Washington State Supreme Court Commission on Children in Foster Care

3/07/2022
1:00-4:00 p.m.

https://wacourts.zoom.us/j/99434692528
Meeting ID: 994 3469 2528
Dial by your location:
+ 1 253 215 8782

ANNOTATED Agenda

1:00 pm *12 min*	1. Welcome and Introductions • Land and Forced Labor Acknowledgment • Please type your name and agency in the chat in lieu of roll call • If you have suggested agenda items for the next meeting, please type them into the chat or email Kelly Warner-King or the Co-Chairs • Introduction of New Members	Secretary Ross Hunter, *DCYF; Co-Chair* Justice Barbara Madsen, *Co-Chair*
1:12 pm *3 min*	2. Approval of December 2021 Minutes	Justice Barbara Madsen, *Co-Chair*
1:15 pm *60 min*	3. DCYF Presentation and Discussion • Presentation and conversation with Dr. Vickie Ybarra and Sec. Hunter – OIAA research and KW decision – implications for DCYF practice ○ Research Brief: Child Outcomes in Kinship Care in Washington State ○ Examination of Infants Indicated for Substance Exposure/Affected at Birth ○ Future research	Secretary Ross Hunter, *DCYF; Co-Chair* *Vickie Ybarra, DCYF*
2:15 pm *20 min*	4. DCYF 1227 Implementation Update • DCYF 1227 Work Plan	Jill Bushnell, *DCYF*
2:35 pm *10 min*	BREAK	
2:45 pm *40 min*	5. Reports from Commission Workgroups: • Family Well-Being Community Collaborative (FWCC) • State Plan • Children's Representation Standards WG Update	Kelly Warner-King, *AOC* Sarah Burns, *AOC* Bailey Zydek, *OCLA*

New Business		

3:25 pm
25 min
	1. Court Improvement Updates – Family & Youth Justice Programs
	• Court Improvement Program
	  ○ Safety Summits
	  ○ Reasonable and Active Efforts Judicial Academy – March 31-April 1 and April 14-15
	  ○ Dependency Dashboard 2.0
	  ○ Equity and Engagement Framework
	• Family Treatment Courts
	• Early Childhood Courts
		Kelly Warner-King, *AOC*
		Laura Vogel*, AOC*

3:50 pm *10 min*	2. Member Updates/Discussion	Justice Barbara Madsen, *Co-Chair*
4:00 pm	**Adjournment**	
	<u>Upcoming 2022 Meetings</u>: May 9, 2022 September 12, 2022 December 12, 2022	

Washington State Supreme Court
Commission on Children in Foster Care
December 13, 2021
Meeting Minutes

Members Present:
Justice Barbara Madsen, Washington State Supreme Court, Commission Co-Chair
Ross Hunter, Department of Children, Youth, and Families (DCYF), Commission Co-Chair
Raven Arroway-Healing, Northwest Intertribal Council
Judge Alicia Burton, Superior Court Judges' Association (SCJA)
Mike Canfield, Foster Parent Alliance of Washington State (FPAWS)
Sydney Doherty, Coordinated Care of WA; Foster Care Physical/Mental Health Representative
Larry Jefferson, Washington State Office of Public Defense (OPD)
Jeannie Kee, Foster Youth Alumni Representative
Laurie Lippold, Partners for Our Children
Jill Malat, Office of Civil Legal Aid (OCLA)
Jill May, Washington Children & Families
Tonia McClanahan, Parent Advocate Representative
Ryan Murrey, Washington Association of Child Advocate Programs
Representative Tana Senn, Washington House of Representatives
Rachel Sottile, Center for Children & Youth Justice (CCYJ)
Emily Stochel, Youth who has Reunified; Mockingbird Society (Tacoma)
Carrie Wayno, Attorney General's Office (Designee for Bob Ferguson)

Members Not Present:
Jim Bamberger, Office of Civil Legal Aid (OCLA)
Jolie Bwiza, Tacoma Chapter Leader, Mockingbird Youth Network
Beth Canfield, Foster Parent Allies of Washington State
Martin Mueller, Office of Superintendent of Public Instruction (Designee for Chris Reykdal)
Vacant, Washington State Senate

Guests Present:
Ashleigh Barranza, FPAWS Board President
Angela Bishop, Washington CASA Association
Sarah Burns, Administrative Office of the Courts (AOC)
Peggy Carlson, Office of Superintendent of Public Instruction (OSPI)
Peggy Devoy, DCYF
Patrick Dowd, Office of the Family and Children's Ombuds
Jazz Dozier, FPAWS Board Vice President
Sydney Forrester, Governor's Office
Tracy Freckleton, FPAWS
Lauren Frederick, Mockingbird Society
Lisa Kelly, University of Washington (UW) School of Law
Erin Shea McCann, Legal Counsel for Youth & Children
Carl McCurley, AOC, Washington State Center for Court Research
Miracle Negron, Mockingbird Society
Jorene Reiber, Washington Association of Juvenile Court Administrators

Dae Shogren, DCYF
Liz Trautman, Mockingbird Society
Laura Vogel, AOC
Bailey Zydek, OCLA

Staff Present:
Kelly Warner-King, AOC
Susan Goulet, AOC

Call to Order
Justice Madsen called the meeting to order at 1:02 p.m. Introductions and roll call were conducted virtually through the Zoom meeting chat box.

Justice Madsen announced that Jill Malat will be leaving the Office of Civil Legal Aid at the end of February, and she thanked Jill for all the work she has done for children in the foster care system, and for all she will continue to give to the community going forward.

Justice Madsen then introduced DCYF Secretary Ross Hunter, who is the new Commission Co-Chair, and welcomed him to the Commission. Secretary Hunter thanked Justice Madsen and the Commission for all the work they do to try to make the world better for kids in foster care, and he talked about the work he hopes to accomplish going forward, which includes focus on getting kids out of the foster care system and reducing racial inequity in the system. He knows that will involve a lot of hard work for everyone, but he is committed to that work and looks forward to working together with the Commission to achieve those goals.

Approval of the Minutes
Justice Madsen invited a motion to approve the September 2021 meeting minutes. The motion to approve the minutes passed.

Written Reports from Commission Workgroups
Justice Madsen noted that written reports from the following Commission workgroups are included in the meeting materials for Commission members' review: COVID Rapid Response Work Group, IDCC Re-Vision Work and Priorities, State Team, and Normalcy Work Group.

Children's Legal Representation Update
Presentation on Evaluation of the Dependent Child Legal Representation Program
Dr. Carl McCurley, Manager of AOC's Washington State Center for Court Research (WSCCR), gave a presentation regarding the 2021 Evaluation of the Washington State Dependent Child Legal Representation (DCLR) Program. He reported that the study results were released in early November 2021, and he gave the history of how the study came to be. Data collection started for the pilot project in 2017 and ran for two years, with the last new case in August 2019. The observations are now closed for analysis but data is still being accumulated, and they plan to return to the data and conduct analysis with larger data set, to see if the data is consistent with outcomes. The control groups for the study (Douglas and Whatcom Counties) were compared to the DCLR study counties (Lewis and Grant Counties), and difference in design and cost benefit analysis were looked at. Findings showed that youth in the DCLR program had (1) significant increase in permanency (45% greater expectation for reunification), (2) lower out-of-home placement rates (vast majority were placed with relatives), and (3) lower rates of non-normative school transitions (30% decrease in school moves). In addition, there was a cost benefit of $1.2 million across 50,000

children/youth, which works out to approximately $24 per child, and means that the program essentially paid for itself. Lastly, the results were robust and held up across the method and increase in sample size as observation continued. This is the second study in Washington State that looked at the impact of legal representation for children; the first was a QIC study which was also positive.

Laurie Lippold asked about the executive summary conclusion and if HB 1219 is applicable to children 8 years old and over? Dr. McCurley confirmed that the findings apply to children of all ages. Secretary Hunter stated that he is supportive and enthused about the results, and said we need to continue to collect data. Justice Madsen asked about ongoing data collection. Dr. McCurley said the data that was used for the four counties can be collected for all counties in Washington State, and they hope to produce performance reports on an annual or semi-annual basis with periodic evaluation. Commission members may email Dr. McCurley at carl.mccurley@courts.wa.gov with questions.

Children's Representation Standards Workgroup
Jill Malat provided an update on the Children's Representation Standards Workgroup. The Workgroup is composed of individuals bringing a variety of experience, including young people in care, children's attorneys, national experts in child representation and legal ethics, parent allies, and others.

The Workgroup is on track to generate training standards, caseload standards, recommendations regarding representation for children under 8 years old, and to update the current standards of practice. The members have broken into four sub-committees to address each of these direct mandates from the legislation. Those subcommittees are meeting regularly and working through the issues, and they have set a January deadline for the subcommittees to finish and report back to the larger Workgroup. Jill expects a final draft will be done by the end of February, and then the Workgroup will need to provide the draft to the Commission for their input before it goes to the Legislature.

Jill is on the caseloads subcommittee. Emily Stochel reported she and Jolie Bwiza have been working on youth engagement, and they have started holding preparation and debrief meetings to support the youth who are involved. Professor Lisa Kelly reported she is on the workgroup for children under 8 years old, and they are looking at the requested recommendations from the Legislature. Two of her of her students, informed by the group, are taking the lead on this. They have been interviewing leaders from a variety of states using different models for representation. They are in process of interviewing Washington lawyers in pilot counties who have done legal interest representation (for children unable to direct counsel), and are starting interviews with parent and youth representatives. They've been looking at different models of child representation for birth to 8 years old, and the group is looking at the language in section 1.17 of the standards that describes how lawyers need to be trained if they are representing young children. She expects they will probably recommend the current model but more robustly describe the training required.

In response to a questions from Justice Madsen, Professor Kelly said the majority of states offer representation at all ages and all stages of a child's development. Washington is in the minority in that we do not provide representation to all children in dependency. Professor Kelly also stated that Washington leads the country in evaluating child representation, along with Florida. Studies from both states showed positive child outcomes with representation.

When asked about the process for stakeholder involvement in HB 1219 implementation, Jill said an advisory group will be created. Emily and Jill invited Commission members to attend meetings of the Standards Workgroup.

Jill was asked if the Standards Workgroup had discussed issues related to attracting and retaining BIPOC attorneys and solo practitioner attorneys. She responded that she considered recruitment details to be an implementation question, which OCLA will address starting in January. She also asserted that OCLA highly values diversity of the attorney workforce, especially for those working with children and youth in the dependency system. OCLA already actively recruits BIPOC attorneys and works with law schools to identify potential attorneys.

Barriers and potential solutions to the lack of diversity in the legal profession were discussed by Commission members who all agreed that the need to recruit and train attorneys of color is necessary. Larry Jefferson reported that he has looked at law school numbers of who is available, and considered moving upstream to high schools and even elementary schools to encourage students of color to pursue careers in the law. OPD has worked with interns to engage them in issues key to representing families and children. Larry and Rachel Sottile expressed interest in working with OCLA to consider ways to grow the pipeline for potential BIPOC attorneys. Lisa provided her perspective from UW School of Law. She agrees we need to look at the pipeline very early and appreciates the interest and commitment of this group. She noted that, when HB 1219 passed, OCLA leadership reached out to all three Washington law schools to work on this issue of having a diverse pipeline. She hopes these efforts continue, and she would love as many hands on deck as possible to do this. Justice Madsen noted that the Supreme Court understands this is a problem but needs to hear from the field. She also mentioned that diversifying the legal field could include non-lawyers, such as legal technicians. Rachel noted that this question does not have not a quick answer, and she requested to be able to keep conversation open, with periodic updates on the recruitment and diversity of OCLA attorneys.

Ryan asked about the role of the Commission related to the recommendations. Justice Madsen said the Workgroup has been asked to share the recommendations and report with the Commission to provide input before they are provided to the Legislature. She prefers to work to consensus with recommendations that the Commission provides. The Commission may need to have a supplemental meeting for review of the Child Representation Workgroup's work product, separate from the next Commission meeting, to ensure sufficient time for discussion and feedback. Jill clarified that the recommendations are intended to inform work conducted by the legislature in the 2023 legislative session, and their deadline to submit recommendations for representation for children under 8 is March 31, 2022. Justice Madsen thanked Jill for continuing to work on this. Kelly will work with Jill to identify a date and time for a meeting with the Child Representation Workgroup to receive the Commission's input.

Racial & SOGIE Equity Discussion: Equity Issues in Foster Placements
Department of Children, Youth, and Families (DCYF)
Dae Shogren, Racial Equity and Social Justice Administrator at DCYF's Office of Racial Equity and Social Justice, reported on behalf of DCYF. She discussed how important it is that we all collaborate and have ongoing, long-game engagement because DCYF cannot do it all themselves, and it will not happen overnight.

Dae discussed the trends DCYF is seeing in rate of occurrence and disproportionality index (DI) for all intakes. DCYF looked at rates per thousands of children/youth identified in intakes by race and

year, and at DI of all intakes (screened out or screened in). They found that American Indian/Alaskan Native and Black are disproportionately high, and Asian and Hispanic are underrepresented. She then discussed DCYF's race data related to placement array, including: (1) that about a quarter of their licensed foster homes, have at least one caregiver who is not White (out of 4,734 licensed foster homes, 1,252 foster homes have at least one caregiver who is not White); (2) the breakdown of 1,761 non-white caregivers (single homes may fall in more than one category) is Hispanic 706, Black African American 469, Asian 233, American Indian Alaskan 208, Native Hawaiian/Other Pacific Islander 76, Tribal Member 69, and 37 who declined to identify; and (3) that nearly 40% of children who come into care are placed with kin. She also discussed what they are seeing with children entering and exiting out of home placement from 2010-2021, which included that the numbers are decreasing and that more children are leaving foster care then are entering (which Secretary Hunter said is a good thing). As of September 30, 2021, there were 6,671 children in out-of-home care, including both licensed and unlicensed care, and there was an 18.3% decrease from the end of calendar year 2019 and an 8.8% decrease from the end of calendar year 2020. Of the 6671 children in out-of-home care on September 30, 2021, 183 (2.7%) were in BRS congregate care, 127 (1.9%) were in BRS treatment foster care, 48.2% were placed with kin, and there are currently 7 DCYF depending youth placed in out-of-state congregate care placements. She also noted that the 48.2% of children placed with kin is a little above the national average. However relatives do not get foster care placement support/adoption support if they are not licensed. Secretary Hunter noted that he would like to increase the number of licensed kinship placements to 60% or 70% because it's better for children and usually reasonably racially balanced. Emily Stochel asked (in the chat), if young people have relatives out of state, are those options explored before non-kinship in-state placements, and Secretary Hunter said, yes.

Dae then discussed the efforts DCYF is making to better help LGBTQIA+ individuals. First she talked about DCYF's draft Administrative Policy 6.04 Supporting LGBTQIA+ Individuals. The purpose of the policy is to (1) support the specific needs of children, youth, and young adults who are developing, discovering, or identifying themselves as lesbian, gay, bisexual, transgender, questioning, intersex, asexual, or gender non-conforming (LGBTQIA+), and (2) respectfully treat individuals, including, but not limited to children, youth, young adults, employees, caregivers, contracted employees, volunteers, interns, and work study students who are developing, discovering, or identifying themselves as LGBTQIA+. The policy applies to DCYF employees, volunteers, interns, and work study students. In addition, Dae provided the following full list of DCYF's LGBTQIA+ efforts, and highlights about each and the work they are doing:

- DCYF Office of Racial Equity and Social Justice
- DCYF Administrative Policy 6.04
- Quarterly Foundational LGBTQIA+ Training
- DCYF LGBTQIA+ Leads, agency wide
- DCYF LGBTQIA+ Advisory Committee
- Pilot of CCYJ eQuality Protocol for Safe & Affirming Care
- Partnership with Amara CAReS Program
- Active recruitment for LGBTQIA+ Caregivers
- Ongoing dialogue with Lived Experts
- Active membership with RAIN
- Active membership with HHS HCA Sex & Gender Identity Workgroup
- Active partnership with LGBTQ Commission

Raven Arroway-Healing suggested the following (in the chat): On the subject of supporting LGBTQ youth, it would be helpful if DCYF required all contract licensing agencies who license foster parents to collect data about demographics of applicants, and ties that data to whether the applicant is denied a license. I spoke with Amber Salzer at DCYF about this, and she told me that DCYF doesn't collect that data. This would really help clear up rumors about contracted licensers turning away LGBTQ foster parent applicants.

