

**Montana Department of Justice
Office of the Child and Family Ombudsman
Systemic Report:
Dependent Neglect Court & Show Cause Hearing
Timelines**



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Systemic Infographic



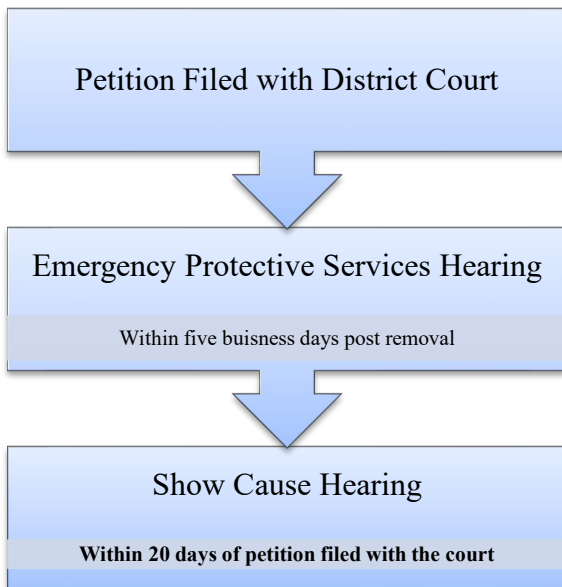
Introduction:

In May 2024, the Office of Child and Family Ombudsman was asked by a legislative task force to present citizen concerns regarding the Dependent Neglect Court in Montana. This systemic report examines the time frame between when the petition is filed and when the Show Cause Hearing occurs.

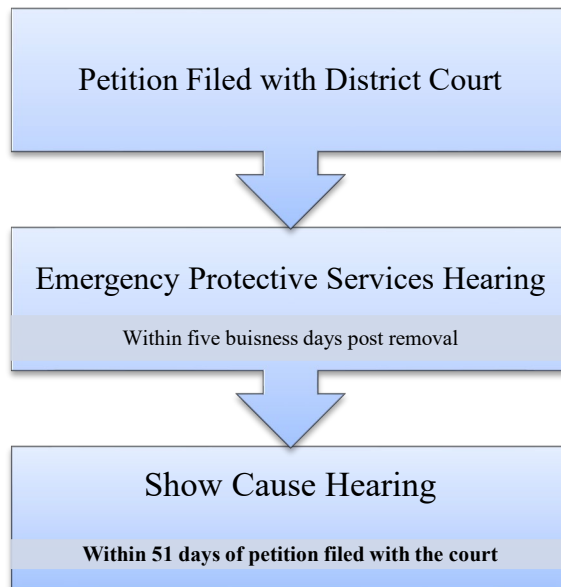
Problem:

According to [MCA 41-3-432](#) there shall be 20 calendar days between the filing of the petition and the Show Cause Hearing. In this report, the Office of Child and Family Ombudsman found that on average there are 51 calendar days between the petition filing and the hearing.

Montana Law:



Reality:



INTRODUCTION

In 2014, the Montana Department of Justice: Office of Child and Family Ombudsman began responding to citizen requests to review and investigate specific Department of Public Health and Human Services (DPHHS): Child and Family Services Division (CFSD) actions or omissions in response to child abuse reports. Between 2014 and July 2024, the Office of Child and Family Ombudsman responded to 2,768 citizens and completed a total of 1,061 case reviews and investigations. During that period, the Office of Child and Family Ombudsman collected a tremendous amount of data and flagged cases with similarities. As a result, the Office of Child and Family Ombudsman and its partners have identified statewide trends in the child welfare system. The current concern that has been expressed repeatedly is how long it can take for a citizen to go in front of a judge to dispute the allegations of abuse and/or neglect.

THE ISSUE

The Office of the Child and Family Ombudsman receives approximately 350 calls and emails a year from citizens with concerns about the Montana child welfare system. Citizens find the Office of the Child and Family Ombudsman through multiple avenues that include online searches, word of mouth and printed materials. Citizens come to the Office of Child and Family Ombudsman with concerns and questions about Montana's child welfare system, not just Child and Family Services. The Office of Child and Family Ombudsman uses an online database to track identified concerns.

