

HB 39: JUDICIAL PILOT PROJECTS WORK GROUP FINDINGS/RECOMMENDATIONS

BACKGROUND

House Bill 39 created a working group to review and make recommendations on legislation, funding, or other items needed to successfully put two new practices into place for child abuse and neglect proceedings. The working group was charged with looking at the use of:

- prehearing conferences (PHCs) in select judicial districts that have been taking part in a pilot project that brings the parties to an abuse and neglect case together for a facilitated meeting before the first court hearing, so they can discuss issues related to the child's placement, visitation schedules, and family treatment needs; and
- emergency protective services (EPS) hearings that are held within 5 days of a child's removal from the home. The pilot project courts have been using those early hearings in conjunction with the PHCs. House Bill 503 from the 2021 legislative session made EPS hearings available to parents in all judicial districts upon request, starting in July 2021.

EPS hearings are slated to become mandatory across the state on July 1, 2023, as required under HB 90 of the 2021 legislative session.

WORKING GROUP PROCESS AND RESULTS

The working group met four times between October 2021 and March 22 to hear from a broad range of stakeholders. Speakers included District Court judges, the Supreme Court administrator, county attorneys, public defenders, and individuals who facilitate the PHCs.

Members heard not only about the benefits of the pilot projects, but also about the obstacles people were experiencing in carrying out the optional EPS hearings. The working group also looked into the logistics and potential costs of expanding the use of PHCs and EPS hearings.

In March, the group developed nine findings for presentation to the Children, Families, Health, and Human Services Interim Committee. Members also agreed to develop a bill draft that implements seven recommendations related to the use of PHCs and EPS hearings. In addition, they made two other recommendations for the committee to consider.

This briefing paper presents the working group's findings and recommendations.

FINDINGS FROM THE WORKING GROUP

After considering the information that members had received and discussed, the working group agreed to present the following findings to the Children, Families, Health, and Human Services Interim Committee:

- Because PHCs and EPS hearings are 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.
- The EPS hearing strengthens the protections provided to Indian children under the Indian Child Welfare Act (ICWA), and 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.
- 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 (DPHHS), the Office of the State Public Defender, the Attorney General's Office, county attorney offices, and the courts.
- Videoconferencing and other electronic options, including the use of telephones, have worked well for both PHCs and EPS hearings by eliminating time and travel issues for all parties. However, parents who prefer an in-person conference or hearing should not be required to use electronic alternatives. In addition, barriers may still exist to the availability of and access to electronic technologies, and steps may be needed to eliminate those barriers or allow other means for participating in the proceeding.
- Parents may need follow-up contact from their caseworker and/or clearer instructions at the time of removal to make sure they fully understand the purposes of the EPS hearing and the opportunities that the hearing provides to quickly establish placement, visitation, and treatment options.
- 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.
- 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 PHCs could become an unfunded mandate.

WORKING GROUP RECOMMENDATIONS

The working group agreed to recommend that the Children, Families, Health, and Human Services Interim Committee take the following steps:

- introduce legislation to strengthen and clarify the laws relating to PHCs and EPS hearings;
- continue the 5-day timeframe for EPS hearings unless further legal research shows that the timeframe may not meet constitutional standards; and
- hear more information on the question of whether all children should be appointed legal representation for an EPS hearing and then decide whether the current statutory requirement needs to be changed.

ELEMENTS FOR A COMMITTEE BILL

The working group agreed to draft a bill for presentation to the Children and Families Committee for consideration and public comment in May. Members decided the bill draft should:

- maintain a uniform timeframe for the EPS hearing, rather than allow a range of timeframes based on the size of a judicial district or the number of judges in a district;
- continue the 5-day timeframe for holding an EPS hearing, pending further legal research into the topic;
- remove the prohibition on EPS hearings for ICWA cases;
- clarify that a parent may have a support person present at an EPS hearing;
- require DPHHS to:
 - notify the Office of the State Public Defender when a child is removed from the home; and
 - provide the office with the affidavit the caseworker prepares for the county attorney;
- require that PHCs be available in all judicial districts for parents who choose to participate in the conferences; and
- include appropriations to cover associated costs, potentially to include items such as the training of additional PHC facilitators and sufficient resources to ensure the availability of public defenders.

NEXT STEPS

The agenda for the May 12 meeting of the Children and Families Committee will include time for presentation of and public comment on the bill draft. Based on the public comment received at that meeting, the committee could:

- request additional changes to the bill draft for further consideration and public comment in June;
- decide to introduce the bill as a committee bill in the 2023 Legislature; or
- decide not to pursue the bill draft.

In addition, the committee also should decide in March or May whether to schedule time at a future meeting to hear more about the requirement for legal representation for children during EPS hearings.