

KEEPING FAMILIES TOGETHER ACT: BASICS FOR THE BENCH



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HB 1227: The “Keeping Families Together Act”

- Effective date: July 1, 2023.
- Amends RCW 13.34, and RCW 26.44.
- Legislative intent:

*“The legislature recognizes that children and families are better served when the state provides support to allow children to be cared for by their loved ones and in their communities. The legislature finds that decades of research show that **Black and Indigenous children are still disproportionately removed from their families and communities** despite reform efforts.*

*For these reasons, it is the intent of the legislature to **safely reduce the number of children in foster care and reduce racial bias in the system** by applying a **standard criteria for determining whether to remove a child from a parent** when 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.”*

RCW 26.44.050: Law Enforcement/Protective Custody Holds

Pre-1227 statute:

- Abuse or neglect.
- Injured or could not be taken into custody if it were first necessary to obtain a court order.

HB 1227 amendments:

- **Imminent physical harm** due to abuse or neglect, including that which results from **sexual abuse, sexual exploitation, or a pattern of severe neglect.**
- **Seriously** injured or could not be taken into custody if it were necessary to first obtain a court order.

RCW 26.44.056: Hospital Holds

Pre-1227 statute:

- Reasonable cause.
- Imminent danger.



Compare with HB 1227 amendments:

- **Probable** cause
- Necessary to prevent **imminent physical harm due to abuse or neglect**, including that which results from **sexual abuse, sexual exploitation, or a pattern of severe neglect**
- **Seriously injured or could not be taken into custody if it were necessary to first obtain a court order.**

RCW 13.34.050: Pick-Up Orders

Pre-1227 statute:

- Petition alleging child is dependent.
- Reasonable grounds that child's health, safety, and welfare will be seriously endangered if not taken into custody.
- Risk of imminent harm, including, but not limited to, sexual abuse, sexual exploitation, and parent's failure to perform basic parental functions.

HB 1227 amendments:

- Petition with **sufficient corroborating evidence** to establish child is dependent.
- Reasonable grounds to believe removal is necessary to prevent **imminent physical harm due to child abuse or neglect**, including that which results from sexual abuse, sexual exploitation, **or pattern of severe neglect**.
- **Specific factual information evidencing insufficient time to serve parent with petition and hold hearing prior to removal.**
- **If child taken into custody, petition and supporting documentation must be served on parent at child's removal unless, after diligent efforts, parent cannot be found. If parent not served, diligent efforts to personally serve parent.**

RCW 13.34.040: Petition, Application of ICWA

Pre-1227 statute:

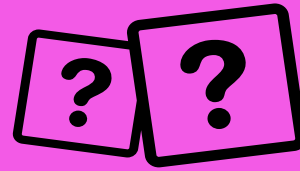
- “Is or may be an Indian child...”



HB 1227 amendments:

- “**Reason to know** child is or may be an Indian child...”
- If reason to know, ICWA applies.
- Petition verified, contain statement constituting dependency, and include names/residence/contact information (if known to petitioner) of each parent/guardian/custodian.
- If petitioner seeking removal, clear and specific statement as to harm if child remains in care of parent/ guardian/custodian, and facts supporting conclusion.

RCW 13.34.060: Removals Prior to Shelter Care Hearing



Pre-1227 statute:

- Priority placement with relative or suitable adult, pending court hearing.
- “Effort within available resources” to place on next business day.
- Department may authorize evaluations/routine and necessary medical care.

HB 1227 amendments:

- Unless reasonable cause based upon **specific evidence**, priority placement with relative or suitable adult.
- **“Continuing efforts”** to place on next business day.
- Department may authorize evaluations/routine and necessary care of child, **after informing parent, unless parent cannot be reached.**
- **Child’s parent must be provided opportunity to attend, unless prohibited by court order.**

RCW 13.34.062: Notice

- Pre-1227 statute: Reasonable efforts.
 1. To inform parents child has been taken into custody, reasons why, and legal rights (including right to shelter care hearing).
 2. To investigate whereabouts of parent.

