

# HOUSE BILL REPORT

## E2SHB 1227

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**As Passed House:**

March 4, 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:**

**Committee Activity:**

Children, Youth & Families: 1/20/21, 1/27/21 [DPS];

Appropriations: 2/11/21, 2/16/21 [DP2S(w/o sub CYF)].

**Floor Activity:**

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

**Brief Summary of Engrossed Second Substitute Bill**

- Requires hospitals, law enforcement, and courts to find that 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 that removal of the child is necessary to prevent imminent physical harm and that the evidence show a causal

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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.*

relationship between the conditions in the home and imminent physical harm to the child.

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## HOUSE COMMITTEE ON CHILDREN, YOUTH & FAMILIES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Callan, Eslick, Goodman, Ortiz-Self, Wicks and Young.

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

**Staff:** Luke Wickham (786-7146).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Children, Youth & Families. Signed by 30 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Boehnke, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Schmick, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives Chambers, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Caldier.

**Staff:** Mary Mulholland (786-7391).

### **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 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 Engrossed Second Substitute 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, 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;
- that the allegations contained in the petition, if true, establish that there are reasonable grounds to believe that 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 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 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 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, 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 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 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, 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 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.

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 a 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:** Available. New fiscal note requested on February 26, 2021.

**Effective Date:** The bill takes effect on July 1, 2023. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony (Children, Youth & Families):**

(In support) Many facets of the child welfare system have not changed in a long time, including the racial disproportionality of children represented in child welfare and the way in which the child welfare system operates. National data indicates that 50 percent of black families will receive a child abuse and neglect investigation before the child turns age 18, while black parents are no more likely than white parents to abuse and neglect or neglect

their children. In fact, studies have shown that incidents of abuse and neglect are actually lower among black families.

While the majority of accepted referrals are based on concerns of neglect rather than abuse, and that neglect is often related to poverty, far more is invested in reimbursing for foster care than helping parents out of poverty. The child-only Temporary Assistance for Needy Families grant is \$363 for the first child, and around \$100 for a second child, while the basic foster care rate starts at \$760. Child welfare experts are looking to stop tinkering and eliminate racial disproportionality and unnecessary removal of children. This bill takes a substantial step in that direction.

This bill protects children from family separation. The bill requires meaningful evidence before families are separated. Research over the past 10 years has shown that children are harmed by removing them from their families. The current statute does not give judges enough guidance to make consistent decisions and avoid arbitrary decision making. This removal has often occurred as an impulse to keep children safe, while it is known that this removal is sometimes necessary, it does cause significant trauma.

This bill requires a judge to weigh the risks present for a child against the harm that will be inflicted by removal.

Reasonable cause is an extraordinarily low burden. Preponderance of the evidence is the burden of proof in almost all civil proceedings. It is possible that issues related to substance abuse could still lead to removal, but that substance abuse alone would not. The imminent physical harm standard is the standard currently used in the Indian Child Welfare Act.

If parents agree to services, the court may return the child to the parent, while the parent participates in services.

There is compelling research demonstrating the trauma that is placed on families following the removal of a child.

Many families whose children are removed are working hard to maintain healthy homes and love their children. There is a need to give everyone a fighting chance to keep their families together. No one can imagine the profound loss experienced when a child is removed. Many children have been removed from families unnecessarily. Unconscious bias perpetuates the disproportionate placement of children of color. There is a need to prevent the unnecessary removal of children and the trauma that follows.

Removing children is a maladaptive response to families asking for help. Families are often in crisis and need support to move through it. Families need access to services that will allow children to remain in the care of the parent.

The burden of proof needs to be raised in a system that allows hearsay as evidence. This

bill does not do enough to prevent unnecessary removal, but it is a good step in the right direction.

Children are seriously harmed when removed from parents. This bill requires that courts consider that harm before authorizing removal.

Most children who are removed from a parent are separated from siblings. The bill helps to support and preserve families.

Instead of the system tearing families apart, the system should support families.

The removal of children from parents creates lasting trauma for children feeling abandoned. The system judges families based on their color. Reuniting families later on does not undo the trauma that has been done.

Out-of-home care should be used as an absolute last resort. This bill creates a framework for making removal a last resort, eliminating bias in the removal process, and supporting placement with relatives.

(Opposed) None.

(Other) There are a few concerns about this bill. The basis for removal of a child would be based on imminent physical harm and would not allow for circumstances of chronic neglect. The bill provision in the bill that provides that a relative may care for a child when that relative does not believe the parent presents a danger to the child is problematic. There is a need to ensure that all families have access to services before there is involvement in the child welfare system. The child welfare system should be equipped to support families with services when poverty is preventing them from adequately parenting.

**Staff Summary of Public Testimony (Appropriations):**

(In support) Children who are removed from their families and placed in foster care can feel overwhelmed by stress and rejection. The impact to a child's brain can cause problems later in the child's life. Current law is based on the old idea that if a child is at any risk at all in their family home, they must be removed and placed in foster care. There are clearly situations in which a child must be removed from their family home for safety reasons, but it is time for state laws to recalibrate. A disproportionate number of families of color have a child removed from their home due to poverty. Family separation must be truly the last resort.

The state must find better ways to preserve families by providing services that address root causes and prevent the need to remove the child. It is time to invest in community resources for equity, stabilization, and healing.



Many parents with developmental disabilities have been separated from their babies after giving birth at a hospital, especially in Eastern Washington, for no reason other than that the parent has a disability.

(Opposed) None.

**Persons Testifying (Children, Youth & Families):** (In support) Representative Ortiz-Self, prime sponsor; Laurie Lippold, Partners for Our Children; Hannah Roman; Shrounda Selivanoff; Jill May; Heather Cantamessa; Annie Chung; Esther Taylor; and Liz Trautman.

(Other) Patrick Dowd, Office of the Family and Children's Ombuds.

**Persons Testifying (Appropriations):** Diana Stadden, The Arc of Washington State; Dave Newell, Children's Home Society of Washington; Tara Urs, King County Department of Public Defense; Carla Arnold, YouthNet; and Nina Caso.

**Persons Signed In To Testify But Not Testifying (Children, Youth & Families):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.