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STATE OF MONTANA  
ELEVENTH JUDICIAL DISTRICT COURT

August 26, 2020

Children, Families, Health, and Human Services Interim Committee  
P.O. Box 201706  
Helena, MT 59620-1706  
c/o Sue O'Connell, Legislative Analyst  
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Dear Chairman Moore and Committee Members:

On behalf of the 11<sup>th</sup> Judicial District, we are happy to accept Representative Lenz's invitation to inform the members of the Interim Committee on our progress implementing the pilot project in Child Dependent & Neglect cases in Flathead County.

To provide for a meaningful comparison of results, we (Judges Eddy and Wilson) have agreed to engage our courts in the pilot project. The two other judges in Flathead County are not presently engaged in the project.

Each of the components of the pilot project differs in a material respect from the statutory process required by the Title 41, Chapter 3 of the Montana Code Annotated. First, let us introduce the key components of the pilot project and then we can describe the benefits we foresee.

- **Immediate Prehearing Conference is Scheduled.** Immediately upon removal of a child from a parent's custody, the parent is notified in writing that a prehearing conference will be held the following Tuesday.
- **Prehearing Conference is Non-Adversarial.** The prehearing conference may take place in a courtroom, but the judge does not attend. Instead, a trained facilitator (a mediator) leads an informal and confidential discussion involving the parents, their attorneys, a child protection specialist (CPS), a court-appointed special advocate (CASA), and an attorney for the Department (DPHHS).

*\*\*\* The new cost associated with implementing the pretrial conference is paying the facilitator. This cost is paid from a short-term federal grant administered by the Supreme Court Administrator's Office \*\*\**

- **An Informal Hearing Follows.** After the prehearing conference is finished, the judge will conduct an informal (and usually brief) hearing during the judge's regular Law & Motion calendar. The Law & Motion calendar allows any number of routine or uncontested matters to be scheduled during the same block of hours for each judge, each week. The follow-up hearing in pilot project cases usually involves the parties informing the judge if an early-stage agreement has been reached about treatment needs for the parents, child placement alternatives, along with provisions for immediate visitation. If there is no agreement at the prehearing conference, the court merely schedules a contested show cause hearing for the next available date.

These key components of the pilot project have the potential to change the trajectory of these cases in positive ways.

Notifying the parents that an **immediate prehearing conference** is scheduled for their case, we believe, may be the key for parents to see that the court is concerned with giving them an opportunity to have their voices heard – and also to be represented by counsel at the prehearing conference. The public defenders, who routinely handle these cases in Flathead County, have been very cooperative in making themselves available for our Tuesday prehearing conferences and follow-up hearings. Securing the attorneys' cooperation is vital, because Tuesdays are not typically days these attorneys would otherwise be scheduled to be in court. Also, securing the commitment of treatment providers to be available on short notice to provide evaluations, testing, and counseling services has been essential. In short, there are many moving parts in this pilot process and the lack of cooperation by any one of the stakeholders may have prevented the pilot project from getting off the ground.

Having the parents' first exposure to the process occur in a **non-adversarial prehearing conference** encourages the parties to engage in discussion and to address and resolve the problems from the beginning of the case – not merely setting the case for a contested hearing so the judge can hear the competing evidence in a formal hearing before sorting matters out. As things go, Courts are very good places for parties to offer their competing evidence and theories to a judge, and courts operate on the valid presumption that when both parties have an opportunity to present their side of a dispute in court, the true facts become evident and the parties' rights can be determined under the law. But this same adversary process is not so effective at promoting cooperation among opposing parties or in fostering a shared sense of purpose to meet a common goal. Perhaps this goes without saying.

*Would the pilot project bring an end to traditional court hearings when such important rights are at stake?*

*Not at all.*

We don't expect the pilot project to be a cure-all or an answer everyone's concerns. There will be cases where there is no middle ground to be found. The statutes currently in effect and the court processes already in place will allow the court to conduct hearings to decide these disputes with hearings set far enough in advance that all parties can present their best case in court. The pilot project merely provides an opportunity in those cases where middle ground can be

established for the parties to reach consensus and achieve their objectives sooner rather than later. It allows parties to take immediate advantage of the Department's services and to arrange for visitation and to schedule treatment. In the typical, traditional case, the parties often wait 2-3 months before the court can finalize a treatment plan for the parents.

