

# HOUSE BILL REPORT

## HB 1213

---

### As Reported by House Committee On:

Children, Youth & Families

Appropriations

**Title:** An act relating to expanding accessible, affordable child care and early childhood development programs.

**Brief Description:** Expanding accessible, affordable child care and early childhood development programs.

**Sponsors:** Representatives Senn, Chopp, Ramos, Bateman, Sells, Shewmake, Lekanoff, Peterson, Stonier, Duerr, Fitzgibbon, Berry, Rule, Davis, Wicks, Fey, Callan, Dolan, Frame, Lovick, Chapman, Ryu, Santos, Thai, Ortiz-Self, Orwall, Simmons, Slatter, Gregerson, Bergquist, Hackney, Valdez, Ramel, Riccelli, Macri, Goodman and Harris-Talley.

### Brief History:

#### Committee Activity:

Children, Youth & Families: 1/21/21, 2/3/21 [DPS];

Appropriations: 2/16/21, 2/17/21 [DP2S(w/o sub CYF)].

#### Brief Summary of Second Substitute Bill

- Establishes a new account for child care and early learning purposes and includes a nonexhaustive list of allowable uses.
- Increases eligibility and decreases copayments in the Working Connections Child Care Program and expands eligibility in the Early Childhood Education and Assistance Program.
- Provides for increased rates, training, grants, and services for child care and early learning providers.
- Increases supports for families of children from birth to age 3, as well as for their providers.

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

---

## HOUSE COMMITTEE ON CHILDREN, YOUTH & FAMILIES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Senn, Chair; Harris-Talley, Vice Chair; Rule, Vice Chair; Callan, Goodman, Ortiz-Self and Wicks.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Dent, Ranking Minority Member; Chase, Assistant Ranking Minority Member; McCaslin, Assistant Ranking Minority Member; Eslick, Klippert and Young.

**Staff:** Lena Brodsky (786-7192).

### **Background:**

#### Early Learning Advisory Council.

The Early Learning Advisory Council (ELAC) advises the Department of Children, Youth, and Families (DCYF) on statewide early learning issues. The ELAC membership includes representatives of state agencies, the Legislature, leaders in early childhood education, and certain stakeholders.

#### Subsidized Child Care.

Working Connections Child Care (WCCC) is a federally and state-funded program that provides subsidies for child care to families with incomes at or below 200 percent of the federal poverty level (FPL). The state pays part of the cost of child care when a parent is working or participating in approved work-related activities. Depending on income, families may be required to pay a copayment to their provider as follows:

If income is:	Then the copayment is:
At or below 82 percent of the FPL	\$15
Above 82 percent of the FPL up to 137.5 percent of the FPL	\$65
Above 137.5 percent of the FPL through 200 percent of the FPL	The dollar amount is equal to subtracting 137.5 percent of the FPL from countable income, multiplying by 50 percent, then adding \$65.

The DCYF may not require an applicant or consumer to meet work requirements as a condition of receiving WCCC benefits when the recipient is a single parent; a full-time student of a community, technical, or tribal college; and pursuing vocational education that leads to a degree or certificate in a specific occupation, not to result in a bachelor's or advanced degree.

The Department of Commerce (COM) administers the Child Care Collaborative Task Force

(Task Force). The Task Force was directed to develop a child care estimate model to determine the full costs providers would incur when providing high quality child care. The Task Force began developing the model but was unable to collect financial information from providers as originally planned due to COVID-19.

#### Early Childhood Education and Assistance Program.

The Early Childhood Education and Assistance Program (ECEAP) is the state's voluntary preschool program. Three- and 4-year-olds from families with incomes at or below 110 percent of the FPL are eligible for the ECEAP. Children with special needs or certain risk factors are also eligible to enroll, regardless of income. In the 2022-23 school year, the ECEAP will become an entitlement for eligible children. The DCYF rules allow children who do not meet the definition of "eligible child" to enroll in the ECEAP, as space is available, if the family income is:

- above 110 percent of the FPL but less than 130 percent of the FPL; or
- above 130 percent of the FPL but less than 200 percent of the FPL if the child meets at least one of the specified risk factors.

