



CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

67th Montana Legislature

SENATE MEMBERS

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Theresa Manzella
Mary McNally

HOUSE MEMBERS

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Jane Gillette
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Ed Stafman – Presiding Officer
Danny Tenenbaum

COMMITTEE STAFF

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

MINUTES LOG

HB 39 Working Group

November 19, 2021
Room 102/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. Dennis Lenz, Presiding Officer
Kelsie Harwood
Eric Barnosky
Brian Smith
Tom Billteen
Kiersta Sullivan
Matt Furlong

MEMBERS PRESENT VIA ZOOM:

Rep. Danny Tenenbaum, Vice Presiding Officer
Judge Jessica Fehr
Eldena Bear Don't Walk

STAFF PRESENT:

Sue O'Connell, Research Analyst
Fong Hom, Secretary

AGENDA [\(Attachment 1\)](#)

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

COMMITTEE ACTION

The HB 39 working group reviewed information related to its ongoing review of the use of prehearing conferences and optional emergency protective services hearings within 5 days of a child's removal from the home in cases of suspected abuse or neglect. Topics included:

- the qualifications and training for prehearing conference facilitators;
- the logistics of putting the procedures in place in rural, multi-county judicial districts; and
- the experiences the various parties involved in abuse and neglect cases have had with the hearings.

Working group members also discussed aspects of the current law that may need to be clarified or refined before the 5-day hearings become required in 2023.

CALL TO ORDER/ROLL CALL

08:32:26 Presiding Officer Lenz called the meeting to order at 8:32 a.m. The committee secretary called roll. [\(Attachment 3\)](#)

08:34:04 Rep. Lenz discussed the goals of the working group.

FOLLOW-UP ITEMS FROM OCTOBER MEETING

Uses of Title IV-E Money

08:37:41 Erica Johnston, Executive Director, DPHHS Economic Security Services, gave a presentation on Title IV-E money.

Pre-Hearing Conference Facilitator Qualifications and Training

08:44:42 Sue O'Connell, Research Analyst [\(Exhibit 1\)](#)

08:46:58 Tom Billteen discussed the facilitator rates.

ICWA Memo from John Guinn

08:48:13 Mr. Billteen discussed John Guinn's memo regarding whether the 10-day notice requirement applies to Emergency Protective Services (EPS) hearings. [\(Exhibit 2\)](#)

Yellowstone County District Court EPS-Related Documents

08:51:39 Judge Jessica Fehr discussed the forms, "Notice of Removal of Child(ren) and Hearing" [\(Exhibit 3\)](#) and "Order Following Emergency Protective Services Hearing" [\(Exhibit 4\)](#).

Questions from the Committee

08:57:33 Brian Smith commented on the challenges of getting more public defenders.

- 08:58:47 Jessica Harwood asked Judge Fehr how soon petitions are filed prior to the EPS hearings.
- 09:00:46 Matt Furlong asked Judge Fehr about the right of entry into the home by a peace officer or by a Department of Public Health and Human Services child protection specialist. He also asked if this occurs only at the time of removal or throughout an ongoing investigation.

DISCUSSION OF PHC AND EPS HEARING LOGISTICS

Historical Court Statistics

- 09:07:00 Ms. O'Connell ([Exhibit 5](#))

Multi-County Judicial Districts

- 09:09:21 Judge Luke Berger of the Fifth Judicial District gave a presentation on his use of PHCs and EPS hearings in his multi-county district.
- 09:25:21 Rep. Lenz discussed the rural judicial districts.

Committee Questions of Judge Berger

- 09:26:55 Mr. Furlong asked about the challenges that people face when they don't have the capability of participating by Zoom because of location and access to the Internet.
- 09:30:19 Rep. Lenz commented that rural districts may be using technology more extensively and quickly than urban areas.
- 09:32:40 Ms. Harwood asked what impacts are seen at the show cause hearings after implementing the PHCs and the EPS hearings.
- 09:37:23 Mr. Furlong asked if there are efforts being made in rural areas in supporting families where there might be a lack of providers and services.
- 09:41:30 Kiersta Sullivan asked if Judge Berger has problems with parents not showing up at the scheduled meetings.
- 09:45:49 Rep. Lenz asked if Judge Berger thinks that having earlier hearings may compel the parents' participation in subsequent hearings and in activities needed to resolve the case.

County Attorney Perspectives

- 09:48:22 Dylan Jensen, Valley County Attorney
- 09:52:22 Bradley Bowen, Gallatin Deputy County Attorney
- 09:57:00 Charity McLarty, Richland Deputy County Attorney
- 10:00:37 Valerie Winfield, Cascade Deputy County Attorney

Committee Questions of the presenters

- 10:18:35 Mr. Smith asked if the presenters had any suggestions on how to get notices out to parents more quickly.
- 10:19:23 Ms. McLarty

10:19:41 Mr. Jensen
 10:20:11 Ms. Winfield
 10:21:46 Mr. Bowen
 10:22:17 Rep. Lenz asked Mr. Bowen why an abuse and neglect case is harder in an EPS hearing.
 10:24:14 Rep. Lenz asked Mr. Bowen about the voluntary 5-day hearing.
 10:25:39 Rep. Tenenbaum asked Mr. Smith if it is a legal requirement or an OPD policy that a public defender in an abuse and neglect case be geographically located as close to the family member as possible.
 10:27:13 Mr. Smith
 10:29:08 Mr. Bowen
 10:30:03 Mr. Smith

BREAK (reconvened at 10:56 a.m.)

