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CASE LAW AND LEGISLATIVE UPDATE

Panelists:

- Sarah Flory, Assistant Attorney General, Office of the Attorney General
- Marci Comeau, Managing Attorney, Office of Public Defense
- Karrina Guilbault, Training Coordinator, Office of Civil Legal Aid
- Morgan Chaput, Child Advocate Program Attorney, Pierce County Juvenile Court

Case Law Updates

In re Dependency of A.T., 541 P.3d 1079 (2024): Court of Appeals, Division Three

In this appeal of a disposition order entered as to the father, Division Three reversed the trial court's finding of active efforts but upheld out-of-home placement because sufficient evidence supported the finding that returning the child would subject him to substantial and immediate danger or threat of such danger.

Applying *Matter of Dependency of G.J.A.*, 197 Wn.2d 868, 489 P.3d 631 (2021), Division Three concluded that active efforts were not met because the Department did not "actively engage [the father] on the issue of mental health services" after the child was removed from the father's care. Before removal, the Department likely met its active efforts obligation, but after removal, it became apparent that the father's deteriorating mental health was a significant barrier to reunification. While the Department provided the father with service letters, discussed the providers, and offered to make phone calls, such were insufficient "to help the father overcome his resistance to services. Something new needed to be tried." The record did not show the Department engaged "in self-evaluation, reflection, and a willingness to change strategy" to overcome the father's resistance to, and unwillingness to engage in, mental health treatment. Active efforts obliged the Department to actively reassess the situation and help the father "'develop the skills required' to understand the importance of mental health treatment…" This was required even though the father could not be ordered into services before the dependency fact finding hearing. The possibility, and even the probability, of failure to prevent the breakup of the Indian family "does not excuse" the Department from continuing to try to make active efforts.

The remedy for failure to make active efforts is to remand the matter to the trial court to return the child home unless doing so "would subject the child to substantial and immediate danger or threat of such danger," pursuant to RCW 13.38.160 and 25 U.S.C. § 1920. In this case, there was sufficient evidence that returning the child to the father would result in a substantial and immediate danger, so Division Three upheld the out-of-home placement order.

In re Dependency of R.D., 27 Wash. App. 2d 219, 532 P.3d 201 (2023): Court of Appeals, Division Three
In this appeal of dependency and disposition orders, Division Three upheld the dependency order, reversed the lower court's finding that the Department provided active efforts, and remanded the case to the lower court to order a return home unless it found that doing so would subject R.D. to substantial and immediate danger or threat of danger. As to active efforts, the court concluded that Department's contacts with the mother did not qualify as such, in that they were limited (as opposed to ongoing) and were "designed to obtain information for the State, not to provide remedial services for the mother." The Court pointed out that the active efforts requirement is not fulfilled simply because a parent is uninterested or that efforts would be futile. It found a declaration submitted by Richard England as a "Qualified Expert Witness" to be unsubstantiated and conclusory; in particular, the Court took issue with Mr. England's expectation that the mother find within herself the wherewithal to overcome her resistance to services. As to the dependency finding, the court concluded that the trial court erred in admitting a chemical dependency assessment as substantive evidence in the absence of the author's testimony, but that such error did not materially affect the outcome of the proceeding because the assessment was cumulative of the other evidence.

In re Dependency of Z.A., 540 P.3d 173 (2023): Court of Appeals, Division One
In this appeal of dependency and disposition orders entered as to the father, Division One upheld the dependency order but reversed portions of the disposition order because it concluded that the trial court misapplied RCW 13.34.130(6)(a) in placing the children with relatives and erred in ordering a domestic violence service. RCW 13.34.130(6)(a) authorizes out-of-home placement if, in relevant part, "There is no parent or guardian available to care for such child." The Division One held that this provision requires courts to find "by clear, cogent, and convincing evidence that a parent's deficiency jeopardizes the child's rights to conditions of basic nurture, health, or safety in circumstances where an in-home placement would pose a manifest danger to the children." It also reversed the trial court's order requiring the father to complete a domestic violence service, as it concluded that the record did not support requiring it. The court upheld the dependency order as supported by substantial evidence but concluded that "some of the court's findings, such as finding the father was not 'prioritizing the children over the mother' did not constitute a danger of substantial damage to the children's psychological or physical development" under RCW 13.34.030(6)(c).

