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NO. 96830-6

SUPREME COURT OF THE STATE OF WASHINGTON

JESSICA L. WRIGLEY, individually, and as Personal Representative
for the Estate of A.C.A., Deceased, and O.K.P., a minor child,
and I.T.W., a minor child, by and through their biological mother,
JESSICA WRIGLEY,

Respondents,

v.

STATE OF WASHINGTON; DEPARTMENT OF SOCIAL & HEALTH
SERVICES; DONALD WATSON & "JANE DOE" WATSON, husband
and wife, individually and the marital community thereof;
ALESSANDRO LAROSA & "JANE DOE" LAROSA, husband and wife,
individually and the marital community thereof; RACHEL WHITNEY &
"JOHN DOE" WHITNEY, husband and wife, individually and the marital
community thereof; JENNIFER GORDER & "JOHN DOE" GORDER,
husband and wife, individually and the marital community thereof;
"JOHN DOE" Social Worker & "JANE DOE" Social Worker, husband
and wife individually and the marital community thereof, 1, through 5,

Petitioners.

PETITION FOR REVIEW

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I. INTRODUCTION

By expanding the statutory duty to investigate under RCW 26.44.050 to include allegations of possible future abuse or neglect, the decision of the Court of Appeals conflicts with this Court's precedent and leads to an unworkable result. Under RCW 26.44, the Department must conduct an investigation of alleged abuse or neglect and, based on verified information, prepare a report determining whether the allegations are founded or unfounded. It is impossible to make a finding about an alleged incident that has not yet happened.

The Court of Appeals extended the scope of the statutory duty beyond the Legislature's express intent and beyond this Court's reading of the statute because it was concerned that the Department otherwise would not have a duty to protect children from future harm. *Wrigley*, 5 Wn.App.2d 909, 928, 428 P.3d 1279 (2018). But in RCW 74.13.031(3), which the Court of Appeals ignored, the Legislature created a separate process directing the Department's investigations when a risk of future harm to children is alleged. As recognized by this Court, the investigation triggered under RCW 26.44 is tailored to allegations that a child has been abused or neglected. The investigation triggered under RCW 74.13.031(3) is tailored to allegations that a recent act or omission presents an imminent risk of serious harm to a child.

The Court of Appeals' decision conflicts with this Court's construction of RCW 26.44, misapplies that statute, and effectively requires the Department to squander its limited investigatory resources attempting to verify and make findings about incidents that have not transpired. The Court of Appeals' decision thus presents both a conflict with this Court's precedent and a substantial matter of public importance warranting review.

II. IDENTITY OF PETITIONER AND DECISION

The Department of Children, Youth, and Families¹ petitions for review of the partially published decision of Division II of the Court of Appeals, *Wrigley, et al. v. Dep't of Social and Health Services, et al.*, 5 Wn.App.2d 909, 428 P.3d 1279 (2018), *reconsideration denied*, January 10, 2019 (attached as App. A).

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Court of Appeals' conclusion that RCW 26.44.010 and .050 require an investigation of allegations of potential future abuse conflicts with this Court's precedent, justifying review under RAP 13.4(b)(1).

¹ This case was filed originally against the Department of Social and Health Services (DSHS). On July 1, 2018, the powers, duties, and functions of the Children's Administration, within DSHS, were transferred to the newly formed Department of Children, Youth, and Families. RCW 43.216.906.

2. Whether the Court of Appeals' conclusion that RCW 26.44.010 and .050 require investigation of allegations of potential future abuse conflicts with the clear legislative intent, and results in strained and unworkable consequences, justifying review under RAP 13.4(b)(4).

3. Whether the Court of Appeals' conclusion that investigation of allegations of potential future abuse is required under RCW 26.44.050 is unnecessary given that RCW 74.13.031(3) already requires the Department to investigate when a child is at imminent risk by a primary caregiver, justifying review under RAP 13.4(b)(4).

IV. STATEMENT OF THE CASE

A. Statement of Facts

1. A.A. Was Removed From His Mother's Care Due to Allegations of Abuse

A.A. was born in October 2005 to Jessica Wrigley and Anthony Viles. CP 7. Five years later the Wrigley family (A.A., his mother Jessica, stepfather Jared Wrigley, and younger half-brother I.W.), relocated to Washington State from Idaho. CP 274.

In the summer of 2011, the Department received multiple referrals alleging that A.A. was being abused by his mother, Jessica Wrigley, and/or his stepfather, Jared Wrigley. CP 356, 370, 381, 387. Ultimately, the

Department made findings of maltreatment against both the Wrigleys, and of physical abuse against Ms. Wrigley. CP 66, 103-25.

2. After the Department Filed for Dependency on A.A., His Biological Father, Anthony Viles, Sought Custody

On October 5, 2011, the Department filed a dependency petition regarding A.A., based on its investigation into the Wrigleys. CP 85-91. A.A.'s father, Mr. Viles, who still resided in Idaho, indicated he wanted custody of A.A. CP 81. The petition informed the court of a prior restraining order between Ms. Wrigley and Mr. Viles. CP 90. The Department ran a National Crime Information Center (NCIC) background check on Mr. Viles and found no crimes that would have disqualified Mr. Viles from having custody of his son. CP 210-11. While the Court of Appeals' opinion purports to summarize Mr. Viles' criminal history, the undisputed facts indicate that many of the items in Mr. Viles' records were arrests, not convictions. CP 213-43. And, as the opinion ultimately acknowledges in a footnote, Mr. Viles' last conviction for violent assaultive behavior occurred when he was a juvenile, 11 years before requesting custody of A.A. *Wrigley*, 5 Wn.App.2d at 914 n.5.

The Court of Appeals' opinion also omits information obtained by the Department. When the social worker conducted his initial investigation, the mother of Mr. Viles' child in Idaho indicated he was "a good father to

our daughter and is good with my two other children” and “[i]s a good caregiver and father figure.” CP 250. Mr. Viles’ live-in girlfriend, who had two children of her own, told the social worker that Mr. Viles was a great father to her two girls and that he was “always very calm and is never angry.” CP 251. There is no evidence in the record of any CPS referrals made against Mr. Viles in Idaho.

Throughout the shelter care process², Mr. Viles continued to make it known that he wanted custody of A.A. Although A.A. was never found to be dependent, the court conducted several hearings regarding Mr. Viles’ request for custody. CP 290-321, 330-338. On January 30, 2012, the court heard Mr. Viles’ motion to have A.A. released from shelter care and placed with him in Idaho. CP 203-04, 291-321. At that hearing, Mr. Wrigley’s attorney indicated that she had heard from Ms. Wrigley that Mr. Viles was violent and that Ms. Wrigley had “grave concern regarding [A.A.]’s well-being.” CP 304. But Ms. Wrigley’s attorney also represented to the court that Ms. Wrigley “ha[d] no strong position either way” on a placement with

² Shelter care is “temporary physical care” of a child somewhere other than his home. RCW 13.34.030(15) (2010). While a hearing on a child’s shelter care status is typically held within 72 hours of the child being placed in shelter care, a parent may request the hearing be continued. RCW 13.34.065(1) (2010). The purpose of the hearing is to determine whether the child can be safely returned home or must remain in out-of-home care while adjudication of the dependency is pending. RCW 13.34.065(1)(a) (2010). Thus, at the shelter care hearing the court does not determine whether the child is dependent. RCW 13.34.065(4) (2010). Dependency is determined at a formal fact-finding hearing on the petition later in the process. RCW 13.34.110 (2010). All statutes cited in this briefing are attached at App. B.

Mr. Viles. CP 305. The judge ultimately ordered that A.A. be released from shelter care and placed with his father for a 30-day visit and set another hearing for February. CP 314. While A.A. was visiting his father in Idaho, Ms. Wrigley contacted the Department two weeks after A.A.'s placement and allegedly told the social worker that A.A. would be dead within six months if he continued to remain with his father.³ CP 880.

Ms. Wrigley was informed of the upcoming February hearing, where she would have an opportunity to voice her concerns, but she did not attend the hearing. CP 238, 326. At the hearing, her counsel stated she was in agreement with dismissing the dependency petition, which left A.A. in Mr. Viles' custody. CP 236-87, 336. On February 21, 2012, the Court found that placement with Mr. Viles was in A.A.'s best interest and dismissed the dependency proceeding. CP 206-08. Tragically, in April 2012, Mr. Viles killed A.A.

B. Procedural History

On December 3, 2014, Ms. Wrigley and A.A.'s estate filed this lawsuit. In April 2016, the superior court granted the Department's motion for summary judgment; the court ruled that the Department did not have a

³ The social worker's case note of this conversation with Ms. Wrigley does not reflect that she made this statement. CP 262-63.

duty to investigate under RCW 26.44.050 because Ms. Wrigley's concern about future harm was not a referral of abuse by Mr. Viles. CP 1595-99.

In a two-to-one decision, the Court of Appeals reversed summary judgment on the negligent investigation claim, concluding that a duty to investigate under RCW 26.44.050 could be triggered by "reports suggesting a reasonable possibility of future abuse or neglect if the placement is made." *Wrigley*, 5 Wn.App.2d at 929. The court specifically found that Ms. Wrigley's statement that "A.A. would be dead in six months," constituted a report of abuse/neglect triggering the duty to investigate under RCW 26.44.050. Reversal was based solely on the implied statutory duty to investigate under RCW 26.44.050. The Department's Motion for Reconsideration was denied on January 10, 2019.

V. REASONS WHY REVIEW SHOULD BE GRANTED

A. The Conclusion That RCW 26.44.010 and .050 Require an Investigation of Potential Future Abuse Conflicts With This Court's Precedent

This Court made its most recent statement on the operation of RCW 26.44.050 just two days after the Court of Appeals' decision in this case. In *H.B.H. v. State*, 192 Wn.2d 154, 429 P.3d 484 (2018), the Supreme Court described the statutory framework of the state dependency and foster care system and the operation of RCW 26.44.050 within that system. "The dependency process is initiated when [the Department] receives a report that

a child *has been* abused, neglected, or abandoned. RCW 26.44.050.”
H.B.H., 192 Wn.2d at 165 (emphasis added).

This characterization of the duty implied under RCW 26.44.050 is consistent with the Court’s prior interpretation. In *Tyner v. State*, this Court applied the *Bennett v. Hardy* test and concluded that RCW 26.44.050 created an implied cause of action in favor of a parent, as well as a child, to reasonably investigate allegations of abuse or neglect. *Tyner v. State*, 141 Wn.2d 68, 77-79, 1 P.3d 1148 (2000) (citing *Bennett v. Hardy*, 113 Wn.2d 912, 784 P.2d 1258 (1990)).

In determining whether the plaintiff was within the class protected under the statute, the Court examined the legislative intent language in RCW 26.44.010. *Tyner*, 141 Wn.2d at 78. RCW 26.44.010 provides that “the state is justified in emergency intervention based upon *verified information . . .*” (Emphasis added.) RCW 26.44.050 directs the Department to provide a report to the protective services section once a referral has been screened in for investigation.⁴ That report ultimately must list the finding as either founded or unfounded. RCW 26.44.030(12). A founded finding means the Department has determined on a more likely

⁴ The report must contain, “(3) the nature and extent of the alleged injury or injuries; (4) the nature and extent of the alleged neglect; (5) the nature and extent of the alleged sexual abuse . . . and (7) any other information that may be helpful in establishing the cause of the child’s death, injury, or injuries . . .” RCW 26.44.040.

than not basis “that child abuse or neglect *did occur*.” RCW 26.44.020(12) (emphasis added). An unfounded finding means the Department has determined on a more likely than not basis that “abuse or neglect *did not occur*.” RCW 26.44.020(26) (emphasis added).

Where a risk of future abuse or neglect is alleged, the Department cannot comply with these sections of RCW 26.44, because it cannot verify whether predicted abuse or neglect has occurred if it has not yet happened. Indeed the Department would be required to make an unfounded finding in every case of potential future abuse because, by definition, the abuse has not yet occurred. Instead, as explained below, an allegation of future abuse or neglect is investigated under RCW 74.13.031(3). Accordingly, it is clear from the statutory scheme as a whole that the duty imposed under RCW 26.44.050—to investigate, verify, and make findings about abuse or neglect—applies only to alleged conduct that has already occurred.

The decision in *M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d 589, 70 P.3d 954 (2003), yields the same narrow construction of RCW 26.44.050. In *M.W.*, this Court analyzed whether the implied statutory cause of action supported a claim of general negligence against the Department based on alleged injury to a child by a social worker during the course of an investigation. *Id.* at 598. The Court rejected such expansive liability, concluding that the statutory cause of action under RCW 26.44.050 “is a

narrow exception that is based on, and limited to, the statutory duty” to investigate allegations that a child has been abused or neglected. *Id.* at 601. *M.W.* held that RCW 26.44.050 gives rise to a claim for negligent investigation “only when [the Department] conducts a biased or faulty investigation that leads to a harmful placement decision.” *Id.* at 591.

In the context of investigating past allegations of abuse or neglect, this articulation of the Department’s duty makes perfect sense. A court cannot deprive a parent of the custody of his child unless a factual basis for doing so exists. The mere possibility of neglect or abuse in the future, by itself, is insufficient as a matter of law to be the basis of the removal of a child from a parent. *See* RCW 13.34.065(5); *In re Custody of ALD*, 191 Wn.App. 474, 478, 363 P.3d 604 (2015) (“due process demands that a parent receive custody of a child unless the parent is unfit or custody of the parent would cause actual detriment to the child’s growth and development”); *State v. Nusbaum*, 126 Wn.App. 160, 167, 107 P.3d 768 (2005) (a warrant that is conditioned upon a future event which, if fulfilled, would create probable cause is not actionable unless and until the future event has occurred).

Judge Sutton’s dissenting opinion cited both *Tyner* and *M.W.* and correctly analyzed the scope of RCW 26.44:

None of the reports or allegations [from Ms. Wrigley] involve a report of a possible act of sexual abuse, sexual exploitation, or injury of a minor child by Viles under circumstances that would cause harm to a child’s health, welfare, or safety. Further, the reports by Jessica do not include allegations of an act or failure to act, or a pattern of behavior that evidences a “serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child’s health, welfare, or safety.” RCW 26.44.020(16). Therefore, the allegations do not constitute a “possible occurrence of abuse or neglect” of a minor child by Viles to trigger a duty to investigate under RCW 26.44.050.

Wrigley, 5 Wn.App.2d at 940 (Sutton, J., dissenting).

The Court of Appeals’ majority opinion conflicts with this Court’s direction to narrowly construe the implied statutory cause of action for negligent investigation and limit it to the statutory directives contained in RCW 26.44.010 and .050. *M.W.*, 149 Wn.2d at 601. Undoubtedly, out of respect for a parent’s constitutional due process rights to the association and companionship of their children, the Legislature required that the Department investigate and have “verified information” before removing a child from the parent.⁵ Because it is impossible for the Department to verify that an allegation of abuse or neglect is founded when such abuse or neglect

⁵ See *Jones v. Cty. of Los Angeles*, 802 F.3d 990, 1000 (9th Cir. 2015), *superseded on other grounds by Jones v. Cty. of Los Angeles*, 722 F.App’x 634 (9th Cir. 2018) (both the Fourth Amendment and the Fourteenth Amendment provide parents with the right of familial association, such that an official who removes a child from a parent’s custody without a warrant must have reasonable cause to believe that a child is likely to experience serious bodily harm in the time it would require to obtain a warrant).

has not yet occurred, the Court of Appeals' decision yields an irrational and unworkable result. By extending the duty to investigate to include potential future abuse or neglect, the court has taken that duty far beyond this Court's direction that the implied statutory cause of action be narrowly construed and limited by the statutory language from which it was extrapolated. Because there is nothing in RCW 26.44 requiring, much less suggesting, that the Department has a duty to verify information and make findings of facts on events that have not yet happened, the Court of Appeals' decision extending the duty to investigate beyond the parameters of the statutory scheme from which it arises conflicts with *Tyner* and *M.W.*

The Court of Appeals' dissenting opinion succinctly stated the proper analysis—“[b]ecause [the Department] never received a report concerning the possible occurrence of child abuse or neglect of the minor child at issue, A.A., by Viles, . . . [the Department] does not have a duty to investigate under RCW 26.44.050.” *Wrigley*, 5 Wn.App.2d at 940 (Sutton, J., dissenting). In other words, A.A. does not fall within the circumscribed class of persons contemplated by the Legislature to be protected by RCW 26.44.050.⁶ For these reasons, this Court should grant review and reverse the decision of the Court of Appeals. RAP 13.4(b)(1).

⁶ As addressed in section V.C. of this Petition, *infra* at 17, the Legislature adopted a different statutory process for addressing “risk only” complaints that is set forth in RCW 74.13.031(3).

B. The Court of Appeals' Conclusion That RCW 26.44.010 and .050 Require an Investigation of Potential Future Abuse Conflicts With the Legislature's Clear Intent That the Department Must Verify and Make Findings About Abuse or Neglect That Has Occurred

In RCW 26.44, the Legislature clearly expressed its intent to task the Department only with investigating allegations of past abuse or neglect. The declaration of purpose section states that “in the instance where a child is deprived of his or her right to . . . health, and safety, the state is justified in emergency intervention *based upon verified information*” and that, as a result of such reports of verified information, “protective services shall be made available in an effort to *prevent further abuses.*” RCW 26.44.010 (emphasis added). By using the past tense of “deprive,” the Legislature made it clear that the obligation to act begins upon receipt of a referral alleging a child has been or is being “deprived” of health and safety; not upon an allegation that some action in the future might deprive a child of health and safety. This is consistent with the requirement for “verified information” and the distinction that services are intended to prevent “further abuses.” *Id.*

The Legislature's intent that RCW 26.44.050 apply to investigation of reports of actual occurrences, not possible future occurrences, is further confirmed by the requirement that the Department must make a determination of whether the allegation is founded or unfounded.

RCW 26.44.030(12)(a). As previously noted, a founded finding is defined as “the determination following an investigation by the department that . . . it is more likely than not that child abuse or neglect *did occur*.” RCW 26.44.020(12) (emphasis added). An unfounded finding is defined as “the determination following an investigation by the department that . . . more likely than not, child abuse or neglect *did not occur*, or that there is insufficient evidence for the department to determine whether the alleged child abuse *did or did not occur*.” RCW 26.44.020(26) (emphasis added).

Neither a founded nor an unfounded finding can be made regarding abuse that has not happened yet, but might possibly occur in the future. Thus, the statutory framework for CPS investigations clearly supports the conclusion that the Legislature intends RCW 26.44.050 investigations to determine whether abuse has occurred in the past and, if so, what action the Department should take to protect children from further abuse; not whether abuse might possibly occur in the future.

The Court of Appeals’ attempt to expand the scope of RCW 26.44.050 by contrasting it with RCW 26.44.030 fails to account for the interaction of the two sections in the statute as a whole. RCW 26.44.030 is comprehensive in addressing the reporting responsibilities of all types of reporters. Persons in mandatory reporter roles “shall report” when there is “reasonable cause to believe that a child *has suffered* abuse or neglect.”

RCW 26.44.030(1)(a), (b), (c) (emphasis added); *see also* (d), (e), (f). But the statute also addresses reporting by persons who are not in such roles. “*Any other person* who has reasonable cause to believe that a child *has suffered* abuse or neglect may report such incident . . . as provided in RCW 26.44.040.” RCW 26.44.030(3) (emphasis added).

It is presumed the statutes relating to the same subject and passed during the same legislative session are imbued with the same spirit and actuated by the same policy, and are to be construed together. *Knack v. Dep’t of Ret. Sys.*, 54 Wn.App. 654, 661, 776 P.2d 687 (1989). The definitions in RCW 26.44.020 apply to both the mandatory duty to report and the mandatory duty to investigate under RCW 26.44.030 and .050, respectively.

Because RCW 26.44.030 applies to all types of reporting, not only mandated reporting, its contextual definition of “report” likewise logically applies to all types of reporting. The proper conclusion, therefore, is that the statute’s use of the past tense indicates that the Department’s duty to investigate applies only to allegations of past incidents of abuse or neglect.

The fact that RCW 26.44.030(11) provides the Department with alternative responses tailored to specific circumstances does not expand the Department’s duty to investigate to encompass allegations of future abuse or neglect. As explained below, the Legislature established a separate duty

to investigate those types of allegations, in RCW 74.13.031(3), along with appropriate standards and sidebars to govern such investigations. The Court of Appeals was understandably concerned that the duty to investigate reports of actual abuse or neglect established in RCW 26.44.050 might allow reports of potential dangers to children to be overlooked. But that valid concern does not justify rewriting RCW 26.44.050—which is part of a statutory process established to investigate, verify, and make findings of past abuse or neglect—a process intended to protect children while also respecting the “paramount importance” of the “bond between a child and his or her parent.” RCW 26.44.010; *Tyner*, 141 Wn.2d at 78. And there is no justification to rewrite RCW 26.44.050 when the Legislature has separately established in RCW 74.13.031(3) a duty to investigate the types of potential dangers that were of concern to the Court of Appeals.

The meaning of a statute is a question of law to be reviewed *de novo*. When a statute’s meaning is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014) (citing *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002)). This Court has made it clear that it will avoid reading statutes in a manner that results in unlikely, absurd, or strained consequences. *Glaubach v. Regence Blueshield*, 149 Wn.2d 827, 833-34, 74 P.3d 115 (2003). The decision of

the Court of Appeals does not apply the narrow interpretation of RCW 26.44.050 that this Court directed in *H.B.H., Tyner, and M.W.* The decision also ignores the more appropriate investigatory process established in RCW 74.13.031(3), and instead requires the Department to investigate, verify, and make findings about events that may or may not occur in the future. Review by this Court is necessary to correct the conflict with this Court’s precedent and to avoid the needless waste of limited and important investigative resources of the Department. RAP 13.4(b)(1), (4).

C. RCW 74.13.031(3) is the Proper Statutory Framework for “Risk Only” Allegations

In accordance with due process and common sense, the Legislature set up a different statutory standard and procedure for the Department’s investigations of potential future abuse or neglect:

The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

RCW 74.13.031(3) (emphasis added).

This statute addresses the Court of Appeals' concern: the Department does not have to wait until a child has actually been harmed before it can take action. When a referral is made to the Department alleging that a recent action or inaction of a parent or other caregiver presents an imminent risk of serious harm to a child, the Department has a duty to investigate under this statute. That duty to investigate is paired with the mandate to "offer child welfare services in relation to the problem to such parents."⁷ RCW 74.13.031(3).

The critical point is that the Court of Appeals was wrong in believing that if it did not impose a duty to investigate possible future abuse under RCW 26.44, children would be unprotected. Children are specifically protected under RCW 74.13, but only when there is a complaint of a recent action or inaction on the part of a parent, guardian, or custodian that presents an imminent risk of serious harm to their child. Those facts do not exist in this case. Ms. Wrigley's description of prior acts of domestic violence against her and her allegation of risk to A.A. if he remained with Mr. Viles

⁷ The Department has policies that differentiate between the two types of referrals, and separate screening criteria for "risk only" referrals that are consistent with its specific statutory directives. *See* Appendix C, DCYF policy on "risk only" complaints. The full policies are available on the Department's website: DCYF Policy 2541, <https://www.dcyf.wa.gov/practices-and-procedures/2541-structured-decision-making-risk-assessmentsdmra>; DCYF Policy 2200, <https://www.dcyf.wa.gov/practices-and-procedures/2200-intake-process-and-response>; DCYF Policy 2331, at <https://www.dcyf.wa.gov/practices-and-procedures/2331-child-protective-services-cps-investigation>.

with whom she and A.A. had not had any contact for over 6 years, identified no recent act or omission by Mr. Viles that presented an imminent risk of serious harm to A.A. Her allegation, even had she not equivocated in the trial court, lacked the elements needed to trigger the Department's duty under RCW 74.13.031(3).