The following are quotes from the Child and Family Ombudsman's intake forms from citizens concerning the court processes:

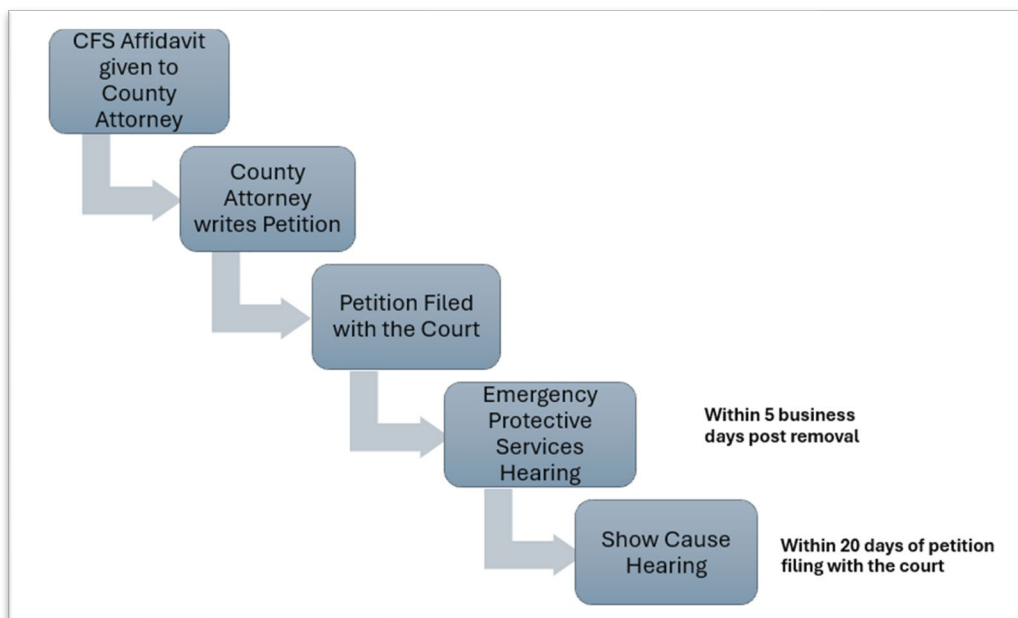
- "Why does my court hearing keep getting pushed out?"
- "I don't understand why my court hearing hasn't happened."
- "I just want the judge to hear from me."
- "I have not heard from my attorney."
- "I want to go (to court) to work on getting my kid back."
- "I want permanency for this child!"

SYSTEMIC INVESTIGATION

Once a Child Protection Specialist has assessed a family and found there to be immediate or impending dangers to the child(ren), the Child Protection Specialist writes a legal document called an affidavit that describes the alleged child abuse and/or neglect. The Office of Child and Family Ombudsman's past systemic reports regarding immediate danger and the agency's assessment of the danger can be found [here](#).

The affidavit is provided to the local County Attorney's office to review. The County Attorney then writes a petition based on the facts of the Child Protection Specialist's affidavit. The petition for immediate protection and emergency protective services must state the specific

authority that Child and Family Services has requested and must be supported by an affidavit. Both of these documents are filed with the appropriate District Court in accordance with [MCA 41-3-422](#).



All parties are required to have legal representation while engaged in the court process.

- Child and Family Services are represented by either the County Attorney, the Attorney General’s Child Protection Unit or an outside contracted attorney.
- The parents of the child(ren) are represented by either the Office of Public Defender or an outside contracted attorney.
- The child(ren) are required to have legal representation as defined by [MCA 41-3-425](#) and are represented by either the Office of Public Defender or an outside contracted attorney.