In re Dependency of R.L.L., 540 P.3d 135 (2023): Court of Appeals, Division Three
This case concerns a mother's challenge to shelter care and dependency orders regarding her infant. At the time of the child's removal, the mother had been involved in a five-year dependency regarding her older child K.J.H., whose guardian had known the mother for six years, due in part to the mother's substance use. The Department social worker testified at the shelter care hearing that the infant's umbilical cord had tested negative for substances, and that, per the hospital physician, this negative test covered an approximate 20 week period. K.J.H.'s guardian testified on the mother's behalf. The court placed R.L.L. in shelter care. In doing so, it relied on testimony that the judge recalled from other proceedings regarding umbilical cord testing, testimony outside the record from the

guardian in a prior proceeding that was not presented at the shelter care hearing, and evidence of the mother's lack of compliance with services in her prior dependency.
Despite mootness, Division Three reviewed and held that the court's consideration of extraneous evidence was improper, but not its consideration of properly admitted evidence regarding the mother's lack of compliance with services in K.J.H.'s dependency. Judges may take notice of undisputable facts under ER 201(b) and may apply their own common sense based on experience, but they cannot consider evidence outside the record. In this case, the trial court erred in considering expert testimony from a wholly unrelated proceeding; such facts were not introduced during the shelter care hearing and, as a result, were not subject to examination. The trial court also erred in considering the testimony of the guardian in the prior dependency hearing; when deciding one case, a court cannot "take judicial notice of records of other independent and separate judicial proceedings even though they are between the same parties." However, evidence of the mother's lack of compliance with services in the prior dependency proceeding was properly admitted through the social worker's testimony, and the Court's reliance on this evidence was proper. In the unpublished portion of the court's opinion, the Court of Appeals upheld the dependency order.

R.T.L. v. K.M., 28 Wash. App. 2d 347, 535 P.3d 882 (2023): Court of Appeals, Division Three

This case concerns a maternal grandmother's challenge to an order denying her motion to intervene in the dependency of a grandchild placed with her. Division Three upheld the order, holding that RCW 26.26A.440(4)(c) requires a petitioner seeking de facto parentage status to establish that they "undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation." The grandmother could not establish this element, as a relative caregiver in a dependency "does not have all the rights a typical parent would have. A caregiver's rights are court-given, court-restricted, and court-withdrawn." Further, a relative caregiver's rights are subject to alteration in a way a typical parent's rights are not; "In a successful dependency, the relative caregiver loses placement when the trial court orders reunification of the child with one or both parents." Thus, a relative who obtains placement of a child in a dependency case does not satisfy RCW 26.26A.440(4)(c)'s requirement of undertaking full and permanent responsibilities of a parent. The lower court's order denying her intervention motion was therefore proper.

In re Dependency of M.L.W., 28 Wash. App. 2d 252, 535 P.3d 491 (2023): Court of Appeals, Division One

In this appeal of two termination orders, Division One upheld the lower court's denial of a sibling's motion to intervene in the termination proceeding involving their parent and younger sibling. In so doing, it held that the trial court did not err in denying the motion as a matter of right, nor did it err in denying permissive intervention under CR 24. In addition, the sibling did not have a constitutional right to "family integrity" that entitled him to intervene, and the mother lacked standing to argue the sibling's alleged constitutional right. The court also held that the statutory amendment to RCW 13.34.180(1)(f), requiring courts to consider the Department's efforts to support a guardianship and the availability of a guardianship, did not apply retroactively to these termination orders. The court further upheld the termination orders, finding substantial evidence supported the trial court's findings under RCW 13.34.180(1)(d), where family therapy was neither a court ordered nor necessary service, and under RCW 13.34.180(1)(f).

***This case has been accepted for discretionary review by the Washington State Supreme Court on the following issues:

1. Whether, in this action to terminate a mother's rights to two daughters, the superior court erroneously denied a motion to intervene brought by the mother's son, where the termination petition had been dismissed as to him, but he asserted that he had a stake in the termination proceedings because his familial relationship with his sisters would be jeopardized by the termination of his mother's parental rights as to them.
2. Whether, in this action to terminate a Black mother's rights to two of her children, a social worker wrongly failed to make a referral for family therapy, a necessary service, because the social worker's perception of the family was tainted by racial bias.

