



CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE 67th Montana Legislature

SENATE MEMBERS

Chris Friedel
Jen Gross
Theresa Manzella
Mary McNally

HOUSE MEMBERS

Mary Caferro
Jennifer Carlson
Jane Gillette
Dennis Lenz
Ed Stafman
Danny Tenenbaum

COMMITTEE STAFF

Fong Hom - Secretary
Sue O'Connell - Research Analyst
Alexis Sandru - Attorney

MINUTES LOG

January 27, 2022
Room 102/Zoom
Helena, Montana

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MEMBERS PRESENT IN PERSON:

Rep. Dennis Lenz, Chair
Ms. Harwood
Mr. Billteen
Ms. Sullivan

MEMBERS PRESENT VIA ZOOM:

Rep. Danny Tenenbaum, Vice Chair
Judge Fehr
Mr. Barnosky
Mr. Smith
Mr. Furlong
Ms. Bear Don't Walk

STAFF PRESENT:

Joe Kolman, Research Director
Fong Hom, Secretary

AGENDA (Attachment 1)

VISITORS' LIST (Attachment 2)

COMMITTEE ACTION

CALL TO ORDER/ROLL CALL

08:33:22 Rep. Dennis Lenz called the meeting to order at 8:33 a.m. The committee secretary took roll. **(Attachment 3)**

08:36:05 Rep. Lenz gave an overview of the meeting packet.

FOLLOW UP ITEMS FROM PREVIOUS MEETING

Emergency Protective Services Hearings Data

08:54:12 Judge Jessica Fehr

Coordination of PHCs and EPS Hearings: Costs and Logistics

08:59:04 Beth McLaughlin, Supreme Court Administrator, responded to the questions from the committee regarding prehearing conferences and what it would take to expand the prehearing conferences statewide.

Work Group Questions/Discussion

09:12:46 Ms. Harwood asked Judge Fehr how the ICWA court in Billings handles EPS and PHC hearings.

09:18:20 Mr. Furlong asked Judge Fehr about removals that are done and if that throws the hearings out of balance.

09:20:44 Mr. Furlong asked Judge Fehr if she sees a challenge with Dependent Neglect cases in creating a visitation plan because the child might be a witness.

09:24:00 Scott Pederson, Deputy Yellowstone County Attorney, gave a presentation on his experience with costs and logistics with coordinating PHC and EPS hearings.

09:30:01 Rep. Tenenbaum asked Mr. Smith about the difference between having counsel in criminal cases vs. dependent neglect cases in Yellowstone.

09:32:00 Ms. Harwood asked Mr. Pederson if the court addresses the statute that requires the parents and the kids to be represented by counsel.

09:35:16 Ms. McLaughlin responded.

09:37:33 Rep. Lenz asked Mr. Pederson about children being removed because of drug issues.

Staff-Prepared Materials

09:40:39 Rep. Lenz discussed the judicial district map and the memo associated with SB 400.

STAKEHOLDER EXPERIENCES WITH EPS HEARINGS

09:42:59 Mr. Barnosky spoke about his experience as the regional administrator of the Eastern Region.

09:45:57 Mr. Smith commented on why parents are not requesting hearings.

09:48:09 Rep. Tenenbaum referenced the document "Notification to Parents" ([Exhibit 1](#)).

09:50:04 Rep. Lenz asked Nikki Grossberg, Administrator, Child and Family Services, about the "Notification to Parents".

09:53:38 Ms. Harwood discussed what the County Attorneys Association has done regarding the PHCs and the EPS hearings.

09:58:20 Rep. Lenz asked Brian Smith, Public Defender, Missoula, if there were any requests from the counties that judges did not followed through.

10:00:12 Rep. Tenebaum asked Judge Fehr about a set date for EPS hearings.

10:02:21 Judge Fehr discussed the "DPHHS Notification to Parents" form and the "Emergency Protective Services form.

10:06:02 Kiersta Sullivan commented that having a set date doesn't work in smaller areas that don't have multiple judges.

10:07:05 Rep. Lenz asked Judge Fehr about a shorter hearing time.

10:15:03 Mr. Furlong asked Judge Fehr about data that shows what preference, remote vs. in-person, that are requested by the parents.

