

# Shelter Care

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<sup>i</sup> Originally written in 2014 by Shawn Crowley

## **Filing a Dependency Petition**

Any person<sup>2</sup> can file a petition with the clerk of the superior court showing that a dependent child is “within the county” or resides in the county.<sup>3</sup> Counties are not permitted to charge a fee for filing such petitions.<sup>4</sup>

A petition may be amended at any time. The court shall grant additional time if necessary to ensure a full and fair hearing on any new allegations in an amended petition.<sup>5</sup>

## **Jurisdiction and Venue**

A child is “within the county” for purposes of jurisdiction in a dependency proceeding when the child is physically within the county, regardless of the residence of the parent<sup>6</sup>, guardian<sup>7</sup>, or legal custodian (“the parent”<sup>8</sup>).<sup>9</sup> The convenience of a forum other than the child’s county of residence or the county in which the child is physically located is a consideration which relates to venue, but not jurisdiction.<sup>10</sup> A child may be considered within the county of a particular superior court even though the child, who had been living in the county, spends brief periods of time with relatives in another county as result of need for emergency care.<sup>11</sup>

Juvenile courts have exclusive original jurisdiction over all proceedings relating to children alleged or found to be dependent, but jurisdiction continues only until the dependency action is terminated or the court determines that the child is no longer dependent.<sup>12</sup>

The family court has concurrent original jurisdiction with the juvenile court over all proceedings under chapter 13.34 RCW if a superior court judge of a county authorizes concurrent jurisdiction as provided in RCW 26.12.010.<sup>13</sup> The juvenile court has concurrent original jurisdiction with the family or probate court over minor guardianship proceedings under chapter 11.130 RCW and proceedings regarding parenting plans or residential schedules under chapter 26.09, RCW 26.26A, and RCW 26.26B RCW, under the terms set forth in chapter 13.34.<sup>15</sup> RCW.<sup>14</sup>

## **Notice of Removal – Allegations – Report**

Whenever a child is taken into custody by the Department pursuant to RCW 13.34.050 (“pick-up order”), or when the Department is notified that a child has been taken into custody pursuant to RCW 26.44.050 (“law enforcement hold”) or RCW 26.44.056 (“hospital hold”), the Department is required to make diligent efforts as soon as possible to inform the parent, including a parent who did not have physical custody of the child when the child was removed, of the reasons why the child has been taken into custody, as well as of the parent’s legal rights, including the right to a shelter care hearing.<sup>15</sup> Notice to the parent must be provided not later than 24 hours after the child is taken into custody or 24 hours after the Department is notified of the child being taken into custody.<sup>16</sup>

Notice of custody and rights may be given by any means reasonably certain of notifying the parent, including but not limited to in writing, by telephone, or in person.<sup>17</sup> The content of any

written notice of custody and rights shall be substantially in the form specified in RCW 13.34.062(2)(b). If notice is provided by a means other than written means, reasonable efforts must be made to give notice in writing as well.<sup>18</sup> Notice must be provided in an understandable manner, taking into account the parent's primary language, level of education, and cultural background.<sup>19</sup>

If, after reasonable efforts to provide notice of custody and rights, the parent cannot be located, notice shall be made to the last known address of the parent. Diligent efforts to advise and give notice shall, at a minimum, include investigation into the whereabouts of the parent.<sup>20</sup>

## **Notice Under Indian Child Welfare Act**

The 2011 legislature adopted a state version of the federal Indian Child Welfare Act (ICWA). The Washington State Indian Child Welfare Act (WICWA) supplements sections in chapter 13.34 RCW<sup>21</sup> and codifies WICWA under chapter 13.38 RCW. Every dependency petition filed must contain a statement alleging whether there is reason to know the child is or may be an Indian child as defined in RCW 13.38.040(7).<sup>22</sup> Reason to know that a child is or may be an Indian child triggers the additional notice and evidentiary requirements of ICWA and WICWA.<sup>23</sup> For example, if the Department knows or has reason to know that the child is or may be an Indian child as defined by WICWA, the Department must also notify the child's tribe in the manner required by RCW 13.34.070(10)<sup>24</sup> and by WICWA.<sup>25</sup> See the chapter on ICWA and WICWA, *infra*.

## **Definitions of Dependency**

A "dependent child" means any child who

- A. Has been abandoned;
- B. Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or
- C. Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.<sup>26</sup>

If the parents have an existing ability or capacity to adequately and properly care for their child, that ability is inconsistent with the status of dependency under subsection (6)(c).<sup>27</sup> RCW 13.34.030(6)(c) encompasses situations where the parents are incapable of caring for their child because of the child's extraordinary needs and the parents' own deficiencies. In such circumstance, the parents can petition for dependency even over the objection of the Department.<sup>28</sup>

The Department need not wait until a child is harmed before filing a dependency petition. For example, one court concluded that where a newborn child faced clear and present danger of suffering the same damage to her health and welfare as had already been suffered by her brother

and sister, the Department did not need to wait until the newborn was abused or neglected prior to intervening to protect the child.<sup>29</sup>

## **Content of Petition**

A dependency petition must state the child's county of residence, and the names, residences, and contact information of the child's parents, guardians, and legal custodians, if known to the Department (or other petitioning party). A dependency petition must be verified and must contain a statement supporting a basis for a dependency.<sup>30</sup>

The filing of a dependency petition does not, in and of itself, require the Department to seek removal of a child from the parental home. However, if the Department is seeking removal of the child from a parent, the petition must contain a clear and specific statement of the harm that will occur if the child remains in the care of the parent, and the facts that support that conclusion.<sup>31</sup>

A dependency petition must also include the following:

1. The name, age, sex, and residence of the juvenile so far as is known to the petitioner;
2. The name, marital status, and residence of the parent, guardian, or custodian, or person with whom the juvenile is residing, so far as is known to the petitioner. If any of this information is unknown, the petition shall so state;
3. Whether the petitioner knows or has reason to know that the juvenile is or may be an Indian child as defined by ICWA and WICWA, as well as the name of the tribe, if known, to which the juvenile belongs;
4. A statement of the statutory provisions which give the court jurisdiction over the proceeding;
5. A statement of the facts which give the court jurisdiction over the juvenile and over the subject matter of the proceedings, stated in plain language and with reasonable definiteness and particularity;
6. A request that the court inquire into the matter and enter an order that the court shall find to be in the best interests of the juvenile and justice; and
7. Any other information required by court rule or statute.<sup>32</sup>

## **Court Order to Take Child into Custody Pending Hearing (“Pick-Up Order”)**

The court may enter a pick-up order if (a) a petition is filed with the juvenile court with sufficient corroborating evidence to establish that the child is dependent; (b) 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 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 (c) an affidavit or declaration is filed by the Department in support of the petition setting forth specific factual information evidencing why there was insufficient time to serve a parent with a dependency petition and hold a hearing prior to removal.<sup>33</sup>

A parent does not have a constitutional right to a hearing before a pick-up order is entered.<sup>34</sup> However, if a petition is filed without the necessary affidavit or declaration, or if the affidavit or declaration is insufficient, the parents of the child must be provided with notice and an opportunity to be heard before a pick-up order can be entered.<sup>35</sup>

If the Department knows or has reason to know the child is or may be an Indian child as defined by ICWA or WICWA, the heightened standard for removal for an Indian child, pursuant to RCW 13.38.140, applies.<sup>36</sup> *See Shelter Care Hearing – Reason to Know*, below.

