

## Child and Family Services Policy Manual: Legal Procedure Immediate Protection and Emergency Protective Services

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### Legal Basis

The policy of the State of Montana is to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. To protect children from child maltreatment, the Child and Family Services Division has statutory authority to intervene in the child's life when the child protection specialist determines that the child would be unsafe if the child continued to reside with his/her parents or legal custodian. In making the decision to intervene and place the child in an out-of-home placement, the child's health and safety are of paramount concern.

### Emergency Placement

If the child protection specialist determines that a child is in immediate or apparent danger of harm, the child protection specialist may use the authority of emergency protective services to immediately remove the child from the dangerous situation. **A substantiation of child abuse or neglect is not required to initiate emergency protective services or to make an emergency placement.**

### Child in Immediate Danger

Examples of cases which might require emergency removal include:

- a child left without appropriate supervision when the child is not physically, mentally, socially, or emotionally mature
- a child who has been physically abused and is in need of medical attention;
- the child protection specialist has reason to believe that retaliation to the child will occur;
- a child who appears to be in need of protection, but whose parents are likely to take the child and flee protective services authority;
- a child who has been physically or sexually assaulted and the child is not safe in the home; or
- a child is in danger because of the occurrence of partner or family member assault.

If the child protection specialist investigating the home is unsure whether or not an immediate removal of the child is necessary, the child protection specialist should contact his or her

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immediate supervisor. If the immediate supervisor is not available, another supervisor in that region or the Regional Administrator should be contacted for assistance.

### Cases Involving Domestic Violence

In cases involving domestic violence, the child protection specialist must consider the situation of the victimized adult in addition to the safety of the child.

If the child protection specialist determines that an adult member of the household is the victim of partner or family member assault, the child protection specialist shall provide the adult victim with a referral to a domestic violence program. The form of the referral will depend on circumstances and will consider the safety of both the child(ren) and the adult victim.

If the child protection specialist determines, after investigation, 1) that the child is in danger because of the occurrence of partner or family member assault against an adult member of the household; and 2) that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the child protection specialist shall take appropriate steps for the protection of the child. The steps taken by the child protection specialist may include:

- 1) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault;
- 2) making reasonable efforts to remove the person who allegedly committed the partner or family member assault from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault; and
- 3) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault until the child protection specialist determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

**Note:** See Section 402-1, Placement Procedures.

The Division may locate and contact extended family members upon placement of a child in out-of-home care. The Division may

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share information with extended family members for placement and case planning purposes.

### Procedure

When the child is removed from the home on an emergency basis, the child protection specialist shall:

- prepare an affidavit and submit it to the county attorney as soon as possible and always within 48 hours, excluding weekends and holidays. The affidavit must allege that the child appears to be at risk of or to have been abused, neglected, or abandoned and must state the basis for the petition (the facts which led the child protection specialist to make the placement and which support the child protection specialist's determination that the child is or appears to be abused, neglected, or abandoned). When drafting the affidavit the child protection specialist should identify the child(ren) by initials. **Note: The child protection specialist must interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed;**
- provide a copy of the affidavit to the parents, if possible, within 2 working days of the emergency removal;
- the child protection specialist is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this “strongly encouraged” is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it;
- if appropriate, obtain a placement agreement from the parent authorizing the Department to place the child in foster care. If the parent is willing to enter into a voluntary foster care placement agreement, the child protection specialist must comply with the following requirements:
  - 1) the voluntary foster care placement may last no longer than 30 days;
  - 2) the parent must be informed that s/he may have another person present whenever the terms of the voluntary foster care placement agreement are discussed between the child protection specialist and the parent ; and

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- 3) the voluntary foster care placement agreement must be executed in the presence of the judge of a court of competent jurisdiction if the child is an Indian child as defined by ICWA;
- notify the parent at the time placement is made of the decision to place the child in care. The notification must include the reason for removal, information regarding the show cause hearing and the purpose of the show cause hearing, and notification that the parent having physical custody of the child has a right to have a support person present during any in-person meeting with the child protection specialist (see the Notification to Parents on page 12 of this section). The child protection specialist should make every effort to notify the parents in person or by phone as soon as the child is removed from the home. These efforts must be noted in the case record. A copy of the Notification to Parents must be included in the case record. A copy of the Notification should be submitted to the county attorney with the affidavit;
  - provide the parent with a copy of the “What Happens Next” booklet;
  - place the child with the child’s noncustodial parent or extended family, when it is in the best interest of the child and when the home is approved by the Department. (see Sections 304-1 and 402-4);
  - gather information necessary from the parent or caregiver to complete the CFS-206 A & B, Information on Child for Placement Purposes and provide a copy of the CFS-206 A & B to the child’s foster care provider;
  - ask the parent if the child is an Indian; and
  - gather information necessary to complete DPHHS-CFS-107, Part 1, Child’s Social and Medical History.

