

2021 Legislation: 5-Day Hearings for CPS Cases

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HOUSE BILL NO. 90

INTRODUCED BY D. LENZ

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE,
STATE-TRIBAL RELATIONS COMMITTEE

5-Day Hearings

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graph TD; A((5-Day Hearings)) --> B[HB 90  
Mandatory 5-Day Hearing]; A --> C[HB 503  
Optional 5-Day Hearing]; A --> D[HB 39  
Interim Review];
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HB 90

Mandatory 5-Day Hearing

Amended to:

- delay the effective date to July 1, 2023
- exempt ICWA cases

HB 503

Optional 5-Day Hearing

- Effective July 1, 2021
- Terminates June 30, 2023
- Exempts ICWA cases

HB 39

Interim Review

- Required CFHHS review of judicial pilot projects
- Optional working group to make recommendations on statewide use

HB 39 Working Group Recommendations

The working group met four times to discuss the benefits of and the challenges to the current optional use of emergency protective services (EPS) hearings and the limited use of prehearing conferences (PHCs). The group recommended draft legislation to the Children, Families, Health, and Human Services Interim Committee to address the issues raised during those meetings.

Recommendation for Draft Legislation

The bill draft:

- continues the 5-day timeframe for holding an EPS hearing;
- requires that PHCs be available in all judicial districts for parents who choose to participate in the conferences;
- clarifies that a parent may have a support person present at an EPS hearing;
- requires the Department of Public Health and Human Services 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; and
- removes the prohibition on EPS hearings for cases subject to the Indian Child Welfare Act (ICWA).

Recommendation Related to ICWA

ICWA requires [10-day notice](#) to parents and tribes before a hearing is held on the foster care placement of an Indian child or the termination of parental rights. ICWA regulations also allows for emergency proceedings; the 10-day notice requirement does not apply to those proceedings.

Working group members reviewed the ICWA requirements and concluded that the 5-day EPS hearing does not violate the 10-day notice requirement because it applies to an emergency proceeding that does not result in a final determination of the child's placement. Members recommended that the prohibition on EPS hearings for ICWA cases be removed. They also noted that the EPS hearing strengthens the protections already provided to Indian children under ICWA.

Next Steps

The Children, Families, Health, and Human Services Interim Committee will review and take public comment on the [bill draft](#) at its May 12 meeting before deciding whether to introduce the bill, or a revised version of it, in the 2023 legislative session.