



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

May 12, 2022
Room 137/Zoom
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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MEMBERS PRESENT IN PERSON:

Rep. Ed Stafman, Chair (D)
Rep. Dennis Lenz, Vice Chair (R)
Rep. Jennifer Carlson (R)
Sen. Chris Friedel (R)
Rep. Jane Gillette (R)
Sen. Jen Gross (D)
Sen. Theresa Manzella (R)
Sen. Mary McNally (D)
Rep. Danny Tenenbaum (D)

MEMBERS EXCUSED:

Rep. Mary Caferro (D)

STAFF PRESENT:

Sue O'Connell, Research Analyst
Milly Allen, Research Analyst
Alexis Sandru, Attorney (Zoom)
Fong Hom, Secretary

AGENDA ([Attachment 1](#))

VISITORS' LIST ([Attachment 2](#))

COMMITTEE ACTION

CALL TO ORDER/ROLL CALL

- 08:59:57 Presiding Officer Ed Stafman called the meeting to order at 8:59 a.m. The committee secretary took roll. ([Attachment 3](#))
- 09:00:53 Sue O'Connell, Lead Researcher, gave an overview of the meeting.

MARCH MEETING FOLLOW-UP/INTERIM COMMITTEE UPDATES

Children and Families Overview

- 09:02:07 Ms. O'Connell gave a presentation on the Loan Repayment Programs. ([Exhibit 1](#))

Law and Justice Committee Overview

- 09:06:17 Sen. Gross gave an update on the Law and Justice Committee's activities regarding House Joint Resolution 4.

Questions from the Committee

- 09:10:57 Sen. Manzella asked Sen. Gross who are the legal teams that do not want to address this issue.
- 09:11:30 Rep. Carlson asked about the conditional release to a community facility.
- 09:12:00 Sen. Gross and Rep. Stafman responded.

HJR 45 STUDY: CHILD REMOVAL AND FAMILY REUNIFICATION TRIGGERS

Introduction to Topics and Speakers

- 09:13:15 Ms. O'Connell gave an overview of the topics to be covered for the House Joint Resolution 45 Study.

Judicial Processes in Abuse and Neglect Cases, Montana Supreme Court

- 09:16:25 Justice Ingrid Gustafson gave a presentation on the judicial process in abuse and neglect cases. She referred the committee to the flowchart that shows the process for Dependent Neglect cases ([Exhibit 2](#)).

Questions from the Committee of Justice Gustafson

- 09:25:14 Sen. Manzella asked about how the removal of a child can be reconciled with the federal and state constitutions.
- 09:28:35 Sen. Manzella asked about the differences between imminent and apparent risk of harm.
- 09:30:35 Rep. Lenz asked about the definition for a prehearing conference.

- 09:40:21 Rep. Gillette asked Justice Gustafson to provide clarity when a child has been removed for reasons of imminent harm or potential of imminent harm and why the children are not returned after that critical incident or issue has been removed and is no longer a factor.
- 09:44:46 Rep. Gillette commented on the Montana District Courts Performance Data.
- 09:52:22 Rep. Carlson asked about the procedure that state officials use to do a seizure or arrest without a warrant.
- 09:56:10 Rep. Caferro asked whether in the case of domestic violence and treatment plans, both parents are required to enter into a treatment plan and what happens if both parents don't comply with the treatment plan.
- 09:58:40 Sen. Manzella asked about the trigger that starts the process for child removal going through the courts.

Jury Trials in Parental Termination Proceedings, Wyoming

- 10:01:37 Joe Belcher, Director, Wyoming Office of Guardian Ad Litem
- 10:02:34 Kim Skoutary-Johnson, Chief Trial and Appellate Attorney, State of Wyoming's Guardian Ad Litem Agency
- 10:03:09 Christina McCabe, Senior Assistant Attorney General, Wyoming Attorney General's Office

Questions from the Committee

- 10:09:12 Rep. Carlson asked Ms. McCabe to clarify her reference to juvenile cases.
- 10:11:35 Rep. Stafman asked Ms. Skoutary-Johnson about the use of juries in proceedings involving termination of parental rights.
- 10:15:33 Ms. Skoutary-Johnson and Ms. McCabe responded.
- 10:18:25 Sen. Manzella asked Mr. Belcher for the number of cases that were represented by public defenders vs. private defenders.
- 10:24:28 Mr. Belcher and Ms. McCabe responded.
- 10:28:36 Sen. Friedel asked for the number of cases that end up going to trial.
- 10:33:15 Ms. McCabe and Ms. Skoutary-Johnson responded.
- 10:33:24 Rep. Carlson asked Mr. Belcher about his statement that "the number of TPR cases are represented by private attorneys".
- 10:35:51 Rep. Lenz asked Mr. Belcher to expand on the dynamics of having a jury step into a highly emotional situation.

