitted by law, and the child would be seriously injured or could not be taken into custody if it were necessary to first obtain a court order provided that such administrator or physician shall notify or cause to be notified the appropriate law enforcement agency or child protective services.

Services and Supports to Child Welfare Workers, Courts, and Families. DCYF is to establish a pilot program to include third-party safety plan participants and public health nurses in child protective services safety planning. The pilot program must include contracts in up to four department offices for third-party safety plan participants and public health nurses to support child protective services workers in safety planning; and provide support for cases involving high-potency synthetic opioids in families who do not have natural supports to aid in safety planning. Subject to appropriation.

Family and Juvenile Court Improvement Grant Program. The training for court commissioners and judges assigned to family and juvenile court to receive a minimum of 30 hours specialized training in topics related to family and juvenile matters within six months of assuming duties in family and juvenile court must include the risk and danger presented to children and youth by high-potency synthetic opioids and the legal standards for removal of a child based on abuse or neglect. Paying for the training of other professionals involved in child welfare court proceedings including, but not limited to, attorneys and guardians ad litem is an allowable use of grant money.

A child welfare worker who is required to respond to a private home or other private location to provide services to, monitor, or investigate a family may make a request to their supervisor to be accompanied by a second trained individual when the child welfare worker has concerns that violence could occur based on a family member's history of violence. When requested, DCYF is to arrange for a second trained individual to accompany the child welfare worker unless it is not possible to fulfill the request under the circumstances.

The second trained individual that may accompany a child welfare worker under this section may be:

- a law enforcement officer;
- a mental health professional;
- a first responder, such as a firefighter or emergency medical personnel;
- a public health nurse; or
- an employee of DCYF who is trained as a child welfare worker and acts in a supervisory capacity with respect to other child welfare workers.

No retaliation may be taken against a child welfare worker for requesting a second trained individual accompany them in providing services to, monitoring, or investigating a family.

DCYF is to establish a pilot program for contracted child care slots for infants in child protective services in locales with the historically highest rates of child welfare screened-in intake due to the parental substance use disorder was a factor in the case. Subject to appropriation.

Home Visiting. DCYF is to enter into targeted contracts with existing home visiting programs in locales with the historically highest rates of child welfare screened-in intake to serve up to 150 families. DCYF is to provide training specific to substance use disorders for the home visiting providers selected for this program. Priority for targeted contracted home visiting slots shall be given to:

- families with child protective services open cases;
- families with family assessment response open cases; and
- families with family voluntary services open cases.

DCYF is to establish a pilot program to connect pregnant people with high-potency synthetic opioid-related substance use disorders in screened-out referrals to community-based resources and supports. This pilot program shall offer voluntary prevention services aimed at reducing child placements in out-of-home care. DCYF shall implement this pilot program in at least eight counties. Subject to appropriation.

DCYF is to implement and maintain a program that provides support to child welfare workers from public health nurses. The support provided by public health nurses must include supporting child welfare workers in:

- engaging and communicating with families about the risks of high-potency synthetic opioids and child health and safety practices;
- developing standardized risk assessment procedures related to high-potency synthetic opioids; and
- determining the level of risk presented to a child or children in specific cases. Subject to appropriation.

Pregnant and Parenting Women. The Health Care Authority (HCA) is to establish a substance use disorder inpatient program that specializes in treating pregnant and parenting women using a family preservation model. HCA shall contract for the services authorized in this section with behavioral health entities in a manner that allows leveraging of federal Medicaid funds to pay for a portion of the costs. Funding provided under this section may be used for documented start-up costs including the recruitment, hiring, and training of staff. Entities contracted to provide services must allow families to reside together while a parent is receiving treatment. Subject to appropriation.

Four legal liaison positions are established within DCYF to work with both DCYF and the

Office of the Attorney General for the purpose of assisting with the preparation of child abuse and neglect court cases involving allegations of high-potency synthetic opioids. The workload of the legal liaisons is to be geographically divided to reflect where the highest risk and most vulnerable high-potency synthetic opioid-related child abuse and neglect cases are filed.

Highest risk and most vulnerable are determined by the age of the child and whether the child is particularly vulnerable given the child's medical or developmental conditions. DCYF may determine the necessary qualifications for the legal liaison positions. Subject to appropriation.

Child welfare worker means an employee of DCYF whose job includes supporting or providing child welfare services or child protective services.

High-potency synthetic opioids means illegally produced synthetic opioids classified as a schedule I or II controlled substance or controlled substance analog in chapter 60.50 RCW and federal law or listed by the pharmacy quality assurance commission in rule including, but not limited to, fentanyl.

EFFECT OF CHANGES MADE BY HUMAN SERVICES COMMITTEE (First Substitute):

The child abuse or neglect establishing the basis for a determination of imminent physical harm may include, child abuse or neglect resulting from endangerment from high potency synthetic opioids (HPSO), which occurs when a parent, guardian, or legal custodian knowingly or intentionally creates a risk that a child will be harmed from exposure, ingestion, inhalation, or contact with HPSO. When evaluating whether endangerment with HPSO necessitates the removal of a child to prevent imminent physical harm to a child due to child abuse or neglect, the court shall consider at a minimum the following factors: public health guidelines & best practices, in addition to language in the bill. This endangerment language is also changed as it applies to law enforcement and hospitals. The risk assessment language and availability of testing strips language is struck. HPSO means illegally produced synthetic opioids classified as a schedule I or II controlled substance or controlled substance analog in state law, and federal or listed by the pharmacy quality assurance commission in rule, including, but not limited to, fentanyl. Services: two were struck—Section 207 went beyond what the program could offer and 211 was repetitive of 210. Technical corrections.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