In re Dependency of G.C.B., 28 Wash. App. 2d 157, 535 P.3d 451 (2023): Court of Appeals, Division One

In this appeal of a termination order, issued following a prior reversal and remand, Division One held that (1) the father had unequivocally waived his right to counsel, and (2) a 2022 Legislative amendment to RCW 13.34.180(1)(f), requiring courts to consider the Department's efforts to support a guardianship and the availability of a guardianship, did not create a new element for termination of parental rights.

First, Division One concluded that the father's waiver of his right to counsel was unequivocal, knowing, and intelligent. The father stated that if he was "not going to be given an opportunity [to testify], then I should probably have legal counsel." This did not render his waiver equivocal in light of the colloquy as a whole. The trial court explained the risks of proceeding pro se to the father, and he indicated he understood the risks, that he was "just… concerned about the truth being heard," and that no one had forced him to make the decision to represent himself. The father also re-affirmed his decision to represent himself a year later, at a hearing regarding standby counsel, and again during the termination trial, in closing argument. While the trial court did not inform him of the specific allegations in the termination petition or the consequences should the Department prevail at trial, the father advised that he had attended the prior termination trial, after which the court terminated his parental rights. As such, the father's waiver was knowing and intelligent.

Second, Division One held that the Department need not disprove the ability of a guardianship to satisfy its burden under RCW 13.34.180(1)(f), which requires proof "[t]hat continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home." In 2022, the Legislature, via House Bill 1747, amended RCW 13.34.180(1)(f) to add: "In making this determination, the court must consider the efforts taken by the department to support a guardianship and whether a guardianship is available as a permanent option for the child." Division One explained that "[w]hether guardianship is a viable alternative to termination is a case-specific determination, considering factors relevant to the best interests of the child," and "even when an identified guardianship is available, 'there will be circumstances under which termination, rather than guardianship, is the appropriate course of action.'" In this case, the trial court had found that guardianship was not a viable alternative to termination because, in part, the children were thriving in their placement, a guardianship would result in a "lack

of stability for seven years," because the father had shown no "ability to parent," and the caregiver "preferred adoption" though "her family 'discussed the potential for guardianship or adoption with the Department.'" The trial court properly considered the Department's efforts to support a guardianship and the availability of a guardianship in finding RCW 13.34.180(1)(f) was met, and substantial evidence supported its finding.

In re Dependency of C.M.L., 28 Wash. App. 2d 40, 537 P.3d 1044 (2023): Court of Appeals, Division One

In this appeal of an order denying a CR 60 motion to vacate a default termination order, Division One upheld the denial as within the trial court's discretion. First, it held that the mother was not entitled to notice of the default hearing under CR 55(a)(3) because she had not previously appeared in the termination proceeding personally or via counsel. Second, the mother failed to show her due process rights were violated, as the Department had personally served her with a notice and summons to appear at a hearing that informed her of her right to an attorney and how to obtain one. Third, the mother failed to show, per CR 60(b)(1), that there was substantial evidence supporting a prima facie defense or that her failure to timely appear and answer was due to mistake, inadvertence, surprise, or excusable neglect. Specifically, the mother argued through counsel, but did not allege in her declaration, that the Department's investigation into her disabilities (including dyslexia) was inadequate, that it did not offer sufficient services, or that her dyslexia prevented her from meaningfully participating in those services or understanding the contents of the notice and summons. For purposes of CR 60(b)(1), the mother's attorney acted with due diligence in bringing the motion, the state would not suffer substantial hardship if the order were vacated, but the equities supported the denial, including the interest shared by the state and child in establishing a stable and permanent home for the child as soon as possible.

In re Dependency of B.B.B., 27 Wash. App. 2d 825, 533 P.3d 1177 (2023): Court of Appeals, Division One

In this appeal of an order denying the mother's request for a fifth continued (30-day) shelter care hearing, where the mother's visits were unsupervised, Division One held that RCW 13.34.065(7)(a)(i) does not require a hearing every 30 days while a child is in shelter care. The court concluded that "although a party may request amendment to an order for continued shelter care… if there are no requested amendments, the statute does not require a hearing, nor subsequent hearings every thirty days." It further held that, while RCW 13.34.065(7)(a)(i) does not require continuing shelter care hearings every 30 days, it also does not prohibit courts from holding such hearings.

