



# **HJR 48/49: CHILD PROTECTIVE SERVICES FINAL REPORT**

OCTOBER 2020

Children, Families, Health, and Human Services Interim Committee

Sue O'Connell, Legislative Research Analyst

**FINAL REPORT TO THE 67<sup>TH</sup> MONTANA LEGISLATURE**

# CFHHS INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Children, Families, Health, and Human Services Interim Committee, like most other interim committees, serve one 20-month term. Members who are re-elected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

## Senate Members

### **Senator Diane Sands, Vice Chair**

4487 Nicole Court  
Missoula, MT 59803-2791  
Ph: 406-251-2001  
E-mail: SenatorSands@gmail.com

### **Senator John Esp**

P.O. Box 1024  
Big Timber, MT 59011-1024  
Ph: 406-932-5662  
E-mail: johnesp2001@yahoo.com

### **Senator Mary McNally**

P.O. Box 20584  
Billings, MT 59104-0584  
Ph: 406-671-1376  
E-mail: Mary.McNally@mtleg.gov

### **Senator Albert Olszewski**

P.O. Box 8891  
Kalispell, MT 59904-1243  
Ph: 406-253-8248  
E-mail: Albert.Olszewski@mtleg.gov

## House Members

### **Representative Frederick (Eric) Moore, Chair**

487 Signal Butte Road  
Miles City, MT 59301-9205  
Ph: 406-234-3562  
E-mail: Eric.Moore@mtleg.gov

### **Representative Barbara Bessette**

P.O. Box 1263  
Great Falls, MT 59403-1263  
Ph: 406-403-5656  
E-mail: Barbara.Bessette@mtleg.gov

### **Representative Mary Caferro**

P.O. Box 668  
Helena, MT 59624-0668  
Ph: 406-461-2384  
E-mail: marycaferro@gmail.com

### **Representative Dennis Lenz**

P.O. Box 20752  
Billings, MT 59104-0752  
Ph: 406-671-7052  
E-mail: Dennis.Lenz@mtleg.gov

### **Representative Gordon Pierson, Jr.**

603 Washington Street  
Deer Lodge, MT 59722-1347  
E-mail: Gordon.Pierson@mtleg.gov

### **Representative Tom Welch**

607 Highland Avenue  
Dillon, MT 59725-2977  
Ph: 406-660-2988  
E-mail: twelch1213@gmail.com

**This report is a summary of the work of the Children, Families, Health, and Human Services Interim Committee** specific to the Committee's 2019-2020 House Joint Resolution 48/49 study as outlined in the Committee's 2017-18 work plan and HJR 48 and HJR 49. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Committee in reaching its conclusions.

To review additional information, including audio minutes, briefing papers, and exhibits, visit the HJR 48/49 Study page of the Committee's website:

<https://leg.mt.gov/committees/interim/2020cfhhs/hjr48-49/>



P.O. Box 201706  
Helena, MT 59620-1706  
Phone: (406) 444-3064  
Fax: (406) 444-3971  
Website: <http://leg.mt.gov/cfhhs>

**Children, Families, Health, and Human Services Interim Committee Staff**  
**Alexis Sandru, Attorney | Sue O'Connell, Legislative Research Analyst | Fong Hom, Secretary**



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# HJR 48/49: CHILD PROTECTIVE SERVICES

## OVERVIEW

In the past decade, the rapid and relatively steady increase in the number of children in foster care or otherwise involved in the child protective services (CPS) system has set off alarm bells for parents, policymakers, and providers alike. The number of children entering out-of-home care in Fiscal Year 2010 was 995<sup>i</sup>. By FY 2019, that number was 2,357<sup>ii</sup>. The rise in cases over the past decade has prompted a proposed foster care demonstration project, a legislative audit, a gubernatorial commission, formation of groups representing parents and grandparents, and a public-private review of the effectiveness of programs serving families.

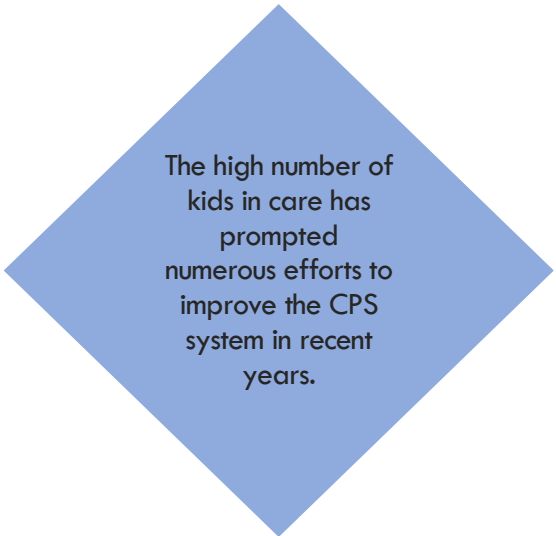
And in 2019, the concerns led to passage of two legislative study resolutions dealing with various facets of the CPS system.

House Joint Resolution 48 focused on supporting families who are involved in the CPS system. House Joint Resolution 49 focused on the effects that the increased number of child abuse and neglect cases are having on law enforcement and the courts.

Both studies ranked highly in the post-session poll of legislators. HJR 49 ranked fifth out of 27 studies, while HJR 48 ranked eighth. The Legislative Council assigned both studies to the Children, Families, Health, and Human Services Interim Committee. The Committee members decided to combine the two studies and devote about 45% of their meeting time to the effort.

Over the course of the interim, the Committee focused on the following study topics:

- trends in CPS caseloads, including the factors behind the numbers and the effects those caseloads have had on the Department of Public Health and Human Services (DPHHS), the judicial system, and others involved in the system;
- the rights of parents, including the right to parent their children;
- the role of the Office of the Child and Family Ombudsman;
- barriers to reunifying families after children have been removed from their homes, including barriers related to parental mental health and substance abuse problems;



The high number of kids in care has prompted numerous efforts to improve the CPS system in recent years.

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- the ways in which the federal Family First Prevention Services Act could change the child welfare system and the steps Montana is taking to comply with that law; and
- whether practices within the CPS system should be changed to reduce child removals, increase family reunification, mitigate the power differential between child protective services workers and their clients, and support activities authorized under the Family First Prevention Services Act.