**IV-E Responsibility** To protect future eligibility for the child, the child’s IV-E eligibility shall be determined for the month in which the parental agreement was signed or the date the petition is filed **even if the child is in unpaid kinship care**. See Section 405-1, IV-E Foster Care.

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### **Legal Procedure** Forward Information to County Attorney

Following emergency removal, the county attorney must file a petition within 5 working days, excluding weekends and holidays. The child protection specialist must forward the necessary information to the county attorney within 2 working days, excluding weekends and holidays. Notification that the parent having physical custody of the child has the right to have a support person present during any in-person meeting with the child protection specialist must also be included in the petition for emergency protective services.

If the child protection specialist has not substantiated child abuse or neglect, the county attorney will file a petition for immediate protection and emergency protective services and/or TIA; if the child protection specialist has substantiated child abuse or neglect, the county attorney will file a petition for immediate protection and emergency protective services and temporary legal custody.

### **Affidavit**

The affidavit is the child protection specialist's facts of the case but must include the parents' statements if any were made.

The affidavit is the document used by the county attorney to determine whether to file a petition with the court. The affidavit contains the facts upon which the county attorney will decide what relief to request of the court. District court filing standards require child protection specialists to refer to the child(ren) by initials.

If the county attorney decides that legal action is necessary, the affidavit is attached to the petition when filed. Preparation of the affidavit alone does not start a legal action. The county attorney starts the legal action by filing a petition with the court and the affidavit provides support for the facts alleged in the petition.

The child protection specialist should identify in the title whether it is an affidavit for TIA, temporary legal custody, guardianship, or permanent legal custody.

The affidavit should only include observations of the child protection specialist and facts determined as a result of the investigation and parents' statements. Only those facts within the personal knowledge of the child protection specialist or any person who will be called as a witness should be contained in the affidavit. Only statements of individuals who are parties,

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alleged perpetrators or potential witnesses should be included in the affidavit. Also, the child protection specialist should not include personal or subjective opinions or conclusions such as "I think the child was abused." Only the facts, such as "the child suffered a spiral fracture while in the exclusive care of the father" should be included. The child protection specialist's personal beliefs about the family should not be a part of the affidavit.

The original affidavit is forwarded to the county attorney and a copy retained in the file. The affidavit will be attached to the legal papers which are served on the parents, **so the name(s) of any reporter or individual who provided information on the alleged child abuse/ neglect should not be identified in the affidavit.**

If the child has been removed from the parental home, the affidavit must contain facts to support a judicial finding that continuation of the child's residence in the home would be contrary to the child's welfare or, in the alternative, that placement of the child in out-of-home care is in the child's best interest.

The affidavit must contain information regarding statements made, if any, by the parents about the facts of the case.

The child protection specialist is strongly encouraged to attach a current picture of the child to all affidavits or reports submitted to the court. The exception to this "strongly encouraged" is if the county attorney, deputy county attorney, CPU attorney representing the division or the judge recommends against it.

The child protection specialist must provide a copy of the affidavit to the parents, if possible, within 2 working days of the emergency removal.

### **Petition for Immediate Protection and Emergency Protective Services**

When a child protection specialist removes a child because s/he has reason to believe the child is in immediate or apparent danger or harm and the child protection specialist determines that the placement will be longer than two working days, excluding weekends and holidays, the Department must have a legal basis to continue the placement. The petition filed by the county attorney provides the legal basis for the continued placement.

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A petition for immediate protection and emergency protective services will generally be the initial petition filed by the county attorney when the child protection specialist places a child in an emergency protective placement. This petition may be combined with a petition for temporary investigative authority or temporary legal custody, depending on whether the child protection specialist has evidence to show the child is at risk of abuse, neglect, or abandonment or evidence to show the child is abused, neglected or abandoned. The petition for immediate protection and emergency protective services may also be combined with a petition to terminate the parent-child relationship when a petition has been filed requesting a determination that preservation or reunification services need not be provided.