*** This case has been accepted for discretionary review by the Washington State Supreme Court on the following issue:
Whether in this dependency action in which the superior court entered a third order extending shelter care for 30 days, the court was required under RCW 13.34.065(7)(a)(i) to hold another hearing at the expiration of the 30-day extension and an additional hearing for any 30-day extension thereafter.

In re Dependency of C.E.C.L., No 85591-3-1, __P.3d __, (2024): Court of Appeals, Division One
This appeal challenged an order requiring the Office of Civil Legal Aid to fund representation of a child at state expense after parental rights to that child had been reinstated. Applying a plain language analysis to RCW 13.34.212, Division One held that subsection (1)(c) limits the mandate for state funding to specific situations, one of which was no longer present following a prior vacation of an order terminating the father's parental rights.

In re Welfare of C.W.M., 27 Wash. App. 2d 747, 533 P.3d 1199 (2023): Court of Appeals, Division Two
In this appeal of dependency and disposition orders, Division Two analyzed the definition of "dependent child" in RCW 13.34.060(6) and held that this statutory definition does not require a reasonable efforts finding in order for the court to establish dependency. Instead, the requirement for reasonable efforts is located in the disposition statute, RCW 13.34.130. The Court rejected the father's argument that the statutory amendments under House Bill (HB) 1227 requires the court to consider reasonable efforts prior to finding a dependency, as well as his public policy argument that a reasonable efforts inquiry should inform whether the court finds a child is dependent, as that public policy argument is more properly addressed to the Legislature.

In re Dependency of A.C., 1 Wn.3d 186 (2023): Washington State Supreme Court
The Washington State Supreme Court reversed a dependency order because trial court improperly relied on hearsay beyond its limited purpose under ER 703 and 705, and its error was prejudicial to the parent. Under ER 703 and 705, a trial court may use an expert witness's hearsay testimony to explain how they reached their opinions. However, a judge cannot treat such testimony as substantive evidence. In this case, the trial court erred in relying on witnesses' testimony regarding secondhand reports and statements that were not admitted, as well as accounts of conversations with third parties who did not testify. The Court concluded that the lower court's error in treating this testimony as substantive evidence was prejudicial and explained that "[a]n erroneous admission of evidence 'is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred.'" In this case, the Court concluded that the taint of the trial court's improper reliance on hearsay as substantive evidence materially affected its view of all the admissible evidence, and that the weight of that reliance, within reasonable probabilities, materially affected the outcome of the hearing.

In re Dependency of A.M.F., 526 P.3d 32 (2023): Washington State Supreme Court
The Washington State Supreme Court affirmed an order terminating parental rights, holding that a trial court may draw a negative inference from a parent's refusal to answer specific questions during a termination trial, asserting the Fifth Amendment privilege against self-incrimination in so refusing. However, the Supreme Court also held that the Fifth Amendment does not allow the State to meet its evidentiary burden in a civil case based solely on an assertion of the right to remain silent. Instead, the State must provide other, admissible evidence supporting the adverse finding against the parent.

In re Welfare of D.H., 25 Wash. App. 2d 502, 523 P.3d 255 (2023): Court of Appeals, Division Two
In this appeal of a termination order entered as to a mother with a diagnosed developmental disability, Division Two reversed the order because it concluded that the trial court lacked sufficient evidence to find that all court-ordered and necessary services, capable of correcting the mother's parental deficiencies in the foreseeable future, were expressly and understandably offered or provided per RCW 13.34.180(1)(d). Applying *In re M.A.S.C.*, 197 Wn.2d 685, 486 P.3d 886 (2021), Division Two held that trial courts must apply an objective standard in determining whether the Department has "expressly and understandably" offered or provided services per RCW 13.34.180(1)(d); specifically, they must "view the evidence as would an objective observer who is aware of the relevant professional guidelines" for communicating with people who have similar disabilities" to the parent. Here, the Department failed to present sufficient evidence about the current professional guidelines for communicating with the mother, and without this evidence, the court could not assess whether the Department's offer of services was reasonably understandable to her. The mother's neuropsychological evaluator testified that he was familiar with "professional guidelines for working with people with intellectual disabilities," but he "did not describe those guidelines or identify which parts of his report reflected those guidelines." For purposes of RCW 13.34.180(1)(d), the Department's obligation to tailor its offer of services to ensure they are understandable to the parent is a separate question from the Department's obligation to tailor the services themselves; here, evidence did not support the lower court's finding that the Department's offer of services was properly tailored to the mother. Division Two did not reach the question of whether the services themselves were sufficiently tailored.

Matter of the Welfare of O.C. and D.C., 27 Wn. App. 2d 671, 533 P.3d 159 (*2023):* Court of Appeals, Division Two
In this case, the Grays Harbor County Sheriff's Office filed several emergency motions to access dependency and juvenile court records related to O.C. and two of her siblings, BB-P and D.C., in order to locate O.C., who had gone missing. The juvenile court granted these motions. O.C.'s mother, JB, appealed the orders that shortened time, ordered disclosure to the sheriff's office, and unsealed juvenile court files for BB-P, D.C., and O.C. The court held that the juvenile court did not err when it ordered the release of dependency court files to the sheriff's office. However, the court found that the juvenile court abused its discretion when it used language that purported to unseal those records. The portion of the court's order unsealing BB-P's, D.C.'s, and O.C.'s juvenile court records was reversed, but the rest of the order was affirmed.

In re Guardianship of L.C., 28 Wash. App. 2d 766, 538 P.3d 309 (2023): Court of Appeals, Division Two
In this appeal, the mother's cousins filed for an emergency minor guardianship of the child. The court granted the petition; however, both parents objected to cousins acting as guardians and identified two other relatives as alternative proposed guardians. The court found that under RCW 11.130.215(2), there must be a specific factual finding made that placement with the parent's proposed guardian is contrary to the child's best interest. Because the trial court failed to make this finding, the case was reversed and remanded.

***In re Custody of A.N.D.M.*,** 26 Wash. App. 2d 360, 527 P.3d 111 (2023): Court of Appeals, Division One

In this appeal of an agreed parenting plan, Division One held that commissioners and judges in both family and juvenile court have authority to hear Special Immigrant Juvenile Status (SIJS) matters under federal law and that a court abuses its discretion in by relying on the reasons for a petitioner's departure from their home country, rather than only the child's best interests. Here, the mother immigrated to the United States while her daughter, A.N.D.M., remained in Honduras. A few years later, A.N.D.M. immigrated to the United States and was detained by immigration authorities. She was subsequently placed with her father in Texas, with whom she had no preexisting relationship. The father did not adequately care for A.N.D.M., and she later reunited with her mother. The mother filed an uncontested petition for a parenting plan, along with a motion seeking specific findings so that A.N.D.M. could be eligible for SIJS. A family court commissioner declined to hear the mother's motion, reasoning that SIJS matters were to be heard by the juvenile court. Later, the juvenile court denied the mother's motion, determining that although the mother alleged that if A.N.D.M. were to return to Honduras she would not have any caregivers, no evidence showed that the mother could not return to Honduras with A.N.D.M.

Congress created SIJS to provide relief to all immigrant children who have suffered abandonment, abuse, neglect, or a similar act by a parent. To be eligible for SIJS, a state court must make specific findings regarding the child, including: (1) a child must be legally committed to or placed under the custody of an individual or entity appointed by a United States court; (2) reunification with one or both parents must not be viable due to abuse, neglect, abandonment, or a similar basis found under state law; and (3) following a judicial or administrative proceeding, there has been a determination that returning the child to their country of citizenship would not be in the child's best interests. First, the Court of Appeals held that the family court commissioner erred in determining it lacked jurisdiction to consider SIJS-related matters. The Court reasoned that either a superior court judge or commissioner acting in their capacity in family or juvenile court has authority to consider SIJS-related matters as they are "juvenile court" judges for purposes of SIJS. The Court also held that the juvenile court judge abused its discretion in denying the mother's motion because the court misinterpreted the law in focusing on the mother's ability to return to Honduras, rather than what was in A.N.D.M.'s best interests. The Court noted that a petitioner is not required to "explain the circumstances of her departure from her home country, let alone meet a certain threshold of trauma upon leaving." The Court further reasoned that returning a child to a country without any caregivers would be detrimental to their health and wellbeing and, therefore, contrary to the child's best interests.