- HB 1227:
Diligent efforts.

RCW 13.34.065(1)(a): Continuance of 72-hour Shelter Care Hearings

Pre-1227 statute:

- Upon request of parent, guardian, or custodian.
- Good cause and inability to attend shelter care hearing.
- Subsequent shelter care hearing.

HB 1227 amendments:

- Upon request of **child's attorney**, parent, guardian, or custodian.
- Good cause and inability to attend, **or inability to adequately prepare for shelter care hearing.**
- **Continuance of initial shelter care hearing or subsequent shelter care hearing.**
- **If parent, guardian, or custodian is not represented by counsel, clerk shall provide information regarding how to obtain counsel.**

Issue 1: Removal from a Parent or Guardian

Context of Changes to Removal from a Parent or Guardian

- The court shall release a child to the care of the parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

- After consideration of specific, provided services that reasonable efforts have been made.

&

- (A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or
- (B) “Imminent Physical Harm, causally connected, contrary to welfare to remain in home, and outweighs harm or removal” i.e. the HB 1227 Amendments; or
- (C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

New Removal Standard

1

- Imminent physical harm due to child abuse or neglect

5(a)(ii)(B)(I)

Part 1

2

- causal relationship between particular conditions in home and imminent physical harm to child;

3

- Contrary to welfare to return/remain home;

5(a)(ii)(B)(II)

New Removal Standard

4

- Imminent physical harm outweighs harm of removal;

5(a)(ii)(B)(III)

Part 2

5

- Whether participation by parent in prevention services would prevent/eliminate need for removal;

5(b)(i)

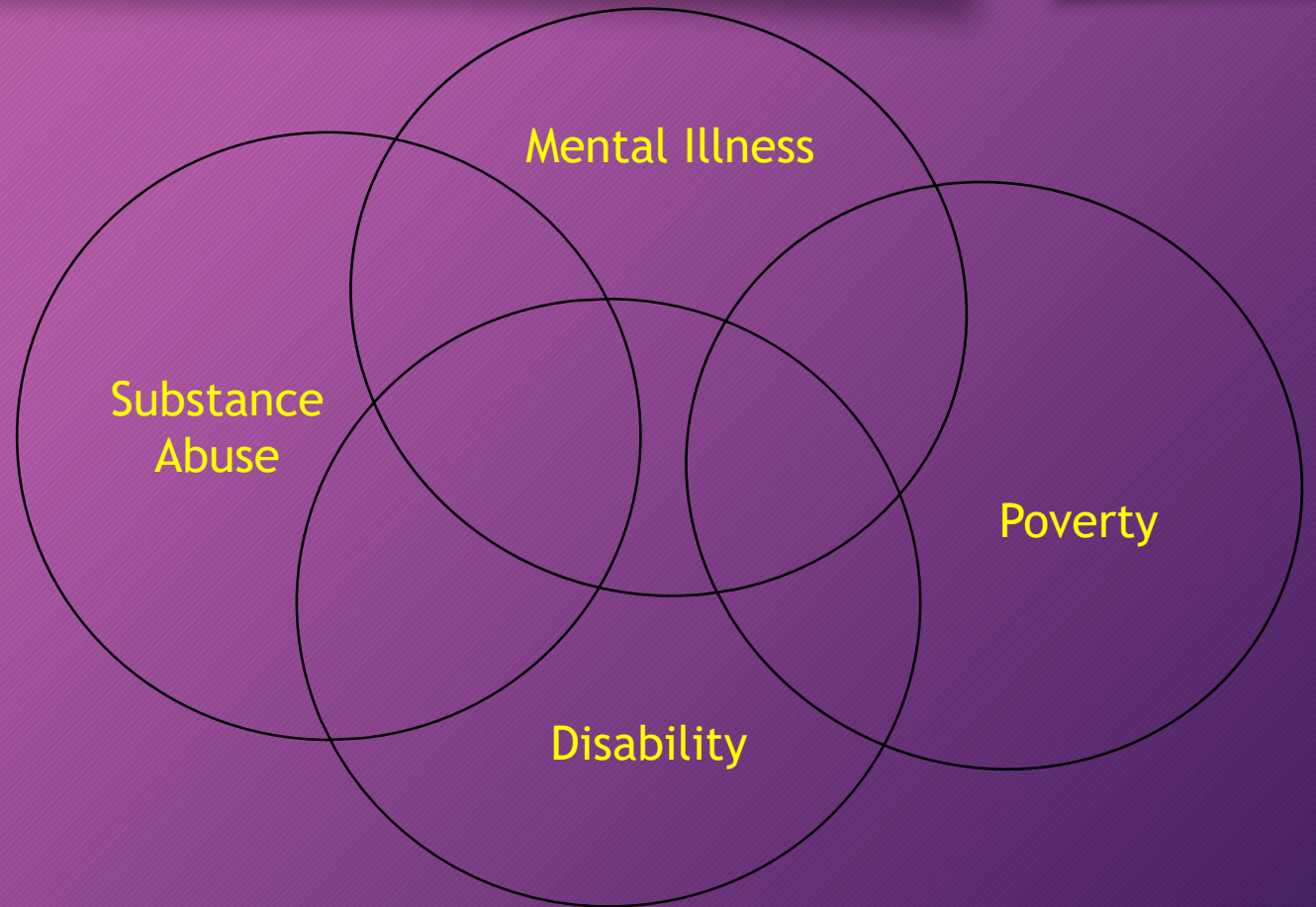
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- Parent agrees to participate in prevention services.

