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#### Access to Gender-affirming or Reproductive Care.

Considering the many questions about HB 1227 and its impact on children entering foster care, especially for those who are or may be seeking gender-affirming care, we wanted to take a moment and highlight Senate Bill 5599 (2023). Under this legislation, a licensed youth shelter or homeless youth program is no longer required to notify the parents or guardian where a minor is seeking or receiving protected health care services; however, DCYF will be notified. Please click [here](#) for more details and analysis.

#### Interpreter Services.

This is a friendly reminder that OCLA has available to contractors, for free, access to on-demand telephonic interpreter services. Access information has been emailed directly to contractors. Please email [crp@ocla.wa.gov](mailto:crp@ocla.wa.gov) with any questions.

#### Practice Concerns Related to HB 1227 Implementation.

OPD and OCLA were notified that the Washington State Attorney General's Office (AGO) believes it may not be able to identify a prospective foster family at shelter care due to confidentiality concerns where a child was not previously ordered into DCYF care. The concern is that DCYF is not legally authorized to share confidential information about a child with a prospective foster parent prior to the child being ordered into DCYF care, thus preventing a foster home from accepting placement.

Under RCW 13.34.065(5)(j)(ii) the Court may order the Department to:

(A) Place the child in a less restrictive placement.

(B) Place the child in a location in closer proximity to the child's parent, home, or school.

(C) Place the child with the child's sibling or siblings.

(D) Take any other necessary steps to ensure the child's health, safety, and well-being.

We know that placement decisions directly impact a youth's support systems; cultural identity; contact with family, siblings, friends, and other significant relationships; education stability; and connection to pro-social activities available to the youth in their community of origin. Despite this position, the CRP is optimistic that children's representatives can still use HB 1227 to ensure the least disruptive placement for the child, even if advocated for only in the abstract.

### LEGISLATIVE AND CASE LAW UPDATES

#### In the Matter of the Dependency of R.D.

In re the Matter of the Dependency of RD, Slip No. 39156-6-III, Division III of the Court of Appeals reversed and vacated a Spokane County Trial Court's dependency and disposition orders, finding that the Department failed to provide active efforts.

On appeal, R.D.'s mother asserted that the trial court impermissibly permitted the mother's chemical dependency evaluation report to be admitted where the evaluator did not testify. The Court of Appeals dismissed DCYF's claim that the evidence was admissible as a hearsay exception – specifically finding that it was not admissible as a (1) a statement of a party-opponent, (2) for purposes of medical diagnosis, and (3) as evidence relied upon by an expert. Yet, the Court of Appeals declined to reverse on this issue as it was found to be harmless error due to it being cumulative evidence of an unaddressed substance abuse.

Regardless, the Court of Appeal's opinion presents a great opportunity to review ER 801 and, more specifically, hearsay within hearsay.

Moving from this evidentiary issue, the Court of Appeals reversed and vacated the decision due to a failure to provide active efforts.

As previously alluded to, ICWA and WICWA were not directly appealed. Nevertheless, the Court of Appeals followed guidance from the Supreme Court in G.J.A., noting:

We must become familiar with the generational trauma wrought by our country's policy of separating Indian children from their lands and their families. And upon involving ourselves in child custody cases, we must carefully study the requirements of ICWA and WICWA and ensure all professionals involved honor the important requirements of the law.

In its decision, the Court of Appeal's concluded, in summary, that the case worker's failure to meet with the mother or do anything more than providing referrals was insufficient. The Court of Appeals noted that: "[the case worker] should have gone further to help the mother follow up on the referrals. This may have included personally providing transportation, helping the mother make phone calls, or filling out necessary paperwork" and that DCYF's provision of financial support - cell phone and rent - were not tailored to help her overcome her identified barriers of chemical dependency and mental health.

It should further be noted that the Court of Appeals found DCYF's qualified expert witness unhelpful, stating:

While Mr. England claimed the Department engaged in active efforts, he failed to substantiate this claim. Mr. England's declaration contains a paragraph listing the referrals made to the mother. See CP at 263. But no mention is made of any affirmative steps the Department took to help the mother act on these referrals. Rather, Mr. England goes on to state that the mother "needs to

take responsibility for her behaviors and come to understand the detriment that she has caused to her daughter through her inappropriate and dangerous behaviors." Id. This conclusory expectation, that the mother find within herself the wherewithal to overcome her resistance to services, runs contrary to the expectations of ICWA and WICWA. See G.J.A., 197 Wn.2d at 895 ("Simply providing referrals and expecting a parent to take the next steps . . . demonstrates a failure to recognize why we hold the Department to a higher standard when working with Native Families.")

For a link to the full opinion, please click [here](#).

## MARK YOUR CALENDARS!

### Joint Contractor Conference.

We are excited to announce a joint conference "Families Stronger Together" with OPD and the Children's Home Society of Washington. This conference will be in-person at UW Tacoma, September 11 – 12, 2023.

### To register, please click [here](#) or visit:

<https://www.surveymonkey.com/r/UWTRegistration23>

**Provided you qualify, your deadline to register and secure lodging is August 4.** The Joint Agency Committee will assign rooms with due consideration for your stated preferences.