VI. CONCLUSION

The Court of Appeals' expansion of the duty to investigate in RCW 26.44.050 conflicts with the language and intent of the statute and with decisions of this Court directing that the duty be narrowly construed. It was prompted by an erroneous belief that judicial expansion of the statutory duty was necessary to protect children from harm; in fact, a separate statute already imposes the duty the Court of Appeals believed was necessary. This Court should accept review and reverse the Court of Appeals.

RESPECTFULLY SUBMITTED this 11th day of February, 2019.

ROBERT W. FERGUSON
Attorney General

s/ Allison Croft

ALLISON CROFT, WSBA #30486
Assistant Attorney General

DECLARATION OF FILING AND SERVICE

I declare under penalty of perjury in accordance with the laws of the state of Washington that on the below date the original of the preceding **PETITION FOR REVIEW** was electronically filed in the Washington State Supreme Court and electronically served on the following parties, according to the Court's protocols for electronic filing and service:

Gary Preble
Jonathan C. Moffitt
State & Sawyer Building, Suite 101
2120 State Avenue NE, Suite 101
Olympia, WA 98506

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 11th day of February, 2019, at Tumwater, Washington.

s/ Erika Summers
ERIKA SUMMERS, Legal Assistant

Appendix A

Wrigley v. State, 5 Wn.App.2d 909, 428 P.3d 1279 (2018)

428 P.3d 1279

Court of Appeals of Washington, Division 2.

Jessica WRIGLEY, individually, and as Personal Representative for the Estate of A.C.A., Deceased, and O.K.P., a minor child, and I.T.W., a minor child, by and through their biological mother, **Jessica Wrigley**, Appellants/Cross-Respondents,

v.

STATE of Washington; Department of Social & Health Services; Donald Watson & “Jane Doe” Watson, husband and wife, individually and the marital community thereof; Alessandro Larosa & “John Doe” Larosa, husband and wife, individually and the marital community thereof; Rachel Whitney & “John Doe” Whitney, husband and wife, individually and the marital community thereof; Jennifer Gorder & “John Doe” Gorder, husband and wife, individually and the marital community thereof; “John Doe” Social Worker & “Jane Doe” Social Worker, husband and wife individually and the marital community thereof, 1 through 5, Respondents/Cross Appellants.

No. 49612-7-II

|

Filed October 30, 2018

Synopsis

Background: Child's estate and mother filed negligence-based claims against Department of Social and Health Services (DSHS) after child was killed by father. The Thurston Superior Court, No. 14-2-02306-2, [Mary Sue Wilson, J.](#), granted partial summary judgment to DSHS and denied plaintiffs' motion for leave to amend their complaint. Plaintiffs appealed.

[Holding:] The Court of Appeals, [Bjorgen, P.J.](#), held that before placing child with father, DSHS had duty to take into account information that was presented directly to it.

Reversed and remanded.

[Sutton, J.](#), dissented in part and filed opinion.

West Headnotes (4)

[1] Appeal and Error**➔ Negligence in general**

Whether or not the element of duty exists in the context of negligence is a question of law that an appellate court reviews de novo.

[Cases that cite this headnote](#)

[2] Infants**➔ Child abuse reports and investigations**

The primary purpose of the former version of the statute governing the duty to investigate a report of abuse or neglect of a child is to protect children and to preserve the integrity of the family. [Wash. Rev. Code Ann. § 26.44.050](#) (2012).

[Cases that cite this headnote](#)

[3] Infants**➔ Child abuse reports and investigations****Infants****➔ Placement or disposition of child**

In the former version of the statute governing the duty to investigate a report of neglect or abuse of a child, the phrase “reports concerning the possible occurrence of abuse or neglect” contemplates both reports concerning incidents that have already occurred and reports suggesting a reasonable possibility of future abuse or neglect if the placement is made. [Wash. Rev. Code Ann. § 26.44.050](#) (2012).

[Cases that cite this headnote](#)

[4] Infants**➔ Placement or disposition of child**

Before placing child with his father, Department of Social and Health Services (DSHS) had duty, under former version of statute governing the duty to investigate a report of neglect or abuse of a child, to take

into account information that was presented directly to it, including father's extensive criminal history and threats to harm mother and child, even though father had not yet harmed child. Wash. Rev. Code Ann. § 26.44.050 (2012).

Cases that cite this headnote

Appeal from Thurston Superior Court, Docket No: 14-2-02306-2, Honorable Mary Sue Wilson, Judge

Attorneys and Law Firms

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PART PUBLISHED OPINION

Bjorgen, P.J.

*1280 ¶ 1 A.A., a six year old boy, was killed by his father, Anthony Viles, approximately three months after being placed with Viles. A.A.'s mother, Jessica Wrigley, I.W., a minor child, and the Estate of A.A. (collectively the Wrigleys) appeal the trial court's grant of partial summary judgment, which dismissed all of the Wrigleys' negligence-based claims against the Department of Social and Health Services (DSHS)¹ relating to the death of A.A. The Wrigleys also appeal the trial court's denial of their motion for leave to amend their complaint.

¶ 2 The Wrigleys argue that DSHS owed A.A. a duty of care under (1) former RCW 26.44.050 (2012), (2) the shelter care order, and (3) the special relationship doctrine. The Wrigleys also argue the trial court abused its discretion when it denied their motion for leave to file an amended complaint because DSHS cannot show it would have been prejudiced by such an amendment.

¶ 3 On cross-appeal, DSHS argues that (1) the Wrigleys' claims fail as a matter of law based on a lack of proximate cause and (2) the trial court abused its discretion when it refused to strike opinions offered by the Wrigleys' expert.

¶ 4 In the published portion of this opinion, we hold that DSHS owed the Wrigleys a duty of care under former RCW 26.44.050. Consequently, we reverse the order granting DSHS's motion for partial summary judgment and dismissing the Wrigleys' claim under former RCW 26.44.050. In the unpublished portion, we decline to address the issue of duty under the shelter care order and the special relationship doctrine under RAP 9.12, because it was not called to the attention of the trial court. We also hold that the trial court abused its discretion when it denied the Wrigleys' motion to amend their complaint to add a general negligence theory. Accordingly, we reverse the dismissal of any other negligence-based claims, because the trial court should have granted the Wrigleys leave to amend their complaint.

¶ 5 On the cross-appeal, we do not reach the issue of proximate cause because we hold that the trial court abused its discretion when it denied the Wrigleys' motion to amend. Finally, we hold the trial court did not abuse its discretion when it refused to strike the opinions offered by the Wrigleys' expert.

¶ 6 We reverse and remand.

FACTS

A. Substantive Facts

¶ 7 Jessica Wrigley² and Viles met in December 2004, and Jessica became pregnant with A.A. in February 2005. After she became pregnant, Jessica claims Viles' behavior toward her changed; for example, he became more controlling and verbally abusive. She asserts his behavior began to escalate and he began threatening and abusing her physically, even threatening to kill her several times. According to Jessica, Viles used methamphetamine, cocaine, ketamine, and heroin and abused alcohol throughout their brief relationship.

*1281 ¶ 8 On August 26, 2005, Jessica sought a protection order, which the court granted on September 10. A.A., their son, was born on October 19. On November 7, Jessica sought renewal and modification

of the protection order because Viles had been loitering outside of her home.

¶ 9 Viles' violent behavior and abuse of drugs and alcohol predated his relationship with **Jessica** and continued after their relationship ended. From 1998-2001, Viles was held in juvenile detention at various times for assaultive behavior and suicidal threats. In February 2000, Viles was taken into mental protective custody after making suicidal threats. Viles' mother, Rose Viles, informed law enforcement that Viles "ha[d] problems with his violent tendencies." Clerk's Papers (CP) at 530. Viles was again taken into mental protective custody in July 2000 after he attempted suicide. In August 2000, Viles was incarcerated at the Psycho Social Rehab Center in Pocatello, Idaho, where he had to be physically restrained after assaulting an inmate. Viles "became combative and began throwing the chair around and yelling and screaming" when law enforcement confronted him. CP at 536. Then, in September 2000, Viles' mother called law enforcement due to a domestic disturbance between Viles and her.

¶ 10 In 2001, Viles pled guilty to battery. In 2002, he pled guilty to minor in possession and was accused of rape. The alleged victim completed a computer voice stress analysis that concluded she was being truthful; Viles would not participate in the stress test due to advice from his counsel. In June 2002, law enforcement was called to a physical altercation between Viles and his girlfriend, Jami Carranza. In October 2002, Viles' grandfather, Roy Viles,³ reported a domestic disturbance between him and Viles.

¶ 11 In September 2003, law enforcement was called because of a domestic disturbance between Viles and Carranza. During the investigation, Viles admitted to pushing Carranza. After a physical altercation with law enforcement, Viles pled guilty to disturbing the peace. In May 2004, Carranza reported to law enforcement that Viles had arrived at her home intoxicated, gotten into an argument, and drove away drunk.

¶ 12 In October 2005, Roy reported another domestic disturbance between Viles and him. Roy reported that Viles had physically threatened him and was using drugs. In January 2006, Viles was stabbed with a screwdriver during a fight.

¶ 13 In January 2007, Viles pled guilty to contributing to the delinquency of a minor when he provided alcohol to and harbored a 15 year old runaway female. Viles admitted to law enforcement he had marijuana in his home.

¶ 14 In January 2009, Ramon Garcia, Carranza's fiance, reported Viles breaking into a shed in his back yard. Viles was charged with unlawful entry.

¶ 15 In December 2011, William Viles⁴ and Ashley Eskelson called law enforcement to report Viles had come to their home and threatened to "break [William's] neck."⁵ CP at 586-88. This incident occurred one month before DSHS placed A.A. with Viles, described below.

¶ 16 **Jessica** married Jared **Wrigley** on November 30, 2007. In 2010, the **Wrigleys**, including A.A., moved from Idaho to Washington.

¶ 17 A.A.'s first contact with DSHS occurred at age five in the summer of 2011, when his Catholic Community Services individual mentor made four reports to DSHS concerning the possible abuse and neglect of A.A. by the **Wrigleys**. Child Protective Services (CPS) assigned the case to Kim Karu for investigation. After Karu's investigation, CPS transferred their case to Family Voluntary Services (FVS) at the end of August 2011.

¶ 18 On September 29, FVS employee, Rachel Whitney, made a routine health and safety visit, traveling to **Jessica**'s home after *1282 she discovered A.A. did not attend school. After arriving at the their home, she observed A.A. shaking, his eyes **tearing**, his lips and mouth area appeared red, and she observed bruising on his jaw and cheek that had not been there during her visit a week earlier. **Jessica** explained that she had put hot pepper sauce in A.A.'s mouth, which caused the observable redness, because he called her a name. Whitney asked A.A. what happened and he said that when his mother "opened his mouth with her fingers to put in the hot sauce he screamed because it hurt so bad." CP at 139. A.A. also said that his father spanked him with his hand or belt for wetting the bed.

¶ 19 Whitney noted that **Jessica** appeared aggravated. **Jessica** stated to Whitney that she wanted to put A.A. up for adoption. Whitney recommended putting A.A. into

a voluntary out-of-home placement for two weeks and **Jessica** agreed.

¶ 20 CPS assigned the case to Jennifer Gorder, and Gorder interviewed A.A. the next day at his school. A.A. stated that he was spanked by his father with a belt for wetting his pants. Gorder noted and photographed bruises on A.A.'s spine, side, face, and above his buttocks. Gorder noted that the bruises on A.A.'s back and forearm were linear, which indicated they may have been made with a belt.

¶ 21 At an October 4 family team decision meeting, **Jessica** informed CPS that she had a restraining order against Viles because of threats he made against her. **Jessica** told the social workers that Viles had threatened to cut her head off, had tried to run over her, had dragged her upstairs by her hair, and had a reputation for violence in Pocatello.

¶ 22 On October 5, DSHS filed a dependency petition regarding A.A., based on Gorder's investigation. The dependency petition informed the court of the restraining order between **Jessica** and Viles. Both A.A. and his younger brother, I.W., were removed from **Jessica**'s home.

¶ 23 Gorder, meanwhile, located Viles, who showed interest in having custody of A.A.⁶ Viles communicated the same desire to Whitney. Gorder ran a "Purpose Code C" background check on Viles through National Crime Information Center (NCIC), which requests criminal history information from the Federal Bureau of Investigation. According to Gorder, Viles' background check did not raise concern. DSHS Centralized Services Administrator, Christopher Parvin, reviewed Viles' Idaho Repository Case History. Parvin was responsible for overseeing all DSHS background check programs. Parvin asserted that none of the information, crimes, or infractions contained in Viles' case history were disqualifying under the federal Adoption and Safe Families Act of 1997, [Public Law 105-89](#).

¶ 24 On October 11, Viles agreed to shelter care for A.A., and the hearing regarding **Jessica** was set for October 25. The shelter care hearing was continued over the next three months. During that time, Viles continued to make it known, both personally and through his attorney, that he wanted A.A. placed with him.

¶ 25 A.A.'s case was reassigned to CPS social worker Don Watson. Watson conducted an initial investigation regarding the placement of A.A. with Viles, calling several references Viles provided, and speaking with Viles directly.

¶ 26 On October 24, Watson called **Jessica** to obtain additional information about Viles and she told him that Viles had an extensive criminal history, had been arrested for providing alcohol to minors, had a restraining order against him, and that A.A. had never met him.

*1283 ¶ 27 On January 25, 2012, Watson entered a note in the file that included **Jessica**'s concerns about A.A. being placed with Viles due to his history of domestic violence.

¶ 28 On January 30, the court heard Viles' motion to have A.A. released from shelter care and placed with him in Idaho. Viles' attorney asserted that "[t]here was absolutely no allegations about [Viles] in the [dependency] petition. The only problem was that he hadn't had contact with the child," and Viles had been addressing that. CP at 293-94. DSHS, through an Assistant Attorney General (AAG), indicated that because A.A. was not dependent and therefore not within the Interstate Compact on the Placement of Children (ICPC), DSHS could not "make a fully informed recommendation" as to A.A.'s placement. CP at 299-300. The AAG indicated, however, that besides the lack of parenting relationship, "the Department has no other concerns." CP at 300.

¶ 29 The AAG and CPS social worker Watson did not provide to the court all of the background information Watson had gathered. Neither the AAG nor Watson informed the court about Viles' prior arrests or **Jessica**'s allegations of violence and concerns regarding placement of A.A. with Viles. **Jessica** did not appear at the hearing. The **Wrigleys**' attorneys did not fully relay the concerns she had expressed to Watson to the court. They advised the court that **Jessica**'s "separation from Mr. Viles and apparently at least some of their relationship was pretty rocky." CP at 306. They also stated that they had heard from **Jessica** that Viles was violent, and that she had "grave concern regarding [A.A.'s] well-being." CP at 304. In addition, the court heard testimony from A.A.'s therapist.

¶ 30 At the conclusion of testimony, the court ordered A.A. released from shelter care and placed with Viles “for a [30 day] visit,” and allowed Viles to take A.A. home that day. CP at 203-04. The court set another hearing date for late February, directing that both Watson and A.A.’s therapist should check in on A.A. during the intervening weeks. Watson and A.A.’s therapist checked in with A.A. several times, but there was no indication Viles had abused or neglected A.A.

¶ 31 When Jessica learned A.A. had been placed with Viles, she “called Mr. Watson hysterical” and reminded him again of the incidents in which Viles had been violent with her or threatened her. CP at 880. She told him that because of A.A.’s behavioral problems, if A.A. was with Viles, “he would be dead within six months.” CP at 880. She stated she did not want A.A. “to be placed with Mr. Viles.” CP at 238. Watson told Jessica about the upcoming February hearing date at which she could voice her concerns.

¶ 32 On February 21, the court held a hearing on whether A.A. should continue placement with Viles. Watson and A.A.’s therapist reported their contacts with A.A. and Viles. Jessica did not attend the hearing. Jessica’s attorney suggested they were in agreement with dismissing the dependency petition, which would leave A.A. in Viles’ custody. The court specifically made a finding that placement with Viles was in A.A.’s best interest and dismissed the dependency petition.

¶ 33 Viles beat A.A. to death eight weeks later—he was only six and half years old.

B. Procedural Facts

¶ 34 The Wrigleys filed their amended complaint for damages against DSHS and others on December 16, 2014. The complaint pled wrongful death, negligent investigation, outrage, loss of consortium, negligent misrepresentation, survival action, negligent training/supervision, and publication of private facts. The complaint did not plead general common law negligence.

¶ 35 DSHS moved for partial summary judgment on all negligence claims. The Wrigleys responded in part by submitting a declaration by Sonja Ulrich with expert testimony on DSHS’s compliance with its standard of care.

¶ 36 On August 5, the court provided an oral ruling on the motion. The trial court order granting in part and denying in part defendants’ motion for partial summary judgment made findings of fact and conclusions of law, in part, as follows:

*1284 Based on these records, the Court finds that the following facts are not disputed:

1. Defendants removed [A.A.] from the home of Jessica and Jared Wrigley based on allegations of abuse and neglect made against the Wrigleys;
2. The only allegations of abuse and neglect made under RCW 26.44 regarding [A.A.] were related to the Wrigley home;
3. There is no evidence that the investigation of the allegations related to the Wrigley home was faulty;
4. DSHS never received any report of abuse or neglect made pursuant to RCW 26.44 regarding Anthony Viles; and
5. Plaintiffs do not allege any negligence-based claims other than those that arise under RCW 26.44.050.

Based on the above undisputed facts, the Court found the following facts were disputed, but construed them in favor of the Plaintiffs for purposes of summary judgment.

1. At the January 30, 2012 placement hearing (“Placement Hearing”), DSHS offered testimony of social worker Donald Watson that only highlighted positive aspects of the potential placement of [A.A.] with Anthony Viles. Argument by DSHS’s representative, Assistant Attorney General, Meghan Collins, also only highlighted positive aspects of the potential placement of [A.A.] with Anthony Viles;
2. At the Placement Hearing, DSHS took the lead in offering testimony related to [A.A.]’s potential placement with Anthony Viles;
3. DSHS had more information than it provided to the court at the Placement Hearing; and
4. Social worker Donald Watson’s understanding of his authority to conduct an investigation related to [A.A.]’s placement in Anthony Viles’ home evolved over time. Social worker Watson believed he did not have

authority to utilize tools available via the ICPC process to conduct a more thorough investigation. Information that would have been available to Mr. Watson through a more thorough investigation include: Mr. Viles' juvenile conviction for battery, the restraining order between **Jessica Wrigley** and Anthony Viles, allegations regarding Anthony Viles' anger issues, and parenting assessment completed as part of custody litigation in which Anthony Viles was a party.

5. In addition, Mr. Watson did not conduct a follow-up investigation regarding the parenting assessment or the restraining order between Mr. Viles and Mrs. **Wrigley**—information that Mr. Watson was aware of in November 2011, prior to [A.A.]'s placement with Anthony Viles.

Based on the foregoing undisputed facts and construing disputed facts in the light most favorable to the Plaintiff, the Court makes the following Conclusions of Law:

1. Assuming the existence of a duty owed to Plaintiffs by Defendants under RCW 26.44, there is a genuine issue of material fact as to whether Defendants breached that duty; and

2. Assuming the existence of a duty owed to Plaintiffs by Defendants under RCW 26.44, there is a genuine issue of material fact as to whether Defendants' breach was the proximate cause of Plaintiffs' injuries.

Based on the above ... undisputed facts and disputed facts and Conclusions of Law, NOW THEREFORE, it is HEREBY Ordered that State Defendants' Motion for Partial Summary Judgment is GRANTED as to all of Plaintiffs' negligence-based claims including Plaintiffs' claims for Wrongful Death, all Survival Actions, Negligent Investigation, Negligent Training and Supervision, and Loss of Consortium, as Defendants did not owe a duty to Plaintiffs.

CP at 1597-98.

¶ 37 Of import, the trial court found, "Plaintiffs do not allege any negligence-based claims other than those that arise under RCW 26.44.050."⁷ CP at 1597.

*1285 ¶ 38 DSHS filed a second motion for summary judgment on all remaining claims, noted for September 16, 2016. The remaining claims included outrage, negligent misrepresentation, and publication of private facts under

former RCW 74.13.500 (2009).⁸ On September 2, the court held a scheduling conference to discuss the impending trial date of October 3. The court continued the trial date because of other trials and conflicts. On September 9, the **Wrigleys** moved for leave to file an amended complaint to add a claim of general negligence.

¶ 39 At the hearing on the motion to amend, the following exchange occurred:

THE COURT: So, Mr. Preble, you've been part of this case, even though Mr. Moffitt has been the lead. You signed off on the amended complaint almost two years ago. And the State filed their motion originally in the spring, the one that I heard in July. Why did you not seek leave to amend to add the separate theory for negligence sooner? I remember asking Mr. Moffitt on summary judgment, "So your whole negligence theory is based upon this statute?" and he said, "Yes."⁹ So why not do it sooner?

MR. PREBLE: That was, I guess, an error on our part. That was something that had not been obvious to me, and I was not aware of his statement to you. However, I would note that inexcusable neglect is not a basis for denying a motion to amend, according to case law. I don't know that I would call it an excusable neglect, but --

THE COURT: I didn't ask him why he hadn't had another theory; I just asked him to confirm his complaint, your complaint, was solely – the negligence theory was based solely on the specific statute that the State was addressing in their motion, and he confirmed that that was the case. And then I was surprised to see a motion to add a different theory, because I thought, "Why didn't that come up when the court was hearing about the negligence topic on summary judgment this summer?"

MR. PREBLE: It should have. It should have. That's all I can say, and I'm regretful. ... [W]e did not concede there was not negligence. The facts were all out there. We said these things were negligent. We just did not include the general negligence claim, which we should have.

Verbatim Report of Proceedings (VRP) (Sept. 16, 2016) at 19-22. The court orally held as follows:

Of course [Civil Rule 15](#) says leave is given freely if justice so requires, and the case law indicates that the court considers whether there's unfair prejudice in thinking about whether justice requires allowing the amendment of the complaint.

In specifically considering the context I understand of the specifics of the case, whether there's been undue delay in presenting the new claim. And, in this case, having looked at several of the cases that have reviewed trial courts deciding on motions to amend, I think the facts are very important. This is a case that was filed in 2014. The complaint was amended in late 2014. The parties have been engaged in discovery and motion practice for quite some time, and the court heard comprehensive motion for summary judgment this summer on the negligence claim under the statute that had been pled. And but for the court's schedule and another case that was *1286 older, this case would be going to trial in a few weeks.

And all of that is part of the context, and, ultimately, I am going to deny the motion to amend and find that justice does not require the adding of this. I don't find that there is a justification for why this claim could not have been brought sooner. And, over the summer, it was clear that the negligence focus, the legal theory of the plaintiffs, had been throughout the entire case the statutory theory, and the plaintiffs confirmed that in July. And I'm finding that there is prejudice to the defendant if the court allows at this late stage in the case an amendment of this sort. So I'll deny the motion to amend.

VRP (Sept. 16, 2016) at 36-37.

¶ 40 In addition to denying the **Wrigleys'** motion to amend, the court also granted DSHS's motion for summary judgment on all remaining claims and dismissed the **Wrigleys'** amended complaint for damages. The court subsequently denied their motion for reconsideration.

¶ 41 The **Wrigleys** appeal, and DSHS cross-appeals.

