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STATE OF WASHINGTON  
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NO. 96830-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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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.

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**SUPPLEMENTAL BRIEF OF PETITIONERS  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ET AL.**

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## I. INTRODUCTION

In 1965, the Legislature enacted a comprehensive statutory system for reporting and investigating allegations of child abuse and neglect. RCW 26.44. Through that system, as amended, the Legislature balances the constitutional rights of parents and children to family integrity along with the rights of children to basic safety, health, and nurture. RCW 26.44.010.

Integral to maintaining that balance is the scope of the implied statutory duty to investigate reports alleging “the possible occurrence of [child] abuse or neglect” under RCW 26.44.050. Since the Court first recognized this duty, it has been applied only to reports alleging that child abuse or neglect *has* occurred. The published opinion of the Court of Appeals radically expands that duty to encompass allegations that child abuse or neglect might possibly occur in the future. This expansion ignores clear legislative intent and fundamentally disrupts the constitutional and functional balance of the child welfare system by mandating governmental intrusion into families based on mere speculation that child abuse or neglect might possibly occur at some future time. It should be reversed.

## II. STATEMENT OF THE ISSUE

Is it error to conclude that RCW 26.44.050 requires investigation of allegations “suggesting a reasonable possibility of future [child] abuse or neglect”? *Wrigley v. State*, 5 Wn. App. 2d 909, 931, 428 P.3d 1279 (2018).

### III. STATEMENT OF THE CASE

#### A. A.A. Was Removed From the Wrigleys Due to Founded Findings of Child Abuse and Neglect

In fall 2011, A.A.'s family, the Wrigleys,<sup>1</sup> was receiving voluntary services from the Department of Social and Health Services (the Department) after several reports alleging physical abuse and maltreatment of A.A. CP 86. When voluntary services social worker Rachel Whitney made a routine health and safety visit to the Wrigleys, she found the home in disarray, with "bags of garbage, old pizza boxes, empty beer bottles, pieces of bread, tampons, and assorted bits of paper and other debris on the floors." CP 127, 139.

Ms. Whitney observed that A.A. was shaking, his eyes were watery, his lips and mouth appeared red, and there was bruising on his jaw and cheek that had not been there a week earlier. CP 136, cf. 132-33. Mrs. Wrigley explained A.A.'s mouth was red because she had just poured hot pepper water in it because A.A. called her a name. CP 136. Ms. Whitney asked A.A. what happened and he said that when Mrs. Wrigley "opened his mouth with her fingers to put in the hot sauce he screamed because it hurt so bad." CP 139. A.A. also said that Mr. Wrigley spanked him with his hand or a belt for wetting the bed. CP 139.

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<sup>1</sup> At that time, the Wrigley family consisted of five-year-old A.A., A.A.'s mother Jessica Wrigley, her husband Jared Wrigley, and their two-year-old son I.W. CP 86.

During the visit, Mrs. Wrigley seemed very frustrated and told Ms. Whitney that she wanted to put A.A. up for adoption. CP 128, 139. Mrs. Wrigley agreed to put A.A. into voluntary out-of-home placement for two weeks. CP 128. A.A. was transferred to a foster home that day. CP 145.

Ms. Whitney reported her observations, and the case was assigned to Child Protective Services (CPS) investigator Jennifer Gorder. CP 65, 127, 139. Ms. Gorder interviewed A.A. the next day at his school. CP 65. A.A. indicated he was spanked with hands and a belt for wetting his pants. CP 71. Ms. Gorder photographed bruises on A.A.'s spine, side, face, and above his buttocks. CP 70-71. She noted the bruises on his back and forearm were linear, indicating they may have been made with a belt. CP 71.

Ms. Gorder talked to several individuals who knew the Wrigleys, including Mrs. Wrigley's friend, Mrs. Wrigley's former father-in-law, and the father of Mrs. Wrigley's oldest child.<sup>2</sup> CP 75-79. All expressed concern regarding the Wrigleys' parenting. CP 75-79. Ms. Gorder also reviewed the Wrigleys' CPS history from Idaho, where there had been similar allegations of abuse and neglect. CP 82-83.

On October 4, 2011, the social workers held a meeting with Mrs. Wrigley at which she described her methods of discipline as locking

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<sup>2</sup> This person is not A.A.'s father, Anthony Viles. CP 76.

children in their room, spanking, and putting hot sauce in their mouths. CP 151-54. Mrs. Wrigley also indicated she previously had a restraining order against A.A.'s father, Anthony Viles, because of threats he made against her. CP 65. Ms. Gorder eventually made founded findings for maltreatment against both of the Wrigleys and a founded finding of physical abuse against Mrs. Wrigley. CP 66, 103-25.<sup>3</sup>

**B. A.A.'s Father, Anthony Viles, Petitioned for Custody**

On October 5, 2011, the Department filed a dependency petition based on Ms. Gorder's investigation. CP 85-91. The petition identified A.A.'s father as Anthony Viles and informed the dependency court of the restraining order between Mrs. Wrigley and Mr. Viles. CP 90. As required by statute, the Department notified Mr. Viles of the petition. RCW 13.34.062. Mr. Viles responded that he wanted A.A. placed with him. CP 236, 245-47. Once shelter care was established, Child and Family Welfare Services social worker, Don Watson, was assigned. CP 236.

In January 2012, Mr. Viles motioned the dependency court to have A.A. placed with him in Idaho. CP 203. At the same time, A.A.'s foster parents asked to have A.A. removed from their home. CP 294-97.

At the hearing on his motion, Mr. Viles told the dependency court

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<sup>3</sup> See page 11, *infra*, for an explanation of "founded findings."

about the efforts he had made since October to build rapport with A.A., including sending him a letter with family pictures and having daily contact with him via phone. CP 295, 302-03. As Mr. Viles's attorney explained: "[t]here was absolutely no allegations about him [Mr. Viles] in the [dependency] petition. The only problem was that he hadn't had contact with the child [A.A.]," and he had been addressing that. CP 293-94.

The Department specifically informed the dependency court that pursuant to a then-recent Court of Appeals decision, *In re D.F.-M.*, 157 Wn. App. 179, 236 P.3d 961 (2010), the Department did not have the statutory authority to do a full assessment of Mr. Viles's home. CP 300. The Department provided the dependency court the information it had, including Mr. Viles's regular contacts with the Department and with A.A.; his co-parenting of his own child and his fiancée's children in Idaho; information from six references, including the mother of Mr. Viles's other child and a family friend/retired social worker; and a "clean" background check. CP 300-03. Based on this information, and subject to the *D.F.-M.* caveat, the Department indicated it had no further concerns regarding Mr. Viles beyond the lack of a preexisting relationship with A.A. CP 300.

The court also heard from A.A.'s therapist, Mr. Miriello, and A.A.'s Court Appointed Special Advocate (CASA), both of whom were concerned

about the immediate transfer of A.A. to Mr. Viles's custody and advocated for a slower transition process. CP 298, 307.

Mrs. Wrigley did not appear at the hearing. CP 324. Her attorney told the court that Mrs. Wrigley "ha[d] no strong position either way" on A.A.'s placement with Mr. Viles, although her "separation from Mr. Viles and apparently at least some of their relationship was pretty rocky." CP 305-06. Mr. Wrigley told the court through his counsel that he had heard from Mrs. Wrigley that her relationship with Mr. Viles had been violent, and that he had "grave concern regarding A.A.'s well-being." CP 304.

**C. The Dependency Court Ordered a 30-Day Extended Visit**

At the conclusion of the testimony, the court ordered that A.A. be placed with Mr. Viles "for a visit" for 30 days, and allowed Mr. Viles to take A.A. with him to Idaho that day. CP 203-04, 312. The court set another hearing for late February, directing that both Mr. Watson and Mr. Miriello check in on A.A. during the intervening weeks. CP 314.

In mid-February, Mrs. Wrigley contacted Mr. Watson to express her belief that Mr. Viles would harm A.A. in the future and to tell Mr. Watson that she "did not want A.A. to be placed with Mr. Viles." CP 238. In her declaration for this lawsuit, Mrs. Wrigley asserts she told Mr. Watson that A.A. would be dead within six months if he remained with his father. CP 880. Mr. Watson's case note documenting the conversation does not

reflect that she made this statement. CP 262. Mr. Watson informed Mrs. Wrigley of the upcoming February hearing, which she could attend. CP 238.