## **Service of Petition**

The petition and supporting documentation must be served on the parent, and if the child is in custody at the time the child is removed, on the entity with custody other than the parent. If the court orders that a child be taken into custody pursuant to a pick-up order, the petition and supporting documentation must be served on the parent at the time the child is taken into custody pursuant to the order unless, after diligent efforts, the parent cannot be located at the time of removal. If the parent is not served at the time of removal, the Department shall make diligent efforts to personally serve the parent. Failure to effect service does not invalidate the petition if service was attempted and the parent could not be found.<sup>37</sup>

## **Shelter Care Placement Pending Court Hearing**

A child taken into custody pursuant to a pick-up order or law enforcement hold shall be immediately placed in shelter care.<sup>38</sup> “Shelter care” means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.<sup>39</sup>

A law enforcement officer shall place a child in custody who was taken in violation of RCW 9A.40.060 or RCW 9A.40.070 (custodial interference). The law enforcement officer shall make every reasonable effort to avoid placing additional trauma on the child by obtaining custody at times and in a manner least disruptive to the child, and the law enforcement officer shall return the child to the person or agency having the right to physical custody unless the officer has reasonable grounds to believe the child should be taken into custody pursuant to a pick-up order or a law enforcement hold.<sup>40</sup>

In no case may a child taken into custody pursuant to a pick-up order, a law enforcement hold, or a hold pursuant to RCW 13.34.055 (custodial interference) be detained in a secure detention facility.<sup>41</sup>

No child may be held longer than 72 hours, excluding Saturdays, Sundays, and holidays, unless a court order has been entered for continued shelter care.<sup>42</sup> A child taken into shelter care shall be released if an order for continued shelter care is not entered within the statutory 72-hour period.<sup>43</sup>

Unless there is reasonable cause, based on specific evidence, 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, priority placement for a child in shelter care, pending a court hearing, shall be with a relative or with another suitable person as described in RCW 13.34.130(1)(b). The placement must be willing and available to care for the child and be able to meet any special needs of the child. The placement must also be willing to facilitate the child's visitation with siblings, if such visitation is part of the Department's plan or is ordered by the court. If a child is not initially placed with a relative or other suitable person requested by the parent, the Department must make continuing efforts to place the child with a relative or other suitable person requested by the parent on the next business day after the child is taken into custody. The Department shall also document its efforts to place the child with a relative or suitable adult requested by the parent.<sup>44</sup>

1. A relative includes persons related to the child in the following ways:
2. Any blood relative, including those of half-blood, and including first and second cousins, nephews, nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;
3. The child's stepfather, stepmother, stepbrother, or stepsister;
4. A person who legally adopts the child or the child's parent, as well as the natural and other legally adopted children of such persons, as well as other relatives of the adoptive parents in accordance with state law;
5. Spouses of any persons named above, even if the marriage is terminated;
6. Relatives (as named in the bullets above) of any half sibling of the child; and
7. Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a 24-hour basis to an Indian child as defined in 25 U.S.C. § 1903(4).<sup>45</sup>

When a child is taken into custody and placed in shelter care, the Department may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care, after informing the child's parent, unless the parent cannot be reached. The child's parent must be provided the opportunity to attend any authorized appointments, unless prohibited by court order.<sup>46</sup>

## **Disclosure/Discovery**

Copies of Department records to which the child and the child's parents have legal access in accordance with chapter 13.50 RCW shall be given to the child or child's counsel and the parent, guardian, legal custodian or their legal counsel prior to any shelter care hearing and within 15 days after the Department receives a written request for such records. These records shall be legible and provided at no expense to the person making the request.<sup>47</sup>

The Department shall make every effort to provide all other discoverable material prior to any shelter care hearing. Discovery shall be provided to the child's parent or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to

review the records prior to the hearing. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the client, and shall review the records with the client, prior to the shelter care hearing.<sup>48</sup>

## **Timing of the Shelter Care Hearing**

The court is required to hold a shelter care hearing within 72 hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays.<sup>49</sup> A court's failure to hold the initial shelter care hearing within the statutory time frame over the objection of the parent, absent a request for a continuance by the parent or their counsel, is error.<sup>50</sup>

In the context of a dependency proceeding, due process requires that parents have notice, the opportunity to be heard and defend, and the right to assistance of counsel.<sup>51</sup> Any child's attorney or parent who, for good cause, is unable to attend or adequately prepare for the shelter care hearing may request that the hearing be continued and that a subsequent shelter care hearing be scheduled. To do this, the requesting party must contact the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the child's attorney or parent, the court shall schedule the hearing within 72 hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the new hearing date by any reasonable means. If a parent is not represented by counsel, the clerk shall provide information regarding how to obtain counsel.<sup>52</sup>

The court shall hold an additional shelter care hearing within 72 hours, excluding Saturdays, Sundays, and holidays if the child is removed from the care of a parent at any time after the initial shelter care hearing.<sup>53</sup>

## **Waiver of the Hearing**

If a parent desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, that the waiver is knowing and voluntary.<sup>54</sup> A parent may not waive their right to the shelter care hearing unless they appear in court, in person or by remote means.<sup>55</sup> As part of this inquiry, the court should advise the parent of the nature of the shelter care hearing, the proceedings to follow the hearing, and the rights associated with a contested hearing.<sup>56</sup>

## **Advice of Rights**

If the hearing is not waived, the court must advise the parties of their basic rights at the commencement of the hearing. These rights are as follows:

1. To be represented by an attorney in all dependency proceedings, and, if indigent, to have counsel appointed for them by the court;
2. To introduce evidence;
3. To be heard in their own behalf;
4. To examine witnesses;

5. To receive a decision based solely on the evidence adduced at the hearing; and
6. To receive an unbiased fact-finder.<sup>57</sup>

