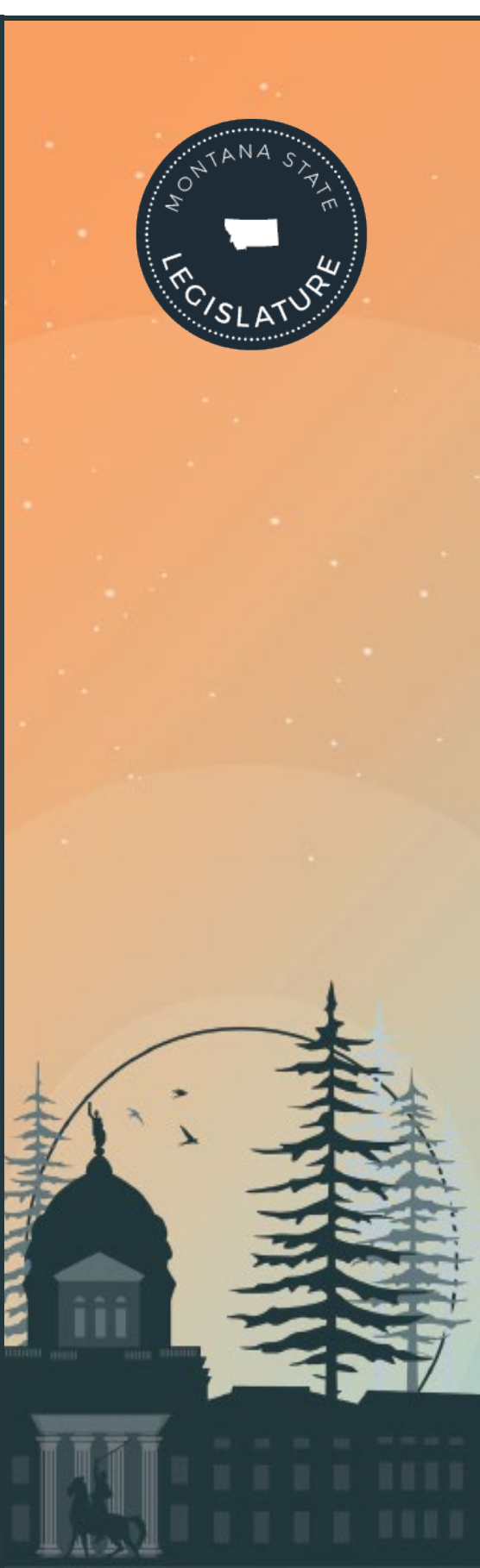




# SB 182: COURT SYSTEM FOR DEPENDENCY AND NEGLECT(DN) TASKFORCE

**DRAFT** REPORT TO THE GOVERNOR, CHIEF  
JUSTICE OF THE SUPREME COURT & THE  
69<sup>TH</sup> MONTANA LEGISLATURE

Dependency and Neglect  
Task Force  
Griffin Burns  
2023-2024





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### **This report is a summary of the work for the court system for**

**Dependency and Neglect (DN) Task Force**, specific to the requirements of Senate Bill 182 and the Court System for Dependency and Neglect Task Force’s 2023-24 work plan. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the DN Task Force in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the DN Task Force’s Interim Committee website: <https://leg.mt.gov/committees/other-groups/court-system-dependency-neglect-task-force/>.

**A full report**, including links to the documents referenced in this print report, is available at the DN Task Force Committee website: <https://leg.mt.gov/committees/other-groups/court-system-dependency-neglect-task-force/>.

# DEPENDENCY AND NEGLECT TASK FORCE SUMMARY OF WORK

## BACKGROUND

### TASK FORCE ON THE DEPENDENCY AND NEGLECT COURT SYSTEM

[Senate Bill 182](#) (SB 182), passed by the 68<sup>th</sup> Montana Legislature, established the Task Force on the Dependency and Neglect Court System (Task Force) to study abuse and neglect court proceedings in Montana. Its responsibility was to determine whether a separate court system dedicated to these issues or the existing court system, with enhancements, would best serve children, families, and other participants involved in dependency and neglect court proceedings. The Task Force reports its findings and recommendations to the Governor, the Chief Justice of the Supreme Court, and the 69<sup>th</sup> Montana State Legislature.