During the interim, the Committee:

- received a 3-hour training by DPHHS on how its employees prioritize abuse and neglect investigations, decide when to remove children, and determine when families are ready for reunification;
- learned about pilot projects underway in courts around the state to improve the handling and outcomes of cases;
- heard about the impacts the caseload increases have had on DPHHS and its caseworkers, on providers, and on the judicial system;
- learned about efforts aimed at preventing abuse and neglect, including public health efforts to work with families at risk for CPS involvement;
- reviewed the elements of the Family First Prevention Services Act and Montana's implementation efforts;
- reviewed the legal rights of parents; and
- heard the concerns of families whose children have been removed.

In May 2020, the Committee agreed to review a bill draft that would require a "shelter care" hearing within 72 hours of a child's removal from the home. The hearing would determine whether the child should be returned home or remain in an out-of-home placement until further court proceedings occur. The Committee reviewed three bill draft options in June and heard from representatives of the court system in August on how each proposal might affect their work.

The Committee decided in August to advance two bill drafts: one creating an emergency protective services hearing within 5 days of a child's removal from the home and another requiring continued interim committee review of two judicial pilot projects that were underway during the 2019-2020 interim.



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## THE CPS SYSTEM: STEPS IN THE PROCESS

Before delving into the issues caused by high caseloads and other concerns raised by stakeholders, the Committee spent a significant portion of its first study-related meeting learning about the steps in the CPS system, from the time an initial complaint is filed until a case is resolved in court.

In September 2019, DPHHS presented a [scaled-down version of a training](#) that it was providing to stakeholders around the state. Court representatives also talked about the steps in the court process and discussed pilot projects that were testing new approaches.



### Assessing Allegations of Mistreatment

State law requires that people in certain professions — such as medical and school personnel — report suspected child abuse and neglect to the state. And anyone who has reason to believe a child is being maltreated may also report that suspicion.

All reports are made to the Centralized Intake office, which operates a toll-free hotline around the clock.

An intake specialist determines whether the concerns meet the statutory requirements of abuse or neglect. DPHHS can take action in instances of:

- physical abuse, which represents a smaller number of referrals than does physical neglect;
- physical neglect, which involves a failure to provide basic necessities, includes substance abuse allegations, and represents the largest percentage of calls to Centralized Intake;
- psychological abuse or neglect, which involves injuries to a child's emotional, intellectual, or psychological ability to function; and
- sexual abuse.

If a report appears to meet statutory requirements for abuse or neglect, the intake specialist assesses the level of risk the alleged maltreatment poses and assigns a priority level to the report. The priority level helps caseworkers in the field determine how quickly they must respond to the report.

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Reports are given one of four priority levels, as shown in the table below.

Priority Level	Potential Threat to Child	Action Required
One	Immediate Risk of Serious Harm	Investigation and assessment, including in-person contact with child, must be initiated within 24 hours of the time the report was made to Centralized Intake.
Two	Risk of Impending Danger	Investigation and assessment must be initiated within 72 hours of the time the report was made to Centralized Intake.
Three	Less Urgent Circumstances	Investigation and contact with child must be initiated within 10 days of the report to Centralized Intake.
Four	Potential Maltreatment/ No Risk of Immediate or Impending Danger	Investigation must be completed within 60 days and must include completion of the Family Functioning Assessment sections on contacts, nature, and maltreatment. Additional assessment must occur if safety threats are identified.

If a report doesn't meet the criteria for abuse or neglect, DPHHS doesn't take any action but keeps the report on file. Caseworkers can review these reports for patterns of abuse if a report involving the same child is made again in the future.

And in some instances, DPHHS links families to services that may assist them if a report doesn't meet the abuse or neglect criteria but a request for services is made.

## Investigating Reports

When investigating reports of maltreatment, CPS caseworkers use the Montana Safety Assessment and Management System to:

- determine whether an immediate danger exists;
- establish the protective capacity of the parents and the vulnerability of the child;
- develop a protection plan or safety plan, as necessary; and
- determine the conditions that must exist for a child to return home if the child is removed.

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## Immediate Danger

CPS caseworkers use the [Immediate Danger Assessment](#) to determine if a child is at risk of an:

*"immediate, significant, and clearly observable family condition (or threat to child safety) that is/are actively occurring or 'in process' of occurring and will likely result in severe (serious) harm to a child."*

The form contains the checklist below to guide caseworkers as they make their determinations.

<b>Immediate Danger Threats (check all that apply):</b>			
<p><b><u>Maltreatment:</u></b></p> <p><input type="checkbox"/> Maltreating now</p> <p><input type="checkbox"/> Multiple Injuries</p> <p><input type="checkbox"/> Face/head</p> <p><input type="checkbox"/> Serious injury</p> <p><input type="checkbox"/> Premeditated</p> <p><input type="checkbox"/> Multiple Victims</p> <p><input type="checkbox"/> History of reports*</p> <p><input type="checkbox"/> Life threatening living arrangements</p> <p><input type="checkbox"/> Unexplained injury</p> <p><input type="checkbox"/> Bizarre cruelty</p> <p><input type="checkbox"/> Accessible to the maltreater(s)</p>	<p><b><u>Child:</u></b></p> <p><input type="checkbox"/> Parent's viewpoint of the child is bizarre</p> <p><input type="checkbox"/> Unsupervised/ alone for long periods of time</p> <p><input type="checkbox"/> Unable to protect self*</p> <p><input type="checkbox"/> Child is fearful</p> <p><input type="checkbox"/> Child needs medical attention</p>	<p><b><u>Parent:</u></b></p> <p><input type="checkbox"/> Parents are unable or unwilling to perform parental duties</p> <p><input type="checkbox"/> Bizarre behaviors</p> <p><input type="checkbox"/> Described or are acting dangerously</p> <p><input type="checkbox"/> Parent is out of control</p> <p><input type="checkbox"/> Parents <u>overtly</u> reject intervention</p>	<p><b><u>Family/ Other:</u></b></p> <p><input type="checkbox"/> Family is isolated*</p> <p><input type="checkbox"/> Domestic violence is occurring</p> <p><input type="checkbox"/> Family will flee</p> <p><input type="checkbox"/> Family hides child</p> <p><input type="checkbox"/> Situation will/may change quickly</p> <p><input type="checkbox"/> Services inaccessible or unavailable.</p>

\*not a stand-alone safety threat

If an immediate danger is found, the caseworker must develop a protection plan that either:

- allows for the child to remain in the home if DPHHS can develop a suitable, reliable, and appropriate plan that ensures the safety of the child in the home; or
- results in an out-of-home placement in kinship care, foster care, or other emergency protective services.