ANALYSIS

I. SUMMARY JUDGMENT

¶ 42 The **Wrigleys** argue that DSHS owed them a duty of care under (1) former [RCW 26.44.050](#), (2) the shelter care order, and (3) the special relationship doctrine. We agree that DSHS owed the **Wrigleys** a duty of care under former [RCW 26.44.050](#), and we decline to reach whether a duty was owed under the shelter care order or the special relationship doctrine.

A. Standard of Review

¶ 43 We review the trial court's grant of summary judgment de novo. *M.W. v. Dep't of Soc. & Health Servs.*, 149 Wash.2d 589, 595, 70 P.3d 954 (2003). We engage in the same inquiry as the trial court, *id.*, and consider all facts and make all reasonable, factual inferences in the light most favorable to the nonmoving party. *Rekhter v. Dep't of Soc. & Health Servs.*, 180 Wash.2d 102, 145, 323 P.3d 1036 (2014). Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [CR 56\(c\)](#). Whether or not the element of duty exists in the context of negligence is a question of law that we review de novo. *Sheikh v. Choe*, 156 Wash.2d 441, 448, 128 P.3d 574 (2006).

B. Duty to Investigate Under Former [RCW 26.44.050](#)

¶ 44 The **Wrigleys** argue that DSHS owed them a duty to investigate under former [RCW 26.44.050](#) because DSHS received a report concerning the possible occurrence of abuse or neglect by Viles. DSHS argues it owed no such duty because it never received a report of past child abuse or neglect by Viles. We agree with the **Wrigleys**.

¶ 45 The resolution of this issue requires us to interpret former [RCW 26.44.050](#). The meaning of a statute is a question of law reviewed de novo. *State v. Breazeale*, 144 Wash.2d 829, 837, 31 P.3d 1155 (2001). Our fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, we give effect to that plain meaning as an expression of legislative intent. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002).

¶ 46 Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. *Gorre v. City of Tacoma*,

184 Wash.2d 30, 37, 357 P.3d 625 (2015); *Campbell & Gwinn*, 146 Wash.2d at 9-12, 43 P.3d 4. Dictionaries are an appropriate source of plain meaning when the ordinary definition furthers the statute's purpose. *Gorre*, 184 Wash.2d at 37, 357 P.3d 625. If, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Campbell & Gwinn*, 146 Wash.2d at 9-12, 43 P.3d 4.

*1287 ¶ 47 Former RCW 26.44.050 provides, in relevant part:

Except as provided in RCW 26.44.030(11), upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department of social and health services *must investigate* and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

(Emphasis added.)

¶ 48 The record is clear that Jessica informed DSHS that she previously had a restraining order against Viles because of threats he made against her and that he had an extensive criminal history and a reputation for violence. The record also shows that Jessica informed DSHS that Viles had threatened to cut her head off, had tried to run over her, and had dragged her upstairs in their home by her hair. The record shows further that when A.A. had been placed with Viles, Jessica told Watson that because of A.A.'s behavioral problems, if A.A. was with Viles, "he would be dead within six months." CP at 880. The question before us is whether those communications constitute "report[s] concerning the possible occurrence of abuse or neglect" by Viles. Former RCW 26.44.050.

¶ 49 Turning first to the definitions of ordinary English, the basic definition of "occurrence" is "something that takes place"; "the action or process of happening." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1561 (2002). "Possible," in the present

context, is defined as "that [which] may or might be the case." *Id.* at 1771. Title 26.44 RCW does not define the term "report." "Report" could simply be defined as "something that gives information." WEBSTER'S, *supra*, at 1925. Alternatively, it could be defined in a more legal sense as "[a] formal oral or written presentation of facts or a recommendation for action." BLACK'S LAW DICTIONARY 1492 (10th ed. 2014).

¶ 50 The requirement to investigate under former RCW 26.44.050 is not triggered by a "report of abuse or neglect," but by a "report concerning the possible occurrence of abuse or neglect." Under its ordinary definitions, the latter phrase can mean a report showing abuse or neglect that may or may not occur; that is, a report suggesting a reasonable possibility of abuse or neglect in the future. Under its ordinary definitions, the phrase also can mean a report of past abuse or neglect.

¶ 51 "Abuse or neglect" is defined by former RCW 26.44.020(1) (2012), to include

sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

¶ 52 "Negligent treatment or maltreatment," in turn, is defined by former RCW 26.44.020(16) to include

an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health,

welfare, or safety, including but not limited to conduct prohibited under [RCW 9A.42.100](#).... [E]xposure to domestic violence as defined in [RCW 26.50.010](#) that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

¶ 53 These definitions simply define “abuse” and “neglect.” They work equally well whether the phrase, “concerning the possible occurrence of abuse or neglect,” is restricted to incidents that have already occurred or whether that phrase also looks to the possibility of abuse or neglect in the future. Former [RCW 26.44.050](#).

¶ 54 Former [RCW 26.44.030](#) (2013), however, speaks more directly to the question. This statute requires individuals in listed roles who have “reasonable cause to believe that a child *has suffered* abuse or neglect” to report the incident to DSHS or law enforcement. Former [RCW 26.44.030\(1\)](#) (emphasis added). The past tense makes clear that mandated ***1288** reporting extends only to abuse and neglect that has already occurred.

¶ 55 [RCW 26.44.050](#) is phrased differently. It simply says that DSHS must investigate when it receives a report of *the possible occurrence* of abuse or neglect. If this referred only to reports of past abuse and neglect from mandated reporters, then its use of “must investigate” would conflict with the detailed prescriptions in former [RCW 26.44.030\(11\)](#) directing family assessments in response to some mandated reports and investigations in response to others. To avoid this conflict, former [RCW 26.44.050](#) must be interpreted to apply also to reports other than those mandated by former [RCW 26.44.030](#). This conclusion also explains the role of the introductory clause of former [RCW 26.44.050](#), “[e]xcept as provided in [RCW 26.44.030\(11\)](#).” For these reasons, former [RCW 26.44.030](#) does not restrict the reference to “possible occurrence of abuse or neglect” in former [RCW 26.44.050](#) to past occurrences. Nor does it restrict the information triggering the duty to investigate under former [RCW 26.44.050](#) to reports mandated by former [RCW 26.44.030](#).

¶ 56 To this point, the examination of the terms in the provisions to be interpreted fairly leads to one conclusion:

the phrase in former [RCW 26.44.050](#), “report concerning the possible occurrence of abuse or neglect,” is ambiguous. It may refer either to abuse or neglect that has already occurred or, in addition, it may also include abuse or neglect which is reasonably possible in the future. The determination of plain meaning, however, does not stop at this point, but also examines “the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” *Gorre*, 184 Wash.2d at 37, 357 P.3d 625 (quoting *Tingey v. Haisch*, 159 Wash.2d 652, 657, 152 P.3d 1020 (2007)). “Our ultimate task, of course, is to ascertain and carry out the legislature’s intent.” *Id.* We are guided in that examination by the decisions of our Supreme Court.

[2] ¶ 57 The primary purpose of former [RCW 26.44.050](#) is to protect children and to preserve the integrity of the family. *Tyner v. Dep’t of Soc. & Health Servs., Child Protective Servs.*, 141 Wash.2d 68, 80, 1 P.3d 1148 (2000). In cases of conflict, the interests of the children prevail. *Tyner*, 141 Wash.2d at 79, 1 P.3d 1148. To achieve those ends, “[RCW 26.44.050](#) places an affirmative duty of investigation on the State.” *Tyner*, 141 Wash.2d at 80, 1 P.3d 1148.

¶ 58 If the phrase, “the possible occurrence of abuse or neglect,” is read to refer only to past abuse, then DSHS would have no duty to investigate when reports showed that a proposed placement would be dangerous for a child, although no abuse had yet occurred. Waiting until tragedy has already descended does nothing to protect the child. Thus, legislative intent is ill served by confining former [RCW 26.44.050](#) only to reports of past abuse or neglect.

¶ 59 This conclusion is buttressed by the scope of the duty to investigate. In *M.W.*, 149 Wash.2d at 595, 70 P.3d 954, our Supreme Court reiterated that former [RCW 26.44.050](#) requires DSHS to investigate child abuse and that “this statutory duty implies a cause of action for children and parents for negligent investigation in certain circumstances.” Such a claim, our Supreme Court stated, involves allegations

that DSHS failed to adequately investigate a child’s living situation before making a placement decision to remove a child from a nonabusive home, let a child remain in an

abusive home, or place a child in an abusive home.

Id. It held that the State was not liable for a harmful examination, which it performed on a sexual abuse victim, because it did not result in a harmful placement decision. *M.W.*, 149 Wash.2d at 601-02, 70 P.3d 954.

[3] ¶ 60 The present appeal, in contrast, involves exactly that: a harmful placement decision. DSHS was in possession of reports showing acute danger to A.A. through placement with Viles. DSHS failed to investigate those reports, and it placed A.A. with Viles. To read the phrase at issue in former RCW 26.44.050 to impose no duty on DSHS to investigate, because Viles had not yet harmed A.A., cuts the heart from the State's duty to adequately investigate a child's living situation before making a placement decision *1289 that could place a child in an abusive home, recognized by *M.W.*, 149 Wash.2d at 595, 70 P.3d 954. To honor the purpose of RCW 26.44.050 recognized by *Tyner*, and to preserve the scope of the State's duty to investigate under *M.W.*, any ambiguity in RCW 26.44.050 can be resolved in only one way: the phrase "reports concerning the possible occurrence of abuse or neglect" contemplates both reports concerning incidents that have already occurred and reports suggesting a reasonable possibility of future abuse or neglect if the placement is made.

¶ 61 Our opinion in *M.M.S. v. Department of Social and Health Services and Child Protective Services*, 1 Wash. App. 2d 320, 404 P.3d 1163 (2017), review denied, 190 Wash.2d 1009, 414 P.3d 581 (2018), does not suggest the contrary. M.M.S. was subjected to unwanted sexual advances by her stepbrother, whom the State had placed with her family. *Id.* at 323, 404 P.3d 1163. The closed files from prior dependencies concerning the stepbrother contained reports of inappropriate sexual behavior by the stepbrother against others. *Id.* at 324, 404 P.3d 1163. M.M.S. and her mother filed a lawsuit against the State alleging, among other matters, that the State breached its duty to investigate under former RCW 26.44.050. *Id.* at 325, 404 P.3d 1163. Specifically, we noted that the mother argued "that the Department's liability arises *only* from [a state social worker's] failure to discover and disclose [J.A.]'s prior sexualized behavior that was documented in the earlier dependencies." *Id.* at 325, 404 P.3d 1163.

¶ 62 We held that the State had no duty to search out, discover and disclose the information in the closed files of prior dependencies. *Id.* at 326-28, 404 P.3d 1163. In the absence of that duty, we concluded there were no reports of possible abuse or neglect that triggered a duty to investigate under former RCW 26.44.050. *Id.* at 330, 332, 404 P.3d 1163.

[4] ¶ 63 The present appeal presents a markedly different situation. As part of the very proceeding to place A.A. with Viles, Jessica informed CPS about Viles' extensive criminal history, his arrest for providing alcohol to minors, his threat to cut Jessica's head off, his attempt to run over her, his dragging her up the stairs by her hair, the restraining order against him, and her concerns about A.A. being placed with Viles due to his history of domestic violence. Most strikingly, after the initial 30 day placement with Viles was ordered, Jessica called the CPS social worker and reminded him again of the incidents in which Viles had been violent with her or threatened her and told him flatly that if A.A. was with Viles, "he would be dead within six months." CP at 880. Wrigley's claim does not, as in *M.M.S.*, place a duty on DSHS to research its archives of past dependencies. Instead, it simply requires DSHS to properly take into account information that was presented directly to it as part of the placement proceeding at issue. *M.M.S.* does not restrict that duty to investigating reports of past abuse or neglect.¹⁰

¶ 64 Further, the fact that the reports triggering the dependency proceeding were of abuse by Jessica does not erode the responsibility of DSHS to protect the child in making the placement decision. As shown, DSHS received information showing not only the "possible occurrence" of abuse or neglect, but a direct threat of harm to A.A. if placed with Viles. DSHS failed to investigate that threat. That failure violated the duty to investigate imposed by former RCW 26.44.050.

¶ 65 To conclude, the phrase "reports concerning the possible occurrence of abuse or neglect" in former RCW 26.44.050 contemplates both reports of incidents that have already occurred and reports suggesting a reasonable possibility of future abuse or neglect if the placement decision is made. The record contains evidence, noted above, that DSHS received reports showing a palpable *1290 danger to A.A. if he were placed with Viles. The record contains evidence that not only did DSHS fail to adequately investigate those reports, but at the

motion on placement with Viles, it also did not provide all material information it had gathered to the dependency court, including information about Viles' prior arrests or Jessica's allegations of violence or her concerns regarding placement of A.A. with Viles.

¶ 66 Therefore, we hold the superior court erred in granting partial summary judgment to DSHS on the Wrigleys' negligence claim under former RCW 26.44.050.

¶ 67 A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Unpublished Text Follows

C. Duty Under the Shelter Care Order

¶ 68 The Wrigleys argue DSHS had a duty under the shelter care order to prevent placement of A.A. with his biological father. We decline to address this claim under RAP 9.12.

¶ 69 RAP 9.12 provides:

On review of an order granting or denying a motion for summary judgment the *appellate court will consider only evidence and issues called to the attention of the trial court*. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered. Documents or other evidence called to the attention of the trial court but not designated in the order shall be made a part of the record by supplemental order of the trial court or by stipulation of counsel.

(Emphasis added.) In *Mithoug v. Apollo Radio of Spokane*, 128 Wash.2d 460, 462, 909 P.2d 291 (1996), our Supreme Court clarified:

The Court of Appeals was apparently of the view that RAP 9.12 and the case[]law on summary judgments limit appellate review to evidence "considered" by the trial court. This is not what RAP 9.12 actually says. Rather, it says that the trial court in its order "shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered." (Emphasis added.) On review, the appellate court "will consider only evidence and issues called to the attention of the trial court." (Emphasis added.) "The purpose of this limitation is to effectuate the rule that the appellate court engages in the same inquiry as the trial court."

¶ 70 In this case, the Wrigleys did not raise the issue of duty under the court shelter care order before the court entered the summary judgment order. Because we engage in the same inquiry as the trial court, we decline to reach the merits of the Wrigleys' new contention on appeal.

D. Duty Under the Special Relationship Doctrine

¶ 71 The Wrigleys argue that DSHS and its employees had a duty of care under the special relationship doctrine. We decline to address this claim under RAP 9.12.

¶ 72 The Wrigleys rely on *HBH v. State*, 197 Wash. App. 77, 85-95, 387 P.3d 1093 (2016), review granted, 189 Wash.2d 1002, 404 P.3d 1162 (2017), to argue DSHS had a duty under the special relationship doctrine. In *HBH*, we addressed whether DSHS owes a duty of reasonable care to investigate the health and safety of children it places in foster homes based on a special protective relationship between the agency and those children. *Id.* at 85-86, 387 P.3d 1093. We held DSHS had a duty to exercise ordinary care to protect foster children from abuse on the basis of its special relationship with such children. *Id.* at 92, 387 P.3d 1093.

¶ 73 Although DSHS may have had a special relationship and duty of care, under a general negligence theory, the Wrigleys did not make these arguments in the trial court. On review of summary judgment, we consider only evidence and issues called to the attention of the trial court. RAP 9.12; *Mithoug*, 128 Wash.2d at 462, 909 P.2d

291. We engage in the same inquiry as the trial court. Therefore, we also decline to reach the merits of this contention.

II. MOTION TO AMEND

¶ 74 The **Wrigleys** argue the trial court erred when it denied their motion for leave to amend its complaint to add a general negligence theory. We agree.

A. Standard of Review

¶ 75 We review the trial court's ruling on a request to amend for a manifest abuse of discretion. *Herron v. Tribune Publ'g Co.*, 108 Wash.2d 162, 165, 736 P.2d 249 (1987). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1997). A trial court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *Id.* at 47, 940 P.2d 1362.

B. Legal Principles

¶ 76 CR 15(a) governs amendments to pleadings and provides, in pertinent part, that "a party may amend [his] pleading only by leave of court ... and leave shall be freely given when justice so requires." The purposes of CR 15 are to enable a proper decision on the merits and to provide each party with sufficient notice regarding the basis of the claims or defenses asserted against him. *Herron*, 108 Wash.2d at 165, 736 P.2d 249. The United States Supreme Court has concluded

[where] the amendment would have done no more than state an alternative theory for recovery, ... [and where] the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, [the plaintiff] ought to be

afforded an opportunity to test his claim on the merits.

Foman v. Davis, 371 U.S. 178, 181-82, 83 S. Ct. 227, 9 L.Ed. 2d 222 (1962) (discussing Rule 15 of the Federal Rules of Civil Procedure); see also *Herron*, 108 Wash.2d at 165-66, 736 P.2d 249.

¶ 77 In any such case, "[t]he touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party." *Wilson v. Horsley*, 137 Wash.2d 500, 505, 974 P.2d 316 (1999). Factors which may be considered in determining whether permitting amendment would cause prejudice include undue delay, unfair surprise, and jury confusion. *Id.* at 505-06, 974 P.2d 316. Although not dispositive, the timing of a motion may result in prejudice. *Herron*, 108 Wash.2d at 166, 736 P.2d 249.

C. DSHS Not Prejudiced

¶ 78 The **Wrigleys** argue that the trial court erred in denying their motion to amend because DSHS has not demonstrated that it would be prejudiced by the amendment. DSHS argues that the trial court did not err when it concluded that the **Wrigleys'** proposed amendment would result in prejudice.

¶ 79 At the hearing on the motion, the trial court opined on the matter of undue delay:

This is a case that was filed in 2014. The complaint was amended in late 2014. The parties have been engaged in discovery and motion practice for quite some time, and the court heard [a] comprehensive motion for summary judgment this summer on the negligence claim under the statute that had been pled. And but for the court's schedule and another case that was older, this case would be going to trial in a few weeks.

... I don't find that there is a justification for why this claim could not have been brought sooner.

VRP (Sept. 16, 2016) at 36-37. Initially, it appeared the trial court denied the **Wrigleys'** motion on the sole basis that it was untimely: it concluded that "there is prejudice to the defendant if the court allows at this late stage in the case an amendment of this sort." VRP (Sept.

16, 2016) at 37. However, after the **Wrigleys** moved for reconsideration, the court clarified:

I know the primary argument that the plaintiff made in the motion for reconsideration is that the court's decision a few weeks ago was based only on the concept of further delay. And I did look back at the arguments and my analysis, and I don't believe that my consideration was only based upon delay, but based upon the timeliness of the issue being raised, the fact that, in July, counsel for the plaintiff indicated the only theory was the statutory-based theory, the opportunity for the plaintiff to have raised it earlier and, from this court's perspective, ultimately the question of prejudice as well.

VRP (Oct. 6, 2016) at 11.

¶ 80 The first factor we examine under *Wilson* in determining prejudice is undue delay. 137 Wash.2d at 505, 974 P.2d 316. The **Wrigleys** argue undue delay alone is not enough for the trial court to deny their motion because undue delay must be accompanied by prejudice to the nonmoving party. The **Wrigleys** claim that because the trial was continued, DSHS would have had the opportunity to bring a dispositive motion related to their general negligence claim; they also argue additional discovery would likely have been unnecessary because the facts involving statutory negligence mirror the facts applicable to their general negligence claim. DSHS argues the trial court applied the correct law, exercised sound discretion, and we should not disturb its ruling. DSHS claims the trial court considered all the factors, including undue delay, and concluded prejudice would result.

¶ 81 Although the court concluded that “there is prejudice to the defendant if the court allows at this late stage in the case an amendment of this sort,” VRP (Sept. 16, 2016) at 37, DSHS did not describe or provide argument as to how the timing or undue delay of the **Wrigleys'** motion would result in prejudice; notwithstanding the

obvious task of having to defend against a claim of general negligence, which would result in additional work.¹¹ Still, the amendment would have done no more than provide an alternative theory for recovery, and the underlying facts or circumstances relied on by the **Wrigleys** are the same. Moreover, a pretrial amendment to the complaint would have provided DSHS with sufficient notice regarding the basis of the general negligence claim the **Wrigleys** wished to assert at trial. Further, DSHS would have had the opportunity to bring another dispositive motion prior to trial. We hold DSHS has not shown that any undue delay would result in prejudice.

¶ 82 Another factor we consider is unfair surprise. *Wilson*, 137 Wash.2d at 507, 974 P.2d 316. The **Wrigleys** argue,

DSHS has been on notice of Plaintiffs' negligence claims from the outset and this issue has been the primary focus of litigation. DSHS simply cannot contend that the addition of a general claim for negligence presents an unfair surprise.

Br. of Appellant at 18. DSHS claims that because the **Wrigleys** confirmed in court that they would not be pursuing a general negligence theory, it was unfairly surprised by the **Wrigleys'** change in position. Again, the amendment would have done no more than state an alternative theory of negligence, and the underlying facts or circumstances relied on by the **Wrigleys** are the proper subject of relief. DSHS should not have been shocked or astonished—that is, surprised—when the **Wrigleys** sought leave to amend after the **Wrigleys'** statutory negligence claims were dismissed on summary judgment and the case was continued by the trial court. We agree with **Wrigley**: “negligence is at the heart of this case, it has been alleged from the beginning, and it has been the parties' primary focus in discovery and litigation.” Br. of Appellant at 18. Thus, we hold DSHS has not shown it was unfairly surprised by the proposed amendment.

¶ 83 The last factor to be considered under *Wilson* is jury confusion. The **Wrigleys** argue,

with the other negligence claims dismissed on summary judgment because of the narrow scope of DSHS' duty with respect to non-subject parents under RCW 26.44.050, this would be the only negligence-related claim presented.

Br. of Appellant at 18. DSHS argues that the Wrigleys' former RCW 26.44.050 negligent investigation claims were properly dismissed on summary judgment, and the Wrigleys' argument tacitly concedes the issue above. Even though we reverse the dismissal of the Wrigleys' claim under former RCW 26.44.050 on appeal, we cannot agree that deciding claims under former RCW 26.44.050 and general negligence would unduly confuse a jury.

¶ 84 In *Herron*, our Supreme Court recognized that “[a]ppellate decisions permitting amendments have emphasized that the moving parties in those cases were merely seeking to assert a new legal theory based upon the same circumstances set forth in the original pleading.” 108 Wash.2d at 166, 736 P.2d 249. Accordingly, when the amendment seeks only to assert a new legal theory based on the same circumstances set forth in the original pleading, it should be allowed. *See id.* Such is the case here. Under *Herron*, the presence of the negligence claims in this matter is not reason to deny the amendment.

¶ 85 For these reasons, we hold the trial court abused its discretion when it denied the Wrigleys' motion for leave to amend. On remand, the Wrigleys may raise their requested claim of general negligence, including claims based on the shelter care order, special relationship and/or entrustment.

III. DSHS CROSS-APPEAL

A. Proximate Cause

¶ 86 DSHS argues it is entitled to summary judgment as a matter of law because the Wrigleys failed to create an issue of material fact on proximate cause. Because we hold that the trial court abused its discretion when it denied the Wrigleys' motion to amend, we do not reach this issue on cross-appeal.

B. Expert Testimony

¶ 87 DSHS argues the trial court abused its discretion when it refused to strike opinions offered by the Wrigleys' standard of care expert, Ulrich, that were based on inadmissible evidence and legally inapplicable procedures. We disagree.