### MEMBERSHIP

Committee membership included legislators, experts, and stakeholders appointed in accordance with SB 182:

Member	Role
<b>Sen. Dennis Lenz, Chair</b>	Member of the Senate
<b>Sen. Ellie Boldman, Vice Chair</b>	Member of the Senate
Rep. Jennifer Carlson	Member of the House of Representatives
Rep. SJ Howell	Member of the House of Representatives
Hon. Rienne McElyea	Public Member, 18 <sup>th</sup> Judicial District
Jessica Finely	Public Member, Missoula County Deputy Attorney
Sgt. John Kadner	Public Member, Cascade County Sheriff's Office
Rachel Green	Public Member, Healthcare Policy Advisor, Governor's Office
Eagle "Wamnee" Ereaux	Tribal Member, experience in Indian and Child Welfare Act
Jennifer Owen	Public Member, experience in dependency and neglect proceedings
Kelly Driscoll	Public Member, Family Defense Bureau Chief, Office of State Public Defender
Nikki Grossberg	Public Member, Child and Family Services Division Administrator, DPHHS

Dependency and Neglect Task Force Staff

Griffin Burns, Legislative Research Analyst | Milly Allen, Legislative Research Analyst  
Jolanda Songer, Secretary |

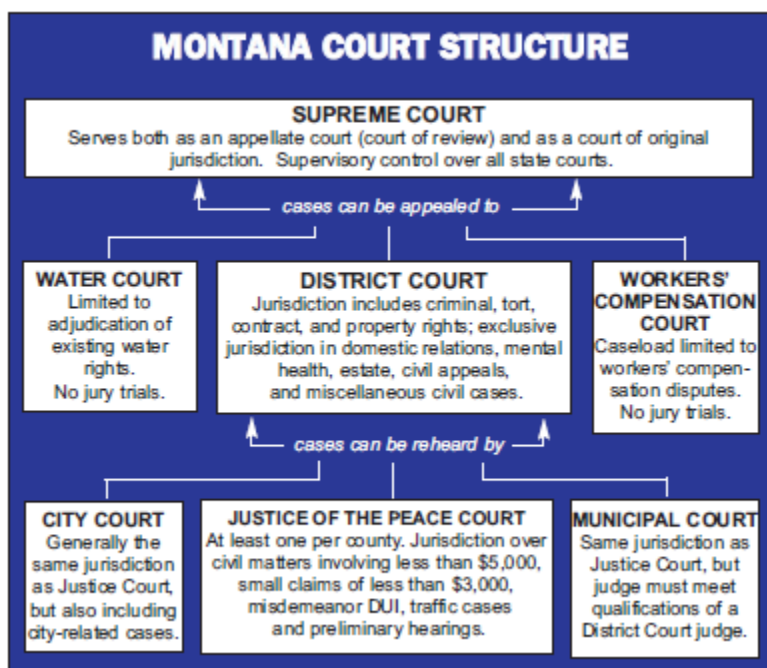
## STUDY PROCESS

Over the course of the interim period, the Task Force met 6 times. During the meetings, the education and discussion was driven by the task forces’ adopted priorities, as outlined in their [2023-2024 workplan](#).

Task Force Priorities
Behavioral health for parents, including substance use disorder treatment
Alternatives and parallel paths to court, including family engagement, mediation, and prehearing conferences
Incarcerated parents
Separate court system for DN cases
Current and potential standards and best practices for DN cases in the current court system