The [MCA 41-3-432](#) defines Show Cause Hearings as the opportunity for parents or caregivers to admit or deny the allegations of abuse and/or neglect in the Child Protection Specialist’s affidavit. The Show Cause Hearing is after the Emergency Protective Services hearing. The Emergency Protective Services hearing is to be held within five business days following the removal of the children from their caregiver. The Show Cause Hearing is an important part of the case. MCA 41-3-432 states that the Show Cause Hearing must happen within 20 calendar days of the initial petition filing with the court. The Show Cause Hearing provides due process for the parents to present evidence on their own behalf.

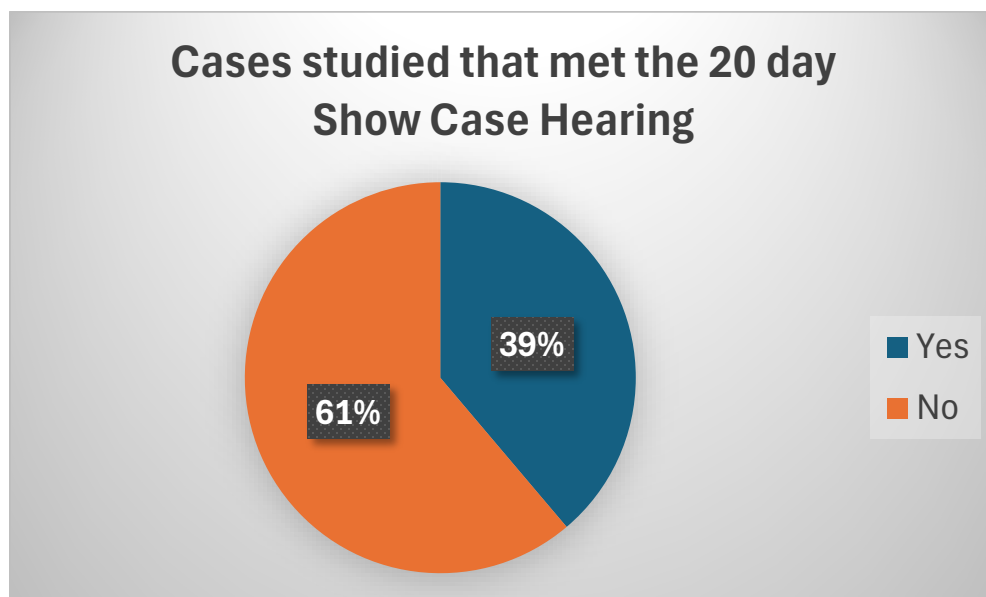
METHODOLOGY

The Office of the Child and Family Ombudsman looked at the number of days between the petition filing and the date of the Show Cause Hearing. The Office looked at two separate data sets to compare. The first data set was *Request for Assistance* forms that are submitted by citizens to the Office of the Child and Family Ombudsman. There were 265 cases that were analyzed in the first data set. For the second set of data, the Office of the Child and Family Ombudsman randomly selected caseloads from the six regions within the Child and Family Services. Individual cases were selected randomly by narrowing the lists for each region to include only children where court petitions were sought by the Child and Family Services. After narrowing the list of cases, the sample size was chosen by reviewing the information for every fourth case listed on the regional caseload lists. This gave the Office of the Child and Family Ombudsman a total of 10 cases per region, or a total of 60 cases. All the cases from both data sets occurred between the years 2020 through 2024.

Once the data selection process was completed for both sets of data, each case file was examined to determine the number of days between the date the initial petition by the attorney for Child and Family Services was filed and the date the Show Cause Hearing was held.