¶ 88 An expert's opinion is admissible if the witness is properly qualified, relies on generally accepted theories, and the expert's testimony is helpful to the trier of fact. *Philippides v. Bernard*, 151 Wash.2d 376, 393, 88 P.3d 939 (2004). Trial courts are afforded wide discretion on issues of evidence and trial court expert opinion decisions will not be disturbed on appeal absent an abuse of discretion. *Johnston-Forbes v. Matsunaga*, 181 Wash.2d 346, 352, 333 P.3d 388 (2014).

¶ 89 In Washington, there are four key evidence rules that govern the use of expert witnesses. ER 702 largely establishes when expert testimony may be utilized at trial:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

ER 703 permits an expert to base his or her opinion on evidence not admissible and to base his or her opinion on facts or data perceived by or made known to the expert at or before the hearing. ER 704 permits an expert to testify on an ultimate issue the trier of fact must resolve. Finally, ER 705 indicates that an expert need not disclose the facts on which his or her opinion is based, although the court may require their disclosure and the expert may be subject to cross-examination on them.

¶ 90 With these standards in mind, we turn to the admissibility of the expert testimony Ulrich provided.

¶ 91 DSHS first argues the trial court erred in failing to strike Ulrich's declaration that related to DSHS's

noncompliance with procedures set forth in the ICPC. DSHS claims the ICPC¹² did not apply to Viles as the biological parent because A.A. had not been found dependent and cites *In re Dependency of D.F.-M.*, 157 Wash. App. 179, 236 P.3d 961 (2010). In *D.F.-M.*, Division One of our court held that the ICPC, which applies to placements in foster care, does not apply to parental placements. 157 Wash. App. at 183, 236 P.3d 961. Still, Ulrich expressly acknowledged in her declaration that the ICPC would not apply to the issues involved in this case. Ulrich instead used the ICPC to provide a comparative analysis and discuss “why an adequate assessment was not completed in this case.” CP at 1574. Ulrich stated in her declaration:

ICPC is a systematic process intended for use in out-of-state placements for children and families involved in the dependency process. ICPC, as it is intended, does not technically apply in this case, as [A.A.] was not yet a dependent of the State of Washington. However, it is important to note that ICPC also does not *prevent* the Department from using their available safety and risk assessment tools and fulfilling their legal obligation to assess and plan for the safety of the child in their care and custody. The file review of the case involving [A.A.] revealed that CA [(Children’s Administration)] staff did not properly use the safety or risk assessment tools as intended.

CP at 967.

¶ 92 Ulrich had 23 years of experience in the area of safety and risk assessment in child welfare and child protection, training and experience as a forensic child interviewing specialist, and was the regional lead for the State of Washington on child safety and child welfare. She also performed independent work interviewing children involved in custodial disputes and had myriad other training and experience in the field. This knowledge, skill, experience, and training qualified Ulrich as an expert on

the area of safety and risk assessment in child welfare and child protection.

¶ 93 Her opinion that the ICPC provided a useful template for DSHS to fulfill their legal obligation to assess and plan for the safety of A.A., who was in their care and custody, would be helpful to the trier of fact insofar as it relates to proper evaluation of risk to child safety and child welfare. We hold that the trial court did not abuse its discretion when it refused to strike Ulrich’s opinion because the protocols generally used in the ICPC are at least minimally relevant to the issue of standard of care in this matter.

¶ 94 Next, DSHS argues the trial court erred in failing to strike Ulrich’s opinions regarding DSHS’s failure to contact Idaho to obtain any records regarding Viles. DSHS claims there is no statute, regulation, policy, or standard that would have required DSHS to do so. Although this much may be true, DSHS had responsibility for the safety and wellbeing of A.A., since he was in their care and custody.

¶ 95 The information **Jessica** provided to DSHS regarding Viles’ history of domestic violence, history of drug abuse, reputation for violence in his community, and her sincere apprehension that Viles would abuse or neglect A.A. if placed in Viles’ home provided a sufficient basis on which Ulrich could form an opinion regarding DSHS’s failure to assess the risks of placement with Viles. Ulrich stated,

For example, the Department could have asked for a domestic violence assessment, anger management assessment, or a chemical dependency assessment of Mr. Viles. All of these formal assessments, completed by a professional in Idaho, would have led the Department to be able to identify any potential areas of risk and/or safety that they needed to plan for prior to deciding about the appropriateness of transitioning [A.A.] to the home of Mr. Viles.

CP at 971. Ulrich’s testimony would have been helpful to the trier of fact insofar as DSHS may have failed to adequately assess the risk and safety of placing A.A. with Viles.

¶ 96 We hold that the trial court did not abuse its discretion when it refused to strike Ulrich’s opinion.

CONCLUSION

¶ 97 We hold that DSHS owed the **Wrigleys** a duty of care under former [RCW 26.44.050](#), and we reverse the order granting DSHS’s motion for partial summary judgment and dismissing the **Wrigleys’** claim under former [RCW 26.44.050](#). We decline to address the issue of duty under the shelter care order and the special relationship doctrine under [RAP 9.12](#), and we hold the trial court abused its discretion when it denied the **Wrigleys’** motion to amend their complaint to add a general negligence theory. In the cross-appeal, we do not reach the issue of proximate cause, and we hold the trial court did not abuse its discretion when it refused to strike the opinions offered by the **Wrigleys’** expert.

¶ 98 We reverse and remand.

End of Unpublished Text

I concur:

[Penoyar](#), J.P.T.

[Sutton](#), J. (dissent in part)

¶ 99 This case presents an issue of the scope of DSHS’s duty to investigate a report of abuse or neglect of a minor child under [RCW 26.44.050](#) and when the duty to investigate is triggered.

¶ 100 The majority holds that DSHS has a duty to investigate a father under [RCW 26.44.050](#) based on the mother’s allegations of the father’s prior violence against her, his prior criminal history, and speculation about possible future abuse or neglect of their minor child, A.A., when there is no report of abuse or neglect of A.A. or any minor child by the father. The majority reasons that the mother’s allegations against the father constitute a report

of possible abuse or neglect of a minor child triggering a duty by DSHS to investigate under [RCW 26.44.050](#). The majority reasons that the phrase “report concerning the possible occurrence of abuse or neglect” of a minor child in [RCW 26.44.050](#) is ambiguous, and that the phrase “may refer either to abuse or neglect that has already occurred or, in addition, it may include also abuse or neglect which is reasonably possible in the future.” Majority at 1288. The majority concludes that legislative intent is ill served by confining [RCW 26.44.050](#) to reports of past abuse or neglect.

¶ 101 The majority’s holding expands the scope of DSHS’s duty to investigate any report of abuse or neglect of anyone, not just a duty to investigate a report of abuse or neglect of the minor child at issue. I respectfully disagree with the majority’s holding that DSHS has a duty of care to the mother to investigate the father under [RCW 26.44.050](#) based on her allegations. For the reasons explained below, I would affirm the superior court’s order granting DSHS’s partial summary judgment motion and dismissing the negligence claims. I join the majority as to the remaining issues addressed in the majority opinion except for the issue of whether the trial court erred by not striking the mother’s expert. I do not reach that issue because DSHS does not have a duty to investigate.

FACTS

¶ 102 I agree with the majority’s presentation of the facts, but for clarity the following material facts are outlined.

¶ 103 Following reports of abuse of A.A. by his mother, **Jessica Wrigley**, and his stepfather, Jared **Wrigley**,¹³ DSHS filed a dependency petition. Anthony Viles, A.A.’s father, filed a motion with the juvenile court to have A.A. placed with him in Idaho. In relevant part, Jared’s attorney stated that Jared was aware of Viles’ violent past, he had concerns, and he wanted a “better investigation done before [A.A.] is moved.” Clerk’s Papers (CP) at 304-05. **Jessica’s** attorney stated that **Jessica** had “no strong position either way.” CP at 305. After hearing arguments and considering the record, the court granted Viles’ motion, ordered A.A. to be released from shelter care, and placed A.A. with Viles “for a visit” for 30 days. CP at 312.

¶ 104 In mid-February, **Jessica** contacted social worker Don Watson and expressed her concerns regarding A.A.'s placement with *1291 Viles, telling Watson about Viles' history of violence toward her and him providing alcohol to a minor. She also told Watson that because of A.A.'s behavioral issues, A.A. "would be dead within six months" if he were placed with Viles. CP at 880.

¶ 105 **Jessica** informed DSHS that she previously had a restraining order against Viles because of threats he had made against her, and that he had an extensive criminal history and a reputation for violence. The record also shows that **Jessica** informed DSHS that Viles had threatened to cut her head off, tried to run over her, and dragged her upstairs by her hair. Further, DSHS knew that Viles had been arrested for harboring a minor runaway and had been convicted of providing alcohol to a minor.

¶ 106 Ultimately, the court did not enter a dependency order, and instead found that placement with Viles was in A.A.'s best interest. The court ordered A.A. be placed with Viles in Idaho and dismissed the dependency petition.

ANALYSIS

I. SUMMARY JUDGMENT

¶ 107 **Jessica** argues that based on her allegations against Viles, DSHS owes her a duty to investigate under RCW 26.44.050.¹⁴ The majority holds that DSHS has a duty to investigate under RCW 26.44.050 because it received a report of a possible future occurrence of child abuse or neglect by Viles. For the reasons explained below, I disagree with the majority's holding.

A. STANDARD OF REVIEW

¶ 108 Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. CR 56(c).

¶ 109 We review the superior court's grant of summary judgment de novo. *M.W. v. Dep't of Soc. & Health Servs.*,

149 Wash.2d 589, 595, 70 P.3d 954 (2003). We engage in the same inquiry as the superior court. *M.W.*, 149 Wash.2d at 595, 70 P.3d 954. We consider all facts and make all reasonable, factual inferences in the light most favorable to the nonmoving party. *Rekhter v. Dep't of Soc. & Health Servs.*, 180 Wash.2d 102, 145, 323 P.3d 1036 (2014).

¶ 110 A negligence claim requires that the plaintiff demonstrate that the defendant owed a duty to plaintiff; that defendant breached that duty; that the breach of duty caused some injury to plaintiff; and the plaintiff suffered damages. *Kim v. Lakeside Adult Family Home*, 186 Wash. App. 398, 408, 345 P.3d 850 (2015), *aff'd in part, rev'd in part*, 185 Wash.2d 532, 374 P.3d 121 (2016). Generally, whether the duty element exists in the negligence context is a question of law that we review de novo. *Sheikh v. Choe*, 156 Wash.2d 441, 448, 128 P.3d 574 (2006). But, where the existence of a legal duty is dependent on disputed material facts, summary judgment is inappropriate. *Mita v. Guardsmark, LLC*, 182 Wash. App. 76, 83, 328 P.3d 962 (2014); *see Kim*, 186 Wash. App. at 408, 345 P.3d 850.

B. DSHS'S DUTY PURSUANT TO RCW 26.44.050

¶ 111 **Jessica** argues, and the majority agrees, that DSHS owed her a duty of care to investigate Viles under RCW 26.44.050 based on her allegations against Viles of his prior violence against her, his prior criminal history, and her claims of possible abuse or neglect of A.A. by Viles. The majority concludes that DSHS received reports concerning the possible occurrence of abuse or neglect by Viles, thus, triggering a duty to investigate. I respectfully disagree as explained below.

¶ 112 We look to RCW 26.44.050 to determine whether DSHS owes a duty to investigate based on **Jessica**'s allegations. Issues of statutory interpretation are questions of law that we review de novo. *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wash.2d 1, 9-10, 43 P.3d 4 (2002). Our fundamental objective is to ascertain and carry out the legislature's *1292 intent, and if the statute's meaning is plain on its face, we give effect to that plain meaning as an expression of legislative intent. *Campbell & Gwinn*, 146 Wash.2d at 9-10, 43 P.3d 4.

¶ 113 To evaluate the plain language, we consider the text of the provision in question, the context of the statute in which the provision is found, and related

statutes. *Jametsky v. Olsen*, 179 Wash.2d 756, 762, 317 P.3d 1003 (2014); *Campbell & Gwinn*, 146 Wash.2d at 10, 43 P.3d 4. “Legislative definitions provided in a statute are controlling, but in the absence of a statutory definition, courts may give a term its plain and ordinary meaning by reference to a standard dictionary.” *Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles*, 148 Wash.2d 224, 239, 59 P.3d 655 (2002). If, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Campbell & Gwinn*, 146 Wash.2d at 12, 43 P.3d 4.

¶ 114 We avoid a literal reading of a statute that would result in unlikely, absurd, or strained consequences. *Fraternal Order of Eagles*, 148 Wash.2d at 239, 59 P.3d 655. “ ‘The spirit or purpose of an enactment should prevail over ... express but inept wording.’ ” *Fraternal Order of Eagles*, 148 Wash.2d at 239, 59 P.3d 655 (alteration in original) (quoting *State v. Day*, 96 Wash.2d 646, 648, 638 P.2d 546 (1981)). We do not add language to an unambiguous statute under the guise of interpretation. *In re Estate of Mower*, 193 Wash. App. 706, 713, 374 P.3d 180 (2016).

1. Negligent investigation claim

¶ 115 Law enforcement and DSHS must investigate reports of abuse or neglect of a minor child pursuant to RCW 26.44.050. RCW 26.44.050 provides:

[U]pon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department must investigate and provide the protective services section with a report in accordance with chapter 74.13 RCW, and where necessary to refer such report to the court.

¶ 116 The primary purpose of RCW 26.44.050 is to protect children and to preserve the integrity of the family. *Tyner v. Dep’t of Soc. & Health Servs.*, 141 Wash.2d 68, 80, 1

P.3d 1148 (2000); RCW 26.44.010. To achieve that end, DSHS has a statutory duty to investigate reports of child abuse or neglect. *Albertson v. State*, 191 Wash. App. 284, 299, 361 P.3d 808 (2015).

¶ 117 Because the legislature enacted RCW 26.44.050 to benefit children who are subjects of reports concerning possible abuse or neglect, “parents and children have an implied cause of action against law enforcement and DSHS for negligent investigation under certain circumstances.” *McCarthy v. Clark County*, 193 Wash. App. 314, 328-29, 376 P.3d 1127, review denied, 186 Wash.2d 1018, 383 P.3d 1023 (2016); *M.W.*, 149 Wash.2d at 595, 70 P.3d 954. The negligent investigation claim under RCW 26.44.050 is a “narrow exception” to the rule that there is no general tort claim for negligent investigation. *M.W.*, 149 Wash.2d at 601, 70 P.3d 954.

¶ 118 A negligent investigation claim is available only when DSHS conducts an incomplete or biased investigation that “resulted in a harmful placement decision.” *M.W.*, 149 Wash.2d at 601, 70 P.3d 954. “A harmful placement decision includes ‘removing a child from a nonabusive home, placing a child in an abusive home, or letting a child remain in an abusive home.’ ” *McCarthy*, 193 Wash. App. at 329, 376 P.3d 1127 (quoting *M.W.*, 149 Wash.2d at 602, 70 P.3d 954). DSHS’s duty to investigate is triggered by a report of possible abuse or neglect of a minor child. *M.M.S. v. Dep’t of Soc. & Health Servs.*, 1 Wash. App.2d 320, 330, 404 P.3d 1163 (2017), review denied, 190 Wash.2d 1009, 414 P.3d 581 (2018).

¶ 119 The majority holds that DSHS’s duty to investigate here is triggered by **Jessica**’s allegations of prior violence by Viles against her, his prior criminal history, and claims of possible abuse or neglect of A.A. by Viles after **Jessica** consented to the placement of A.A. with Viles. As discussed below, I disagree that **Jessica**’s allegations constitute a *1293 “report concerning the possible occurrence of abuse or neglect” of a minor child triggering a duty by DSHS to investigate under RCW 26.44.050.

2. DSHS did not receive a report concerning the possible occurrence of child abuse or neglect by Viles under RCW 26.44.050

¶ 120 The issue is whether the information that DSHS received from **Jessica** constituted a “report concerning the possible occurrence of abuse or neglect” of a minor

child, A.A., by Viles, thus triggering a duty to investigate under [RCW 26.44.050](#). If it did receive such a report, then summary judgement was erroneous.

¶ 121 I agree with the majority that it is undisputed that

[t]he record is clear that **Jessica** informed DSHS that she previously had a restraining order against Viles because of threats he made against her, and that he had an extensive criminal history and a reputation for violence. The record also shows that **Jessica** informed DSHS that Viles had threatened to cut her head off, had tried to run over her, and had dragged her upstairs in their home by her hair. The record shows further that when A.A. had been placed with Viles, **Jessica** told Watson that because of A.A.'s behavioral problems, if A.A. was with Viles, "he would be dead within six months." CP at 880.

Majority at 1287.

¶ 122 I disagree, however, with the majority's conclusion that the above-quoted undisputed facts constitute a "report concerning the possible occurrence of abuse or neglect" of a minor child, A.A., by Viles. Majority at 1286.

¶ 123 "Abuse or neglect" is defined as

sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under [RCW 9A.16.100](#); or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

[RCW 26.44.020\(1\)](#). "Negligent treatment or maltreatment" is defined as

an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction,

that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under [RCW 9A.42.100](#). When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in [RCW 26.50.010](#) that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

[RCW 26.44.020\(16\)](#).

¶ 124 Title 26.44 RCW does not define "report" or "occurrence." It does, however, address the contents and form a report. Specifically, [RCW 26.44.040](#) provides that "[a]n immediate oral report" must be made by telephone or otherwise to the proper law enforcement agency or DSHS.

¶ 125 Further, to the extent that the information is known, the report must contain:

- (1) The name, address, and age of the child;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;

(6) Any evidence of previous injuries, including their nature and extent; and

(7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the *1294 identity of the alleged perpetrator or perpetrators.

RCW 26.44.040.

¶ 126 The above-quoted undisputed facts relate to reports made by Jessica and received by DSHS that Viles committed acts of domestic violence against Jessica, an adult, not against A.A. or any other minor child. None of the reports or allegations involve a report of a possible act of sexual abuse, sexual exploitation, or injury of a minor child by Viles under circumstances that would cause harm to a child's health, welfare, or safety. Further, the reports by Jessica do not include allegations of an act or failure to act, or a pattern of behavior that evidences a "serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety." RCW 26.44.020(16). Therefore, the allegations do not constitute a "possible occurrence of abuse or neglect" of a minor child by Viles to trigger a duty to investigate under RCW 26.44.050.

¶ 127 Because the allegations do not constitute a "possible occurrence of abuse or neglect" of a minor child by Viles, I would hold that Jessica's allegations do not trigger a duty to investigate under RCW 26.44.050.

¶ 128 In sum, Jessica argues that DSHS had a duty of care to investigate Viles based on the information she provided to DSHS. Yet, RCW 26.44.050 imposes no such duty here. See *M.M.S.*, 1 Wash. App.2d at 331, 404 P.3d 1163. The duty to investigate arises when DSHS receives "a report concerning the possible occurrence of child abuse or neglect" of a minor child. *M.M.S.*, 1 Wash. App.2d at 331, 404 P.3d 1163. Because DSHS never received a report concerning the possible occurrence of child abuse or neglect of the minor child at issue, A.A., by Viles, I would hold that DSHS does not have a duty to investigate under RCW 26.44.050. Thus, based on the holding that DSHS did not owe a duty to investigate, I would affirm the superior court's order granting DSHS's motion for partial summary judgment, and dismissing the negligence claims under RCW 26.44.050.

All Citations

428 P.3d 1279

Footnotes

- 1 The Department of Social & Health Services (DSHS) recently changed its name to Department of Children, Youth, and Families. We refer to DSHS in this opinion because that was its name at the time this case was filed in superior court.
- 2 We use Jessica Wrigley's first name for clarity, as the lawsuit involves multiple plaintiffs/appellants. We intend no disrespect.
- 3 We refer to Roy Viles by his first name to avoid confusion. We intend no disrespect.
- 4 The record does not disclose the relationship between Viles and William.
- 5 Although Viles had been arrested multiple times for incidents discussed above, his last conviction for violence dated to when he was a juvenile, 11 years earlier.
- 6 It appears DSHS did not inform Viles of all of A.A.'s significant behavior issues. DSHS conveyed to Viles that A.A. "had trouble with school and he acted out a lot. That was pretty much it." CP at 731. In fact, Viles testified that "[t]hey really had no information for me." CP at 731. Viles "assumed it was mainly throwing ... temper tantrums." CP at 733. DSHS did not advise Viles that A.A. had been removed from several schools and daycare providers. DSHS did not inform Viles that the behavioral issues included concerns and diagnoses of ADHD (attention deficit hyperactivity disorder), PTSD (post-traumatic stress disorder), anxiety, pervasive development disorder, oppositional defiant disorder, autism, anger/rage concerns, depression, sleep disturbance, and enuresis.
- 7 The Wrigleys' assignment of error 4 states, "The trial court erred in finding [that] Plaintiffs did not allege any negligence-based claims other than those that arise under RCW 26.44.050. Finding 5." Br. of Appellants at 1. In addition, the Wrigleys' issues pertaining to assignments of error state, "Whether there were other negligence claims pleaded besides negligent investigation." Br. of Appellants at 1. The brief of the appellants does not explicitly make arguments to support this assignment of error and issue on appeal. Further, their amended complaint did not allege general common law negligence or another form of statutory negligence, which could provide the basis for relief. Thus, it appears all of

the **Wrigleys'** negligence-based claims (i.e., wrongful death, loss of consortium, survival action, and negligent training/supervision) stemmed from their former [RCW 26.44.050](#) negligent investigation cause of action.

8 The **Wrigleys** did not appeal the dismissal of these claims on summary judgment.

9 We reviewed the verbatim report of proceedings from July 22, 2016, which transcribes the hearing for partial summary judgment that the trial court references at the hearing on the motion to amend. On the record before us, we could not locate an exchange in which the **Wrigleys'** attorney states that all negligence claims are based on former [RCW 26.44.050](#).

10 We note the statement in *M.M.S.* that “[h]ere, there was no report that M.M.S. was abused or neglected before [J.A.] was placed in the home.” 1 *Wash. App. 2d* at 330, 404 P.3d 1163. This is simply a recognition that other than the statements in the closed archives, there were no reports of abuse or neglect. In context, it cannot be taken as a holding that the duty to investigate in former [RCW 26.44.050](#) is triggered only by reports of past abuse or neglect against the victim. If it were so read, it would conflict with the Supreme Court decisions in *Tyner* and *M.W.*, as discussed above.

11 In a concurrence and dissent in *Wilson*, Justice Sanders cogently argued:

Delay, per se, i[s] no reason for denial. If it were, no leave to amend would ever be allowed as amendments are by their nature delayed beyond the original pleading. Delay, excusable or not, i[s] not sufficient reason to deny a motion to amend unless it works some undue hardship or prejudice upon the opposing party. Horsley filed his motion to amend seven months after he filed his original pro se answer. How “undue” was this delay is a matter of opinion: however, we have held that a delay of over five years is acceptable absent a showing of prejudice by the party opposing amendment.

[137 Wash.2d](#) at 514, [974 P.2d](#) 316 (internal citations omitted).

12 Chapter 26.34 RCW.

13 We use the minor child’s initials to protect his identity. Because **Jessica** and Jared **Wrigley** share a surname, we refer to them by their first names. We mean no disrespect.

14 The court below found that **Jessica**’s negligent investigation claim was based on [RCW 26.44.050](#). Notably, **Jessica** did not reference [RCW 26.44.050](#) in her pleadings.