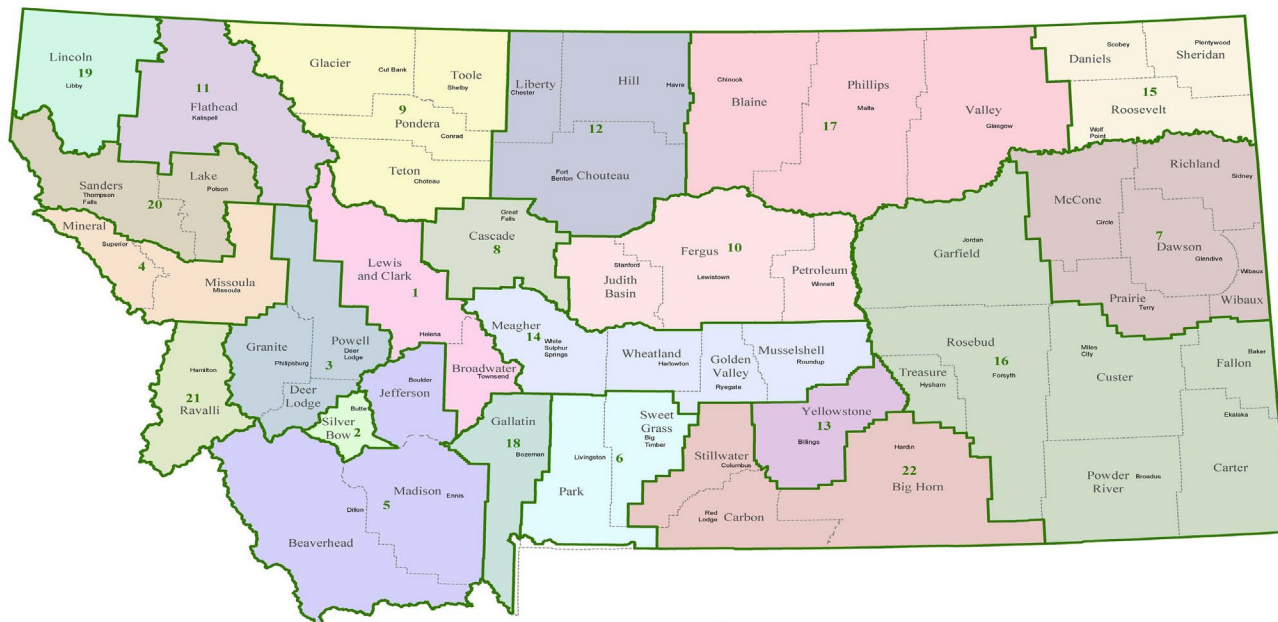
## DISTRICT COURT OVERVIEW & EXPLORING A NEW COURT SYSTEM

To better determine if a separate court system for dependency and neglect cases was viable or to suggest improvements to the current system, the Task Force examined the current structure of Montana District Courts. Through cooperation with the Court Administrator’s Office, the Task Force received background on judicial districts, workload allocation practices amongst districts, and historical dependency and neglect case trends.



*MONTANA HAS SPECIALTY COURTS THAT DECIDE SPECIFIC ISSUES. EXAMPLES OF SPECIALTY COURTS ARE YOUTH COURTS, DRUG COURTS, WATER COURT, AND WORKERS' COMPENSATION COURT. THE TASK FORCE LOOKED TO THESE SPECIALTY COURTS AS A POSSIBLE FRAMEWORK FOR A SEPARATE DN COURT SYSTEM.*

### State of Montana Judicial Districts



Montana’s 56 District courts are administratively structured into 22 judicial districts and served by 46 district court judges.<sup>1</sup> District court judges are elected to a 6-year term in non-partisan elections. As a general jurisdiction court, they handle all case types unless reserved by another court.<sup>2</sup> District Court staffing and caseloads vary depending on the district. Subject to the district, there could be a single judge with support staff or multiple judges with support staff. To explore possible options, the Task Force was provided with start-up costs for a single judge.

#### New Judge with Staff

	Sal/Fringe	
	FTE	Total Cost
Elected Official	1.00	194,424
Judicial Admin Assistant I (\$21.78/Hr)	1.00	66,310
Official Court Rpt-Steno (\$24.55/Hr)	1.00	73,135
Law Clerk I (\$27.14/Hr)	1.00	79,517
<b>Total personal Services</b>	<b>4.00</b>	<b>413,386</b>

Based on 2088 hours with current entry level rates

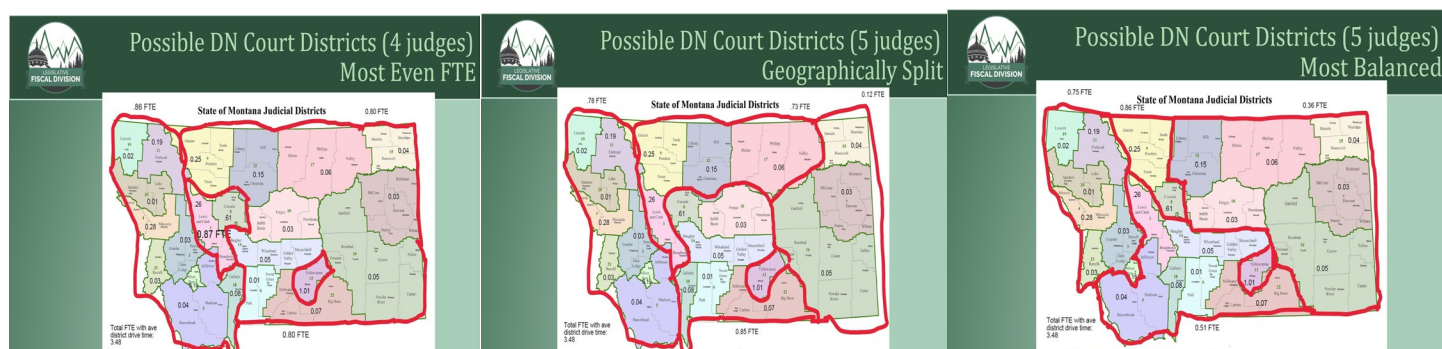
In addition to payroll, startup costs would include office supplies, equipment, and travel. An estimated cost for a judge, support staff, and equipment totals \$456,266. During the Task Force’s October 25th, 2023, meeting, the