**D. Jessica Wrigley Agreed to Dismissal of the Dependency Petition and the Dependency Court Dismissed It, Finding Placement with Mr. Viles to Be in A.A.'s Best Interest**

On February 21, 2012, the dependency court conducted a hearing on whether A.A. should continue placement with Mr. Viles in Idaho. The court heard reports from Mr. Watson and Mr. Miriello about their numerous contacts with A.A. and other individuals who had contact with A.A. in Idaho. Mr. Watson indicated that A.A. was enrolled in school, that Mr. Viles was working with the family friend/social worker, and that he had spoken with both Mr. Viles and A.A. CP 334. Mr. Miriello indicated that he had spoken with A.A. one to two times a week since A.A. went to Idaho and that overall things were going well. CP 334-35.

Again, Mrs. Wrigley did not attend the hearing. CP 326. Her counsel indicated she was in agreement with dismissing the dependency petition, which would leave A.A. in Mr. Viles's custody. CP 286-87, 336. Her counsel later testified at deposition in this case that Mrs. Wrigley asked to have the dependency dismissed because it would benefit her. CP 286-87.

The court dismissed the dependency petition and specifically found that placement with Mr. Viles was in A.A.'s best interest. CP 206-08. Tragically, in April 2012, Mr. Viles killed A.A.

#### IV. ARGUMENT

##### A. The Plain Language and Operation of RCW 26.44 Confirm That RCW 26.44.050 Mandates Investigation of Allegations That Child Abuse or Neglect *Has Occurred*

The duty to investigate under RCW 26.44.050 is a “narrow exception” to the rule that there is no general duty to investigate. *M.W. v. Dep’t of Soc. & Health Servs.*, 149 Wn.2d 589, 601, 70 P.3d 954 (2003). Until the Court of Appeals’ opinion here, this duty has been construed to apply to allegations of past child abuse and neglect. As this Court recently explained, “[t]he dependency process is initiated when DSHS receives a report that a child *has been* abused, neglected or abandoned. RCW 26.44.050.” *H.B.H. v. State*, 192 Wn.2d 154, 165, 429 P.3d 484 (2018) (emphasis added). This construction is fully consistent with the statute’s plain language and operation. The Court of Appeals’ construction is not.

When construing statutes, courts give effect to the statute’s plain meaning. *Dep’t of Ecology v. Campbell & Gwinn L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Courts discern legislative intent from the statute itself as well as related statutes. *Id.* at 11-12. Considering RCW 26.44 as a whole, it is clear that the Legislature intended to require the Department to investigate allegations that child abuse or neglect has already occurred.<sup>4</sup>

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<sup>4</sup> Citations in this brief to RCW 26.44 and its provisions reference the statute as it existed following the 2012 amendments discussed in the Court of Appeals’ opinion.

The legislative declaration of purpose for RCW 26.44 states that “where a child is deprived” of health and safety, the State is justified in intervening “based upon verified information.” RCW 26.44.010. The State is then directed to provide services “in an effort to prevent *further* abuses.” *Id.* (emphasis added). The language “where a child is deprived” establishes that the obligation to act begins when a child is “deprived” of health and safety, *not* when there is an allegation that a child might potentially be deprived of health and safety at some point in the future. This interpretation is supported by the requirement for “verified information” and the provision of services to prevent “further abuses.” *Id.*

The legislative purpose strikes a constitutionally sound balance between the rights of parents and children to family integrity and the rights of children to basic safety, health, and nurture. Children must be protected. At the same time, a family’s right to live together without governmental interference is “an essential liberty interest protected by the Fourteenth Amendment’s guarantee that parents and children will not be separated by the state without due process of law except in an emergency.” *Wallis v. Spencer*, 202 F.3d 1126, 1136-37 (9th Cir. 2000); *In re Custody of Smith*, 137 Wn.2d 1, 13, 969 P.2d 21 (1998). In order to obtain a court order to take a child into custody, the Department must provide the court with “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.” RCW 13.34.050, .060. Requiring investigation of allegations that child abuse or neglect *has* occurred, but not investigation of speculative allegations that it might occur in the future, properly confines the RCW 26.44.050 duty to situations where the verified information required by due process is ascertainable.

The Legislature’s requirements for the investigatory process also support limiting the RCW 26.44.050 duty to allegations of past abuse and neglect. RCW 26.44 lays out a system for reporting allegations of child abuse and neglect by both mandatory and voluntary reporters. RCW 26.44.030, .040. Each report is assessed by the Department to determine whether its allegations, if true, meet the threshold definition of child abuse or neglect found in RCW 26.44.020. If so, the report is “screened in” and assigned for either investigation or family assessment response.<sup>5</sup> RCW 26.44.030(11). *See n. 7, infra*; App. A, Department Policy 2200.

Each report assigned for investigation must result in a determination—a finding—that indicates whether or not the alleged abuse

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<sup>5</sup> The statute does not define a screened in report. However, a “[s]creened-out report” is defined as “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 . . . .” RCW 26.44.020(22). Logically, a screened in report meets the opposite criteria.

or neglect has in fact occurred. RCW 26.44.030(12)(a), .050. A founded finding is “a 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). An unfounded finding is the determination 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). Once a determination is made, the Department then decides whether to seek court intervention. RCW 13.34.

RCW 26.44’s requirement that investigations result in a determination that child abuse or neglect “did” or “did not” occur can only be fulfilled if the RCW 26.44.050 duty to investigate “the possible occurrence of abuse or neglect” refers to the possibility that child abuse or neglect has already occurred. It would be impossible for the Department to determine whether abuse “did” or “did not” occur during an investigation into speculative allegations of possible future abuse. Thus, the Court of Appeals’ construction of RCW 26.44.050 is inconsistent with both the legislative purpose set out in RCW 26.44.010 and the statutory requirements the Legislature has set forth for such investigations.

Correspondingly, RCW 26.44.030 plainly contemplates that reports alleging child abuse or neglect relate to past occurrences of abuse or neglect.

The Court of Appeals agrees: it states that individuals required to report allegations of abuse and neglect pursuant to RCW 26.44.030 are required to report only “abuse and neglect that has already occurred.” *Wrigley*, 5 Wn. App. 2d at 927. It errs in defining “report” differently in RCW 26.44.050.

RCW 26.44.030 defines how reports are made, by whom, and how those reports are assigned for investigation under RCW 26.44.050. It requires some individuals, and allows anyone, to report allegations of child abuse or neglect if they have “reasonable cause to believe that a child *has suffered* abuse or neglect . . . .” RCW 26.44.030(1)(a)-(e) (emphasis added). The language of RCW 26.44.030 describes reports and reporting of past occurrences. Logic compels the same result. Otherwise, mandatory reporters would be subject to liability for failing to report things that had not occurred. *Beggs v. Dep’t of Soc. & Health Servs.*, 171 Wn.2d 69, 247 P.3d 421 (2011). Logic, and rules of statutory construction, likewise dictate that “report” have the same meaning in RCW 26.44.050 as it does in RCW 26.44.030.

The Court of Appeals disregards that logic. It finds that RCW 26.44.030 and .050 conflict because RCW 26.44.030(11) provides that the Department, upon receiving a report of alleged abuse or neglect, shall use one of two responses—investigation or family assessment—while RCW 26.44.050 requires the Department to investigate when it receives a

report. *Wrigley*, 5 Wn. App. 2d at 927. But no conflict exists. When the Legislature added family assessment as a differential response to allegations of child abuse or neglect, it also amended RCW 26.44.050 to add the clause, “[e]xcept as provided in RCW 26.44.030(11).” Laws of 2012, ch. 259, § 5.

The two statutes thereby exist in harmony: RCW 26.44.050 directs that, except as provided in RCW 26.44.030(11), upon receipt of a report concerning the possible occurrence of abuse or neglect, that report must be investigated. Thus, RCW 26.44.050 requires investigation except where the response is family assessment. The cross-reference to RCW 26.44.030(11) in RCW 26.44.050 does not make the meaning of “report” in RCW 26.44.050 different from what it means in RCW 26.44.030; it simply recognizes that a different response, family assessment rather than investigation, may be appropriate in certain circumstances.

The Court of Appeals also errs in concluding that RCW 26.44.030 applies only to reports made by mandatory reporters and that there are “reports” other than those addressed in RCW 26.44.030. *Wrigley*, 5 Wn. App. 2d at 927. RCW 26.44 establishes the workflow through which the Department screens and responds to reports concerning the possible occurrence of abuse or neglect. RCW 26.44.030 prescribes how reports (referrals) come to the Department, through either mandated reporters or permissive reporters; and it comprehensively addresses the workflow

applied to all reports that are received by the Department. RCW 26.44.040 describes what information must be contained in those reports; i.e. details of the abuse or neglect that has already occurred. Upon receipt, a report is evaluated against screening criteria, and is “screened in” for further action if it alleges a credible report of abuse or neglect. For reports that are screened in, RCW 26.44.030(11) requires the Department to respond through either investigation or family assessment.