In the end, we hope the parties who take advantage of the pilot project's offerings will reduce the time their cases are pending in court and they will experience earlier case dismissals as they are reunited with their children. This is our hope.

Once the parties have engaged in the prehearing conference, an **informal hearing with the judge will typically follow**. In Flathead County, we scheduled the prehearing conferences and the follow-up hearings for Tuesdays (both for morning and afternoon sessions). This, it turns out, is the only day of the week when the participating judges have time to fit the hearings into their current calendars.

*Are both judges in the Flathead County pilot project available every Tuesday of the year for these follow-up hearings?*

*Unfortunately, no.*

In Flathead County there are four judges sharing three courtrooms. This makes scheduling court time for each judge a challenge. Added to that, each judge is responsible for providing time for jury trials in criminal and civil cases. To maximize efficiency, we schedule our jury trials to occur during two-week terms, with seven terms scheduled each year for each judge. For our pilot project judges in Flathead County, that means for approximately 14 weeks a year each judge may not be available to attend the follow-up hearing immediately after the prehearing conference. But we do not see this limitation affecting the success of the pilot project.

*Why?*

Because the real work driving the success of the pilot project is being done by the parties as they engage in the non-adversarial prehearing conference. When their discussions are successful, they are able to reduce the time necessary for determining which services are needed and which child placement options are appropriate. And through a mediated process, the parties can assert more control over their circumstances and devote less time to the court process than in cases when the judge must first hear the evidence and decide the issues. In any event, if the judge is not available on a particular Tuesday for the follow-up hearing, the parties can simply notify the court in writing of their prehearing conference agreement or notify the court of the need to schedule a contested hearing in the case. For these reasons, we see our version of the pilot project in Flathead County as one that can be adapted and used in both in multi-judge districts and one-judge districts where the judge has to attend hearings in several counties.

*Where are we in the process?*

*We find ourselves in the beginning stages – but optimistically so.*

The pilot project has been running in Flathead County nearly 3 months, but the results look promising. So far, there are 15 cases filed before pilot project judges, with these results:

- 1 case was dismissed a month after its filing when a negotiated, in-home safety plan satisfied the Department's concerns.
- 1 case was transferred to Missoula County as the proper venue.
- 5 cases: both parents accepted services at the prehearing conference and stipulated to Department involvement. The parents will have their treatment plans approved by the court less than one month after the prehearing conference, and no contested hearings were required.
- 1 case invoked ICWA (the Indian Child Welfare Act), which requires at least 10 days' notice to each Tribe which may enroll the child before the court can conduct a hearing. Unfortunately, the notice requirements of ICWA do not lend themselves to a seamless application of the pilot project.
- 2 cases are proceeding in the traditional fashion with contested hearings scheduled as requested by the parents.
- 4 cases: one parent accepted services at the prehearing conference, but the other parent's position was unknown because the other parent had not been located or could not be served with timely notice before the prehearing conference.
- 1 case: the parents requested no prehearing conference to allow them more time to challenge the allegations of abuse or neglect at a regular contested hearing.

We believe these numbers are cause for optimism. And we are satisfied, frankly, that two of the judges in Flathead County are not participating in the pilot project, because we believe we will be able to examine the outcomes among the various cases over time and have enough information to make meaningful comparisons.

The cost of implementing the pilot project has been minimal. As mentioned above, the cost of the facilitator's services is being paid by a short-term federal grant. The cost of employing data and case management software is being subsidized by a vendor, on a shorter-term basis. The vendor is currently donating use of the software. This, we expect, will change.

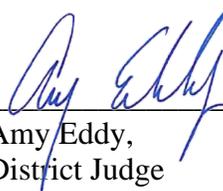
Please let us know if we can provide more information to the Interim Committee.

Respectfully,



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Dan Wilson,  
District Judge



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Amy Eddy,  
District Judge