

Child and Family Services Policy Manual: Investigation Legal Base

Legal Background The child's **safety** is the paramount concern of Child Protective Services. The public policy of the State of Montana is to ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family. It is generally recognized that the sanctity of the family will not be violated unless there is some compelling state interest that justifies the state's intervention. That compelling state interest is the safety and health of the child.

The sanctity of the family and the right of an individual to raise his or her children according to his or her personal beliefs has been recognized by the United States Supreme Court and the Montana Supreme Court as a fundamental right which is constitutionally protected. Meyer v. Nebraska, 262 U.S. 390 (1923); In the Matter of J.L.B. 182 Mont. 100, 542 p.2d 1127 (1979). However, the public policy of Montana recognizes that a child is entitled to assert the child's constitutional rights so raising a child according to the parent's personal beliefs cannot conflict with the constitutional rights of that child. [Mont. Code Ann. § 41-3-101(1)(f)].

Montana recognizes the primacy of the family in the child's life by requiring that the Department place with family members whenever possible. When an out-of-home placement becomes necessary, the child protection specialist is required to place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles prior to placing the child in an alternative protective or residential facility when it is in the child's best interests and the family is approved by the Department.

Given the recognized importance of the family, intrusion into the family unit by the state is justified only when a child has been abused or neglected, or is at substantial risk of being abused or neglected, as defined by Montana law. [Mont. Code Ann. § 41-3-102]. Even then, the intrusion should not go beyond the level necessary to protect the child. The Adoption and Safe Families Act of 1997 states, "in determining reasonable efforts to be made with respect to a child, . . . the child's health and safety shall be the paramount concern." [Section 471(a)(15) of the Social Security Act]

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Authority	<p>The Department of Public Health and Human Services, Child and Family Services Division, is designated by statute as the agency responsible for the protection of children who are abandoned, neglected or abused, and is specifically charged with the duty to respond to reports of child abuse or neglect and to provide protective services when necessary, including the authority to take temporary or permanent custody of a child when ordered to do so by the court.</p> <p>The Department's authority to intervene in people's lives is wholly statutory. Thus, the Department must strictly adhere to the specific requirements of the statutes in providing protective services to children in need of such care.</p> <p>The Department has statutory authority to provide three categories of protective services: Voluntary protective services, emergency protective services, and court-ordered protective services. The Department and parents may also agree to enter into a Child abuse court diversion pilot project [Mont. Code Ann. § 41-3-305] in jurisdictions where these pilot projects exist.</p>
Voluntary Protective Services	<p>Voluntary protective services must be provided pursuant to a written Voluntary Protective Services Agreement (VPSA) (See CFS-202 attached). A VPSA may include but is not limited to individual and/or family counseling, parenting classes, a family group decision making meeting, temporary relocation of a parent, in-home services, psychological evaluations, chemical dependency evaluations, etc. A VPSA may also include a Voluntary Placement Agreement (VPA) for up to thirty (30) days. If the parent(s) and child protection specialist negotiate a Voluntary Protective Services Agreement, the child protection specialist must inform the parent(s) of the right to have another person of the parent's choice present when the terms of the VPSA are discussed with the parent(s). A VPSA remains in effect for the timeframe indicated; however, it may be revoked at any time by the child protection specialist or parent(s).</p>
Voluntary Placement Agreement	<p>If the department has a VPSA that includes a VPA, CFS cannot place the child outside their home for a time period to exceed 30 days without court approval. If a VPSA includes temporary, voluntary out-of-home placement of a child, a Protection Plan and Agreement for Foster Care Placement</p>

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(CFS-012) must also be completed per CFSD Policy 402-1. For Indian children, voluntary placements must instead use CFS-ICWA-253 and CFS-ICWA-254, which must be signed before a judge (see Policy 402-1).

**Emergency
Protective Services**

Emergency protective services are those services provided to a child when the child protection specialist determines, based on a thorough investigation, that the child cannot remain safely in the home and the child protection specialist places the child in an out-of-home placement.