Fiscal Note: Requested on January 25, 2024

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services): *The committee recommended a different version of the bill than what was heard.* PRO: We have all seen the headlines about fentanyl as well as other opioids. We also have to focus on services for families, what we're seeing is what happens when we don't provide families with the resources they need. Everyone is looking for solutions. We need to do this for the best interest of all children, but there are a lot of unknowns. What is the science? This issue is a priority for the state, nation and word. This is not a perfect bill but it does represent a bi-partisan effort to support the families in need. Fentanyl is having a catastrophic impact on our communities, we need resources and to intervene earlier. Children are showing up in the ER dying. While there is trauma and disproportionality in removing children from their homes, 1227 did a wonderful job but happened to coincide with the fentanyl epidemic, we need to find a way to keep children safe.

CON: Removing a child often doesn't help the parent. Clinical care and public health needs to be person centered so a parent can safely parent or there are worse outcomes for the children including an increase in opioid deaths. What does the evidence show? It's not exposure or being in the same room, removal does more harm to the child. There is no definition, methadone should not be included. Also, test strips can show false positives.

OTHER: Substance use alone is not a reason to remove the child. Since 2018 there have been an increase in critical incidents. We need to clarify that fentanyl is dangerous and lethal and provide support services. This bill won't prevent a dependency or a judicial offer from removing a child due to an imminent risk of harm. Kids need the services, assess parents for the ability to care for the child. We should rely on science. Judges should have most current public health information. We have seen removals like crack in the 1990's. Despite 1227, there is still disproportionality in which children are removed from the home which leads to increased risks of homelessness and incarceration, among other negative long term effects. Public health should guide lawmakers.

Persons Testifying (Human Services): PRO: Senator Claire Wilson, Prime Sponsor; Joyce Gilbert, Child Advocacy Centers of Washington (CACWA); Paula Reed, Children's Advocacy Centers of Washington; Jason Cummings, Snohomish County Prosecuting Attorney; Lori Vanderburg, Dawson Place Child Advocacy Center (CAC).

CON: Melissa Moore, Drug Policy Alliance; Everett Maroon, Blue Mountain Heart to Heart.

OTHER: Kati Durkin, Washington Federation of State Employees; Laurie Lippold, Partners for Our Children; Jerry Milner, Family Justice Group; Mishka Terplan MD MPH,FACOG,DFAS; Jennifer Justice; Shrounda Selivanoff; Allison Krutsinger, Dept of Children, Youth, and Families.

Persons Signed In To Testify But Not Testifying (Human Services): PRO: Georgia

Spiropoulos, Equiscript; Lisa Wahl, No; Jeanette Obelcz, WFSE Member.

CON: Malika Lamont, Purpose Dignity Action (PDA); Jacob D'Annunzio, WA State Office of Public Defense; Carra Wetzel Chubb, Harm Reduction Doula Collective.

OTHER: Giovanni Severino, Latino Community Fund; Patrick Dowd, WA State Office of the Family and Children's Ombuds; Teshara Villaluz; Tara Urs, King County Department of Public Defense; Kathleen Biron.

Staff Summary of Public Testimony on First Substitute (Ways & Means): CON: This bill surveils and targets a population that we need to protect, not punish. Children removed from families has worse outcomes. This bill is not backed by evidence and is a panic response, while abandoning the promise from Keeping Families Together Act. In a time of housing shortages in a state with the most regressive tax system, this bill presents another barrier to low income Washingtonians, while the services component is wholly inadequate.

This bill is harmful and a return to the drug war policy. Picking one substance and blaming the user is not smart policy. Equating substance abuse to sexual abuse is damaging. A chilling effect for people asking for help.

OTHER: There have been near fatalities when a child ingested fentanyl while there was an open DCYF case. This bill strikes a balance between investing and training the judicial branch, while investing in services to keep families together. Services is a crucial component.

We'd like to work with the Legislature to fix the issue caused by incorporating a criminal statute standard into a dependency statute. The knowingly and intentionally standard is difficult to prove at a shelter care hearing.

There is a preference to support home visiting services that already exist. Testifier's agency provides services to over one-thousand families, of which about 10 percent are involved in substance abuse. 98 percent are able to make a change to keep their households safe.

We need staffing capacity to engage experts. Would love to develop education on the science of fentanyl because this training does not exist.

The bill will compound the fentanyl problem because almost all are limited by socioeconomic factors. Parents need access to long-term housing, child care, and other resources. Knowing you have a home over your head provides security.

Judges are not confused by the current standard and there is no data to show that the current removal standard is insufficiently clear or precise to keep children safe. Courts take a look on an individual basis and make a determination. We need to look at the actual root cause.

Strong support for inpatient treatment services for pregnant women. This is critical to

recovery. This treatment requires adequate intensity and duration.

A testifier with lived experience utilized inpatient treatment three times in five years, and has now been post-treatment for seven years. Supports options for parents to use substance use recovery, especially if that means they keep their children.

Persons Testifying (Ways & Means):

CON: Malika Lamont, VOCAL-WA ; Austin Field, SEIU 925.

OTHER: Kelly Warner-King, Washington State Administrative Office of the Courts; Atharshna Singarajah; Tara Urs, King County Department of Public Defense; Susan Stoner, Ph.D., Department of Psychiatry & Behavioral Sciences Addictions, Drug & Alcohol Institute; Allison Krutsinger, Dept of Children, Youth, and Families; Gabe Cisneros-Lassey; Mary Fischer, Institute for Family Development.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.