

Module 4: Fact Finding

Introduction to Fact Finding

Welcome to the Fact Finding Hearing module. The information contained within this module is intended for educational purposes only.

Course Accessibility

Navigate this course by using the onscreen prompts and buttons on the toolbar below. Click the accessibility icon on the toolbar below for more navigation options. 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. Materials available for download can be accessed in the resources tab located above.

When you are ready, click the next button on the toolbar below to continue.

Section 1: Procedures

Notice

The due process clause of the 14th Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children. If the state seeks to interfere with this fundamental right, the legislature has provided a procedure by which a child may be declared dependent.

The procedure includes a fact finding trial or hearing in which the petitioner bears the burden of establishing by a preponderance of the evidence that the child meets one of the statutory definitions of dependency.

Before a court can hear an adjudicated dependency fact finding trial, the department must follow procedures set forth in RCW 13.34.70. Those procedures include the filing of a petition in the issuance of a summons, attaching a copy of the petition, and directing notice of the fact finding hearing to the following parties:

1. The child, if the child is 12 years of age or older
2. Parents, guardians, or custodians
3. Other persons appear to the court to be proper or necessary parties to the proceedings.

Any petition filed by the department must be verified. Contain a statement constituting a dependency, and include the names, residence, and contact information of each parent, guardian, or custodian of the child if known.

The department must properly serve the parties responding to the dependency petition. In order for the court to have personal jurisdiction. Any party who can be found within the state must be personally served with the summons no later than 15 court days before the fact finding hearing. If the party resides within the state and cannot be personally served, but the party's address is known or can be ascertained with reasonable diligence, the department can serve the summons on the party by mailing a copy by certified mail no later than 15 court days before the fact finding hearing.

If a party is outside of the state but can be found or their address is known, or can with reasonable diligence be ascertained, the department can serve the summons either by personal service or by certified mail, at least 10 court days before the fact finding hearing. If the party is not a resident of this state or the name, place of residence, or whereabouts of the party is unknown and the department has been unable to serve a party after due diligence, the department may seek an order directing the county clerk to publish notice to the party in the county in which the petition was filed.

If the party is believed to be a resident of another county or state, notice must be published in the county in which the party is believed to reside. The department must also mail a copy of the notice to the party at their last known residence.

Timing

The court shall hold a fact finding hearing on a dependency petition no later than 75 days after the filing of the petition. Unless the court finds exceptional circumstances for a continuance, the party requesting the continuance has the burden of proving by a preponderance of the evidence that exceptional circumstances exist.

The court shall give preference to those cases where the child is placed in out-of-home care.

Pretrial Proceedings

All hearings shall be public, except if the court finds that excluding the public is in the best interest of the child. Whether courtroom proceedings should be closed to the public requires the court to make an individualized determination based upon five factors.

1. The proponent of closure must make some showing of the need to do so, and the need involves a serious and imminent risk.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available to protect the threatened interest.
4. The court must weigh the competing interests of the closure, proponent, and the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose.

Either the parent or the child's attorney or the GAL may move to close a hearing at any time. The statute does not address whether the department can seek to close a hearing.

Section 2: Fact Finding Hearing

Purpose

Fact finding in child dependency cases is a crucial legal proceeding where the court examines and establishes the facts central to the case to determine whether the allegations of abuse or neglect are true, or where a child has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constituted danger of substantial damage to the child's psychological or physical development.

The fact finding hearing is a formal trial held in the presence of a judge or court commissioner. This is sometimes referred to as a contested fact finding or fact finding trial.

Evidence

The rules of evidence apply at the fact finding Hearing. During a fact finding hearing, evidence is presented, and witnesses may be called to testify. Judicial officers may take notice of undisputed facts and may apply common sense based on their experience, but they cannot consider evidence outside the record at the conclusion of the hearing the court will determine by a preponderance of the evidence whether the child is legally dependent.