LEGISLATIVE UPDATES

E2SSB 6109: Supporting children, families, and child welfare workers by improving services and clarifying the child removal process in circumstances involving high-potency synthetic opioids.

The legislature found a significant increase in child fatalities and near fatalities involving fentanyl since 2018 and described this is a “unique and growing threat to the safety of children in Washington State.” HB 6109 is intended “to provide clarity to judges, social workers, advocates, and families about the safety threat that potency synthetic opioids pose to vulnerable children” by giving great weight to the lethality of high-potency synthetic opioids and public health guidance from the DOH related to high-potency synthetic opioids.

SB 6109 defines a "high-potency synthetic opioid" as an unprescribed synthetic opioid classified as a schedule II controlled substance or controlled substance analog in chapter 69.50 RCW or by the pharmacy quality assurance commission in rule including, but not limited to, fentanyl.

Related to pick up orders, SB 6109 adds the following underlined language:

> RCW 13.34.050(1) … 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, a pattern of severe neglect, or a high-potency synthetic opioid. The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids in determining whether removal is necessary to prevent imminent physical harm to the child due to child abuse or neglect.

Related to the shelter care hearing, SB 6109 adds the following underlined language:

> RCW 13.34.065(5)(a)(ii)(B)(I)… 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, a high-potency synthetic opioid, or a pattern of severe neglect, notwithstanding an order entered pursuant to RCW 26.44.063. The evidence must show a causal relationship between the particular 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 shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids when determining whether removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect.
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> …

RCW 13.34.065(5)(b)(i) … Whether participation by the parents, guardians, or legal custodians in any prevention services would prevent or eliminate the need for removal and, if so, shall inquire of the parent whether they are willing to participate in such services. If the parent agrees to participate in the prevention services identified by the court that would prevent or eliminate the need for removal, the court shall place the child with the parent. The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids when deciding whether to place the child with the parent.

…

RCW 13.34.065(5)(c)(i)(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, a high-potency synthetic opioid, or a pattern of severe neglect, because no relative or other suitable person is capable of ensuring the basic safety of the child.

Related to dispositional hearings, SB 6109 adds the following underlined language:

RCW 13.34.130(6)(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger. The court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the department of health related to high-potency synthetic opioids, including fentanyl, when deciding whether a manifest danger exists.

Related to law enforcement protective custody, SB 6109 adds the following underlined language:

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that taking the child into custody is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, a high-potency synthetic opioid, or a pattern of severe neglect, and the child would be seriously injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

Related to hospital holds, SB 6109 adds the following underlined language:

An administrator of a hospital or similar institution or any physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain a child without consent of a person legally responsible for the child whether or not medical treatment is required, if there is probable cause to believe that detaining the child is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, a high-potency synthetic

opioid, or a pattern of severe neglect, and the child would be seriously injured or could not be taken into custody if it were necessary to first obtain a court order under RCW 13.34.050: PROVIDED, That such administrator or physician shall notify or cause to be notified the appropriate law enforcement agency or child protective services pursuant to RCW 26.44.040.

In order to apply for grants from the family and juvenile court improvement grant program, the superior court's local improvement plan must include the requirement that court commissioners and judges receive a minimum of 30 hours specialized training including the risk and danger presented to children and youth by substance use disorders and the legal standards for removal of a child based on abuse or neglect. This training will also be available to other professionals involved in child welfare court proceedings.

Subject to appropriations:

- DCYF is to establish a pilot program for contracted childcare slots for infants in areas with the historically highest rates of child welfare screened-in intake due to the parental substance use disorder was a factor in the case. ($1.6M)
- DCYF is to enter into targeted contracts with existing home visiting programs in areas with the historically highest rates of child welfare screened-in intakes. ($1.6M)
- A legal liaison within each region in DCYF for the purpose of assisting with the preparation of child abuse and neglect court cases involving allegations of high potency synthetic opioids. ($875K)
- HCA will expand specific treatment and services to children and youth with prenatal substance exposure who would benefit from evidence-based services impacting their behavioral and physical health.
- DCYF will establish two pilot programs to implement an evidence-based, comprehensive, intensive, in-home parenting services support model. ($972K)
- DCYF is to convene a work group on children and exposure to fentanyl.
- DOH shall support Promotoras in at least two communities. One community on each side of the state.
- DCYF is to establish a pilot program to include third-party safety plan participants ($1.5M) and public health nurses ($1.35M) in child protective services safety planning.