Effective Legal Representation for Parents, Washington State

- 10:40:57 Brett Ballew, Washington State Office of Public Defender, gave a presentation on Washington State's Statewide Interdisciplinary Program. ([Exhibit 3](#))

Questions from the Committee of Mr. Ballew

- 10:59:30 Rep. Tenenbaum asked about the hourly rates for attorneys who contract as public defenders in Washington.

- 11:02:41 Rep. Caferro asked if there is any kind of approach that targets parents with education and training opportunities so the parents may better care for their children.
- 11:05:32 Rep. Stafman asked if the Statewide Interdisciplinary Program was established in statute.
- 11:10:32 Sen. Gross asked how much faster the Washington program would have gone statewide if there had been a surplus in the budget.

BREAK (reconvened at 11:22 a.m.)

Safety Science in Child Welfare

- 11:23:23 Scott Modell, Co-Founder, Collaborative Safety ([Exhibit 4](#))
- 11:32:20 Noel Hengelbrok, Co-Founder, Collaborative Safety ([Exhibit 4](#))

Questions from the Committee

- 11:49:11 Rep. Stafman asked Mr. Modell if Collaborative Safety is currently under contract with the Department of Public Health and Human Services.
- 11:52:12 Rep. Stafman asked who Mr. Modell is working with at the Montana State Hospital.
- 11:53:05 Rep. Carlson asked if committee members could be included in Collaborative Safety discussions with the State Hospital.
- 11:54:23 Sen. Manzella asked Mr. Modell to address the science in understanding how State Hospital workers can remain committed to their job.
- 11:59:00 Sen. Manzella asked if Mr. Modell has had time to evaluate Montana's child protective services program to determine if any of the elements are built into the system for our social workers.
- 12:00:21 Rep. Tenenbaum asked Mr. Modell if Collaborative Safety had worked with Director Meier in Kentucky and what was the nature of the work and the results.
- 12:01:41 Rep. Tenenbaum asked Mr. Model to define success and failure.
- 12:02:10 Mr. Modell and Mr. Hengelbrok responded.
- 12:06:26 Sen. McNally asked if Collaborative Safety has a website with peer review materials posted.
- 12:06:47 Mr. Hengelbrok responded.
- 12:07:04 Sen. McNally asked about the timeframe of the company's contract with the Montana State Hospital.
- 12:07:22 Mr. Modell responded.
- 12:08:32 Sen. McNally asked Mr. Modell how Collaborative Safety can change the working culture at the State Hospital when workers are cycling in and out on a short-term basis.
- 12:12:35 Rep. Carlson asked if Montana might see a decrease in unnecessary child removals similar to the results seen in Kentucky.
- 12:13:41 Mr. Modell responded.

- 12:14:49 Rep. Caferro asked if Collaborative Safety has worked with Christian-based agencies.
- 12:14:52 Mr. Modell responded.
- 12:15:25 Rep. Caferro asked Mr. Modell to comment on training for case workers or foster parents to help children transition into homes that respects the culture that they may bring with them.
- 12:20:05 Sen. Manzella asked Mr. Modell for more details on the contract.
- 12:20:43 Rep. Stafman asked about Collaborative Safety's contract with Kentucky.

LUNCH BREAK (reconvened at 1:15 p.m.)

Public Comment on the HJR 45 Study

- 13:15:24 Denise Johnson, Director of Communications, Montana Child Protection Alliance
- 13:21:25 David Arnett, parent, Billings
- 13:26:28 Angela Arnett, parent, Billings
- 13:31:37 Lillie Rutledge, Great Falls

Questions from the Committee for public commenters

- 13:37:34 Sen. Manzella asked Mr. Arnett if he was charged with a crime and if so, whether he was provided a defense attorney and had access to evidentiary files.
- 13:38:55 Ms. Arnett provided more testimony.
- 13:39:18 Sen. Friedel asked Ms. Arnett which judge presided over the case.