The Mockingbird Society

Liz Trautman, Director of Public Policy & Advocacy at The Mockingbird Society, reported on *The Report Card: Statewide Survey of Young Adults with Experience in Foster Care* study that Mockingbird conducted. Mockingbird asked young people about their experiences in foster care. The study consisted of 219 online surveys of young adults who had experienced foster care (completed August through December 2020) where respondents graded the services they had received, and the reasons for the grades were explained in 63 follow-up one-on-one interviews (completed October 2020 through January 2021). The survey and interview design were developed by Mockingbird staff and participants with lived experience in foster care and/or homelessness, and the instruments and process were pretested with Mockingbird participants.

Results of the study included the following.

- The racial/ethnic mix and ratio of those identifying as LGBTQ+ were representative of the State child welfare system. BIPOC respondents (59%) slightly exceeded the population of white only (41%) youth in care, and 28% of respondents identified as LGBTQ+.
- The majority were more likely to enter the foster care system as pre-teens or teenagers (after age 10) and spent significant time in care (half spend five or more years in care), and 52% spent time in group home (Liz pointed out that this is powerful and important information; they are not being particularly well represented in care).
- The overall average "grades" for general services and supports shows a D to C score. "Education Supports" and "Non-Profit Services" (in general) received the highest grades ("A" and "B" grades). "Keeping the Same Social Worker" received the most "D" and "F" grades overall.
- Respondents who identified as either LGBTQ+ or BIPOC gave "C" average grades to services that might have helped them with any challenges related to those identities. Almost half of those who identified as LGBTQ+ rated any additional support from their social worker and/or foster parents as "D", "F" or "Did not have."
- LGBTQ+ young adults also reported less desirable outcomes than others; they were 50% more likely to have been homeless at some point; they were four times as likely to still be working on their GED; they were far less likely to have said that their physical health was "excellent" or "good"; and they were twice as likely to call their mental health "poor".
- Respondents who identified as BIPOC reported similar outcomes to those who identified as "white", and they tended to receive better cultural support than LGBTQ+ although there is still room for improvement.
- Respondents were asked about challenges related to cultural identity or LGBTQ+, and a higher percentage of LGBTQ+ noted challenges as overwhelming. Youth who identified as BIPOC were not that different from white regarding post-foster care outcomes, but LGBTQ+ were more likely to have difficulties including poor mental health.

The results of the study validate the need to listen to impacted youth, and show the following: Alignment with recommendations from youth advocates and others for many years, including the

need for culturally relevant services and safe and affirming placements for LGBTQ+ young people; LGBTQ+ young people report more challenging experiences during and after care; those experiencing foster care need an automated, regular feedback loop for the State to be aware of social workers who are under-performing, challenges in placement, and other issues; in general, there seems to also be a need for all those caring for youth in foster care—including teachers—to be better trained in trauma-informed care; and more qualitative data gathering, at and after exit, would be useful.

Carrie Wayno asked if they evaluated that in the BIPOC population, and to what degree did that change their experience. Liz said she does not think they were able to do an analysis of that data in a quantitative way, but that would be a good thing to explore in the future.

Washington Association for Children and Families
Jill May, Washington Association for Children and Families (WACF), reported that WACF is made up of four different agencies across the continuum that provide family preservation and support services, child placing agencies, intensive services, and independent living. Jill also shared the WACF Members Equity Commitment, which states the following: "*Members must be committed to removing practices and policies that lead to poor outcomes for people of color in the child welfare system. WACF will ensure all policy, advocacy and practice improvement changes have a focus on removing racism. We value providing best practice that promotes improved outcomes for children and youth regardless of their economic status, sexual orientation, gender identity, race, ethnicity, language, or age.*" Jill explained that WACF is a good place to share with each other, break down silos, and discuss shared practices, and she was excited to be asked to talk about this. Services that members provide are where children are being served. WACF looked at racial equity and consultants were hired to help them. They also surveyed members, and there was a real interest in diversity in hiring.

WACF's vision was to have a network of private providers united for racial equity. They thought about this work in three parts: organizational equity (examining and redesigning WACF advocacy, policies, strategies and investments to increase racial equity); capacity development (foundation of learning about history, individual and structural racism, and bias and vision for racial equity in child welfare); and equity in action (targeted equity impact projects). The agencies they work with are in different places; some have done a lot of racial equity work and others have done very little. So WACF started moving forward with a project to increase diversity in recruitment, and as they did, they found their agencies need to become trustworthy partners in order to recruit BIPOC families. They brought a group of stakeholders together, which included 50% BIPOC (including LGBTQ youth and indigenous youth), and they started small and looked at a few agencies. They now see where their barriers are, and eventually want to share those with their members.

Their next steps include: (1) implementing change ideas in three areas (increasing peer supports for current BIPOC foster parents, hiring diverse staff, and internal culture of equity); (2) sharing learnings (they have been sharing along the way with CPAs, DCYF, and other recruiting practice groups and will continue to do so); (3) following up on projects (i.e. project planning with DCYF recruiting team on barriers in licensing process that families of color are experiencing). They have also been having lots of conversations with DCYF about how best to partner and include data. Jill offered to share feedback with the Commission in the future.

Foster Parent Alliance of Washington State (FPAWS)
Mike Canfield, Executive Director of FPAWS, and Ashleigh Barraza, Board President of FPAWS, presented together on the organizations efforts to improve care for LGBTQIA+ youth. Ashleigh said the FPAWS Board reflects a board range of people, and they are stronger because they are diverse. FPAWS offers training to adoptive and biological parents, networking, a helpline, and highly educated and thoroughly vetted expert speakers for their trainings. She reported some of their trainings include: "Transracial Caregiving", "Sexual Health for All", "Our Girls, Our Communities", and "Cultivating Transracial Caregiving." In FPAWS trainings, participants discuss issues and challenges, seek to dispel myths, and help families learn about significant things they can do to support the children. It is a supportive nonjudgmental place to grow, and they have received positive feedback from families. FPAWS wants to be part of the solution, and they are not just a community; they are about taking people from where they are now to making positive changes. Members may contact Mike Canfield with questions.

Request for Support of the FPAWS Parent Mentoring Program
Jazz Dozier, Vice President of FPAWS Board, reported that the FPAWS Parent Mentoring Program is focused on the reunification of children with their families. The program is currently operating in the Clark County Family Treatment Court, and FPAWS wants to introduce the Parent Mentoring Program statewide. FPAWS believes that providing mentoring, support, education, skills, and viable solutions to parents and foster parents is necessary for them to become and remain successful. Program accomplishments include: 85% successful reunification rate compared to 44% without the program, parents have better understanding children's needs and participate in making alternative parenting plans for their children, foster parent retention was enhanced by the foster parents' involvement with the program, foster parent mentors had increased satisfaction with foster parenting and often remained licensed, and mentors continued their relationships with the parents they supported long after the official mentoring period was over. FPAWS is requesting funding from the Legislature to cover program costs, and would appreciate the Commission members' support. Information about the FPAWS Parent Mentoring Program was provided in the meeting materials. Tracy Freckleton has been the lead on this project, and Commission members can contact Tracy with any questions.

2022 Commission Meeting Schedule
Justice Madsen said she and Secretary Hunter have been discussing going back to the traditional 3-hour Commission meetings, and their intent is to do so. If Commission members would like to provide input about keeping the meetings shorter than 3 hours, we will provide an opportunity for you to give you feedback via email.

Closing & Adjournment
The next Commission meeting is on March 7, 2022.

Adjourned at 3:21 p.m. by Justice Barbara Madsen.

The Office of Innovation, Alignment, and Accountability

RESEARCH BRIEF: CHILD OUTCOMES IN KINSHIP CARE IN WASHINGTON STATE

Washington State Department of CHILDREN, YOUTH & FAMILIES

If you would like copies of this document in an alternative format or language, please contact DCYF Constituent Relations (1-800-723-4831 | 360-902-8060, ConstRelations@dcyf.wa.gov).

January 2022

Washington State Department of CHILDREN, YOUTH & FAMILIES

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Federal Law 7

Ybarra, V., Klinman, D., and Luna, H. (2022). Child Outcomes in Kinship Care in Washington State – A Research Brief. *Washington State Department of Children, Youth, and Families – Office of Innovation, Alignment, and Accountability*.

January 2022

Background

When a child or youth must be removed from their parent's care, kinship care provides continuity of family relationships and culture while affirming a child's sense of belonging and identity. Children entering out-of-home care frequently lose not only their home, neighborhood, school, pets, and friends, they also frequently lose their relationships with extended family and the traditions, language, and history maintained and passed on by these relationships. It is in the context of these relationships that children develop their earliest identity and sense of belonging. When children are placed with kin, they are more likely to maintain these connections and experience their associated protective factors.

Reflexively, families also often want to care for their children when a parent is not available. Out-of-home placement can disrupt and create a void in the entire family system. This is especially true for racial and ethnic groups whose children may be disproportionately placed in foster care. Kinship care affirms the vital importance of culture and provides one way to address the racial and ethnic disproportionality and disparities found in child welfare. If children are placed with kin, it is more likely that they will be cared for by someone who shares their ethnicity, culture and/or language.

Washington State's child welfare laws are found in Title 13 of the Revised Code of Washington. It is worth noting that the Washington State Legislature felt strongly enough about the importance of the family unit to open chapter 13.34 with the following statement:

> *The Legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the Legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. RCW 13.34.020*

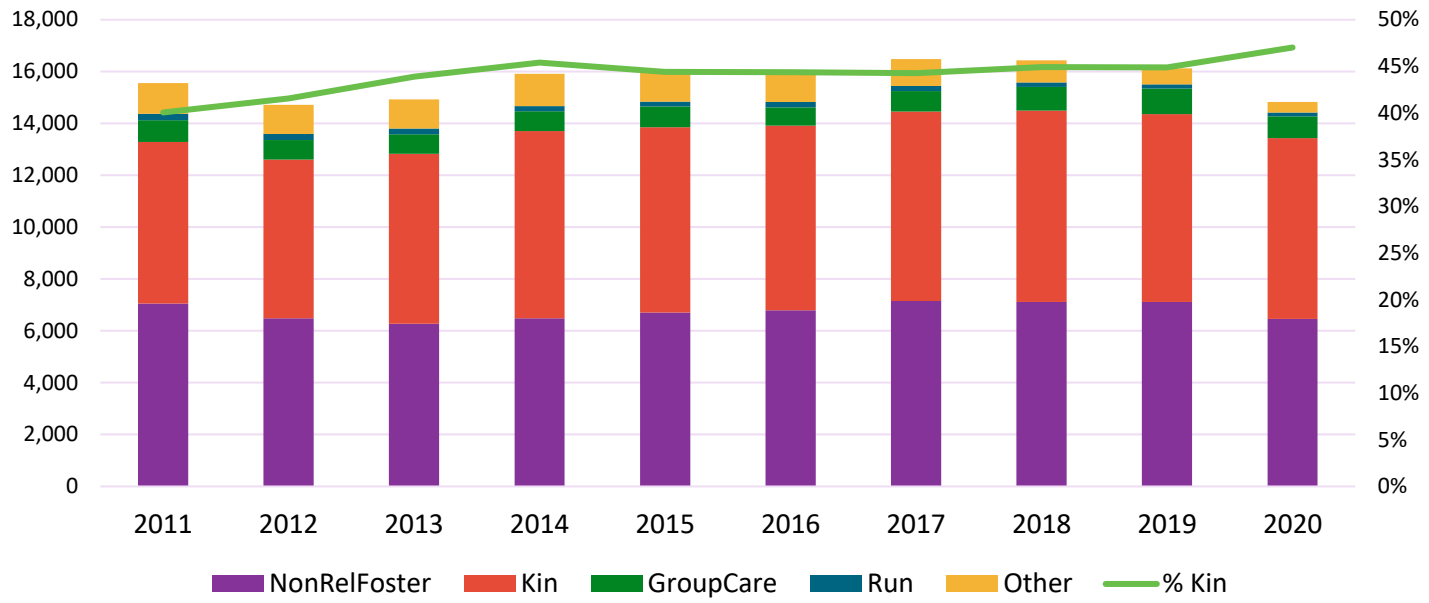
If a child or youth must be removed from their parent's care, it is incumbent upon the child welfare system to seek out and place children with kin. By doing so, the Washington State Department of Children, Youth, and Families (DCYF) affirms the importance of the family unit and the child's identity and culture and intentionally engages in a practice that begins to address racial and ethnic disproportionality.

DCYF maintains a kin-first preference as reflected in Policy 4250 Placement Out-of-Home and Conditions for Return Home. When children must be removed from a parent's care, DCYF staff only place children with a licensed, typically unrelated caregiver when a kinship caregiver is unavailable.

In Washington State laws and policies, the term "kin" includes relatives, by blood or adoption, and suitable other persons.

In Washington State in FY 2020, about 47% of all children under 18 experiencing foster care were placed with kin. This is higher than seen in the past decade when anywhere from 40% to 45% of children in out-of-home care were placed with kin.

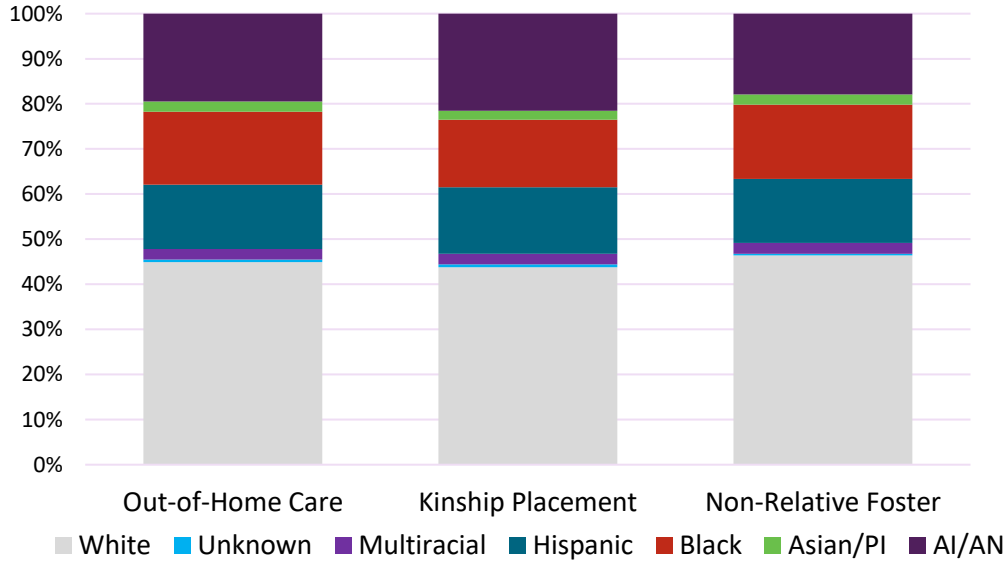
Figure 1. Total Children <18 in Out-of-Home Placements, by FY 2011-2020



Note: Data exclude children exclusively in Trial Return Home during FY.

We can compare the racial/ethnic makeup of children experiencing kinship care each year with DCYF compared with those experiencing non-relative foster care. In Figure 2, we see that a slightly higher portion of children in kinship care are children of color (53.2%) than the portion in non-relative foster care (50.8%).