#### Birth-to-Three Early Childhood Education and Assistance Program.

In 2019 the DCYF was directed to develop a plan for phased implementation of a Birth-to-Three ECEAP pilot project for eligible children under 36 months old. To be eligible, a child's family income must be at or below 130 percent of the FPL.

#### Infant and Early Childhood Mental Health Consultation.

In 2019 the DCYF was directed to enter into a contractual agreement to hire one qualified mental health consultant for each of the six DCYF-designated regions. The consultants must support Early Achievers (EA) coaches and child care providers by providing resources, information, and guidance regarding challenging behavior and expulsions.

#### Early Childhood Intervention and Prevention Services Program.

The DCYF administers the Early Childhood Intervention and Prevention Program, which is delivered by two community-based programs that provide therapeutic child care and other specialized treatment services to families and children who have had exposure to complex trauma.

#### Early Achievers and Provider Support.

The EA program is Washington's Quality Rating and Improvement System for child care and early learning. Participation in the EA program is mandatory for all providers serving non-school-age children, including ECEAP contractors, who accept state subsidy payments. An objective of the EA program is to provide professional development and coaching opportunities to child care and early learning providers.

#### Income Measures.

Federal poverty guidelines are used to determine financial eligibility for certain programs. For a family of three, the 2021 poverty guideline is \$21,960.

In the National School Lunch Program, students whose families have income at or below 130 percent of the FPL are eligible for free meals. Students whose families have income between 130 percent and 185 percent of the FPL are eligible for reduced-price meals.

The Washington State Department of Social and Health Services publishes a state median income chart. For a family of three, the 2021 state median income (SMI) is \$86,340. For a family of three, 36 percent of the SMI converts to 136 percent of the FPL, and 50 percent of the SMI converts to 189 percent of the FPL.

---

### **Summary of Substitute Bill:**

#### Fair Start for Kids Account and Early Learning Advisory Council.

The Fair Start for Kids Account (account) is created, and expenditures from the account may be used only for child care and early learning purposes, including a nonexhaustive list of allowable uses.

The role of the Early Learning Advisory Council (ELAC) is amended to:

- provide recommendations annually, beginning August 31, 2022, regarding the phased implementation of strategies and priorities identified in the account, recognizing that capacity must be developed and revenue expanded;
- maintain a focus on racial equity inclusion in order to dismantle systemic racism at its core and contribute to statewide efforts to break the cycle of intergenerational poverty;
- maintain a focus on inclusionary practices for children with disabilities;
- partner with nonprofit organizations to collect and analyze data and measure progress; and
- assist the Department of Children, Youth, and Families (DCYF) in monitoring and ensuring that the investments funded by the account accomplish specified goals.

Membership of the ELAC is adjusted to add certain representatives. The ELAC may convene advisory groups to evaluate specific issues, and the ELAC must annually report its findings and recommendations to the Governor and the Legislature.

#### Expanding Access to Child Care and Early Learning Program.

By July 1, 2025, a family is eligible for Working Connections Child Care (WCCC) when the household's annual income is at or below 75 percent of the state median income (SMI), the child receiving care is: (1) age 13 or younger; or (2) age 19 or younger and has a verified special need or is under court supervision, and the household meets other eligibility requirements. Subject to appropriations, a family is eligible when the household's annual income is above 75 percent and at or below 100 percent of the SMI.

A household's monthly copayment must be calculated according to a phased-in schedule:

Beginning date:	If the household's income is:	Then the household's copayment is:
Beginning July 1, 2021	At or below 36 percent of the SMI	Waived to the extent allowable under federal law
Beginning July 1, 2021	Above 36 percent and at or below 50 percent of the SMI	\$65
Beginning July 1, 2023	Above 50 percent and at or below 60 percent of the SMI	\$165
Beginning July 1, 2025	Above 60 percent and at or below 75 percent of the SMI	\$215

The DCYF must adopt a copayment model for households with income above 75 percent of the SMI. The copayment can be no greater than seven percent of the household's income.

