

## Child and Family Services Policy Manual: Legal Procedure Temporary Investigative Authority

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### Authority Other Than Custody

When the child protection specialist believes it is necessary to have court approval to conduct an investigation the child protection specialist should request temporary investigative authority (TIA).

A Temporary Investigative Authority does not require a substantiation of child abuse or neglect. The Court may grant a TIA if the child appears to be abused or neglected or is in danger of being abused or neglected. The petition must contain facts establishing probable cause that the child is or is in danger of being abused or neglected. A TIA is used when the child protection specialist has "reasonable cause to suspect" that the abuse or neglect occurred.

### Purpose of the Temporary Investigative Authority

The purpose of the TIA is to receive judicial approval to conduct an in-depth investigation into the allegations of child abuse or neglect. If the TIA is granted, the Court agrees to the necessity of a longer period of time to complete the investigation.

The TIA should be used when the child protection specialist does not have evidence to substantiate abuse or neglect. The Court may grant the TIA if the evidence establishes probable cause, after a show cause hearing, that the child appears to be at risk of abuse or neglect and further investigation is warranted. The purpose of the investigation is to determine if the child abuse or neglect actually occurred and to assess the safety of the child.

If the initial investigation (prior to filing a petition) results in evidence/facts to determine that it is more probable than not (preponderance of evidence) that the abuse/neglect actually occurred, a petition for temporary legal custody should be filed instead of a petition for a TIA.

The court may permit testimony by telephone, videoconference, or other audio/audiovisual means at any time during an abuse/neglect proceeding.

### Limitations

TIA's are granted for a period of up to 90 days **with no extension.**

The TIA order does not give the Department legal custody of the child. The filing of a petition for TIA is merely a request to the court to grant the Department the authority to conduct an in-depth investigation.

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<b>Child Protection Specialist Action</b>	The decision to file a petition for TIA should be discussed and made jointly with a supervisor. If the child protection specialist has been working with the family and determines that there is a need to file a TIA or other legal action, the parent should be notified that the child protection specialist is seeking legal action prior to filing, unless to do so would place the child in jeopardy. This may be done personally, by telephone, or letter. The child protection specialist must provide a copy of the affidavit to the parents, if possible, within 2 working days of the emergency removal.
<b>Temporary Investigative Authority and Immediate Protection and Emergency Protective Services</b>	No authority exists under a TIA to remove the child from his/her home. Therefore, if the child protection specialist has removed the child from the parents' home based on probable cause that the child is being abused and neglected and the child protection specialist's determination that the child is not safe in the parental home, a petition for immediate protection and emergency protective services combined with a TIA should be filed with the court.
<b>Indian Child Welfare Act</b>	If a child has been placed in foster care and there is reasonable belief that the child may be an Indian child, the child protection specialist must follow ICWA policy, seek enrollment status information from the tribe, and notify the tribe of the pending legal proceedings. Use DocGen D200, <u>Request for Verification of Status</u> to request enrollment information, and DocGen D105, <u>Notification of Judicial Proceedings</u> to notify the child's tribe of pending court action. See 305-1, Indian Child Welfare Act.
<b>Procedure</b> Affidavits	<p>To obtain a TIA, the child protection specialist completes an affidavit alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation. The affidavit is forwarded to the county attorney with the request that s/he file a Petition for Temporary Investigative Authority.</p> <p>An affidavit is a written statement of the facts made under oath by the child protection specialist investigating the referral before an officer authorized by law to administer oaths (usually a notary public). See Section 302-1 for a more complete discussion of the affidavit.</p> <p>The affidavit must include the facts upon which the child protection specialist made the determination to request that the county attorney file the petition requesting a TIA.</p>

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With the exception of the affidavit filed in support of the initial petition in a child abuse or neglect proceeding (which must be completed within 2 working days to assure the petition is filed within 5 working days of the removal), the child protection specialist must file all affidavits supporting petition in a timely manner to assure the petition is filed and the hearing scheduled within the timeframes applicable to each individual 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.

### Contrary to the Welfare

If a foster placement has been made the affidavit must also 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.

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 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

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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.

### Legal Action

County Attorney

The child protection specialist should consult the county attorney to clarify the preferred procedure for initiating any legal action. This procedure may vary according to the preference of the attorney.

### 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.

### CAPS

To ensure compliance of state and federal requirements mandating certain dispositional reviews and hearings within strict time frames 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 court order, type of hearing (court event), reliefs granted (court dispositions, including those determinations issued from the bench prior to receiving the written 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 review date to ensure

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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 twelve-month reviews are due. CAPS will also alert the child protection specialist in advance of the expiration date of the court order, if they have entered the end date of the court order.

**References**

Mont. Code Ann. § 41-3-422.  
Mont. Code Ann. § 41-3-424.  
Mont. Code Ann. § 41-3-433.  
Indian Child Welfare Act, 25 U.S.C 1901 et seq.  
45 CFS 1356.21.