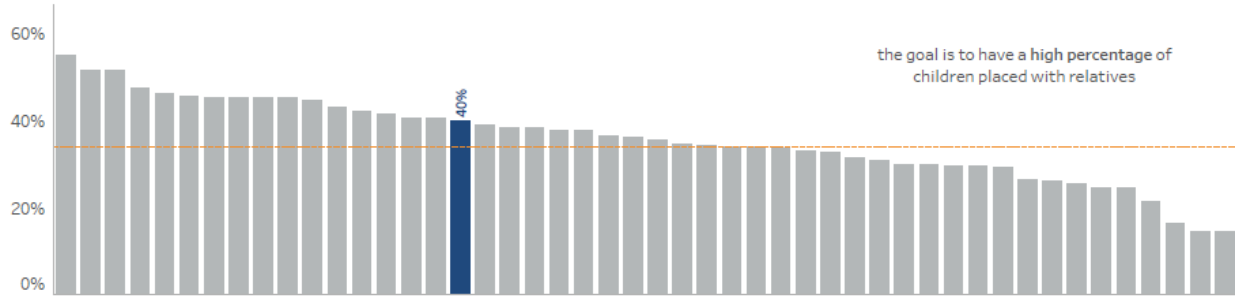
Figure 2. Children <18 Experiencing Out-of-Home Care by Race/Ethnicity and Placement Setting, FY 2020



Note: Data exclude children exclusively in Trial Return Home during FY; race/ethnicity calcuated using WSRDAC/m standard.

Compared with other states, Washington is just above average in terms of percent of children placed with kin. The chart below from Casey Family Programs shows that on Sept. 30, 2020, 40% of Washington's children were in kinship care, compared with the about 38% national average among states.

Figure 3. Percent of Children in Kinship Care, All Ages



Data Note: Sept 30, 2020 point in time, children on Trial Return Home excluded, data courtesy Casey Family Programs.

Child Outcomes

Researchers across the nation have studied the potential benefits and risks of kinship placement in the child welfare system on outcomes for children for many years. In a 2014 meta-analysis of over one hundred such rigorous studies, involving over 600,000 children total, Cochrane found that children in kinship foster care on average experience fewer behavioral problems, fewer mental health disorders, better well-being, and less placement disruption than do children in non-kinship foster care.[1]

In Washington State, we have a number of sources of data that provide us information about how children in kinship care are faring in our state. The first is the Healthy Youth Survey, a general survey of youth in grades 6, 8, 10, and 12, where youth can self-identify if they are living with a relative or friend instead of their parents. We also have specific data from child assessments administered by DCYF staff. The findings from Washington's Healthy Youth Survey as well as the examination of children placed in out-of-home care by DCYF are consistent with findings in the broader research. On average, children and youth in Washington State placed in out-of-home care experience greater well-being when placed in kinship care.

The 2018 Healthy Youth Survey (most recent data available) provides data on youth who self-identified as living with parents, relatives, unrelated kin, or in foster care. It is important to note that living with relatives and unrelated kin would include many children in informal kinship arrangements who are not involved in the child welfare system, as well as those in kinship placement through DCYF. The analyses below are taken from a forthcoming report.[2]

Youth in alternative living arrangements are more likely to feel hopelessness, but hopelessness is lower for youth in kinship care.*

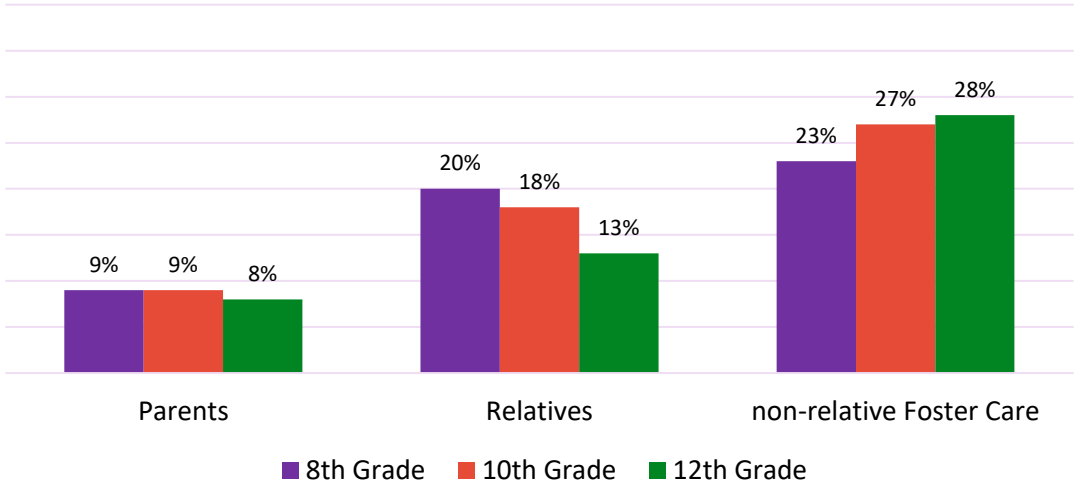
Youth not living with their parents were more likely to report feeling low or very low hope. Hopelessness increased the further youth were separated from their family. Compared to living with parents, hopelessness was:

- **3.0** times higher for youth in relative care
- **4.8** times higher for youth in foster care

[1] Winokur, M., Holtan, A. and Batchelder, K.E., 2014. Kinship care for the safety, permanency, and well-being of children removed from the home for maltreatment. *Cochrane Database of Systematic Reviews*, (1).

[2] *Forthcoming*. Risk Factors Associated with Different Living Arrangements: Youth in Kinship Care and Foster Care. Findings from the 2018 Healthy Youth Survey, Department of Social and Health Services.

Figure 4. Percent reporting "Hopelessness" by grade level, HYS 2018



** Odds ratios adjusted for grade and sex.*
**Hopeless is computed using the Children's Hope Scale, a six-item self-report measure of children's perceptions that their goals can be met.*

Youth in alternative living arrangements are more likely to have been harassed and feel unsafe, but substance use was lower for youth in kinship care compared to foster care.

Youth not living with their parents were more likely to feel unsafe and experience harassment. Feeling unsafe and harassment increased the further youth were separated from their family. Compared to living with parents:

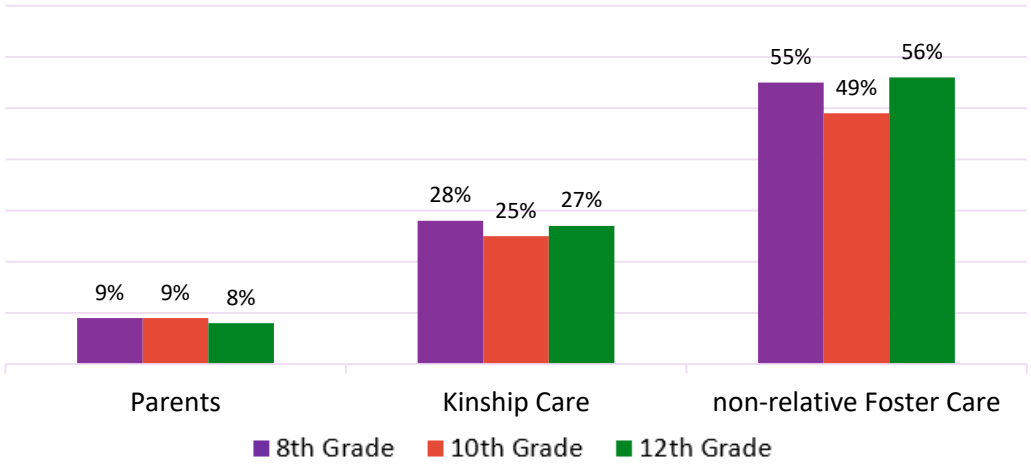
Youth living in kinship care were:

- **3.6** times more likely to feel unsafe going to/from school
- **2.9** times more likely to experience harassment because of race
- **3.7** times more likely to experience harassment because of perceived sexual orientation

Youth living in foster care were:

- **12.7** times more likely to feel unsafe going to/from school
- **7.9** times more likely to experience harassment because of race
- **11.5** times more likely to experience harassment because of perceived sexual orientation

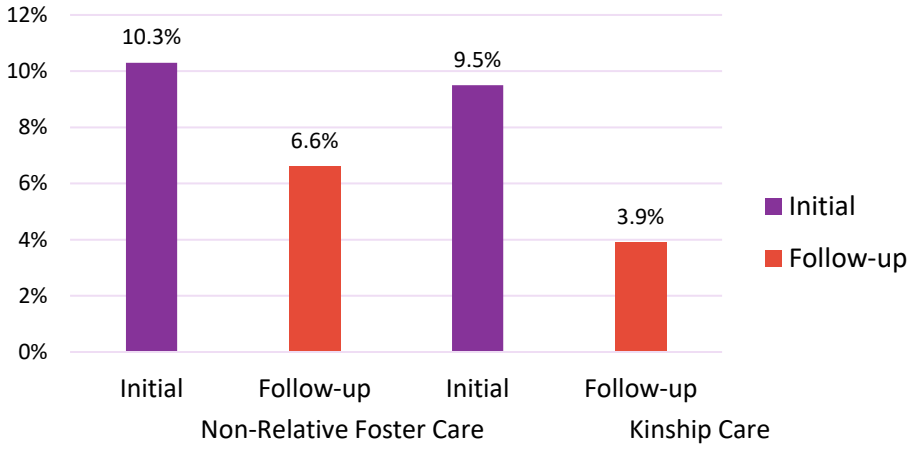
Figure 5. Percent harassment and feeling unsafe among 10th graders, HYS 2018



A recent analysis by DCYF's Office of Innovation, Alignment, and Accountability on screening and assessment data from a group of children ages 6-17 who entered out-of-home care as a result of child welfare involvement in 2016-2019 adds additional insight into the benefits of placing children in kinship care.

When children involved with child welfare enter out-of-home care, DCYF staff conduct a number of screening and assessment measures that provide insight into the child's emotional/behavioral wellbeing. Examination of these various measures indicate that, on average, children and youth placed in kinship care in Washington's child welfare system tend to do better emotionally and behaviorally than those placed in non-relative foster care. For example, children and youth ages 6 to 17 placed in kinship care showed greater improvements on their PTSD (post-traumatic stress disorder) scores over the course of their first six months in out-of-home care (Figure 6).

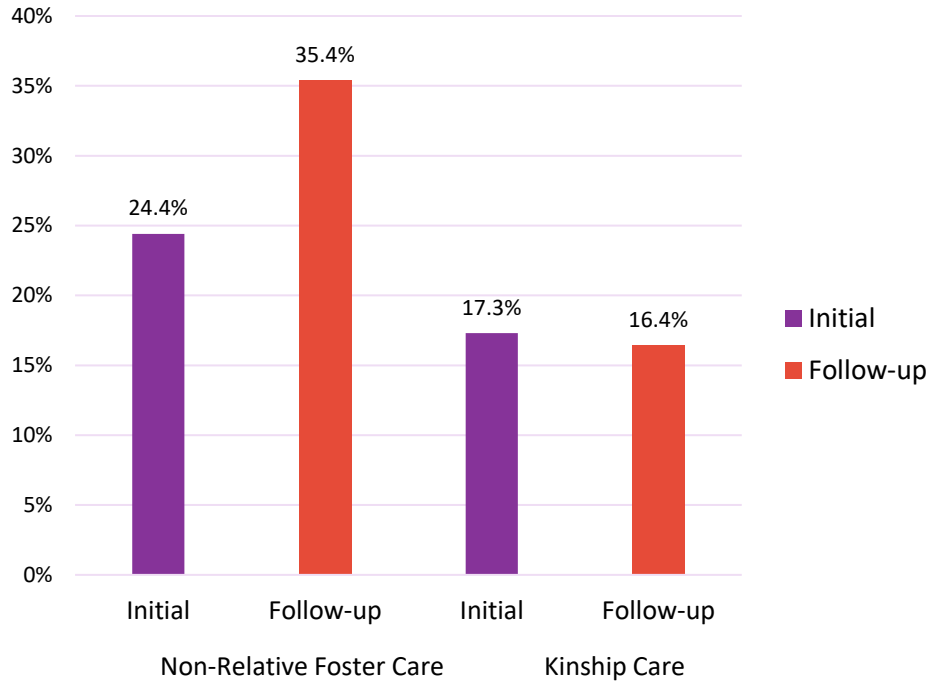
Figure 6. Percent "At Risk" on PTSD Screener, DCYF Placements 2016-2019



Total N=364

Additionally, children and youth placed in kinship care show slight improvements in externalizing behavior over the first six months of placement, while those placed in foster care showed significantly worse externalizing behavior problems over the same time frame (Figure 7).

Figure 7. Percent "At Risk" on PSC-17 Externalizing Scale, DCYF Placements 2016-2019

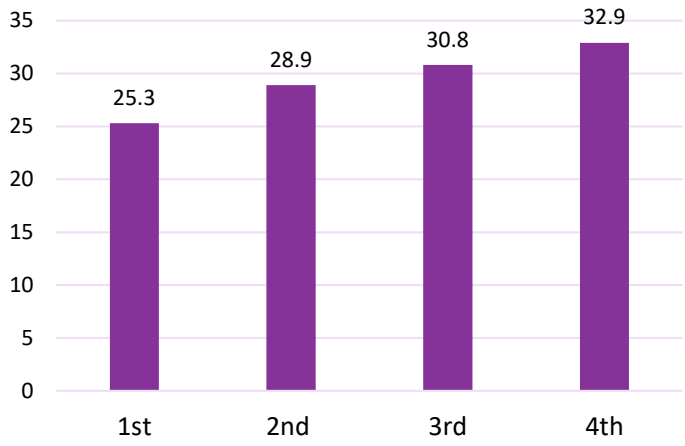


Total N=711

This increase in externalizing behavioral problems among children placed in licensed (primarily non-kin)[3] foster care was also found when examining the scores on the Foster Care Rate Assessment, which is completed initially when a child is placed into licensed foster care and then every six months. Here we see a steady increase in the number of hours required to meet the behavioral needs of children placed in licensed foster care over the first four Foster Care Rate Assessment (first 18 months in out-of-home care). As indicated on the Foster Care Rate Assessment, foster parents are initially reporting that on average 25.3 hours are needed per week to meet the behavioral needs of children placed in their care, with this number steadily increasing to on average 32.9 hours per week by the fourth rate assessment (Figure 8).

[3] In Washington, most kinship care is not licensed, so this licensed sample is 98% non-kinship care across all four observations.

Figure 8. Average Number of Hours Needed Each Week to Meet Behavioral Needs of Child, All Children Ages 0-18 in Care 2016-2019



Data source: Foster Care Rate Assessment-Behavioral Needs Domain; N=520 children

Relevant Policies and Laws

DCYF Policy

- 4250. Placement Out-of-Home and Conditions for Return Home.
  - Policy (4) gives kin placement priority.
- 4527. Kinship Care: Searching for, Placing with, and Supporting Relatives and Suitable Other Persons.
  - Defines kinship, relative, and suitable person.
  - Policy (5) prioritizes kinship placements.

RCW

- 13.34.060—Gives kin (relatives and suitable other persons) placement priority at the time removal.
- 13.34.130—Authorizes the agency to place a child with kin and states that children should only be placed with a person not related to them when it is in the best interests of the child.
- In general, RCW 13.34 uses the relative definition in RCW 74.15.020(2)(a).
- Suitable others are defined in 13.34.130(1)(b)(ii).

Federal Law

- 42 U.S.C. § 671(a)(19) and 42 U.S.C. § 671(a)(29)

Title IV-E of the Social Security Act requires that states prioritize relative placements over nonrelated foster care (as long as the caregiver meets all relevant requirements) and demonstrate due diligence to identify and notify relatives. States must meet these requirements in order to receive IV-E funds.