The statutes contained in Title 41, Chapter 3, Montana Code Annotated set forth the specific definitions of what constitutes harm to the child's welfare that justifies state intervention into the family, and further provides the legal procedures which must be followed by the Department to fulfill its responsibilities to protect the welfare of the child and to obtain the court's sanction of its activities upon exercising Emergency Protective Services. (See Mont. Code Ann. § 41-3-101, et seq.) \

**Child Abuse Court
Diversion Pilot
Project**

If the Department and the parent, guardian, or person having legal custody of the child over whom the Department has exercised Emergency Protective Services agree, then the case shall be referred to a child abuse court diversion pilot project. As set forth in Mont. Code Ann. 41-3-305, the requirements regarding Emergency Protective Services and other relevant statutes shall not apply during the time in which the case remains in the child abuse court diversion pilot project.

References

U.S. Constitution, 9th and 14th Amendments Montana Constitution
Mont. Code Ann. § § 41-3-101, et seq.
Mont. Code Ann. § § 52-1-101, 102, 111, 112, and 113.
Adoption and Safe Families Act of 1997, 42 U.S.C. 671(P. L 105-89)

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Rev. 10/02
Rev. 10/03
Rev. 04/04
Rev. 10/04
Rev. 10/07
Rev. 11/15

Voluntary Protective Services Agreement

IMPORTANT INFORMATION

This voluntary protective services agreement is a specific plan to help you make changes that will ensure your child(ren)'s safety and reduce risk of future harm. **You have the right to have another person of your choice present during the discussion of and the signing of this agreement.**

THIS IS NOT A PLACEMENT AGREEMENT. *If a child is being placed voluntarily in out-of home care, the CFS-012, Agreement for Foster Care Placement must also be completed. Voluntary placements of Indian children must be signed in front of a judge using forms CFS-ICWA-253 and CFS-ICWA-254.*

Your decision to sign this agreement is voluntary. Signing this agreement indicates your desire to assure that your child's safety is not threatened in the future. The voluntary protective services agreement will remain in effect until the date indicated below unless:

1. Any participant in the agreement does not or cannot successfully follow through with the activities detailed in the agreement.
2. Another report of child abuse or neglect is received by the agency.

If either or both of the above occur, the child protection specialist will conduct another safety assessment of the children. The safety assessment will determine what if any further action will be taken.

Parent(s) /Guardian(s) Caretakers Initials:

_____ I (We) have read and understand the above information about voluntary protective service agreements.

_____ The above information has been read to me (us) and I (we) understand it.

I. Identifying Information:

Participating caretaker name(s):

Relationship to child(ren):

Names of children included in this protective service agreement:

Agreement is in effect from _____ **to** _____

CP Specialist name _____ **Phone number** _____

CPS Supervisor name _____ **Phone number** _____

For after hours emergencies call 1-866-820-5437. **If you cannot follow this agreement, contact your child protection specialist or the above emergency phone number.

II. Voluntary Protective Services Activities:

On {Date} , a child protection specialist made a determination that the above named children were harmed or at substantial risk of harm based on an investigation of a report of child abuse or neglect. The activities of this plan will address the safety factors identified by the child protection specialist, increase protective capacities and or reduce child vulnerability in order to reduce the likelihood that the children will be harmed or will be at substantial risk of harm in the future.

Safety factor(s)

Conditions that make this a threat and how condition can be changed:

Activity(ies) to be conducted, person responsible and completion date for the activity(ies):

Describe how activities will be monitored, how often and by whom:

Safety factor(s)

Conditions that make this a threat and how condition can be changed:

Activity(ies) to be conducted, person responsible and completion date for the activity(ies):

Describe how activities will be monitored, how often and by whom:

Safety factor(s)

Conditions that make this a threat and how condition can be changed:

Activity(ies) to be conducted, person responsible and completion date for the activity(ies):

Describe how activities will be monitored, how often and by whom:

III. Acknowledgement:

I (We) understand this agreement and agree to fully participate in the activities assigned. I (We) understand that I (we) may inform the child protection specialist at any time that I (we) no longer wish to voluntarily participate in this agreement. At that time, the child protection specialist will again assess the safety of my (our) child(ren) and may determine that court action is necessary to protect my (our) child(ren) from further harm. I (We) also understand that any subsequent reports of child abuse or neglect to the agency may void this agreement.

Parent / Guardian:

Date:

Other:

Date:

Parent / Guardian:

Date:

Other:

Date:

Child Protection Specialist:

Date:

CPS Supervisor:

Date:
