

Module 3: Shelter Care

Introduction to Shelter Care

Welcome to the Shelter Care hearing module. The information contained within this module is intended for educational purposes only.

Course Accessibility

You can navigate this course by using the onscreen prompts and buttons on the toolbar below. Materials available for download can be accessed in the resources tab located above. This course contains audio. Please take a moment to adjust the volume on your device. Closed captioning is available. Turn on captions using the toolbar below.

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Section 1: Dependency Petitions

A dependent child is defined as any child who:

- A. Has been abandoned
- B. Is abused or neglected by a person legally responsible for the care of the child
- C. Has no parent, guardian, or custodian capable of adequately caring for them, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development
- D. Is receiving extended foster care services
- E. Is a victim of sex trafficking or severe forms of trafficking in persons under the Trafficking Victims Protection Act of 2000. When the parent is involved in the trafficking, facilitating the trafficking, or should have known that the child is being trafficked

Check out the resources tab above to view the child in youth trafficking in dependency cases bench cards.

These bench cards provide judicial officers with guidance on decisions around removal, placement, family time visitation, and case plan services in cases involving children and youth who have experienced trafficking.

Filing Petition

Any person can file a petition in Superior Court showing that there is a dependent child within that county. Courts are not allowed to charge filing fees for dependency petitions. A child is considered within the county for purposes of jurisdiction in a dependency proceeding when the child is physically within the county, regardless of the residence of the parent, guardian, or legal custodian.

A dependency petition may be amended at any time. The court shall grant additional time if necessary to ensure a full and fair hearing on any new allegations in an amended petition. If an amended petition is filed, the court still needs to comply with holding the fact-finding hearing within 75 days from the original filing unless it found exceptional reasons to justify a continuance.

Content of Petition

A dependency petition must state the child's county of residence and the names, residences, and contact information of the child's parents, guardians, and legal custodians if known to the department or other petitioning party.

A dependency petition must be verified and must contain a statement supporting a basis for a dependency.

The filing of a dependency petition does not, in and of itself, require the department to seek removal of a child from the parental home. However, if the department is seeking removal of the child from a parent, the petition must contain a clear and specific statement of the harm that will occur if the child remains in the care of the parent and the facts that support that conclusion.

A dependency petition must also include the age, sex, and residence of the juvenile so far as is known to the petitioner, along with the name, marital status, and residence of the parent, guardian, or custodian, or person with whom the juvenile is residing, so far as is known to the petitioner. The petition must state if any of this information is unknown.

The dependency petition must indicate whether the petitioner knows or has reason to know that the juvenile is, or may be, an Indian child as defined by the Indian Child Welfare Act or Washington State Indian Child Welfare Act, as well as the name of the tribe, if known, to which the child belongs.

The petition must include a statement of the statutory provisions which give the court jurisdiction over the proceeding.

In a statement of the facts which give the court jurisdiction over the juvenile and over the subject matter of the proceedings stated in plain language and with reasonable definiteness in particularity. The petition must include a request that the court inquire into the matter and enter an order that the court shall find to be in the best interest of the juvenile and justice.

Finally, the petition should include any other information required by court rule or statute.

Click the next button on the toolbar below when you are ready to continue.

Section 2: Shelter Care Hearing

72-Hour Shelter Care Hearing Purpose

Anytime a child has been removed or a petition has been filed, seeking removal, the court shall hold a shelter care hearing within 72 hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can immediately and safely be returned home while the adjudication of the dependency is pending.

Shelter care hearings shall be public and can be conducted at any time or place within the limits of the court, except if the court finds that excluding the public is in the best interest of the child and after conducting a bone-club analysis, if the public is excluded from the hearing, the following people may nonetheless attend the closed hearing unless the court finds it is not in the best interest of the child, the child's relatives, the child's foster parents, and any person requested by the parent.

If a parent desires to waive the shelter care hearing, the court shall determine on the record and with the parties present that the waiver is involuntary. A parent may not waive their right to the shelter care hearing unless they appear in court, in person, or by remote means.

Advisement of Rights

If the hearing is not waived, the court must advise the parties of their basic rights at the commencement of the hearing. These rights are as follows:

1. To be represented by an attorney in all dependency proceedings and if indigent, to have counsel appointed for them by the court.
2. To introduce evidence.
3. To be heard on their own behalf.
4. To examine witnesses.
5. To receive a decision based solely on the evidence adduced at the hearing.
6. To have an unbiased fact-finder.