The Office of Innovation, Alignment, and Accountability

EXAMINATION OF INFANTS INDICATED FOR SUBSTANCE EXPOSURE/AFFECTED AT BIRTH

Washington State Department of CHILDREN, YOUTH & FAMILIES

If you would like copies of this document in an alternative format or language, please contact DCYF Constituent Relations (1-800-723-4831 | 360-902-8060, ConstRelations@dcyf.wa.gov).

January 2022

Washington State Department of CHILDREN, YOUTH & FAMILIES

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Klinman, D. (2022). Examination of Infants Indicated for Substance Exposure/Affected at Birth. *Washington State Department of Children, Youth, and Families – Office of Innovation, Alignment, and Accountability*.

January 2022

Introduction

This report examines the trajectory of infants who were reported to Child Welfare due, at least in part, to concerns of substance exposure/affected[1] in utero or at birth (from here on referred to as SE/A). In order to explore this complex topic, this report examines the data in three separate ways. In the first and second sections, we examine an existing analytic dataset of an intake cohort of all families who received a referral to Child Welfare in 2016. The cohort includes detailed information on families and follows children placed in out-of-home care for a few years, allowing for a longitudinal examination. While the first two sections allow a more in-depth look at the infants and families linked to SE/A intakes, the third section, which includes all intakes in which an infant is identified for SE/A between 2012 and 2020 (Jan. 1, 2012 – Dec. 31, 2020), provides an opportunity to examine how trends related to SE/A intakes have changed over time.

Key Findings

1. Since 2012, there has been a steady increase in the number of infants who are reported to Child Welfare as being indicated as substance-exposed/affected – an increase of nearly 300% between 2012 and 2020.
2. Thirty-four percent of infants identified as potentially substance-exposed/affected are placed into out-of-home care within 30 days of the intake alleging substance-exposed/affected.
3. An increase in the number of intakes alleging an infant was substance-exposed/affected, as well as an increase in the likelihood of these intakes being screened in for investigation/services appears to be responsible for an increase in the likelihood of this population being placed in out-of-home care over the last few years.
4. Infants indicated and not indicated for substance exposure/affected have similar reunification rates within two years of removal (41% and 39%).
5. One in five referrals screened out due to an unborn victim are subsequently referred as a substance-exposed/affected infant. In addition, an estimated 57% of SE/A infant referrals have had a previous unborn victim referral during the same pregnancy.[2]
6. Parental Drug Abuse is indicated as a reason for removal at a much higher rate among infants placed in out-of-home care (71%) than other children placed into out-of-home care, regardless of whether the infant was indicated or not indicated as a substance-exposed/affected.
7. On initial measures of child wellbeing for children placed in out-of-home care, infants indicated as substance-exposed/affected had similar scores compared to those not indicated as substance-exposed/affected.
8. On the initial Behavior Domain of the Foster Care Rate assessment, infants with and without substance exposure/affected indicated had similar scores. However, at the follow-up assessment done six months later, substance-exposed/affected infants had scores indicating higher needs compared to other infants.

Background

Examining the impact of parental substance use and abuse is crucial to better serve children in our state. Among all parents involved in the Child Welfare system, 27% have a substance use disorder, and 58% of caregivers with children in out-of-home care have a substance use disorder.[3] The needs of SE/A infants, and their families, are a growing issue of focus both nationally and locally. This report describes the characteristics of SE/A infants identified by the Child Welfare system in Washington State and their short-term outcomes.

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[1] A 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. A 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). It is important to note that the designation of SE/A infant by Child Welfare policy is not the same as identification of parental substance abuse as a concern on the initial referral or as a reason for placement. Both parental substance abuse as a referral concern and reason for placement appear at higher rates, and thus SE/A infants represent a smaller portion of young children whose safety may be at risk due to parental substance abuse.

[2] See DCYF FFPSA Prevention Plan.

[3] DSHS Research and Data Analysis (RDA). 2020. Substance Use Disorder Treatment Penetration among Child Welfare-Involved Caregivers.

According to Washington State Department of Children, Youth, and Families (DCYF) policy 2200, substance-affected infants are to be screened in for investigation regardless of the presence of other child abuse and neglect concerns. Referrals on substance-exposed infants are to be screened in for investigation if there is an allegation of child abuse or neglect and/or when other risk factors are present that would indicate imminent risk of serious harm. The decision screening matrix that intake workers use to determine SE/A is outlined in Table 1. It is important to keep in mind that SE/A is an optional data collection field in the intake report, likely resulting in an undercount of the number of newborns and infants with SE/A (e.g., an intake worker may document a substance exposure concern in the narrative text but not check the Substance Exposure box). Additionally, the SE/A field does not distinguish between substance-exposed and substance-affected infants, making it impractical to examine these two groups of infants separately.[4]

Table 1: Decision Screening Guidelines for Substance-Exposed or Substance-Affected Newborns[5]

Intake staff must take the following actions on all intakes that identify a newborn as exposed to substance(s).

Substance-Exposed Newborn:

- Screen in the intake for Child Protective Services (CPS) investigation when there is an allegation of child abuse/neglect (CA/N).
- Screen in for CPS Risk Only when there is no allegation, but risk factor(s) indicate imminent risk of serious harm.
- Consider lack of prenatal care along with other risk factors

Substance-Exposed and Substance-Affected Newborn:

- Screen in for CPS investigation when the newborn is Substance-Affected, and there is an allegation of CA/N.
- Screen in for CPS Risk Only investigation when the newborn is Substance-Affected and there is no allegation of child abuse or neglect.

When the newborn is exposed prenatally to substance(s), check the SE box (Substance Exposure Evident at Birth) for the newborn in FamLink Intake Participants.

Document whether the medical practitioner identified the newborn as AFFECTED by substance(s) AND available information on risk and protective factors.

Section 1: Substance-Exposed/Affected Infants Referred to Child Welfare (2016 Cohort)

Section 1 focuses on an existing intake cohort of all cases that received at least one referral in 2016.[6] Substance-exposed/affected infant referrals make up a small portion of all referrals made to DCYF.

When looking at the first referral (the index referral) on each of the 57,466 cases reported to Child Welfare in 2016,[7] 451 (<1%) of these intakes included a SE/A infant. When looking at all of the referrals received on the cases included in

[4] While preferable for answering key questions, it would require reading and qualitative coding of freeform text of the referrals to distinguish between substance-exposed and substance-affected infants in a 2016 cohort.

[5] https://www.dcyf.wa.gov/practices-and-procedures/2200-intake-process-and-response (Section G).

[6] For this analysis, the 2016 cohort tracks data through February 2019.

[7] More information was collected on the index referral than the other referrals attached to the cases.

the 2016 cohort, in the three-year study period, 1.9% of the cases were associated with an SE/A infant referral[8][9] (Table 2).

Table 2: Reason for Child Welfare Referral (2016 Cohort, Index Referral + ≈3 Years)

	Frequency (Percent)
Case attached to a Substance-Exposed/Affected infant referral	1,099 (1.9%)
Case not attached to Substance-Exposed/Affected infant referral	56,367 (98.1 %)
Total	57,466 (100%)

Table 3 shows the reporter type (i.e., category characterizing the person who made the referral) for the index referral separately for referrals that indicate and do not indicate a SE/A infant. What is most notable is that medical professionals and social service professionals make up the vast majority of the reports involving a SE/A infant (97% combined), which is significantly different from the other referent types for the other categories of referrals. For other maltreatment referrals, medical and social service professionals only make up 27% of reporters and other reporter types, such as educators and law enforcement, are more frequent reporter types.

Table 3: Referent Type for the Index Referral in 2016, With and Without Substance-Exposed/Affected Infant Indicated

Type of referent on reference report for the 2016 cohort	Other child maltreatment referrals (Age prenatal - 18)		Substance-Exposed infant indicated (Age prenatal – 30 days)	
	Frequency	Percent	Frequency	Percent
Anonymous	2,223	3.9	1	.2
Child Care Provider	898	1.6	0	0
Corrections	569	1.0	0	0
DSHS (DCYF)	1499	2.6	2	.4
Educator	10,861	19.0	0	0
Foster Care Provider	255	.4	0	0
Friend/Neighbor	2,511	4.4	1	.2
Law Enforcement Officer	4,978	8.7	0	0
Medical Professional	4,283	7.5	128	28.4
Mental Health Professional	6,343	11.1	5	1.1
Other	3426	6.0	4	.9
Other Relative	3,360	5.9	1	.2
Parent/Guardian	6,251	11.0	0	0
Social Service Professional (e.g., hospital social worker)	9,210	16.2	309	68.5
Subject	11	.0	0	0
Victim and/or Self	337	.6	0	0
Total	57,015	100.0	451	100.0

[8] The 2016 cohort follows the family (Case ID) until 2/2019, so some of the infants would not have been born at the time of the index referral in 2016.

[9] Note that in some cases the index referral is received prior to birth, thus the universe for potential index referrals includes the prenatal period.

Lastly, we examine the population of infants for which the index referral was screened-out due to an unborn victim being indicated and for whom a subsequent SE/A referral was made within eight months (240 days) of the index referral. There were 852 index referrals that were screened out due to an unborn victim, and 154 (18%) of these cases had a subsequent referral alleging SE/A within eight months.

Section 2: Substance-Exposed Infants Placed in Out-of-Home Care (2016 Cohort)

Descriptive Information

From the 57,466 cases included in the 2016 cohort, 9,505 children (N=9,505) were placed in out-of-home care at some point between the index referral and February 2019. Of these children placed in out-of-home care, 577 (6.1%) had been identified in a referral as a SE/A infant. Of those 577 reportedly SE/A infants, 349 (61%) entered out-of-home care within the first month of their life.

Of all infants under one month of age who were placed in out-of-home care, one-third were indicated as SE/A. Among infants placed in out-of-home care prior to one month of age, males and Native Americans appear to be at increased risk of being indicated as SE/A (Table 4) relative to infants in out-of-home care referred for other forms of maltreatment.

Table 4: Descriptive Characteristics of Children Placed in Out-of-Home Care Prior to One Month of Age

	Not identified for Substance-Exposed/Affected		Indicated as Substance-Exposed/Affected		% Point Difference
	Frequency	Percent	Frequency	Percent	
Female	370	50.8	158	45.3	-6
Male	359	49.2	191	54.7	+6
African American	107	14.7	55	15.8	+1
Asian/PI	32	4.4	12	3.4	-1
Hispanic	88	12.1	38	10.9	-1
Native American	151	20.7	85	24.4	+4
White*	347	47.6	158	45.3	-2
Total	729	100.0	349	100.0	

*One substance-exposed infant and four not substance-exposed infants did not have race/ethnicity indicated and are excluded from the race metrics.

Reason for Removal

When a child is placed in out-of-home care, the caseworker indicates the reason(s) for removal. The caseworker can select more than one reason for removal. Infants in the 2016 cohort who were placed in out-of-home care in the first month of life who were identified as SE/A were more likely to have a reason for removal of “Parent Drug Abuse” (79%) compared with infants placed in out-of- home care in the first month of life who were not indicated as a SE/A infant (68%) (Table 5). However, “Parent Drug Abuse” is the leading reason for infants placed in out-of-home care in the first month of life, regardless of whether SE/A at birth was identified. Additionally, the rates of removal for “Parent Drug Abuse” for infants with and without substance exposure identified (79% and 68%) are significantly higher than the rest of the population in the cohort; about 30% of children removed between age 31 days and 17 years have “Parent Drug Abuse” indicated as the reason for removal.

Table 5: Reason for Removal Comparing Those Infants With and Without Substance Exposure Indicated at Birth

	Not identified for Substance Exposure N=729	Substance Exposed/Affected N=349	% Point Difference
Caretaker Inability to Cope	*11%*	*11%*	*0*
Inadequate Housing	*17%*	*14%*	*-3*
Neglect	*48%*	*44%*	*-4*
Parent Abuse Alcohol	*6%*	*4%*	*-2*
Parent Death	*0%*	*0%*	*0*
Parent Drug Abuse	*68%*	*79%***	*+11*
Parent Incarceration	*7%*	*3%**	*-4*
Physical Abuse	*4%*	*0%***	*-4*
Sex Abuse	*1%*	*0%*	*-1*

Chi Square test, sig of *=.05 and **=.01

Reunification

In the 2016 cohort, infants who are placed in out-of-home care within their first 30 days of life are reunified with their parents within two years about 41% of the time. On average, those infants who are reunified within two years are in care 304 days (approximately 10 months), though the range of length of stays is large. Interestingly, there were no significant differences in the length of stay or reunification rates between infants with and without SE/A indicated at birth (Table 6). When compared to all other children in the cohort 31 days and older who were placed in out-of-home care, infants were less likely to be reunified (37% compared to 51% within two years) and, on average, spent more time in out-of-home care.

Table 6: Placement Episode Length and Episode Outcome for Those With and Without Substance Exposure Indicated

		Exit reason within two years of removal is reunification	Length to reunification for those reunified
		Percent	Mean (Std.Dev)
Substance exposure not identified at birth (Removal age 30 days or under)	N=729	39%	308 (233)
Substance exposure identified at birth (Removal age 30 days or under)	N=349	41%	295 (226)
All other children	N=8427	55%	207 (236)

Assessed Needs of Substance-Exposed Infants in Out-of-Home Care (2016)

Differences in the needs of infants with and without SE/A indicated at birth appear to develop over time, as indicated on one of the child wellbeing measures used by DCYF. The Foster Care Rate Assessment is completed with foster parents early in the placement of a child in their care and is used to determine the foster care reimbursement rate. It is then repeated every six months.[10] On the first Foster Care Rate Assessment, infants indicated and not indicated for SE/A had very similar scores in the Behavior and Physical Domains (6.4 and 6.4 on Behavioral and 5.1 and 5.0 on Physical

[10] The Foster Care Rate Assessment form does not include a Behavioral and Physical Domain, but rather includes a series of questions. Using factor analysis these domain were established. For additional information, see the Foster Rate Assessment evaluation document.

domain, for SE/A and not SE/A respectively). However, by the second rate assessment, those indicated for SE/A had increased scores in the Behavior domain (7.1 and 6.4), while the scores on the physical domain remained similar (5.5 and 5.2) (Table 7). Although the difference in the Behavior domain may seem small, the domain score can be translated into an approximate number of hours needed a week to care for the infant's behavioral needs. When this is done, by the second Foster Care Rate Assessment SE/A infants needed approximately 25.7 hours a week of care in the Behavior domain compared to 19.5 hours a week of care for infants not indicated for SE/A.[11,12]

Table 7: Child behavior/development comparing those with and without SE/A indicated at birth as reported on the Foster Care Rate Assessment

Table 7: Child Behavior/Development Comparing Those With and Without SE/A Indicated at Birth as Reported on the Foster Care Rate Assessment

	Assessment 1		Assessment 2	
	Substance Exposed N=160	Not Substance Exposed N=352	Substance Exposed N=81	Not Substance Exposed N=194
	Mean (SD)	Mean (SD)	Mean (SD)	Mean (SD)
Behavioral Needs (Scale of 5-18)	6.4 (2.1)	6.4 (2.4)	7.05 (2.3)**	6.36 (2.1)
Physical Needs (Scale of 4-12)	5.01 (1.8)	5.07 (2.0)	5.49 (2.2)	5.22 (2.0)

Independent Sample T-Test. **sig.01, Not all infants received a Foster Care Rate Assessment (e.g., those placed in relative care)

The Denver Scale is a child development screening tool administered by a Child Health and Education Tracking screener within the first 30 days of the infant's placement in out-of-home care. The Denver Scale screens for personal, fine motor, gross motor, and language. There were no significant differences between the two groups on any of the Denver domain results (See Table B in Appendix).

Section 3: Trends in Placement of Substance-Exposed/Affected Infants Reported to Child Welfare Between 2012 and 2020

Over the past nine years, there has been a steady increase in the number of intakes with a newborn indicated as SE/A, increasing from 262 in 2012 to 972 in 2020.[12] Figure 1 shows the total number of intakes in each year for which the SE/A newborn check box was selected. As the screening policy (Table 1) focuses on newborn infants, only referrals received between the child's birth and 30 days after birth are included in this section.