Working Connections Child Care Student Parents.

Beginning July 1, 2023, the DCYF may not require an applicant or consumer to meet work requirements as a condition of receiving WCCC benefits when the applicant or consumer is a full-time student of a community, technical, or tribal college and is enrolled in:

- a vocational education program that leads to degree or certificate in a specific occupation;
- an associate degree program; or
- a registered apprenticeship program.

Subject to appropriations, the DCYF may extend these provisions to full-time students enrolled in a bachelor degree program or applied baccalaureate program.

The income measure for children allowed to enroll in the Early Childhood Education and Assistance Program (ECEAP) is changed from the federal poverty level (FPL) to the SMI, adjusted for household size.

Child Care Subsidy Rates.

By July 1, 2021, child care subsidy base rates must achieve the seventy-fifth percentile of market for licensed or certified child care providers. By July 1, 2023, child care subsidy base rates must achieve the eighty-fifth percentile of market for providers.

The DCYF must build upon the work of the Child Care Collaborative Task Force to develop and implement a child care cost estimate model and use the completed model to recommend subsidy rates that are sufficient to compensate for the full costs of providing high quality child care.

Early Childhood Education and Assistance Program.

Beginning July 1, 2026, the definition of "eligible child" for purposes of entitlement in the ECEAP is expanded. The term "family with financial need" is defined as families with incomes at or below 36 percent of the SMI until the 2030-31 school year. Beginning in the 2030-31 school year, it means families with incomes at or below 50 percent of the SMI.

The ECEAP enrollment is expanded so that the DCYF is required to adopt rules that allow children who do not meet the definition of "eligible child" to enroll, if space is available, if the family income is above 36 percent but less than 50 percent of the SMI, and the child meets at least one of specified risk factors. Expanded enrollment ends August 1, 2030.

*Early Entry Early Childhood Education and Assistance Program.* The DCYF must adopt rules to allow children to enroll in early ECEAP, as space is available, when the child turns three, and with family incomes at or below 50 percent of the SMI or meet one one of the specified risk factors and have participated in early head start, the Early Support for Infants and Toddlers program, Birth-to-Three ECEAP, or the Early Childhood Intervention and Prevention Services program, or received class C developmental services.

Supporting Child Care and Early Learning Providers.

For the 2021-22 through 2022-23 school years, ECEAP rates must be set at a level at least seven percent higher than the rates established in the 2019-21 operating budget. For the 2023-24 school year, rates must be set at a level at 10 percent higher than the 2019-21 operating budget.

*Complex Needs Funds.* The DCYF must administer two complex needs funds to promote inclusive, least restrictive environments and to support contractors and providers serving children who have developmental delays, disabilities, behavioral needs, or other unique needs. One fund must support the ECEAP, and one fund must support child care providers, license-exempt child care programs, and Birth-to-Three ECEAP.

*Nonstandard Hours Care.* By January 1, 2022, the DCYF must develop and submit a rate model for nonstandard child care hours to expand the supply after-hours care.

*Trauma-Informed Care Supports.* By July 1, 2022, the DCYF must provide supports to aid eligible providers in providing trauma-informed care. Supports include additional compensation for specialty credentials, professional development and training, screening tools and assessment materials, supportive services, and other related expenses.

*Dual Language Rate Enhancement.* By July 1, 2022, the DCYF must establish a dual language designation and provide subsidy rate enhancements or site-specific grants for child care providers, ECEAP contractors, or Birth-to-Three ECEAP contractors.

*Infant and Early Childhood Mental Health Consultation.* The DCYF must administer or contract for these consultation services to child care and early learning providers in the EA program. By July 1, 2021, the DCYF must have one infant and early childhood mental health coordinator and must enter into a contract with an organization providing (EA) coaching services to hire at least 12 consultants. The DCYF must determine where the additional consultants should be placed based on highest need.

*Equity Grants.* Subject to appropriations, the DCYF must distribute early childhood equity grants to eligible applicants who may receive a grant once every two years. The DCYF must administer the grants to support inclusive and culturally and linguistically specific programs.