Similarly, at the shelter care hearing, the child has the right to be represented by counsel. Counsel shall be provided to the child, a public expense, subject to eligibility requirements pertaining to age in the phase and schedule.

All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. The court must take great care and safeguard a parent's due process rights by allowing witnesses to be examined.

Evidence

The rules of evidence need not apply in the shelter care hearing. The court reviews evidence that the shelter care hearing under a reasonable cause standard. Hearsay evidence regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

Inquiries

Notice to Parents:

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

Return Home:

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

Relative Placement Efforts:

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

Services to Prevent Removal:

What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that experiencing homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

Least-Disruptive Placement:

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

Educational Stability:

Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

GAL or Attorney:

Whether there is a need for an appointment of a guardian ad litem or attorney;

ICWA/Reason to Know:

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

Restraining Orders:

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

Orders Needed:

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

Family Time:

The terms and conditions for parental, sibling, and family visitation.

Orders

A Shelter care order must include the requirement for a case conference. The shelter care order shall include notice to all parties and establish the date, time, and location of the case conference, which shall be no later than 30 days before the fact-finding hearing. If the parent is not present at the shelter care hearing or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

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

The inquiries, findings, and orders made at the shelter care hearing are contained in the shelter care hearing order. A shelter care order may be amended at any time with proper notice and hearing. However, the shelter care decision of placement shall be modified only upon a showing of a change in circumstances. No child may be placed in shelter care for longer than 30 days without an order signed by the judge authorizing continued shelter care.

Other orders issued at the shelter care hearing may include orders for genetic testing and orders authorizing the release of information relating to the healthcare and educational needs of the child.

Section 3: Removal Decision

Reasonable Efforts

In the context of the shelter care hearing, reasonable efforts, findings refers to the judicial ruling that the Child Welfare Agency has or has not provided appropriate

services to a family prior to removing a child from their home. Reasonable efforts include specific services such as housing assistance that are provided to the child and the child's parent, guardian, or legal custodian.

The reasonable effort standard is flexible. However, this does not excuse the department from making no efforts to place with a parent. After consideration of the specific services that have been offered to the families, the court must consider whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home, and to make it possible for the child to return home.

In making findings, the court must consider whether or not reasonable efforts have been made for each parent in determining whether reasonable efforts have been made. The court should consider the facts and circumstances of each parent. Each parent must be considered individually, and reasonable efforts should be made for both parents before the department considers other options.

In cases where the court does not find reasonable efforts have been made to prevent or eliminate the need for removal, or there was not reasonable cause for removal, the child must be returned home pending adjudication of the dependency hearing. Dismissal of the petition is, however, not a remedy available to the court at a shelter care hearing without the agreement of the department, absence of a proper motion.

If the trial court concludes the department has made reasonable efforts, it must make findings on the record to support its conclusion. Checking a box is not sufficient to protect the important interests involved or to provide information necessary for review.

Removal Decision

In order to establish a legal basis for removing a child, the court must make a finding that reasonable efforts have been provided and that there is reasonable cause to believe that one or more of the following apply.

A. The child has no parent, guardian, or legal custodian to provide supervision and care for such child.

B. Removal of the child is necessary to prevent imminent physical harm due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, a high-potency synthetic opioid, or a pattern of severe neglect.

C. The parent to whom the child could be released is alleged to have committed custodial interference.

In order to find that there is reasonable cause to believe that removal is necessary to prevent imminent physical harm under section B, the court must also make the following findings.

Imminent Physical Harm Inquiry

The evidence must show a causal relationship between the particular conditions in the home and imminent physical harm to the child.

When determining the causal relationship, the court should consider that the existence of community or family, poverty, isolation, single parenthood, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability, or special needs of the parent or child or nonconforming social behavior does not by itself constitute imminent physical harm.

The court shall also give great weight to the lethality of high-potency synthetic opioids and public health guidance from the Department of Health related to high-potency synthetic opioids when determining whether removal of the child is necessary to prevent imminent physical harm due to abuse or neglect.