[11] Table A and Figure A in the Appendix shows the results of a repeated measures Anova which along with substance exposure also includes Sex and Race in the model. In the Repeated Measure Anova the substance-exposed infant variable remains significant as shown both in the table and well as in the figure.

[12] Some cases had multiple intakes on the same infant alleging SE/A. In these instances, only the first intake is included in the analysis. Additionally, when an intake included twins, only one infant was included in the dataset.

Figure 1: Number of intakes with a newborn indicated for substance exposure/affected 2012-2020

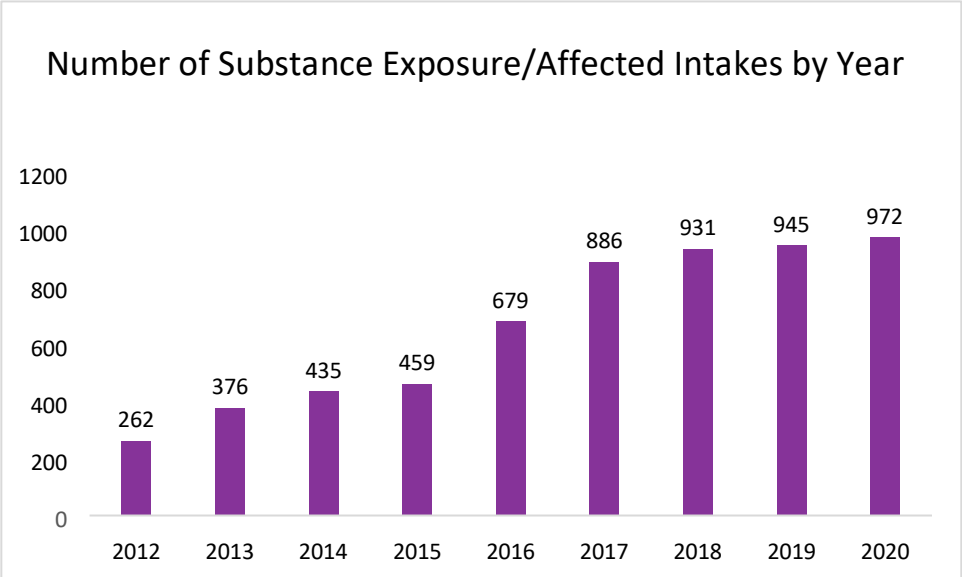
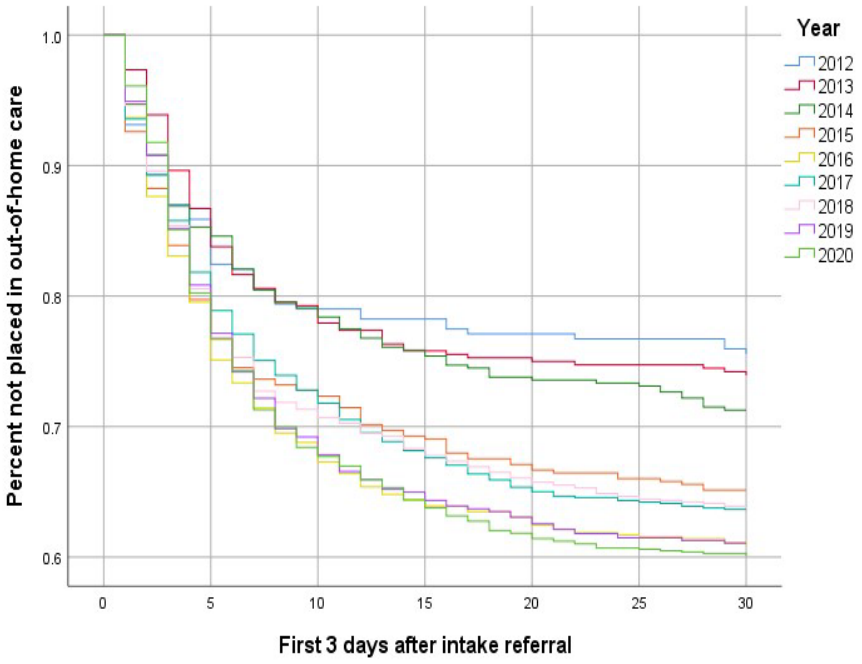


Figure 2 is an Event Curve representing the first 30 days after the intake indicating a SE/A infant. The lines in the figure show the percent of the population at any given point in time for which an event has *not* occurred. For these nine years (2012-2020), approximately 36% of the infants identified as SE/A were placed in out-of-home care within 30 days of the referral. As can be seen in Figure 2, most of the events occur closer to the intake date. For example, in 2020 (the light green line), by the 10th day after the intake, over 30% of the infants had been placed in out-of-home care compared to approximately 40% by the end of the 30 days. In Figure 2, it can also be seen that the risk of a SE/A infant being placed in out-of-home care has increased since 2012. Over the course of the first 30 days, the 2012 group (blue line) is associated with the lowest percentage of infants being placed in out-of-home care and the 2020 group (light green line) with the highest percentage.

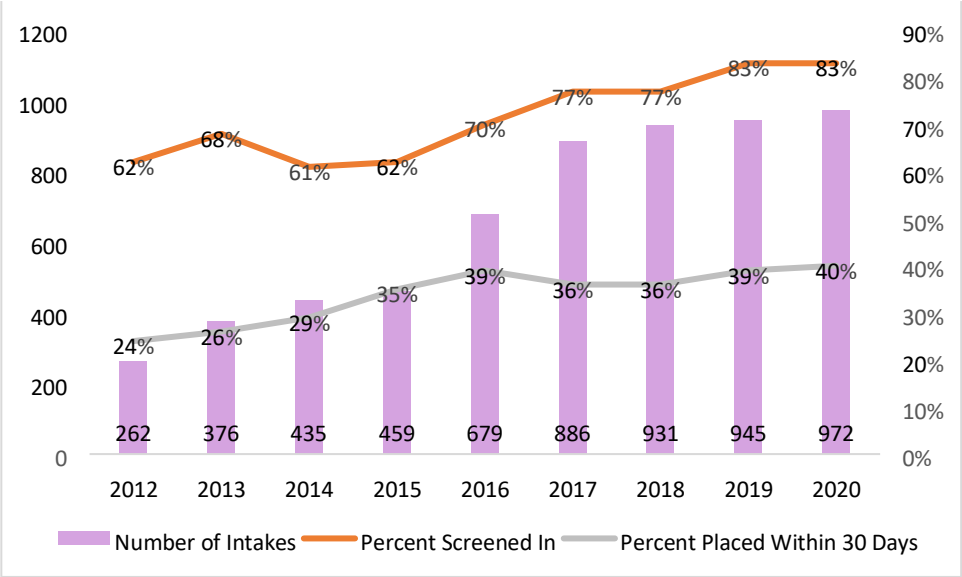
Figure 2: Event Curve showing the rate of placement in out-of-home care for the first 30 days after intake alleging a SE/A infant (2012 – 2020)



Impact of Screening Discussion

As indicated in the screening policy (Table 1), not all intakes that include a SE/A infant allegation screen in for an investigation/services. Figure 3 shows the number of SE/A intakes for each year and the percentage of intakes that screen in (e.g., CPS-Investigation and CPS-Risk Only) by year. There is a trend over time for intakes with SE/A infants to be increasingly more likely to be screened in for investigation/services. Additionally, shown in Figure 3 is the percent of intakes indicating SE/A that result in a placement of the infant in out-of-home care. As can be seen, in addition to the increase in SE/A intakes being screened in, there is also a trend for a higher percentage of infants to be placed in out-of-home care who are associated with SE/A referrals. Although there is also a small but significant trend over time for more SE/A infants to be placed in out-of-home care even when controlling for the screen-in rate of all SE/A infants, it appears that the increasing screen-in rate of the SE/A intakes is driving most of the increase in the likelihood of infants being placed into out-of-home care. (See Table C and Figure B in Appendix for regression analysis, which includes both year and screen-in rates). These increases in the screen-in rate of SE/A infant intakes taken together with the large increase in recent years in the number of additional intakes alleging SE/A infants seems to explain a large portion of the increasing number of SE/A infants being placed into out-of-home care.[13]

Figure 3: Intakes with an infant identified as substance-exposed/affected that screened in for investigation and resulted in a placement by intake year



Discussion

This study provides a number of important findings. Since 2012, there has been a steady increase in the number of intake reports indicating substance-exposed/affected newborns. Additionally, there has been an increasing trend to screen in for investigation/services reports with a SE/A infant. While the reason for these increases is not clear, taken together, these trends have led to both a higher number and a higher likelihood of SE/A infants being placed in out-of-home care. There seems to be little difference between the placement trajectories of infants indicated and not indicated for SE/A (e.g., the length of stay and the reunification rate for both groups is about the same). However, there is some limited evidence that SE/A infants may show increasing rates of behavioral needs while in out-of-home care. This finding is based on limited data from the Foster Care Rate Assessment and is in need of more careful examination. Lastly, there is strong indication that infants are placed in out-of-home care with Parental Drug Abuse as a contributing

[13] The screen-in rate of intakes reporting SE/A is not only much higher than CPS intakes in general, but also has been trending upwards, a pattern not seen in the total population of CPS intakes. The screen-in rate for all CPS intakes over the same years as shown in Figure 3 is: 2012-48%, 2013-47%, 2014-43%, 2015-42%, 2016-41%, 2017-43%, 2018-42%, 2019-41%, 2020-40% (InfoFamlink).

reason at a much higher rate than older children are (71% compared to 30%). The 71% placement rate of infants for parental substance abuse may indicate that many more infants are SE/A prenatally than are currently being reported.

Limitations

This report examines infants who were indicated at birth as being substance-exposed/affected (SE/A). A substantial limitation of this report is that, due to the data collection system, a distinction could not be made between those infants who were substance-exposed and those determined to be substance-affected. Having this information would have permitted a targeted examination of the placement and developmental trajectory of substance-affected infants placed in out-of-home care. Additionally, the lack of more robust developmental assessments of SE/A infants placed in out-of-home care limits the insight into how prenatal substance abuse is affecting the development of this group of children relative to other children in out-of-home care. The Denver Scale screener used in the first 30 days after a child is born may lack the necessary sensitivity and/or specificity to show meaningful developmental differences between those with and without prenatal substance exposure in the first 30 days of life. Additionally, the Denver Scale lacks studies of its validity, particularly for infants.[14]

Appendix

Table A: Repeated Measures ANOVA using the first and second Foster Care Rate Assessment along with other relevant variables – Behavioral Needs domain for infants placed in out-of-home care between birth and 30 days. The results indicate that an infant indicated for substance exposure is likely to have a significantly higher increase in their score in the Behavior domain than infants not indicated for substance exposure.

Source	factor 1	Type III Sum of Squares	df	Mean Square	F	Sig.
Time (First compared to second score)	Linear	.825	1	.825	.324	.570
Time * Prior Substance-Exposed Infant	Linear	10.720	1	10.720	4.207	.041
Time * Sex	Linear	1.957	1	1.957	.768	.382
Time * Race	Linear	25.495	4	6.374	2.502	.043
Error(factor1)	Linear	682.814	268	2.548		

[14] More information on the functioning of the Denver Scale can be found in the Assessment of the Denver report completed as part of the 2020 Evaluation of the Assessment System in Child Welfare.

Figure A: Comparison of the scores on the first and second Foster Care Rate Assessment comparing those infants placed in out-of-home care who were indicated and not indicated for substance exposure/affected at birth.

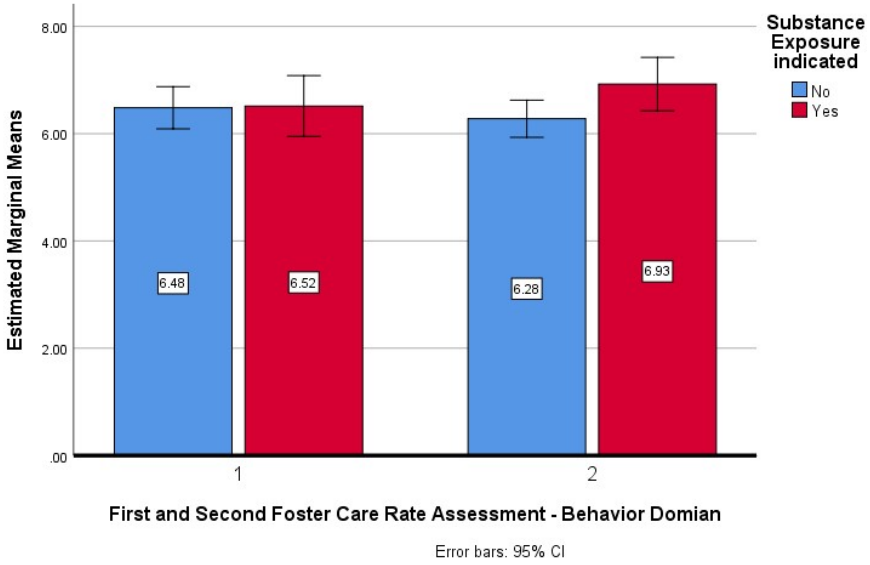


Table B: Resulting Denver Scale Scores (differences between groups were not statistically significant)

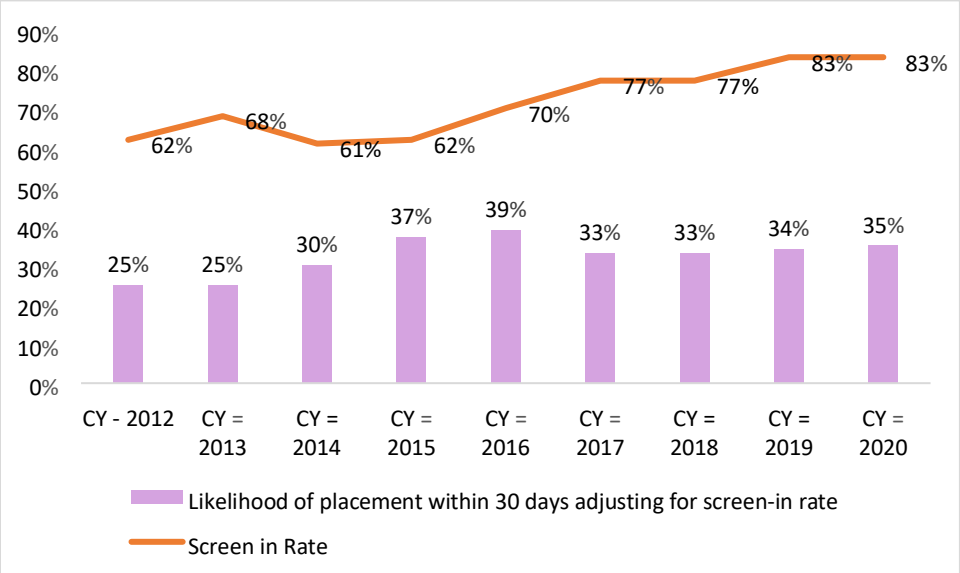
Denver Domain	Indicated for Substance Exposure/Affected	N	Percent Indicated
Denver Personal Results	Not substance-exposed	501	6%
	Substance-exposed	244	5%
Denver Fine Motor Results	Not substance-exposed	501	13%
	Substance-exposed	243	15%
Denver Language Result	Not substance-exposed	501	7%
	Substance-exposed	244	5%
Denver Gross Motor Result	Not substance-exposed	501	5%
	Substance-exposed	244	7%
Denver Overall Score Result	Not substance-exposed	499	15%
	Substance-exposed	239	17%

Table C: Binary Regression model: **Placement rate of infants referred for substance exposure/affected by year and referral screening decision** – Indicates the significant impact of the screen-in rate of intakes for SE/A infants. But also suggests that even when controlling for the screen-in, rate there has also been a greater tendency since 2015 to place infants associated with SE/A into out-of-home care.