Appendix B

Excerpts of cited RCWs

13.34.030 (2010)	26.44.030
13.34.065 (2010)	26.44.040
13.34.110 (2010)	26.44.050
13.34.065	43.216.906
26.44.010	74.13.031
26.44.020	

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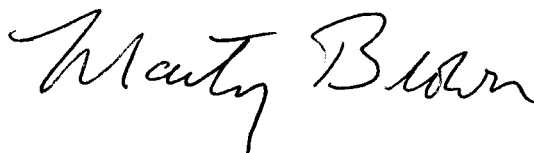
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MARTY BROWN, Chair
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Chapter 13.34 RCW

JUVENILE COURT ACT—DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

Sections

- 13.34.010 Short title.
- 13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child.
- 13.34.025 Child dependency cases—Coordination of services—Remedial services.
- 13.34.030 Definitions.
- 13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution.
- 13.34.040 Petition to court to deal with dependent child—Application of Indian child welfare act.
- 13.34.050 Court order to take child into custody, when—Hearing.
- 13.34.055 Custody by law enforcement officer—Release from liability.
- 13.34.060 Shelter care—Placement—Custody—Duties of parties.
- 13.34.062 Shelter care—Notice of custody and rights.
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (*as amended by 2009 c 397*).
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (*as amended by 2009 c 477*).
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (*as amended by 2009 c 491*).
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Case management by supervising agency, when appropriate—Release (*as amended by 2009 c 520*).
- 13.34.067 Shelter care—Case conference—Service agreement.
- 13.34.069 Shelter care—Order and authorization of health care and education records.
- 13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear—Required notice regarding Indian children.
- 13.34.080 Summons when petition filed—Publication of notice.
- 13.34.090 Rights under chapter proceedings.
- 13.34.092 Rights under chapter proceedings—Appointment of counsel—Notice.
- 13.34.094 Description of services provided to parents.
- 13.34.096 Right to be heard—Notice.
- 13.34.100 Appointment of guardian ad litem—Background information—Rights—Notification and inquiry—Appointment of counsel for child—Review.
- 13.34.102 Guardian ad litem—Training—Registry—Selection—Substitution—Exception.
- 13.34.105 Guardian ad litem—Duties—Immunity—Access to information.
- 13.34.107 Guardian ad litem—Ex parte communications—Removal.
- 13.34.108 Guardian ad litem—Fees.
- 13.34.110 Hearings—Fact-finding and disposition—Time and place, notice.
- 13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings.
- 13.34.120 Social study and reports made available at disposition hearing—Contents—Notice to parents.
- 13.34.125 Voluntary adoption plan—Consideration of preferences for proposed placement.
- 13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Placement with relatives, foster family home, group care facility, or other suitable persons—Placement of an Indian child in out-of-home care—Contact with siblings.
- 13.34.132 Petition seeking termination of parent-child relationship—Requirements.
- 13.34.134 Permanent placement of child.
- 13.34.136 Permanency plan of care.
- 13.34.138 Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance.
- 13.34.141 Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice.
- 13.34.142 Current placement episode—Calculation.
- 13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.
- 13.34.150 Modification of orders.

- 13.34.155 Concurrent jurisdiction over nonparental actions for child custody (*as amended by 2009 c 520*).
- 13.34.155 Concurrent jurisdiction over nonparental actions for child custody—Establishment or modification of parenting plan (*as amended by 2009 c 526*).
- 13.34.160 Order of support for dependent child.
- 13.34.161 Order of support for dependent child—Noncompliance—Enforcement of judgment.
- 13.34.165 Civil contempt—Grounds—Motion—Penalty—Detention review hearing.
- 13.34.174 Order of alcohol or substance abuse diagnostic investigation and evaluation—Treatment plan—Breach of plan—Reports.
- 13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order.
- 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (*as amended by 2009 c 477*).
- 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (*as amended by 2009 c 520*).
- 13.34.190 Order terminating parent and child relationship—Findings.
- 13.34.200 Order terminating parent and child relationship—Rights of parties when granted.
- 13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights.
- 13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability.
- 13.34.232 Guardianship for dependent child—Order, contents—Rights and duties of dependency guardian.
- 13.34.233 Guardianship for dependent child—Modification or termination of order—Hearing—Termination of guardianship.
- 13.34.234 Guardianship for dependent child—Dependency guardianship subsidies.
- 13.34.235 Guardianship for dependent child—Review hearing requirements not applicable—Exception.
- 13.34.237 Guardianship for dependent child—Subject to dependency and termination of parent-child relationship provisions—Exceptions—Request to convert dependency guardianship to guardianship—Dismissal of dependency.
- 13.34.240 Acts, records, and proceedings of Indian tribe or band given full faith and credit.
- 13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination.
- 13.34.250 Preference characteristics when placing Indian child in foster care home.
- 13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged.
- 13.34.265 Foster home placement—Considerations.
- 13.34.270 Child with developmental disability—Out-of-home placement—Permanency planning hearing.
- 13.34.300 Relevance of failure to cause juvenile to attend school to neglect petition.
- 13.34.315 Health care—Evaluation and treatment.
- 13.34.320 Inpatient mental health treatment—When parental consent required—Hearing.
- 13.34.330 Inpatient mental health treatment—Placement.
- 13.34.340 Release of records—Disclosure to treating physician.
- 13.34.350 Dependent children—Information sharing—Guidelines.
- 13.34.360 Transfer of newborn to qualified person—Criminal liability—Notification to child protective services—Definitions.
- 13.34.370 Evaluation of parties—Selection of evaluators.
- 13.34.380 Visitation policies and protocols—Development—Elements.
- 13.34.385 Petition for visitation—Relatives of dependent children—Notice—Modification of order—Effect of granting the petition—Retroactive application.
- 13.34.390 Comprehensive services for drug-affected and alcohol-affected mothers and infants.
- 13.34.400 Child welfare proceedings—Placement—Documentation.
- 13.34.800 Drug-affected and alcohol-affected infants—Model project.
- 13.34.801 Rules—Definition of "drug-affected infant."
- 13.34.802 Rules—Definition of "alcohol-affected infant."
- 13.34.820 Permanency for dependent children—Annual report.
- 13.34.830 Child protection and child welfare—Racial disproportionality—Evaluation—Report.
- 13.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Family preservation services: Chapter 74.14C RCW.

Foster placement prevention: Chapter 74.14C RCW.

Implementation of chapters 13.32A and 13.34 RCW: RCW 74.13.036.

Information about rights: RCW 26.44.100 through 26.44.120.

Juvenile may be both dependent and an offender: RCW 13.04.300.

Out-of-home care—Social study required: RCW 74.13.065.
Out-of-home placement: RCW 13.32A.140 through 13.32A.190.
Procedures for families in conflict, interstate compact to apply, when: RCW 13.32A.110.
Therapeutic family home program for youth in custody under chapter 13.34 RCW: RCW 74.13.170.
Transitional living programs for youth in the process of being emancipated: RCW 74.13.037.

13.34.010 Short title. This chapter shall be known as the "Juvenile Court Act in Cases Relating to Dependency of a Child and the Termination of a Parent and Child Relationship". [1977 ex.s. c 291 § 29.]

Additional notes found at www.leg.wa.gov

13.34.020 Legislative declaration of family unit as resource to be nurtured—Rights of child. The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter. [1998 c 314 § 1; 1990 c 284 § 31; 1987 c 524 § 2; 1977 ex.s. c 291 § 30.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

Additional notes found at www.leg.wa.gov

13.34.025 Child dependency cases—Coordination of services—Remedial services. (1) The department and supervising agencies shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department and supervising agencies must:

(a) Coordinate and integrate services to children and families, using service plans and activities that address the children's and families' multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;

(b) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and

(c) Access training for department and supervising agency staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

(2) The department shall coordinate within the administrations of the department, and with contracted service providers including supervising agencies, to ensure that parents in dependency proceedings under this chapter receive priority access to remedial services recommended by the department or supervising agency in its social study or ordered by the court for the purpose of correcting any parental deficiencies identified in the dependency proceeding that are capable of

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being corrected in the foreseeable future. Services may also be provided to caregivers other than the parents as identified in RCW 13.34.138.

(a) For purposes of this chapter, remedial services are those services defined in the federal adoption and safe families act as time-limited family reunification services. 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.

(b) The department shall provide funds for remedial services if the parent is unable to pay to the extent funding is appropriated in the operating budget or otherwise available to the department for such specific services. As a condition for receiving funded remedial services, the court may inquire into the parent's ability to pay for all or part of such services or may require that the parent make appropriate applications for funding to alternative funding sources for such services.

(c) If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department or supervising agency shall promptly notify the court that the parent is unable to engage in the treatment due to the inability to access such services.

(d) This section does not create an entitlement to services and does not create judicial authority to order the provision of services except for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding under this chapter. [2009 c 520 § 20; 2007 c 410 § 2; 2002 c 52 § 2; 2001 c 256 § 2.]

Short title—2007 c 410: See note following RCW 13.34.138.

Intent—2002 c 52: "It is the intent of the legislature to recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention." [2002 c 52 § 1.]

Finding—2001 c 256: "The department of social and health services serves parents and children with multiple needs, which cannot be resolved in isolation. Further, the complexity of service delivery systems is a barrier for families in crisis when a child is removed or a parent is removed from the home. The department must undertake efforts to streamline the delivery of services." [2001 c 256 § 1.]

13.34.030 Definitions. For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and

continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "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.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "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 a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(10) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, disability lifeline benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(13) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Preventive 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.

(15) "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.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emo-

tional bond with any siblings, and the agency’s plan to provide ongoing contact between the child and the child’s siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020. [2010 1st sp.s. c 8 § 13; 2010 c 272 § 10; 2010 c 94 § 6. Prior: 2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

Reviser’s note: This section was amended by 2010 c 94 § 6, 2010 c 272 § 10, and by 2010 1st sp.s. c 8 § 13, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Short title—Effective date—2010 1st sp.s. c 8: See notes following RCW 74.04.225.

Purpose—2010 c 94: See note following RCW 44.04.280.

Intent—2003 c 227: See note following RCW 13.34.130.

Intent—2002 c 52: See note following RCW 13.34.025.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Legislative finding—1983 c 311: "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children’s service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

Additional notes found at www.leg.wa.gov

13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution. (1) The administrative office of the courts shall develop standard court forms and format rules for mandatory use by parties in dependency matters commenced under this chapter or chapter 26.44 RCW. Forms shall be developed not later than November 1, 2009, and the mandatory use requirement shall be effective January 1, 2010. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) According to rules established by the administrative office of the courts, a party may delete unnecessary portions of the forms and may supplement the mandatory forms with additional material.

(3) Failure by a party to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. The court may, however, require the party to submit a corrected pleading and may

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impose terms payable to the opposing party or payable to the court, or both.

(4) The administrative office of the courts shall distribute a master copy of the mandatory forms to all county court clerks. Upon request, the administrative office of the courts and county clerks must distribute the forms to the public and may charge for the cost of production and distribution of the forms. Private vendors also may distribute the forms. Distribution of forms may be in printed or electronic form. [2009 c 491 § 6.]

13.34.040 Petition to court to deal with dependent child—Application of Indian child welfare act. (1) Any person may file with the clerk of the superior court a petition showing that there is within the county, or residing within the county, a dependent child and requesting that the superior court deal with such child as provided in this chapter. There shall be no fee for filing such petitions.

(2) In counties having paid probation officers, these officers shall, to the extent possible, first determine if a petition is reasonably justifiable. Each petition shall be verified and contain a statement of facts constituting a dependency, and the names and residence, if known to the petitioner, of the parents, guardian, or custodian of the alleged dependent child.

(3) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903. If the child is an Indian child as defined under the Indian child welfare act, the provisions of the act shall apply.

(4) Every order or decree entered under this chapter shall contain a finding that the Indian child welfare act does or does not apply. Where there is a finding that the Indian child welfare act does apply, the decree or order must also contain a finding that all notice requirements and evidentiary requirements under the Indian child welfare act have been satisfied. [2004 c 64 § 3; 2000 c 122 § 2; 1977 ex.s. c 291 § 32; 1913 c 160 § 5; RRS § 1987-5. Formerly RCW 13.04.060.]

Additional notes found at www.leg.wa.gov

13.34.050 Court order to take child into custody, when—Hearing. (1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child’s health, safety, and welfare will be seriously endangered if not taken into custody; (b) an affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child’s health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, sexual exploitation as defined in RCW 26.44.020, and a parent’s failure to perform basic parental functions, obligations, and duties as the result of substance abuse; and (c) the court finds reasonable grounds to believe the child is dependent and that the child’s health,

present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used. [2009 c 477 § 2. Prior: 2007 c 413 § 4; 2007 c 409 § 5; 2004 c 147 § 2; 2001 c 332 § 2; 2000 c 122 § 5.]

Findings—Intent—2009 c 477: "The legislature finds that when children have been found dependent and placed in out-of-home care, the likelihood of reunification with their parents diminishes significantly after fifteen months. The legislature also finds that early and consistent parental engagement in services and participation in appropriate parent-child contact and visitation increases the likelihood of successful reunifications. The legislature intends to promote greater awareness among parents in dependency cases of the importance of active participation in services, visitation, and case planning for the child, and the risks created by failure to participate in their child's case over the long term." [2009 c 477 § 1.]

Severability—2007 c 413: See note following RCW 13.34.215.

Effective date—2007 c 409: See note following RCW 13.34.096.

Effective date—2004 c 147: See note following RCW 13.34.067.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 397). (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court 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.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights

required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) 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 before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to 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 of the child or children;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) 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 what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of 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; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; 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.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency 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 is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 477). (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court 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.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) 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 what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of 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; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; 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.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

- (i) Care for the child and be able to meet any special needs of the child;
- (ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and
- (iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency 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 is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 477 § 3; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Findings—Intent—2009 c 477: See note following RCW 13.34.062.

13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 491). (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court 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.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) 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 what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of 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; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; 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.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1).

(d) If a relative or other suitable person is not available, the court shall order continued shelter care ~~((or order placement with another suitable person, and the court))~~ and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency 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 is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection ~~((or with another suitable person under (d) of this subsection))~~.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 491 § 1; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

13.34.065 Shelter care—Hearing—Recommendation as to further need—Case management by supervising agency, when appropriate—Release (as amended by 2009 c 520).

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department ~~((of social and health services))~~ or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which ~~((it is the petitioner))~~ the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court 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.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW

13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order ~~(the supervising agency or)~~ the department ~~(of social and health services)~~ to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the ~~department or supervising~~ agency the least disruptive and most family-like setting that meets the needs of the child;

(f) 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 what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of 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; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; 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.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the ~~department or supervising agency~~ in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the ~~department's or supervising agency'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 is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 520 § 22; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

Reviser's note: RCW 13.34.065 was amended four times during the 2009 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—2007 c 413: See note following RCW 13.34.215.

13.34.067 Shelter care—Case conference—Service agreement. (1)(a) Following shelter care and no later than thirty days prior to fact-finding, the department or supervising agency shall convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department or supervising agency and the parent regarding voluntary services for the parent.

(b) The case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the parties. Once the shelter care order is entered, the department or supervising agency is not required to provide additional notice of the case conference to any participants in the case conference.

(c) The written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific services to be provided to the parent.

(d) The case conference agreement must be agreed to and signed by the parties. The court shall not consider the

content of the discussions at the case conference at the time of the fact-finding hearing for the purposes of establishing that the child is a dependent child, and the court shall not consider any documents or written materials presented at the case conference but not incorporated into the case conference agreement, unless the documents or written materials were prepared for purposes other than or as a result of the case conference and are otherwise admissible under the rules of evidence.

(2) At any other stage in a dependency proceeding, the department or supervising agency, upon the parent’s request, shall convene a case conference. [2009 c 520 § 23; 2004 c 147 § 1; 2001 c 332 § 1.]

Effective date—2004 c 147: "This act takes effect July 1, 2004." [2004 c 147 § 5.]

13.34.069 Shelter care—Order and authorization of health care and education records. If a child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, an order and authorization regarding health care and education records for the child shall be entered. The order shall:

(1) Provide the department or other supervising agency with the right to inspect and copy all health, medical, mental health, and education records of the child;

(2) Authorize and direct any agency, hospital, doctor, nurse, dentist, orthodontist, or other health care provider, therapist, drug or alcohol treatment provider, psychologist, psychiatrist, or mental health clinic, or health or medical records custodian or document management company, or school or school organization to permit the department or other supervising agency to inspect and to obtain copies of any records relating to the child involved in the case, without the further consent of the parent or guardian of the child; and

(3) Grant the department or other supervising agency or its designee the authority and responsibility, where applicable, to:

(a) Notify the child’s school that the child is in out-of-home placement;

(b) Enroll the child in school;

(c) Request the school transfer records;

(d) Request and authorize evaluation of special needs;

(e) Attend parent or teacher conferences;

(f) Excuse absences;

(g) Grant permission for extracurricular activities;

(h) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and

(i) Complete or update school emergency records.

Access to records under this section is subject to the child’s consent where required by other state and federal laws. [2007 c 409 § 2.]

Effective date—2007 c 409: See note following RCW 13.34.096.

13.34.070 Summons when petition filed—Service procedure—Hearing, when—Contempt upon failure to appear—Required notice regarding Indian children. (1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents,

guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child’s custodian as well as to the child’s parent. The developmentally disabled child shall not be required to appear unless requested by the court. When the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child’s parent, guardian, or legal custodian of his or her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him or her to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he or she may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

NOTICE:
VIOLATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party’s address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found

ceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(d) The superior court shall remove any person from the guardian ad litem registry who misrepresents his or her qualifications pursuant to a grievance procedure established by the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2005 c 282 § 26; 2000 c 124 § 3; 1997 c 41 § 6; 1996 c 249 § 17.]

Intent—1996 c 249: See note following RCW 2.56.030.

13.34.105 Guardian ad litem—Duties—Immunity—Access to information. (1) Unless otherwise directed by the court, the duties of the guardian ad litem for a child subject to a proceeding under this chapter, including an attorney specifically appointed by the court to serve as a guardian ad litem, include but are not limited to the following:

(a) To investigate, collect relevant information about the child’s situation, and report to the court factual information regarding the best interests of the child;

(b) To meet with, interview, or observe the child, depending on the child’s age and developmental status, and report to the court any views or positions expressed by the child on issues pending before the court;

(c) To monitor all court orders for compliance and to bring to the court’s attention any change in circumstances that may require a modification of the court’s order;

(d) To report to the court information on the legal status of a child’s membership in any Indian tribe or band;

(e) Court-appointed special advocates and guardians ad litem may make recommendations based upon an independent investigation regarding the best interests of the child, which the court may consider and weigh in conjunction with the recommendations of all of the parties;

(f) To represent and be an advocate for the best interests of the child; and

(g) To inform the child, if the child is twelve years old or older, of his or her right to request counsel and to ask the child whether he or she wishes to have counsel, pursuant to RCW 13.34.100(6). The guardian ad litem shall report to the court that the child was notified of this right and indicate the child’s position regarding appointment of counsel. The guardian ad litem shall report to the court his or her independent recommendation as to whether appointment of counsel is in the best interest of the child.

(2) A guardian ad litem shall be deemed an officer of the court for the purpose of immunity from civil liability.

(3) Except for information or records specified in RCW 13.50.100(7), the guardian ad litem shall have access to all information available to the state or agency on the case. Upon presentation of the order of appointment by the guardian ad litem, any agency, hospital, school organization, division or department of the state, doctor, nurse, or other health care provider, psychologist, psychiatrist, police department, or mental health clinic shall permit the guardian ad litem to inspect and copy any records relating to the child or children involved in the case, without the consent of the parent or

guardian of the child, or of the child if the child is under the age of thirteen years, unless such access is otherwise specifically prohibited by law.

(4) A guardian ad litem may release confidential information, records, and reports to the office of the family and children’s ombudsman for the purposes of carrying out its duties under chapter 43.06A RCW.

(5) The guardian ad litem shall release case information in accordance with the provisions of RCW 13.50.100. [2010 c 180 § 3; 2008 c 267 § 13; 2000 c 124 § 4; 1999 c 390 § 2; 1993 c 241 § 3.]

Findings—2010 c 180: See note following RCW 13.34.100.

Additional notes found at www.leg.wa.gov

13.34.107 Guardian ad litem—Ex parte communications—Removal. A guardian ad litem or court-appointed special advocate shall not engage in ex parte communications with any judicial officer involved in the matter for which he or she is appointed during the pendency of the proceeding, except as permitted by court rule or statute for ex parte motions. Ex parte motions shall be heard in open court on the record. The record may be preserved in a manner deemed appropriate by the county where the matter is heard. The court, upon its own motion, or upon the motion of a party, may consider the removal of any guardian ad litem or court-appointed special advocate who violates this section from any pending case or from any court-authorized registry, and if so removed may require forfeiture of any fees for professional services on the pending case. [2000 c 124 § 11.]

13.34.108 Guardian ad litem—Fees. The court shall specify the hourly rate the guardian ad litem may charge for his or her services, and shall specify the maximum amount the guardian ad litem may charge without additional court review and approval. The court shall specify rates and fees in the order of appointment or at the earliest date the court is able to determine the appropriate rates and fees and prior to the guardian ad litem billing for his or her services. This section shall apply except as provided by local court rule. [2000 c 124 § 14.]

13.34.110 Hearings—Fact-finding and disposition—Time and place, notice. (1) The court shall hold a fact-finding hearing on the petition and, unless the court dismisses the petition, shall make written findings of fact, stating the reasons therefor. The rules of evidence shall apply at the fact-finding hearing and the parent, guardian, or legal custodian of the child shall have all of the rights provided in RCW 13.34.090(1). The petitioner shall have the burden of establishing by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030.

(2) The court in a fact-finding hearing may consider the history of past involvement of child protective services or law enforcement agencies with the family for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of the child on the part of the child’s parent, guardian, or legal custodian, or for the purpose of establishing that reasonable efforts have been made by the department to prevent or eliminate the need for removal of the child from the child’s home. No report of

child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes.

(3)(a) The parent, guardian, or legal custodian of the child may waive his or her right to a fact-finding hearing by stipulating or agreeing to the entry of an order of dependency establishing that the child is dependent within the meaning of RCW 13.34.030. The parent, guardian, or legal custodian may also stipulate or agree to an order of disposition pursuant to RCW 13.34.130 at the same time. Any stipulated or agreed order of dependency or disposition must be signed by the parent, guardian, or legal custodian and his or her attorney, unless the parent, guardian, or legal custodian has waived his or her right to an attorney in open court, and by the petitioner and the attorney, guardian ad litem, or court-appointed special advocate for the child, if any. If the department of social and health services is not the petitioner and is required by the order to supervise the placement of the child or provide services to any party, the department must also agree to and sign the order.

(b) Entry of any stipulated or agreed order of dependency or disposition is subject to approval by the court. The court shall receive and review a social study before entering a stipulated or agreed order and shall consider whether the order is consistent with the allegations of the dependency petition and the problems that necessitated the child's placement in out-of-home care. No social file or social study may be considered by the court in connection with the fact-finding hearing or prior to factual determination, except as otherwise admissible under the rules of evidence.

(c) Prior to the entry of any stipulated or agreed order of dependency, the parent, guardian, or legal custodian of the child and his or her attorney must appear before the court and the court within available resources must inquire and establish on the record that:

(i) The parent, guardian, or legal custodian understands the terms of the order or orders he or she has signed, including his or her responsibility to participate in remedial services as provided in any disposition order;

(ii) The parent, guardian, or legal custodian understands that entry of the order starts a process that could result in the filing of a petition to terminate his or her relationship with the child within the time frames required by state and federal law if he or she fails to comply with the terms of the dependency or disposition orders or fails to substantially remedy the problems that necessitated the child's placement in out-of-home care;

(iii) The parent, guardian, or legal custodian understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent within the meaning of RCW 13.34.030 and shall have the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent, guardian, or legal custodian shall not have the right in any subsequent proceeding for termination of parental rights or dependency guardianship pursuant to this chapter or nonparental custody pursuant to chapter 26.10 RCW to challenge or dispute the fact that the child was found to be dependent; and

(iv) The parent, guardian, or legal custodian knowingly and willingly stipulated and agreed to and signed the order or orders, without duress, and without misrepresentation or fraud by any other party.

If a parent, guardian, or legal custodian fails to appear before the court after stipulating or agreeing to entry of an order of dependency, the court may enter the order upon a finding that the parent, guardian, or legal custodian had actual notice of the right to appear before the court and chose not to do so. The court may require other parties to the order, including the attorney for the parent, guardian, or legal custodian, to appear and advise the court of the parent's, guardian's, or legal custodian's notice of the right to appear and understanding of the factors specified in this subsection. A parent, guardian, or legal custodian may choose to waive his or her presence at the in-court hearing for entry of the stipulated or agreed order of dependency by submitting to the court through counsel a completed stipulated or agreed dependency fact-finding/disposition statement in a form determined by the Washington state supreme court pursuant to General Rule GR 9.

(4) Immediately after the entry of the findings of fact, the court shall hold a disposition hearing, unless there is good cause for continuing the matter for up to fourteen days. If good cause is shown, the case may be continued for longer than fourteen days. Notice of the time and place of the continued hearing may be given in open court. If notice in open court is not given to a party, that party shall be notified by certified mail of the time and place of any continued hearing. Unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or efforts to reunite the parent and child would be hindered, the court shall direct the department to notify those adult persons who: (a) Are related by blood or marriage to the child in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, or aunt; (b) are known to the department as having been in contact with the family or child within the past twelve months; and (c) would be an appropriate placement for the child. Reasonable cause to dispense with notification to a parent under this section must be proved by clear, cogent, and convincing evidence.

The parties need not appear at the fact-finding or dispositional hearing if the parties, their attorneys, the guardian ad litem, and court-appointed special advocates, if any, are all in agreement. [2007 c 220 § 9; 2001 c 332 § 7; 2000 c 122 § 11. Prior: 1995 c 313 § 1; 1995 c 311 § 27; 1993 c 412 § 7; 1991 c 340 § 3; 1983 c 311 § 4; 1979 c 155 § 44; 1977 ex.s. c 291 § 39; 1961 c 302 § 5; prior: 1913 c 160 § 10, part; RCW 13.04.090, part. Formerly RCW 13.04.091.]

Legislative finding—1983 c 311: See note following RCW 13.34.030.

Additional notes found at www.leg.wa.gov

13.34.115 Hearings—Public excluded when in the best interests of the child—Notes and records—Video recordings. (1) All hearings shall be public, and conducted at any time or place within the limits of the county, except if the judge finds that excluding the public is in the best interests of the child.

(2) Either parent, or the child's attorney or guardian ad litem, may move to close a hearing at any time. If the judge finds that it is in the best interests of the child the court shall exclude the public.

RCW 13.34.065

Shelter care—Hearing—Recommendation as to further need—Release.

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, the department shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court 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.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

- (i) The parent, guardian, or custodian has the right to a shelter care hearing;
- (ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and
- (iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW **13.34.090**; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW **13.34.062** was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW **13.34.062** was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of

the status of the case, including the date and time of any subsequent hearings, and their rights under RCW **13.34.090**;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW **13.34.130**(1)(b) and shall determine what efforts have been made toward such a placement;

(d) 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 before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to 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 of the child or children;

(e) Is the placement proposed by the department the least disruptive and most family-like setting that meets the needs of the child;

(f) 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 what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in RCW **13.38.040**, whether the provisions of the federal Indian child welfare act or chapter **13.38** RCW apply, and whether there is compliance with the federal Indian child welfare act and chapter **13.38** RCW, including notice to the child's tribe;

(i) Whether, as provided in RCW **26.44.063**, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of 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; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW **26.44.063**; 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**.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW **13.34.130**(1)(b), unless there is reasonable cause to believe the health, safety, or

welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. If such relative or other suitable person appears otherwise suitable and competent to provide care and treatment, the fingerprint-based background check need not be completed before placement, but as soon as possible after placement. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

- (i) Care for the child and be able to meet any special needs of the child;
- (ii) Facilitate the child's visitation with siblings, if such visitation is part of the department's plan or is ordered by the court; and
- (iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the department shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or agency'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 is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

[2018 c 284 § 4; 2013 c 162 § 6; 2011 c 309 § 24. Prior: 2009 c 520 § 22; 2009 c 491 § 1; 2009 c 477 § 3; 2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

NOTES:

Findings—Rules—2013 c 162: See notes following RCW **74.13.700**.

Findings—Intent—2009 c 477: See note following RCW **13.34.062**.

Severability—2007 c 413: See note following RCW **13.34.215**.

RCW 26.44.010

Declaration of purpose.

The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children. When the child's physical or mental health is jeopardized, or the safety of the child conflicts with the legal rights of a parent, custodian, or guardian, the health and safety interests of the child should prevail. When determining whether a child and a parent, custodian, or guardian should be separated during or immediately following an investigation of alleged child abuse or neglect, the safety of the child shall be the department's paramount concern. Reports of child abuse and neglect shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions. This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

[2012 c 259 § 12; 1999 c 176 § 27; 1987 c 206 § 1; 1984 c 97 § 1; 1977 ex.s. c 80 § 24; 1975 1st ex.s. c 217 § 1; 1969 ex.s. c 35 § 1; 1965 c 13 § 1.]

NOTES:

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

RCW 26.44.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW **9A.16.100**; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child forensic interview" means a developmentally sensitive and legally sound method of gathering factual information regarding allegations of child abuse, child neglect, or exposure to violence. This interview is conducted by a competently trained, neutral professional utilizing techniques informed by research and best practice as part of a larger investigative process.

(4) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(5) "Child protective services section" means the child protective services section of the department.

(6) "Children's advocacy center" means a child-focused facility in good standing with the state chapter for children's advocacy centers and that coordinates a multidisciplinary process for the investigation, prosecution, and treatment of sexual and other types of child abuse. Children's advocacy centers provide a location for forensic interviews and coordinate access to services such as, but not limited to, medical evaluations, advocacy, therapy, and case review by multidisciplinary teams within the context of county protocols as defined in RCW **26.44.180** and **26.44.185**.

(7) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Court" means the superior court of the state of Washington, juvenile department.

(9) "Department" means the department of children, youth, and families.

(10) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(11) "Family assessment response" means a way of responding to certain reports of child abuse or neglect made under this chapter using a differential response approach to child protective services. The family assessment response shall focus on the safety of the child, the integrity and preservation of the family, and shall assess the status of the child and the family in terms of risk of abuse and neglect including the parent's or guardian's or other caretaker's capacity and willingness to protect the child and, if necessary, plan and arrange the provision of services to reduce the risk and otherwise support the family. No one is named as a perpetrator, and no investigative finding is entered in the record as a result of a family assessment.

(12) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(13) "Inconclusive" means the determination following an investigation by the department of social and health services, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(14) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(15) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(16) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(17) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW **9A.42.100**. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW **26.50.010** that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(18) "Pharmacist" means any registered pharmacist under chapter **18.64** RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(19) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(20) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(21) "Psychologist" means any person licensed to practice psychology under chapter **18.83** RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(22) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(23) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(24) "Sexually aggressive youth" means a child who is defined in RCW **74.13.075(1)(b)** as being a sexually aggressive youth.

(25) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(26) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the department to determine whether the alleged child abuse did or did not occur.

[**2018 c 284 § 33**; (2018 c 284 § 32 expired July 1, 2018); **2018 c 171 § 3**; (2018 c 171 § 2 expired July 1, 2018); **2017 3rd sp.s. c 6 § 321**; **2012 c 259 § 1**. Prior: **2010 c 176 § 1**; **2009 c 520 § 17**; **2007 c 220 § 1**; **2006 c 339 § 108**; (2006 c 339 § 107 expired January 1, 2007); **2005 c 512 § 5**; **2000 c 162 § 19**; **1999 c 176 § 29**; **1998 c 314 § 7**; prior: **1997 c 386 § 45**; **1997 c 386 § 24**; **1997 c 282 § 4**; **1997 c 132 § 2**; **1996 c 178 § 10**; prior: **1993 c 412 § 12**; **1993 c 402 § 1**; **1988 c 142 § 1**; prior: **1987 c 524 § 9**; **1987 c 206 § 2**; **1984 c 97 § 2**; **1982 c 129 § 6**; **1981 c 164 § 1**; **1977 ex.s. c 80 § 25**; **1975 1st ex.s. c 217 § 2**; **1969 ex.s. c 35 § 2**; **1965 c 13 § 2**.]

NOTES:

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW **1.08.015(2)(k)**.

(2) This section was amended by 2018 c 171 § 3 and by 2018 c 284 § 33, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW **1.12.025(2)**. For rule of construction, see RCW **1.12.025(1)**.

Effective date—2018 c 284 §§ 3, 8, 13, 20, 33, 36, and 67: See note following RCW **13.34.030**.

Expiration date—2018 c 284 §§ 2, 7, 12, 19, 32, 35, and 66: See note following RCW **13.34.030**.

Effective date—2018 c 171 § 3: "Section 3 of this act takes effect July 1, 2018." [**2018 c 171 § 10**.]

Expiration date—2018 c 171 § 2: "Section 2 of this act expires July 1, 2018." [[2018 c 171 § 9.](#)]

Effective date—2018 c 171: See note following RCW [26.44.188.](#)

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW [43.216.025.](#)

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW [43.216.908.](#)

Effective date—2012 c 259 §§ 1 and 3-10: "Sections 1 and 3 through 10 of this act take effect December 1, 2013." [[2012 c 259 § 15.](#)]

Effective date—2007 c 220 §§ 1-3: "Sections 1 through 3 of this act take effect October 1, 2008." [[2007 c 220 § 10.](#)]

Implementation—2007 c 220 §§ 1-3: "The secretary of the department of social and health services may take the necessary steps to ensure that sections 1 through 3 of this act are implemented on their effective date." [[2007 c 220 § 11.](#)]

Effective date—2006 c 339 § 108: "Section 108 of this act takes effect January 1, 2007." [[2006 c 339 § 404.](#)]

Expiration date—2006 c 339 § 107: "Section 107 of this act expires January 1, 2007." [[2006 c 339 § 403.](#)]

Intent—Part headings not law—2006 c 339: See notes following RCW [74.34.020.](#)

Finding—Intent—Effective date—Short title—2005 c 512: See notes following RCW [26.44.100.](#)

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW [74.34.005.](#)

Application—Effective date—1997 c 386: See notes following RCW [13.50.010.](#)

Findings—1997 c 132: "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [[1997 c 132 § 1.](#)]

Effective date—1996 c 178: See note following RCW [18.35.110.](#)

Severability—1982 c 129: See note following RCW [9A.04.080.](#)

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW
4.16.190.

RCW 26.44.030**Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process.**

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of children, youth, and families, licensed or certified child care providers or their employees, employee of the department of social and health services, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, state family and children's ombuds or any volunteer in the ombuds's office, or host home program has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW **26.44.040**.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW **5.60.060**.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW **9A.44.010**.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW **26.44.040**.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles **11** and **13** RCW and this title, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW **28B.10.016**, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department as provided in RCW **26.44.040**.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency, including military law enforcement, if appropriate. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected

to alleged sexual abuse, shall report such incident in writing as provided in RCW **26.44.040** to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter **18.57** or **18.71** RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;
 (b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:

- (i) Investigation; or
 - (ii) Family assessment.
- (b) In making the response in (a) of this subsection the department shall:
- (i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;
 - (ii) Allow for a change in response assignment based on new information that alters risk or safety level;
 - (iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;
 - (iv) Provide a full investigation if a family refuses the initial family assessment;
 - (v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;
 - (vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:
 - (A) Poses a risk of "imminent harm" consistent with the definition provided in RCW **13.34.050**, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;
 - (B) Poses a serious threat of substantial harm to a child;
 - (C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;
 - (D) The child is an abandoned child as defined in RCW **13.34.030**;
 - (E) The child is an adjudicated dependent child as defined in RCW **13.34.030**, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter **74.15** RCW.
- (c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.
- (12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW **26.44.180** and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.
- (b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending

investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to one hundred twenty days. The department's extension of the family assessment response period must be operated within the department's appropriations;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian agree to participate in services before services are initiated. The department shall inform the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not agree to participate in services.

(14)(a) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(i) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(ii) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(b) The Washington state school directors' association shall adopt a model policy addressing protocols when an interview, as authorized by this subsection, is conducted on school premises. In formulating its policy, the association shall consult with the department and the Washington association of sheriffs and police chiefs.

(15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombuds of

the contents of the report. The department shall also notify the ombuds of the disposition of the report.

(16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter **13.34** RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW **13.34.030**.

(21) The department shall make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the department determines that a parent or guardian is in the military, the department shall notify a department of defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for investigation that relates to that military parent or guardian.

(22) The department shall make available on its public web site a downloadable and printable poster that includes the reporting requirements included in this section. The poster must be no smaller than eight and one-half by eleven inches with all information on one side. The poster must be made available in both the English and Spanish languages. Organizations that include employees or volunteers subject to the reporting requirements of this section must clearly display this poster in a common area. At a minimum, this poster must include the following:

- (a) Who is required to report child abuse and neglect;
- (b) The standard of knowledge to justify a report;
- (c) The definition of reportable crimes;
- (d) Where to report suspected child abuse and neglect; and
- (e) What should be included in a report and the appropriate timing.

[**2018 c 77 § 1**. Prior: **2017 3rd sp.s. c 20 § 24**; **2017 3rd sp.s. c 6 § 322**; **2017 c 118 § 1**; **2016 c 166 § 4**; **2015 1st sp.s. c 6 § 1**; prior: **2013 c 273 § 2**; (2013 c 273 § 1 expired December 1, 2013); **2013 c 48 § 2**; (2013 c 48 § 1 expired December 1, 2013); **2013 c 23 § 43**; (2013 c 23 § 42 expired December 1, 2013); prior: **2012 c 259 § 3**; **2012 c 55 § 1**; **2009 c 480 § 1**; **2008 c 211 § 5**; (2008 c 211 § 4 expired October 1, 2008); prior: **2007 c 387 § 3**; **2007 c 220 § 2**; **2005 c 417 § 1**; **2003 c 207 § 4**; prior: **1999 c 267 § 20**; **1999 c 176 § 30**;

1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

NOTES:

Effective date—2018 c 77: "This act takes effect July 1, 2018." [[2018 c 77 § 2.](#)]

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW [74.13.270](#).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW [43.216.025](#).

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW [43.216.908](#).

Effective date—2013 c 273 § 2: "Section 2 of this act takes effect December 1, 2013." [[2013 c 273 § 4.](#)]

Expiration date—2013 c 273 § 1: "Section 1 of this act expires December 1, 2013." [[2013 c 273 § 3.](#)]

Effective date—2013 c 48 § 2: "Section 2 of this act takes effect December 1, 2013." [[2013 c 48 § 4.](#)]

Expiration date—2013 c 48 § 1: "Section 1 of this act expires December 1, 2013." [[2013 c 48 § 3.](#)]

Effective date—2013 c 23 § 43: "Section 43 of this act takes effect December 1, 2013." [[2013 c 23 § 639.](#)]

Expiration date—2013 c 23 § 42: "Section 42 of this act expires December 1, 2013." [[2013 c 23 § 638.](#)]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW [26.44.020](#).

Effective date—2008 c 211 § 5: "Section 5 of this act takes effect October 1, 2008." [[2008 c 211 § 8.](#)]

Expiration date—2008 c 211 § 4: "Section 4 of this act expires October 1, 2008." [[2008 c 211 § 7.](#)]

Effective date—Implementation—2007 c 220 §§ 1-3: See notes following RCW [26.44.020](#).

Severability—2005 c 417: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[2005 c 417 § 2](#).]

Findings—Intent—Severability—1999 c 267: See notes following RCW [43.20A.790](#).

Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26: See RCW [74.15.900](#) and [74.15.901](#).

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW [74.34.005](#).

Application—Effective date—1997 c 386: See notes following RCW [13.50.010](#).

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW [26.44.030\(1\)\(a\)](#)." [[1996 c 278 § 1](#).]

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [[1985 c 259 § 1](#).]

Severability—1982 c 129: See note following RCW [9A.04.080](#).

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW
4.16.190.

RCW 26.44.040

Reports—Oral, written—Contents.

An immediate oral report must be made by telephone or otherwise to the proper law enforcement agency or the department and, upon request, must be followed by a report in writing. Such reports must contain the following information, if known:

- (1) The name, address, and age of the child;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child;
- (3) The nature and extent of the alleged injury or injuries;
- (4) The nature and extent of the alleged neglect;
- (5) The nature and extent of the alleged sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information that may be helpful in establishing the cause of the child's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators.

[2017 3rd sp.s. c 6 § 323; 1999 c 176 § 32; 1997 c 386 § 27; 1993 c 412 § 14; 1987 c 206 § 4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

NOTES:

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW [43.216.025](#).

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW [43.216.908](#).

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW [74.34.005](#).

Application—Effective date—1997 c 386: See notes following RCW [13.50.010](#).

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW [4.16.190](#).

RCW 26.44.050**Abuse or neglect of child—Duty of law enforcement agency or department of children, youth, and families—Taking child into custody without court order, when.**

Except as provided in RCW **26.44.030**(11), upon the receipt of a report concerning the possible occurrence of abuse or neglect, the law enforcement agency or the department must investigate and provide the protective services section with a report in accordance with chapter **74.13** RCW, and where necessary to refer such report to the court.

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 the child is abused or neglected and that the child would be 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.

[**2017 3rd sp.s. c 6 § 324; 2012 c 259 § 5; 1999 c 176 § 33**. Prior: **1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.**]

NOTES:

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW **43.216.025**.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW **43.216.908**.

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW **26.44.020**.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW **74.34.005**.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW **13.04.005**.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW **4.16.190**.

Severability—1971 ex.s. c 302: See note following RCW **9.41.010**.

RCW 43.216.906

Transfer of child welfare provisions from the department of social and health services.

(1) All powers, duties, and functions of the department of social and health services pertaining to child welfare services under chapters **13.32A**, 13.34, 13.36, 13.38, 13.50, 13.60, 13.64, 26.33, 26.44, 74.13, 74.13A, 74.14B, 74.14C, and **74.15** RCW are transferred to the department of children, youth, and families. All references to the secretary or the department of social and health services in the Revised Code of Washington shall be construed to mean the secretary or the department of children, youth, and families when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of social and health services pertaining to the powers, duties, and functions transferred shall be delivered to the custody of the department of children, youth, and families. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of social and health services in carrying out the powers, duties, and functions transferred shall be made available to the department of children, youth, and families. All funds, credits, or other assets held in connection with the powers, duties, and functions transferred shall be assigned to the department of children, youth, and families.

(b) Any appropriations made to the department of social and health services for carrying out the powers, duties, and functions transferred shall, on July 1, 2018, be transferred and credited to the department of children, youth, and families.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All employees of the department of social and health services engaged in performing the powers, duties, and functions transferred are transferred to the jurisdiction of the department of children, youth, and families. All employees classified under chapter **41.06** RCW, the state civil service law, are assigned to the department of children, youth, and families to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service.

(4) All rules and all pending business before the department of social and health services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of children, youth, and families. All existing contracts and obligations shall remain in full force and shall be performed by the department of children, youth, and families.

(5) The transfer of the powers, duties, functions, and personnel of the department of social and health services shall not affect the validity of any act performed before July 1, 2018.

(6) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the

appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(7)(a) The portions of any bargaining units of employees at the department of social and health services existing on July 1, 2018, that are transferred to the department of children, youth, and families shall be considered separate appropriate units within the department of children, youth, and families unless and until modified by the public employment relations commission pursuant to Title 391 WAC. The exclusive bargaining representatives recognized as representing the portions of the bargaining units of employees at the department of social and health services existing on July 1, 2018, shall continue as the exclusive bargaining representatives of the transferred bargaining units without the necessity of an election.

(b) The public employment relations commission may review the appropriateness of the collective bargaining units that are a result of the transfer from the department of social and health services to the department of children, youth, and families under chapter 6, Laws of 2017 3rd sp. sess. The employer or the exclusive bargaining representative may petition the public employment relations commission to review the bargaining units in accordance with this section.

[[2018 c 58 § 80](#); [2017 3rd sp.s. c 6 § 803](#).]

NOTES:

Effective date—2018 c 58: See note following RCW [28A.655.080](#).

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW [43.216.025](#).

RCW 74.13.031

Duties of department—Child welfare services—Children's services advisory committee.

(1) The department shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) As provided in RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(6) The department shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department is encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(7) The department shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(8) The department shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(9) The department shall have authority to purchase care for children.

(10) The department shall establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(11)(a) The department shall provide continued extended foster care services to nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program;

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment;

(iv) Engaged in employment for eighty hours or more per month; or

(v) Not able to engage in any of the activities described in (a)(i) through (iv) of this subsection due to a documented medical condition.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW **13.34.267**, he or she may receive extended foster care services pursuant to a voluntary placement agreement under RCW **74.13.336** or pursuant to an order of dependency issued by the court under RCW **13.34.268**. A nonminor dependent whose dependency case was dismissed by the court may request extended foster care services before reaching age twenty-one years. Eligible nonminor dependents may unenroll and reenroll in extended foster care through a voluntary placement agreement an unlimited number of times between ages eighteen and twenty-one.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(d) The department shall make efforts to ensure that extended foster care services maximize medicaid reimbursements. This must include the department ensuring that health and mental health extended foster care providers participate in medicaid, unless the condition of the extended foster care youth requires specialty care that is not available among participating medicaid providers or there are no participating medicaid providers in the area. The department shall coordinate other services to maximize federal resources and the most cost-efficient delivery of services to extended foster care youth.

(e) The department shall allow a youth who has received extended foster care services, but lost his or her eligibility, to reenter the extended foster care program an unlimited number of times through a voluntary placement agreement when he or she meets the eligibility criteria again.

(12) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter **13.34** RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order. The purchase of such care is exempt from the requirements of chapter **74.13B** RCW and may be purchased from the federally recognized Indian tribe or tribally licensed child-placing agency, and shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW **13.32A.170** through **13.32A.200**, **43.185C.295**, **74.13.035**, and **74.13.036**, or of this section all services to be provided by the department under subsections (4), (7), and (8) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW **74.13.250** regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

- (i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;
- (ii) Sibling visits subject to the restrictions in RCW **13.34.136(2)(b)(ii)**;
- (iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

(19)(a) The department shall have the authority to purchase legal representation for parents or kinship caregivers, or both, of children who are at risk of being dependent, or who are dependent, to establish or modify a parenting plan under RCW **13.34.155** or chapter **26.09** or * **26.26** RCW or secure orders establishing other relevant civil legal relationships authorized by law, when it is necessary for the child's safety, permanence, or well-being. The department's purchase of legal representation for kinship caregivers must be within the department's appropriations. This subsection does not create an entitlement to legal representation purchased by the department and does not create judicial authority to order the department to purchase legal representation for a parent or kinship caregiver. Such determinations are solely within the department's discretion. The term "kinship caregiver" as used in this section means a caregiver who meets the definition of "kin" in RCW **74.13.600(1)**, unless the child is an Indian child as defined in RCW **13.38.040** and 25 U.S.C. Sec. 1903. For an Indian child as defined in RCW **13.38.040** and 25 U.S.C. Sec. 1903, the term "kinship caregiver" as used in this section means a caregiver who is an "extended family member" as defined in RCW **13.38.040(8)**.