The petition for immediate protection and emergency protective services must contain facts to support a finding, based on probable cause, the child appears to be abused, neglected, or abandoned or the child is in danger of abuse, neglect, or abandonment. The petition must also contain facts establishing that continued residence of the child with the parents is contrary to the welfare of the child.

The petition for immediate protection and emergency protective services must state the specific authority requested. **The authority requested under a petition for immediate protection and emergency protective services does not constitute a court-approved treatment plan.**

The following relief may be requested in a petition for immediate protection and emergency protective services. If the court finds probable cause that the child is at risk or is being abused or neglected, these reliefs may be granted in an Order for Immediate Protection and Emergency Protective Services:

- a) the right of entry by a peace officer or child protection specialist;
- b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;
- c) the right for the department to locate, contact, and share

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information with any extended family members who may be considered a placement options for the child;

- d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may request and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;
- e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;
- f) a requirement that the parent provide the child protection specialist with the name and address of the other parent if known, unless parental rights to the child have been terminated, including the name and address of a putative father to serve the legal documents;
- g) a requirement that the parent provide the child protection specialist with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and
- h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the Department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment

**Other Relief  
requested in  
Petition for  
Immediate  
Protection and  
Emergency  
Protective Services**

Relief other than those listed above may be requested in the petition for immediate protection and emergency protective services. However, if the following relief is requested, the court cannot grant the relief until after the show cause hearing:

- a) inquire into the financial ability of the parent, guardian, or other person having physical or legal custody to contribute toward the care of the child and order a contribution; and
- b) require specified examinations, evaluations, or counseling.

**Order for**

The order the judge issues based on the filing of the petition for



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**Immediate Protection and Emergency Protective Services**

immediate protection and emergency services is called an "*ex parte*" order. This means the judge issues the order based on the petition and the information contained in the affidavit before a hearing on the facts at issue.

If the court determines that the petition and the affidavit contain facts which establish probable cause that the child has been or is at risk of being abused, neglected, or abandoned, the court may issue an order granting the relief requested in the petition for immediate protection and emergency protective services. The order also must:

- a) include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child if the *ex parte* is an order for removal; **and**
- b) require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing.

**Note:** In some cases, the child protection specialist has made the determination that the child may safely remain in the home but court intervention is required. In this instance, the court often will grant the child protection specialist the right to place the child if, subsequent to the date of the order, the child protection specialist determines the child may no longer remain safely in the home.

If the child is placed subsequent to receiving an order authorizing the placement, the child protection specialist must obtain from the court a finding that continued residence of the child with the parent is contrary to the child's welfare. This finding must be issued by the court **after** the removal of the child from the home. An order which contains the finding that continued residence of the child with the parent(s) is contrary to the welfare of the child obtained **prior to** removal will not suffice for the "contrary to the welfare" requirement.

In addition, after placement the child protection

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specialist must obtain a judicial finding that reasonable efforts were made to prevent the removal of the child from the parent(s) home. Federal regulations require that this judicial finding be made within 60 days of placement. Therefore, even if the court has authorized a placement, after the child is actually placed, a hearing must be held within 60 days of placement to obtain the finding that:

- a) placement of the child was in the child's best interests or;
- b) continued residence of the child with the parent(s) is contrary to the child's welfare;  
**AND**
- c) reasonable efforts have been made to prevent the placement.

The child protection specialist will obtain a certified copy of the order and copies of any supporting legal documents for the file.

A certified copy of the order, along with a copy of the petition and supporting documents (including a copy of the child protection specialist's affidavit) must be personally served on the person(s) named in the order at least five days before the date set for hearing. If the person(s) cannot be personally served, the person(s) must be served by publication pursuant to Mont. Code Ann. § § 41-3-428 and 429.

### Criteria for Case Dismissal

Unless the petition has been previously dismissed, the court **shall** dismiss an abuse and neglect proceeding on the motion of a party, or on its own motion, in any case in which **all** of the following criteria are met:

- 1) a child who has been placed in foster care is reunited with the child's parents and returned home;
- 2) the child remains in the home for a minimum of six months with no additional confirmed reports of child abuse/neglect; and
- 3) the child protection specialist determines and informs the court that the issues that led to the child protection specialist's intervention have been resolved and that no reason exists for further child protection specialist intervention or monitoring.

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### County Attorney Does Not File

Return Child

If a petition is not filed by the county attorney within 5 working days, a parental agreement is not signed, or a court order obtained, the child must be returned to his or her home.