	B	S.E.	Wald	df	Sig.	Exp(B)
2012 (Reference year)			31.715	8	.000	
2013	-.002	.195	.000	1	.993	.998
2014	.260	.189	1.892	1	.169	1.297
2015	.575	.185	9.688	1	.002	1.776
2016	.646	.173	13.920	1	.000	1.908
2017	.375	.168	4.962	1	.026	1.455
2018	.371	.168	4.906	1	.027	1.449
2019	.422	.167	6.420	1	.011	1.525
2020	.462	.166	7.725	1	.005	1.587
Referral screening decision (Screened Out is reference group	1.934	.091	456.612	1	.000	6.920
Constant	-2.552	.170	225.988	1	.000	.078

Negelkerke R Square .151
5945 cases and 2133 placements within 30 days of the intake

Figure B: Likelihood of placement within 30 days adjusted for the screen-in rate



IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In the Matter of the Dependency of	)	No. 99301-7
	)	
K.W., a minor child.	)	EN BANC
	)	
	)	Filed : February 17, 2022
	)	

MONTOYA-LEWIS, J.— The Department of Children, Youth, and Families (Department) and the dependency court system serve to provide protection for children who are in unsafe situations with caregivers who are unable to provide safe and stable parenting. When children have to be removed from their parents, the legislative scheme requires that children be placed with relatives first to reduce the disruption children face upon parental removal. In this case, K.W. was removed from his long-term placement with his relative, "Grandma B.," after she took a one-day trip and did not notify the social worker of the trip. The consequence of this removal resulted in tremendous upheaval in K.W.'s life and violated the requirements of RCW 13.34.130. Though K.W. was legally free, the placement

preferences set out in the statute still applied, and the court erred in failing to apply them and failing to place K.W. with relatives. We reverse.

FACTS AND PROCEDURAL HISTORY

A. Factual Background

K.W. is fortunate to have an extensive support system of relatives and family friends who have been closely involved in his life since he was born in 2013. He is closely bonded with dozens of family members, including his siblings, cousins, and older relatives across generations who all live in the Seattle area. His cousins are like siblings to him, and two women relatives have helped raise him since he was a baby. K.W. and his family are Black. K.W. regularly spent time with his extended family from a young age, attending family gatherings and significant cultural events together, like the annual Martin Luther King Jr. march and rally.

In 2014, when K.W. was about a year old, his mother reached out to her cousin for help caring for K.W. K.W. refers to this woman as his "grandma," and we refer to her as "Grandma B." Grandma B. welcomed K.W. into her home, and he remained in her care without interruption until December 6, 2019. In 2016, when K.W. was about three and a half years old, a juvenile court found K.W. and his siblings dependent. The dependency court continued K.W.'s placement with Grandma B. at shelter care and disposition in 2016, and repeatedly throughout the

next several years of the dependency. Grandma B. has effectively raised K.W. since infancy, with the love and support of many other relatives.

Grandma B. has extensive experience working with children both professionally and at home. She has decades of experience as a teacher at an early childhood learning center for children experiencing the traumatic effects of homelessness. In addition to raising her own children, she has helped care for other children of friends and family. Grandma B.'s adult son, Mr. W., lived with her for several years and also helped raise K.W. since he was an infant; one of Mr. W.'s children is the same age as K.W., and the two children are very close.

In 2018, Grandma B. expressed interest in being a permanent placement for K.W. However, in early 2019, she told the Department she could not be a permanent placement for K.W. because she needed to go back to school to get a certificate in order to keep her job. The Department approved continued placement with her.

K.W.'s great aunt, whom we refer to as "Aunt H.," also helped raise K.W. since he was an infant. Aunt H. worked as a bus driver and as a certified home care aide worker for Seattle and King County's Aging and Disability Services. She also helped relatives and friends manage their finances and Social Security benefits. Like Grandma B., Aunt H. had helped raise children of family members, as well as her own. Aunt H. also expressed interest in being a permanent placement for K.W., but

in mid-2019, she informed the Department she could not be a permanent placement for him because of her work schedule, which required early morning driving shifts.

K.W.'s father's parental rights were terminated in 2018. In March 2019, K.W.'s mother's parental rights were terminated,[1] and K.W. was declared legally free.[2] The Department began to search for adoptive families for K.W. because no relative could be a permanent placement option at that time. In November 2019, the Department identified two couples as potential adoptive placements. Throughout this process, K.W. continued to be placed with Grandma B.

1. *The Department Removes K.W. from Relative Care*

On Friday, December 6, 2019, after putting K.W. on the bus to school, Grandma B. left for a day trip to attend her niece's graduation, about three hours away in northwest Oregon. She planned to return later that evening and arranged for her son, Mr. W., to pick up K.W. Mr. W.'s daughter and K.W. attended the same after-school day care, and Mr. W. was on K.W.'s approved pickup list. They planned for K.W. to stay at Mr. W.'s house until Grandma B. returned later that evening.

[1] K.W.'s mother's parental rights were later restored, and he has since been placed with her.

[2] A child is considered "legally free" when no one holds parental rights and the child is legally free for adoption. *See* RCW 13.34.210.

While Grandma B. was driving to Oregon, a department social worker sent her a text message to see if she would be available to meet the following Wednesday. Grandma B. responded, "I am out of town but I will connect with you when I am back next week." 4 Clerk's Papers (CP) at 802. As it was Friday afternoon, Grandma B. intended to get back in touch with the social worker the following Monday. The social worker texted Grandma B. back, "Who is [K.W.] with while you're out of town?" *Id.* Grandma B. did not respond immediately because she was driving. The social worker did not call Grandma B. or any other relative at that point, but she contacted K.W.'s school. The school staff said K.W. had already gotten on the bus to day care but mentioned that he had a cell phone and tried to call a person labeled "Mom" that day. 4 CP at 795. The social worker went to the day care and spoke with K.W., who said he was staying with Aunt H. for six days. Concerned that Grandma B. might have left K.W. for six days, that Aunt H. might not have childcare while she was at work, and that K.W. might have contact with his mother, the social worker took him into custody.

The Department and the court-appointed special advocate (CASA) repeated these allegations multiple times in the record over the next several months. Grandma B. consistently stated that she had always planned to return to Washington the same day and pick up K.W. from her son's house, and she submitted an e-mail from her

supervisor confirming that she requested one day off work and a receipt showing that she rented a car for one day.

When Grandma B. learned that K.W. had been taken into department custody on the afternoon of December 6, she immediately drove back to Seattle. She tried to call the social worker to find out where K.W. was but got no answer, and when she saw the missed text message, she responded that she was on her way back. These events all happened within the span of two hours.

The Department placed K.W. in respite care for the weekend,[3] and the following Monday, moved K.W. to the home of a prospective adoptive family.[4] Aunt H. contacted the Department that Monday to inform them she was able to be a permanent placement for K.W. because her work schedule had changed. She also pointed out that she was a certified home care aide, submitted a background check, and submitted a home study that had been completed in 2013. The Department informed her that K.W. was already placed with a prospective adoptive family.

[3] While in respite care, K.W. said he was scared of returning to Grandma B.'s home, though he did not say why. He later filed a declaration saying that he felt safe with his grandma, he did not know why he said he felt unsafe, and he considered her house his home.

[4] While in this first prospective adoptive family's care, K.W. said he did not want to go back to Grandma B.'s home because he was scared of a man named Mr. R. He said that Mr. R. is "rude" and hits him, but that Mr. R. does not live at Grandma B.'s home. 4 CP at 797. In his subsequent declaration, K.W. retracted this statement as well, stating that it was a long time ago when Mr. R. was mean to him, and he felt safe in Grandma B.'s home.

Also, while K.W. was with this prospective adoptive family, his braids were cut off.

However, within less than one week, that family informed the Department they would not adopt K.W. and asked for him to be removed from their care.

2. *K.W.'s First Request To Return to Relative Care*

On December 20, 2019—two weeks after his abrupt removal from his relatives—K.W. filed a motion to be returned to Grandma B. or, in the alternative, to be placed with Aunt H. or Mr. W. K.W. filed a declaration expressing his strong desire to return to his relatives. Grandma B., Aunt H., and Aunt H.'s son submitted declarations in support of returning K.W. to relative placement.

The court held a hearing on December 24. K.W.'s attorney underscored that K.W. had lived with Grandma B. for almost his entire life before he was suddenly removed from her care. He stressed K.W.'s strong connections with his family; he also argued there were "no true safety issues" with the relatives and that Grandma B. and Aunt H. would satisfy the background check and home study requirements without issue because of their jobs and prior experience caring for other children. Report of Proceedings (RP) (Dec. 24, 2019) at 15, 27. The Department opposed modifying placement to a relative without a department home study, due to alleged safety concerns about each of K.W.'s requested relative placements, including concerns that his relatives were permitting K.W. to have contact with his mother.[5]

[5] However, the Department had approved of supervised visits with K.W.'s mother throughout the dependency as recently as two months earlier and had approved an open adoption agreement that included visitation.

The CASA reported that K.W. was having emotional outbursts at school since his removal from Grandma B.'s care—but she argued that K.W. should be placed with a prospective adoptive family because he needed permanence.

The court authorized the Department to place K.W. with Aunt H. It also "urged [the Department] to expedite the completion of a home study" in the order but authorized the placement with Aunt H. without the completion of a home study. 4 CP at 814. It further ordered the Department to meet with Aunt H. to address its concerns and to "investigate and give priority to permanent placements with a relative." *Id.* at 815. However, it also authorized the Department to place K.W. in licensed foster care.

Immediately following the hearing, a department social worker allegedly told K.W.'s attorney and Aunt H. that they would not place K.W. with Aunt H. until a home study was completed, despite the court order. Arguing that the Department was acting in bad faith and the comments demonstrated their animus against the relatives, K.W.'s attorney requested the court to order placement with Aunt H. once the background check was completed. The court reiterated that a home study was not required but declined to modify its order. The Department moved K.W. to the home of another prospective adoptive family on December 27, 2019.[6] This was the

[6] While K.W. was placed with this prospective family, his relatives requested through K.W.'s attorney that the Department allow K.W. to attend the Martin Luther King Jr. march and rally in January. K.W. had attended every year with his family, since the age of two. The

third unfamiliar home K.W. was sent to in three weeks since he had been removed from his relatives' care.

3. *Relatives' Efforts To Satisfy the Department*

Desperate to bring K.W. home to the love, stability, and familiarity of his family, several relatives immediately began working to satisfy the Department's concerns about placing K.W. with them.

a. Aunt H.

Since the Department refused to place K.W. with Aunt H. before she completed a home study, Aunt H. began the home study process immediately. She submitted applications for a new background check and home study the same day of the December 24 hearing. Pursuant to the court's order, Aunt H. met with the Department social worker on January 6, 2020, to discuss the Department's concerns regarding placement with her. The Department's concerns seemed to be focused on Aunt H.'s prior contact with the Department while caring for other children.

First, the Department raised concerns about the time when her grandniece was in her care in 2007. Aunt H. had begun a home study for her grandniece with the Department but did not complete it when she opted to do a home study through a private agency instead. The Department was concerned that Aunt H. had allowed

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Department denied the request, citing their inability to supervise his attendance and concerns about "tensions" with K.W.'s mother and extended family. *Id.* at 894.

her grandniece to have unsupervised visits with her biological mother. Aunt H. clarified that she permitted only supervised visits. The Department was also concerned about a man they alleged was Aunt H.'s live-in boyfriend, who had a criminal history and whose children were also dependent. Aunt H. explained that the man was a family friend, not her boyfriend, and he did not live with her; he received mail at her house for a time when he was experiencing housing instability.

Second, the Department was concerned by a couple of Child Protective Services investigations in the intervening years. In 2008, there was an investigation regarding allegations of sexual abuse of a child in Aunt H.'s care. The allegations were determined to be unfounded. In 2015, there was an investigation when her grandson was living with her. The child was found outside the home unattended while Aunt H. was at work and she had left the child in his uncle's care for an hour. Drugs and a loaded gun were found in the uncle's bedroom, and the uncle had a criminal history. The uncle was only temporarily staying with Aunt H., and Aunt H. kicked him out of the house immediately after this incident. She denied knowing about the drugs, guns, and criminal history, and stated she would not have allowed the drugs or guns in her home if she had known about them. In 2018, there was an investigation with no specific allegations of abuse, negligence, or risk. Her grandson was on the phone with his birth mother, who thought she heard a man count to three, a thud, and then a child screaming. Aunt H. explained to the Department that the

child's mother suffered from mental illness and that there was no man in the home; she also located a police report confirming that the police found no man in the house and had no concerns for the child's safety. More recently, another family member had reported that Aunt H.'s grandson displayed sexualized behaviors toward other children in the family, and the Department was concerned K.W. would potentially share a bedroom with the grandson. Aunt H. said she had never seen any such behavior and said she would never permit any inappropriate behavior. She also pointed out that she had completed a home study to gain custody of her grandson.

Third, the Department was concerned about Aunt H.'s hopes for K.W. to reunify with his parents. In May 2019, when she informed the Department that she could not be a permanent placement for K.W. at that time, she noted that his parents were progressing well, and she hoped that the Department would consider placing K.W. with them. The Department informed her that K.W.'s mother's and father's parental rights had been terminated, so they would not be a placement option. Aunt H. had not known that their parental rights had been terminated until then, and she clarified that she would allow K.W. to return to them only if court ordered. She also stated that she would be willing to adopt K.W. if his mother's and father's parental rights were not reinstated.

At the conclusion of the January 2020 meeting, Aunt H. asked if K.W. could be placed with her, in light of the court order that authorized placement with her

before a home study was completed. The social worker responded that they would not move K.W. before she completed a home study. After this meeting, the Department received notice that Aunt H. had passed the background check. Aunt H. met with the home study evaluator on January 31, 2020, and they began the home study process. Aunt H. also began training to become a licensed foster care parent.

b. Grandma B.

In late January, Grandma B. informed the Department she could also be a permanent placement option for K.W. and requested a home study. The Department told her that it had a policy of doing only one home study at a time and that because it was engaged in the home study process for Aunt H., it would not begin a home study for Grandma B. until Aunt H.'s was complete. Therefore, Grandma B. began the process to obtain a private home study and began training to become a licensed foster care parent.

The Department had concerns about Grandma B.'s history as a victim of domestic violence about 10 years earlier. In 2011, Grandma B.'s son (Mr. W.) obtained a protection order against Grandma B.'s husband, Mr. R. Grandma B. and Mr. R. separated at that time, and they began a dissolution of marriage that was never finalized. Grandma B. informed the Department that Mr. R. was her estranged husband and had not lived with her in since 2011. Mr. R. submitted letters and receipts for rent indicating his separate residence dating back to 2012. Grandma B.

also explained that Mr. R. came to the home only to see their daughter, who lived with Grandma B., and Grandma B. was willing to get a divorce.

The Department also believed that Grandma B. would not be a suitable placement for K.W. because she might allow unsupervised visits with his biological parents. The Department was concerned that Grandma B. allegedly permitted K.W. to have contact with his parents and left him in their care on December 6, 2019, even though their rights were terminated. Grandma B. stated that K.W. had not had contact with his father since a social worker informed her that his parental rights had been terminated. She also clarified that she allowed K.W. to speak to his mother only under her supervision and reiterated that the plan for December 6, 2019, had always been for K.W. to stay with her son, Mr. W., for the afternoon, not with K.W.'s parents.

c. Mr. W.

