

HB 39: JUDICIAL PILOT PROJECTS BILL DRAFT PROVISIONS AND CONSIDERATIONS

BACKGROUND

Earlier this interim, the House Bill 39 Working Group reviewed the results of judicial pilot projects involving prehearing conferences (PHCs) and emergency protective services (EPS) hearings in selected areas of the state. The group also heard about the voluntary use of EPS hearings in non-pilot project judicial districts. Based on its review, the group made eight recommendations for implementing those practices across the state. The recommendations are encompassed in HB 39-1, a bill draft for consideration by the Children, Families, Health, and Human Services Interim Committee.

DECIPHERING THE BILL DRAFT

This briefing paper shows how the recommendations were incorporated into the bill draft, explains the timing of currently scheduled as well as proposed changes to the law, and provides points for the committee to consider as it decides whether to introduce the bill in the 2023 legislative session.

WHY ARE SOME SECTIONS LABELED "TEMPORARY?"

Sections 1 and 2 of the bill amend 41-3-301 and 41-3-306, MCA. Both of those statutes have two different versions in the Montana Code Annotated, and both of the versions are included in the bill draft. The temporary sections of the statutes are in effect right now and involve the current, *optional* use of EPS hearings. The second version of each statute is slated to go into effect on July 1, 2023, and will *require* the use of EPS hearings in all judicial districts at that time.

Section 3 amends a statute that is due to expire on June 30, 2023, so it's also labeled as a temporary section. However, the bill draft amends this section and would also remove its termination date, in Section 4. That would make the amended version of the statute permanent.

HOW DO THE RECOMMENDATIONS TRANSLATE INTO STATUTORY LANGUAGE?

The table below shows where each of the working group's recommendations can be found in the bill draft.

Recommendation	Corresponding Bill Section
Clarify that a support person may be present during EPS hearings	<ul style="list-style-type: none"> • P. 2, Section 1, subsection (1)(b)(iv)(C) – Temporary Section • P. 4, Section 1, subsection (1)(b)(3) – Permanent Section
Require the Department of Public Health and Human Services (DPHHS) to notify the Office of State Public Defender (OPD) when a child is removed from the home	<ul style="list-style-type: none"> • P. 2, Section 1, subsection (1)(c) – Temporary Section • P. 4, Section 1, subsection (1)(c) – Permanent Section
Require DPHHS to provide OPD with a copy of the affidavit prepared for the county attorney at the same time that it's provided to the parents	<ul style="list-style-type: none"> • P. 3, Section 1, subsection (6) – Temporary Section • P. 6, Section 1, subsection (6) – Permanent Section
Remove the prohibition on EPS hearings for cases subject to the Indian Child Welfare Act (ICWA)	<ul style="list-style-type: none"> • P. 7, Section 2, subsection (8) – Temporary Section • P. 7, Section 2, subsection (7) – Permanent Section
Maintain a uniform timeframe for the EPS hearing in all judicial districts	<ul style="list-style-type: none"> • No change needed
Maintain the 5-day timeframe for EPS hearings	<ul style="list-style-type: none"> • No change needed; existing language on P. 7, Section 2, subsection (1) will remain the same
Require that PHCs be available to willing parents in all judicial districts	<ul style="list-style-type: none"> • P. 8, Section 3
Include appropriations to cover associated costs	<ul style="list-style-type: none"> • P. 9, Section 5

WHEN WOULD THE CHANGES GO INTO EFFECT?

The bill contains three different effective dates in Section 6, as follows:

- The changes in Sections 1 and 2 would go into effect immediately and would remain in effect after June 30, 2023. These changes would:
 - allow EPS hearings for ICWA cases;
 - require the Department of Public Health and Human Services (DPHHS) to notify the Office of Public Defender (OPD) of the child's removal and provide the affidavit; and
 - clarify that a support person may be present at the EPS hearing.
- Section 4 would go into effect on June 30, 2023. That allows 41-3-307, the PHC statute, to remain in effect past its scheduled sunset date.
- The changes to Section 3, requiring all judicial districts to make PHCs available, would go into effect July 1, 2023. Section 5, providing the appropriations, also would go into effect on July 1 to correspond with the start of Fiscal Year 2024.