What is not imminent physical harm?

RCW 13.34.065(5)(a)(ii)(B)(I).

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



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- Parent agrees to participate in prevention services.

Part 2

RCW 13.34.030(21): "Prevention services" means 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. Prevention services include, but are not limited to, **prevention and family services and programs** as defined in this section.

RCW 74.14C.005(9) "Preservation services" means **family preservation services** and **intensive family preservation services** that consider the individual family's cultural values and needs.

6

- Parent agrees to participate in prevention services.

Part 2

RCW 74.14C.020(3) Preservation services shall include the following characteristics:

- (a) Protect the child and strengthen the family;
- (b) Limited funds to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;
- (c) Available to the family twenty-four hours a day and seven days a week;
- (d) Enhance parenting skills, family and personal self-sufficiency, functioning of the family, and reduce stress on families; and
- (e) Help to locate and use additional assistance including, but not limited to, the development and maintenance of community support systems, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services.

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- Parent agrees to participate in prevention services.

Part 2

RCW 13.34.030(20): "Prevention and family services and programs" means specific **mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs** that qualify for federal funding under the federal family first prevention services act, P.L. 115-123. **For purposes of this chapter, prevention and family services and programs are not remedial services or family reunification services as described in RCW 13.34.025(2).**

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- Parent agrees to participate in prevention services.

Part 2

RCW 13.34.025(a) For purposes of this chapter, remedial services are those 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.

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- Parent agrees to participate in prevention services.

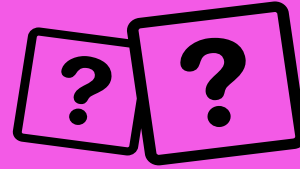
Part 2

42 USC 629a(7) Family reunification services

(B) Services and activities described [t]he services and activities described in this subparagraph are the following:

- (i) Individual, group, and family counseling.
- (ii) Inpatient, residential, or outpatient substance abuse treatment services.
- (iii) Mental health services.
- (iv) Assistance to address domestic violence.
- (v) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries.
- (vi) Peer-to-peer mentoring and support groups for parents and primary caregivers.
- (vii) Services and activities designed to facilitate access to and visitation of children by parents and siblings.
- (viii) Transportation to or from any of the services and activities described in this subparagraph.

