

HOUSE BILL REPORT

HB 2447

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 welfare process in circumstances involving high-potency synthetic opioids.

Brief Description: Supporting children and families.

Sponsors: Representatives Senn, Callan, Ramel and Pollet.

Brief History:

Committee Activity:

Human Services, Youth, & Early Learning: 1/23/24, 1/30/24 [DPS].

Brief Summary of Substitute Bill

- Requires courts to give great weight to the lethality of and public health guidance 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, expands training for professionals involved with the child welfare court process, and adds positions within the Department of Children, Youth, and Families.

HOUSE COMMITTEE ON HUMAN SERVICES, YOUTH, & EARLY LEARNING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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.

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, 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—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: 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, other 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 court 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 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 Substitute Bill:

Child Welfare Process.

A court must give great weight to the lethality of high-potency synthetic opioids and public health guidance 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.

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:

- the risk and danger presented to children by high-potency synthetic opioids;
- policies and procedures of the Department of Children, Youth, and Families (DCYF) regarding safety and service planning including the differences between safety plans and service plans; and
- the legal standards for removal of a child based on abuse or neglect.

The Administrative Office of the Courts must provide funding to a statewide organization focused on advocating for the best interest of children experiencing abuse and neglect to develop and provide training regarding the risk and danger presented to children by high-potency synthetic opioids and the legal standards for removal of a child based on abuse or neglect.

Services and Staff Positions.

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 DCYF must implement and maintain a program that provides support to child welfare workers from public health nurses.

The Health Care Authority (HCA) must establish a substance use disorder inpatient program that specializes in treating pregnant and parenting women using a family preservation model.

The HCA 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.

Legal liaison positions within the DCYF are established in at least one of each of the DCYF regions (there are six) 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 to include third-party safety plan participants and public health nurses in child protective services safety planning.

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 Department of Health 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.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that the court must give great weight to the lethality of high-potency synthetic opioids and public health guidance related to high-potency synthetic opioids when considering whether the child may remain in the home of a parent during a:

- request for a pickup order;
- shelter care hearing; and
- dispositional hearing.

The substitute bill modifies the definition of "high-potency synthetic opioid" 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, by removing the reference to federal law and excluding high-potency synthetic opioids that are illicitly used or classified as a Schedule I Controlled Substance.

The substitute bill removes the requirement that the Department of Children, Youth, and Families (DCYF) provide fentanyl testing strips to DCYF staff.

The substitute bill requires the Administrative Office of the Courts to provide funding to a statewide organization focused on advocating for the best interest of children experiencing abuse and neglect to develop and provide training regarding the risk and danger presented to children by high-potency synthetic opioids and the legal standards for removal of a child based on abuse or neglect.

The substitute bill requires the DCYF to 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 substitute bill requires the Department of Health to provide funding to support promotoras in at least two communities. These promotoras shall 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 substitute bill removes the grant program that provides grant funding to a nonprofit organization to provide supports, including behavioral health resources, housing services,

and parenting education, to parents with substance use disorders in order to reduce the need for foster care placement or to shorten the time that children remain in out-of-home care when placement is necessary.

The substitute bill replaces the requirement that four legal liaison positions be created within the DCYF with a requirement that there be at least one legal liaison position established within each region of the six DCYF regions.

Appropriation: None.

Fiscal Note: Requested on January 21, 2024.

Effective Date of Substitute 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) There have been child fatalities from fentanyl. The goal of this legislation is to protect children from fentanyl. It is important to try and strike the right balance here.

The current interpretation of imminent physical harm required to remove a child is preventing caseworkers from removing children who are exposed to fentanyl during a public health crisis related to that substance. Children do not have time to wait. This bill increases support for children and families and clarifies the legal standard for child removal when fentanyl is present.

This bill provides much needed clarification for child removal. The criticism that caseworkers receive in court is a major reason why many caseworkers leave the field. Judges tear caseworkers down on a personal level. Additional training for judges and commissioners will improve the safety of children and families. High-potency synthetic opioids have tripled the incidents of child fatality and near fatality.

There are cases where the Department of Children, Youth, and Families (DCYF) has to file a case multiple times. It is only after a child is involved in a fatality or near fatality that the court will remove a child.

Caseworkers are seeing the impact of fentanyl on a daily basis. Keeping families together cannot be prioritized without recognizing the devastating impact of fentanyl. The risks posed by fentanyl are accidental and not a result of parents not caring for their children. Caseworkers know that children are being exposed to fentanyl, but are not able to remove children from the home unless a child overdoses. It is possible to safety plan for a family when heroin is present in the home, but it is often impossible to safety plan when fentanyl is present.

This bill provides clarity in the law, provides needed services, and provides support for the judicial system.

Substance use alone should not result in the removal of children. Since 2018 there has been a consistent increase in child fatalities or critical incidents where the DCYF is investigating or providing services. In 2018 there were two critical incidents involving fentanyl. Last year there were 33 of these cases involving fentanyl. In 28 of those cases, the children were under two years old.

In courts around the state there has been inconsistent application of the law. The language in this bill provides necessary clarity. This bill names the danger and lethality of a high-potency synthetic opioid and requires judges to consider that lethality and potency.

There is a lack of data regarding the number of dependency filings involving fentanyl where a request for out-of-home placement is denied by a court.

This bill may not go far enough. This bill ignores the threat posed to children by other drugs like methadone, heroin, cocaine, and oxycodone. Active drug users need the push into treatment that an open child welfare case can provide. The Legislature should go back to the child removal standard that existed before the adoption of House Bill 1227.

