



Children, Families, Health, and Human Services Interim Committee

67th Montana Legislature

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August 15, 2022

TO: Children, Families, Health, and Human Services Interim Committee
FROM: Alexis Sandru, Staff Attorney
RE: Explanation of Revisions to HJR 45-1 (Version 3)

In June, the Children, Families, Health, and Human Services Interim Committee (CFHHS) approved several revisions to HJR 45-1. Also, since June, members of CFHHS have requested additional changes to the draft. Because August is the last scheduled meeting, the additional changes have been included in the draft for CFHHS consideration; however, the changes must be approved by CFHHS at its August meeting to move forward. This paper describes the revisions approved by CFHHS in June and describes additional changes recommended by CFHHS members since June.

REVISIONS APPROVED BY CFHHS IN JUNE

1. Require "active efforts" rather than "reasonable efforts" to prevent the necessity of removal or to reunify families that have been separated by the state.

Location in draft: Section 8 (41-3-423(1)(b))

Explanation: Amends the definition of reasonable efforts in 41-3-423(1)(b) to more closely align with the federal definition of "active efforts".

2. Guarantee the right to counsel for children.

Location in draft: Section 10 (41-3-425)

Explanation: Requires the court to immediately appoint the Office of State Public Defender to assign counsel for any child involved in a child abuse or neglect. (Existing law requires appointment of counsel only when a guardian ad litem is not appointed for a child.)

3. Require the Department to engage families despite applying for a removal warrant.

Location in draft: Section 8 (41-3-423(1)(a))

Explanation: Inserted second sentence in 41-3-423(1)(a), providing that applying for a warrant to remove a child does not absolve the Department of its duty to make reasonable efforts to prevent removal.

4. Prohibit the service of warrants during certain times of the day – require law enforcement involvement in removals.

Location in draft: N/A

Explanation: CFHHS members decided to receive additional information from panelists at the August meeting before further revising draft language.

ADDITIONAL CHANGES RECOMMENDED BY MEMBERS FOR CFHHS CONSIDERATION

1. Revise the definition of child abuse and neglect to exclude circumstances of parental substance abuse, disorderly living conditions, factors related to economic status, or childhood obesity.

Location in draft: Section 4 (41-3-102(7)(d))

Explanation: Amends the definition of child abuse and neglect to provide that the term does not include, standing alone, a parent's or guardian's substance use, disorderly living conditions, factors closely related to economic status, or a child's obesity.

2. Revise the requirements for disclosing child abuse and neglect case records.

Location in draft: Section 5 (41-3-205(3)(e))

Explanation: Amends 41-3-205(3)(e) to allow disclosure to the child's guardian ad litem or court-appointed special advocate *unless* the child or child's parent or guardian objects to the disclosure.