

HJR 48/49: CHILD PROTECTIVE SERVICES BILL DRAFT CONSIDERATIONS

BACKGROUND

During the House Joint Resolution 48/49 study of the child protective services system, stakeholders discussed the idea of "shelter care hearings" as a way to quickly review a decision to remove a child from the home. The Children, Families, Health, and Human Services Interim Committee agreed in May 2020 to review a bill draft related to shelter care hearings.

Because the committee had not heard specific suggestions for a bill draft, staff drafted three approaches for the committee's review and consideration. This briefing paper summarizes each bill, describes potential costs, and poses questions for committee consideration.

HJR 48/49-1: 72-HOUR HEARING

The committee heard from many stakeholders that a hearing within 72 hours of a child's removal from the home would be a way to provide more accountability for the removals and potentially to establish some important parameters, such as a preliminary visitation schedule.

HJR 48/49-1 creates a new emergency protective services hearing that would have to be held within 72 hours to determine whether the child's continued removal from the home is necessary. The court would be required to set visitation guidelines and review kinship placement options. The court may, at its discretion and under certain circumstances, direct the Department of Public Health and Human Services to develop a treatment plan.

POTENTIAL COSTS

In early 2020, some district judges in Yellowstone County began holding show cause hearings within 72 to 96 hours of a child's removal, using a structured process that involves prehearing conferences, a contract with a provider who quickly undertakes court-ordered evaluations, and use of a smart phone program to track participant data. Law clerks, judicial assistants, and DPHHS employees have undertaken additional duties to carry out the program.¹

Replicating the Yellowstone County program could require that district courts hire a coordinator for CPS cases and a facilitator for prehearing conferences. They also could incur additional technology costs for tracking whether parents are keeping service- and court-related appointments.

PROS AND CONS

Stakeholders noted the following points may be raised if the bill is introduced.

Pros	Cons
Could provide a higher comfort level about decisions related to removals	Would add an extra hearing to the court docket, potentially delaying other civil cases
Parents would be immediately engaged in the process	Limited information may be available for the judge to evaluate the removal decision
Parents may obtain legal representation more quickly	Establishing a robust hearing process could create additional costs for district courts

HJR 48/49-2: EARLIER SHOW CAUSE HEARING

When a child is removed from the home, an abuse and neglect petition must be filed within 5 working days of the removal. A show cause hearing must be held within 20 days of the filing of the petition, unless the court grants an extension of time or the parties agree to a different timeline.

Based on the show cause hearing, the judge determines whether a child who has been removed from the home should remain in an out-of-home placement. The judge also may consider the terms for visitation and the need for any evaluations, counseling, or treatment for the parents or the child.

HJR 48/49-2 would require that the show cause hearing be held within 5 days, rather than 20 days.

PROS AND CONS

Stakeholder noted the following points may be raised if the bill is introduced.

Pros	Cons
Would speed up the current process, including decisions related to visitation and treatment	Could increase the workload for DPHHS and county attorneys
Could reduce the length of time before parents are able to visit their children	If attorneys don't have enough time to prepare for the hearing, could lead to an increase in requests for an extension of time
Would provide more time for arranging legal representation and preparing facts for judicial review than would HJR 48/49-1	

HJR 48/49-3: PILOT PROJECT REVIEW/SUBCOMMITTEE OPTION

During the interim, the committee heard about the 72-hour shelter care hearing pilot project in Yellowstone County and about a prehearing conference pilot project that first began in 2015. The prehearing conferences bring all parties together in a facilitated meeting right before a show cause hearing is held. This gives parents a chance to meet their attorneys, if they haven't yet done so, and gives all parties a chance to discuss the desired outcomes for the hearing. Prehearing conferences are now being held in Flathead, Gallatin, Lewis and Clark, Silver Bow, and Yellowstone counties.

The pilot project costs have been paid by the Court Improvement Program, a federally authorized and funded program in each state that is designed to improve the legal process for children in foster care.

HJR 48/49-3 requires the 2021-2022 Children and Families Committee to hear and evaluate information about the results of the two pilot projects. If the preliminary results appear promising, the committee would be required to establish a subcommittee of stakeholders and committee members to review the data more closely and determine whether and how the pilot projects could be expanded to other areas of the state.

POTENTIAL COSTS

By law, nonlegislative members of a subcommittee appointed by an interim committee must be reimbursed for the cost of participating in subcommittee activities. All subcommittee members are entitled to reimbursement for travel costs, while members who are not employees of state or local governments are also entitled to salary.

The table below shows the potential costs of subcommittee meetings of varying lengths. It assumes:

- two state or local government representatives would be based in Helena and reimbursed only for lunches;
- three state or local government members would be eligible for mileage, meals, and lodging; and
- four legislative and public members would be eligible for salary, mileage, meals, and lodging;
- subcommittee members who travel would travel an average of 350 miles round trip for each meeting (based on the assumptions used for interim committee mileage); and
- half of the members who travel would have lodging costs.

Meeting Days	Legislative/Public Members	Agency Members	Total
2	\$3,020.40	\$1,841.86	\$4,862.26
4	\$6,040.80	\$3,683.72	\$9,724.52
6	\$9,061.20	\$5,525.58	\$14,568.78

PROS AND CONS

Stakeholder noted the following points may be raised if the bill is introduced.

Pros	Cons
Would allow time to collect and evaluate data on the effectiveness of current efforts	Would not immediately address concerns raised by stakeholders during the HJR 48/49 study
Could lead to a more uniform approach to abuse and neglect cases throughout the state	

QUESTIONS FOR COMMITTEE CONSIDERATION

After taking public comment and reviewing the bill drafts, the committee may want to consider and decide the following questions if members decide to pursue any of the bills.

HJR 48/49-1

1. Are there other elements that would be important to include in the requirements for the 72-hour hearing?

HJR 48/49-2

1. Should the 5-day requirement for a show cause hearing be shortened or lengthened?

HJR 48/49-3

1. Should this bill be introduced as:
 - a. a study bill, making it mandatory and requiring an appropriation; or
 - b. a study resolution, which would allow a future interim committee to decide whether to carry out the subcommittee review?
2. If HJR 48/49-3 is introduced as a study bill, how many meeting days should the appropriation cover?
3. Are there other stakeholders who should be included in the work group provided for in subsection (5)(b) of Section 1?

ⁱ E-mail from 13th Judicial District Judge Jessica Fehr. June 16, 2020.