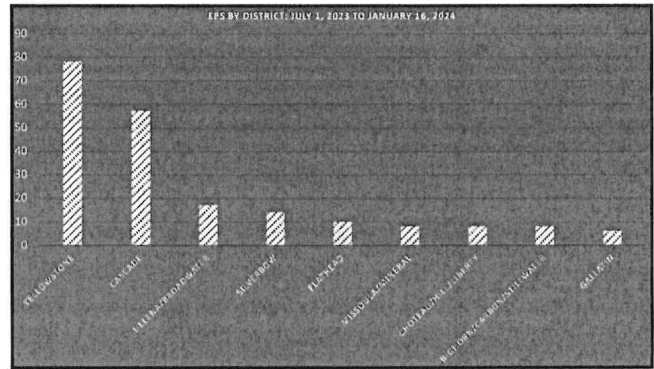


Obstacles to Reunification

SB 182: Task Force on the Dependency and Neglect Court System

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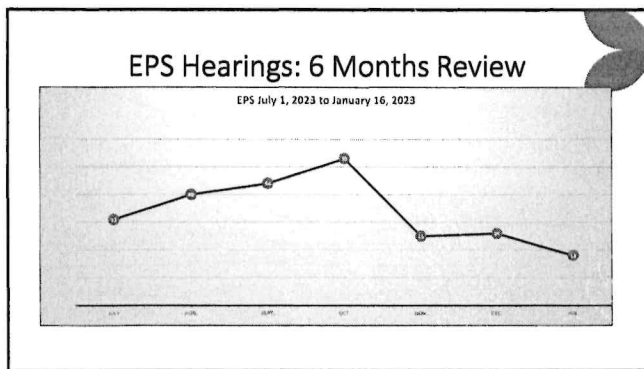
Agenda

- EPS Data: Six months in review
- Areas of consensus
- Timeline of a DN case
- Pre-petition challenges.
- Post-petition challenges.
- Areas for growth

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Areas of Consensus

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Guiding Principles

41-7-102. Policy and guiding principles.

It is the policy of the state of Montana to support and preserve the family as the **single most powerful influence** for ensuring the healthy social development and mental and physical well-being of Montana's children.

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Reunification Is The Goal

- In the vast majority of cases, the Department is legally obligated to provide services aimed at reunifying families separated by the state.
- These services are collectively referred to as "active efforts" and "reasonable efforts."
- Definition of "reasonable efforts" was expanded during the 2023 session. 41-3-422, MCA.

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Access to Resources

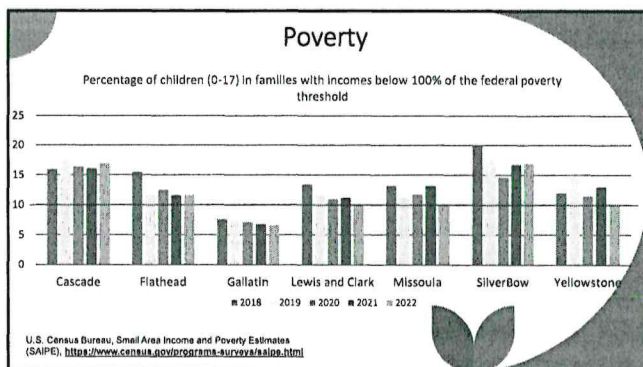
- Poverty should not equate with an increased risk of involvement with CFS.
- Obstacles:
 - Housing
 - Lack of affordable, quality childcare
 - Food insecurity
 - Issues of home and personal hygiene (lice, bedbugs, etc.)
- Would increased access to resources have prevented this removal?
- How do we create communities that are insulated against the risk of removal?
 - Quality daycare/preschool
 - Safe, affordable housing.
 - Community-based programs for families.
 - Physical and mental healthcare.
 - Food

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Our Collective Work is to Reunify Families

Image from Casey Family Programs.
<https://www.casey.org/icwa-gold-standard/>

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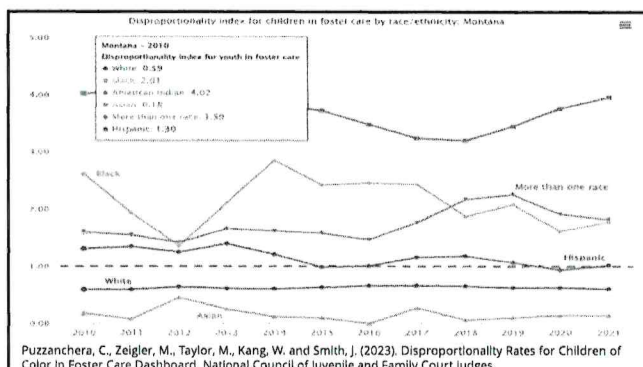