The statutory amendment that added the family assessment response to RCW 26.44.030(11) did not change that workflow or the criteria for screening allegations of child abuse and neglect. It simply created an alternative response for reports that are screened in. The amendment does not support the Court of Appeals’ conclusion that RCW 26.44.050 requires investigation of possible future acts of abuse and neglect.

Finally, the Court of Appeals’ conclusion that RCW 26.44.030 applies only to reports made by mandated reporters produces an irrational outcome. Under its construction of RCW 26.44.030 and .050, the *duty to report* allegations of abuse and neglect *is narrower than* the *duty to investigate* them. Here, because Mrs. Wrigley’s concerns did not allege child abuse or neglect that had already occurred, the mandatory duty to report was not triggered and social worker Don Watson had no duty to report those concerns to the Department. However, applying the Court of

Appeals' opinion, the Department would still have a duty to investigate Mrs. Wrigley's concerns. This defies common sense and cannot be the law.

The proper analysis harmonizes RCW 26.44.030 and .050 by finding "report" to mean the same thing in both provisions. Under RCW 26.44.030 "report" is confined to allegations of past occurrences of abuse or neglect, and "report" in RCW 26.44.050 must be likewise limited.

**B. The Court of Appeals Fails to Apprehend That the Department Is Already Required to Investigate Certain Instances of Future Abuse or Neglect**

The Court of Appeals' expansion of the RCW 26.44.050 duty is driven by concern that children be protected. *Wrigley*, 5 Wn. App. 2d at 928 ("Waiting until tragedy has already descended does nothing to protect the child."). However, the existing statutory framework already addresses that concern to the extent the Legislature has deemed constitutionally permissible in balancing the competing rights involved.

In accordance with due process and common sense, the Legislature set up a different statutory standard and procedure in RCW 74.13.031 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 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 . . . or bring the situation to the attention of an appropriate court, or another community agency.*

RCW 74.13.031(3) (emphasis added).

As RCW 74.13.031(3) makes clear, the Department does not need to wait until a child has actually been harmed before it can take action. When the Department receives a report alleging that a recent action or inaction of a parent or other caregiver presents an imminent risk of serious harm to a child,<sup>6</sup> the Department has a duty to investigate under RCW 74.13.031, and to “offer child welfare services in relation to the problem to such parents.” RCW 74.13.031(3).<sup>7</sup>

Thus, contrary to the Court of Appeals’ conclusion, children will *not* be left unprotected unless RCW 26.44.050 is judicially expanded to require investigation of possible future abuse. Under RCW 74.13, the Department has a duty to investigate an allegation that a recent action or inaction on the part of a caregiver presents an imminent risk of serious harm to a child.

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<sup>6</sup> “Imminent risk of serious harm” is defined by Department Policy: Imminent – Having the potential to occur at any moment, or there is a *substantial likelihood* that harm will be experienced. Risk of Harm – A *high likelihood* of a child being abused or experiencing negligent treatment or maltreatment that could result in one or more of the following outcomes: death, life endangering illness, injury requiring medical attention, substantial risk of injury to the physical, emotional, or cognitive development.

Practices and Procedures, Appendix A: Definitions (emphasis added). Available at <https://www.dcyf.wa.gov/practices-and-procedures> and attached in Appendix A.

<sup>7</sup> The Department has policies that differentiate between the two types of reports, and separate screening criteria for “risk only” reports that are consistent with its specific statutory directives. See Practices and Procedures, Policies 2541 (“Structured Decision Making Risk Assessment®(SDMRA)”), 2200 (“Intake Process and Response”), and 2331 (“Child Protective Services (CPS) Investigation”). Available at <https://www.dcyf.wa.gov/practices-and-procedures> and attached in Appendix A.

Those facts did not exist in this case. Mrs. Wrigley’s description of Mr. Viles’s prior acts of domestic violence against her and her allegations of possible future risk to A.A. if he remained with Mr. Viles—with whom she and A.A. had not had any contact for over six years—did not identify any recent act or omission by Mr. Viles that presented an imminent risk of serious harm to A.A. Domestic violence between adults, even when it is happening contemporaneously, does not constitute child abuse. RCW 26.44.020(17). And the record contained no evidence that Mr. Viles was ever alleged to have abused a child at any time. To the contrary, the record showed that Mr. Viles had parented his own child and his fiancée’s children for years without incident. CP 311. Thus, Mrs. Wrigley’s allegations lacked the elements needed to trigger the Department’s duty under RCW 74.13.031(3).

**C. The Court of Appeals Errs by Expecting the Department to Act in a Manner That Would Have Exceeded Its Authority Under Then-Recent Washington Precedent**

The published opinion of the Court of Appeals failed to grapple with the significant limitations that *In re D.F.-M.*, 157 Wn. App. 179, placed on the Department’s authority to assess the safety of Mr. Viles’s home prior to the dependency court ordering A.A. to Idaho. That limitation, as well as other concerns about A.A.’s transition to Mr. Viles’s home, were conveyed to the dependency court during its hearings on Mr. Viles’s motion for

custody. Notwithstanding this information, the dependency court determined that placement with Mr. Viles was in A.A.'s best interest.

*In re D.F.-M.* clarified just how limited the Department's authority is to investigate noncustodial parents when there is no allegation of child abuse or neglect against that parent. *D.F.-M.* bears striking similarities to this case; an out-of-state father seeking custody of a Washington child with whom he had no prior contact. A report from the receiving state, developed pursuant to the Interstate Compact on the Placement of Children (ICPC), indicated that the father's home was not fit for the child. *D.F.-M.*, 157 Wn. App. at 185. The Washington dependency court granted the father's request for custody over the Department's and the mother's objection. *Id.* The mother appealed, arguing that a child cannot be placed out of state with a negative ICPC report. *Id.* at 186.

The Court of Appeals upheld placement of the child with his father, holding that use of the ICPC for a natural parent was inappropriate when the child has not yet been found dependent. Thus, placement of the child out of state and dismissal of the petition was appropriate:

In making placement decisions, the court's paramount duty is to protect the best interests of the children. Placement with an unfit parent is obviously not in a child's best interests, and *courts can and should demand information about the absent parent's fitness.* However, *courts*, not administrative agencies or individual social workers, are the *ultimate evaluators* of a parent's ability to care for his child, and the

*ultimate decision-makers* as to whether placement with a fit parent is in the child's best interests.

*D.F.-M.*, 157 Wn. App. at 192-93 (emphasis added).

In this case, like in *D.F.-M.*, A.A. had not been found dependent at the time that his father motioned for placement. CP 185-201. Thus, pursuant to *D.F.-M.*, the Department had very little authority and no ICPC mechanism to investigate Mr. Viles's home in Idaho. CP 300. Moreover, the information the Department did have regarding Mr. Viles did not provide a legal or factual basis to contest A.A.'s placement with his father. The Department clearly conveyed its lack of authority to the dependency court, when the assistant attorney general informed the court that the Department could not make a recommendation as to A.A.'s placement as it did not have sufficient information. CP 299-300.

As stated in *D.F.-M.*, it is the court's job to evaluate a parent's ability to care for his child and the court is the ultimate decision-maker on child safety issues. Here, the dependency court was aware that Mrs. Wrigley had obtained a protective order against Mr. Viles, that Mr. Viles did not have a pre-existing relationship with A.A., that Mr. and Mrs. Wrigley had concerns for A.A.'s safety in Mr. Viles's home, and that both A.A.'s counselor and the CASA were recommending a slower transition. The Department's attorney clearly conveyed to the dependency court that under *D.F.-M.* the

Department did not have the *legal authority* to thoroughly investigate Mr. Viles's home, and as such was "unable to ensure the safety of [A.A.]" CP 300. The dependency court did not request further information or authorize the Department to further assess Mr. Viles's home. Instead, the dependency court specifically stated it was not worried about the father, and found that placement with Mr. Viles was in A.A.'s best interest. CP 207, 307.

The Department investigated Mr. Viles's home subject to and limited by its authority under *D.F.-M*. It presented the dependency court with the information it had as well as the limitations on its authority to gather that information. The burden and authority to request any additional information that might have been necessary was on the dependency court. They should not be imputed to the Department under RCW 26.44.050.

