

HB 39: JUDICIAL PILOT PROJECTS REVISED DRAFT FINDINGS

BACKGROUND AND PURPOSE

House Bill 39 of the 2021 legislative session created a stakeholder working group to evaluate two pilot projects that are underway in several Montana judicial districts for the handling of child abuse and neglect cases. The working group is tasked with determining whether the efforts should be implemented more widely and whether statutory or other changes are needed to allow for that. The pilot projects involve:

- the use of prehearing conferences (PHCs) before the first hearing in an abuse or neglect case; and
- an emergency protective services (EPS) hearing that is held within 5 days of a child's removal from the home.

In January 2022, the House Bill 39 Working Group reviewed a draft of proposed findings and discussed potential changes that members may want to make before presenting any findings and recommendations to the Children, Families, Health, and Human Services Interim Committee later this interim.

This briefing paper incorporates the suggested revisions, so members can review the draft findings in March and decide which – if any – to forward to the committee. The work group also may decide to eliminate some of the draft findings or to include additional findings.

REVISED DRAFT FINDINGS

Changes to the draft findings that were considered in January are indicated below in *italicized* text.

- 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.
- *Evidence from the state's judicial districts shows that EPS hearings have been more successful in the pilot project judicial districts, where the hearings are required, than in other parts of the state, where parents can opt to have an EPS hearing but are not required to do so.*

- *Although the EPS statute exempts cases subject to the Indian Child Welfare Act (ICWA) from the requirement for an EPS hearing, some courts have concluded that ICWA's exception for emergency proceedings means the hearings do not violate the federal law's timelines for notice to parents and tribes. However, it's still important to ensure that tribes receive notice about the cases within the timeframes required under ICWA.*
- The combination of prehearing conferences and EPS hearings has often made show cause hearings more productive.
- *PHCs and EPS hearings may reduce the number of contested show cause hearings or may result in quicker resolution of abuse and neglect cases, leading to a reduction in the number of court hearings and a corresponding decrease in caseloads and costs for the Department of Public Health and Human Services, the Office of the State Public Defender, and the courts.*
- 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.
- *Parents may need follow-up contact from their caseworker and/or clearer instructions from DPHHS at the time of removal to make sure they fully understand their options for the EPS hearing and the opportunities that the hearing provides to quickly establish placement, visitation, and treatment options.*
- 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.
- *The state public defender system is stretched thin for both criminal and civil cases and has not always been able to provide attorneys during EPS hearings. Because of the statutory priority given to child abuse and neglect cases and the importance of those cases, the Office of the State Public Defender should be given additional resources to ensure that attorneys will be available to represent parents at EPS hearings.*
- 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, *particularly in the judicial districts where hearings are currently optional and must be requested by a parent.*
- Counties are concerned that EPS hearings could become an unfunded mandate.