(b) The department is encouraged to work with the office of public defense parent representation program and the office of civil legal aid to develop a cost-effective system for providing effective civil legal representation for parents and kinship caregivers if it exercises its authority under this subsection.

[**2018 c 284 § 37**; **2018 c 80 § 1**; **2018 c 34 § 5**. Prior: **2017 3rd sp.s. c 20 § 7**; **2017 c 265 § 2**; **2015 c 240 § 3**; **2014 c 122 § 2**; prior: **2013 c 332 § 10**; (2013 c 332 § 9 expired December 1, 2013); **2013 c 32 § 2**; (2013 c 32 § 1 expired December 1, 2013); prior: **2012 c 259 § 8**; **2012 c 52 § 2**; prior: **2011 c 330 § 5**; **2011 c 160 § 2**; prior: **2009 c 520 § 51**; **2009 c 491 § 7**; (2009 c 235 § 4 expired October 1, 2010); **2009 c 235 § 2**; **2008 c 267 § 6**; **2007 c 413 § 10**; prior: **2006 c 266 § 1**; **2006 c 221 § 3**; **2004 c 183 § 3**; **2001 c 192 § 1**; **1999 c 267 § 8**; **1998 c 314 § 10**; prior: **1997 c 386 § 32**; **1997 c 272 § 1**; **1995 c 191 § 1**; **1990 c 146 § 9**; prior: **1987 c 505 § 69**; **1987 c 170 § 10**; **1983 c 246 § 4**; **1982 c 118 § 3**; **1981 c 298 § 16**; **1979 ex.s. c 165 § 22**; **1979 c 155 § 77**; **1977 ex.s. c 291 § 22**; 1975-'76 2nd ex.s. c 71 § 4; **1973 1st ex.s. c 101 § 2**; **1967 c 172 § 17**.]

NOTES:

Reviser's note: *(1) Chapter **26.26** RCW was repealed by 2018 c 6 § 907, effective January 1, 2019, with the exception of RCW **26.26.065**, **26.26.130** through **26.26.190**, and **26.26.270**, which were recodified as RCW **26.26B.010** through **26.26B.120**, effective January 1, 2019. For later enactment of the uniform parentage act, see chapter **26.26A** RCW.

(2) This section was amended by 2018 c 34 § 5, 2018 c 80 § 1, and by 2018 c 284 § 37, each without reference to the other. All amendments are incorporated in the publication of this section under RCW **1.12.025(2)**. For rule of construction, see RCW **1.12.025(1)**.

Effective date—2018 c 34: See note following RCW [13.34.267](#).

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW [74.13.270](#).

Finding—Intent—2017 c 265: "The legislature finds that a large number of foster youth experience homelessness. The legislature intends that individuals who are eligible for extended foster care services are able to receive those services to help prevent them from experiencing homelessness. The 2016 office of homeless youth annual report identifies ensuring that youth exiting public systems are not released into homelessness as a goal and recommends expanding options for youth to enroll in extended foster care." [[2017 c 265 § 1](#).]

Effective date—2015 c 240: See note following RCW [13.34.267](#).

Effective date—2014 c 122: See note following RCW [13.34.267](#).

Effective date—2013 c 332 §§ 8 and 10: See note following RCW [74.13.020](#).

Expiration date—2013 c 332 §§ 7 and 9: See note following RCW [74.13.020](#).

Findings—Recommendations—Application—2013 c 332: See notes following RCW [13.34.267](#).

Effective date—2013 c 32 § 2: "Section 2 of this act takes effect December 1, 2013." [[2013 c 32 § 3](#).]

Expiration date—2013 c 32 § 1: "Section 1 of this act expires December 1, 2013." [[2013 c 32 § 4](#).]

Effective date—2012 c 259 §§ 1 and 3-10: See note following RCW [26.44.020](#).

Intent—2012 c 52: "Since 2006, under a program known as "foster care to 21," the Washington state legislature has provided services to young adults transitioning out of foster care in order for them to enroll in and complete their postsecondary educations. In 2008, the United States congress passed the fostering connections to success and increasing adoptions act of 2008, which allows states to receive a federal match for state dollars expended in supporting youth transitioning out of foster care. In 2011, the Washington state legislature opted to create the "extended foster care program," in order to receive the federal match for youth completing high school. It is the intent of this act to enable the state to receive the federal match to offset costs expended on supporting youth seeking postsecondary education. This act would result in these youth being served under the extended foster care program, for which there is a federal match, instead of the foster care to 21 program, which relies solely on state dollars. It is the intent of the legislature to allow all youth currently enrolled in the foster care to 21 program for the purposes of postsecondary education to remain enrolled until they turn twenty-one, are no longer otherwise eligible, or choose to leave the program. Within three years of June 7, 2012, the "foster care to 21" program will cease to operate, and youth

seeking a postsecondary education will be solely served by the extended foster care program." [[2012 c 52 § 1.](#)]

Intent—2011 c 330: See note following RCW [13.04.011](#).

Findings—2011 c 160: "The legislature finds that foster parents are a critical piece of the dependency system. The legislature further finds that the majority of foster parents provide excellent care to children in the dependency system, many of whom have suffered serious damage in their families of origin. It is the legislature's belief that through the selfless dedication of many foster parents that abused and neglected children are able to heal and go on to lead productive lives. The legislature also believes that some foster parents act in ways that are damaging to the children in their care and it is the department of social and health services' responsibility to make sure all children in care are safe. The legislature finds that unannounced visits to caregivers' homes is another method by which the department of social and health services can make sure the children in foster care are safe." [[2011 c 160 § 1.](#)]

Effective date—2009 c 235 § 2: "Section 2 of this act takes effect October 1, 2010." [[2009 c 235 § 7.](#)]

Expiration date—2009 c 235 § 4: "Section 4 of this act expires October 1, 2010." [[2009 c 235 § 8.](#)]

Findings—Intent—2009 c 235: "(1) The legislature finds that the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities for the state to use federal funding to promote permanency and positive outcomes for youth in foster care and for those who age out of the foster care system.

(2) The legislature also finds that research regarding former foster youth is generally sobering. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security; untreated mental or behavioral health problems; involvement in the criminal justice and corrections systems; and early parenthood combined with second-generation child welfare involvement. The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment; employment and earnings; and reduced rates of teen pregnancies.

(3) The legislature intends to clarify existing authority for foster care services beyond age eighteen and to establish authority for future expansion of housing and other supports for youth aging out of foster care and youth who achieved permanency in later adolescence." [[2009 c 235 § 1.](#)]

Effective date—2008 c 267 § 6: "Section 6 of this act takes effect December 31, 2008." [[2008 c 267 § 14.](#)]

Severability—2007 c 413: See note following RCW [13.34.215](#).

Construction—2006 c 266: "Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter **13.34** RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or
- (3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [**2006 c 266 § 2.**]

Adoption of rules—2006 c 266: "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [**2006 c 266 § 3.**]

Study and report—2006 c 266: "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW **74.13.031**(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [**2006 c 266 § 4.**]

Finding—2006 c 221: See note following RCW **13.34.315.**

Effective date—2004 c 183: See note following RCW **13.34.160.**

Findings—Intent—Severability—1999 c 267: See notes following RCW **43.20A.790.**

Application—Effective date—1997 c 386: See notes following RCW **13.50.010.**

Effective date—1997 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [**1997 c 272 § 8.**]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [**1987 c 170 § 16.**]

Severability—1987 c 170: See note following RCW **13.04.030.**

Severability—1981 c 298: See note following RCW **13.32A.040.**

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW **13.04.005.**

Severability—1967 c 172: See note following RCW **74.15.010.**

Declaration of purpose—1967 c 172: See RCW **74.15.010**.

Abuse of child: Chapter **26.44** RCW.

Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter **74.15** RCW.

Appendix C

DCYF Policy 2200. Intake Process and Response

DCYF Policy 2331. Child Protective Services (CPS) Investigation

DCYF Policy 2541. Structured Decision Making Risk
Assessment (SDMRA)



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2200. Intake Process and Response

Approval: Connie Lambert-Eckel, Acting Assistant Secretary

Original Date: 1972

Revised Date: July 1, 2018

Policy Review: July 1, 2023

Purpose

Children's Administration (CA) receives and processes reports of child abuse and neglect, requests for services and provides information and referrals according to federal and state law on a 24-hour basis.

Scope

This policy applies to all CA intake staff.

Laws

RCW 9A.16.100 (<http://app.leg.wa.gov/rcw/default.aspx?cite=9A.16.100>) Use of Force

RCW 13.34.030 (<http://app.leg.wa.gov/rcw/default.aspx?cite=13.34.030>) Juvenile Court Act - Definitions

RCW 13.34.360 (<http://app.leg.wa.gov/rcw/default.aspx?cite=13.34.060>) Safety of Newborn

Children Act

RCW 26.44.020 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44.020>) Abuse of Children - Definitions

RCW 26.44.030 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=26.44.030>) Abuse of Children - Reports

RCW 46.61.687 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=46.61.687>) Child Passenger Restraint

RCW 74.13 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=74.13>) Child Welfare Services

RCW 74.15 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=74.15>) Care of Children, Expectant Mothers, Persons with Developmental Disabilities

Policy

1. The intake worker will:
 - a. Conduct a comprehensive interview with any referrer, including making reasonable efforts to learn the referrer's name, address, and telephone number and conduct a FamLink person search for all persons, victims, perpetrators, parents and family members listed in the intake.
 - b. Contact and document collateral source information in order to complete a comprehensive intake when:
 - i. Sufficient information is not available from the referrer to determine the intake screening decision or appropriate response time.
 - ii. It is necessary to verify or clarify a child abuse or neglect (CA/N) allegation.
 - c. Process reports with allegations of CA/N, circumstances placing a child at imminent risk of serious harm (/node/1428) and requests for services specific to CA from any source and in any form, and document in an intake.
 - i. **Sufficiency Screening**
Screen in intakes for Child Protective Services (CPS) intervention if the following sufficiency screening criteria are met:
 - A. The alleged victim is under 18 years of age;
 - B. The allegation, if true, minimally meets the WAC definition of CA/N or it is alleged a child's circumstances place him or her at imminent risk of serious harm; and
 - C. The alleged subject has the role of a parent, person acting in loco parentis, or unknown; or
 - D. The subject is providing care in a facility subject to licensing by DSHS, Department of Early Learning (DEL), or in other state-regulated care.

ii. **Allegations of CA/N or Imminent Risk of Serious Harm**

Utilize the FamLink intake, Chronicity Indicator, and Structured Decision Making (SDM) Intake and Intake Practice Guides located on the CA intranet to determine assignment to CPS Investigation, Family Assessment Response (FAR), or for Division of Licensed Resources DLR/CPS.

A. Screen in for:

I. **CPS or DLR/CPS Investigation** when there is an allegation of:

- i. Sexual abuse or sexual exploitation.
- ii. Serious physical abuse or serious neglect.
- iii. Physical abuse to a child three years or younger for DCFS.
- iv. Abuse or neglect reported by a physician, or a medical professional on a physician's behalf, regarding a child under age five.
- v. Injury or bruise on a non-mobile infant, birth to twelve months regardless of the explanation about how the injury or bruise occurred.

II. **CPS or DLR/CPS Investigation** when a report is received from a commissioned law enforcement officer stating a parent has been arrested for Criminal Mistreatment in the fourth degree. RCW 9A.42 (<http://apps.leg.wa.gov/rcw/default.aspx?cite=9A.42>)

III. **CPS Investigation** when:

- i. Child or youth in the household is having sexualized contact or engaging in sexual behaviors with other children or youth in the home. (See reference for behaviors that may be considered common for childhood development (http://nctsn.org/nctsn_assets/pdfs/caring/sexualdevelopmentandbehavior))
- ii. There is an open dependency case involving the child victim or other member of the household.
- iii. A dependency action involving the child victim or household was closed within the previous 12 months.
- iv. An alleged victim or subject has been named in three or more intakes screened in for investigation or Family Assessment Response (FAR) in the past 12 months.

IV. **CPS FAR** when it is indicated on the Structured Decision Making Screening Tool.

V. **DLR/CPS Investigation** when there is an allegation of CA/N in a facility subject to licensing by DLR or Department of Early Learning (DEL) or the facility is state regulated. Follow the intake requirements in the DLR CA/N Handbook – Investigating Abuse and Neglect in State-Regulated Care.

- B. Screen in CPS Risk Only reports when a child is at imminent risk of serious harm and there are no CA/N allegations. These include but are not limited to reports:
 - I. From LE about a sexually aggressive youth under age 8.
 - II. From the prosecutor's office about a sexually aggressive youth under age 12 who will not be prosecuted.
 - III. Involving CA/N allegations against an individual age 18-21 who resides in a state-regulated or licensed facility, or facility subject to licensing.
 - IV. Of a child at imminent risk of serious harm on an open Department of Children and Family Services (DCFS) case.
 - V. Of a child at imminent risk of serious harm in the care of a licensed or unlicensed provider.
- C. Screen in reports made by a physician licensed under RCW Chapter 18.71 (<http://app.leg.wa.gov/RCW/default.aspx?cite=18.71>) on the basis of expert medical opinion that child abuse, neglect, or sexual assault may have or has occurred and that the child's safety will be seriously endangered if the child is returned home. RCW 26.44.030(8) (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.030>)
- D. Screen in reports from anonymous referrers when alleged CA/N meets the sufficiency screening criteria or there is imminent risk of serious harm and one or more of the following exists:
 - I. There is a serious threat of substantial harm to a child.
 - II. The allegation(s) includes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim.
 - III. A member of the household has a prior founded report of CA/N within three years of receiving the most recent intake. Inform the referrer that, if he or she remains anonymous and the allegation is assessed at a lower risk, the intake (with the exception of DLR/CPS) will be screened out and not be assigned for investigation.
- E. Screen in all reports of CA/N or imminent risk of serious harm involving a facility or a facility subject to licensing, regardless of the anonymity of the referrer.
- F. Screen in reports involving a newborn exposed to substances including alcohol, marijuana, prescription medications and any drug with abuse potential to the following pathways:
 - I. **CPS (Investigation or FAR) or DLR/CPS Investigation** when there is a CA/N allegation.
 - II. **CPS Risk Only** when there is no CA/N allegation but the newborn is one of the following:

- i. Substance affected (/node/1428) (as identified by a medical practitioner)
- ii. Substance exposed (/node/1428) **and** risk factors indicate imminent risk of serious harm (/node/1428).

iii. **Commercially Sexually Exploited Children (CSEC):**

- A. Complete the CSEC screening question for all intakes involving suspected or confirmed allegations of sexual exploitation of a child or youth.
- B. Assign all intakes with suspected or confirmed allegations of CSEC to CPS or DLR/CPS investigations when there are allegations of CA/N and the alleged subject is a parent, guardian, legal custodian or person acting in loco-parentis.
- C. Notify law enforcement within 24 hours of the time the intake is received on all suspected or confirmed CSEC related intakes when there is reasonable cause to believe a crime has been committed. The intake worker will notify the LE agency with jurisdiction when the 24-hour notification requirement cannot be met by an assigned caseworker or field supervisor managing the straw assignments.

iv. **Requests for services for a family or child (Non CPS)**

- A. Screen in intakes for:
 - I. **Family Voluntary Services (FVS)** when a parent or legal guardian requests services in the home or temporary placement of a child, and there is no anticipated court involvement.
 - II. **Family Reconciliation Services (FRS)** when receiving a request:
 - i. For a family assessment for a Child in Need of Services (CHINS) or an At Risk Youth (ARY) petition.
 - ii. From a youth age 12-17, parent (custodial or noncustodial), caregiver, LE, Tribal social worker or CA, HOPE Center or Crisis Residential Center (CRC) staff when at least one family member is voluntarily requesting CA assistance for a family experiencing immediate family crisis due to conflict or a youth exhibiting high risk behaviors.
 - III. The following pathways when receiving reports from a CRC, Hope Center or Overnight Youth Shelter involving a runaway youth and there are no allegations of CA/N:
 - i. FRS for youth age 12 and older.
 - ii. FVS for youth under age 12.
 - IV. The following pathways when there are no allegations of CA/N regarding a parent or caregiver and requests are received for services involving commercially sexually exploited children and youth and the request is made by the youth, parent or other community member:

- i. FRS for youth age 12 and older.
- ii. FVS for youth under age 12.

V. Child and Family Welfare Services (CFWS) when:

- i. Services are requested for a family or child, the request is appropriate and there is service availability. The caregiver, child, community member or other child welfare agency may make a service request.
- ii. A parent transfers a newborn (birth to 72-hours old) anonymously at a hospital emergency room, fire station or federally designated rural health clinic if open and personnel are present to accept the child. See Safety of Newborn Children Act (Safe Haven law) (<http://app.leg.wa.gov/RCW/default.aspx?cite=13.34.360>).

VI. Extended Foster Care (EFC) services when a youth requests services, and assign to where the youth currently resides.

VII. Non-CPS rule infraction on reports regarding DLR or DEL licensed home or facility that do not contain allegations of CA/N.

VIII. IV-E and non IV-E Tribal Placement/Payment Only on all tribal payment requests, for both open and closed cases, unless it is a modification to an existing payment-only case.

B. Refer all inquiries regarding adoption to a DLR supervisor.

v. Indian Child Welfare (ICW)

A. Make efforts to determine if a child is affiliated with a federally recognized Tribe. See Washington State Tribes: Tribal Contact and Coordination Guidelines (</sites/default/files/pdf/TribalCoordination.pdf>) and Tribal Agreements located on the ICW page on the CA intranet.

B. If a child or family is affiliated with a Washington state federally recognized Tribe:

- I. Attempt collateral contact with the Tribe prior to making a screening decision.
- II. Document the contact or attempts in the ICW tab in the CA Intake.
- III. Follow Indian Child Welfare Manual Chapter 1 (</node/873>).

vi. Law Enforcement (LE)

A. Consult immediately with the intake supervisor if there is an indication the child may be in present danger and a LE child welfare check may be needed. See 1110. Present Danger (</node/577>) policy.

B. Follow 2570. Mandated Reports to Law Enforcement policy.

vii. Domestic Violence (DV)

A. Screen for DV on all intakes by asking the following universal screening questions, "Has any adult used or threatened to use physical force against

an adult in the home?" If so, the intake worker must ask, "Who did what to whom?"

- B. Offer DV resource information to the referrer on all screened in or out intakes when DV is identified and the referrer is not familiar with DV resources. Resource information is located at Washington State Coalition Against Domestic Violence (<http://wscadv.org/>) and the DSHS's DV site (<https://www.dshs.wa.gov/esa/community-services-offices/domestic-violence>).

viii. Contracted Provider

- A. Screen out CPS intakes regarding a contracted provider (not acting as a parent, guardian, or in loco-parentis) that does not have a DLR or DEL license as third party and send the report to LE if an alleged crime has been committed.
- B. Complete a CA Contracts Unit Complaint form (not an intake) when receiving non-CPS complaints regarding a contracted provider that does not have a DLR or DEL license. See Contract Complaint Link on the Contracts Tab on the Intake and CPS page on the CA intranet.
- C. Inform the CA headquarters contracts unit manager when made aware of a screened-in CPS intake related to the following persons or their biological family:
 - I. A contracted provider who is not licensed or subject to be licensed by DLR or DEL, or
 - II. An employee or sub-contractor of the provider.

ix. Alerts and Requests from Other States

- A. Generate an intake when an alert or request is received from another state.
 - I. Screen in intakes when the child is in Washington state and there are allegations of CA/N that occurred in Washington state meeting the sufficiency screen or there is imminent risk of serious harm.
 - II. Screen out the intake when it is determined that the child is not in Washington State.
- B. Screen out intakes with requests for courtesy home walkthroughs or child welfare checks for a child residing in Washington State if there are not allegations of CA/N or imminent risk of harm and refer to appropriate resources (Interstate Compact on the Placement of Children (ICPC) or LE).

x. After Business Hours, Weekends and State Holidays Intake Response

- A. The intake worker immediately notifies the intake supervisor of an emergent intake (no later than one hour after determining it is emergent).
- B. The intake supervisor will contact the after hours supervisor/area administrator for an after hours response when:

- I. A child is in present or impending danger.
- II. A face-to-face cannot be completed during normal business hours.

xi. **Additional Requirements**

- A. Provide assurance to referrers that CA will make all legal and reasonable efforts to maintain their confidentiality.
- B. Inform the referrers the name of any referrer may be disclosed for:
 - I. Court proceedings.
 - II. Dependency or criminal court proceedings.
 - III. Criminal Investigations by LE including malicious reporting.
 - IV. When the court orders disclosure.
- C. Inform the referrer that reports or testimony made in good faith have immunity under RCW 26.44.060 (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.060>).
- D. Generate an intake regardless of where the child resides in Washington state.
- E. Generate a new intake on an open case when a report is received alleging a new instance of abuse or neglect. If the intake is screened in, the case will be assigned to a CPS caseworker.
- F. Identify a minor child as a subject **only** when he or she is the parent of the alleged victim.
- G. Generate and screen out an intake when a report is received about a pregnant woman's alleged abuse of substances **and** if there is no CA/N allegation or imminent risk of serious harm regarding children in her care. Substances can include alcohol, marijuana, prescription medications and any drug with abuse potential.
- H. Generate a new screened out intake when a CA caseworker receives additional reports of the same CA/N allegations that are already documented in an intake (excluding facility related intakes) and:
 - I. Select the reason code option of "Allegation Documented in Previous Intake."
 - II. Include the previous intake number in the explanation dialogue box in Decision tab in FamLink.
 - III. The supervisor must confirm all allegations were previously documented.
- I. Complete the following when any child is reported to intake as **Missing from Care** (MFC).
 - I. Notify the assigned caseworker and his or her supervisor of any child MFC. Refer to Intake Practice Guide on the CA intranet for notification details.
 - II. Document the notification in a case note.

- J. Respond to inquiry only (/node/1428) calls by providing resource information as requested and available. Inquiry calls are not documented in FamLink because there is no CA/N allegation, concern or request for services specific to CA, and do not require screening.
 - d. Create and document the intake in FamLink on the date and time CA receives the information. Complete the intake according to the following timeframes and intake pathways:
 - i. **Four hours:**
 - A. Emergent CPS, CPS Risk Only, or DLR/CPS
 - B. FRS
 - ii. **Four business hours** (8:00 a.m. to 5:00 p.m., Monday through Friday)
 - A. Non-Emergent Investigation
 - B. FAR
 - C. Non-Emergent DLR/CPS
 - iii. **Two business days**
 - A. Information Only
 - B. Third Party
 - C. CFWS
 - D. Rule Infraction
 - E. ICPC Home Study. See 5602. ICPC (/node/1410) policy.
- 2. The intake supervisor will:
 - a. Review all intakes to make a final screening decision and pathway assignment. The final screening decision is based upon information in the intake and FamLink, and critical thinking that balances child safety, risk and mitigating factors.
 - b. Restrict intake/case records during the process of documenting an intake and notify his or her area administrator when it is learned:
 - i. The subject, victim, or client is an employee or family member of DSHS or DEL.
 - ii. The case is high profile. High profile cases include those involving a child fatality or near-fatality, reports in the media about events in a new intake, a child in an open case is the subject of an Amber Alert, or a parent or caregiver has been arrested as the suspect of child abuse or neglect in a new intake.
 - iii. The appointing authority determines it is necessary.
 - c. Review the case history and current allegations on all screened out intakes that have the chronicity flag indicated to:
 - i. Review and document patterns or history to determine if cumulative harm exists. RCW 26.44.020 (16) (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.020>)
 - ii. Assess if a call back to the referrer or collateral contact is necessary for additional information to make a final screening decision.