## V. CONCLUSION

The Court of Appeals errs by holding that RCW 26.44.050 requires investigation of allegations of possible future abuse and neglect. The opinion extends the duty beyond the clear limits established by the plain language of the statute. The Department respectfully requests that this Court reverse the Court of Appeals' opinion as regards the construction of RCW 26.44.050, reinstate the order dismissing the Wrigleys' cause of action pursuant to that statute, and remand to the superior court for further proceedings.

RESPECTFULLY SUBMITTED this 30th day of July, 2019.

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# APPENDIX A

## **Practices and Procedures of the Department of Children, Youth and Families:**

Appendix A: Definitions

Policy 2200 (Intake Process and Response)

Policy 2331 (Child Protective Services (CPS) Investigation)

Policy 2541 (Structured Decision Making Risk Assessment®(SDMRA))

[Safety](#)[Services](#)[Our Practice](#)[Tribal Relations](#)[About](#)[PRACTICES AND PROCEDURES](#) [APPENDIX A: DEFINITIONS](#)

# Appendix A: Definitions

The following definitions apply for purposes of the *CA Practices and Procedures Guide*.

**“ADMINISTRATIVE INCIDENTS”** are serious and emergent incidents involving CA clients, staff and providers.

**“ADOPTION SUPPORT AGREEMENT”** means a written contract between the adoptive parent(s) and the department that identifies the specific support available to the adoptive parent(s) and other terms and conditions of the agreement.

**“AFTERCARE SERVICES”** means the provision of less intensive, ongoing services to youth and their families following the youth’s discharge from residential care or in-home services.

**“AGE OR DEVELOPMENTALLY-APPROPRIATE”** means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

**“AT-RISK YOUTH”** means a juvenile who:

1. Is absent from home for at least 72 consecutive hours without consent of his or her parent.
2. Is beyond the control of his or her parent such that the child's behavior endangers the health,

safety, or welfare of the child or any other person.

3. Has a substance abuse problem for which there are no pending criminal charges related to the substance abuse.

RCW 13.32A.030

**"BEHAVIORAL REHABILITATION SERVICES"**: See "After-Care Services," "Continuum of Care," "Group Care," "In-Home Services," "Residential Care," "Staffed Treatment Foster Care," and "Treatment Foster Care."

**"BORROWED FOSTER HOME"** means the placement and supervision by an agency of child(ren) in a foster family home licensed or certified by another agency, with the permission of that agency.

**"Caregiver"** means an adult living in the home permanently or semi-permanently and has routine responsibility for childcare. This may be the other legally responsible adult, another adult relative or a live-in partner. It may also be any other adult with regular ongoing time in the home and has routine responsibility for childcare.

**"CASE PLAN"** means a written statement by the social worker of the anticipated activities, including service agreements, which are planned in the conduct of the case.

**"CERTIFICATION FOR ADOPTION"** means a person or persons constituting a household have submitted an application for adoption to the department or a child placing agency, have had a satisfactory home study completed, and have been determined suitable as adoptive parent or parents.

**"CHILD," "JUVENILE,"** and **"YOUTH"** mean any unemancipated individual who is under the chronological age of 18 years. RCW 13.32A.030

## **"CHILD ABUSE AND NEGLECT"**

CPS WAC Definitions of CA/N

Child abuse or neglect means the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child under circumstances which indicate that the child's health, welfare, and safety is harmed. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

1. Physical abuse means the non-accidental infliction of physical injury or physical mistreatment on a child. Physical abuse includes, but is not limited to, such actions as:

- a. Throwing, kicking, burning, or cutting a child;
  - b. Striking a child with a closed fist;
  - c. Shaking a child under age three;
  - d. Interfering with a child's breathing;
  - e. Threatening a child with a deadly weapon;
  - f. Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks or which is injurious to the child's health, welfare and safety.
2. Physical discipline of a child, including the reasonable use of corporal punishment, is not considered abuse when it is reasonable and moderate and is inflicted by a parent or guardian for the purposes of restraining or correcting the child.
  - a. The age, size, and condition of the child, and the location of any inflicted injury shall be considered in determining whether the bodily harm is reasonable or moderate.
  - b. Other factors may include the developmental level of the child and the nature of the child's misconduct.
  - c. A parent's belief that it is necessary to punish a child does not justify or permit the use of excessive, immoderate or unreasonable force against the child.
3. Sexual abuse means committing or allowing to be committed any sexual offense against a child as defined in the criminal code.
  - a. The intentional touching, either directly or through the clothing, of the sexual or other intimate parts of a child or allowing, permitting, compelling, encouraging, aiding, or otherwise causing a child to engage in touching the sexual or other intimate parts of another for the purpose of gratifying the sexual desire of the person touching the child, the child, or a third party.
  - b. A parent or guardian of a child, a person authorized by the parent or guardian to provide childcare for the child, or a person providing medically recognized services for the child, may touch a child in the sexual or other intimate parts for the purposes of providing hygiene, child care, and medical treatment or diagnosis.
4. Sexual exploitation includes, but is not limited to, sex trafficking and commercial exploitation as those terms are defined by law. Sexual exploitation also includes, but is not limited to, such actions as allowing, compelling, encouraging, aiding, or otherwise causing a child to participate in one or more of the following:
  - a. Any sex act when anything of value is given to or received by any person for the sex act;
  - b. Sexually explicit, obscene or pornographic activity to be photographed, filmed, or electronically reproduced or transmitted;

- c. Sexually explicit, obscene or pornographic activity as part of a live performance, or for the benefit or sexual gratification of another person.
5. Negligent treatment or maltreatment means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, on the part of a child's parent, legal custodian, guardian, or caregiver that shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety.
  - a. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor must be given great weight.
  - b. The fact that the siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment.
  - c. Poverty, homelessness, or exposure to domestic violence perpetrated against someone other than the child does not, in and of itself, constitute negligent treatment or maltreatment.
  - d. A child does not have to suffer actual damage or physical or emotional harm to be in circumstances that create a clear and present danger to the child's health, welfare, or safety.
  - e. Negligent treatment or maltreatment may include, but is not limited to one or more of the following:
    - i. Failure to provide adequate food, shelter, clothing, supervision, or health care necessary for a child's health, welfare, or safety, such that the failure shows a serious disregard of the consequence to the child and creates a clear and present danger to the child's health, welfare, or safety;
    - ii. Actions, failures to act, or omissions that result in injury or risk of injury to the physical, emotional, and/or cognitive development of a child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety;
    - iii. The cumulative effects of a pattern of conduct, behavior, or inaction by a parent or guardian in providing for the physical, emotional or developmental needs of the child, such that it shows a serious disregard of the consequences to the child and creates a clear and present danger to the child's health, welfare, or safety;
    - iv. The effects of chronic failure on the part of a parent or guardian to perform basic parental functions, obligations, or duties that causes injury or substantial risk of injury to the physical, emotional, or cognitive development of the child, such that it shows a serious disregard of the consequences to the child and creates a clear and present

danger to the child's health, welfare, or safety.

6. A Parent or guardian abandons a child when the parent or guardian is responsible for the care, education, or support of a child and:
  - a. Deserts the child in any manner whatever with the intent to abandon the child;
  - b. Leaves a child without the means or ability to obtain one or more of the basic necessities of life such as food, water, shelter, clothing, hygiene, and medically necessary health care;  
or
  - c. Forgoes for an extended period of time parental rights, functions, duties and obligations despite an ability to exercise such rights, duties, and obligations.
7. Abandonment of a child by a parent may be established by conduct on the part of a parent or guardian that demonstrates a substantial lack of regard for the rights, duties, and obligations of the parent or guardian or for the health, welfare, and safety of the child. Criminal activity or incarceration of a parent or guardian does not constitute abandonment in and of themselves, but a pattern of criminal activity or repeated or long term incarceration may constitute abandonment of a child.

**"CHILD ACTION PLAN"** means the services and tasks that are provided to the child and placement provider as necessary to support the placement and meet the needs of the child while in out-of-home care. The Child Action Plan includes objectives and tasks pertaining to the following:

- Educational needs
- Medical needs
- Social needs
- Psychological needs
- Cultural needs
- Independent living needs

**"CHILD AND FAMILY TEAM (CFT)"** means a group of people established by the family and WISE agency that consists of family members and other people connected to them through natural, community, and formal support relationships. The CFT develops and implements the family's plan, addresses unmet needs, works toward the child, youth or family's vision and team mission, and monitors progress regularly to revise and refine the plan of care.

**"CHILD IN NEED OF SERVICES (CHINS)"** means a juvenile who:

1. Is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or other person.

2. Has been reported to law enforcement as absent without consent for at least 24 consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions and has exhibited:
  - a. A serious substance abuse problem or
  - b. Behaviors that create a serious risk of harm to the health, safety, and welfare of the child or any other person.
3. Is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family, and
  - a. Who lacks access, or has declined, to utilize these services.
  - b. Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure

**"CHILD IN NEED OF SERVICES (CHINS) PETITION"** means a petition filed in juvenile court by a parent, child, or the department seeking adjudication of placement of the child. RCW 13.32A.030

**"CHILD PLACING AGENCY"** means an agency which places a child or children for temporary care, continued care, or for adoption.

**"CLIENT"** means, for the purposes of defining a child client is a child (or youth up to age 21) in the care, custody, and/or supervision of the Children's Administration and/or the Department of Social and Health Services as it relates to services CA provides.

**"COMMERCIALY SEXUALLY EXPLOITED CHILD "** (see also SEX TRAFFICKING VICTIM) means a child who has not attained 18 years of age who is induced to perform any sex act on account of which anything of value is given to or received by any person.

**"COMMUNITY NETWORK"** means working relationships between DCFS, cultural consultants, key informants (lay/professional person), natural helpers (extended families, folk healers), and other agencies to develop cultural responsiveness.

**"COMPELLING REASON"** means, for purposes of the Adoption and Safe Families Act and RCW, a factor in case planning that presents an unusual circumstance that makes necessary a decision which would not normally be made for a child or family. "Compelling Reason" includes, but is not necessary limited to:

1. Circumstances in which a child:
  - a. Is over age 14 and is opposed, following a discussion with the caseworker of the alternatives, to adoption as a permanent plan;

- b. Has significant ties to the child's family which are positive and expected to be on-going and would be disrupted by termination of parental rights;
  - c. Is in placement for reasons other than abuse, neglect, abandonment, or no parent able or willing to care for the child (e, g., children in care due to the risk they pose to others, due to behavioral management issues, etc.);
  - d. Does not have a permanent placement resource identified and for whom there is significant risk that an adoptive resource will not be found; or
  - e. Has other unique situations described in the court report by the caseworker that constitute compelling reasons not to file a petition to terminate parental rights.
2. The supervising agency is required to recruit, identify, and process a permanency placement resource for a child when a permanent plan other than reunification is identified for the child. In unusual circumstances, it may be appropriate to leave a child in a temporary placement setting until the court decision-making process is completed or in order to meet the treatment needs of the child.
3. The court or CA has determined that:
  - a. A birth parent is considering relinquishment within a reasonable time to free the child for adoption.
  - b. A non-offending parent is pursuing an alternate permanent plan.
  - c. A professional assessment of the child has determined the child is unable to remain within a family setting.
4. The parent is incarcerated and:
  - a. The incarceration is the only reason for filing the TPR; and
  - b. The court has determined the parent maintains a meaningful role in the child's life.
5. The child's Tribe is opposed to adoption and has identified another acceptable permanency plan for the child per RCW 13.38.150.

**"COMPLIANCE AGREEMENT"** means a written plan approved by DSHS which identifies deficiencies in Contractor's performance, describes the steps a contractor must take to correct the deficiencies, and sets forth timeframes the contractor must meet in order to return to compliance within the terms of the contract.

**"CONTINUOUS IMPROVEMENT"** is the complete process of identifying, describing and analyzing strengths and problems and then testing, implementing, learning from and revising solutions; the ongoing process by which the agency makes decisions and evaluates its progress.

**"CONTINUUM OF CARE"** means provision of care from in-home services to highly structured

residential care and the ability to provide appropriate services to the child/family.

**"CONTRACT"** is a legally binding written agreement between DSHS and another public or private entity for the provision of goods or services. Terms such as Memorandum of Understanding (MOU) or Service Level Agreement (SLA) may also be used to refer to contracts falling within the scope of the Contracts policy.

**"CONTRACT FORMAT"** means an electronic or hard copy contract template developed or approved by Central Contracts Legal Service. A contract format includes but is not limited to: data elements, general terms and conditions, and special terms and conditions. All approved contract formats are available in the Agency Contract Database for use by authorized staff.

**"CONTRACT RESOURCES"** means the Regional and Statewide Contract Directories on the Intranet/Internet, as well as the Regional Contract/Program Managers.

**"CONTRACTED AND/OR LICENSED PROVIDER"**:The individuals or entity performing services pursuant to contracting with Children's Administration.

**"CRITICAL INCIDENT"** is an event that requires an immediate and thorough response, notification, information gathering and communication. All critical incidents are reported through the Administrative Incident Reporting System (AIRS) and in some high profile situations may require an initial phone call alert to headquarters staff. Critical incidents include:

- Fatality or near fatality of a child with an open case.
- Fatality or near fatality of a child which services were provided to the family within 12 months preceding the child's death or near fatality, including information only referrals.
- High profile event receiving media coverage and involves an individual or family for whom we have provided services.

**"CULTURAL COMPETENCE"** means a set of behaviors and attitudes that enables individuals working with a child or family to learn about or recognize the cultural context of a situation and to integrate that knowledge into an action.

**"CULTURAL CONSULTANTS"** means culturally competent individuals recognized by the department and/or client as a resource to help assess and/or resolve problems relating to cultural issues.

**"CULTURAL DIVERSITY"** means the distinguishable differences in life styles, values, traditions, religions, etc.

**"CULTURALLY RESPONSIVE "** means a pattern of behaviors that incorporates and acknowledges the importance of cultures (competence), the assessment of cross-culture relations (literate), vigilance towards the dynamics that result from cultural difference (effective), the expansion of cultural knowledge and the adaptation of services to meet culturally unique needs (relevant).

**"CULTURE"** means the integrated pattern of human behavior including thought, communication, actions, customs, beliefs, values, institutions, of a racial, ethnic, religious or social group.

**"CUSTODIAN"** means the person or entity who has the legal right to the custody of the child. RCW 13.32A.030

**"DESK REVIEW"** means a monitoring activity comprised of reviewing information including but not limited to the contractor's payment and billing system, and reports to verify contract compliance.

**"DEVELOPMENTAL STAGES "** means:

1. Adolescent - a child age 12 but less than 18 years.
2. Child - a born person less than 18 years.
3. Fetus - the unborn child.
4. Infant - a child from birth until one year of age.
5. Toddler - a child age one but less than six years.

**"DLR COMPREHENSIVE REVIEW"**: The Comprehensive Review is a thorough review of the BRS contractor or other contracted and/or licensed provider's ability to meet licensing, contracts, and programming requirements. It includes an onsite review, completion of approved forms and tools, and a final report.

**"DOCUMENTED MEDICAL CONDITION"** is any physical or mental health condition documented by a licensed health care provider that may be temporary or permanent, including but not limited to, a physical injury or a physical or behavioral health condition.

A "documented medical condition" may include physiological, mental, or psychological conditions or disorders, including but not limited to, orthopedic, visual, speech, and hearing impairments.

**"ETHNIC"** means a group designated by customs, characteristics, language, common history and/or racial affiliation.

**"ETHNOGRAPHIC INTERVIEWING"** means communication with a member of another culture to identify the:

1. Key cultural differences.
2. Meaning of those cultural practices and norms.

**"EXTENDED FAMILY MEMBER"** means an adult who is a grandparent, brother, sister, stepbrother, stepsister, uncle, aunt, or first cousin with whom the child has a relationship and is comfortable and who is willing and available to care for the child. RCW 13.32A.030

**"EXTENUATING CIRCUMSTANCES"** (in relation to adoption support) means a finding by an administrative law judge or a review judge that one or more certain qualifying conditions or events prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

**"FAMILY PRESERVATION SERVICES"** means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

1. Respite care of children to provide temporary relief for parents and other care givers.
2. Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition.
3. Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

RCW 74.14C.010

**"FOSTER CARE"** means placement of a child by the department or a licensed child placing agency in a home or facility licensed pursuant to chapter 74.15 RCW or in a home or facility that is not required to be licensed pursuant to chapter 74.15 RCW.

**"FOSTER FAMILY CARE"** means care and supervision provided on a 24-hour basis for up to six children in the licensed family abode of the person or persons under whose direct care and supervision the child is placed.