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## Family Functioning Assessment

After determining whether a child is in immediate danger and taking the appropriate action, a caseworker completes a [\*Family Functioning Assessment\*](#). This tool is used to both:

- determine whether a threat of immediate or impending danger exists; and
- if so, develop a protection plan or safety plan, as appropriate.

An impending threat may be a risk created by a parent's living arrangements, use of substances, untreated mental health problems, or another situation that could put the child at risk of abuse or neglect. By assessing both the child's and the parent's functioning and the parent's ability to care for and protect the child, the caseworker determines whether the child is at risk and if a safety plan is needed.

DPHHS officials noted that the results of an assessment can vary depending on the age and capabilities of the child involved. For example, if a parent frequently fails to prepare meals, a 1-year-old child would be in much greater danger of neglect than would a teenager.

## Protection and Safety Plans

If the assessment identifies an immediate danger to the child, the caseworker must develop a protection plan to be followed by the parent.

If the assessment identifies an impending danger, the caseworker develops a safety plan.

Among other things, these plans:

- identify the people who are available to care for the child and ensure the child's safety and the way they will do that;
- establish whether the child will remain in the home with safety resources to monitor the child's safety or will be placed outside of the home with a noncustodial parent or other person;
- outline an initial plan for visitation if family members are separated; and
- establish the duration of the plan and how the caseworker will interact with the parent and others involved in the child's care during that time.

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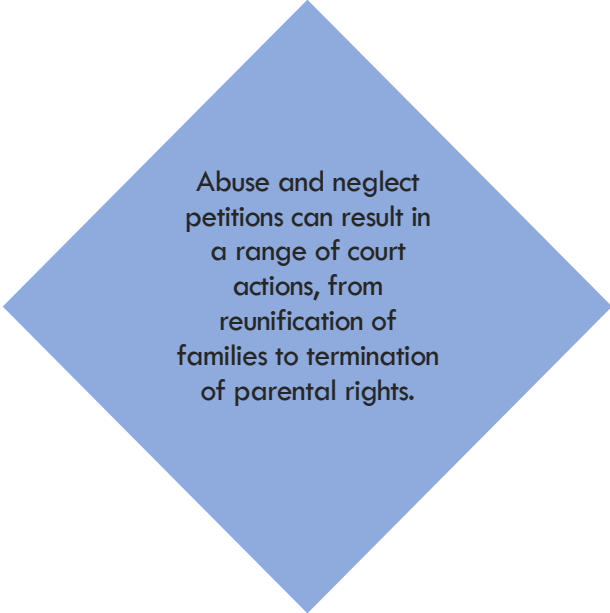
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## Moving into the Legal System

If DPHHS removes a child from the home, the agency must file an abuse and neglect petition. It can also file a petition if the child remains in the home. A district court must schedule a show cause hearing on an initial petition within 20 days of filing of the petition.

A petition may request one or a combination of the following actions:

- immediate protection and emergency protective services;
- temporary investigative authority, which may or may not involve a removal from the home but allows the parents to retain legal custody of the child and gives DPHHS 90 days to investigate the allegations to determine if they're true;
- temporary legal custody, which transfers custody of the child to DPHHS and allows the agency to place the child in out-of-home care for up to 6 months and potentially longer, if the agency requests an extension of custody;
- long-term custody, which allows the child to remain in a planned, permanent living arrangement under certain circumstances;
- appointment of a guardian;
- a determination that family preservation or reunification services are not needed; or
- termination of parental rights.



Abuse and neglect petitions can result in a range of court actions, from reunification of families to termination of parental rights.

A petition must be heard and decided within 90 days unless a party to the case requests an extension of time. A court could dismiss the petition if it finds the child is not abused or neglected, or the court could determine that the child is a youth in need of care. If the child is a youth in need of care, a dispositional hearing must be held within 20 days to decide the next steps for the case.

## Making a Permanent Plan

The court must schedule a permanency hearing no later than 12 months after the initial finding that the child has been abused or neglected or 12 months after the child's first 60 days of removal from the home, whichever occurs first. Permanency hearings must be held every 12 months after that until permanency is achieved.

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A permanent placement could result in reunification of the child with the parent or parents, placement of the child with the noncustodial parent, appointment of a guardian, adoption, or long-term custody for a child in a planned permanent living arrangement under certain, specific circumstances.

Under the federal Adoption and Safe Families Act of 1997, the court must presume that the best interests of the child are served by termination of parental rights if the child has been in foster care for 15 of the most recent 22 months. In that situation, a termination petition must be filed unless:

- the child is being cared for by a relative;
- DPHHS has not provided the services needed for the child's safe return to the home; or
- DPHHS has documented a compelling reason that termination would not be in the child's best interest.