POTENTIAL APPROPRIATIONS

Working group members recommended that the Children and Families Committee include funding in the bill draft to cover the costs of expanding the use of prehearing conferences and EPS hearings. The costs generally fell into two categories: the costs for the PHC program and the costs of ensuring legal representation for parents at the PHC and the EPS hearing.

PREHEARING CONFERENCE COSTS

The Office of the Court Administrator provided the working group with a breakdown of the first-year costs of expanding the PHC program beyond the judicial districts participating in the pilot. The table below provides the potential costs of the expansion, using the following assumptions:

- Courts across the state would be handling 2,082 cases a year, based on the 10-year average of cases that have been filed in Montana.
- PHC facilitators would spend an average of 3 hours on each case at a rate of \$62 an hour, or \$186 per case.
- A half-time administrative support person would be needed for data entry and for coordinating other aspects of the PHC program.
- The office would continue a PHC training contract with the University of Montana.
- The Court Improvement Program (CIP) would continue to use \$100,000 of its federal grant funds to support the program each year.

Because it's unknown how many parents would choose to participate in the conferences, the table below estimates costs at three different levels of participation.

Item	100% of Cases		90% of Cases		80% of cases	
	Annual	Biennial	Annual	Biennial	Annual	Biennial
PHC Facilitators	\$387,252	\$774,504	\$348,527	\$697,054	\$309,802	\$619,603
Administrative Support	\$43,222	\$86,444	\$43,222	\$86,444	\$43,222	\$86,444
Training	\$13,608	\$27,216	\$13,608	\$27,216	\$13,608	\$27,216
Subtotal	\$444,082	\$888,164	\$405,357	\$810,714	\$366,632	\$733,263
Less CIP Funding	-\$100,000	-\$200,000	-\$100,000	-\$200,000	-\$100,000	-\$200,000
Total	\$344,082	\$688,164	\$305,357	\$610,714	\$266,632	\$533,263
Less FTE insurance costs	-\$12,648	-\$25,296	-\$12,648	-\$25,296	-\$12,648	-\$25,296
Potential Revised Total	\$331,434	\$662,868	\$292,709	\$585,418	\$253,984	\$507,967

OFFICE OF PUBLIC DEFENDER COSTS

OPD has noted that its attorneys represent parents in these cases as part of their regular duties, so the addition of the EPS hearing doesn't really increase the office's caseload. However, the working group heard repeatedly about the difficulty that OPD was having in ensuring that enough attorneys were available for EPS hearings to represent all the parents who might be involved in an EPS hearing. Members also heard about the office's idea of paying non-staff attorneys to be on call for EPS hearings. Members were told the anticipated cost was \$200 to \$300 a month for each judge in a judicial district.

If the Legislature wanted to support the concept of on-call contract attorneys for EPS hearings, the table below shows the potential costs of having those attorneys available for all 51 district judges. The estimates are based on three different retainer rates.

Monthly Retainer	Annual Cost	Biennial Cost
\$200	\$122,400	\$244,800
\$250	\$153,000	\$306,000
\$300	\$183,600	\$367,200

COMMITTEE CONSIDERATIONS AND DECISION POINTS

If the committee wants to pursue HB 39-1, members may want to consider and decide the following questions to develop a draft for further review and consideration at a future meeting.

1. Should the 5-day timeframe for the EPS hearing be revised? If so, what timeframe should be used?
 - a. If the timeframe is not revised, it will conflict with the current draft of HJR 45-1, and the committee will have to:
 - i. revise the timeframe in HJR 45-1; or
 - ii. advance only one of the bills.
2. The bill draft currently contains an appropriations section to cover the costs of expanding the use of prehearing conferences and to cover the cost of retaining on-call attorneys to help OPD ensure that attorneys are available for PHCs and EPS hearings. Does the committee want to include appropriations for one or both of these items?
 - a. If so, the committee must decide the amount of the appropriation and whether it should be a per-year or biennial appropriation.
 - b. If not, the committee may want to consider adding language to Section 3 saying that the hearings are "subject to available funding."
3. Does the committee want to make any other changes to the bill draft based on public comment received?