

CPS STUDIES: HB 39 AND HJR 45 BILL DRAFT REVISIONS/DECISION POINTS

BACKGROUND

In May, the Children, Families, Health, and Human Services Interim Committee reviewed a bill draft related to the House Bill 39 study of emergency protective services (EPS) hearings and prehearing conferences (PHCs.) Members also reviewed a bill draft related to their House Joint Resolution 45 study of the factors involved in removing a child from a home when abuse or neglect is suspected and in reunifying families after removal occurs.

This briefing paper outlines the key elements of each initial bill draft, the committee decisions made in May, changes made to the bill drafts for the June meeting, and remaining decision points for the committee.

HB 39-1V2: REVISE EPS HEARING AND PHC LAWS

- **Initial Draft:** Incorporated the following recommendations from the working group: continue holding EPS hearings within 5 days of a child's removal rather than varying the time frame according to the number of judges in each district; remove the prohibition on using EPS hearings in cases subject to the Indian Child Welfare Act; require PHCs to be available in all judicial districts; require the Department of Public Health and Human Services (DPHHS) to notify the Office of State Public Defender (OPD) when a child is removed from the home; require DPHHS to provide OPD with the affidavit for the case within 2 days of a removal; and clarify that a support person may be present at EPS hearings.
- **Committee Decisions in May:** Reduce the timeframe for an EPS hearing from 5 working days to 72 hours and appropriate funds for additional costs related to expanded use of PHCs and public defender availability.
- **Key Changes:**
 - A support person may be present for all meetings with a child protection specialist, rather than only during in-person meetings. [Section 1(1)(b)(iv)(C); Section 4(1)(e)]
 - The requirement that OPD be provided with notification of a removal has been clarified to indicate the notification must occur within 1 business day of a child's out-of-home placement. [Section 1(1)(c)]

- A biennial appropriation of \$450,000 has been added for the Office of Court Administrator to cover the costs of additional prehearing conferences, with the intent that it be built into the base for the 2027 biennium. *[Section 6(1)]*
- A biennial appropriation of \$300,000 has been added for OPD to provide legal representation for EPS hearings and PHCs. *[Section 6(2)]*
- **Remaining Decision Points:**
 1. Should the timeframe for an EPS hearing be reduced from 5 business days to 72 hours?
 2. Should the OPD appropriation be one-time-only or built into the base of the 2027 biennium?
 3. Are further changes needed?
 4. Should the bill be introduced as a committee bill in the 2023 legislative session?

HJR 45-1V2: REVISE CHILD ABUSE AND NEGLECT LAWS

- **Initial Draft:** Require a warrant for removal of a child except for instances of imminent danger of serious bodily injury; require an abuse and neglect petition to be filed within 72 hours of a child's removal from the home; require an EPS hearing to be held within 72 hours of a removal; require the training provided to DPHHS caseworkers to comply with constitutional requirements; revise the requirements for dismissing an abuse and neglect petition; and require court orders for emergency protective services to articulate the factual basis for each finding in the order.
- **Committee Decisions in May:** Revise warrant requirements to allow warrants over the telephone, similar to the procedures in Title 46, chapter 5, part 2; correct erroneous reference to "reasonable cause;" and revise the title to reference constitutional compliance.
- **Key Changes:**
 - A preamble was inserted in lieu of revising the title. *[Page 1, lines 14-17]*
 - A warrant may be provided by telephonic or electronic means. *[Section 1(1) and (2)]*
 - Procedures have been added for executing a warrant to remove a child. *[New Section 2]*
 - The warrant exception has been revised to require a warrant except in instances of imminent danger of serious bodily injury **or sexual abuse**. *[Section 3(1)(c); Section 4(1)(b)(i)-Effective July 1, 2023]*
 - The erroneous reference to "reasonable cause" in 41-3-301 has been corrected to "probable cause." *[Section 4(1)(b)-Effective July 1, 2023]*
 - A July 1, 2023, effective date has been inserted. *[Section 9]*
- **Remaining Decision Points:**
 1. Should the 72-hour period be revised to exclude Saturdays, Sundays, or holidays, or revised in any other way?
 2. Are further changes needed?
 3. Should the bill be introduced as a committee bill in the 2023 legislative session?