SSHB 1205: Relating to responsibility for providing service by publication of a summons or notice in dependency and termination of parental rights cases.

Subject to specific funding provided by June 30, 2024, in a dependency or termination of parental rights proceeding where service by publication is required, the petitioner, rather than the clerk of court, is responsible for publishing notice of the petition and hearing date in a legal newspaper once a week for three consecutive weeks. The petitioner must pay for the cost of publication. If the petitioner is a minor, the Office of Civil Legal Aid (OCLA) must pay for or reimburse the publication costs, and if the petitioner is an indigent parent or legal guardian, the Office of Public Defense (OPD) must pay for or reimburse the publication costs. The requirement that the publication be in a legal newspaper "printed in the county qualified to publish summons" is eliminated.

2SSB 6006: Supporting victims of human trafficking and sexual abuse.

SB 6006 creates a statewide coordinating committee to facilitate a statewide coordinated response to the commercial sexual exploitation of children, youth, and young adults, to be convened by the office of the attorney general. Duties of the committee include, amongst other things:

- Overseeing implementation of the Washington state model protocol for commercially sexually exploited children at task force sites.
- Receiving reports and data about incidence of commercially sexually exploited children and perpetrators.
- Making policy and legislative, data collection, and strategic investment recommendations.

SB 6006 amends the definition of a dependent child to include a child who "is a victim of sex trafficking or severe forms of trafficking in persons under the trafficking victim's protection act of 2000, 22 U.S.C. Sec. 7101 et seq., when the parent is involved in the trafficking, facilitating the trafficking, or should have known that the child is being trafficked." This new definition is codified at RCW 13.34.030(6)(e). SB 6006 also amends the definition of abuse and neglect under RCW 26.44.020(1) to include trafficking as described in RCW 9A.40.100, sex trafficking or severe forms of trafficking in persons under the trafficking victim's protection act of 2000, 22 U.S.C. Sec. 7101 et seq. The law also provides in relevant part:

- The department of children, youth, and families, and juvenile justice agencies (law enforcement, diversion units, juvenile courts, detention centers, and persons or public or private agencies having children committed to their custody), to use a validated assessment tool to screen a child for commercial sexual abuse if there is an allegation of or reasonable cause to believe that commercial sexual abuse of a minor under the jurisdiction of the juvenile justice agency has occurred.
- The department to (1) recommend to the legislature the types of services that need to be offered to children who are identified as being a victim of sex trafficking or other severe forms of trafficking, and (2) assess and offer services to dependent children identified as victims of such trafficking. The department may offer services to children identified as victims of such trafficking, who have not been found dependent by a juvenile court.
- The department may file a petition for a sexual assault protection order (SAPO) on behalf of a minor. Similarly, a law enforcement agency may file a petition for an ex parte temporary SAPO on behalf of a minor. A minor's consent is not grounds to deny a SAPO when the petition alleges commercial sexual abuse or sex trafficking.

E2SSB 6068: An act relating to reporting on dependency outcomes.

This legislation adds a section stating that dependency courts should work to ensure the well-being of dependent children and that every young person who leaves foster care has relational permanency, meaning they have various long-term relationships with siblings, extended family, mentors, tribes, and others that help them feel loved and connected. While legal permanency achieved through reunification, guardianship, or adoption is important, it

is not the only way to provide a sense of belonging and meaningful connections for young people and that legal permanency alone does not guarantee secure attachments and lifelong relationships.

This legislation requires the Administrative Office of Courts (AOC) to, in consultation with others, identify measures of relational permanency and child well-being and report to the Legislature by July 1, 2025, the following information:

- a plan for reporting on child well-being and relational permanency;
- a plan for tracking and reporting on whether an order or portion of an order was agreed or contested, and if contested, by which party or parties;
- how many children in dependency have incarcerated parents;
- how to make such information publicly available;
- what can be reported using existing data;
- what additional information should be collected; and
- what data-sharing agreements are necessary to ensure an accurate picture of the needs of families in the dependency system.

