

HJR 48/49: Child Protective Services *Initial Hearing Timeframes*

Prepared for the Children, Families, Health, and Human Services Interim Committee
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At its November 2019 meeting, the Children, Families, Health, and Human Services Interim Committee requested information regarding the timeframes in which surrounding states hold initial hearings in child abuse and neglect proceedings. The following chart provides information on timeframes for and the nature of initial hearings in Montana, as well as in Colorado, Idaho, North Dakota, South Dakota, and Wyoming.

State	Timeframe	Nature of Hearing
Montana	<p>A show cause hearing must be held within 20 days of the filing of an initial child abuse and neglect petition** unless otherwise stipulated by the parties or unless an extension of time is granted by the court upon a showing of substantial injustice.¹</p> <p>**If emergency protective services are provided and a child is removed from the child’s home, an abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays.²</p>	<p>The court shall determine:</p> <ul style="list-style-type: none"> • whether the child should be returned home, remain in out-of-home care, or be removed from home; • if removal is ordered or continuation of removal is ordered, why the child remaining in home would be contrary to the child’s best interests and welfare; • whether the Department made reasonable efforts to avoid protective placement or to safely return the child home; • financial support of the child; and • whether another hearing is needed and, if so, the date and time of the next hearing. <p>The District Court may consider:</p> <ul style="list-style-type: none"> • terms and conditions for parental visitation; and • whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.³
Colorado	<p>A temporary custody hearing:</p> <ul style="list-style-type: none"> • must be held within 72 hours of placement, excluding weekends and holidays, if temporary custody of a child is placed with the county department of human or social services or when an emergency protection order is entered. • must be held within 48 hours, excluding weekends and holidays, if a child is removed from home by law enforcement and placed in a facility not operated by the department of human services.⁴ 	<p>The court shall determine further custody of the child or whether the emergency protection order should continue or, if the child is placed in a facility not operated by the department, whether the child is to be detained further.⁵</p>
Idaho	A shelter care hearing:	The court shall determine:

	<ul style="list-style-type: none"> occurs if a child or alleged offender has been removed from home by law enforcement or if there is a petition to remove a child or alleged offender from home; must occur within 48 hours of removal of a child or within 24 hours of removal of an offender, excluding weekends and holidays.⁶ <p>A shelter care hearing may be continued for a reasonable time at the request of the parent, custodian, or attorney for the child.⁷</p>	<ul style="list-style-type: none"> whether there is reasonable cause to believe the child is within the jurisdiction of the Child Protection Act (i.e., whether the child is abused, neglected, abandoned, or homeless or whose parent/custodian fails to provide a stable home environment⁸); and whether it is in the child's best interest to remain in or be placed in shelter care.⁹
North Dakota	A shelter care hearing must be held promptly and not later than 96 hours after the child is placed in shelter care. ¹⁰	<p>The court shall determine:</p> <ul style="list-style-type: none"> whether there is probable cause to believe the child is deprived; and whether the child's shelter care is required under 27-20-14 (providing, in part, that a child may be placed in shelter care in certain circumstances, including to protect the child, to prevent the child from being removed from the jurisdiction of the court, or because the child has no parent or guardian to care for or supervise the child). <p>If continued shelter care is required, the judge or referee may order that the child be kept in shelter care for no more than 60 days from the date of the shelter care hearing.¹¹</p>
South Dakota	A temporary custody hearing must be held within 48 hours, excluding Saturdays, Sundays, and court holidays, after taking an apparent abused or neglected child into temporary custody, unless extended by order of the court. ¹²	<p>The court shall consider the evidence of the need for continued temporary custody of the child in keeping with the best interests of the child.¹³</p> <p>After the temporary custody hearing, the court may:</p> <ul style="list-style-type: none"> order the release of the child to the child's parent, guardian, or custodian, with or without conditions; or continue the temporary custody of the child.¹⁴
Wyoming	A shelter care hearing must be held as soon as reasonably possible but no later than 48 hours, excluding weekends and legal holidays, after a child is taken into temporary protective custody. ¹⁵ If a judge is not available, a district court commissioner may hold the shelter care hearing. The court is required to review the commissioner's report, orders, and actions as soon as reasonably possible and confirm or modify the order and actions as appropriate. ¹⁶	The court shall determine whether full-time shelter care of the child is required to protect the child's welfare pending further proceedings. If the court determines that full-time shelter care is required, the court shall order the child placed in the legal custody of the department of family services. If full-time shelter care is not required, the court shall order the child released and may impose conditions on the release, including that the child be placed in the custody of the child's parents under supervision of the department. ¹⁷

¹ § 41-3-432(1)(a) and (1)(c), MCA.

² § 41-3-301(6), MCA.

³ § 41-3-432(5)-(6), MCA.

⁴ C.R.S. 19-3-403.

⁵ C.R.S. 19-3-403.

⁶ Idaho Code § 16-1608.

⁷ Idaho Code § 16-1615.

⁸ Idaho Code § 16-1603.

⁹ Idaho Code § 16-1615.

¹⁰ N.D. Cent. Code, § 27-20-17.

¹¹ N.D. Cent. Code, § 27-20-17.

¹² S.D. Codified Laws § 26-7A-15.

¹³ S.D. Codified Laws § 26-7A-18.

¹⁴ S.D. Codified Laws § 26-7A-19.

¹⁵ Wyo. Stat. § 14-3-409.

¹⁶ Wyo. Stat. § 14-3-410.

¹⁷ Wyo. Stat. § 14-3-409.