*Employer-Supported Child Care.* Subject to appropriations, the COM, in collaboration with the DCYF, must provide or contract to provide remote or in-person technical assistance to employers interested in supporting their employees' access to high quality child care.

*Play and Learn Groups.* Subject to appropriations, the DCYF must provide or contract to provide resources and supports for inclusive and culturally and linguistically relevant play and learn groups.

*Professional Development.* Subject to appropriations, the DCYF must provide professional development supports to aid eligible providers in reaching the professional education and training standards adopted by the DCYF. Professional development supports may include training, EA scholarships, community-based training pathways, and other activities.

Prenatal-to-Three Supports.

Subject to appropriations, the DCYF must administer a prenatal-to-three family engagement strategy to support expectant parents, babies and toddlers from birth to age 3, and their caregivers.

Subject to appropriations, the Birth-to-Three ECEAP pilot project is made permanent. To be eligible for the program, a child's family income must be at or below 50 percent of the SMI.

By July 1, 2022, the DCYF must provide an infant rate enhancement for licensed or certified child care providers and Birth-to-Three ECEAP contractors accepting state subsidy and caring for children between birth and 17 months. To the extent practicable, beginning in the 2021-21 fiscal biennium, parties should consider implementation of infant care rate incentives in collective bargaining agreements.

Early Therapeutic and Preventative Services.

Subject to appropriations, the DCYF must administer early therapeutic and preventative services and programs, such as the Early Childhood Intervention and Prevention Program, for children between birth and age 5 who are referred by certain people due to risk of child abuse or neglect, exposure to complex trauma, or significant developmental delays.

**Substitute Bill Compared to Original Bill:**

The following allowable uses are added to the Fair Start for Kids Account (account):

- expanding health care coverage through state sponsorship of child care workers on the Washington Health Benefit Exchange and providing consumer assistance through

- navigators;
- increasing child care and early learning providers' compensation;
- establishing prekindergarten through third grade systems coordinators at educational service districts;
- allowing the exploration of options to provide regulatory relief and make licensing more affordable for child care providers;
- studying and evaluating options to incentivize business participation in child care and early learning systems; and
- developing a language access plan that centers around equity and access for immigrants, multilingual providers, caregivers, and families.

The Early Learning Advisory Council (ELAC) must provide annual recommendations, beginning August 31, 2022, regarding the phased implementation of strategies and priorities identified in the account. The goals, focuses, and membership of the ELAC are revised.

Working Connections Child Care is amended so that:

- by July 1, 2025, a family is eligible when the household's annual income is at or below 75 percent of the state median income instead of 85 percent; and
- the monthly copayment schedule is revised.

Early Childhood Education and Assistance Program.

- Early Childhood Education and Assistance Program (ECEAP) entitlement is changed from the 2022-23 school year to the 2026-27 school year.
- Enrollment is expanded for children who do not meet the definition of "eligible child" and have family incomes from 36 to 50 percent of state median income (SMI) and have at least one risk factor, as space is available, until 2030.
- Revises one of the risk factors to include a developmental delay eligible for services under Part C of the federal Individuals with Disabilities Education Act (IDEA) but not eligible for services under Part B of the IDEA.
- The early entry ECEAP eligibility is changed to when a child turns three and has a family income at or below 50 percent of the SMI instead of 100 percent of the SMI.
- Participation in the Early Childhood Intervention and Prevention Program is added as a factor that allows for early entry enrollment.
- For the 2021-22 through 2022-23 school years, rates must be set at a level seven percent, instead of five percent, higher than the rates established in the 2019-21 operating budget.

Provider Supports.

- Birth-to-Three ECEAP is added as a program supported by the complex needs fund.
- Provisions directing parties to consider trauma informed supports and dual language rate enhancements in collective bargaining agreements are removed.
- The Department of Children, Youth, and Families must provide, or contract with an entity to provide, reflective supervision and professional development for infant and early childhood mental health consultants and coaches to meet national competency



standards and overall service delivery coordination.