(Opposed) Information about fentanyl must be fact-based and rooted in health. It is crucial for the Legislature to ground any action taken on high-potency synthetic opioids such as fentanyl on real facts about how people can be exposed. The evidence in research shows what is not a source of problematic exposure: touch, secondhand exposure, or being in the same room as the substance. The Department of Health public awareness document regarding fentanyl exposure in public places indicates that a person cannot overdose from just touching fentanyl. In fact, there are no confirmed cases of overdose from touching fentanyl powder or pills. While fentanyl can be absorbed through the skin, this happens only with constant direct contact over hours and days. Overdoses can only occur based on prolonged exposure to the substance. The same guidance indicates that inhalation of fentanyl smoke is incredibly unlikely to result in overdose.

In powder form, the way it is almost always found in the illicit drug supply, the drug cannot be absorbed through the skin. Just being near the substance also won't cause an overdose. It's the same reason you can touch sugar without your blood sugar going up. Solids do not cross through your skin.

Families should be given the necessary supports and services to ensure that they can provide safe nurturing environments for children. Unfortunately, the war on drugs has been a key tool in perpetuating this incredibly harmful system, especially against parents of color.

This bill has the potential to create greater harm no matter how well intended it is. Fentanyl

test strips create a binary result, only demonstrating that a substance is present, but not demonstrating that this substance is a threat to children or whether those children should be removed from the home. Additionally, they can create false positive results, especially when testing stimulants without proper dilution.

Fentanyl test strips are a critical public health tool for use with individuals that are already using substances but they are not a tool for investigation and they are not the tool that should be used to justify whether or not children should be taken away from their family.

Child removal is a negative outcome that creates a higher chance for negative outcomes in the future. The reactive return to a punitive drug policy offers a disturbing level of unbridled discretion to systems that have statistically been proven to have bias and these trainings will not necessarily address that for the courts.

(Other) Separating families harms them. Children who have experienced foster care are more likely to experience homelessness. There are many loving foster homes, but there are also harmful foster homes. The drug policies in this country have had a disproportionate impact on families of color.

The law does not require keeping families together at all costs. Separating families is not the answer. Families need support. This bill is not the solution.

It is challenging for people with substance disorders to come forward and request for help. When substance use is criminalized, outcomes decline. Fentanyl is part of every epidural and has been around for a long time. Fentanyl is new in the illicit market. Most likely testing for fentanyl will be done through urine testing. Any person who has had an epidural will test positive and fentanyl will remain in someone's system for weeks.

This is a step back to the criminalized approach to drugs. You might feel like you are preventing child deaths because of these changes, but this will mask the number of families who do not seek out any help. Global changes in drug supply have resulted in the unavailability of heroin.

Small amounts of fentanyl can be harmful. Small amounts of fentanyl inhaled or that someone comes into contact with is not harmful, but ingestion of fentanyl can be fatal.

The removal of a child from a parent may prevent that parent from receiving the support they need. Services and supports are crucial, but the child removal components will create more harm than good.

There is concern about unintended consequences of this bill, like people unintentionally consuming fentanyl. This bill creates more fear among parents that their children will be removed. Creating a rule specific to high-potency synthetic opioids risks parents giving up altogether.

There are concerns around the child welfare components of this bill. The current law does not prevent children from being removed, or the DCYF from seeking removal of children, when there is imminent physical harm.

Everyone wants children to be safe. Taking a child from a parent is the most consequential thing the government can do. And because of that, any changes to the law in this area have to be weighed very carefully because the stakes are so incredibly high.

The Keeping Families Together Act was based almost word for word on the Indian Child Welfare Act, which has been in place since 1978.

This legislation would create enormous uncertainty. It is unclear and confusing. Depending on what it means, it might be unconstitutional, particularly if it allows judges to presume that substance use causes harm to children, which it might.

The definition raises serious due process concerns. It is not clear what federal laws being referenced or what drugs are being included or excluded from this definition.

This bill makes changes to the definition of the word "available" in the dispositional hearing statute, which would have profound implications that this committee has not fully considered.

This bill will not make children safer and may actually put them a greater risk of harm.

If increasing stigma creates fear and drives families away from treatment, I urge the committee to pause, and act with greater care, and gather data.

When children are brought before the court, courts are making the appropriate decisions. Treatment will make the most difference in these cases. Previous changes to the child removal standard included in House Bill 1227 do not prevent courts from removing children when there is imminent physical harm.

Judges need to stay on the rotation for longer than 12 months and receive training from experts regarding the public health guidance regarding fentanyl.

The focus of this bill on high-potency synthetic opioids may be problematic. Alternative factors may be appropriate for courts to consider. The current legal structure provides the appropriate discretion in approaching these issues.

Persons Testifying: (In support) Representative Tana Senn, prime sponsor; Jeanette Obelcz and Chelsea Burroughs, Washington Federation of State Employees; Paula Reed, Children's Advocacy Centers of Washington; and Allison Krutsinger, Department of Children, Youth, and Families.

(Opposed) Melissa Moore, Drug Policy Alliance; and Malika Lamont, Voices of Community Activists and Leaders Washington.

(Other) Shrounda Selivanoff; Teshara Villaluz; Jennifer Justice; Laurie Lippold; Tara Urs; Susan Stoner; Jacob D'Annunzio, Office of Public Defense; Patrick Dowd, Office of the Family and Children's Ombuds; Christina Faucett; and Jim Walsh.

Persons Signed In To Testify But Not Testifying:

Everett Maroon, Blue Mountain Heart to Heart; and Mishka Terplan.