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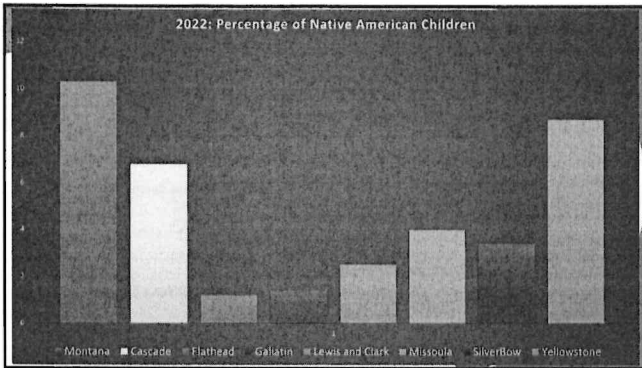
Pre-Petition Obstacles

Challenges faced by families prior to the filing of a legal action.

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Post-Petition Obstacles

Challenges to reunification once legal case is filed

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Legal Counsel

- Families have no right to counsel until:
 - Removal of their children, or
 - Filing of a petition under Title 41
- Critical Services to Prevent Removal:
 - Address legal issues to prevent removal:
 - Filing a temporary order of protection,
 - Connecting with public benefits, housing assistance,
 - Assisting with a private guardianship.
 - Providing legal guidance during CFS investigation.
 - Assisting with safety plans to keep children in the home.

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Timeline Handout

- Key Points in a DN Case:
 - Removal
 - Adjudication and Disposition
 - Treatment Plan and Services
 - Permanency

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More Information of Pre-Petition Advocacy

- NCJFCJ: https://www.americanbar.org/content/dam/aba/administrative/child_law/early-legal-advocacy.pdf
- ABA: https://www.americanbar.org/groups/public_interest/child_law/project-areas/family-justice-initiative/prepetition-legal-representation/

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Family Time

- Default practice of supervised visitation
 - Visits at CFS office
 - Visits through a third-party contractor
 - Limited schedules
 - Unnatural setting
- Ask: Can we control for safety during family time?
 - Community parenting time.
 - Parenting time in the home.
 - Using natural supports as supervisors: grandparents, aunts/uncles, etc.

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Integration of Parents into Child's Daily Life

- **Obstacle:** When CFS intervenes, parents often become separated from the daily lives of their children (school, doctor's appointments, contact with extended family).
- **Better Practice:** Continue to involve parents in daily lives of their children.
 - School events (parent-teacher conferences, sporting events, school plays, etc.)
 - Include parents in well-child appointments.
 - Invite parents to feedback sessions with child's therapist.
 - Schedule parenting time for family dinner, bath and bedtime, homework help.

Requires staffing resources for CFS.
Requires strong communication between placement, CFS, and parent.

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Legal Representation

- **Vertical representation goal.**
 - We only have one Family Defense unit.
 - Reliance on conflict and contract counsel.
 - Goal is a parent has **same attorney throughout case trajectory.**
- **Cooperation with Department.**
 - Setting aside contested hearings (removals, adjudication, termination), we should all be working on the **same goal of reunification.**
 - Personalities must take back seat to goal of reunification.
- **Discovery and Information Sharing**
 - Significant work still needed to ensure parents and children's counsel receive timely disclosure of information.

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Placement Challenges

- **Obstacle:**
 - Children placed with non-kin placements.
 - Siblings separated.
 - Placements outside the family's home community
- **Consequences:**
 - Decreased parenting time.
 - Increased isolation and feelings of despair. Fear of losing children forever increase.
 - Typically, harder for parents to work with non-kin placements.
 - Expensive. Cost to Department and/or parent of travel for visitation.

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Attorney Workloads

- Experts recommend that parents' attorneys should not exceed a caseload of **60 clients** at one time.
 - Family Justice Initiative, "High-Quality Legal Representation," <https://familyjusticeinitiative.org/model/high-quality-representation/>
- Our current workload standards estimate an attorney can manage **72 new DN cases** a year.
 - Because of the extended timeline of DN cases, some family defense attorneys frequently carry **80+ cases** at one time.
 - OPD attorneys work in multiple jurisdictions, covering many district courts and traveling frequently.

What does this mean for clients?