**"GROUP CARE"** means the provision of a safe, healthful environment for youth in a 24-hour licensed facility for more than six children, which provides the basic needs of food, shelter, and the provision of therapeutic services required for the successful reunification of youth with their family resource.

**"GUARDIAN"** means that person or agency that (a) has been appointed as the guardian of a child in

a legal proceeding other than a proceeding under chapter 13.34 RCW, and (b) has the right to legal custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under Chapter 13.34 RCW. RCW 13.32A.030; 13.34.030

**"HEALTH & EDUCATION RECORD"** means the entire array of data entry screens in the electronic data system, including the provider, education, behavior, counseling, and daily routine information entered by CA staff.

**"IMMINENT RISK"** means, for Intensive Family Preservation Services, when a decision has been made by the department that without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapters 13.13A or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated. 74.14C.010 RCW

**"IMMINENT RISK OF SERIOUS HARM"** (Used in Risk Only Intakes and coordination with law enforcement)

Imminent - Having the potential to occur at any moment, or there is substantial likelihood that harm will be experienced.

Risk of Serious Harm - A high likelihood of a child being abused or experiencing negligent treatment or maltreatment that could result in one or more of the following outcomes:

- Death
- Life endangering illness
- Injury requiring medical attention
- Substantial risk of injury to the physical, emotional, or cognitive development

**"IMPENDING DANGER"** means parenting behavior that is harmful and destructive to a child's cognitive, social, emotional or physical development that is likely to occur in the immediate or near future that could result in one of more of the following outcomes:

- Death
- Life endangering illness
- Injury requiring medical attention
- Serious or severe harm

**"INDIAN CHILD"** means any unmarried and unemancipated person who is under age eighteen and is either (a) a member or citizen of an Indian tribe or (b) is eligible for membership or citizenship in an

Indian tribe and is the biological child of a member/citizen of an Indian tribe. 25 U.S.C. § 1903 (4); 25 C.F.R. § 23.2. A child who meets this definition is subject to the Indian Child Welfare Act.

**“INFORMED CONSENT”** means the process by which the treating health care provider discloses appropriate information to a competent patient or their caregiver so that a decision can be made to accept or refuse treatment; including medications. It originates from the legal and ethical right the patient has to direct what happens to their body and from the ethical duty of the physician to involve the patient in their health care.

**“IN-HOME SERVICES”** means services provided in the child’s home in lieu of out-of-home placement equivalent to the level of service intensity required to maintain the child in residential care.

**"IN LOCO PARENTIS"** A person who acts in the position of a parent of a child and who has assumed on an on-going basis a parent’s rights, duties and responsibilities towards the child. A person living in the home and participating in the day-to-day parenting decisions in one or more of the following:

- Financial
- Supervision
- Decisions on where the child sleeps within the home
- Discipline
- Attending medical appointments
- Attending school conferences

**"INQUIRY ONLY CALLS "** occur when someone contacts Children's Administration for the sole purpose of obtaining information and not for purposes of alleging CA/N or requesting services specific to CA.

**"INTENSIVE FAMILY PRESERVATION SERVICES "** means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement. RCW 74.14C.010

**LEGALLY FREE** -A child is legally free for adoption if the child has no legal parent, either because the parent has died or because parental rights have been terminated (through relinquishment or involuntary termination) by a court order.

**"LIMITED ENGLISH PROFICIENCY"** means persons are limited in their ability to read, write or speak English or have a limited ability to speak or read English well enough to understand and communicate effectively.

**"MEDICAL HISTORY"** means health information on the child contained in the child's case record, as required by the *CA Practices and Procedures Guide*, chapter 4000, section 43092, Health and Education Record.

**"MEDICAL NECESSITY FOR INPATIENT MENTAL HEALTH CARE"** means a requested service which is reasonably calculated to: (a) diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available. RCW 71.34.020

**"MISSING CHILD"** means any child under the care and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship

**"MONITORING"** includes any activity that reviews and evaluates contractor performance and compliance with the terms, conditions, and requirements of a contract.

**"MONITORING PLAN"** means a written proposal for monitoring contractor(s) compliance with the contract requirements and obligations. The plan is based on the assessment of risk to the department and its clients as well as the performance of services by the contractor.

**"NEAR FATALITY"** means an act that, as certified by a physician, places the child in serious or critical condition. RCW 74.13.500

**"NEAR VERBATIM"** means in exactly the same words as were used originally.

**"NEWBORN"** or **"NEONATE"** means a child up to age 1 month (4 weeks old).

**"ON-SITE REVIEW"** is a contract monitoring activity that reviews and evaluates contractor performance and compliance with the terms, conditions, and requirements of a contract at the contractor's place of business.

**"ORIGINAL PLACEMENT DATE"** or **"ORIGINAL FOSTER CARE PLACEMENT"**, for the purposes of the Social Security Act and federal regulations, means the date of the child's most recent removal from the child's home and placement into foster care under the care and responsibility of the state agency. 45 CFR 1356.21(k)

This definition applies both to children placed in foster care under a voluntary agreement and to those children under the state's responsibility through court order. Therefore, the original date of placement,

for purposes of Title IV-E and section 422 of Title IV-B, would be when the child is in foster care and the state has been given responsibility for care either through a voluntary placement agreement or a court adjudication. PIQ 83-06

**"OUT-OF-HOME PLACEMENT or CARE"** means a placement in a foster family home or group care facility or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed under 74.15 RCW. RCW 74.14C.010

**"PARENT"** means a biological parent or adoptive parent of a child or an individual who have an established parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated or paternity has been disestablished.

**"PARENTING STATUS "** means:

1. **Custodian** - a person appointed by the parent, guardian, or court to provide care for a child.
2. **Guardian** - a person appointed by the court to provide care or to supervise a child.
3. **Parent** - is the prime person responsible for the care of a child and may include:
  - a. **Adoptive parent** - a person the courts grant parental status, rights, and privileges for a child.
  - b. **Birth or natural parents** - the persons, male and female, who conceived and gave birth to the child.
  - c. **Custodial parent** - the parent with whom the child resides:
  - d. **Legal** - a current court order designating a parent's right to the child's custody that may include:
    - i. Joint custody.
    - ii. Parenting plans.
    - iii. Shared custody.
    - iv. Sole custody to one parent.
  - e. **Physical** - the parent(s) with whom the child resides or is found.
4. **Stepparent** - a person, not the child's parent, who is currently married to the child's parent.
5. **Caretaker** - a person who has actual physical supervision responsibility for a child and may include any of the above parenting statuses or a person appointed to provide physical custody.

**"PERIOD OF PURPLE CRYING"** is a phrase used to describe the time in a baby's life when they cry more than any other time:

1. The word "PURPLE" is an acronym that describes the characteristics of infant crying:
  - a. Peak of Crying - Crying peaks during the second month, decreasing after that

- b. Unexpected - Crying comes and goes unexpectedly, for no apparent reason
  - c. Resists Soothing - Crying may continue despite all soothing efforts by caregivers
    - i. Encouragement of soothing has been shown to help in up to 50% of cases
  - d. Pain-like Face - Infants look like they are in pain, even when they are not
  - e. Long Lasting - Crying can go on for 30-40 minutes at a time, and often for much longer up to 5 hours in some cases
  - f. Evening Crying - Crying occurs more in the late afternoon and evening
2. The word "Period" informs caregivers that the crying is a temporary event.

**"PLACEMENT DECISION"** means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of the agency or entity involved to seek the termination of birth parent rights or otherwise make a child legally available for adoptive placement. 42 USC 5115a

**"PRESENT DANGER"** means immediate, significant, and clearly observable severe harm or threat of severe harm occurring in the present.

**"PRESERVATION SERVICES"** means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs. RCW 74.14C.010

**"PREVENTIVE SERVICES"** means preservation services, as defined in 74.14C RCW, and other reasonably available services capable of preventing the need for out-of-home placement while protecting the child. RCW 13.34.030

**"PRN"** stands for *pro re nata* and means "As needed."

**"PROBATIONARY LICENSE"** means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards. RCW 74.15.020

**"PROTECTIVE ACTION"** means an immediate short term response to control present danger observed at first contact with a family. Or at any time present danger is identified to manage the immediate threats to a child.