- Caregivers and licensed or certified, military, and tribal early learning providers are added to the list of providers that may receive access to the consultation services as capacity allows. Instead of requiring two consultants in each of the six regions, 12 consultants must be placed based on need.
- Professional development supports are made subject to appropriations. Additional professional development activities are added, including training content maintenance, data collection and reporting, trainer recruitment, retention, program monitoring, social-emotional learning, and implementing inclusionary practices in early learning environments.

*Prenatal-to-Three Supports.* The rate enhancement is delayed from July 1, 2021 to July 1, 2022. Infant care rate enhancements are revised to include children between the age of birth to 11 months instead of 17 months.

*Early Therapeutic and Preventative Services.* Children must no longer be enrolled in Apple Health for Kids to be served by these programs.

The definition of "school-age child" is changed to a child who is age 5 through 13 instead of age 12.

---

**Appropriation:** None.

**Fiscal Note:** Requested on February 3, 2021.

**Effective Date of Substitute Bill:** The bill contains multiple effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:**

(In support) Early learning supports are essential in Washington. Expanding the Early Childhood Education and Assistance Program (ECEAP) is essential to closing the opportunity gap, and equity must be at the forefront.

It is really difficult to get quality affordable child care in Washington, and quality child care is out of reach for many families. Businesses have lost employees due to a lack of affordable child care. There is a child care crisis in Washington. There is a need for affordable child care to retain businesses.

The ECEAP parents are thankful for the growth they have seen in their children from participating in the ECEAP. The ECEAP teachers support expanding the program. There is great demand for early childcare. There is support for expanding early ECEAP. The state needs to increase access to early learning. Early start programs are important to our

businesses and state economy.

Child care providers have left the industry because the state does not pay adequate rates. The industry needs more support. Child care providers support investments in providers. Due to COVID-19, there have been deep cuts to child care programming because of school closures, social distancing, and other reasons. Providers have had their businesses closed due to the pandemic, and they need more support.

Play and learn groups are great; they help children socialize and learn other languages. These groups have great impact for parents. Home visiting services support early literacy and child engagement and are needed.

The increased subsidies to the Working Connections Child Care (WCCC) in the bill are greatly appreciated. There is a need for more realistic and equitable eligibility requirements for the WCCC program. Child care providers need healthcare. Providers need opportunities to influence decisions that are made, and their inclusion in the oversight board in the bill is appreciated.

The barriers for student parents to get child care need to be removed. There is support the expansion of child care to all full time student parents, and that is something that many would like to see in this bill. Increasing subsidy rates for student parents is supported.

There is a need for more early childhood mental health support. There are currently only five consultants for the entire state. There needs to be more support for programs for children developmental disabilities.

The bill expands high quality early learning support. There is a critical child care gap in the state, and more support will allow for tens of thousands of families to return to the workforce. The bill provides an important framework.

(Opposed) None.

(Other) Affordable child care is necessary for the economic recovery in Washington. There is support for providing additional options and incentives for businesses. Please carefully consider pursuing mandates, requirements, and entitlements. The bill should expand supports for students in four-year programs and graduate students.

**Persons Testifying:** (In support) Representative Senn, prime sponsor; Valisa Smith, Early Start; Pamela Williams, ParentChild+ and Early Start; Fajar Farimin, Child Care Resources; Diana Stadden, The Arc of Washington State; Mike Edwards, ReadyNation; Latisha Conley, Franklin Pierce School District; Angela Haberman, Spokane County Head Start and Early Childhood Education and Assistance Program; Rekah Strong, Educational Opportunities for Children and Families; Lanaya Taylor; Stephan Blanford, Children's Alliance; Julie Rolling, Puget Sound Educational Service District; Jamie Madden,

Enterprise Community Partners; Angela Jones, Washington STEM; Drayton Jackson, Governor's Poverty Reduction Work Group; Reshonna Booker, MomsRising; Paulina Valerio-Guerrero, Wageira Yurumein Family Home WeeCare Daycare; Mary Curry, Service Employees International Union 925; Mohamed Roble, Seattle Schools; Ramla Abdi, OneAmerica; Jacobed Gonzalez Razo; Sarah Brady, Spanish/English interpreter for Jacobed Gonzalez; Susan Brown, Kids Company; Samantha Fakharzadeh, Washington Students Association; Katya Miltimore, Boys and Girls Clubs of Washington; Jennifer Dellinger, Washington State Board for Community and Technical Colleges; Eiledon McClellan; Colleen McAleer, Clallam County Economic Development Council; Jennifer Burkhardt, Olympic Medical Center; and Nicole Sohn, Washington Childcare Centers Association.