In addition to the causal relationship, the court must also find that it is contrary to the welfare of the child to be returned home, and after considering the particular circumstances of the child, any imminent physical harm to the child outweighs the harm the child will experience as a result of the removal.

If after these inquiries, the court finds that there is reasonable cause to believe removal is necessary to prevent imminent physical harm. The court must further consider whether participation by the parent in any prevention services would prevent or eliminate the need for removal. If so, the court shall inquire of the parent whether they're willing to participate in services, and if the parent agrees, the court shall place the child with the parent.

In deciding whether to place the child with the parent, the court shall give great weight to the lethality of high-potency synthetic opioids and public health guidance from the Department of Health related to high-potency synthetic opioids. And whether the issuance of a temporary order or protection directing the removal of a person or persons from the child's residence would prevent the need for removal of the child.

Inquiry Terminology

- **Imminent physical harm** is not defined in the statute. However, it is drawn from similar language in ICWA and WICWA, which requires a finding of imminent physical damage or harm in order to remove a child from a parent or Indian custodian on an emergency basis.
- A **causal relationship** is generally understood as a cause-and-effect relationship where one event or variable directly results in the occurrence of another event or change in another variable when determining if there is a legal basis to remove a child from the home to prevent imminent physical harm occurring to that child.

The court must find that such a relationship exists between the specific conditions in the home and the imminent threat of physical harm to the child. For example, saying that a child needs to be removed because “..when the parents use substances, they cannot adequately supervise and care for the young child.”

It does not establish a causal relationship because it fails to demonstrate a cause-and-effect connection between the specific behavior of the parents and the child being in imminent physical danger.

Rather, the following would establish a causal relationship.

“...the parents are unable to adequately supervise the child when using substances as evidenced by the parents being found unresponsive in their car with the young child crying loudly in the backseat.”

- **Harm of removal** is not defined in the statute. It is an umbrella term that encompasses the many ways children are negatively impacted by forcible removal and continued family separation. Children who are removed from their parents' care by child welfare face a loss of physical liberty in assessing the harm of removal. The Washington Supreme Court has previously concluded that separating a child from their family for periods of time as short as one hour can cause great trauma. Removal is often unexpected and extremely disruptive to a child's neurological and socio-emotional development, including children experiencing abuse or neglect in the home.

In addition to the distress of being separated from family, removal disrupts the child's connections to other important people, places, and things, including

relatives, friends, pets, possessions, traditions, culture, and their community. While there are certainly cases where removal is necessary to ensure safety, study after study has demonstrated that children suffer complex and long lasting harms when they're removed from their parents and placed into foster care, depending on the particular circumstances of the family, removal and placement into foster care can result in far worse life outcomes for children than they would have experienced remaining in the home.

- The term **high potency synthetic opioid** refers to an unprescribed synthetic opioid classified as a schedule II controlled substance or controlled substance analog in chapter 69.50 RCW, or by the Pharmacy Quality Assurance Commission and rule, including but not limited to fentanyl.
- **Prevention services** include preservation services and other reasonably available services including housing assistance capable of preventing the need for out of home placement while protecting the child. Prevention services are not the same as remedial services or family reunification services. In practice, the goal of prevention services is to create safety for a child immediately in order to prevent or eliminate the need for removal. They may include a combination of professional services, natural supports and community resources.

Prevention services are included in safety plans because they focus on creating immediate short-term safety for the child that does not depend on parent promises. This is different from the services that are ordered in case plans which focus on long-term parental behavior change. If you are struggling with whether a service, task or support would be appropriate in a safety plan, try asking yourself, "Would it create safety for the child right now?"

In Home Conditions

The court cannot order a parent to participate in prevention services at the shelter care hearing; however, the court can order that a child can remain in the care of a parent contingent on specific conditions put in place to protect the immediate safety of the child while the case proceeds in shelter care, the parent must agree to these conditions.

Such an order is commonly referred to as in-home with conditions, and often includes a combination of prevention services, monitoring, and reporting requirements, and other conditions and restrictions meant to keep the child safe from the identified threats to child safety while in the care of the parent.

Importantly, this also contains orders for the department to provide any specific services, assistance, and concrete support needed to protect the safety of the child while they remain in the care of the parent. With notice in a hearing, the court can amend this order at any time if parties fail to conform to the conditions imposed. The court must consider whether non-conformance with any conditions resulted from circumstances beyond the control of the parent, and give weight to that fact before ordering return of the child during shelter care.