HJR 44 STUDY: FAMILY FOSTER CARE SYSTEM

Introduction to Topics and Speakers

- 13:41:42 Milly Allen, Research Analyst, gave an overview of the foster care system.

Barriers to Becoming/Remaining a Foster Parent

- 13:42:58 Nick Domitrovich, foster parent
- 13:56:21 Carrie Lutkehus, foster parent
- 14:03:38 Brett Lutkehus, foster parent

Indian Child Welfare Act Provisions and Considerations

- 14:11:50 Georgette Boggio, Attorney, Elk River Law Office
- 14:18:47 Stacie FourStar, Fort Peck Tribal Judge

Public Comment on the HJR 44 Study

- 14:26:19 Russ Miner, foster parent and CASA worker, Great Falls
- 14:28:45 Denise Johnson, foster parent, distributed a document "What happens to kids who age out of foster care?" ([Exhibit 5](#)).

14:34:57 Kelsen Young, kinship foster parent, CASA advocate

Questions from the Committee

14:40:14 Rep. Gillette asked Mr. Domitrovich about laws requiring notice of hearings for foster parents.

14:42:32 Rep. Gillette asked Mr. Lutkehus to expand on how children are treated in the system.

14:45:48 Rep. Tenenbaum asked Mr. Domitrovich to expand on his statement that child protective services workers asked him to take the birth parent to classes.

14:48:16 Sen. Friedel asked the Lutkehuses if they were biological parents before becoming foster parents.

14:49:00 Ms. Lutkehus responded.

14:50:15 Rep. Carlson expressed her interest in seeing Ms. Lutkehus' proposed statutory amendments.

BREAK (reconvened at 3:00 p.m.)

BILL DRAFTS: HB 39 STUDY AND HJR 45 STUDY

Overview of Bill Drafts and Related Considerations

15:03:50 Sue O'Connell, Lead Researcher, discussed the briefing paper "Interim Committee Bills Appropriations-Related Considerations." ([Exhibit 6](#))

HB 39-1: Revise EPS Hearing and PHC Laws

15:08:37 Ms. O'Connell discussed the briefing paper, "HB 39: Judicial Pilot Projects Bill Draft Provisions and Considerations" ([Exhibit 7](#)), and the draft bill, HB 39-1 ([Exhibit 8](#)).

Questions from the Committee of Ms. O'Connell

15:12:58 Rep. Stafman asked for clarification on how the stipend will work for the public defenders.

15:14:32 Rep. Lenz noted that the attorneys are non-staff attorneys and the intent is to expand the base outside the Office of the Public Defender.

Court Decisions on Initial Hearings of the 5-DayTimeframe vs. 72-hour EPS Hearings

15:15:47 Alexis Sandru, Staff Attorney, discussed court decisions related to how quickly the initial hearing must be held when a child is removed from the home.

Questions from the Committee

15:27:30 Rep. Stafman asked Rep. Lenz and Rep. Tenenbaum about the 3-day hearing vs. the 5-day hearing and if the 3-day or 5-day hearings are working days or calendar days.

15:31:08 Rep. Carlson asked Ms. Sandru if anything else changed in the statute when the 48-hour timeframe for an affidavit was extended to a longer time period.

15:32:20 Rep. Gillette asked Rep. Lenz and Rep. Tenenbaum to walk her through what a 48-hour timeframe would look like.

15:33:02 Rep. Tenenbaum, Rep. Lenz, and Ms. Sandru responded.

15:36:42 Rep. Lenz asked Ms. Sandru about the court's palatability for a 24-hour or a 48-hour timeframe.

15:40:16 Rep. Stafman asked Ms. Sandru about holding a hearing within 5 calendar days.

15:40:39 Sen. Friedel discussed certain language flip flopping between "may" and "shall" and "must" in the bill.

15:42:30 Rep. Tenenbaum asked Ms. Sandru if she knew of any court cases where a court explicitly said that the 5-day timeframe does not violate the constitution.

15:43:10 Rep. Stafman asked Ms. Sandru if it would be possible to have a 3-day limit in counties that have a population greater than a certain amount and a 5-day limit in counties that have a population lower than that.

15:44:02 Rep. Lenz responded.