<sup>1</sup> District Court Overview, *Montana Judicial Branch*.  
<sup>2</sup> The Montana Citizen’s Guide to the Courts, *State Bar of Montana*.

Court Administrator's Office relayed that the actual cost could be much higher if the Task Force pursued to have a separate court system where judges traveled between districts to preside over court proceedings.

In adding additional FTE to address judicial resource needs in an existing district, the District Court Council analyzes case filing statistics, and uses a workload formula. In the workload formula, the council examines the case types reduced to estimated minutes needed to fulfil duties, travel by judges based on miles & reporting, and miscellaneous factors such as travel and training.<sup>3</sup>

At the request of the Task Force, the Legislative Fiscal Division provided members with possible mock districts for a separate court system:



## DEPENDENCY & NEGLECT CASE TRENDS 2010-2018

Over a 14-year period, the number of abuse and neglect cases has seen a rise and fall. From 2010 to 2018, district courts saw an 144% rise in abuse and neglect cases.<sup>4</sup> With this alarming rise, the legislature conducted multiple studies, audits, and proposed legislation to combat the increase in cases. To find the attributing factors that led to the rise in cases, the legislature looked at trends in caseloads, the barriers to reunification, and the roles/responsibilities of the entities involved. [HJR 48-49](#), from the 2019-2020 interim period, suggested the rise in cases stemmed from the increase of methamphetamine usage in the state and caseworker turnover. To decrease caseloads and reunify families, two pivotal pilot programs began in select judicial districts: Pre-Hearing Conferences and Emergency Protect Services Hearings.

## PILOT PROGRAMS

Beginning in 2015, the federally funded Court Improvement Program started a Pre-Hearing Conference project in Lewis and Clark County, Gallatin County, and Flathead County, eventually expanding to more counties. Pre-Hearing Conferences (PHC) facilitate a conference amongst all case participants to address the child's placement, family time between parent and child, treatment services for the family, and conditions of return. Studies indicated that

<sup>3</sup> Ibid.

<sup>4</sup> HJR 48/49: Child Protective Services Final Report, *Children, Families, Health, and Human Services Interim Committee*

## DEPENDENCY AND NEGLECT TASK FORCE SUMMARY OF WORK

PHCs lead to higher reunification rates, and reduced time to permanency.<sup>5</sup> With a PHC, the average time to permanency was reduced from 530 days to 472 days.

## General Goals of a PHC:

- Addressing any needs or issues related to the children.
- Gathering input from family members or associates close to the family.
- Identifying possible relative and kin placements for children.
- Identifying services for parents and establishing a commitment to begin treatment services.
- Reaching agreements regarding placement.
- Establishing conditions of return.<sup>6</sup>

With the length of time it took for parents to see their children after a removal as a concern, select districts began Emergency Protective Services (EPS) hearing pilot courts in 2020. EPS hearings allow parents and guardians to address the courts sooner following a removal and provide quicker access to legal counsel. The pilot courts conducting EPS hearings reported cases being resolved quicker and connecting families sooner.<sup>7</sup>