Prevention Services vs. Remedial Services



Preventative

- Services capable of preventing need for out-of-home placement while protecting child.
- Safety planning?
- Preservation services.
- Housing assistance.
- **Specific mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs that qualify for federal funding under the federal family first prevention services act.**

Services



Remedial

- Family reunification services that facilitate reunification of child safely and appropriately within a timely fashion.
- Case Planning?
- **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 childcare and therapeutic services for families; and transportation.**

Issue 2: Placement with a Relative

RCW 13.34.065(5)(c): Relative Placement

PRESUMPTION of relative placement: Court shall place with relative or suitable adults unless:

- Reasonable cause to believe that placement in foster care is necessary to prevent imminent physical harm (SAME AS SHELTER CARE REMOVAL STANDARD)
- Because no relative or other suitable person is capable of ensuring the basic safety of the child

OR

- Efforts to reunite will be hindered
- Burden of proof on petitioner



RCW 13.34.065(5)(c)(ii): Court's Inquiry Into Relative Placement Options

At 72-hour Shelter Care Hearing, Court shall inquire whether relative or suitable person:

- Has expressed interest in becoming caregiver for child;
- Is able to meet any special needs of child;
- Is willing to facilitate child's sibling and parent visitation if ordered by court;
- Supports reunification of parent and child once reunification can safely occur.

Court shall give great weight to stated preference of parent, guardian, or legal custodian, and the child.

RCW 13.34.065(5)(c)(iii): Relative Placement: Factors Not Preventing Placement

The following factors/issues must NOT prevent child's placement with relative/suitable adult:

- Incomplete Department or fingerprint-based background check, if relative or suitable adult appears suitable and competent, but background check must be completed as soon as possible after placement;
- Uncertainty on part of relative/suitable adult regarding adoption;
- Disbelief on part of relative/suitable adult that parent presents a danger to the child, provided caregiver will protect the safety of child and comply with court orders regarding parent-child contact;
- Conditions of relative/suitable adult's home are not sufficient to satisfy requirements of licensed foster home. Court may order Department to provide financial or other support to ensure safe conditions in the home.

RCW 13.34.065(5)(i): Relative Placement: Initial Foster Care License

- If court places with relative or suitable adult, and placement wishes to be a **licensed foster parent**, court shall order Department to begin initial assessment within **10 days**.
- If relative or suitable adult is **qualified**, Department shall issue an **initial license** and begin making foster care payments after **10 days**, beginning on date Department approves initial license.
- If relative or suitable adult **unqualified**, Department shall report to court within **one week of decision**.
- Department shall also report on status of licensure process during **entry of dispositional orders**.

Ten Days

72 Hour Hearing

Assessment for
Licensure

Issue 3: Placement in Foster Care

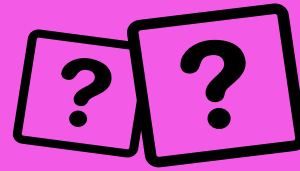
RCW 13.34.065(j): Court Authority Over Foster Care Placement

If court places child in foster care, Department **SHALL** report to court, at shelter care hearing, **location** of licensed foster placement identified by Department.

- NEW** court authority to over Department's ability to place in foster care, including:
- Ordering placement in **less restrictive placement**;
 - Ordering Department to place in **location in closer proximity to child's parent, home, or school**;
 - Ordering Department to place with **child's siblings**; and
 - Taking **any other necessary steps to ensure the child's health, safety, and well-being**.



RCW 13.34.065(j)(iii): Department's compliance and impact on reasonable efforts



- Department's **failure to comply with court orders** in shelter care may be considered when determining whether **reasonable efforts** have been made by Department at **dispositional hearing**.
- **Placement moves** in shelter care may be considered when determining whether **reasonable efforts** have been made by Department during **dispositional hearing**.

QUESTIONS?

COMMENTS?

THANK YOU!



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