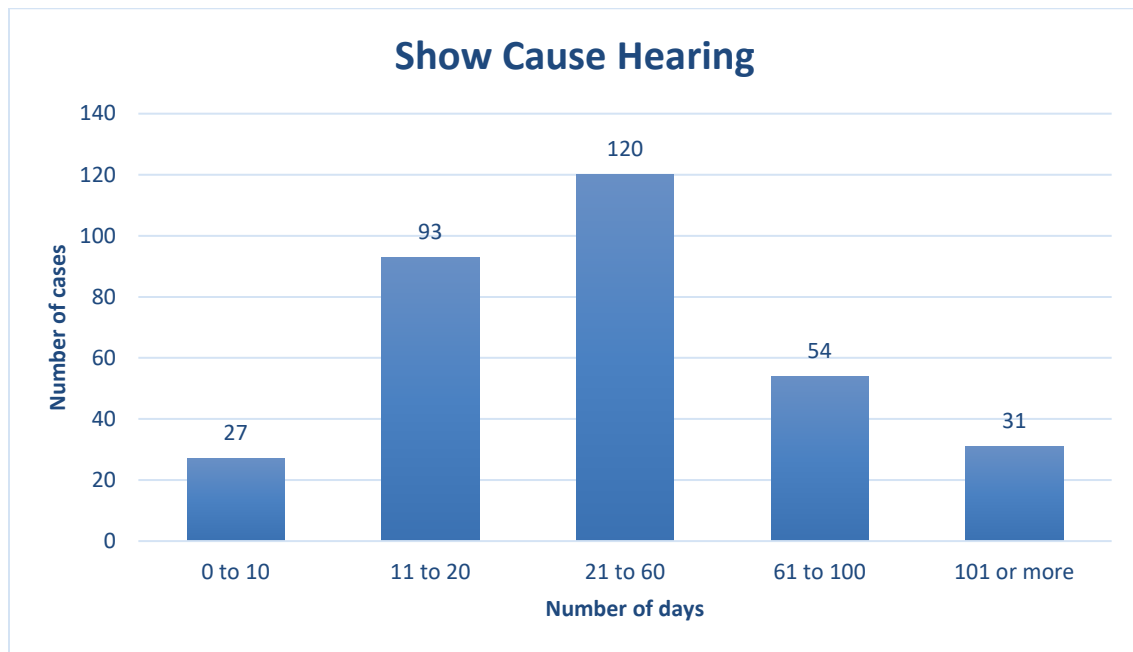
OUTCOME

The outcome with the two data sets found that, on average, a Show Cause Hearing was taking place 51 days after the initial petition filing. Show Cause Hearings were found to being held before or at 20 days post-petition filing 39% of the time.



SUMMARY

There were 27 of the 325 cases that the Office of the Child and Family Ombudsman reviewed for this report that had a Show Cause Hearing within 10 days or less since the initial petition filing. There were 93 of the 325 cases pulled that held the required Show Case Hearing between 11 and 20 days. The data revealed that most Show Cause Hearings were happening between 21 to 60 days. There were 31 of the 325 cases that the Office of the Child and Family Ombudsman reviewed that had a Show Cause Hearing in over 100 days since the initial petition filing. One case had a Show Cause Hearing over 370 days following the initial petition filing. All the cases pulled for data analysis occurred during the years 2020 through 2024.



The Show Cause Hearings early in 2020 and 2021 may have been impacted by Covid 19 and the subsequent move courts made to online platforms. The reasons behind why a court hearing may be delayed could also include service to the appropriate parties or schedule conflicts among the court and/or the assigned attorneys.

RECOMMENDATIONS

Recommendation #1: DPHHS direct CFSD to provide evidence-based training to the judiciary on delayed permanency and its outcomes for children in out-of-home placements.

Rationale #1: On average the Show Cause Hearing took 51 days to be held, 31 more days than allowed in statute. This would mean a child remains in out-of-home placement for a month longer. While also pushing back the statutorily required timelines for other Dependent Neglect related court hearings. While the reasoning behind a delayed Show Cause Hearing may vary, it may also result in the parent losing critical time in working reunification as well as a child remaining in out-of-home placement for longer periods of time.

CONCLUSION

The State of Montana has 56 unique District Courts that are structured into 22 judicial districts and served by 46 District Court Judges. Every Montana county, court and family situation is unique. In the next systemic report, the Office of Child and Family Ombudsman will look deeper into the cases that took over 60 days to receive the Show Cause Hearing.