**"PSYCHOTROPIC MEDICATION"** means medication, the prescribed intent of which is to affect or alter thought processes, mood, sleep, or behavior, including, but not limited to, anti-psychotic, antidepressant, and anxiolytic medications. The classification of a medication depends on its stated, intended effect when prescribed because it may have many different effects. Examples of some such

medications are:

- Amitriptyline/Elavil
- Desipramine/Norpramine
- Amoxapine/Asendin
- Imipramine/Tofranil
- Trimipramine/Surmontil
- Fluoxetine/Prozac
- Sertraline/Zoloft
- Phenelzine/Nardil
- Isocarboxazid/Marplan
- Burpropion/Wellbutrin
- Carbamazepine/Tegretol
- Lithium/Eskalith or Lithobid
- Chlordiazepoxide/Librium
- Diazepam/Valium
- Lorazepam/Ativan
- Propranolol/Inderal
- Chlorpromazine/Thorazine
- Haloperidol/Haldol
- Trifluoperazine/Stelazine
- Thioridazine/Mellaril
- Methylphenidate/Ritalin
- Pemoline/Cylert
- Amphetamine Sulfate/Amphetamine

**"QUALITY ASSURANCE"** measures compliance against standards and informs continuous quality improvement.

**REASONABLE AND PRUDENT PARENTING STANDARD** means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver or designated official for a child care institution shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities. (See [Caregiver Guidelines For Foster Childhood Activities](#)).

The term 'age or developmentally-appropriate' means:

1. Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and
2. In the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

**"RELATIVE"** From 74.15.010 (2) (a) (i-vi): Persons related to the child, expectant mother, or person with developmental disability in the following ways:

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

**"RESIDENTIAL CARE"** is a generic term for group care, residential treatment, and treatment foster care.

**"RESIDENTIAL TREATMENT SERVICES"**: See "After-Care Services," "Continuum of Care," "Group Care," "In-Home Services," "Residential Care," "Staffed Treatment Foster Care," and "Treatment Foster Care."

**"RUNAWAY"** is a juvenile who leaves and remains away from home without parental permission. (This definition is taken from "The Runaway and Homeless Youth Act".) **"SAFE"** child means children are considered safe when there is no present danger or impending danger threats or the caregiver's protective capacities control all known safety threats.

**"SAFE HAVEN (Safety of Newborn Children Act)"** Allows a parent to transfer (abandon) a newborn anonymously and without criminal liability at a hospital emergency room, fire station or federally designated rural health clinic if open and personnel are present to accept the child.

**"SAFETY THRESHOLD"** means the criteria that must be met in the family's situation to determine that a vulnerable child is unsafe. Criteria include threats to safety that 1) are observable and specific, 2) immediate or near future, 3) out of control, 4) have the potential for severe impacts, there is a vulnerable child 5) there is a vulnerable child.

**"SECURE FACILITY"** means a crisis residential center, or portion thereof, that has locking doors, locking windows, or a secured perimeter, designed and operated to prevent a child from leaving without permission of the facility staff. RCW 13.32A.030

**"SERIOUS INJURY"** of a child client is an injury requiring professional and medical treatment (beyond first aid).

**"SERVICE AGREEMENT"** means a formal written description of services to be provided or performed. Agreements are developed by the social worker with the parent and/or the court and any child over age 13 who is to receive or participate in services.

**"SEX TRAFFICKING"** means the recruitment, harboring, transportation, provision, or obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.

**"SEX TRAFFICKING VICTIM"** (Commercially Sexually Exploited Child) means any child or youth over whom the State/Tribal agency has responsibility for placement, care, or supervision and who the agency has reasonable cause to believe is, or is at risk or being, a sex trafficking victim (including children for whom an agency has an open case file but who have not been removed from the home, children who have run away from foster care and who have not attained 18 years of age or such older age as the State has elected under section 475(8) of this the Act, and youth who are not in foster care but are receiving services under this section.

**"SEXUALLY EXPLOITED YOUTH"** means any person under the age of eighteen who is a victim of one of the following crimes:

- Commercial sexual abuse of a minor (RCW 9.68A.100),
- Promoting commercial sexual abuse of a minor (RCW 9.68A.101) or
- Promoting travel for commercial sexual abuse of a minor (RCW 9.68A.102)

**“SPECIAL NEEDS”** means the specific factors or conditions that apply to the child and that may prevent the child from being adopted unless the department provides adoption support services.

**“STAFFED TREATMENT FOSTER CARE”** means a licensed treatment foster care where the foster parents are professional staff who are hired to provide 24-hour supervision to six or less children residing in a foster home-like setting.

**“SUBSTANCE-AFFECTED NEWBORN”** means a newborn child who has withdrawal symptoms resulting from prenatal substance exposure and/or demonstrates physical or behavioral signs that can be attributed to prenatal exposure to substances.

**“SUBSTANCE-EXPOSED NEWBORN”** means a newborn child who tests positive for substance(s) at birth, or the mother tests positive for substance(s) at the time of delivery or the newborn is identified by a medical practitioner as having been prenatally exposed to substance(s).

**“TEMPORARY OUT-OF-HOME PLACEMENT”** means an out-of-home placement of not more than 14 days ordered by a court at a fact-finding hearing on a child in need of services (CHINS) petition.  
RCW 13.32A.030

**“TREATMENT FOSTER CARE”** means a program designed for children, youth, and their families whose special needs are provided through services delivered primarily by treatment foster parents trained, supervised, and supported by agency staff. In addition to the provision of a safe, healthful environment, foster parents are expected to be members of the treatment team and to perform tasks which are central to the treatment process in a manner consistent with the child’s treatment plan.

**“UNEXPECTED DEATH OF A MINOR”** means a death not resulting from a diagnosed terminal illness or other debilitating or deteriorating illness or condition where death is anticipated.

**“UNFOUNDED”** means available information indicates that, more likely than not, child abuse or neglect did not occur. Chapter 26.44.020

**“UNSAFE”** child means children are considered unsafe when they are vulnerable to present or impending danger and caregiver(s) is unable or unwilling to provide protection.

**“WRAPAROUND WITH INTENSIVE SERVICES (WISe)”** means intensive mental health services and supports, provided in home and community settings, for Medicaid eligible individuals, up to 21 years of age, with complex behavioral health needs and their families. These services are provided by community mental health agencies.



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# 2200. Intake Process and Response

**Original Date:** 1972

**Revised Date:** July 1, 2019

**Sunset Review Date:** July 31, 2023

**Approved by:** Ross Hunter, Secretary

## Purpose

The Department of Children, Youth, and Families (DCYF) 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 child welfare intake employees.

# Laws

Chapter 74.13 RCW Child Welfare Services

Chapter 74.15 RCW Care of Children, Expectant Mothers, Persons with Developmental Disabilities

RCW 9A.16.100 Use of Force

RCW 13.34.030 Juvenile Court Act – Definitions

RCW 13.34.360 Transfer of Newborn to Qualified Person – Criminal Liability – Notification to Child Protective Services – Definitions

RCW 26.44.020 Abuse of Children – Definitions

RCW 26.44.030 Abuse of Children – Reports

RCW 46.61.687 Child Passenger Restraint

# 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 and requests for services specific to DCYF 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 them 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 DCYF, or in other state-regulated care.
- ii. Allegations of CA/N or Imminent Risk of Serious Harm

Utilize the FamLink intake, Chronicity Indicator, Structured Decision Making (SDM) Intake, and Intake Practice Guides located on the DCYF intranet to determine assignment to CPS Investigation, CPS Family Assessment Response (FAR), or for Licensing Division (LD) formerly Division of Licensed Resources CPS.

A. Screen in for:

I. CPS or LD 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 under the age of four for DCYF.
- 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 12 months regardless of the explanation about how the injury or bruise occurred.

II. CPS or LD CPS Investigation when a report is received from a commissioned law enforcement (LE) officer stating a parent has been arrested for Criminal Mistreatment in the fourth degree per [chapter 9A.42 RCW](#)

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. For behaviors that may be considered common for childhood development, see [Sexual Development and Behavior](#) in Children.
- ii. There is an open dependency case involving the child victim or other member of the household.
- iii. A dependency action, closed within the previous 12 months, involving the child victim or a household member who may be a

parent, guardian, caregiver of the child, or other adult who resides in the home.

- iv. An alleged victim or subject is named in three or more intakes screened in for investigation or FAR in the past 12 months.

IV. CPS FAR when it is indicated on the SDM Screening Tool.

V. LD CPS Investigation when there is an allegation of CA/N in a facility subject to licensing by LD or DCYF or the facility is state regulated.