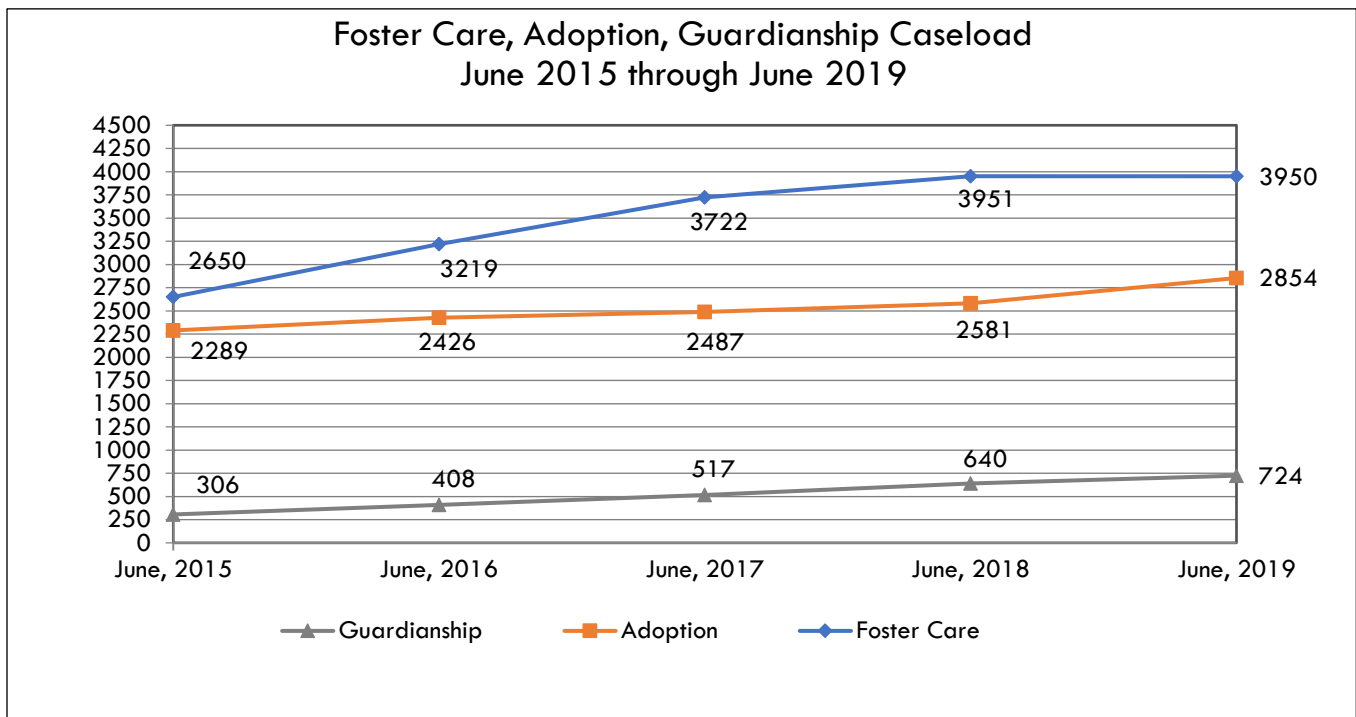
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## CPS BY THE NUMBERS

The long-running and relatively steady increase in the number of child removals and court cases was a key concern behind both study resolutions. During the study, the Committee examined both caseload and caseworker statistics.

### DPHHS Caseloads

As the Committee began its work in the summer of 2019, DPHHS data for FY 2015-FY 2019 showed a generally steady increase in the number of abuse and neglect reports made to the agency, as well as in the number of investigations and child removals. The total number of children in foster care increased by 49% during that time, as shown in the table below.



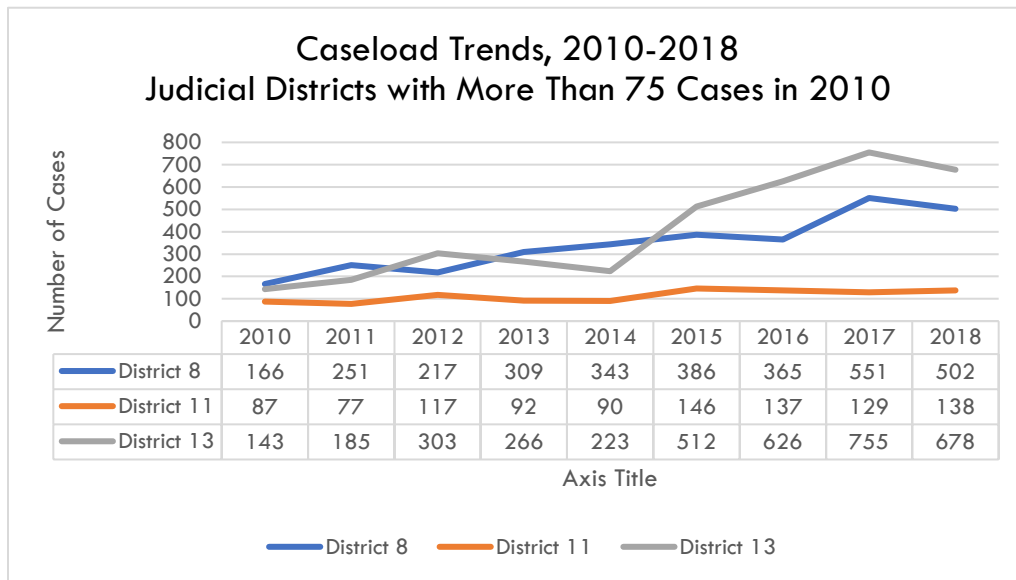
### Court Caseloads

The increase in the number of children being removed from their homes also caused an increase in the number of abuse and neglect cases in the district courts. In the court system, each child involved in the system is counted as a separate case, even if the child is part of a sibling group.

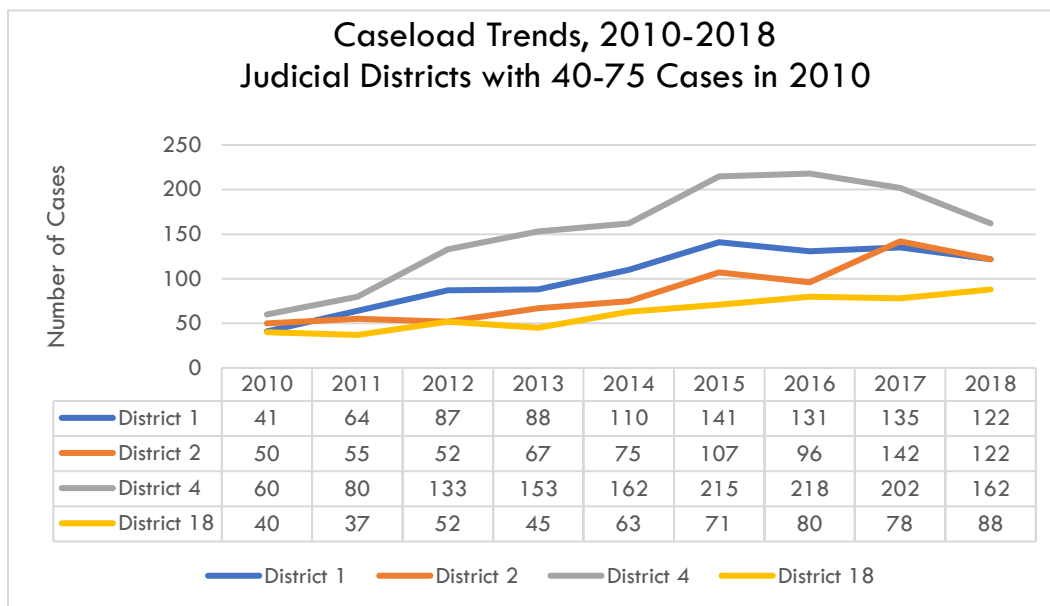
Filings in the state's 22 judicial districts increased by 144% from 2010 to 2018, from 1,30 cases in 2010 to 2,519 cases in 2018.