## **Appointed Counsel**

At the shelter care hearing, the parent has the right to have counsel appointed for them by the court, if indigent. Unless waived in court, the court shall provide counsel if the child's parent (a) has appeared in the proceeding or requested the court to appoint counsel; and (b) is financially unable to obtain counsel because of indigency.<sup>58</sup>

Appointed counsel will be retained at public expense. Indigency includes the inability to obtain a lawyer without causing substantial financial hardship to the parent or the child's family.<sup>59</sup>

Similarly, at the shelter care hearing, the child has the right to be represented by counsel. Counsel shall be provided to the child at public expense subject to eligibility requirements pertaining to age and a phase-in schedule pursuant to RCW 13.34.212(3).<sup>60</sup>

## **Who May be Present at the Shelter Care Hearing**

All hearings shall be public and can be conducted at any time or place within the limits of the court, except if the court finds that excluding the public is in the best interests of the child.<sup>61</sup> Either parent, or the child's attorney or guardian ad litem (GAL), may move to close a hearing at any time.<sup>62</sup> If the public is excluded from the hearing, the following people may nonetheless attend the closed hearing unless the court finds it is not in the best interests of the child: the child's relatives, the child's foster parents if the child resides in foster care, and any person requested by the parent.<sup>63</sup>

Whether courtroom proceedings should be closed to the public requires the court to make an individualized determination based upon five factors:

1. The proponent of closure must make some showing of the need to do so, and the need involves a serious and imminent risk;
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure;
3. The proposed method for curtailing open access must be the least restrictive means available to protect the threatened interest;
4. The court must weigh the competing interest of the closure proponent and the public; and
5. The order must be no broader in its application or duration than necessary to serve its purpose.<sup>64</sup>

## **Procedures at the Shelter Care Hearing**

The primary purpose of the shelter care hearing is to determine whether the child can immediately and safely be returned home while the adjudication of the dependency is pending.<sup>65</sup>



The rules of evidence need not apply in the shelter care hearing.<sup>66</sup> The court reviews evidence at the shelter care hearing under a “reasonable cause” standard.<sup>67</sup> Hearsay evidence regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.<sup>68</sup>

The court must take great care in safeguarding a parent’s due process rights by allowing witnesses to be examined.<sup>69</sup> All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.<sup>70</sup>

The law of privileges remains in effect at shelter care hearings.<sup>71</sup> Petitions for shelter care may contain allegations of criminal conduct by a parent. Compelled testimony at a shelter care hearing may raise Fifth Amendment issues. A parent may invoke a Fifth Amendment privilege and refuse to answer questions that could result in criminal liability; however, a court may draw a negative inference from a parent’s refusal to answer such questions.<sup>72</sup> The evidentiary burden cannot be satisfied solely on the negative inference drawn from a parent’s invocation of their right to remain silent.<sup>73</sup>

At a shelter care hearing, the court must inquire into whether notice was given to all known parents, guardians, or legal custodians.<sup>74</sup> The court is required to make an express finding as to whether notice requirements were met pursuant to RCW 13.34.062.<sup>75</sup> If actual notice was not given to the parent and the whereabouts of the person is known or can be ascertained, the court shall order the Department to make diligent efforts to advise the parent of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.<sup>76</sup>

The court must also inquire whether the child is or may be an Indian child as defined in ICWA and WICWA. The court must also inquire whether ICWA and WICWA apply, and if so, whether the Department has complied with ICWA and WICWA. Compliance includes notice of the hearing to the child’s tribe, following ICWA’s placement preferences and, where required, making active efforts to prevent the break-up of the Indian family.<sup>77</sup> If any participant in the proceeding indicates that there is reason to know the child has tribal heritage, the legal standards under ICWA and WICWA apply to the case until it is determined, on the record, that the child does not meet the definition of an Indian child.<sup>78</sup> The state court cannot, and should not, attempt to determine tribal membership or eligibility; rather, this determination is the province of each tribe.<sup>79</sup>

The court must inquire into whether the child can be safely returned home while the adjudication of the dependency is pending.<sup>80</sup> The court must consider what services were provided to the family to prevent or eliminate the need for removal of the child from the child’s home. If the dependency petition or other information alleges homelessness or lack of suitable housing as a significant factor in the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal.<sup>81</sup> If applicable, the court must consider whether any restraining orders, pursuant to RCW 26.44.063, expelling an allegedly abusive household member from the home of a nonabusive parent, would allow the child to safely remain in the home.<sup>82</sup>

The court must also inquire into what efforts have been made to place the child with a relative. The court is required to ask the parents whether the Department discussed placement of the child with a relative or other suitable person and shall determine what efforts have been made toward such a placement.<sup>83</sup>

If the Department is requesting that the child be placed out of the home of the parent, the court must inquire into whether the placement proposed by the Department is the least disruptive and most family-like setting that meets the needs of the child.<sup>84</sup> The court must also consider the terms of visitation with parents, siblings, and family.<sup>85</sup>

The court must also inquire into whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and, if it is in the child's best interest, what efforts have been made to maintain the child in the school, developmental program, or child care.<sup>86</sup>

The court must inquire into whether any orders for examinations, evaluations, or immediate services are needed; however, the court may not order a parent to participate in services at the shelter care hearing unless the parent agrees.<sup>87</sup>

The court must inquire whether there is a need for appointment of a guardian ad litem or attorney for the child.<sup>88</sup> The court shall appoint a guardian ad litem for a child alleged to be dependent, unless the court, for good cause, finds such an appointment unnecessary.<sup>89</sup> The requirement of a guardian ad litem may be deemed satisfied if the child is represented by an independent attorney in the proceedings.<sup>90</sup> RCW 13.34.212(3)(c) sets forth a statewide plan of implementation of court appointment of attorneys for children in dependency proceedings that will be phased in on a county-by-county basis over a six-year period, beginning July 1, 2021. For counties in which this statutory provision is operational, the court must appoint an attorney at or before the commencement of a shelter care hearing for every child ages 8 through 17 upon the filing of a new dependency petition.<sup>91</sup>

A shelter care order shall include the requirement for a case conference, unless the parent is not present at the shelter care hearing or does not agree to the case conference.<sup>92</sup> If the court orders a case conference, the shelter care order must include notice to all parties and establish the time, date, and location of the case conference, which shall be no later than 30 days before the fact-finding hearing.<sup>93</sup> The court may order another conference, case staffing, or hearing as an alternative to the case staffing required under RCW 13.34.067, as long as the alternative meets the requirements of RCW 13.34.067, including the requirement of a written service agreement specifying services to be provided to the parent.<sup>94</sup>

In cases where the court does not find reasonable efforts have been made to prevent or eliminate the need for removal, and/or reasonable cause for removal, the child must be returned home pending adjudication of the dependency hearing. Dismissal of the petition is, however, not a remedy available to the court at a shelter care hearing without the agreement of the Department, absent a proper motion.<sup>95</sup> Caselaw has cited the need for parties to have notice of any motion to dismiss, and has pointed to CR 56 or CR 12(b)(6), both of which have notice requirements that would rarely be available during the initial shelter care hearing.<sup>96</sup>

## Shelter Care Hearing

At the shelter care hearing, the court shall release a child alleged to be dependent to the care, custody, and control of the child's parent unless the court finds there is reasonable cause to believe that, after considering the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home.