A "dependent child" is one who

- A. Has been abandoned
- B. Is abused or neglected, as defined in RCW 26.44 by a person legally responsible for the care of the child
- C. Has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.
- D. Is receiving extended foster care services. However, it should be noted that the court does not hold contested fact finding hearings to determine whether a child meets the definition of dependency under this section
- 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 dependency cases, bench cards. These bench cards provide judicial officers with guidance on decisions around removal, placement, family time visitation, and case plan services and cases involving children and youth who have experienced trafficking.

The dependency petition must provide the parents with notice of the parental deficiencies the department is alleging. Due process is violated if a parent is held accountable for a parenting deficiency that they were never notified of. If new allegations arise during the investigation, the department can amend the petition to include those allegations so that evidence of those allegations can be introduced at the fact finding hearing.

Outcomes

If the department does not meet its burden of proof in showing that the child is dependent, the petition is dismissed and the child is returned to the custody of the parent.

If the department does meet its burden of proof in showing that the child is dependent, the court must enter written findings of fact stating the reasons for finding the child is dependent and conclusions of law, written findings contained in the order of dependency should include and evaluate the facts in the context of the statutory language and should not merely incorporate the court's oral ruling.

These findings of fact should identify the specific evidence upon which the court relied to support its ultimate findings.

Establishing dependency is a pivotal juncture in a case. Once a child is legally declared dependent, the court is able to order the parents to participate in remedial services designed to eliminate the need for out-of-home care. Entry of an order of dependency also starts a process that could ultimately result in the filing of a petition to terminate parental rights if the parents are not able to timely remedy the safety issues that brought the child into state care.

It is incredibly important that parents understand the fact finding process and comprehend the implications of a dependency finding. Not only does this help ensure that the rights of the parents are protected, it also supports the capacity of parents to participate in their case, comply with court orders, and work towards reunification.

Section 3: Orders

Order of Dependency

An order of dependency establishes that the child is a dependent of the state and grants the state custodial authority. Disposition can either occur in conjunction with fact finding or a separate dispositional hearing can be scheduled. A disposition hearing should occur within 14 days of the dependency order unless the court finds good cause to continue the hearing.

Default Orders

If the parent does not appear at the dependency fact finding hearing after receiving proper notice, the department may request to enter an order of dependency against the parent by default. If the parent has previously appeared in the dependency proceeding, either personally or through counsel, the parent is entitled to notice of the department's intent to proceed by default at the fact finding hearing.

However, if the parent has never appeared in the proceeding, no notice is required.

Agreed to Orders

A parent may waive their right to a fact finding hearing by agreeing to the entry of an order establishing dependency. An agreed order must be signed by the parent and their attorney unless the parent has waived their right to an attorney in open court. It must also be signed by the department and by the child's attorney, guardian ad litem, or court-appointed special advocate.

The agreed order of dependency is subject to the approval of the court.

To approve an agreed order, the parent and their attorney must appear before the court, and the court, within available resources, must inquire and establish on the record that:

1. The parent understands the terms of the order they have signed, including their responsibility to participate in remedial services as provided in any disposition order
2. The parent understands that entry of the order starts a process that could result in the filing of a petition to terminate their relationship with the child within the timeframes required by state and federal law if they failed to comply with the terms of the dependency or disposition orders, or failed to substantially remedy the problems that necessitated the child's placement in out-of-home care.
3. The parent understands that the entry of the stipulated or agreed order of dependency is an admission that the child is dependent and has the same legal effect as a finding by the court that the child is dependent by at least a preponderance of the evidence, and that the parent shall not have the right in any subsequent proceeding for termination of parental rights or guardianship to challenge or dispute the fact that the child was found to be dependent.
4. The parent knowingly and willingly stipulated and agreed to, and signed the order or orders without duress and without misrepresentation or fraud by any other party.

If a parent stipulates or agrees to entry of an order of dependency but then fails to appear before the court, the court may enter the order of dependency if the court finds the parent had actual notice of the right to appear but chose not to do so. A parent may choose to waive their presence in court for entry of the stipulated or agreed order of dependency by submitting to the court through counsel a stipulated or agreed dependency fact finding statement.

Closing

Congratulations, you have completed the Fact Finding 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.