## DEPENDENCY &amp; NEGLECT CASE TRENDS 2018-PRESENT

District Court Case Filings - ALL												Avg. Case Filings
Case Category	CY2014	CY2015	CY2016	CY2017	CY2018	CY2019	CY2020	CY2021	CY2022	CY2023	Sparkline	2014-2023
Adoption	840	764	715	791	870	924	739	782	665	619		771
Child Abuse and Neglect	1,609	2,321	2,433	2,667	2,519	2,382	2,114	1,750	1,414	1,283		2,049
Civil	20,113	20,197	17,988	15,703	19,842	21,262	23,984	18,640	17,384	18,825		19,394
Commitment of a Person with a Mental Illness	1,213	1,295	1,344	1,237	1,166	1,045	1,178	1,030	964	985		1,146
Commitment of a Person with Dev. Disability	50	27	29	24	19	23	25	25	22	16		26
Criminal	9,339	10,707	11,774	12,378	12,850	12,582	12,383	12,948	12,892	13,245		12,110
Domestic Relations	10,438	10,731	10,926	10,644	10,958	10,333	9,276	8,910	9,634	9,534		10,138
Drug & Other Treatment Courts	405	391	369	447	409	554	566	499	607	541		479
Guardian/Conservator	1,124	1,047	1,105	1,104	1,160	1,129	1,071	1,198	1,133	1,228		1,130
Investigative Subpoena/Search Warrant	3,519	3,666	3,948	4,441	4,317	4,398	5,212	4,812	5,497	5,212		4,502
Juvenile	1,379	1,310	1,271	1,226	1,071	1,009	839	780	980	1,081		1,095
Paternity	73	51	41	48	50	35	51	27	30	36		44
Probate	3,485	3,708	3,436	3,601	3,528	3,482	3,679	4,053	4,057	3,889		3,692
<b>Total</b>	<b>53,587</b>	<b>56,215</b>	<b>55,379</b>	<b>54,311</b>	<b>58,759</b>	<b>59,158</b>	<b>61,117</b>	<b>55,454</b>	<b>55,279</b>	<b>56,494</b>		<b>56,575</b>

\*Child Abuse and Neglect, Civil, Criminal, Drug & other Treatment Courts, and Juvenile are typically the most time intensive case types.

<sup>5</sup> Pre-Hearing Conference Facilitator Training Manual 2023, *University of Montana Center for Children, Families and Workforce Development*.

<sup>6</sup> Ibid.

<sup>7</sup> Montana Emergency Protective Services Hearings 2023, *University of Montana Center for Children, Families, and Workforce Development*.

Utilizing the trends from the 6 largest judicial districts, abuse and neglect proceedings have seen a steady decrease statewide. It is suggested that the pilot programs that were introduced during this period aided in the decline of cases, although not conclusive. At this time, it cannot be determined if case numbers will continue to decrease or stabilize in the coming years.

### HB 16 (2023)

With favorable outcomes being reported from both pilot programs, the 68<sup>th</sup> legislature passed [HB 16](#) (2023). An act generally revising child and abuse proceedings, HB 16 required PHCs, and EPS hearings to be made available and conducted statewide. PHC's must be made available within 5 days of a child's removal and occur before an EPS hearing. EPS hearings must be conducted within 5 business days of a child's removal. With the new statewide rollout of PHC & EPS hearings, the Task Force sought participation from members and panelists during meetings to share their views on the rollout, and any procedural challenges they have encountered.

**"41-3-306. Emergency protective services hearing -- exception.** (1) (a) A district court shall hold a hearing within 5 business days of a child's removal from the home pursuant to **41-3-301** to determine whether there is probable cause to continue the removal beyond 5 business days.

(b) The department shall provide notification of the hearing as required under **41-3-301**.

(c) A hearing is not required if the child is released prior to the time of the required hearing.

(2) The hearing may be held in person, by videoconference, or, if no other means are available, by telephone.

(3) The child and the child's parents, parent, guardian, or other person having physical or legal custody of the child must be represented by counsel at the hearing.

(4) If the court determines that continued out-of-home placement is needed, the court shall:

(a) establish guidelines for visitation by the parents, parent, guardian, or other person having physical or legal custody of the child pending the show cause hearing; and

(b) review the availability of options for a kinship placement and make recommendations if appropriate.

(5) The court may direct the department to develop and implement a treatment plan before the show cause hearing if the parents, parent, guardian or other person having physical or legal custody of the child stipulates to a condition subject to a treatment plan and agrees to immediately comply with the treatment plan if a plan is developed.

(6) If the court determines continued removal is not appropriate, the child must be immediately returned to the parents, parent, guardian, or other person having physical or legal custody of the child.

(7) The emergency protective services hearing is an emergency proceeding for the purposes of the federal Indian Child Welfare Act and is not subject to the notice requirements of that act.