Office of the State Public Defender Perspectives

10:56:55 Brian Smith, Public Defender Division, Office of the State Public Defender

Department of Public Health and Human Services Perspectives

11:05:19 Nikki Grossberg, Acting Administrator, Child and Family Services Division

CASA Perspectives

11:07:14 Kiersta Sullivan, Front Range CASA/GAL, Inc.

Committee Questions of presenters

11:13:02 Rep. Lenz asked Ms. Sullivan for more clarity on how CASA interacts with children.
 11:15:16 Mr. Furlong asked Ms. Sullivan if there are challenges in staffing the cases with CASA volunteers.
 11:16:24 Mr. Smith commented on Ms. Grossberg's presentation.
 11:18:14 Mr. Furlong asked Ms. Grossberg about whether the 5-day hearings have helped with workforce retention or resulted in a reduction in workload for CPS staff.
 11:21:54 Judge Fehr discussed how Yellowstone County appoints attorneys for children.

NEXT STEPS

Research/Information Requests for Next Meeting

11:26:22 Mr. Billteen requested more information on the "what next" with respect to the PHC program.
 11:27:52 Ms. Sullivan said she would like to know how many mediators are needed to cover the state.

11:28:16 Rep. Lenz said he would like to know how CASA could be used in future.

11:29:17 Ms. Harwood asked about having some type of a coordinator in each judicial district and how that would look.

11:30:01 Mr. Billteen said, in response to Ms. Sullivan's comment on training, that would be an area for the Court Improvement Program to continue to provide services and resources.

11:30:52 Mr. Furlong discussed the kinship placement and working on some preliminary situation with CPS where a child can go and stay with the and curbing the need to go to the 5-day hearing.

11:31:43 Rep. Lenz asked if Ms. Grossberg had any insights on kinship placement.

11:32:44 Ms. O'Connell asked Ms. Grossberg if there is anything in law that allows related people to be contacted in a removal case.

LUNCH BREAK (reconvened at 12:45 p.m.)

GENERAL PUBLIC COMMENT

12:46:55 Denise Johnson, Communications Director, Montana Child Protection Alliance, commented on House Bill 90 and the section regarding the removal of children from the home.

ROUNDTABLE DISCUSSION

Indian Child Welfare Act Issues

12:57:11 Eldena Bear Don't Walk discussed ICWA issues.

Committee Questions of Ms. Bear Don't Walk

12:59:41 Rep. Lenz commented on being a proponent for ICWA for all and not just for Native American children.

13:01:04 Ms. Bear Don't Walk commented that ICWA ensures uniform standards for all jurisdictions.

Public Comment

13:02:47 John Guinn discussed the use of PHCs and ESP hearings for Native American children.

Committee Questions

13:05:55 Ms. Harwood asked Mr. Guinn whether his position is that parents of Indian children may request an EPS hearing and just follow the Montana notice provisions for that specific hearing.

13:10:03 Judge Fehr discussed the Yellowstone County practices regarding ICWA cases.

13:14:23 Rep. Tenenbaum asked about the practice of not allowing EPS hearings in ICWA cases

13:15:32 Ms. Winfield explained the bill that says the EPS hearing law does not apply to ICWA cases so judges are not proceeding with the hearings if they're requested.

13:16:25 Rep. Tenenbaum asked Mr. Guinn to respond to Ms. Winfield's testimony.
13:17:42 Mr. Smith asked Judge Fehr if judges could hold an EPS hearing more quickly than 5 days.

Potential Statutory Changes

13:22:23 Mr. Barnosky asked about the timeline for EPS hearings if parents don't request them for 3 or 4 days..
13:25:40 Ms. O'Connell summarized what she thought the working group was asking for: statutory fixes regarding judges allowing video participation; guardian ad litem in CASA and attorneys for the child; does 41-3-306 need to be refined in some way to work better with 41-3-425; clarify when CASA involvement is necessary at the EPS hearings; and dealing with the ICWA language and the exception.
13:28:16 Judge Fehr discussed potential fiscal implications.
13:30:48 Mr. Furlong asked whether Senate Bill 400, which outlines parental rights, applies during the removal process.
13:33:31 Mr. Furlong asked whether parents may have a support person present during an EPS hearing.
13:34:02 Judge Fehr discussed the practices in Yellowstone County.
13:36:48 Mr. Furlong discussed Minnesota's 72-hour hearing
13:39:50 Judge Fehr and Ms. Harwood commented on notice requirements with ICWA cases.
13:44:10 Ms. Harwood asked about the timeframes of when an affidavit is sent to the county attorney's office and when the county attorney files the appropriate petition.
13:46:38 Mr. Furlong asked for clarification on the removal forms.
13:52:21 Mr. Smith discussed a potential change to 41-3-301, MCA.
13:53:32 Mr. Barnosky discussed the complexity of giving the parent a copy of the affidavit within 48 hours.
13:56:41 Mr. Smith commented on 41-3-301(6), MCA.
13:58:25 Ms. Sullivan asked whether the law needs to be clearer on when and how the public defender is notified of a case.
13:59:28 Mr. Smith explained the importance of providing sufficient information to the contract attorney in a case.
14:05:50 Mr. Barnosky suggested that there be a mechanism for the parties in each county to receive training and develop a standard procedure for handling requests for EPS hearings.

Discussion of Next Meeting: Agenda Items and Date

14:13:11 The committee discussed meeting dates for January and March.

ADJOURNMENT

14:16:22 Rep. Lenz adjourned the meeting at 2:16 p.m.