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41-3-450: Placement Preferences

(a) the child must be placed in the least restrictive setting that:

- most approximates a family, taking into consideration sibling attachment;
- allows the child's special needs, if any, to be met; and
- is in reasonable proximity to the child's home, extended family, or siblings;

(b) preference must be given in descending order to placement of the child with:

- a member of the child's extended family, including fictive kin;
- a licensed foster home located in the child's community with ethnic, cultural, and religious heritage similar to the child's family;
- a licensed foster home with ethnic, cultural, and religious heritage similar to the child's family; or
- an institution for children approved by the department that has a program suitable to meet the child's needs; and

(c) the preference of the child or the child's parent or legal guardian must be considered.

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NACC Recommendations: Workloads for Children's Counsel

- NACC recommends that an attorney providing legal representation to children should represent no more than **40-60 individual clients**.
- "Generally, a caseload of this size will allow for the frequent, high-quality client communication, out-of-court and in-court advocacy, and other core functions of children's legal representation..."
- National Association of Counsel for Children. NACC Recommendations for Representation of Children in Abuse and Neglect Cases. <https://naccchildlaw.org/policy-resource-hub/>

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Cultivating Compassion and Cooperation

- Obstacle: Criminalizing parents in the child welfare system.
- Better Practice: Viewing parents with a lens of compassion.
 - Post-removal: Promote culture of cooperation and teamwork, not investigation and penalty.
 - Focus on individual and community responsibility to address reasons for removal.
 - Timely referrals.
 - Frequent contact.
 - Transparency in expectations

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Treatment Plan Tasks vs. Safety

- Unduly deferential to treatment plan tasks rather than **focusing on safety**.
- Parental rights may be terminated if treatment plan not 100% successfully completed:
 - "Partial compliance with a treatment plan...is insufficient to preclude termination of parental rights." *In re K.A.B.*, 1999 MT 71, 294 Mont. 29, 977 P.2d 997.
- Job + kids + multiple treatment providers is not sustainable for many folks.

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Treatment Plan Obstacles

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Obstacles to Receiving Services

- Lack of mental health and SUD services in rural Montana.
- Waitlist for services.
- Interruption to medical insurance coverage of services.
- Lack of peer-support services.
- "Referrals-only" social work.

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Boilerplate Treatment Plans

- Treatment plans frequently feature the exact same tasks for parents.
 - CDE, sobriety, drug and alcohol testing.
 - Mental health eval or psychological eval, individual therapy.
 - Parenting class.
 - Obtain housing and income.
- Parents' attorneys need to be attuned to this issue and be willing to litigate it.
- Focus should be on individualized treatment plans designed to ensure **adequate and safe parenting**.

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Housing

- Housing insecurity is a **major barrier** to reunification.
- Many families **could** be reunited if parents had stable housing.
- Waitlists for affordable housing are sometimes years long.
- Shelters for parents + children are limited.
- Maintaining services and sobriety while homeless is very difficult.

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Incarceration and Reunifications

- Nationally, 1 in 5 children have had an incarcerated parent.
- Currently, Montana law does not require the Department to work reunification with parents when they will be incarcerated for **1 year or longer**. Section 41-3-609(4), MCA.
 - Parents in DOC treatment are often in treatment for 12+ months.
- Consider **changing the timeline** to allow parents who are incarcerated an opportunity to reunify.
- Consider an **exception to 15 of 22 month rule** for some incarcerated parents.



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Greater Support for Families on Trial Home Visits


- Conditions of Return and Trial Home Visits.
- Creative In-Home Safety Plans.
 - Natural supports (extended family, neighbors, teachers, employers).
 - In-home services (public health nurses, community non-profits).
 - **Peer Support!**



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Incarceration Obstacles


- Visitation
- Limited communication between CPS and incarcerated parent.
 - Concurrent planning: missed opportunities for keeping family connected.
- Social work support (housing, employment, recovery groups) for parents as they re-enter the community.



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Reunification and Dismissal

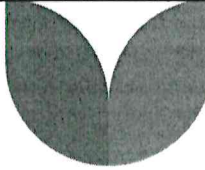
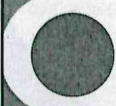
- **Current Law (41-3-424)** requires all of the following criteria for a case to be dismissed:
 - Child **reunited** with parent,
 - Child remains in the home for **at least 6 months** with no additional reports, and
 - The Department determines the reasons for involvement have been resolved and there is **no further need for intervention** or monitoring.
- Consider changing the statute to permit court dismissal without agency approval.



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Permanency


Reunification, Dismissal, Guardianships, and Adoption

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Guardianships and Adoptions

- HB 560 now allows parents to enter into “open” adoption agreements when relinquishing parental rights.
 - Ensures children can maintain connections to birth parents.
- We need something similar for guardianships.
 - Current law does not allow for visitation agreements between biological parents and guardians.



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