10:18:10 Mr. Furlong asked Judge Fehr if there are ways to track recusals.

10:22:04 Mr. Smith commented on the statute regarding child abuse and neglect cases.

10:24:25 Ms. Sullivan commented on using Zoom capabilities for the EPS hearings.

BREAK (reconvened at 10:40 a.m.)

PROPOSED FINDINGS AND RECOMMENDATIONS

Overview of Draft Findings and Recommendations

10:42:39 Rep. Lenz discussed the document "Findings and Recommendations".
([Exhibit 2](#))

Work Group Discussion

10:45:38 Mr. Smith and Rep. Lenz discussed having public defenders on call and paying public defenders and contract attorneys a different rate.

10:50:03 Ms. Harwood discussed the first Finding regarding the Indian Child Welfare Act (ICWA).

10:51:53 Mr. Furlong expressed his concern with the 5-day hearing and the initial information that is given to parents.

10:54:06 Judge Fehr discussed the 5 business days from the date of removal, not counting the day the child is removed and what happens in that window of time.

10:57:18 Mr. Furlong commented on the documentation that is not made available to the parent upon removal because the parent isn't present when the removal happens.

10:58:07 Mr. Barnosky discussed the statutes regarding the department giving parents notice and making reasonable efforts to give parents notice.

- 11:02:05 Mr. Barnosky asked about the plan where the parents can request an EPS hearing except in jurisdictions where PHCs are held.
- 11:05:11 Rep. Tenenbaum said he views the PHC as a great opportunity for the parents and DPHHS to get started on the right foot. He also viewed the EPS hearing as a necessary step of judicial review to make sure that the allegations against them have sufficient factual basis and to give the parents a chance to contest things.
- 11:07:31 Ms. Bear Don't Walk concurs with Rep. Tenenbaum's comments.
- 11:09:20 Rep. Lenz asked Ms. Bear Don't Walk if she thinks that EPS hearings are more critical than PHCs hearings with regard to ICWA case.
- 11:10:44 Mr. Billteen responded to Rep. Tenenbaum's questions and statements.

REVIEW OF DRAFT LEGISLATION

Overview of PD 1

- 11:14:10 Rep. Lenz referred the working group to PD 0001 ([Exhibit 3](#)) and said that this gives the working group an idea of what a bill looks like and what the working group is trying to accomplish.

Working Group Discussion

- 11:18:55 Judge Fehr addressed the timing of rollout.
- 11:22:46 Mr. Billteen commented on Judge Fehr's suggestion of having a consistent day statewide.
- 11:24:42 Ms. Bear Don't Walk commented on emergency removals on tribal reservations.
- 11:26:46 Rep. Lenz asked if we need to clarify that with the 5-day hearing.
- 11:28:52 Rep. Tenenbaum asked Judge Fehr about the videoconferencing change. He suggested adding language to the new EPS statute, "...if someone wanted to waive their EPS hearing" and once that goes into effect, does the statute allow for that.
- 11:32:29 Judge Fehr responded that people aren't waiving the EPS hearing but waiving the show cause.

GENERAL PUBLIC COMMENT

- 11:35:46 Rebecca Schwartz discussed licensing for foster care.
- 11:37:41 Denise Johnson (*couldn't hear her*)

Further Discussion

- 11:38:27 Rep. Lenz summarized the working group's discussion.
- 11:40:10 Mr. Smith said that EPS is a deviation from normal as far as appointment for counsel for the child.
- 11:41:13 Rep. Lenz asked if the child receives counsel as an infant or is there an age point.
- 11:42:17 Judge Fehr responded.

Public Comment

11:48:54 Denise Johnson, Montana Child Protection Alliance

Meeting Wrap Up

11:57:44 Ms. Harwood expressed her concern that EPS hearings will become an unfunded mandate.

12:01:40 Mr. Furlong discussed the Order Following Emergency Protective Services Hearing that may conflict with SB 400.

12:04:11 Rep. Lenz said that the working group will meet before the CFHHS' meeting in March to make recommendations.

12:04:46 Mr. Smith asked if it would be beneficial to hear from attorneys in other jurisdictions regarding PHCs vs. EPS hearings.

ADJOURNMENT

12:07:38 Rep. Lenz adjourned the meeting at 12:07 p.m.