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Using data from the Office of the Court Administrator, the graphs below show the impact that abuse and neglect cases have had on district courts that have seen the greatest increase in cases during that time period.



The 8<sup>th</sup> Judicial District consists of Cascade County, while the 11<sup>th</sup> Judicial District encompasses Flathead County. The 13<sup>th</sup> Judicial District covers Yellowstone County.



The 1<sup>st</sup> Judicial District consists of Broadwater and Lewis and Clark counties. The 2<sup>nd</sup> Judicial District consists of Butte-Silver Bow County. The 4<sup>th</sup> Judicial District is made up of Missoula and Mineral counties, while the 18<sup>th</sup> Judicial District covers Gallatin County.



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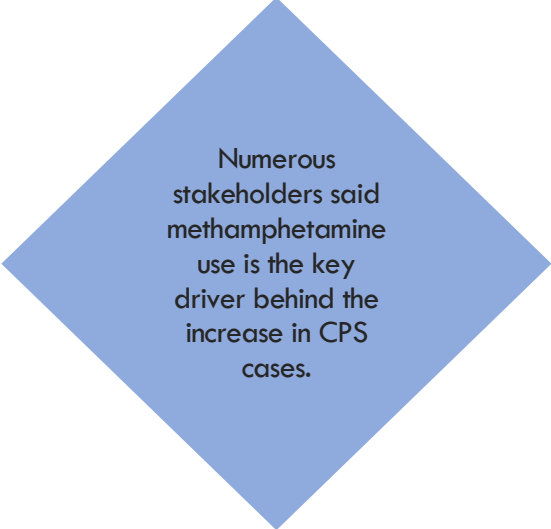
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## What's Behind the Numbers?

DPHHS and judicial system representatives alike attributed much of the caseload growth to the increased use of methamphetamine in Montana. District Judge Rod Souza of Billings told the Committee in November that methamphetamine "unquestionably" is the primary driver in both abuse and neglect cases and felony criminal cases. He noted that nearly 80% of the abuse and neglect cases in Yellowstone County involved drugs in 2018 and said meth was involved in 63% of those cases.

The Committee reviewed statistics related to federal drug prosecutions and state drug arrests and seizures as part of the study. The [statistics](#) showed:

- federal drug prosecutions involving methamphetamine were significantly higher in the West than elsewhere in the country;
- Montana's meth-related federal prosecutions were slightly higher than those in neighboring states;
- the number of meth-related drug offenses reported by local law enforcement agencies in Montana has been increasing steadily since 2012, while other types of drug offenses have held relatively steady during the same time period; and
- methamphetamine drug seizures in Montana have increased significantly since 2013, outpacing other types of drugs.



Numerous stakeholders said methamphetamine use is the key driver behind the increase in CPS cases.

## Caseworker Turnover

The Committee heard throughout the interim about the high degree of turnover among CPS caseworkers. Turnover affects everyone involved in the child protective services system. When positions are vacant, caseloads increase for the remaining caseworkers in the office. Families and service providers may have difficulty trying to contact CPS workers as cases are handed off or the available staff is spread more thinly. Newly hired workers typically need training before they take on cases and don't carry full caseloads immediately. Court deadlines may be extended. And families and caseworkers both lose continuity if ongoing cases are passed from one worker to another.

Staffing reports provided on a routine basis to the Committee showed that, on average, about 86% of the funded caseworker positions were filled from September 2019 through April 2020. The region encompassing Helena, Butte, Bozeman, Dillon, and Deer Lodge consistently had the biggest staffing gap, with 20% of its positions typically open.

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The Committee compared Montana's turnover rate to that of surrounding states and found that turnover was significantly lower elsewhere, as shown in the table below.

State	Turnover	Year
Montana	40.6%	FY 2019
Idaho	19%	FY 2019
Wyoming	22.6%	CY 2019
South Dakota	27.7%	FY 2019
North Dakota*	23.4%	FY 2018

\* Covers only investigative assessments for 28 of 47 counties.

### Caseworker Salaries

Committee members also looked at how the pay for Montana's CPS caseworkers compared to salaries in other states and found that Montana's pay generally lagged behind the other states. The table below provides a snapshot of caseworker pay in Montana and surrounding states in January 2020.

State	Starting Salary	Other Considerations
Montana	\$42,640	Pay for Montana caseworkers just increased on Jan. 1, 2020. Before that, the starting salary was \$38,500 a year.
Idaho	\$46,051	Idaho requires that caseworkers be licensed social workers and requires 9 months of training for newly licensed social workers, who are paid \$2.53 less per hour until they complete that training.
Wyoming	\$46,696	Pay for caseworkers in the county that includes Jackson Hole is \$1,630 higher a month, for an annual full-time salary of \$66,256.
South Dakota	\$39,025	State CPS staff working on the five Indian reservations with state services receive an additional \$1.50 an hour work, for an annual full-time salary of \$42,145.
North Dakota	\$52,392 minimum	Starting pay can vary by location and experience; North Dakota's system is supervised by the state but administered at the county level.

## ALLEVIATING THE PRESSURE POINTS

During the study, the Committee heard from representatives of the judicial system and DPHHS about the pressures created by the high number of abuse and neglect cases. They also heard about efforts currently underway to improve the court processes for these cases and heard other ideas for revamping the CPS system.

