

Facilitator Guide

OPD/OCLA Joint Training on HB 1227 (Part 3)
HB 1227 and HB 1747 Trial/Appellate Attorney Training

June 8, 2023, 9:00 AM – 12:00 PM

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Big changes are afoot in dependency cases! HB 1747 has gone into effect, and HB 1227 is rolling out on July 1, 2023. These bills make it much harder for DCYF to remove kids from their parents' care, give the courts more oversight over what the Department does in terms of placement, and require the courts to consider whether guardianship is available as a permanent option for children in care. But they won't be effective unless attorneys are ready to litigate their new requirements at every level of the dependency process! Join us on June 8, 2023, when we will bring together trial-level parent representation attorneys, child representation attorneys, and appellate attorneys for an interactive, breakout training where we will learn about, and discuss, HB 1227 and HB 1747 hot topics!

CLE Credits Pending

Zoom Link:

AGENDA

- 9:00 AM – 9:40 AM: Implementing HB 1747 and Appellate Issues – Tara Urs, Civil Practice and Policy Director, King County Department of Public Defense
- 9:40 AM – 10:20 AM: HB 1227: Look How Far We’ve Come! – Marci Comeau, Managing Attorney, Parents Representation Program, Washington State Office of Public Defense
- 10:20 AM – 10:30 AM: BREAK
- 10:30 AM – 11:15 AM: Developing Trial Court and Appellate Strategies: Session One – Jacob D’Annunzio, Managing Attorney, Parents Representation Program, Washington State Office of Public Defense
- 11:15 AM – 12:00 PM: Developing Trial Court and Appellate Strategies: Session Two – Gideon Newmark, Managing Attorney, Appellate Program, Washington State Office of Public Defense

FACILITATOR INFORMATION

Participants will be divided into groups consisting of an appellate attorney and several trial level attorneys from OPD and OCLA. Each group will identify a scribe to record the groups answers and conclusions. The goals of the breakout groups are to:

1. Identify the appellate issues within the assigned topic that you see most likely brewing or arising.
2. Generate a list of appellate issues and must do's and must not do's and other recommendations.

The purpose of these breakout session is to gather a multidisciplinary group to examine a particular aspect of HB 1227 and to review and dissect areas and means of raising appropriate appellate issues.

A general topic to spark discussion:

In retrospect, can anyone recall a fact-pattern where this law may have made a difference in the result? If so, how? How would you argue it differently? What would you need to do to set up an appeal?

Also, a list of scenarios or questions is provided if necessary to continue discussion. Groups are not required to answer any or all the questions. Please feel free to use as appropriate.

BREAK OUT SESSION 1

ISSUE 1(A) Facilitator(s): Gideon Newmark; Katherine Kameron; Brett Ballew; and Jacob D'Annunzio.

What is imminent physical harm and does the evidence show a causal relationship between the conditions in the home and the imminent harm.

Scenario/Question 1. When or if ever does neglect rise to the level of imminent harm?

Scenario/Question 2. Can drug use, in particular fentanyl, rise to imminent harm? Does the age, circumstances of the child warrant a different outcome?

Scenario/ Question 3. The family unit consists of a mother, father, and two children – ages 4 and 10. The family is currently homeless, living between their van and with friends. The parents have a documented history of domestic violence, with the father and mother both being arrested on different occasions for assault against one another. The family has CPS history with a previous dependency.

ISSUE 1(B) Facilitator(s): Manek Mistry; Jeffrey Adams; and Lisa Dabalos McMahon.

Initial Removal: Does the imminent physical harm to the child outweigh the harm of removal.

Scenario/Question 1. The family unit consists of a mother and two children – ages 8 and 13. The father is deceased. The 13-year-old was admitted to the hospital after suffering fractured bone in

her face as the result of a physical fight with her mother over her cell phone. The 13-year-old wants to be placed out of the family home and has identified her boyfriend's parents, who are both schoolteachers, as willing to take placement. The 8-year-old desires to remain in the family home. The children have not experienced a non-normative school move. Both are involved in school activities and extracurricular sports.

Scenario/Question 2. The family unit consists of a mother, father and one child, age 7. The child has an extensive IEP. The mother is actively using fentanyl. The father has a current warrant for his arrest due to his failure to appear to court on a felony possession and distribution charge.

Scenario/Question 3. The family unit consists of a mother, father, and three children, ages 2, 5, and 10. The 10-year-old disclosed to her school counselor on a Friday that her father was touching her inappropriately. The school notified the Department regarding the youth's statements. The responding social worker notified law enforcement and requested their assistance as the father has a history of aggressive behavior with the Department. The SW and Law Enforcement arrive at 7:00 PM and find the mother home with the children. The home is cluttered, and the mother appears disheveled. The children are all removed by law enforcement, but it is not clear from the records that law enforcement made the decision to remove on their own or were acting at the behest of the Department. The children were placed into a single home on Saturday and then moved on Sunday due to behaviors of the 10-year-old. The children are now placed in separate foster homes. Since Monday, the Department has not identified a relative placement.

ISSUE 1(C) Facilitator(s): Jan Trasen; Bailey Zydek; and Amelia Watson.

Initial Removal: Are there preventative services, limitations to the court's authority, and how to consider the mitigation effect.