Although a shelter care order may be amended at any time with notice in a hearing, the shelter care placement decision shall be modified only upon a showing of a change in circumstances.

Active Efforts

If there is reason to know a child is, or maybe an Indian child is defined by the federal ICWA or WICWA, the department must make active efforts to reunite the family. In some circumstances, the active efforts requirement is not triggered until after the first shelter care hearing, such as when a court orders law enforcement or child protective services to take a child into custody in an emergency, or when a child is taken into protective custody without a court order.

However, when the department has prior contact with the family and has reason to believe the child was at risk of physical damage or harm, it has an obligation to begin active efforts.

Active efforts must be at a minimum thorough, timely, consistent, culturally appropriate, and documented. It is the department's burden to prove that active efforts were unsuccessful, and the department must document its provision of active efforts in the record. A parent's refusal to engage in services does not relieve the department of its obligation to provide active efforts.

Moreover, a tribe's lack of response or involvement does not relieve the department of its responsibility to engage the parenting in culturally appropriate services.

ICWA Removal Decision

The court must consider whether active efforts have been made at shelter care hearings, and must evaluate active efforts at every hearing where the child is placed in out-of-home care. The court must make a finding on the record in each shelter care

hearing that out-of-home placement is necessary to prevent imminent physical damage or harm.

The department shall ensure that the emergency removal or placement of the child terminates immediately when such removal or placement is no longer necessary to prevent imminent physical damage or harm to the child. Where the department does not establish that it has made active efforts, the court must immediately return the child to their parents' care unless the department has established that doing so would subject the child to substantial and immediate danger or threat of such danger.

When removal is ordered, there is a presumption that placement should be with a relative and suitable other person whenever possible. It is the burden of the state to show why placement in licensed foster care is needed when making placement decisions. The court must give great weight to the stated placement preference of the parents and the child.

Section 4: Placement Decision

Relative/Suitable Other Placement

At the shelter care hearing, if the court does not release the child to their parent, the court shall order placement with a relative or other suitable person unless the department establishes there is reasonable cause to believe that placement in licensed foster care is necessary to prevent imminent physical harm to the child due to child abuse or neglect, including that which results from sexual abuse, sexual exploitation, a high-potency synthetic opioid, or a pattern of severe neglect because no relative or other suitable person is capable of ensuring the basic safety of the child.

Or

Efforts to reunite the parent and child will be hindered.

The court must inquire of the department and any other person present at the hearing for the child whether there are any other relatives or other suitable persons who are willing to care for the child. The inquiry must also include whether any relatives or other suitable persons have expressed interest in caring for the child, are able to meet the child's special needs, are willing to facilitate sibling and parent visitation if ordered by the court, and support parent-child reunification once it can safely occur.

As long as the inquiry is satisfied, the following must not prevent the child's placement with the relative or other suitable person. An incomplete department, or fingerprint-based background check if the relative or other suitable person appears otherwise suitable and competent to provide care and treatment. But the background checks must be completed as soon as possible after placement.

Uncertainty on the part of the relative or other suitable person regarding potential adoption of the child.

Disbelief on the part of the relative or other suitable person that the parent presents a danger to the child provided the caregiver will protect the safety of the child and comply with court orders regarding contact with a parent.

The conditions of the relative or other suitable person's home are not sufficient to satisfy the requirements of a licensed foster home, in which case the court may order the department to provide financial or other support to the relative or other suitable person necessary to ensure safe conditions in the home.

If the court orders placement of the child with a suitable other person, the placement is subject to all terms and conditions that apply to relative placements.

Anytime the court places a child with a relative or other suitable person, they should inquire if the placement has a desire to become a licensed foster parent. If the relative or suitable other placement does indicate a desire to be licensed, the court must order the department to commence an assessment of the placement's home within 10 days.

If the relative or suitable other person qualifies pursuant to this initial assessment, the department shall issue an initial foster family home license. This initial license allows relative and suitable other caregivers to start receiving monthly foster care maintenance payments, which are much higher than what caregivers can receive through other sources like TANF.

An initial license for a foster family home is valid for up to 90 days, over which time the placement can continue to pursue full licensure. There are no exceptions or extensions to this initial licensing timeline.