AOC must consult and may enter data sharing agreements with the Office of the Superintendent of Public Instruction, Health Care Authority, DCYF, DSHS, and the Department of Corrections. It must also consult with, and tribal data experts and any other entity holding relevant data or expertise.

ESSB 5908: Relating to the provision of extended foster care services to youth ages 18 to 21

Changes to the EFC program, include:

- DCYF must develop policies and procedures to ensure dependent youth ages 15 and older are informed of the EFC program.
- A dependent youth may sign a voluntary placement agreement to receive EFC services within six months of their 18th birthday and any time after their 18th birthday and may withdraw consent at any time.
- DCYF must provide continued EFC services to nonminor dependents who request EFC. A youth no longer must meet educational or vocational criteria or demonstrate a medical exemption to be eligible for EFC.
- EFC services includes a supervised independent living subsidy.
- DCYF may not create additional eligibility requirements and must develop age-appropriate social work supports that includes a codesign process with those with lived experience in the foster care system.
- A youth enrolled in EFC may elect a foster care placement or may live independently. A youth who is not in a licensed foster care placement is eligible for a monthly supervised independent living subsidy effective the date the youth signs the voluntary placement agreement, agrees to dependency, or informs their social worker they are living independently, whichever occurs first.
- DCYF is to pursue federal reimbursement where appropriate, including when a youth is residing in an approved supervised independent living setting.

- If the youth is not residing in an approved supervised independent living setting, DCYF is to work with the youth to help identify an appropriate living arrangement until the youth is living in a safe location approved by DCYF or the court—during this time, DCYF shall continue to pay the monthly supervised independent living subsidy.

The court shall maintain the dependency proceeding for any youth who is dependent at the age of 18 until the youth turns 21 or withdraws their agreement to participate. DCYF is to develop a program to make incentive payments to youth in extended foster care who participate in qualifying activities. The program design is to include stakeholder engagement from impacted communities. Subject to appropriations, DCYF is to make incentive payments to qualifying youth, in addition to supervised independent living subsidies.

SB 5805: Developing a schedule for court appointment of attorneys for children and youth in dependency and termination proceedings.

The legislation extends full implementation of HB 1219 (2021) from 2027 to 2028 under RCW 13.34.212.

ESHB 1652: Relating to child support pass through.

The Department of Social and Health Services (DSHS) must pass through to a family receiving Temporary Assistance for Needy Families (TANF) all current child support collected on behalf of the family each month. DSHS must disregard and not count as income any amount of current child support passed through to TANF or WorkFirst applicants or recipients when determining eligibility for and the amount of assistance for, needy families or WorkFirst.

SSHB 1929: Relating to supporting young adults following inpatient behavioral health treatment.

Subject to the availability of amounts appropriated for this specific purpose by June 30, 2024, the post inpatient housing program for young adults is established to provide supportive transitional housing with behavioral health support focused on securing long-term housing for young adults exiting inpatient behavioral health treatment. Youth must be 18-24 and exiting inpatient behavioral health treatment or have exited within the last month and engaged in a recovery plan, and not have secured long-term housing.

The legislation provides for funding a voluntary, community-based residential program or programs and at least two residential programs with six to 10 beds, one on each side of the Cascade Mountain range. The program supports recovery in a developmentally and culturally responsive environment.

SB 5825: AN ACT Relating to guardianship and conservatorship.
This legislation implements changes to RCW 11.130, including mandatory dismissal if the petitioner fails to identify a proposed guardian within 30 days of filing. It adds court-appointed attorney fees for bad faith filings and provides that a minor on their own behalf, or a person interested in the welfare of a minor who will obtain the age of majority within 45 days of filing, may petition for appointment of a guardian. It adds parents to the list of individuals to be named in a petition "if living and involved in" the life of the respondent (individual for whom appointment of a guardian is sought). The legislation requires appointment of counsel within 5 days, if the respondent objects to the petition or requests appointment of counsel. The legislation also shortens notice after appointment of the guardian to 14 days instead of 30.