Advise County Attorney  
in Writing

If the child protection specialist disagrees with the county attorney's decision not to file, the child protection specialist should, in consultation with his/her supervisor and Regional Administrator, advise the county attorney in writing that the child is being returned to a potentially dangerous situation because the county attorney failed to file. A copy of this notice is placed in the child's file and should be sent to agency legal staff, the child protection specialist supervisor and the Regional Administrator.

### Abandoned Newborns

Montana statute allows parents to surrender their newborn babies to an emergency services provider if the newborn is no more than 30 days old. If a parent surrenders a newborn to an emergency services provider, the emergency services provider must deliver the newborn to a hospital.

The hospital must call the local Child and Family Services office within one day of accepting the newborn.

Upon receipt of a call from a hospital regarding an abandoned newborn, the child protection specialist shall, among other things:

- a) immediately assume the care, control, and temporary protective custody of the newborn;
- b) make a temporary placement of the newborn; and
- c) no later than 48 hours after assuming the care, control, and temporary protective custody of the newborn, file a petition with the court (generally a petition for emergency protective services, adjudication, and temporary legal custody based on abandonment with the request for a determination that no reasonable efforts to reunite must be provided) requesting appropriate relief with the goal of achieving permanent placement for the newborn at the earliest possible date;

**NOTE:** The child protection specialist should work with the county attorney to determine the most appropriate relief to request. The county attorney will probably file a

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petition for immediate protection and emergency protective services combined with either temporary investigative authority or temporary legal custody based on abandonment.

### **Non-Citizens**

For specifics regarding child protection specialist responsibilities when a parent voluntarily surrenders a newborn, refer to Section 305-2, Abandoned Newborns.

To place children who are not U.S. citizens or lawful permanent residents of the U.S. the child protection specialist must have permission of the United States Attorney General for the state to be awarded custody.

All non-citizen children in foster care who are not lawful permanent residents of the U.S. are in the legal custody of Immigration and Naturalization Services (INS) unless the U.S. Attorney General gives express consent for custody to be awarded to a state agency. A custody/dependency order issued by a state court regarding such a juvenile would be considered invalid without the consent of the U.S. Attorney General. The law applies as follows:

The youth is an immigrant who is present in the United States and

- has been placed under the custody of an agency or department of a State and been determined to be in need of long term foster care due to abuse, neglect or abandonment;
- has been judicially determined that it is not in his/her best interest to be returned to his/her or parent's previous country of nationality or country of last habitual residence; and
- the U.S. Attorney General expressly consents to the dependency order serving as a precondition to the grant of special immigrant juvenile status.

State courts do not have jurisdiction to consider the status of an alien in foster care without the consent of the U.S. Attorney General. Birth or adoptive parents do not acquire lawful permanent resident status or any other special status because the status is granted to the youth.

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To obtain the U.S. Attorney General's consent send the request to:

District Director or Deputy District Director,  
Office of Examinations,  
U.S. Bureau of Citizenship and Immigration,  
2800 Skyway Drive  
Helena, MT 59602.

Enclose the following information:

- Youth's date and place of birth
- Date and manner of entry into the U.S.
- Current immigration status
- Information about the whereabouts and immigration status of the youth's parents and other close family members
- Evidence of abuse, neglect and abandonment of the youth
- The stated reasons why it would not be in the best interests of the youth to be returned to his/her parents' country of nationality or last habitual residence
- The type of court proceedings resulting in the state custody (i.e. juvenile delinquency, temporary care and protection, terminating parental rights)

Once the U.S. Attorney General's consent is received and the youth attains the status of qualified alien, s/he is entitled to federally funded benefits such as Medicaid and IV-E foster care payments if all other eligibility criteria is met.

### Indian Child Welfare Act

If there is reasonable belief the child may be an Indian child, ICWA policy must be followed (Section 305-1). The tribe must be sent a letter (DocGen D200) requesting verification of enrollment status. The child protection specialist must also notify the tribe of pending legal proceedings (DocGen D205).

**NOTE:** Under ICWA, the child protection specialist must make **active efforts** to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family prior to removal. Active efforts should involve and use the available resources of the extended family, the tribe, Indian social services agencies and individual Indian care givers. The child protection

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specialist must also have clear and convincing evidence that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

### CAPS

Enter the removal service on SERN, using the SERM service code. After completing this screen, CAPS will take you to CREI (Client Removal Eligibility Information) to enter removal information. Also complete CPHL (Client Placement History List). Use PLAD (Placement Detail) for foster care placements and enter the placement service(s) on SERL. All placement services, **including non-paid kinship placements**, must be entered on CAPS no later than 60 days after the actual date of placement (Federal requirement).

