

SUPREME COURT OF THE STATE OF WASHINGTON

IAN ATKERSON, individually
and as Personal Representative to
the Estate of RUSTIN
ATKERSON,

Petitioner,

v.

STATE OF WASHINGTON
DEPARTMENT OF CHILDREN,
YOUTH, and FAMILIES,
John and Jane Doe 1-10,

Respondents.

**RESPONDENT
STATE OF
WASHINGTON,
DEPARTMENT OF
CHILDREN,
YOUTH, AND
FAMILIES'
RESPONSE TO
PETITIONER'S
MOTION TO
INCLUDE
EXTRARECORD
MATERIALS IN
APPENDIX**

I. INTRODUCTION

The Department of Children, Youth, and Families (DCYF) requests that this Court deny Petitioner Atkerson's motion to introduce legislative history documents not otherwise found in the record because RAP 10.3(a) does not apply to Atkerson's Petition. Rather, the content of a petition for review to the Supreme Court is governed by RAP 13.4(c). The contents of a petition's appendix are limited in scope, and there is no provision

for requesting permission to include other materials such as bill reports or committee hearing transcripts. RAP 13.4(c)(9). Further, interpreting RCW 4.24.595(1) based on its plain text does not require the inclusion of new documents into the record.

II. COUNTERSTATEMENT OF FACTS

The Court of Appeals issued a unanimous published opinion in this case, holding that the plain language of RCW 4.24.595(1) requires a gross negligence standard to assess liability in emergent placement investigations even if, as here, no shelter care hearing occurred. *Atkerson v. State*, -- Wn. App. 2d --, 542 P.3d 593 (2024).

Atkerson now seeks to improperly and unnecessarily add legislative reports into the record through the contents of a petition for review appendix.

III. ARGUMENT

A. Atkerson's Reliance on RAP 10.3 is Misplaced

Atkerson contends that RAP 10.3(a)(8) requires the Court's permission to include "an appendix containing extra

record materials” with his Petition. Pet’r’s Mot. at 2. However, RAP 10.3(a) governs contents in the brief of an appellant or petitioner. A different rule, RAP 13.4(c), establishes the *content* of a petition for review to the Supreme Court. Only the petition’s *form* should comply with RAP 10.3, RAP 10.4, and RAP 18.17, except as otherwise provided in the discretionary review rule. RAP 13.4(e).

The contents of the appendix to a petition for review should include “a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.” RAP 13.4(c)(9). The content rule does not expressly permit a party to add legislative history materials. *Id.*

Consequently, because RAP 13.4(c) does not authorize Atkerson to include either bill reports or committee hearing transcripts in his Petition for Review Appendix or to otherwise

seek the Court's permission for doing so, the Court should deny Atkerson's motion.

B. No Exploration of Legislative History is Necessary to Interpret RCW 4.24.595(1)

The Court of Appeals recognized that the definition of “emergent placement investigation” in RCW 4.24.595(1) unambiguously includes situations where a child remains in the care of parents or guardians, and therefore, would not result in the child's removal as a predicate to shelter care under RCW 13.34.060. *Atkerson*, 542 P.3d at 602-03; *see also Five Corners Fam. Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011) (“The surest indication of the legislature's intent is the plain meaning of the statute. . .”).

But even if there were a perceived ambiguity to justify a review of legislative history, nothing in either the Bill Report or House Judiciary Committee Hearing record suggests emergent placement investigations must *only* occur when a child is taken into custody as Atkerson maintains. Pet. for Review at 13; App.;

see also Biggs v. Vail, 119 Wn.2d 129, 134, 830 P.2d 350, 352-53 (1992) (“if the meaning of the statute and the intent of the Legislature are not clear from the words of the statute, we may resort to extrinsic aids, such as legislative history”).

Because the plain text of “emergent placement investigation” in RCW 4.24.595(1) clearly includes leaving a child in parental care, as occurred here, it is unnecessary to supplement the record with legislative history materials not found in the Clerk’s Papers or Report of Proceedings. *Cf.* Pet’r’s Mot. at 2.

IV. CONCLUSION

Based on both RAP 13.4(c) and lack of necessity in considering the legislative history of RCW 4.24.595(1), the Court should deny Atkerson’s motion to include new documents in his Petition’s Appendix that are not already part of the appellate record.

This document contains 660 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 18th day of March
2024.

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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the **Respondent State of Washington, Department of Children, Youth, And Families Response to Petitioner's Motion To Include Extra Record Materials In Appendix** with the Clerk of the Court using the electronic filing system which caused it to be served on the following electronic filing system participant as follows:

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

///

EXECUTED this 18th day of March 2024, at Olympia,
Washington.

s/ Beverly Cox

BEVERLY COX
Paralegal

ATTORNEY GENERAL'S OFFICE, TORTS DIVISION

March 18, 2024 - 2:39 PM

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