"Reasonable efforts" is not defined by the statute. However, the United States Department of Health and Human Services (DHHS) has offered overarching considerations to help guide the reasonable efforts, including at a shelter care hearing:

1. Would the child's health or safety have been compromised had the agency attempted to maintain him or her at home?
2. Was the service plan customized to the individual needs of the family or was it a standard package of services?
3. Did the agency provide services to ameliorate factors present in the child or parent, i.e., physical, emotional, or psychological, that would inhibit a parent's ability to maintain the child safely at home?
4. Do limitations exist with respect to service availability, including transportation issues? If so, what efforts did the agency undertake to overcome these obstacles?<sup>97</sup>

If the trial court concludes the Department has made reasonable efforts, it must make findings on the record to support its conclusion. Checking a box is not sufficient to protect the important interests involved or to provide information necessary for review. In making findings, the court must consider whether or not reasonable efforts have been made for each parent. In determining whether reasonable efforts have been made, the court should consider the facts and circumstances of each parent. Each parent must be considered individually, and reasonable efforts should be made for both parents before the Department considers other options.<sup>98</sup>

The reasonable efforts standard is flexible; however, a flexible standard does not excuse the Department from making no efforts to place with a parent. There is no exception to the reasonable efforts requirement; the statute states that a child *shall* be placed with, or returned home to, a parent unless reasonable efforts have been made to prevent removal and one of the conditions under RCW 13.34.065(5)(a) has been met.<sup>99</sup>

If the court makes findings to support that reasonable efforts have been made, then the court must consider whether:

- A. The child has no parent, guardian, or legal custodian to provide supervision and care for such child<sup>100</sup>;
- B. Removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, or a pattern of severe neglect, notwithstanding a restraining order entered pursuant to RCW 26.44.063. Under this section, the court must also find that:

- I. The evidence must show a causal relationship between the particular conditions in the home and imminent physical harm to the child. In so finding, 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 cannot, by itself, constitute imminent physical harm<sup>101</sup>; and
  - II. It is contrary to the welfare of the child to be returned home; and
  - III. 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 the removal<sup>102</sup>; or
- C. The parent to whom the child could be released is alleged to have committed custodial interference as defined by either RCW 9A.40.060 or 9A.40.070.<sup>103</sup>

While “imminent physical harm” is not defined in the statute, the language is drawn from similar language in ICWA and WICWA, which also requires a finding of “imminent physical damage or harm” in order to remove a child from a parent or Indian custodian on an emergency basis.<sup>104</sup> The standard under ICWA and WICWA is not satisfied by a showing of emotional abuse or neglect.<sup>105</sup>

In assessing the harm of removal, the Washington Supreme Court has previously concluded that separating a child from their family for periods of time as short as one hour can cause “great trauma.”<sup>106</sup> Children who are removed from their parents’ care face a loss of physical liberty. Children also risk losing not only the connection with their parents, but also relationships with siblings and extended family. Children may be forced to change not only their homes, but their schools, activities, medical providers, and other service providers.<sup>107</sup>

If the court finds reasonable cause to believe removal is necessary to prevent imminent physical harm, the court must further consider:

1. Whether the issuance of a temporary order of protection directing the removal of a person or persons from the child's residence would prevent the need for removal of the child<sup>108</sup>; and
2. Whether participation by the parent in any prevention services would prevent or eliminate the need for removal. If so, the court shall inquire of the parent whether they are willing to participate in services, and if the parent agrees, the court shall place the child with the parent. The court shall not order a parent to participate in prevention services over the parent’s objection; however, the parent shall have the opportunity to consult with counsel prior to deciding whether to agree to proposed prevention services as a condition of having the child return to or remain in the care of a parent.<sup>109</sup>

“Prevention services” include preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.<sup>110</sup> Prevention services also include specific mental health prevention and treatment services, substance abuse prevention and

treatment services, and in-home parent skill-based programs.<sup>111</sup> Prevention services are not remedial services or family reunification services.<sup>112</sup>

Uncertainty by a parent that an alleged abuser has in fact abused a child shall not, alone, be a basis upon which a child is removed from the care of a parent.<sup>113</sup>

An order releasing the child to the parents on any specific conditions may be amended at any time, with notice and hearing, if the parties have failed to conform to the conditions originally imposed.<sup>114</sup> The court must consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent and give weight to that fact before ordering return of the child to shelter care.<sup>115</sup> Although a shelter care order may be amended at any time with notice and a hearing, the shelter care placement decision “shall be modified only upon a showing of change in circumstances.”<sup>116</sup>

## **Shelter Care Hearing – Reason to Know**

If there is “reason to know” a child is or may be an Indian child as defined by the federal ICWA and/or WICWA, the Department must make active efforts to reunite the family.<sup>117</sup> In some circumstances, the active efforts requirement is not triggered until after the first shelter care hearing, such as when a court orders law enforcement or Child Protective Services to take a child into custody in an emergency, or when a child is taken into protective custody without a court order.<sup>118</sup> However, where the Department has prior contact with the family and has reason to believe the child was at risk of physical damage or harm, it has an obligation to begin active efforts.<sup>119</sup> The court must also consider whether active efforts have been made at shelter care hearings and must evaluate active efforts at every hearing where the child is placed in out-of-home care.<sup>120</sup> Where the Department does not establish that it has made active efforts, the court must immediately return the child to their parent’s care unless the Department has established that doing so would subject the child to substantial and immediate danger or threat of such danger.<sup>121</sup>

Active efforts must be, at a minimum, thorough, timely, consistent, culturally appropriate, and documented. It is the Department’s burden to prove that active efforts were, in fact, unsuccessful, and the Department must document its provision of active efforts in the record.<sup>122</sup> The futility doctrine does not apply, and a parent’s refusal to engage in services does not relieve the Department of its obligation to provide active efforts.<sup>123</sup> Moreover, a tribe’s lack of response or involvement does not relieve the Department of its responsibility to engage the parent in culturally appropriate services.<sup>124</sup>