In December 2019, Mr. W. also contacted the Department to express his desire to be a permanent placement and adopt K.W. A social worker and the CASA observed appropriate interactions between K.W. and Mr. W. and found Mr. W.'s home clean and appropriate. But when a department social worker interviewed Mr. W., he felt that the social worker was discouraging him from continuing the process because they believed he would not be able to pass a home study. The Department completed a background check on Mr. W. and learned that a previously dismissed

DUI (driving under the influence) charge from a year earlier had recently been refiled. The Department was also concerned about other criminal allegations from 2011 and 2012, and his report that someone had stolen his firearm in 2015. The Department concluded that it would not consider placing K.W. with Mr. W. until the DUI charge was fully resolved. It also determined that his background check would require an additional review before deciding whether a home study could even occur and, therefore, he could not be an immediate placement option.

4. *K.W.'s Second Request To Return to Relative Care*

On February 13, 2020, K.W. filed another motion to be returned to either Grandma B. or Aunt H. as well as another declaration, again expressing his desire to return to his relatives. Twenty relatives and family friends filed declarations in support of his motion, describing the extended family's close bonds. K.W. also included a report by a clinical psychologist about placement best practices and the psychological and developmental impact of relative placement. Grandma B. and Aunt H. both filed declarations meticulously responding to the Department's concerns about permanent placement with them and detailing their efforts to complete home studies. Grandma B. also provided a copy of the completed private home study recommending her as a suitable placement for K.W. The social worker who prepared it filed a declaration explaining that it met all the statutory requirements for a preplacement adoption home study report.

The CASA filed a motion requesting to modify the December order to delay placing K.W. with a relative "until they have been fully vetted and passed the home study process" and requesting that K.W. remain in foster care. 5 CP at 1018. The CASA reported that K.W. continued to struggle in school since his parents' rights were terminated and since his removal from Grandma B.'s care. But she provided the court with Grandma B.'s, Aunt H.'s, and Mr. R.'s civil court histories and argued it was in K.W.'s best interests to stay with the prospective adoptive family.

The Department also opposed placing K.W. with a relative until that relative passed a home study. The Department argued that there is no statutory preference for relative placement once a dependent child becomes legally free and that permanence is the highest priority for a legally free child. Since the relatives had previously not been able to adopt K.W. and had only recently offered to be permanent placements for him after K.W. was removed from Grandma B.'s care, the Department did not want to place K.W. with a relative until they decided that would be his final placement, which could be determined only after a home study.

The Department and the CASA also opposed Grandma B.'s private home study, stating that it did not meet Department standards. Specifically, the Department was concerned that the private home study did not include Grandma B.'s estranged husband as a co-applicant. It argued that Mr. R. was a safety concern because of his domestic violence history in 2011 and because of statements that

K.W. had made about him and subsequently retracted. The Department would require both Grandma B. and Mr. R. to complete a department home study, which it would not begin before completing Aunt H.'s.

In a March 12, 2020, hearing, the court acknowledged that "it is clear . . . that [K.W.] has a number of people who really care about him" but said that it was "particularly concerned about stability" and concluded that "stability is equally and sometimes more important" than living with relatives. RP (Mar. 12, 2020) at 86. The court ultimately decided it was in K.W.'s "best interest" to remain in his current potential adoptive foster placement. *Id.* at 88. Therefore, the court denied K.W.'s motion and granted the CASA's motion to delay relative placement until Grandma B. or Aunt H. was "fully vetted with a Department approved home study." 6 CP at 1364.

K.W.'s counsel reminded the court that Grandma B. had completed an adoptive home study through the independent social worker. However, the court said, "The information that was provided was not completely accurate." RP (Mar. 12, 2020) at 90. When K.W.'s counsel asked what information was inaccurate, the court simply said it would not argue with him. The court did not explain why it found the private home study inadequate.

B. Procedural History

K.W. filed a motion for discretionary review of the March order in the Court of Appeals. The court denied review and denied K.W.'s motion to modify that decision. K.W. then sought discretionary review in this court, which we granted.[7] Two amici curiae briefs were filed in support of K.W.: one on behalf of K.W.'s mother and the other on behalf of the Washington Defender Association, Smith Law LLC, American Civil Liberties Union of Washington, Fred T. Korematsu Center for Law and Equality, Legal Counsel for Youth and Children, the Mockingbird Society, and Treehouse (WDA et al. Amici).

ANALYSIS

A. Dependency and Placement Statutes

As a preliminary matter, the parties dispute which standard governs the placement of a legally free dependent child, such as K.W. The meaning of a statute

[7] The Department opposed review, arguing, in part, that the case was moot because K.W. had been returned to his mother's care when her parental rights were reinstated. *See supra* note 1. Generally, this court will not review a moot case unless it presents issues of continuing and substantial public interest. *In re Marriage of Horner*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004). We consider "whether the issues are of a public or private nature, whether an authoritative determination is desirable to provide future guidance to public officers, . . . whether the issues are likely to recur," "the likelihood that the issue will escape review[,] and the adverseness and quality of the advocacy." *In re Dependency of Z.J.G.*, 196 Wn.2d 152, 161 n.7, 471 P.3d 853 (2020). Questions about how our courts resolve competing interests in child welfare cases are of a public nature, and the vigorous debate about preference for relative placement and dearth of applicable case law indicate that public officers would benefit from authoritative guidance on the matter. Further, placement decisions occur every day in our courts but are likely to evade review due to their interlocutory nature. Last, the advocacy has been genuinely adverse and includes briefs from numerous amici curiae. This case satisfies each consideration for establishing an issue of continuing and substantial public interest. *Id.*

is a question of law we review de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). We determine the plain meaning of a statute based on "the statute and related statutes." *Id.* at 11. The Washington Juvenile Court Act recognizes that children have a "right to conditions of basic nurture, health, [and] safety." RCW 13.34.020. "The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter." *Id.*

When a child is found dependent, the court must enter an order indicating whether the child will remain in the home or be removed "into the custody, control, and care of a relative or other suitable person, the department, or agency responsible for supervision of the child's placement." RCW 13.34.130(1)(b). The statute governing placement of a dependent child expresses a strong preference for placement with relatives:

> The department *may only place a child with a person not related to the child* as defined in RCW 74.15.020(2)(a)[8] . . . when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child *shall* be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as

[8] RCW 74.15.020(2)(a)(i) specifies people related to the child, including "[a]ny 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." Aunt H. is K.W.'s great aunt and Grandma B. is his mother's cousin.

> described in subsection (1)(b) of this section.[9] The court *shall* consider the child's existing relationships and attachments when determining placement.

RCW 13.34.130(3) (emphasis added). Thus, the Department is authorized to place the child with someone other than a relative who has a relationship with the child only if relative placement would jeopardize the child's health, safety, or welfare. *Id.* Further, "[p]lacement of the child with a relative or other suitable person as described in subsection (1)(b) of this section *shall be given preference by the court*." RCW 13.34.130(6) (emphasis added). This statutory scheme makes it clear that both the Department and the courts are directed by the legislature to preserve the family unit and, when unable to do so, to place the child with family members, relatives, or fictive kin before looking beyond those categories to nonrelatives.

During the course of a dependency, the court is required to review the child's status at least every six months to determine whether court supervision should continue. RCW 13.34.138(1). Among other things, if the court concludes the dependent child should not be returned to their parents' home or homes, it must also

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[9] Previously, RCW 13.34.130(1)(b) authorized placement only with relatives or in the Department's custody. *See* former RCW 13.34.130(1)(b) (LAWS OF 2007, ch. 413, § 6). In 2009, the legislature expanded this authority to include "a relative or other suitable person." LAWS OF 2009, ch. 491, § 2(1)(b). The Department recognizes people who are not relatives by birth or law but who have kinship relationships as "suitable person[s]" if they have a preexisting relationship with the child or family, they are available and willing to safely care for and nurture the child, they pass the required background checks, and the child is comfortable with them. WASH. STATE DEP'T OF CHILDREN, YOUTH & FAMILY, POLICY NO. 4527, "Kinship Care: Searching for, Placing with, and Supporting Relatives and Suitable Other Persons," (revised July 23, 2017) https://www.dcyf.wa.gov/4500-specific-services/4527-kinship-care-searching-placing-and-supporting-relatives-and-suitable [https://perma.cc/K72A-PFWD].

determine "[w]hether preference has been given to placement with the child's relatives if such placement is in the child's best interests." RCW 13.34.138(2)(c)(ix). This means that the dependency court is charged with actively ensuring that relative placements have been fairly evaluated. This is an active process required at each hearing. *Id.* Making a finding that no such family placements exist at one hearing does not mean that the inquiry ends: the statute contemplates that the inquiry is ongoing, recognizing that family circumstances change, as they so often do, and as they did in this very case. *Id.*

Although dependent children are very often placed somewhere other than their parents' homes, parental rights remain intact during a dependency. However, if the Department ultimately concludes that parental rights to the dependent child should be terminated, the court may enter an order terminating parental rights. RCW 13.34.180(1), .190. At that point, if "there remains no parent having parental rights," the child is considered legally free, and

> the court shall commit the child to the custody of the department . . . for the purpose of placing the child for adoption. If an adoptive home has not been identified, the department shall place the child in a licensed foster home or take other suitable measures for the care and welfare of the child.

RCW 13.34.210. While the termination of parental rights authorizes the Department to identify and place the child in an adoptive home, it does not put an end to the dependency; a child who is legally free remains dependent until the court concludes

that supervision should not continue. *Id.*; RCW 13.34.138(1). Many children remain legally free after their parents' parental rights have been terminated. For example, in 2020, of the children who became legally free, 32 percent had adoptions completed within six months of being legally free. WASH. STATE CTR. FOR COURT RESEARCH, DEPENDENT CHILDREN IN WASHINGTON STATE: CASE TIMELINESS AND OUTCOMES 2020 ANNUAL REPORT 21 (2020), https://www.courts.wa.gov/subsite/wsccr/docs/2020DTR.pdf (hereinafter DEPENDENT CHILDREN IN WASHINGTON STATE 2020 ANNUAL REPORT). That means that 68 percent of legally free children remained legally free for at least six months after their parents' parental rights were terminated. *Id.* While many of those children may be in permanent placements, the data do not assure that.

K.W. and the Department appear to agree that RCW 13.34.210 governs the custody of legally free dependent children, but they disagree on whether the preference for relative placement expressed by the legislature at various stages of dependency are among the "suitable measures" the court must take at that time. *See* RCW 13.34.060(2) (shelter care), .065(5)(b) (shelter care hearing), .130(1), (6) (disposition). All amici argue that the dependency disposition statute, RCW 13.34.130—which explicitly states a strong preference for relative placement—governs the placement of a dependent child, whether legally free or not, unless and until there is a "change in circumstance." *See* RCW 13.34.130(6), .150.

We consider the statutory scheme as a whole when determining legislative intent. *Campbell & Gwinn*, 146 Wn.2d at 11-12. A child remains dependent even after parental rights have been terminated. RCW 13.34.138(1), .210. During dependency, the legislature requires courts and the Department to prioritize placement with relatives "[u]nless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered." RCW 13.34.130(3). One of the primary goals in dependency proceedings is the child's stability, and the standards governing a child's placement should not change at each stage of a dependency. *See* RCW 13.34.020. When a dependent child becomes legally free, the Department is authorized to identify an adoptive home and to place the child in licensed foster care "or take other suitable measures for the care and welfare of the child." RCW 13.34.210. Looking to the statutory scheme as a whole, we conclude that the legislature intended "other suitable measures" to be those expressed throughout the statutory scheme for child dependency and termination, including the placement preferences stated in RCW 13.34.130(3): "the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is[a relative or another] suitable person" with whom the child has a relationship and is comfortable, and the court "shall consider the child's existing relationships and attachments when determining placement." Therefore, the preference for relative

placement and the requirement for the court to consider existing relationships and attachments continue to apply to a dependent child once legally free. RCW 13.34.130(3), (6).

B. Placement with Relatives

In a dependency proceeding, we review a court's decision regarding the child's placement for an abuse of discretion. *In re Dependency of A.C.*, 74 Wn. App. 271, 275, 873 P.2d 535 (1994). "A court abuses its discretion if the decision is manifestly unreasonable, or based on untenable grounds or untenable reasons." *In re Dependency of M.R.*, 166 Wn. App. 504, 517, 270 P.3d 607 (2012). A dependency court abuses its discretion when it makes a placement decision without considering all the relevant factors. *A.C.*, 74 Wn. App. at 279.

When making placement decisions, courts "must be mindful of the statutory scheme, and particularly the legislative preference for placements that least disrupt a child's attachments and sense of stability." *In re Dependency of J.B.S.*, 123 Wn.2d 1, 12, 863 P.2d 1344 (1993). "A child who has been removed from [their] home has a right to preferential placement with a relative or known suitable adult." *In re Dependency of S.K.-P.*, 200 Wn. App. 86, 117, 401 P.3d 442 (2017), *aff'd sub nom. In re Dependency of E.H.*, 191 Wn.2d 872, 427 P.3d 587 (2018); *see also* RCW 13.34.130(3); *McKinney v. State*, 134 Wn.2d 388, 404, 950 P.2d 461 (1998) ("If an out of home placement is necessary, first priority for placement is given to the child's

relatives." (citing RCW 13.34.130(1)(b))). Changes in custody should be minimized because of the importance of the "'continuity of established relationships.'" *J.B.S.*, 123 Wn.2d at 12-13 (quoting *McDaniels v. Carlson*, 108 Wn.2d 299, 312, 738 P.2d 254 (1987)). In determining an appropriate placement, the best interests of the child are "paramount." *Id.* at 11. Yet, "the criteria for establishing the best interests of the child are not capable of specification" because each case is "largely dependent upon its own facts and circumstances." *In re Welfare of Aschauer*, 93 Wn.2d 689, 695, 611 P.2d 1245 (1980).

In *J.B.S.*, this court reversed a juvenile court order removing a dependent child from a foster family in Washington State who facilitated visits with his mother, to place him in the custody of his father, who had been deported to Mexico after serving time in prison for drug trafficking and who had a limited relationship with the child. 123 Wn.2d at 3, 10 n.5. The mother, though young at the time of the birth of the child and the dependency, had resolved most of the issues that gave rise to the dependency. *Id.* at 6-7. Both parents sought return of the child; return of the child to the father would mean the child would be limited in his ability to see his mother because the father could not travel legally into the United States. *Id.* The trial court observed that placing the child with his estranged father in another country would likely cause the child separation anxiety and trauma, but it erroneously believed that RCW 13.34.020 required the child to be placed with an available parent regardless

of numerous indications that such a placement would not be in the child's best interest. *Id.* at 8. Although the case involved competing desires of parents who retained parental rights to the dependent child, the *J.B.S.* court's guidance on the considerations that should inform placement decisions is relevant to placement decisions more generally, including when the child is placed out of the home and when relatives are afforded preference. *See* RCW 13.34.130(3), (6). The court explained that considerations should include "the psychological and emotional bonds" between the child and their current caregivers, "the potential harm [the child] would suffer if effectively severed from contact with these persons," the nature of the child's attachment to the prospective caregiver, the prospective caregiver's history and current circumstances, "and the potential effect upon [the child] of an abrupt and substantial change in [their] environment." *J.B.S.*, 123 Wn.2d at 11; *see also* RCW 13.34.130(3) ("The court shall consider the child's existing relationships and attachments when determining placement."). The court also explained that while courts have discretion to consider criminal history and immigration status, neither of those factors can be dispositive. *J.B.S.*, 123 Wn.2d at 11-12; *see also M.R.*, 166 Wn. App. at 518-20 (abuse of discretion to remove a child from the care of relatives he had close bonds with based on their status as undocumented immigrants and the mere possibility of deportation). More than anything, though,

J.B.S. stated that "the *child's* best interests should be paramount." 123 Wn.2d at 11 (some emphasis added).

The legislature has recognized that placement with relatives will very often support the child's best interests. RCW 13.34.130(3) (requiring the Department to place a dependent child with a relative "[u]nless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized" and permitting it to place a dependent child with someone other than a relative *only* when doing so would be in the best interests of the child).