### DPHHS Pressure Points

The Committee heard regularly from Child and Family Services Division (CFSD) Administrator Marti Vining during the interim and also heard from two CPS caseworkers in November. The agency representatives outlined several pressure points on the CPS system, including:

- many workers carry high caseloads, making it difficult to spend as much time as they would like on working with families and often leading to caseworker burnout and turnover;
- high caseworker turnover makes it difficult for families and providers to maintain communication with CPS workers, which in turn creates problems with case continuity and with families gaining trust in the system;
- the level of caseworker pay is not commensurate with the duties and stresses of the job; and
- caseworkers are often targeted for criticism on social media or other public forums, making the job less appealing.

### Pressure Points in the Courts

People who spoke about the court process for abuse and neglect cases generally focused on the high number of cases and the length of time and amount of resources the cases require. The Committee heard that:

- a study looking at the amount of time judges spend on various types of cases showed that abuse and neglect cases are by far the most time-intensive cases that judges handle;
- abuse and neglect petitions by law must be given the highest preference when a judge sets hearing dates, meaning that other civil matters have been delayed as abuse and neglect cases have increased; and
- a lack of mental health and substance abuse treatment resources creates barriers for parents to complete their treatment plans.

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## Ongoing Judicial Pilot Projects

Some district courts around Montana have undertaken pilot projects in recent years to try to reduce the length of time that cases take to resolve and to improve the outcomes of those cases. The efforts have been funded 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.

### Pre-Hearing Conferences

In 2015, district courts in a few counties began holding pre-hearing conferences that brought together all parties in a case right before the scheduled show cause hearing was held. During these facilitated meetings, the parties discuss the desired outcomes for the show cause hearing, particularly around issues related to the child's placement, the visitation schedule, and the services the family needs.

A 2018 review of the results<sup>iii</sup> showed, among other things:

- a statistically significant increase in family reunifications in the first year but not in subsequent years;
- quicker resolution of cases, with 66% of prehearing conference cases resulting in permanency within 12 months compared with 41% of cases without the conferences; and
- between 2014 and 2017, a reduction of more than 40 days in the time between the filing of an abuse and neglect petition to the development of a treatment plan.



### Emergency Protective Services Hearings

In early 2020, some judges in Yellowstone County began pairing its prehearing conferences with what were termed emergency protective services hearings. Essentially, the judges held a show cause hearing within 3 to 5 working days of the filing of the abuse and neglect petition. The county also contracted with a provider who agreed to quickly conduct court-ordered substance abuse and mental health evaluations and provide treatment as needed. And parents were provided with a smartphone app to help them keep track of appointments and other information related to their cases.

The courts expected to collect data on the pilot project throughout 2020 to determine whether families were experiencing better outcomes.

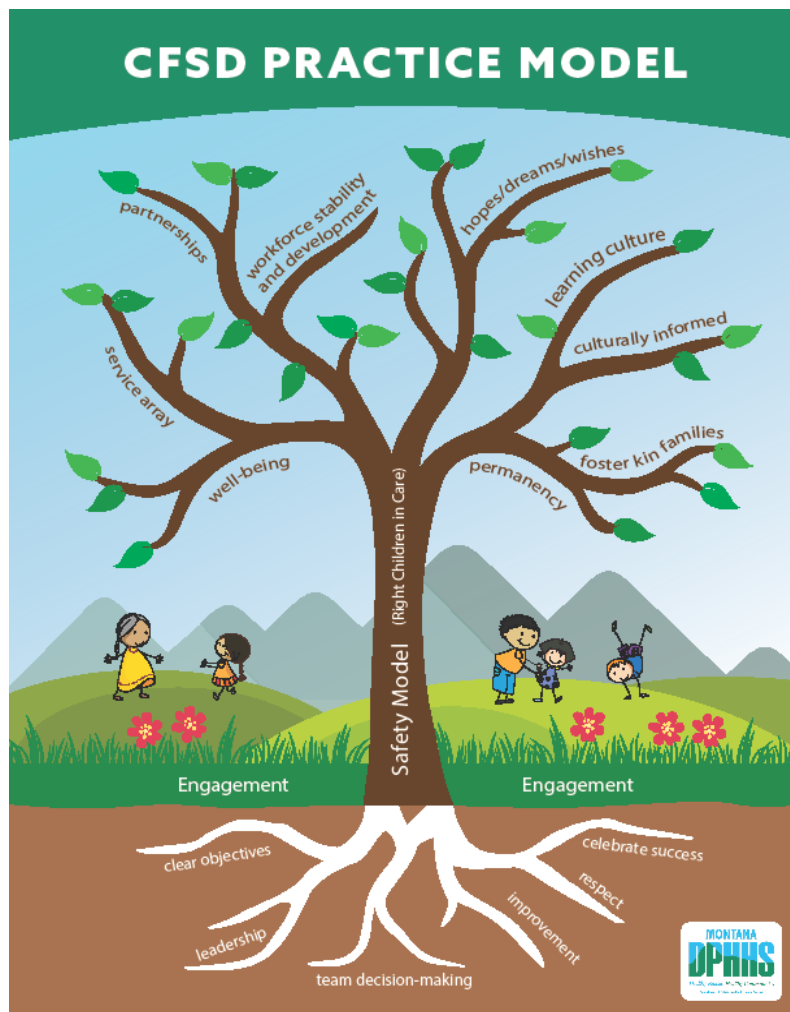
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## DPHHS Practice Principles

At the Committee's August 2020 meeting, CFSD Administrator Vining discussed the [practice principles](#) and practice model that the division recently adopted to guide caseworkers in their interactions with families in the system. She said the effort was designed to improve CPS services by putting in writing the values needed to enhance services to and engagement with families. She said the principles should also lead to consistent handling of CPS cases across the state.

The principles will be incorporated into training for new and existing staff.

The division developed the graphic below to illustrate its model for working with families. It shows the practice principles — clear objectives, leadership, teamwork and shared decision making, continuous improvement, respect, and celebrating success — as the roots of the CPS practice model "tree." Engagement with families makes up the trunk, while Vining said the branches hold the division's "hopes, dreams, and wishes for child welfare in Montana."