(Opposed) None.

(Other) Amy Anderson, Association of Washington Business; and Zackary Turner, Washington Student Association.

**Persons Signed In To Testify But Not Testifying:** Carrie Glover, WithinReach; Regina Malveaux, Washington State Women's Commission; Paul Knox, United Ways of the Pacific Northwest; Karma Hugo, Office of Superintendent of Public Instruction; Hannah Sieben, Graduate and Professional Student Senate, University of Washington; and Ashlee Braun.

---

## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Children, Youth & Families. Signed by 24 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Assistant Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Boehnke, Caldier, Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Johnson, J., Lekanoff, Pollet, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Chandler, Dye, Hoff, Jacobsen and Schmick.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Harris and Rude.

**Staff:** Jordan Clarke (786-7123).

**Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Children, Youth & Families:**

The Appropriations Committee recommended the addition of supporting collectively bargained provisions or family child care providers and start-up grants for new child care or Early Childhood Education and Assistance Program (ECEAP) sites as allowable uses of the Fair Start for Kids Account. The committee added language that the union representative is from the largest union representing child care providers. The committee recommended changing the date of ECEAP entitlement for Indian children from households under 100 percent state median income (SMI) from the 2020-21 school year to the 2026-27 school year. The committee recommended the addition of language providing that the act does not interfere with, impede, or in any way diminish the right of employees to collectively bargain. The committee recommended the removal of the requirement that the Department of Children, Youth, and Families provide, or contract to provide, reflective supervision and professional development for Early Achievers coaches. The committee recommended clarification of the complex needs fund that must support birth to three ECEAP. The committee also recommended the addition of a null and void clause, making the bill null and void unless funded in the budget.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on February 3, 2021.

**Effective Date of Second Substitute Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed. However, the bill is null and void if not specifically funded in the operating budget.

**Staff Summary of Public Testimony:**

(In support) Families can not go back to work without a safe place for their children, but providers are leaving the industry because the state does not pay the true cost of high-quality care. This is not fair to small business owners who need to balance their books and who are mostly women and women of color. The bill raises the subsidy rates and makes other investments in providers so that they keep their doors open. Expanding eligibility to 100 percent SMI will help families afford childcare so they can go back to work. In addition, childcare should not have to be a deciding factor for a student hoping to attend college to bring themselves out of poverty.

Washington will not have a successful economic recovery from the pandemic without affordable childcare for the workforce, and the state only spends 1.1 percent of its budget on early learning. The bill will support this recovery effort with federal money, a stepped approach to funding, and revenue already provided. Washington businesses support their workforce and want their employees to have accessible and affordable childcare access. The policies in this bill are critical investments for today and tomorrow. The last year has shown how important child care is, especially for women, to enable people to get back to work and improve the state's economy.

It is an open secret among mothers that you need to get on a years-long waitlist for child care as soon as you become pregnant. You also need to be able to afford it. There is so much talk about the cost of college, but childcare costs more than college and can add up to over \$2,000 per month for some families. When childcare providers closed, some women were laid off and lost their careers because they needed to stay home with their children. The pandemic did not cause these problems, but it did pronounce them. The system the state has now does not work, and when childcare does not work then neither can moms. We need a fair start for kids and a fair start for moms.

(Opposed) None.

**Persons Testifying:** Guadalupe Magallan, Service Employees International Union 925; Amy Anderson, Association of Washington Business; Patty Liu, MomsRising; Nicole Sohn, Washington Childcare Centers Association and Journey Discovery Center; and Jude Ahmed, Washington Student Association.

**Persons Signed In To Testify But Not Testifying:** None.