> Children adjudged dependent often suffer emotional damage from the traumatic experience of being removed from their homes and placed with strangers. Recognizing this potential harm, the Legislature seeks to place a dependent child in a familiar and comfortable environment as soon as possible after a court makes a dependency determination in order to minimize any adverse effects to the child. Relatives of the dependent child can often provide such an environment, and their relationship to the child gives a preliminary assurance that the child will be safeguarded from harm. The statutory scheme, which favors placement of dependent children with relatives, clearly reflects that legislative goal.

Babcock v. State, 116 Wn.2d 596, 656, 809 P.2d 143 (1991); *see also* LAWS OF 2021, ch. 211, § 2 (recognizing that "Black and Indigenous children are still disproportionately removed from their families and communities" and amending shelter care statutes to reduce the removal of children from their homes in the first instance and strengthen the preference for placement with relatives when out-of-home placement is necessary).

While relative placement will not necessarily be in the child's best interests in every single case, ample evidence supports this legislative preference as one that will often minimize the trauma to the child, particularly when the child has existing relationships with the relatives. "[T]he vast majority of children in foster care have relative or fictive kin relationships that are of great value to them," and nurturing and protecting those relationships increases the chances for children to achieve permanency because "[w]hen these relationships are prioritized, protective factors are increased, which promotes current and future well-being." ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., ACHIEVING PERMANENCY FOR THE WELL-BEING OF CHILDREN AND YOUTH 10 (2021), https://www.acf.hhs.gov/sites/default/files/documents/cb/im2101.pdf [https://perma.cc/FS5T-USRG].[10] Relational permanence is particularly critical for Black, Indigenous, and other children of Color, who are disproportionately affected by the trauma of child welfare and other legal systems. *See generally* J. CHRISTOPHER GRAHAM, WASH. STATE DEP'T OF CHILDREN, YOUTH & FAMILIES, 2019 WASHINGTON STATE CHILD WELFARE RACIAL DISPARITY INDICES REPORT

[10] *See also* Jennifer Miller, *Creating a Kin-First Culture in Child Welfare*, 36 CHILD L. PRAC. 83, 83 (2017) ("Research confirms that children do best in kinship foster care and that family connections are critical to healthy child development and a sense of belonging. Kinship care also helps preserve children's cultural identity and relationship to their community." (footnote omitted)); Br. of Pet'r at 29-30 (citing numerous studies); Br. of WDA et al. Amici at 8-10 (citing numerous studies); Sixto Cancel, Guest Essay, *I Will Never Forget That I Could Have Lived with People Who Loved Me*, N.Y. TIMES, Sept. 16, 2021, https://www.nytimes.com/2021/09/16/opinion/foster-care-children-us.html.

(2020) (hereinafter WASHINGTON CHILD WELFARE RACIAL DISPARITY), https://www.dcyf.wa.gov/sites/default/files/pdf/reports/CWRacialDisparityIndices2019.pdf.

Yet, K.W. and amici correctly point out that the "best interests of the child" standard is susceptible to class- and race-based biases, and it is impermissible for the Department or dependency courts to rely on factors that serve as proxies for race in order to deny placements with bonded relatives. *Cf. In re Custody of Smith*, 137 Wn.2d 1, 20, 969 P.2d 21 (1998) (warning against interpreting the "best interests of the child" standard as permitting the State to "break up stable families and redistribute its infant population to provide each child with the 'best family'"), *aff'd sub nom. Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000) (plurality opinion). Decisions in child welfare proceedings "are often vulnerable to judgments based on cultural or class bias," given that poor families and families of Color are disproportionately impacted by child welfare proceedings. *Santosky v. Kramer*, 455 U.S. 745, 763, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (plurality opinion); *see also* Br. of Pet'r at 31 (citing studies); Br. of WDA et al. Amici at 3-4 ("The disparate separation of Black and Native American families [is] the result of a deeply engrained history of taking children of [C]olor from their parents in the name of furthering the child's 'best interests.'" (citing Leah A. Hill, *Loving Lessons: White Supremacy,* Loving v. Virginia*, and Disproportionality in the Child Welfare*

System, 86 FORDHAM L. REV. 2727, 2733 (2018))). For example, in King County, the Black population is approximately 14 percent of the overall population but made up 36 percent of the dependency caseload in 2020. DEPENDENT CHILDREN IN WASHINGTON STATE 2020 ANNUAL REPORT apps. B, C-71.

K.W. points to GR 37 for examples of criteria that have historically been used as proxies for race or ethnicity, such as prior contact with law enforcement or not being a native English speaker. GR 37(h)(i), (vii). Although GR 37 is not directly applicable to placement decisions in child welfare cases, Washington courts have previously condemned overreliance on similar factors in placement decisions that can serve as proxies for race and class, like criminal history and immigration status. *E.g.*, *J.B.S.*, 123 Wn.2d at 12; *M.R.*, 166 Wn. App. at 505. We know that like all human beings, judges and social workers hold biases, and we know that families of Color are disproportionately impacted by child welfare proceedings. Therefore, actors in child welfare proceedings must be vigilant in preventing bias from interfering in their decision-making. Factors that serve as proxies for race cannot be used to deny placement with relatives with whom the child has a relationship and is comfortable. RCW 13.34.130(3).

Given the expressed statutory preference for relative placement, the empirically demonstrated value and importance of relational permanence, and the danger of improper biases about "best interests" contaminating the decision-making

process, courts must give *meaningful* preference to relative placement options. Children are entitled to procedural fairness in the evaluation of potential placements. Courts must do more than give a passing acknowledgment for relative preference, as occurred in this case. Courts must actually treat relatives as preferred placement options and cannot use factors that operate as proxies for race or class to deny placement with a relative. RCW 13.34.130(3), (6).

C. Failure To Return K.W. to Relative Care

RCW 13.34.130(3) requires the court to consider the child's existing relationships and attachments and to give preference to placement with relatives who are "willing, appropriate, and available to care for the child" and "with whom the child has a relationship and is comfortable." In the event that the child cannot be maintained in "his or her home," the child must be placed with a "relative or other suitable person." RCW 13.34.130(1)(a), (b)(i). The last resort, as contemplated by the statute, is placement "with a person not related to the child." RCW 13.34.130(3).

Here, K.W. requested to be returned to relative care with either Aunt H. or Grandma B., relatives with whom he had strong relationships and attachments, since they had been involved in raising him since he was an infant. It is important to note here that K.W. had been living with Grandma B. prior to his removal with no issues; the reason for removal appears to have been the failure of Grandma B. to notify the Department that she was taking a one-day trip and had arranged for someone else

K.W. knew to watch him until her return. K.W., the prospective relative caregivers, and numerous other members of the family attested to the bonds between K.W. and these relatives and to the safe environments they could provide him. Aunt H. and Grandma B. endeavored to answer every single one of the Department's concerns and made significant efforts to complete home studies and otherwise demonstrate that they were willing, appropriate, and available to care for K.W. It is difficult to imagine what more Aunt H. or Grandma B. could have done to demonstrate the strength of their familial bonds and their commitment to providing safe care for K.W. in their homes.

Aunt H. had previously been very involved in K.W.'s life and had expressed a desire to be a permanent placement for him. Nevertheless, the Department refused to even consider placing K.W. with her before completing a home study—despite a court order expressly authorizing placement with her. Instead, when the Department met with Aunt H., the social worker raised concerns about her prior involvement with the Department; Aunt H. responded to each concern by explaining that each incident had either been unfounded, caused her to make changes to make the home safer, or alerted her to a risk she would take steps to protect K.W. from. The Department did not explain why she remained an unsuitable relative placement for K.W., other than its apparent prediction that she was unlikely to pass a home study. Prior involvement with child welfare agencies, without more, can serve as a proxy

for race or class, given that families of Color are disproportionately impacted by the child welfare system.[11] *See* WASHINGTON CHILD WELFARE RACIAL DISPARITY, *supra*. The Department's reliance on Aunt H.'s prior interactions with the child welfare system as a reason to deny her placement after she addressed each specific concern was arbitrary and improper. *Cf. J.B.S.*, 123 Wn.2d at 12 (criminal history

[11] For example, under the Indian Child Welfare Act (ICWA)—the "gold standard" in child welfare policy—children in foster care or preadoptive placement "shall be placed in the least restrictive setting which most approximates a family" with highest preference to a member of the child's extended family, absent "good cause to the contrary." 25 U.S.C. § 1915(b); BUREAU OF INDIAN AFFAIRS, U.S. DEP'T OF INTERIOR, GUIDELINES FOR IMPLEMENTING THE INDIAN CHILD WELFARE ACT 39 (2016). A party seeking to deviate from this placement preference must state their reasons on the record and bears the burden of proving by clear and convincing evidence that there is good cause to depart from the placement preference. 25 C.F.R. § 23.132(a), (b). One reason a court may conclude that there is good cause to depart from the placement preference is the unavailability of a suitable placement, but "the standards for determining whether a placement is unavailable must conform to the prevailing social and cultural standards of the Indian community in which the Indian child's parent or extended family resides or with which the Indian child's parent or extended family members maintain social and cultural ties," and socioeconomic status may not be a basis to depart from the placement preference. 25 C.F.R. § 23.132(c)(5), (d). Notably, prior contact with the child welfare system, criminal history, and poverty are not good cause reasons to depart from the strong preference for placement with relatives under ICWA. Likewise, tribes located around Washington State prioritize placement with extended family or other members of the tribal community and rarely treat factors like prior child welfare proceedings or criminal history as disqualifying in determining out-of-home placements for children. *See, e.g.*, NISQUALLY TRIBAL CODE § 50.09.09; NOOKSACK LAWS & ORDINANCES § 15.09.100; JAMESTOWN S'KLALLAM TRIBE TRIBAL CODE § 33.01.09(J); PUYALLUP TRIBAL CODE § 7.04.840. *But see* TULALIP TRIBAL CODE § 4.05.110(4) (prohibiting placement with someone with a criminal conviction, but only for certain crimes identified as disqualifying crimes by the social services division charged by the Tulalip Tribe with the responsibility to protect the health and welfare of Tulalip families and their children (beda?chelh)).

cannot be a dispositive factor in placement decisions); *M.R.*, 166 Wn. App. at 505 (immigration status cannot be a dispositive factor in placement decisions).

Likewise, Grandma B. had been the relative whom K.W.'s mother asked to care for K.W. when he was a year old and who had raised him until the age of six, with the Department's repeated approval. This is in compliance with the statute, which says, "Absent good cause, the department shall follow the wishes of the natural parent regarding the placement of the child." RCW 13.34.130(2). Grandma B. helped raise multiple children—both her own natural children and the children of friends and family who needed help—and she had a professional background and training in early childhood development and trauma-informed care. The Department insisted that it removed K.W. from Grandma B.'s care due to safety concerns and that it did not want to return K.W. to Grandma B. without further investigation. However, it is unclear what, if anything, the Department did to investigate those safety concerns—other than receive statements from Grandma B. and Aunt H. addressing each of those concerns. Instead, the Department appeared to conclude that Grandma B. was not a suitable placement because she had been the victim of domestic violence a decade earlier and allowed her estranged husband to maintain a relationship with their daughter. The Department insisted that it would not consider placement with Grandma B. until she had completed a department-authorized home study including her estranged husband, despite her statements that he had not lived

in her home since before she took K.W. into her home and that she was willing to get a divorce.[12] The Department also penalized Grandma B., Aunt H., and Mr. W. for being unable to commit to being permanent placements for K.W. earlier.[13]

Additionally, the Department overemphasized the importance of future permanence, failing to consider the significant stability K.W.'s long-term relative caregivers had provided him for almost his entire life and the dramatic instability the Department had introduced into K.W.'s life by removing him from Grandma B.'s care. The Department apparently opposed placement with relatives because it could not be certain they would ultimately become permanent placements for K.W. However, these rationales of "permanency" and "stability" crumble under the facts of this case, where the Department abruptly removed K.W. from a relative placement with no prior safety concerns without conducting sufficient inquiry into the plans for his care, subjected him to three different foster homes in a few weeks, prevented him

[12] The Department has now conceded that the trial court erred in rejecting Grandma B's private home study based on unspecified alleged inaccuracies, and it also concedes that it should not have refused to conduct its own home study with Grandma B. while Aunt H.'s was pending.

[13] Under Laws of 2021, ch. 211, § 9(5)(c)(iii)(B) and (D), "[u]ncertainty on the part of the relative . . . regarding potential adoption of the child" and "conditions of the relative['s] . . . home [that] are not sufficient to satisfy the requirements of a licensed foster home" are impermissible reasons to deny shelter care placement with a relative who had expressed interest in caring for the child and meets other statutory requirements.

from attending an important annual family and cultural event, and then refused to return him to the care of his relatives, despite his and his family's many requests.

We reverse. Statutory preferences to place dependent children with relatives are "suitable measures for the care and welfare of the child" consistent with the statutory scheme and continue to apply after a child becomes legally free. RCW 13.34.210, .130(3), (6). The purpose of these statutes is to ensure children are safe and in placements that are consistent, stable, and in homes with relatives. Disrupting a child's placement, as happened in this case, for reasons that appear to have virtually no grounds at all, creates chaos for the child. That chaos can be mitigated or alleviated by following the statutory scheme ensuring children should be placed with relatives. Courts *must* afford meaningful preference to placement with relatives. RCW 13.34.130(3).

In this case, the juvenile court applied the wrong standard, which is an abuse of discretion. *M.R.*, 166 Wn. App. at 517. The court failed to consider whether the relatives K.W. requested to be placed with were "willing, appropriate, and available to care for the child" and "with whom the child has a relationship and is comfortable." RCW 13.34.130(3); *see A.C.*, 74 Wn. App. at 279 (a dependency court abuses its discretion when it makes a placement decision without considering the appropriate factors). Further, the court overlooked the Department's role in causing instability to K.W.'s placement and giving inappropriate weight to factors

that serve as proxies for race. It was an abuse of discretion to deny K.W.'s request to return to placement with a long-term relative caregiver after the Department abruptly removed him and the relatives made remarkable efforts to assuage the Department's concerns.[14] The court also erred in concluding that "stability" refers only to future permanence as a stabilizing factor for a dependent child, particularly when the child has existing relationships with the relatives. RCW 13.34.130(3) (preference for placement with a relative "with whom the child has a relationship and is comfortable"); *cf. J.B.S.*, 123 Wn.2d at 11. Here, the Department and the court relied on impermissible factors and failed to give meaningful preference to the relative placements K.W. requested.

CONCLUSION

The legislature has expressed a strong preference for placement with relatives during child welfare proceedings, and those placements must be given meaningful preference throughout a dependency in order to effectuate the empirically demonstrated harm-reduction purposes of relational stability. Here, the trial court abused its discretion in denying K.W.'s request to be returned to the care of relatives with whom he had existing relationships and felt comfortable. RCW 13.34.130(3). The court also erred in accepting the Department's reasons for opposing relative

[14] The court notes here that relative placements need not be exceptionally qualified under the statute. Rather, they need to be able to provide a safe place for children and provide competent care for the child. RCW 13.34.130(1)(b)(ii), (10).

placements—which, without more, serve as proxies for race and class. Therefore, we reverse and remand to the trial court for further proceedings consistent with this decision.

Montoya-Lewis, J.

WE CONCUR:

González, C.J.

Stephens, J.

Johnson, J.

Gordon McCloud, J.

Madsen, J.

Yu, J.

Owens, J.

Whitener, J.

Washington State Supreme Court
Commission on Children in Foster Care
2022 Meeting Dates

DATE	TIME	LOCATION
Monday, March 7th	1:00 PM – 4:00 PM	Zoom Videoconference
Monday, May 9th	1:00 PM – 4:00 PM	Zoom Videoconference
Monday, September 12th	1:00 PM – 4:00 PM	Zoom Videoconference
Monday, December 12th	1:00 PM – 4:00 PM	Zoom Videoconference

Updated: December 27, 2021

Please contact Susan.Goulet@courts.wa.gov if you have any questions.