(8) The emergency protective services hearing is an emergency proceeding for the purposes of the Montana Indian Child Welfare Act provided for in Title 41, chapter 3, part 13, and is not subject to the notice requirements of the Montana Indian Child Welfare Act. *(Subsection (8) terminates June 30, 2025--sec. 55, Ch. 716, L. 2023.)*<sup>8</sup>

**“41-3-307. Availability of prehearing conferences.** (1) The parents, parent, guardian, or other person having physical or legal custody of a child who has been removed from the home pursuant to **41-3-301** may participate in a conference within 5 days of the child's removal and before an emergency protective services hearing held by the court pursuant to **41-3-306**.

(2) A prehearing conference must include the following parties:

- (a) the parents, parent, guardian, or other person having physical or legal custody of the child;
- (b) the person's legal counsel;
- (c) the county attorney's office; and
- (d) a department social worker.

(3) To the greatest degree possible using available funding, the meetings must be conducted by an independent and trained facilitator.

(4) At a minimum, the meetings must involve discussion of:

- (a) the child's current placement and options for continued placement if the child remains out of the home;
- (b) whether other options exist for an in-home safety plan or resource that may allow the child to remain in the home;
- (c) parenting time schedules; and
- (d) treatment services for the family.”<sup>9</sup>

## ADDITIONAL TASK FORCE DISCUSSIONS

Throughout the Task Force's meetings, members were provided with the basics of abuse and neglect proceedings through the lens of the Judicial Branch, Department of Public Health and Human Services, Office of Public Defenders, Court Appointed Special Advocates, Department of Justice, and Department of Corrections. Each organization educated the Task Force on their roles and responsibilities in abuse and neglect proceedings to invoke conversation. In addition to agency participation, Task Force members shared their personal experiences and background in abuse and neglect proceedings during workshop discussions.

### Discussion Highlights:

- **The Court Improvement Program:** On March 14th, 2024, the Task Force was presented on the Court Improvement Program and the efforts the program is making to educate families, stakeholders, and

<sup>8</sup> 41-3-306, *Montana Code Annotated*.

<sup>9</sup> 41-3-307, *Montana Code Annotated*.

## DEPENDENCY AND NEGLECT TASK FORCE SUMMARY OF WORK

professionals on Prehearing Conferences & Emergency Protective Services Hearings. In partnership with the Children and Families Services Division and Casey Family Programs, their “Moving the Dial” trainings bring attorneys, guardian ad litem, and social workers together to bolster child welfare.<sup>10</sup>

- **Citizens’ Review Board Act:** Additionally in March, the taskforce explored the Citizen Review Board Act as presented by Chase Rosario, Attorney, Malcom & Piers. Still in Montana statute, *41-3-1001-1014, MCA*, Citizen Review Boards were a pilot program in select districts during the 1990s and early 2000’s. Citizen Review Boards were a committee of volunteers appointed by judges to review permanency plans and makes recommendations to the Department of Public Health and Human Services. Ultimately, Citizen Review Boards did not receive the necessary funding for statewide expansion in Montana, but many states still employ similar programs.
- During the Task Force’s May 8<sup>th</sup>, 2024, meeting, the Department of Corrections educated Task Force members on their [reunification programs](#) for incarcerated parents. The Department’s Connecting Adults and Minors through Positive Parenting (CAMPP) at Montana State Prison brings incarcerated fathers and their children together through instructor led parenting programs and virtual/in-person visitations.
- With prior meeting conversations focusing on the roles of Child Protective Services and the Office of Public Defenders, the Task Force invited Karen Kane, Assistant Attorney General during the May 8<sup>th</sup> meeting to share a prosecution perspective to abuse and neglect proceedings. Assistant AG Kane’s presentation focused on a State Attorney’s obligation to establish a burden of proof for Non-IWCA and IWCA cases. In addition, the evidentiary requirements for IWCA cases and the heightened standards involving IWCA cases. All abuse and neglected cases should be treated as IWCA until proven otherwise.
- District Court Judges Panel- On July 19<sup>th</sup>, 2024, the Task Force held a panel discussion consisting of 5 district court judges. During the panel, each judge shared their personal experiences in handling abuse and neglect proceedings and answered Task Force member questions.

## TASK FORCE RECOMMENDATIONS

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TBD

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<sup>10</sup> Court Improvement Program, *Montana Supreme Court*.

DEPENDENCY AND NEGLECT TASK FORCE SUMMARY OF WORK