- d. Review FamLink Desktop alerts during his or her shift prior to clearing intakes. If there is an alert on a child identified in the intake, he or she will notify the assigned office immediately.
- e. Document an intake time frame extension in a case note explaining the rationale within seven calendar days of granting the extension. Extensions (not to exceed two hours) are only approved by the intake supervisor to allow intake staff additional time to complete collateral contacts.

Procedures

When completing an intake, the intake worker will follow steps outlined in the Intake Practice Guide located on the Intake page on the CA Intranet.

Forms

- Intake Report DSHS 14-260 located on the Intake and Forms pages on the CA Intranet.

Resources

- Sexual Development and Behavior in Children
(http://nctsn.org/nctsn_assets/pdfs/caring/sexualdevelopmentandbehavior.pdf)
- Mandated Reporter Toolkit (/safety/mandated-reporter)
- The following is located on the CA intranet – Intake and DLR/CPS pages
 - Screening and Assessment Response Policy and Procedures
 - DLR Child Abuse and Neglect Practice Guide
 - DLR CA/N Handbook – Investigating Abuse and Neglect in State-Regulated Care.

◀ 1740. Child Protection Teams (CPT)
(/1700-case-staffings/1740-child-protection-teams-cpt)

Up 2310. Child Protective Services (CPS) Initial Face-To-Face (IFF) Response
(/practices-and-procedures/2310-child-protective-services-cps-initial-face-face-iff-response)



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<https://www.linkedin.com/company/washington-state-department-of-children-youth-and-families/>

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Useful Links

[Capitol Campus Map](#)

<https://des.wa.gov/capitol-campus-interactive-map>

[Department of Social & Health Services](#)

<http://dshs.wa.gov/>

[Rehabilitation Administration](#)

<https://www.dshs.wa.gov/ra>

[Behavioral Health Administration](#)

<https://www.dshs.wa.gov/bha>

[Alliance for Child Welfare Excellence](#)

<https://allianceforchildwelfare.org/>

[Prevent Child Abuse Washington](#)

<http://preventchildabuse.org/>

[Rule Making \(/practice/policy-laws-rules/rule-making\)](#)

[Sole Source Contracts \(/contracts/sole-source-contracts\)](#)

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2331. Child Protective Services (CPS) Investigation

Approval: Connie Lambert-Eckel, Acting Assistant Secretary

Original Date: January 31, 2016

Revised Date: July 1, 2018

Policy Review: July 1, 2021

Purpose

A Children's Administration (CA) Child Protective Services (CPS) or Division of Licensed Resources (DLR) CPS investigation is conducted when an intake is screened in with allegations of child abuse or neglect (CA/N) or a child is believed to be at imminent risk of harm.

Scope

This policy applies to Division of Children and Family Services (DCFS) caseworkers and DLR investigators conducting CPS investigations

Laws

RCW 26.44.030 (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.030>) Reports, Duty and authority to make

RCW 26.44.100 (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.100>) Information about rights, Notification of investigation, report, and findings

RCW 26.44.185 (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.185>) Investigation of child

sexual abuse, Revision and expansion of protocols

RCW 74.13.031 (<http://app.leg.wa.gov/RCW/default.aspx?cite=74.13.031>) Duties of department, Child welfare services

RCW 74.14B.010 (<http://app.leg.wa.gov/RCW/default.aspx?cite=74.14B.010>) Children's services workers, Hiring and training

Policy

1. The regional administrator (RA) or designee must:
 - a. Develop CPS guidelines with the military base commander or designee for families living on-post within the region. Guidelines and procedures may include off-post families.
 - b. Collaborate with the county prosecutor and CA offices to establish and maintain the county child abuse investigation protocol per RCW 26.44.185 (<http://app.leg.wa.gov/RCW/default.aspx?cite=26.44.185>).
2. The DLR/CPS supervisor and investigators must follow the CA/N section of the handbook "Investigating Abuse and Neglect in State-Regulated Care" located on the CA intranet.
3. The supervisor of the assigned DCFS caseworker must:
 - a. Consult with the area administrator (AA) when there is a disagreement between supervisors about an intake screening decision or a CPS investigation identified for transfer to Family Voluntary Services (FVS).
 - b. CPS Risk Only Assignment**
 - i. Assign CPS risk only intakes per the Case Assignment policy (/node/1413).
 - ii. If a case is already open in the office where a CPS risk only assignment belongs, assign the CPS risk only intake to the CPS Family Assessment Response (FAR), CPS investigation, FVS or Child and Family Welfare Services (CFWS) caseworker who will complete the CPS investigation; including the initial face-to-face contact with the child, and safety, risk and investigative assessments.
 - iii. If the case is co-assigned with CPS investigations, assign the intake to the CPS investigation caseworker.
 - c. Conduct monthly supervisor case reviews (/node/1388), review all safety plans (/node/579) and document the reviews in a case note associated with the case.
 - d. Review investigations submitted for approval, confirm the case documentation is complete and document the review in FamLink.
 - e. Close the case or transfer the case assignment to FVS or CFWS for ongoing services as applicable.
 - f. Review and approve timeframe extensions entered in FamLink for investigations that remain open past 90 calendar days from the date and time of intake due to collaboration with law enforcement or prosecutor and County Child Abuse, Fatality and Criminal Investigation Protocols.
 - g. Review CPS cases for a statewide CPS alert through FamLink Help Desk when reasonable efforts to locate the child have been exhausted and either:
 - i. The child is believed to be in present danger or unsafe.

- ii. The court has authorized pick-up of the child.
 - h. If a child is believed to be unsafe and the child's whereabouts out-of-state are known, make a CPS report in that state.
- 4. The assigned caseworker must complete the following.
 - a. Prior to face-to-face contact or investigative interview of a child:
 - i. Review the case history, if applicable.
 - ii. Coordinate with local law enforcement agencies per county child abuse investigation protocol located on the CA intranet, as applicable.
 - iii. Follow Indian Child Welfare Chapter 1 Initial Intake Indian Child Welfare (ICW) (/node/873) policies when there is reason to believe that the child is or may be a member, or is the biological child of a member and eligible for membership in a federally recognized tribe.
 - iv. Contact the referrer to ensure that the information in the intake is clear and complete, while maintaining confidentiality of case information with non-mandatory reporters. Case information may only be shared with mandated reporters as long as the information is pertinent to the CPS case.
 - v. If the investigation involves a military parent or guardian, notify the Department of Defense Family Advocacy Program, per the military Memorandum of Understanding.
 - b. Face-to-Face Contacts and Interviews with Children
 - i. Conduct initial face-to-face (IFF) (/node/590) present danger assessment with the victim or identified child within the following timeframes from the date and time CA receives the intake:
 - A. 24-hours for an emergent response.
 - B. 72-hour for a non-emergent response.
 - ii. Conduct the investigative interview (/node/593) with the victim or identified child within ten calendar days from the date and time CA receives the intake if the interview was not already completed during the IFF.
 - iii. For children who are not a victim or identified child but who reside in the household, make face-to-face contact with each child to assess his or her safety and gather information to complete the safety assessment. The safety assessment (/node/578) must be completed on all children no later than 30 calendar days from date of intake.
 - iv. Assess all children in the household for present danger (/node/577). Take immediate protective action if any child is in present danger.
 - v. If a victim, identified child or child residing in the household cannot be located, continue efforts to locate him or her until either the interview or safety assessment occurs or reasonable efforts to locate the child have been exhausted. Follow 2310. IFF (/node/590) policy and see Reasonable Efforts to locate Children or Parents on the CA intranet.
 - vi. During the investigative interview, follow the 2350. Audio Recording (/node/596) policy for child physical or sexual abuse interviews.

- vii. Follow the 6500. Photograph Documentation (/node/1421) policy when photographing a child's physical condition or surroundings to document CA/N.
- viii. Conduct monthly health and safety visits with children and parents (/node/1333) if the case is open longer than 60 calendar days.
- c. In-Person Interviews of the Child's Parent or Legal Guardian, and Alleged Perpetrators
 - i. Notify the child's parents, guardian, or legal custodian:
 - A. Of any CA/N allegations made against him or her at the initial point of contact, while maintaining the:
 - I. Confidentiality of the person making the allegations.
 - II. Safety and protection of the child.
 - III. Integrity of the investigation process.
 - B. When a child is taken into protective custody.
 - ii. Identify and verify all individuals living in the home and assess for safety threats and risk.
 - iii. Provide infant safety education and intervention (/node/580) for all children in the household age birth to one year.
 - iv. Inquire about the child's possible membership or eligibility for membership in a federally recognized tribe. Follow Indian Child Welfare Manual Chapter 3 Inquiry and Verification of Child's Indian Status (/node/883).
 - v. Conduct a universal domestic violence (DV) screening at key points in a case, i.e., a new intake, case transfer, and re-assessment of safety to identify if DV is present. If DV is identified, follow the 1170. DV policy and ensure all persons (e.g., child, caregivers or alleged perpetrators) are interviewed separately, if possible.
 - vi. If a parent or legal guardian or subject cannot be located, continue efforts to locate him or her or until either the interview occurs, or reasonable efforts to locate the parent have been exhausted. See Guidelines for Reasonable Efforts to Locate Children or Parents on the CA intranet
- d. Safety, Risk and Investigative Assessments
 - i. Complete a safety assessment (/node/578) within 30 calendar days from the date of the intake, and at key decision points in a case.
 - ii. If a safety threat is identified and cannot be managed with a safety plan, review the case with a supervisor to determine if the child should be placed in out-of-home care.
 - iii. Complete the Structured Decision Making Risk Assessment (/node/600) (SDRMA) within 60 calendar days from the date and time CA receives the intake. Services must be offered to family with a high SDMRA score, and may be offered to families with a moderately high score. Ongoing risk assessment continues throughout the life of a case from the initial CPS intake until the case is closed.
 - iv. Complete the Investigative Assessment (IA) (/node/599) on all investigations within 60 calendar days of date and time CA receives the intake.

- v. Document and submit for supervisor approval, a FamLink timeframe extension for investigations remaining open beyond 90 calendar days from the date and time CA receives the intake due to law enforcement or prosecutor collaboration.
- e. Safety Plans
 - i. If a safety threat is identified, and can be controlled and managed in the home, complete a safety plan (/node/579).
 - ii. Complete a Plan of Safe Care DSHS 15-491 (https://www.dshs.wa.gov/fsa/forms?field_number_value=15-491&title) with the family when a newborn is either:
 - A. Identified as substance affected by a medical practitioner.
 - B. Is born to a dependent youth.
- f. Consultations, Evaluations and Referrals
 - i. Secure a prompt medical evaluation or treatment for a child:
 - A. If indicators of serious CA/N exist.
 - B. A child is three or younger with a physical abuse allegation.
 - C. The alleged CA/N cannot be reasonably attributed to the explanation and a diagnostic finding would clarify the assessment of risk or determine the need for medical treatment.
 - D. If the alleged neglect includes concerns that children are deprived of food, underweight, or are starved.
 - ii. Contact the Child Protection Medical Consultant in your region when identification or management of CA/N would be facilitated by expert medical consultation.
 - iii. Seek legal authority for the medical examination if the parent does not comply with the request.
 - iv. Contact the Washington Poison Control Center (<http://www.wapc.org/>) at 1-800-222-1222 if consultation is needed about prescribed or non-prescribed medications.
 - v. Refer a child or youth with complex behavioral health needs for a Wraparound Intensive Services (WISe) screen per 4542. WISe policy (/node/1376).
 - vi. Make a referral to Early Support for Infants and Toddlers (ESIT) services within two business days of identifying a child younger than three years old with a possible developmental delay. To refer:
 - A. Contact the Family Resources Coordinator at 1-800-322-2588 or through the ESIT web site (/services/child-dev-support-providers/esit).
 - B. Inform the child's parents or legal guardian of the ESIT referral, that the services are no cost to the family and:
 - I. Voluntary for non-dependent children; and
 - II. Mandatory for dependent children.
- g. Case Coordination and Collateral Contacts
 - i. Complete a criminal history background check (/node/1426) for emergent placement of a child with an unlicensed relative or other suitable person. A criminal background check (/node/1426) may be requested on alleged subjects or adults related to the investigation to assess child and caseworker safety.

- ii. Contact law enforcement (LE):
 - A. If there is information about a crime that has been committed against a child or vulnerable adult, or the child's welfare is endangered per 2571. Mandated Reports to Law Enforcement (/node/605) policy.
 - B. If assistance is needed to:
 - I. Assure the safety of a child or staff.
 - II. Observe or preserve evidence.
 - III. Determine if a child is in need of protective custody.
 - IV. Enforce a court order.
 - V. Assist with the investigation.
 - iii. Consult with the supervisor if a child is unsafe and LE does not place the child into protective custody.
 - iv. Interview professionals and other persons who may have knowledge of the child, parent or legal guardian, or the allegations of CA/N including but not limited to:
 - A. Non-custodial parents
 - B. School personnel
 - C. Medical providers
 - D. Childcare providers
 - E. Relatives
 - F. Neighbors
 - G. Other adults or children living in the home.
 - H. Other individuals identified by the parent or caregiver
 - I. Tribal social worker, law enforcement or staff
 - v. Seek expert consultation and evaluation of issues that may pose a child safety threat or risk of imminent harm, e.g., housing inspector, health department or other local authority, etc.
- h. Investigating Allegations of Serious Physical and Sexual Abuse
- i. Consult with the Child Protection Medical Consultation Network (CP Med-Con) or with a Child Advocacy Center (CAC) physician:
 - A. To determine if a child alleged to be sexually abused needs a medical examination.
 - B. When there is an allegation of sexual abuse that includes physical injury to the child or the potential for the child to have a sexually transmitted disease.
 - C. When the child is seriously injured.
 - D. When there is a pattern of injury to a young child because of alleged CA/N.
 - ii. Ensure the physician examining the child is affiliated with the CP Med-Con or with a CAC. If a child is examined or was previously examined by a physician who is not affiliated with the CP Med-Con or a CAC, refer the case to the CP Med-Con or CA physician so he or she is aware of the current allegations, available medical information, previous injuries and indications the child has been abused or neglected in the past.

- iii. Place a child in out-of-home care (except when the court has determined the child is safe to remain in the home) when he or she:
 - A. Has suffered a serious non-accidental injury and a safety plan separating the child from the alleged perpetrator cannot be developed.
 - B. Is a sibling of a child who has been fatally or seriously injured due to abuse or neglect and a safety plan separating the child from the alleged perpetrator cannot be developed.
 - C. Has a parent or legal guardian who has been determined to be unwilling or incapable (i.e., due to mental illness or substance abuse) of supervising or protecting the child and an in-home safety plan cannot be developed to assure the supervision/protection of the child.
 - D. Has been sexually abused and a safety plan cannot be developed to protect the child from the alleged perpetrator.
- iv. When a safety threat is identified and a safety plan (<http://www.dcyf.wa.gov/node/579>) will keep a child safe in the home, the safety plan must include:
 - A. Separation of the child from the person who poses the safety threat.
 - B. Safety plan participants who can assist in monitoring child safety, will take action to protect the child, and agree to contact the caseworker if the child is in danger. Safety plan participants can include relatives, neighbors, and mandated reporters.
 - C. A parent or legal guardian who has the capacity to understand and follow a plan. Promises by parents and caregivers cannot control safety threats.
 - D. Regular contact by the caseworker with all safety plan participants.
- v. Prior to allowing contact between the alleged perpetrator and victim:
 - A. Consider the psychological harm and physical safety of the child.
 - B. Consult with law enforcement, treatment providers and others involved with the family.
 - C. Obtain reliable supervision of the contact between the child and the person who poses the safety threat so that the threat is sufficiently monitored.
 - D. Obtain supervisor approval.
- i. Additional Requirements
 - i. Follow the 2559. Hospital Hold (/node/602) policy when a child has been placed on a Hospital Hold by a physician or hospital administrator.
 - ii. Follow the 4536. Sexually Aggressive Youth (SAY) (/node/1371) policy when investigating SAY intakes.
 - iii. When any child in an open case is believed to be at imminent risk of serious harm or there is a new allegation of CA/N not included in the original intake, the assigned caseworker must make a report to intake.
 - iv. Send a False Reporting Letter DSHS 27-070 by certified mail to any person believed to have made a false report of CA/N.
- j. Concluding an Investigation

- i. Notify all persons named in the intake as alleged perpetrators of the abuse or neglect findings, and his and her rights of review and appeal per 2559B. CPS Investigative Findings Notification (/node/603) policy.
- ii. Inform the Washington State federally recognized tribe of the outcome of the investigation when the child meets the definition of an Indian child.
- iii. The case must remain open when Family Voluntary Services (FVS) and Child and Family Welfare Services (CFWS) are provided, including placement in out-of-home care through a Voluntary Placement Agreement (VPA) or court order.
- iv. Close the case and submit to the CPS supervisor when:
 - A. There is no safety threat or the safety threat has been reduced or eliminated, and the parent or legal guardian has the protective capacity to protect his or her child.
 - B. There is continuing risk of CA/N which is not likely to be resolved through treatment efforts when:
 - I. Further voluntary services are not available or accepted, and
 - II. Court intervention is not necessary or appropriate.
 - C. The family is unable to be located following the steps to locate in the "Guidelines for Reasonable Efforts to Locate Children or Parents" on the CA intranet. Complete the exception to the face-to-face contact per the 2310. IFF (/node/590) policy.
- v. Submit the completed case documentation to the supervisor for case closure or transfer.

Resources

- Child's Physical Description DSHS 15-359 (https://www.dshs.wa.gov/fsa/forms?field_number_value=15-359&title)
- Understanding the Dependency Process - brochure DSHS 22-1499 (<https://www.dshs.wa.gov/sites/default/files/SESA/publications/documents/22-1499.pdf>)
- Washington State Court Forms (<http://www.courts.wa.gov/forms/?fa=forms.contribute&formID=7>)

Located on CA intranet:

- Military MOU
- Child Custody Transfer DSHS 10-157 located on the CA Intranet
- Child Protection Medical Consultation Network
- Supervisory Review of Cases
- Using Child Safety as the Basis for Case Closing - article (http://action4cp.org/documents/2007/pdf/Jan_2007_Using_Child_Safety_as_a_Basis_for_Case_Closing_010)

◀ 2310. Child Protective Services (CPS) Initial Face-To-Face (IFF) Response (/practices-and-procedures/2310-child-protective-services-cps-initial-face-face-iff-response) Up 2332. Child Protective Services Family Assessment Response (/practices-and-procedures/2332-child-protective-services-family-assessment-response) ▶ (/practices-and-procedures/2332-child-protective-services-family-assessment-response)



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> PRACTICES AND PROCEDURES (/PRACTICES-AND-PROCEDURES)

> 2541. STRUCTURED DECISION MAKING RISK ASSESSMENT®(SDMRA)

2541. Structured Decision Making Risk Assessment®(SDMRA)

Purpose Statement

The Structured Decision Making Risk Assessment (SDMRA) is a household-based assessment focused on the characteristics of the caregivers and children living in that household. By completing the SDMRA following the Safety Assessment, the worker obtains an objective appraisal of the risk to a child. The SDMRA informs when services may or must be offered.

Laws

RCW 26.44.030 (<http://apps.leg.wa.gov/RCW/default.aspx?cite=26.44.030>)

Executive Order 12-04 (http://www.governor.wa.gov/sites/default/files/exe_order/eo_12-04.pdf)

Policy

1. The SDMRA risk assessment tool is required as part of the Investigative Assessment and is **completed on all screened in CPS intakes (includes Risk Only intakes)** requiring a CPS investigation.
2. Services must be offered to families with a high SDMRA score.
3. Services **may** be offered to families with a moderately high SDMRA score.

4. Services are not offered to families when observable, verifiable and describable changes have been made within the family that reduces the identified risk in the SDMRA .
5. Cases with a high SDMRA score must be staffed with a Child Protection Team (CPT) for identified child victims aged six years or younger.

Procedures

1. Complete the SDMRA no longer than **60** days after the intake was received and following the Safety Assessment and prior to a determination to offer ongoing services or a case transfer to another program area. Supervisors may extend the completion date of the SDMRA with reason.
2. When the SDMRA score is "high" and the child is determined **unsafe** through the Safety Assessment then:
 - a. Follow the Safety Plan policy (/node/576)
 - b. Follow the 1740 Child Protection Teams (CPT) policy (/node/588).
 - c. Document "Transferred to Tribal Authority" per ICW Manual on the Investigative Assessment disposition tab when a Tribe is assuming responsibility for providing services and monitoring the family.
 - d. Explain why services were not offered or provided to the family in (including when Tribe assumes authority) in FamLink.
3. When the SDMRA score is "high" or "moderately high" and the child is determined **safe** through the Safety Assessment:
 - a. Offer services when the SDMRA score is high and both family and individual level concerns exist per 2440 Service Agreement policy (<https://www.dshs.wa.gov/ca/2400-case-planning/2440-cps-service-delivery>).
 - b. Consider offering services when the SDM score is moderately high and both family and individual level concerns exist per 2440 Service Agreement policy (<https://www.dshs.wa.gov/ca/2400-case-planning/2440-cps-service-delivery>).
 - c. Services are not offered to families when observable, verifiable and describable changes have been made within the family that reduces the identified risk in the SDMRA.
 - d. Follow the 1740 Child Protection Teams (CPT) policy (<https://www.dshs.wa.gov/ca/1700-case-staffings/1740-child-protection-teams-cpt#1740>).
 - e. Document the following on the Investigative Assessment disposition tab when services are not offered to the family by CA:

- i. "Transferred to Tribal Authority" if Tribe is assuming responsibility for providing services and monitoring the family
 - ii. "Other" on the drop down menu and in the text box document an explanation why services were not offered or provided
- 4. When the chronicity indicator has been identified with a family and the family has a SDMRA score of high, and:
 - a. Voluntary services are offered:
 - i. Refer family to appropriate evidence based or promising programs where available, or
 - ii. If not available, refer other relevant agency contracted or community services
 - b. Voluntary services are not offered:
 - i. Follow the 1740 Child Protection Teams (CPT) policy (<https://www.dshs.wa.gov/ca/1700-case-staffings/1740-child-protection-teams-cpt#1740>).
 - ii. Review case with CPS supervisor before case closure

Resources

- SDM Risk Assessment - Procedures Manual
- 1740 Child Protection Teams (CPT) policy (<https://www.dshs.wa.gov/ca/1700-case-staffings/1740-child-protection-teams-cpt#1740>)
- 2440 Service Agreement policy (<https://www.dshs.wa.gov/ca/2400-case-planning/2440-cps-service-delivery>)
- Comparing and Understanding the Differences: Risk of Maltreatment, Present Danger, Impending Danger - article (<http://action4cp.org/documents/2006/pdf/Januaryarticle.pdf>)
- The Differences between Risk and Safety - article (<http://action4cp.org/documents/2003/pdf/Jan2003TheDifferencesbetweenRiskandSafety2.27.pc>)

◀ 2540. Investigative Assessment
(/practices-and-procedures/2540-investigative-assessment)

Up
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2559. Hospital Holds ▶ (/practices-and-procedures/2559-hospital-holds)



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February 11, 2019 - 3:46 PM

Filing Petition for Review

Transmittal Information

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Appellate Court Case Title: Jessica L. Wrigley, Appellant v State of WA DSHS, etal, Respondents (496127)

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