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## An Ounce of Prevention

Many of the people involved in the HJR 48/49 study stressed that removing a child from the home is a trauma in and of itself — even if removal occurs for the child's own safety. They said removals could be reduced if preventive action is taken before a child's safety or well-being is at risk.

Some of the discussion around prevention overlapped with the Committee's work on its House Joint Resolution 32 study of prenatal drug use. For instance, during the HJR 32 study, the Committee heard about a public-private partnership that's connecting pregnant women with substance use treatment in order to improve outcomes for their pregnancies. At the same time, the women are less likely to lose their babies to the CPS system if they've actively been involved in treatment before giving birth.

The Committee learned of other programs in which:

- public health nurses visit pregnant women and young families to assess their current and future needs and help them build skills so abuse or neglect doesn't occur in the first place;
- health clinics offer classes to families in the CPS system to improve their parenting skills and help them manage the behaviors that put their children at risk of abuse or neglect; and
- wrap-around health care and mental health and substance use treatment services are provided to improve the overall health of the community and at-risk families.

## Other Suggestions

Many of the suggestions voiced during the study fell into the same general topic areas, no matter who was suggesting the idea. Those ideas included:

- finding avenues to recruit and retain caseworkers, including increasing their pay, providing pay differentials based on geographic location, and providing other assistance such as a student loan forgiveness or repayment program;
- increasing the number of CPS staff, whether it be caseworkers or aides who can help with non-social work responsibilities to give caseworkers more time to work with families;
- providing more training or increasing educational requirements for caseworkers; and
- holding regular status hearings on cases so judges can ensure all parties are making progress.

CFSD Administrator Vining also suggested that training and education on best practices be extended to others who are involved in abuse and neglect cases, including law enforcement, attorneys, judges, and providers.

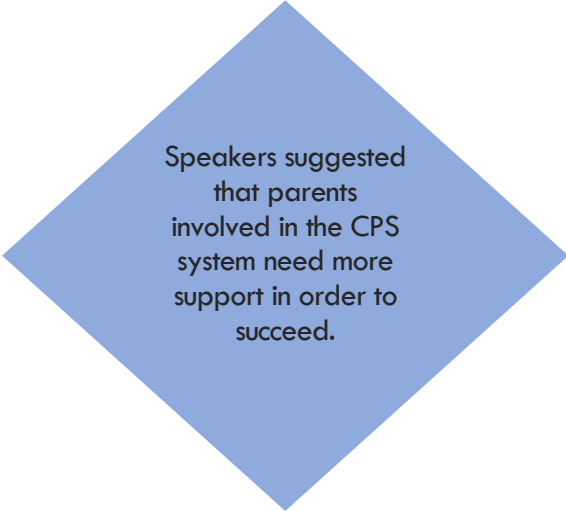
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# HJR 48/49: CHILD PROTECTIVE SERVICES

## PARENT PERSPECTIVES AND RIGHTS

HJR 48 specifically asked that the Committee look at the rights of parents to parent their children, barriers to reunifying children with their parents, and steps that could be taken to mitigate the power differential between CPS workers and their clients.

At its January 2020 meeting, the Committee reviewed the rights of parents, heard suggestions from parent representatives about ways to improve interactions, and received the annual report of the Office of the Child and Family Ombudsman.



Speakers suggested that parents involved in the CPS system need more support in order to succeed.

### Parental Rights

Montana's courts have held that the right of a parent to make decisions about the care, custody, and control of a child is a fundamental liberty interest guaranteed by the state and U.S. constitutions. However, the courts have also said that right may be limited by the state's responsibility to protect the welfare of children and that it does not exceed the best interests of the child.

Because child abuse and neglect proceedings involve a parent's fundamental liberty interest, the state must follow all statutory requirements and provide a

fundamentally fair procedure at all stages of the legal process to ensure that a parent is not placed at an unfair advantage.

The Montana Supreme Court has held that a fundamentally fair procedure involves:

- notice of the proceedings and an opportunity to be heard;
- appointment of an attorney and effective assistance from the attorney;
- clear and convincing evidence that the treatment plan developed for the parents is appropriate;
- good faith efforts by the state to develop and carry out the treatment plan; and
- before parental rights are terminated, clear and convincing evidence that the statutory requirements for termination have been met.

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## Parental Concerns

Speakers at the Committee's January meeting also talked about ways that parents could be better supported in the system. Their ideas included:

- improving the speed with which attorneys are appointed for parents and ensuring that attorneys handling the cases are well versed in CPS statutes and procedures;
- providing peer support or other advocates for parents who become involved in the system;
- incorporating conflict resolution into the process;
- improving procedures for assessing and investigating reports of abuse and neglect;
- improving training for law enforcement and CPS workers; and
- ensuring that children are not removed from the home simply because the parent has a disability or mental illness.

## Child and Family Ombudsman

The Office of the Child and Family Ombudsman responds to citizen requests related to the CPS system and has authority to review individual cases. It issues an [annual report](#) on its work each year. In January, the Committee learned that the office logged 327 contacts with citizens in 2019 and that 126 of those contacts became requests for assistance with cases.

Other highlights of the 2019 annual report included:

- nearly half of the contacts were made by a biological parent, while grandparents made up the next largest group of contacts at 18%;
- a lack of response by CPS officials was the most prevalent concern reported by those who contacted the office, followed by unprofessional conduct by CPS staff and safety of the child; and
- the office found that DPHHS was not consistently following its procedures for reporting and responding to runaway foster youth.

The office also developed a document to help parents' attorneys, guardian ad litems, and court-appointed special advocates understand what case information should be available to them and how to access the information.



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## FAMILY FIRST PREVENTION SERVICES ACT

Throughout the interim, Committee members, DPHHS, and stakeholders discussed the potential that recently passed federal legislation holds to change the framework of the state's child welfare system.

By changing the allowable uses of federal funding, the Family First Prevention Services Act (FFPSA) emphasizes efforts to keep at-risk families together while the parents and children receive treatment or other services that may help prevent the removal of the children.

Title IV-E funding is the primary source of funding for child welfare efforts. This open-ended source of funds has long been used to pay for foster care placements and administrative expenses of state child welfare agencies.

However, the new federal law allows for a new use of the money — to pay for services that will keep families together and in their homes. The table below shows some of the key differences in how states can use Title IV-E funds, depending on whether they implement aspects of the new law.