15:44:35 Rep. Gillette commented.

15:44:55 Rep. Lenz said that the House Bill 39 working group determined that the Indian Child Welfare Act (ICWA) doesn't require a 10-day notification for an EPS hearing.

HJR 45-1: Revise Child Abuse and Neglect Laws

15:46:28 Ms. Sandru gave a presentation on HJR 45-1 ([Exhibit 9](#)).

Questions from the Committee

15:49:47 Rep. Stafman asked Ms. Sandru about the Child Protective Services (CPS) worker removing a child from the home without a warrant.

15:52:11 Ms. Sandru, Rep. Lenz, and Ms. O'Connell discussed the changes.

15:53:31 Sen. McNally asked Ms. Sandru for clarity on the timeline for affidavits in HJR 45-1.

15:54:27 Rep. Stafman asked Ms. Sandru about warrants.

15:56:32 Rep. Stafman discussed making sure the statute complies with the constitution and making sure that CPS workers have the flexibility to be able to remove a child without a warrant where there's an emergency.

15:58:17 Ms. Sandru responded.

15:58:27 Sen. Friedel discussed the usage of "may", "must", and "shall" in statute. He asked what constitution the committee is referring to.

16:00:39 Mr. Sandru responded.

16:02:16 Rep. Tenenbaum responded.

16:03:40 Rep. Lenz asked Rep. Tenenbaum about the definition of serious bodily injury in 45-2-101, MCA.

16:06:29 Sen. Friedel asked if there was any reason for staying with the 20 days as stated in HJR 45-1, page 4, line 2.

16:07:06 Rep. Tenenbaum and Rep. Lenz responded.

16:08:14 Rep. Stafman asked about the differences between the 5-day hearing and the 20-day hearing.

16:08:32 Rep. Tenenbaum responded.

16:09:17 Rep. Lenz commented on show cause hearings.

16:09:42 Sen. McNally asked why the flowchart doesn't show EPS hearings.

16:10:16 Rep. Tenenbaum and Ms. O'Connell responded to Sen. McNally's concern.

16:11:52 Rep. Stafman asked if there was a reason to keep the 20-day hearing in the bill.

16:12:19 Ms. Sandru responded.

16:12:58 Ms. O'Connell discussed the statute for the EPS hearing.

16:16:45 Rep. Gillette commented on the definition of the 5-day EPS hearing.

Public Comment on the HB 39 and HJR 45 Bill Drafts

16:18:10 April Sommers, Executive Director, Montana CASA/GAL Association

16:20:59 Denise Johnson distributed a document showing data from Michigan and Montana. [\(Exhibit 10\)](#)

16:27:32 Kelsie Harwood, Blaine County Attorney, and the Board of Directors for the Montana County Attorneys Association

16:36:16 Kelsen Young, Montana Coalition Against Domestic and Sexual Violence

Questions from the Committee

16:41:46 Rep. Lenz asked Denise Johnson about her changes regarding HB 39-1.

16:42:29 Ms. Johnson discussed her changes in HB 39-1.

COMMITTEE WORK SESSION

HB 39 and HJR 45 Bill Draft Discussion

16:45:19 The committee discussed the bill drafts HB 39-1 and HJR 45-1.

Discussion on the warrant provision

16:52:10 Rep. Stafman said there was consensus from the committee to go with the warrant provision. Rep. Caferro indicated her opposition.

Discussion on the 3-day or 5-day timeframe for EPS hearing

17:01:24 Rep. Stafman proposed a compromise of 5 calendar days beginning in July, 2023, and decreasing the timeframe to 72 hours in 2025. Rep. Stafman recognized consensus of the 72-hour timing.

Discussion on notice requirement

17:31:07 Rep. Lenz opposed the notice requirement for a court-appointed special advocate (CASA). Rep. Stafman said there isn't enough support on this issue.

Discussion on the HB 39 budget

17:35:15 Rep. Stafman asked about combining HB 39-1 and HJR 45-1 into one bill. Ms. O'Connell said that if the committee proceeded with both HB 39-1 and HJR 45-1, they may want to change the timeline in HB 39-1 to 72 hours. Rep. Stafman discussed allocating \$450,000 for prehearing conferences and \$300,000 for public defenders.

RECESS

17:51:41 Rep. Stafman recessed the meeting at 5:51 p.m.