Follow the intake requirements in the DLR CPS 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 law enforcement (LE) about a sexually aggressive youth under age eight.
- 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 through 20 residing in a state-regulated or licensed facility or facility subject to licensing.
- IV. Involving CA/N allegations against an individual age 18 through 24 who reside in a juvenile rehabilitation (JR) facility.
- V. Of a child at imminent risk of serious harm on an open DCYF case.
- VI. 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 [chapter 18.71 RCW](#) 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, per [RCW 26.44.030\(8\)](#)

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 allegations 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.
- E. Inform the referrer that, if they choose to remain anonymous and the allegation is assessed at a lower risk, the intake, with the exception of LD CPS, will screen out and will not be assigned for CPS or FAR investigation.
- F. 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.
- G. 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 Risk Only when there is no CA/N allegation but the newborn is one of the following:
    - i. Substance affected, as identified by a medical practitioner.
    - ii. Substance exposed and risk factors indicate imminent risk of serious harm.
  - II. CPS Investigation or FAR or LD CPS Investigation when there is a CA/N allegation.
- 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 LD 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 LE 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 or DCYF caseworker, HOPE Center, Crisis Residential Center (CRC), or Overnight Youth Shelter (OYS) staff when at least one family member requests immediate assistance from DCYF 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 OYS 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, per [RCW 13.34.360](#).
- VI. Extended Foster Care (EFC) for youth 18 through 21 years old requesting services and who were dependent on their 18th birthday. This includes dependent youth in the custody of JR, DOC, county detention, or jail and who otherwise meet the eligibility criteria. The intake is assigned to the local office in the nearest area where the youth currently resides.

- VII. Non-CPS rule infraction on reports regarding LD or DCYF licensed home or facility that do not contain allegations of CA/N.
  - VIII. Non-CPS rule infraction on reports regarding an illegally operating child care or foster home that does not contain allegations of CA/N.
  - IX. Title IV-E and non-Title IV-E Tribal Placement or 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 foster care licensing supervisor.
- v. Indian Child Welfare (ICW)
- A. Make efforts to determine if a child is affiliated with a federally recognized Tribe. Refer to the [Intake Referral and After-Hours Field Response Coordination with Washington state Federally Recognized Tribes](#) and Tribal Agreements located on the ICW page on the DCYF 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 [ICW Manual Chapter 1](#).
- 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, per the [Present Danger](#) policy.
  - B. Follow [Mandated Reports to Law Enforcement](#) policy.
- vii. Domestic Violence (DV)
- A. Screen in 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](#) and the [DSHS DV site](#).
- viii. Contracted Provider
- A. Screen out CPS intakes regarding a contracted provider not acting as:

- I. Parent,
- II. Guardian, or
- III. Loco-Parentis

That does not have a DCYF license as third party and send the report to LE if an alleged crime has been committed.

- B. Complete the DCYF survey monkey complaint tool, not an intake, when receiving non-CPS complaints regarding contracted providers that do not have a DCYF license.
- C. Inform the DCYF headquarters contracts monitoring 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 DCYF, 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 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, such as 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 or 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 DCYF will make all legal and reasonable efforts to maintain their confidentiality.
- B. Inform the referrer their name may be disclosed for:
  - I. Court proceedings.
  - II. Dependency or criminal court proceedings.
  - III. Criminal Investigations by LE including malicious or false 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**.
- 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 CA/N. 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 they are 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 DCYF 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 their supervisor of any child MFC. Refer to Intake Practice Guide on the DCYF intranet for notification details.
  - II. Document the notification in a case note.
- J. Follow the **Photograph Documentation** policy when a photograph is received.

- K. Follow the **Audio Recording** policy when an audio recording is received.
  - L. Respond to **inquiry only** 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 DCYF, and do not require screening.
- d. Create and document the intake in FamLink on the date and time DCYF receives the information. Complete the intake according to the following timeframes and intake pathways:
- i. Four hours:
    - A. Emergent CPS, CFWS, CPS Risk Only, or LD CPS
    - B. CFWS emergent placement and Safe Haven
    - C. FRS
  - ii. Four business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays)
    - A. Non-Emergent Investigation
    - B. FAR
    - C. Non-Emergent LD CPS
  - iii. Two business days (8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays)
    - A. Information Only
    - B. Third Party
    - C. CFWS
    - D. Rule Infraction
    - E. ICPC Home Study, per **ICPC Placed in Washington state** 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 or case records during the process of documenting an intake and notify - the area administrator when it is learned:
    - i. The subject, victim, or client is an employee or family member of DCYF.
    - 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 \(17\)](#)
    - 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 their 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 DCYF Intranet.

## Forms

- Intake Report DCYF 14-260

## Resources

- Intake Guide
- LD Child Abuse and Neglect Practice Guide
- DLR CPS Handbook – Investigating Abuse and Neglect in State-Regulated Care
- [Mandated Reporter Toolkit](#)
- Screening and Assessment Response Policy and Procedures
- [Sexual Development and Behavior in Children](#)

[◀ 1740. Child Protection Teams \(CPT\)](#)

Up

[2310. Child Protective Services \(CPS\) Initial Face-To-Face \(IFF\) Response ▶](#)



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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** Reports, Duty and authority to make

**RCW 26.44.100** Information about rights, Notification of investigation, report, and findings

**RCW 26.44.185** Investigation of child sexual abuse, Revision and expansion of protocols

**RCW 74.13.031** Duties of department, Child welfare services

**RCW 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**.
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**.
    - 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**, review all **safety plans** 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)** 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)** 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** 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** 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**. 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** policy and see Reasonable Efforts to locate Children or Parents on the CA intranet.
  - vi. During the investigative interview, follow the **2350. Audio Recording** policy for child physical or sexual abuse interviews.
  - vii. Follow the **6500. Photograph Documentation** 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** 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** 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**.

- 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** 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 (SDRMA)** within 60 calendar days from the date and time CA receives the intake. Services must be offered to family with a high SDRMA 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)** 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**.
  - ii. Complete a **[Plan of Safe Care DSHS 15-491](#)** 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](#) 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](#).
  - 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](#).
    - 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](#) for emergent placement of a child with an unlicensed relative or other suitable person. A criminal [background check](#) 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](#) 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** 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** 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)** 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](#) 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](#) policy.
- v. Submit the completed case documentation to the supervisor for case closure or transfer.

## Resources

- [Child's Physical Description DSHS 15-359](#)
- [Understanding the Dependency Process - brochure DSHS 22-1499](#)
- [Washington State Court Forms](#)

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](#)

[◀ 2310. Child Protective Services \(CPS\) Initial Face-To-Face \(IFF\) Response](#)    [Up](#)

[2332. Child Protective Services Family Assessment Response ▶](#)



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# 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](#)

[Executive Order 12-04](#)

## 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**
  - b. Follow the **1740 Child Protection Teams (CPT) policy** .
  - 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** .
  - b. Consider offering services when the SDM score is moderately high and both family and individual level concerns exist per **2440 Service Agreement policy** .
  - 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** .
  - 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](#).
  - ii. Review case with CPS supervisor before case closure

## Resources

- [SDM Risk Assessment - Procedures Manual](#)
- [1740 Child Protection Teams \(CPT\) policy](#)
- [2440 Service Agreement policy](#)
- [Comparing and Understanding the Differences: Risk of Maltreatment, Present Danger, Impending Danger - article](#)
- [The Differences between Risk and Safety - article](#)

[◀ 2540. Investigative Assessment](#)

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[2559. Hospital Holds ▶](#)



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## DECLARATION OF SERVICE

I declare under penalty of perjury in accordance with the laws of the state of Washington that on July 30, 2019, the preceding document was filed in the Washington State Supreme Court according to the Court's protocols for electronic filing at the following address: [Supreme@courts.wa.gov](mailto:Supreme@courts.wa.gov)

A copy of the preceding document was also served on Respondents by email according to the Court's protocols for electronic filing at the following e-mail addresses:

Gary Preble: [gary@preblelaw.com](mailto:gary@preblelaw.com)

Jonathan C. Moffitt: [j.moffitt@envisionfamilylaw.com](mailto:j.moffitt@envisionfamilylaw.com)

DATED this 30th day of July 2019 at Tumwater, Washington.

*/s/ Jeanette Fagerness*  
\_\_\_\_\_  
Jeanette Fagerness, Legal Assistant

**ATTORNEY GENERAL'S OFFICE, TORTS DIVISION**

**July 30, 2019 - 12:54 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
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**Appellate Court Case Title:** Jessica L. Wrigley, et al. v State of Washington, DSHS, et al.  
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