Licensed Foster Care

If there is no relative or suitable other person available for placement of the child, or if the court does not order placement with a relative or other suitable person, the court

shall place the child in licensed foster care and shall set forth reasons for the order. If the court places the child in licensed foster care, the department shall report to the court at the shelter care hearing the location of the licensed foster placement the department has identified for the child.

Further, the court must inquire as to whether the identified placement is the least restrictive placement necessary to meet the needs of the child.

- The child will be able to remain in the same school, and whether any orders of the court are necessary to ensure educational stability for the child.
- The child will be placed with a sibling or siblings. And whether court-ordered sibling contact would promote the well-being of the child.
- The licensed foster placement is able to meet the special needs of the child.
- The location of the proposed foster placement will impede visitation with the child's parent or parents.

If the court places the child in licensed foster care, the court may order the department to:

- Place the child in a less restrictive placement.
- Place the child in a location in closer proximity to the child's parent home or school.
- Place the child with the child's sibling or siblings.
- Take any other necessary steps to ensure the child's health, safety, and wellbeing.

QRTP

A qualified residential treatment program or QRTP is a specific category of non-foster family home setting for which public child welfare agencies must meet detailed assessment, case planning, documentation, judicial determinations, and ongoing review and permanency hearing requirements for a child to be placed in and continue to receive federal funding for the placement.

The department decides whether to recommend placement of a child in a QRTP as part of a holistic case planning approach, whereby the department assesses what placement is available to best meet the child's needs, inclusive of placement in the home of relatives, suitable other persons, in foster family homes. The QRTP requirements, including those related to considering less restrictive alternatives built on and did not replace existing Washington State law and department practices in this regard.

A QRTP is a program uses a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate of children with serious emotional or behavioral disorders or disturbances, and is able to implement treatment for the child that is identified in an assessment that:

- Is completed by a trained, professional or licensed clinician who is a qualified individual as the term is defined under the Family First Prevention Services Act
- Assesses the strengths and needs of the child
- Determines whether the child's needs can be met with family members or through placement in a foster family home, or if not, which available placement setting would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the child's permanency plan.

If the child is placed in a QRTP, the court shall, within 60 days of placement, hold a hearing to:

- Consider the assessment required and submitted as part of the department's social study and any related documentation,
- Determine whether placement in foster care can meet the child's needs, or if placement in another available placement setting best meets the child's needs in the least restrictive environment
- Approve or disapprove the child's placement in the QRTP.

Section 5: Family Time Visitation

Visitation is a right of the family. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and supporting family reunification. Visitation must occur in the least restrictive setting and be unsupervised unless the presence of

threats or danger to the child requires the constant presence of an adult to ensure child safety.

First Visit

If a child is removed from a parent, the first visit must take place within 72 hours of the child being delivered into the custody of the department, unless the court finds that extraordinary circumstances require delay. If this first visit occurs in an in-person format, this first visit must be supervised unless the department determines that visit supervision is not necessary.

At the shelter care hearing, the court must inquire about the terms and conditions for parental, sibling, and family visitation and order of visitation plan individualized to the needs of the family with the goal of providing the maximum parent, child, and sibling contact possible. The court and the department should rely upon community, resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that resources are available and appropriate, and the child's safety would not be compromised.

Visitation shall not be limited as a sanction for a parent's failure to comply with recommended services during shelter care. In fact, visitation may only be limited when necessary to ensure the health, safety, or welfare of the child.

The court shall advise the department that the failure to provide court-ordered visitation may result in a finding that the department failed to make reasonable efforts to finalize the permanency plan.

The lack of sufficient contracted visitation providers will not excuse the failure to provide court-ordered visitation.

30-Day Shelter Care Review

If the court previously ordered that visitation between a parent and child be supervised or monitored, there shall be a presumption that such supervision or monitoring will no longer be necessary when entering a continued shelter care order. To overcome this presumption, a party must provide a report to the court, including evidence establishing that removing visits, supervision, or monitoring would create a risk to the child's safety.

Then, the court shall make a determination as to whether visit supervision or monitoring must continue.

Closing

Congratulations, you have completed the Shelter Care Hearing Module. You can learn more about this module by clicking on the tabs on the bottom of the screen. Click the done button when you are ready to exit this module.