Scenario/Question 1. The family unit consists of a father and two children, ages 8 and 9. The children's mother has not been involved with the children in 5 years and resides in Texas. The Department has been working with the father for several weeks. The Department became involved with the family after a neighbor reported children playing unsupervised in the family's front yard while the father was clearly not home. The father works and is unable to afford childcare. He drops the children off at school and the children return to the home by themselves. The father typically returns home at 5:00 or 6:00 pm. The Department has offered the father childcare supports. The children frequently do not attend childcare following school and simply walk home. The children are hyperactive and difficult to redirect. Neighbors claim that the father is often heard yelling at the children in angry and demeaning ways. The Department has attempted to get FPS or IFPS into the family home and offered to get the children into counseling. There are no current providers available to assist the family with any of these services. The wait list for FPS is 60 days, IFPS 30 days, and counseling is unknown.

Scenario/Question 2. The family unit consists of the mother, father, and one child who is 18 months old. The family is homeless. The mother reports that she is not eligible for TANIF and the father reports as unable to work due to a back injury. He claims that he is in the process of obtaining SSI, but he has already been denied at least one time. The family is living in their car after being evicted after the father's injury. The car is currently inoperable and parked on a side street. The

child appears well nourished. The mother has a diagnosed history of social anxiety and two prior hospitalizations.

BREAK OUT SESSION 2

ISSUE 2(A) Facilitator(s): Gideon Newmark; Katherine Kameron; Brett Ballew; and Jacob D'Annunzio.

Relative Placement: Relative Presumption.

Scenario/Question 1. The court cannot place with a parent or parents. The mother and father support placement of their two children with the maternal grandmother. The maternal grandmother lives alone in a one-bedroom apartment. The maternal grandmother has 13 unfounded CPS reports from 1994 – 2001 when the mother was in her care. She has no other CPS history. The maternal grandmother has a criminal conviction from four years prior due to an altercation with the children's mother. She plead guilty to one count of fourth-degree assault DV. The Department opposes placement.

Scenario/Question 2. The court cannot place with a parent or parents. The mother and father support placement of their child with a paternal uncle. The paternal uncle has a CPS history with a founded finding. Since then, he has applied for and received a certificate of parental improvement. The Department opposes placement.

Scenario/Question 3. The court cannot place with a parent or parents. The mother and father support placement of their 5-year-old with the maternal grandfather. He lives in a two-bedroom house. He is retired with a modest pension from his prior employer, a scraping company, and social security. The house is in a state of disrepair. The maternal grandfather was recently the victim of a telephone scam that stripped him of his savings and left him in debt to a roofing company that he recently hired to replace his roof. He has been paying the roofing bills but is behind to both the water and electric companies. Currently, his water is shut off. He has been accessing water through this neighbor's hose and an extension cord from their property. The outside of the maternal grandfather's home is cluttered with rusted vehicles and odd bits of steel, tires, and appliances. The city has begun sending the paternal grandfather letters regarding his need to remove the debris.

ISSUE 2(B) Facilitator(s): Manek Mistry; Jeffrey Adams; and Lisa Dabalos McMahon.

The child has been placed and you are returning to court to consider removal on motion by a party.

Scenario/Question 4. The court did not place with the parents. The mother and father supported placement of their 2-year-old with the maternal aunt. The child is in care as the result of a broken arm. The parent's claim that the arm broke during a fall from the bed. The child was evaluated and the clinician states that such a fall would not have caused the injury. The child was placed with the maternal aunt after a contested shelter care where the Department raised concerns of her boundaries and unfounded CPS history within 6 years. The Department has requested and received an order allowing only supervised visitation claiming that the aunt is not an appropriate supervisor

based on concerns with her CPS history and the Department has not since then approved of the aunt as a visitation supervisor. The child aunt does not believe that the parents could inflict such injuries and has permitted the parents to visit with the child at a local park, in violation of the Court's order. The parents are supposed to be visiting at a facility and have been referred, but the referral has not been picked up since shelter care. The social worker has provided once weekly visits at the Department for one hour.

Scenario/Question 5. The court could not place with a parent or parents. The mother and father supported placement of their 14-year-old with the maternal uncle. The 14-year-old supported placement with the maternal grandmother. After a contested hearing, the youth was placed with the maternal grandmother. Since placement, the 14-year-old has not been visiting with the parents but is attending school regularly and counseling once a week. The youth's counselor reports that they are doing well in services. During a recent phone call between the maternal grandmother and the mother, the maternal grandmother began arguing with the mother and accusing her of being a terrible parent. The maternal grandmother indicated that she would do what was necessary to ensure that the child did not return home. The youth does not want to change placement to the maternal uncle due to a "fear" that is otherwise not disclosed and claims that they are safe and well cared for in the care of the maternal grandmother. The youth reported that their unwillingness to attend visits with the parents has nothing to do with the maternal grandmother's constant complaints. Currently, the parents continue to engage in services, but it is inconsistent and there is no noted progress from providers.

ISSUE 2(C) Facilitator(s): Jan Trasen; Bailey Zydek; and Amelia Watson.

The Court's authority over foster care placement and the means of ensuring compliance.

Scenario/Question 1. The court cannot place with a parent or parents and there are no identified relatives. There are two children 7 years old and 9 years old. The children are placed in a foster home 60 miles from their home.

Scenario/Question 2. The court cannot place with a parent or parents and there are no identified relatives. There is one child who is 10 years old. The child is placed in a group home 200 miles from their home.

Scenario/Question 3. The court cannot place with a parent or parents and there are no identified relatives. The family unit consists of a mother, father, and three children between the ages of 7 and 12. The department has identified a foster home for two children, that is in a different school district. The third is placed in a neighboring city in a foster home with other youth.