Title IV-E Funding Uses	
FFPSA Not Implemented	FFPSA Implemented
Primarily used for foster care	May be used for up to 12 months of in-home prevention and treatment services
Pays only for services to the child	Pays for services to parents, child, and kinship caregivers
Makes foster care payments only for certain low-income children	Pays for prevention services to any child at risk of foster care and the child's parents or kinship caregivers, regardless of income
May be used to pay for congregate foster care settings	May be used to pay for congregate care <i>only</i> in certain situations and settings
Can't be used to place a child with a parent who is in a residential substance abuse treatment program	May be used for up to 12 months of placement with a parent in a residential treatment program

Under the FFPSA, states may access the new prevention money only for certain services and only if congregate foster care settings meet new, more stringent requirements and oversight measures.

A [briefing paper](#) presented to the Committee outlined the changes in more detail.

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## Moving Forward in Montana: A Strategic Plan

DPHHS undertook a planning process for implementing the Family First Act after the law's passage. In addition, the 2019 Legislature passed House Bill 604, which required DPHHS to develop a [strategic plan](#) for implementing the Family First Prevention Services Act during the 2019-2020 interim. DPHHS presented that plan to the Committee in August 2020.

The plan identifies five specific goals and outlines the agency's approach to accomplishing those goals, as follows:

- **Adopt definitions for integral FFPSA terms.** The plan specifically mentions the following terms: Adverse Childhood Experiences (ACEs), prevention services, trauma, and trauma-informed care. The plan says DPHHS will ensure that services for children and families meet trauma-informed care standards.
- **Inventory existing prevention programs** to determine whether they qualify for funding under the act or could be adapted to qualify for funding. Twice a year, the department will determine which programs meet the standards for the new federal funding and notify all stakeholders about the programs that meet the criteria.
- **Review and research prevention and trauma-informed care programs in other states.** DPHHS will work with Casey Family Programs to learn what other states are doing in this area and will also review Title IV-E prevention services plans that have been submitted by other states and approved by the federal government.
- **Evaluate need and capacity for new prevention services in Montana.** DPHHS plans to engage stakeholders in this effort and also will monitor the national clearinghouse of approved prevention programs frequently to identify models that are in sync with provider interests.
- **Draft an evidence-based, trauma-informed plan for prevention services** that can be used to apply for FFPSA funding in 2021. The department envisions this goal will be accomplished by working with a full spectrum of stakeholders, including providers, caseworkers, attorneys, tribes, kinship and foster care families, and children involved in the system.



The strategic plan lays out the steps DPHHS will take to comply with the federal law and receive new funding in 2021.

## TRIBAL PERSPECTIVES

The Committee agreed at the start of the interim to include the perspectives of Montana's Native American communities in the study by having tribal representatives discuss the approaches they take to providing child welfare services.

All Indian reservations in Montana except the Fort Peck Reservation have their own child protective services systems. At Fort Peck, the Bureau of Indian Affairs conducts investigations while DPHHS handles case management for child welfare cases.

During the interim, tribal representatives shared the following information with committee members.

- All tribes work together when an Indian child is involved in a CPS case to determine which tribe has jurisdiction of the child.
- The tribes have done cross-cultural training to be sensitive to the customs of the different tribes and to better respond to the needs of a child with ties to more than one tribe.
- Many tribal youth who are affected by methamphetamine use have to leave their communities because the reservations don't have licensed therapeutic foster care to provide the higher level of care the youth need.
- Some state judicial districts have created courts specifically to handle cases involving Indian children. In these districts, children are being placed with family members more often.
- The use of culturally competent preventive services improves outcomes.

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## COMMITTEE ACTION

For its May 2020 meeting, the Committee received a summary of nearly three dozen suggestions made by stakeholders up to that point, and stakeholders offered several more ideas in May. While some ideas did not fit neatly into a specific category, most touched on one of the following areas:

- CPS workforce-related changes;
- system process changes;
- DPHHS-related changes;
- judicial system changes;
- parent issues;
- training, education, and mentoring for CPS, law enforcement, attorneys, judges, and parents;
- public involvement and transparency; and
- compliance with the Family First Prevention Services Act.

At the May meeting, Committee members asked staff to draft a bill providing for an early "shelter care hearing" when children are removed from the home on an emergency basis. In June, the Committee reviewed three different approaches to the concept:

- requiring an emergency protective services hearing within 72 hours of the removal;
- reducing the timeframe for a show cause hearing on an abuse and neglect petition from 20 working days to 5 working days; and
- requiring a more in-depth review in the 2021-2022 interim of the results of the prehearing conferences and the emergency protective services hearing pilot projects that were underway during the current interim.

After reviewing the bills at the June meeting, members asked to hear from representatives of the judicial system about how the bills may affect the system. Representatives of the Office of the State Public Defender, rural and urban county attorney's offices, and the district courts discussed the pros and cons of the three bills at the Committee's final meeting in August. Some speakers applauded the idea of creating a new hearing within days of a child's removal, saying it could improve parent engagement and family outcomes. However, the panelists also questioned whether the public defender's office and the district courts have the capacity to handle an additional hearing, particularly since multiple public defenders are often involved in one case and may not be available to appear in court on such short notice.

The Committee decided to pursue legislation for the emergency protective services hearing, but members revised the proposed time frame from 72 hours to 5 business days. Members also noted

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that the bill may need to be amended as it moves through the legislative process in 2021, to address concerns that were raised at the final August meeting.

The Committee also agreed to introduce the bill requiring continued review of the judicial pilot projects that are currently underway. If those results appear promising, the bill would require creation of a working group to consider whether the approaches could be put in place statewide.

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<sup>i</sup> "The Montana IV-E Child Welfare Demonstration Project." *DPHHS Child and Family Services Division*. PowerPoint presented to the Children, Families, Health, and Human Services Interim Committee. Jan. 10, 2014.

<sup>ii</sup> Information provided by DPHHS Deputy Director Laura Smith. Aug. 23, 2019.

<sup>iii</sup> Alicia Summers. "Montana PHC Study: Evaluation of the Montana Pre-Hearing Conference Pilot Project." *Data Savvy Consulting, LLC*. 2018.