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House Bill 39 Working Group

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# FINDINGS AND RECOMMENDATIONS DRAFT FOR DISCUSSION PURPOSES

## BACKGROUND AND PURPOSE

House Bill 39 from the 2021 Legislature called for creation of a working group to review two judicial pilot projects currently being used in child abuse and neglect cases in some counties.

One effort involves prehearing conferences, where all parties to a case meet with a facilitator before the first court hearing. The parties discuss the child's placement, visitation schedules, treatment services, and the conditions for the child's return to the home. The other pilot project involves emergency protective services (EPS) hearings that are being held within five days of a child's removal from the home. The EPS hearings are designed to provide parents with a quicker court appearance than the show cause hearing that's held within 20 days of a child's removal as the first hearing in child abuse and neglect cases.

HB 39 directed the working group to:

- determine whether the pilot projects could be put in place in other areas of the state;
- evaluate whether existing laws need to be changed to implement the pilot projects more widely, as is scheduled to occur in 2023; and
- make recommendations to the Children, Families, Health, and Human Services Interim Committee on legislation, funding, or other items needed for successful implementation on a wider basis.

This briefing paper presents potential findings and recommendations for the working group to consider for presentation to the interim committee. ***It's important to note*** that these are draft findings and recommendations developed by staff based on working group discussions to date; members have not yet provided comment on these items.

## POTENTIAL FINDINGS

Based on the information received and discussed to date, the working group may want to consider making one or more of the following findings:

- The Indian Child Welfare Act (ICWA) does not prevent the use of EPS hearings in cases involving Indian children, but it's still important to ensure that tribes receive notice about the cases within the timeframes required under ICWA.

- Because the EPS hearing is held so quickly after a child's removal, parents are more likely to engage in court proceedings and in the activities they need to complete in order for reunification to occur.
- The combination of prehearing conferences and EPS hearings has often made show-cause hearings more productive.
- Videoconferencing technology has worked well for both prehearing conferences and EPS hearings by eliminating time and travel issues for parents and public defenders. However, barriers may still exist for some parents in accessing the technology, and steps may be needed to eliminate those barriers.
- In some counties with high abuse and neglect caseloads, the addition of the accelerated EPS hearings will likely create a backlog of other civil cases because, by law, child abuse and neglect cases must be given priority over other cases.
- Public defenders are not always available for EPS hearings. The hearings won't succeed on a wide scale unless the Office of the State Public Defender has additional staff or contract attorneys.
- Some confusion exists among the various parties involved in EPS hearings as to the logistics of scheduling and carrying out those hearings and about the purpose of the hearings.
- Counties are concerned that EPS hearings could become an unfunded mandate.

## POTENTIAL RECOMMENDATIONS

The working group may want to:

- recommend that the interim committee propose legislation to:
  - clarify that ICWA does not prevent the use of EPS hearings in cases involving Indian children and to remove existing statutory language preventing the use of the hearings in ICWA cases;
  - revise the time frames for EPS hearings in some multicounty judicial districts;
  - expressly require the hearings to be held by electronic means unless a court determines good cause exists for in-person hearings;
  - clarify the procedure for notifying the Office of the State Public Defender and district court clerks when a child is removed from the home and an EPS hearing must be scheduled;
  - revise the requirement that the child have an attorney for the EPS hearing;
  - clarify procedures involving court-appointed special advocates for children;
  - clarify that a support person can be present for a parent during EPS hearings; and
  - provide for training on implementing the EPS hearings before they become mandatory in 2023.
- suggest that the interim committee review the potential costs of expanding the use of prehearing conferences and EPS hearings and determine whether additional state funds should be appropriated to cover some or all of the costs. Potential costs could include expenses for:
  - additional public defenders;
  - additional prehearing conference facilitators;
  - case management tools for the courts and case workers; and
  - coordinators to schedule prehearing conferences and EPS hearings for a county or judicial district.

## NEXT STEPS

The working group is scheduled to review the potential findings and recommendations, as well as draft legislation, at its January 2022 meeting. Questions for working group consideration include:

1. Does the working group want to present findings to the Children and Families Committee? If so, the group will need to determine:
  - a. which of the potential findings to propose and whether to revise those findings; and
  - b. whether additional findings should be included.
  
2. Does the working group want to propose draft legislation to the interim committee? If so, the working group will need to determine:
  - a. which elements of PD 1 should be kept, eliminated, or revised; and
  - b. whether additional concepts need to be added.
  
3. Does the working group want the interim committee to review costs and consider appropriating funds to expand prehearing conferences and EPS hearings? If so, does the working group want to:
  - a. develop cost estimates for the interim committee to consider;
  - b. suggest the types of staff, activities, or technology that should be paid for by the state and allow the interim committee to develop cost estimates;
  - c. suggest funding sources to cover the costs; or
  - d. take another approach to this recommendation?