To ensure compliance of federal requirements mandating certain dispositional reviews and hearings within strict timeframes after court determinations, after each court hearing (including continuances) the child protection specialist must enter court detail on CRTD as soon as possible. The child protection specialist will need to enter petition date, court hearing date, begin and end dates of the court order, type of hearing (court event), reliefs granted (court dispositions, including those dispositions issued from the bench prior to receiving a signed court order), parties to the hearing, and whether or not the court order has been received. Once a disposition has been entered and confirmed (SHIFT F4), the event, disposition, and dates are not modifiable. The child protection specialist should also enter the court review date to ensure a thirty day advance alert. In addition, CAPS is set up to alert the child protection specialist thirty days after a court date, if the court order has not yet been recorded and when the 12 month permanency reviews are due. CAPS will alert the child protection specialist in advance of the expiration date of each court order, based on the entered end date of the court order.

### References

Mont. Code Ann. § 41-3-101  
 Mont. Code Ann. § 41-3-301  
 Mont. Code Ann. § 43-3-302  
 Mont. Code Ann. § 41-3-422  
 Mont. Code Ann. § 41-3-424  
 Mont. Code Ann. § 41-3-427  
 Indian Child Welfare Act, 25 USC 1901, et seq.



# Department of Public Health and Human Services

Child & Family Services Division, Central Office ♦ Centralized Intake Unit ♦ PO Box 8005 ♦

Park Avenue Building ♦ Helena, MT 59604-8005 ♦ Phone: (406) 841-2400 ♦ Fax: (406) 444-4156

**Steve Bullock, Governor**

**Richard H. Opper, Director**

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Division of Child & Family Services  
**NOTIFICATION TO PARENT**

***If you are the parent having physical custody of your child(ren) you may have a support person present during any in-person meeting with the child protection specialist concerning emergency protective services.***

TO: \_\_\_\_\_ DATE: \_\_\_\_\_

FROM: \_\_\_\_\_, Child Protection Specialist PHONE #: \_\_\_\_\_

Child and Family Services Division Address: \_\_\_\_\_

Name(s) of Child(ren): 1. \_\_\_\_\_ 2. \_\_\_\_\_  
3. \_\_\_\_\_ 4. \_\_\_\_\_

**REASONS FOR REMOVAL:**

On this date, after receiving a report of suspected child abuse, neglect, or abandonment, the Child and Family Services Division (CFSD) investigated the circumstances of the report. CFSD determined that the above-named child(ren) is (are) at risk of child abuse or neglect or is (are) being abused or neglected. After making this determination, CFSD removed your child(ren) from your home and placed him/her/them in emergency foster care. The reason(s) CFSD removed your child(ren) are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE OF SHOW CAUSE HEARING:**

The next step in the legal process is for a District Court Judge to schedule a Show Cause Hearing. You will be notified of the time, date, and place of the Show Cause Hearing. If you have any questions prior to the hearing, please call the CFSD Child Protection Specialist at the telephone number listed above.

**PURPOSE OF SHOW CAUSE HEARING:**

The District Court Judge is required to hold a Show Cause Hearing if your child(ren) is (are) removed from your home for longer than 5 working days. At the Show Cause Hearing, the Child Protection Specialist and you will both have the opportunity to provide statements to the Judge. The Child Protection Specialist will explain the reasons that your child(ren) was (were) removed from your home and placed in emergency foster care. You will have the opportunity to tell the Judge why you believe CFSD should not have removed your child(ren). The Judge must consider all the information that you and the Child Protection Specialist present, as well as the statements you make during the hearing.

At the end of the Show Cause Hearing, the Judge will make two decisions:

- 1) Whether the Child and Family Services Division should have removed your child(ren) from your home; and
- 2) Whether your child(ren) should remain in temporary foster care.

If the Judge decides that your child(ren) should remain in foster care, the CFSD Child Protection Specialist will work with you to develop a treatment plan. The treatment plan will outline the steps you will need to take for your children to be returned to you.

The Department of Public Health and Human Services (DPHHS) does not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. If you believe you have been subjected to discrimination contact the DPHHS Human Resources Division at (406) 444-3136 or the Montana Human Rights Bureau at 1-(800)-542-0807, or relay service at 711.

*"Children and Family Programs"*