When there is reason to know a child is or may be an Indian child and the court either removes the child from the parents’ care or maintains the child in out-of-home care, the court must make a finding on the record at each shelter care hearing that out-of-home placement is necessary to prevent imminent physical damage or harm.<sup>125</sup> The Department shall ensure that the emergency removal or placement of the child terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child.<sup>126</sup>

## Restraining Orders

The Washington State Legislature has intended to minimize trauma to a child involved in an allegation of sexual or physical abuse. However, it recognizes that removing a child from the home often has the effect of further traumatizing the child. As a result, courts are permitted to order removal of the alleged offender from the home rather than the child. This should be done at the earliest possible point of intervention.<sup>127</sup>

In any judicial proceeding in which it is alleged that a child has been subjected to sexual or physical abuse, if the court finds reasonable grounds to believe that an incident of sexual or physical abuse has occurred, the court may, on its own motion or on the motion of the GAL or other parties, issue a temporary restraining order or preliminary injunction restraining or enjoining the person accused of committing the abuse from the following:

1. Molesting or disturbing the peace of the alleged victim;
2. Entering the family home of the alleged victim except as specifically authorized by the court;
3. Having any contact with the alleged victim, except as specifically authorized by the court; or
4. Knowingly coming within, or knowingly remaining within, a specified distance of a specified location.<sup>128</sup>

In issuing a temporary restraining order or preliminary injunction, the court has the discretion to impose any additional restrictions that it determines are necessary to protect the child from further abuse or emotional trauma pending final resolution of the abuse allegations.<sup>129</sup>

The court shall issue a temporary restraining order prohibiting a person from entering the family home if the court finds that the order (a) would eliminate the need for out-of-home placement to protect the child's right to nurturance, health, and safety, and (b) is sufficient to protect the child from further sexual or physical abuse or coercion.<sup>130</sup>

The court may issue a temporary restraining order without requiring notice to the party to be restrained or other parties only if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for responding has elapsed.<sup>131</sup>

A temporary restraining order or preliminary injunction does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding. Also, the order may be revoked or modified.<sup>132</sup>

The person with physical custody of the child has an affirmative duty to assist in the enforcement of the restraining order, including, but not limited to the following:

1. A duty to notify the court as soon as practicable of any violation of the order;
2. A duty to request the assistance of law enforcement officers to enforce the order; and

3. A duty to notify DCYF of any violation of the order as soon as practicable if DCYF is a party to the action.

Failure by the custodial party to discharge these affirmative duties shall subject the custodial party to contempt proceedings.<sup>133</sup>

Willful violation of a court order entered under RCW 26.44.063 is a misdemeanor. A written order shall contain the court's directive and shall bear the legend: "Violation of this order with actual notice of its terms is a criminal offense under chapter 26.44 RCW, is also subject to contempt proceedings, and will subject a violator to arrest."<sup>134</sup>

## Relative Placement

At the shelter care hearing, if the court does not release the child to their parent, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless the Department establishes there is reasonable cause to believe that (a) placement in licensed foster care 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, because no relative or other suitable person is capable of ensuring the basic safety of the child; or (b) efforts to reunite the parent and child will be hindered.<sup>135</sup>

In making this determination, the court must inquire of the Department and any other person present at the hearing for the child whether there are any other relatives or other suitable persons who are willing to care for the child. The inquiry must also include whether any relatives or other suitable persons:

1. Have expressed interest in caring for the child;
2. Are able to meet the child's special needs;
3. Are willing to facilitate sibling and parent visitation, if ordered by the court; and
4. Support parent-child reunification once it can safely occur.<sup>136</sup>

The court must give great weight to the stated preference of the parent and the child.<sup>137</sup>

If a relative or other suitable person satisfies the inquiry pursuant to RCW 13.34.065(c)(ii)(A), the following must not prevent the child's placement with the relative or other suitable person:

1. An incomplete Department or fingerprint-based background check, if the relative or other suitable person appears otherwise suitable and competent to provide care and treatment, but the background checks must be completed as soon as possible after placement;
2. Uncertainty on the part of the relative or other suitable person regarding potential adoption of the child;
3. Disbelief on the part of the relative or other suitable person that the parent presents a danger to the child, provided the caregiver will protect the safety of the child and comply with court orders regarding contact with a parent; or
4. The conditions of the relative or other suitable person's home are not sufficient to satisfy the requirements of a licensed foster home. The court may order the Department to

provide financial or other support to the relative or other suitable person necessary to ensure safe conditions in the home.<sup>138</sup>

If the court places with a relative or other suitable person, and that person indicates a desire to become a licensed foster parent, the court shall order the Department to commence an assessment of the home of such relative or other suitable person within 10 days. If the relative or suitable other person qualifies pursuant to this initial assessment, the Department shall issue an initial foster family home license as provided under RCW 74.15.120. The relative or other suitable person shall receive a foster care maintenance payment, starting on the date the Department approves the initial license. If the home is found to be unqualified for licensure, the Department shall report this fact to the court within one week of that determination. The Department shall report on the status of the licensure process during the entry of any dispositional orders in the case.<sup>139</sup> An initial license for a foster family home is valid for up to 90 days.<sup>140</sup>

If the court orders placement of the child with a suitable other person, the placement is subject to all terms and conditions that apply to relative placements.<sup>141</sup> Any placement with a relative or other suitable person approved by the court shall be contingent upon cooperation with the Department's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order may be grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.<sup>142</sup>

## **Licensed Foster Care Placement**

If there is no relative or suitable other person available for placement of the child, or if the court does not order placement with a relative or other suitable person because the Department establishes there is reasonable cause to believe that (a) placement in licensed foster care 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, because no relative or other suitable person is capable of ensuring the basic safety of the child; or (b) efforts to reunite the parent and child will be hindered, the court shall place the child in licensed foster care and shall set forth reasons for the order.<sup>143</sup>

If the court places the child in licensed foster care, the Department shall report to the court, at the shelter care hearing, the location of the licensed foster placement the Department has identified for the child.<sup>144</sup> Further, the court must inquire as to whether:

1. The identified placement is the least restrictive placement necessary to meet the needs of the child;
2. The child will be able to remain in the same school and whether any orders of the court are necessary to ensure educational stability for the child;
3. The child will be placed with a sibling or siblings, and whether court-ordered sibling contact would promote the well-being of the child;



4. The licensed foster placement is able to meet the special needs of the child; and
5. The location of the proposed foster placement will impede visitation with the child's parent or parents.<sup>145</sup>

If the court places the child in licensed foster care, the court may order the Department to:

1. Place the child in a less restrictive placement;
2. Place the child in a location in closer proximity to the child's parent, home, or school;
3. Place the child with the child's sibling or siblings; and/or
4. Take any other necessary steps to ensure the child's health, safety, and well-being.<sup>146</sup>

The court must advise the Department that (a) failure to comply with court orders while a child is in shelter care will be considered when determining whether reasonable efforts have been made by the Department during a hearing under RCW 13.34.110; and (b) placement moves while a child is in shelter care will be considered when determining whether reasonable efforts have been made by the Department during a hearing under RCW 13.34.110.<sup>147</sup>

A qualified residential treatment program (“QRTP”) is a program that qualifies for funding under the family first prevention services act pursuant to 42 U.S.C. Sec. 672(k), is licensed as a group care facility (if located within Washington State), and:

1. Uses a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of children with serious emotional or behavioral disorders or disturbances; and
2. Is able to implement treatment for the child that is identified in an assessment that:
  - (a) Is completed by a trained professional or licensed clinician who is a “qualified individual as the term is defined under the family first prevention services act;
  - (b) Assesses the strengths and needs of the child; and
  - (c) Determines whether the child’s needs can be met with family members or through placement in a foster family home or, if not, which available placement setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the child’s permanency plan.<sup>148</sup>

If the child is placed in a QRTP, the court shall, within 60 days of placement, hold a hearing to:

1. Consider the assessment required under RCW 13.34.420 and submitted as part of the Department’s social study, and any related documentation;
2. Determine whether placement in foster care can meet the child’s needs or if placement in another available placement setting best meets the child’s needs in the least restrictive environment; and
3. Approve or disapprove the child’s placement in the QRTP.<sup>149</sup>

## Visitation

At the shelter care hearing the court must also inquire about the “terms and conditions for parental, sibling, and family visitation.”<sup>150</sup>

Visitation is a right of the family.<sup>151</sup> Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and allowing family reunification. The court shall order a visitation plan individualized to the needs of the family with a goal of providing the maximum parent, child, and sibling contact possible.<sup>152</sup> If a child is removed from a parent, the first visit must take place within 72 hours of the child being delivered into the custody of the Department, unless the court finds that extraordinary circumstances require delay.<sup>153</sup> If this first visit occurs in an in-person format, this first visit must be supervised unless the Department determines that visit supervision is not necessary.<sup>154</sup>

Visitation must occur in the least restrictive setting and be unsupervised unless the presence of threats or danger to the child requires the constant presence of an adult to ensure the safety of the child.<sup>155</sup> Visitation shall not be limited as a sanction for a parent's failure to comply with recommended services during shelter care.<sup>156</sup> Rather, visitation may only be limited where necessary to ensure the health, safety, or welfare of the child.<sup>157</sup>

If the court previously ordered that visitation between a parent and child be supervised or monitored, there shall be a presumption that such supervision or monitoring will no longer be necessary when entering a continued shelter care order. To overcome this presumption, a party must provide a report to the court, including evidence, establishing that removing visit supervision or monitoring would create a risk to the child's safety. Then, the court shall make a determination as to whether visit supervision or monitoring must continue.<sup>158</sup>

The court and the Department should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that resources are available, and appropriate, and the child's safety would not be compromised.<sup>159</sup> The court shall advise the Department that the failure to provide court-ordered visitation may result in a finding that the Department failed to make reasonable efforts to finalize the permanency plan. The lack of sufficient contracted visitation providers will not excuse the failure to provide court-ordered visitation.<sup>160</sup>

The court does not have the authority to order visitation between dependent siblings and nondependent siblings, absent the agreement of the parents of the nondependent siblings.<sup>161</sup>

## **Services Ordered for Non-Party**

The court shall order treatment and education requirements necessary to protect the child from further abuse for an individual who, while acting in a parental role, has physically or sexually abused a child and who has been removed from the home pursuant to a court order issued in a proceeding under chapter 13.34 RCW. These requirements must be met prior to the individual being permitted to reside in the home where the child resides. The court may require the individual to continue treatment as a condition for remaining in the home where the child resides. The Department is required to make recommendations to the court regarding proper treatment and education. It must also provide referrals to the individual and monitor and assess the individual's progress. However, unless the individual is a parent, guardian, or custodian of the child and has been convicted of the crime for the acts of abuse determined in a fact-finding

pursuant to RCW 13.34, the individual is not required to admit guilt in order to begin to fulfill any necessary treatment and education requirements.<sup>162</sup>

## ENDNOTES

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<sup>1</sup> **Marci Comeau (she/her)** is a Managing Attorney for the Washington State Office of Public Defense (OPD) Parents Representation Program. Prior to joining OPD, Marci served as an Administrative Law Judge for the Washington State Office of Administrative Hearings, both in the Social and Health Services and Employment Security Divisions. Marci has also represented parents and children in dependency, termination, and guardianship proceedings working for the King County Department of Public Defense, and she represented DSHS in dependency, termination, and guardianship proceedings as an Assistant Attorney General. Throughout her career, Marci has enjoyed providing local, statewide, and national trainings to stakeholders in the juvenile dependency system on various topics, including dependency practice and procedure, discovery, the harm of removal, the mental health of dependency practitioners, and anti-racist dependency practice. Marci is active in the Juvenile Law Section of the Washington State Bar Association, and participates in other juvenile and dependency court and system improvement committees. Marci received her undergraduate degree from the University of Washington in 2001 and her Juris Doctorate from Seattle University in 2006.

<sup>2</sup> In the vast majority of dependency cases filed in the state of Washington, the petitioning party is the Department of Children, Youth, and Families (“the Department.”) For consistency and clarity, this chapter will refer to the petitioner as “the Department.”

<sup>3</sup> RCW 13.34.040(1); JuCR 3.2(b); *In re Gibson*, 4 Wn. App. 372 (1971).

<sup>4</sup> RCW 13.34.040(1); JuCR 3.2(a).

<sup>5</sup> JuCR 3.5.

<sup>6</sup> RCW 13.34.030(19) ("Parent" means “the biological or adoptive parents of a child, or an individual who has established a parent-child relationship under RCW 26.26A.100, unless the legal rights of that person have been terminated by a judicial proceeding pursuant to this chapter, chapter 26.33 RCW, or the equivalent laws of another state or a federally recognized Indian tribe.”)

<sup>7</sup> RCW 13.34.030(11) ("Guardian" means “the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment.” The term "guardian" does not include a "dependency guardian" appointed pursuant to chapter 13.34 RCW.)

<sup>8</sup> Parents, guardians, and legal custodians may all be respondents to a dependency petition. For purposes of brevity, clarity, and consistency, this chapter will refer to these respondents as “the parent” or “the parents.”

<sup>9</sup> *In re Gibson*, 4 Wn. App. 372 (1971).

<sup>10</sup> RCW 4.12.030.

<sup>11</sup> *In re Gibson*, 4 Wn. App. 372 (1971).

<sup>12</sup> RCW 13.04.030(1); *In re the Marriage of Rich*, 80 Wn. App. 252 (1996).

<sup>13</sup> RCW 13.04.030(2).

<sup>14</sup> RCW 13.04.030(3).

<sup>15</sup> RCW 13.34.062(1)(a).

<sup>16</sup> RCW 13.34.062(1)(b).

<sup>17</sup> RCW 13.34.062(2)(a).

<sup>18</sup> RCW 13.34.062(2)(a); RCW 26.44.115.

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- <sup>19</sup> RCW 13.34.062(1)(a).
- <sup>20</sup> RCW 13.34.062(4).
- <sup>21</sup> *See, e.g.*, RCW 13.34.040, RCW 13.34.070.
- <sup>22</sup> RCW 13.34.040.
- <sup>23</sup> *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152 (2020).
- <sup>24</sup> JuCR 2.3(d) (but *cf. In re J.M.W.*, 199 Wn.2d 837, n. 4, (2022) (ten days' prior written notice to tribes is not required prior to a shelter care hearing when it could not be accomplished)).
- <sup>25</sup> RCW 13.38.070 (but *cf. In re J.M.W.*, 199 Wn.2d 837, n. 4, (2022) (ten days' prior written notice to tribes is not required prior to a shelter care hearing when it could not be accomplished)).
- <sup>26</sup> RCW 13.34.030(6) (subsection (d) omitted).
- <sup>27</sup> *See In re Warren*, 40 Wn.2d 342 (1952).
- <sup>28</sup> *See In re Schermer*, 161 Wn.2d 927 (2007).
- <sup>29</sup> *See In re Frederiksen*, 25 Wn. App. 726 (1979).
- <sup>30</sup> RCW 13.34.040(5).
- <sup>31</sup> RCW 13.34.040(5).
- <sup>32</sup> JuCR 3.3.
- <sup>33</sup> RCW 13.34.050(1); JuCR 2.1(b)(1).
- <sup>34</sup> *Matter of Dependency of A.W.*, 24 Wn. App. 2d 76 (2022).
- <sup>35</sup> RCW 13.34.050(2).
- <sup>36</sup> *Matter of Dependency of A.W.*, 24 Wn. App. 2d 76 (2022).
- <sup>37</sup> RCW 13.34.050(3).
- <sup>38</sup> RCW 13.34.060(1).
- <sup>39</sup> RCW 13.34.030(24).
- <sup>40</sup> RCW 13.34.055(1).
- <sup>41</sup> RCW 13.34.060(1).
- <sup>42</sup> RCW 13.34.060(1).
- <sup>43</sup> JuCR 2.2.
- <sup>44</sup> RCW 13.34.060(2).
- <sup>45</sup> RCW 13.34.030(23).
- <sup>46</sup> RCW 13.34.060(3).
- <sup>47</sup> RCW 13.34.090(5).
- <sup>48</sup> RCW 13.34.090(5).
- <sup>49</sup> JuCR 2.3(b).
- <sup>50</sup> *In re Dependency of T.P.*, 12 Wn.App. 2d 538 (2020).
- <sup>51</sup> *See In re H.W.*, 70 Wn. App. 552 (1993); *see also* RCW 13.34.090.
- <sup>52</sup> RCW 13.34.065(1)(b).
- <sup>53</sup> RCW 13.34.065(1)(a).
- <sup>54</sup> JuCR 2.3(b).
- <sup>55</sup> RCW 13.34.065(3)(b).
- <sup>56</sup> *See, e.g.*, RCW 13.34.062.
- <sup>57</sup> RCW 13.34.090(1).
- <sup>58</sup> RCW 13.34.090(2).
- <sup>59</sup> *See* JuCR 9.2(c)(2); *In re Grove*, 127 Wn.2d 221, 897 P.2d 1252 (1995).
- <sup>60</sup> RCW 13.34.090(3). Implementation of the phase-in schedule is available at <https://ocla.wa.gov/about-us/programs/childrens-representation/>.
- <sup>61</sup> RCW 13.34.115(1).

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- <sup>62</sup> RCW 13.34.115(2).
- <sup>63</sup> RCW 13.34.115(3).
- <sup>64</sup> *See Seattle Times v. Ishikawa*, 97 Wn.2d 30 (1982).
- <sup>65</sup> RCW 13.34.065(1)(a).
- <sup>66</sup> *See In re H.W.*, 70 Wn. App. 552 (1993); *In re Brown*, 29 Wn. App. 744; ER 1101(c)(3).
- <sup>67</sup> RCW 13.34.065(5).
- <sup>68</sup> RCW 13.34.065(2)(b).
- <sup>69</sup> *See In re R.L.*, 123 Wn. App. 215, 98 P.3d 75 (2004).
- <sup>70</sup> RCW 13.34.065(2)(b).
- <sup>71</sup> ER 1101(b).
- <sup>72</sup> *See Matter of Dependency of A.M.F.*, 526 P.3d 32 (2023).
- <sup>73</sup> *See Matter of Dependency of A.M.F.*, 526 P.3d 32 (2023).
- <sup>74</sup> RCW 13.34.065(4); JuCR 2.4(b).
- <sup>75</sup> RCW 13.34.065(4)(a).
- <sup>76</sup> RCW 13.34.065(4)(a).
- <sup>77</sup> RCW 13.34.065(4)(h); *In re J.M.W.*, 199 Wn.2d 837 (2022).
- <sup>78</sup> *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152 (2020).
- <sup>79</sup> *Matter of Dependency of Z.J.G.*, 196 Wn.2d 152 (2020).
- <sup>80</sup> RCW 13.34.065(4)(b).
- <sup>81</sup> RCW 13.34.065(4)(d).
- <sup>82</sup> RCW 13.34.065(4)(i).
- <sup>83</sup> RCW 13.34.065(4)(c).
- <sup>84</sup> RCW 13.34.065(4)(e).
- <sup>85</sup> RCW 13.34.065(5)(k).
- <sup>86</sup> RCW 13.34.065(4)(f).
- <sup>87</sup> RCW 13.34.065(4)(j).
- <sup>88</sup> RCW 13.34.065(4)(g).
- <sup>89</sup> RCW 13.34.100(1).
- <sup>90</sup> RCW 13.34.100(1).
- <sup>91</sup> RCW 13.34.212(3)(a)(ii). Implementation of phase-in section at: <https://ocla.wa.gov/about-us/programs/childrens-representation/>.
- <sup>92</sup> RCW 13.34.065(6)(a); RCW 13.34.067.
- <sup>93</sup> RCW 13.34.065(6)(b).
- <sup>94</sup> RCW 13.34.065(6)(c).
- <sup>95</sup> *See In re R.H.*, 129 Wn. App. 83 (2005).
- <sup>96</sup> *See In re R.H.*, 129 Wn. App. 83 (2005).
- <sup>97</sup> *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022) (footnote 4 omitted).
- <sup>98</sup> *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022).
- <sup>99</sup> *Matter of Dependency of L.C.S.*, 200 Wn.2d 91 (2022).
- <sup>100</sup> RCW 13.34.065(5)(a)(ii)(A); compare with RCW 13.34.030(6)(c) (definition of dependent child as a child who has “no parent, guardian, or custodian *capable of adequately caring for the child...*”) and RCW 13.34.130(6)(a) (requiring out-of-home placement at dispositional hearing if there is “no parent or guardian *available*” to care for the child) (emphasis added).
- <sup>101</sup> Compare with ICWA, 25 CFR § 23.121(d): “...evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself constitute clear

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and convincing evidence or evidence beyond a reasonable doubt that continued custody is likely to result in serious emotional or physical damage to the child.”

<sup>102</sup> RCW 13.34.065(5)(a)(ii)(B).

<sup>103</sup> RCW 13.34.065(5)(a)(ii)(C).

<sup>104</sup> 25 U.S.C. § 1922; RCW 13.38.140(1).

<sup>105</sup> *Matter of Dependency of A.W.*, 24 Wn.App.2d 75 (2022).

<sup>106</sup> *See In re J.M.W.*, 199 Wn.2d 837 (2022).

<sup>107</sup> *See Matter of Dependency of Lee*, 200 Wn. App. 414 (2017).

<sup>108</sup> RCW 13.34.065(5)(b)(ii).

<sup>109</sup> RCW 13.34.065(5)(b)(i).

<sup>110</sup> RCW 13.34.030(21).

<sup>111</sup> RCW 13.34.030(20).

<sup>112</sup> *See* RCW 13.34.025(2)(a) (defining remedial services as “services defined in the federal adoption and safe families act as family reunification services that facilitate the reunification of the child safely and appropriately within a timely fashion. Remedial services include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.”)

<sup>113</sup> RCW 13.34.065(5)(h).

<sup>114</sup> JuCR 2.4(c).

<sup>115</sup> RCW 13.34.065(7)(b)(i).

<sup>116</sup> RCW 13.34.065(7)(b)(ii).

<sup>117</sup> RCW 13.38.130(1); *see also In re J.W.M.*, 199 Wn.2d 837 (2022).

<sup>118</sup> *In re J.W.M.*, 199 Wn.2d 837 (2022).

<sup>119</sup> *In re J.W.M.*, 199 Wn.2d 837 (2022).

<sup>120</sup> *In re J.W.M.*, 199 Wn.2d 837 (2022); *Matter of Dependency of G.J.A.*, 197 Wn.2d 868 (2021).

<sup>121</sup> RCW 13.38.160.

<sup>122</sup> *Matter of Dependency of G.J.A.*, 197 Wn.2d 868 (2021).

<sup>123</sup> *Matter of Dependency of G.J.A.*, 197 Wn.2d 868 (2021); *Matter of Dependency of A.L.K.*, 196 Wn.2d 686, 478 P.3d 63 (2020).

<sup>124</sup> *Matter of Dependency of G.J.A.*, 197 Wn.2d 868 (2021).

<sup>125</sup> *In re J.W.M.*, 199 Wn.2d 837 (2022).

<sup>126</sup> RCW 13.38.130(2).

<sup>127</sup> RCW 13.34.065(4)(i).

<sup>128</sup> RCW 26.44.063(1). *See generally* RCW 10.31.100; RCW 26.44.130.

<sup>129</sup> RCW 26.44.063(4).

<sup>130</sup> RCW 26.44.063(5).

<sup>131</sup> RCW 26.44.063(6).

<sup>132</sup> RCW 26.44.063(7).

<sup>133</sup> RCW 26.44.063(8).

<sup>134</sup> RCW 26.44.063(9).

<sup>135</sup> RCW 13.34.065(5)(c).

<sup>136</sup> RCW 13.34.065(c)(ii)(A).

<sup>137</sup> RCW 13.34.065(5)(c)(ii)(B).

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<sup>138</sup> RCW 13.34.065(5)(c)(iii); *see also In re Dependency of K.W.*, 199 Wn.2d 131 (2022) (finding that the “best interests of the child” standard is susceptible to class- and race-based biases (such as the use of criminal history, immigration status, or prior involvement with child welfare agencies), and it is impermissible for the Department or dependency courts to rely on factors that serve as proxies for race in order to deny placements with bonded relatives.)

<sup>139</sup> RCW 13.34.065(5)(i).

<sup>140</sup> RCW 74.15.120.

<sup>141</sup> RCW 13.34.065(5)(e).

<sup>142</sup> RCW 13.34.065(5)(f).

<sup>143</sup> RCW 13.34.065(5)(e).

<sup>144</sup> RCW 13.34.065(5)(j)(i).

<sup>145</sup> RCW 13.34.065(5)(j)(i).

<sup>146</sup> RCW 13.34.065(5)(j)(ii).

<sup>147</sup> RCW 13.34.065(5)(j)(iii).

<sup>148</sup> RCW 13.34.030(22); RCW 13.34.420.

<sup>149</sup> RCW 13.34.065(5)(g).

<sup>150</sup> RCW 13.34.065(4)(k).

<sup>151</sup> RCW 13.34.136(2)(b)(ii)(A).

<sup>152</sup> RCW 13.34.065(9)(a).

<sup>153</sup> RCW 13.34.065(9)(d).

<sup>154</sup> RCW 13.34.065(9)(e).

<sup>155</sup> RCW 13.34.136(2)(b)(ii)(C).

<sup>156</sup> RCW 13.34.065(9)(b).

<sup>157</sup> RCW 13.34.065(9)(c).

<sup>158</sup> RCW 13.34.065(7)(a)(ii).

<sup>159</sup> RCW 13.34.136(2)(b)(ii)(D).

<sup>160</sup> RCW 13.34.136(2)(b)(ii)(F).

<sup>161</sup> RCW 13.34.130(7)(a)(i).

<sup>162</sup> RCW 26.44.140.