



CHILD SUPPORT SERVICES DIVISION
GENERAL PROGRAM ADMINISTRATION
Domestic Violence Indicator

CS 101.5

SUPERSEDES

CS 101.5 Domestic Violence Indicator, July 27, 2006

REFERENCES

42 USC §§ 653(a)-(c), 654(26), 663(a)-(d); 45 CFR 303.70; MCA 40-5-206(6)

Organization

This section is divided into three parts:

- I. Setting the domestic violence indicator
- II. Judicial override initiated by Montana
- III. Judicial override initiated by another state

Procedures

Caseworker

I. Setting the Domestic Violence Indicator

1. Upon becoming aware of the existence of any of the conditions in 1) through 5), immediately sets the alleged domestic violence indicator (DVI) for the alleged victim in the case. The request may be oral or written. If it is oral, it must be received during a direct communication between the caseworker and the participant. Enters extended text in case notes describing how the claim was made, and the basis for the DVI.

Where this condition applies, no further evaluation of the claim by the caseworker, or proof of harm, or risk of harm is required.

- 1) There is a protective or restraining order in place between the participants in a CSSD case.
- 2) A participant in a CSSD case both requests the CSSD not disclose information regarding the participant's whereabouts and claims disclosure of the information may result in physical or emotional harm to the participant or child(ren).
- 3) A good cause claim has been approved for a CSSD participant's public assistance referral. The electronic referral from CHIMES to the CSSD system will have a cooperation code of 'GC'. If good cause is pending, the system will not know about the referral.
- 4) In unusual cases, a participant has directly stated to the CSSD that he or she intends physical harm to the other participant in the case. This condition **does not** apply to ordinary negative remarks, but **only to direct threats**. In questionable cases the caseworker should consult a supervisor.



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If this condition applies, the caseworker should promptly inform the potential victim that the CSSD has set a DVI in the case, explain the reason for it, and complete the form in step 2 on behalf of the potential victim and send him or her a copy.

- 5) The CSSD has received information from another Montana state agency indicating possible domestic violence against a participant in a CSSD case by another participant in the case. For example, the CSSD liaison may receive such information from the TEAMS Coordinator.
2. If the DVI set in step 1 was based on an oral request from the alleged victim, prepares and sends to the alleged victim CS-101.5A Request for Non-Disclosure; upon receipt of the completed form, places the document in the case file and enters a case note. Does not remove or delay setting the DVI in step 1 pending receipt of the completed form; the oral request alone is a valid basis for setting and maintaining the DVI.

TERMINOLOGY: Beginning in step 3 "participant" means the person designated as the alleged victim in a DVI case.

3. If the facts in steps 1 or 2 indicate the non-disclosure applies to all situations involving the participant, not to just this particular case, enters a case note to that effect, and sets a DVI on all other cases involving the participant.
4. Monitors the case to ensure that information regarding the whereabouts of the participant is not disclosed by the CSSD. Specifically proceeds in 4a through 4c below.
 - a. Reviews any system-generated documents that will be released to another participant in the case; in documents containing automated fields for the participant's telephone, address, or employer, confirms the system has suppressed the information. Personal information should not appear when the DVI is set.
 - b. For any administrative, court hearing, or trial in **any** case involving the participant, inspects all CSSD exhibits prior to their release to determine whether documents contain the participant's phone number, address, or employer. If any exhibit contains this information, proceeds in 4b(i) and 4b(ii):
 - i. Removes the information from all copies exchanged with the parties, and from any copies sent to CSSD witnesses in conjunction with their testimony; leaves the original exhibit intact.
 - ii. Before sending the original exhibit to the Office of Fair Hearings (OFH) or court, attaches a **clear and unmistakable warning** that the document cannot be released because of a risk of harm to the participant or child(ren). Does not in any way alter the original document. At the option of the caseworker, includes an additional copy of the exhibits with the non-disclosable information removed or obliterated, for the use of the OFH or court.



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NOTE:

Global Application of DVI for Hearings. Because information presented at child support hearings or trials is public record, it can be obtained by anyone including an alleged perpetrator of domestic violence against the participant in all CSSD cases. For this reason, CSSD policy extends the non-disclosure to all the participant's cases that go to hearing or trial.

- c. Identifies any other documents prepared or exchanged in the case that contain information on the participant's whereabouts not suppressible by the system* and will be sent to another participant in the case.

*Information is not suppressible by SEARCHS if it is entered manually after the form is generated, or if it is needed by the main recipient of the form for example, the employer or licensing agency.

Prevents disclosure of the protected participant's information to the other participant by proceeding in either 4c(i) or 4c(ii) below.

- i. Removes the information from the copy sent to the other participant.
- ii. Does not send a copy of the document to the other participant; instead, prepares and sends CS-510.8B Case Action Letter, briefly stating the action or status that would have been shown by the document itself.

Administrative Law Judge

5. Upon being informed by the caseworker that an exhibit submitted for a CSSD hearing contains information that should not be released or disclosed because of a risk of harm to the participant, takes any steps necessary to protect the information before and during the hearing. After the hearing, places the protected document under seal and marks the sealed record as confidential.

If a judicial review is requested, forwards the sealed, confidential record to the court along with the rest of the hearing record; informs the court the sealed record contains the whereabouts of an alleged victim of domestic violence and should not be disclosed.

Caseworker

6. Upon being contacted by the alleged victim in the DVI case stating the DVI is no longer necessary, prepares and sends CS-101.5B Withdrawal of Request for Non-Disclosure. Upon receipt of the completed and signed form or its equivalent, removes the DVI and enters a case note for the written request received.
7. Upon case closure, including closures where the case is being transferred to region 90, does not remove the DVI except as authorized in step 6.



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II. Judicial override initiated by Montana

The following definitions apply to the terms "authorized person" and "authorized purpose" as used in these procedures; for more complete definitions see the U.S. Code cites specified:

AUTHORIZED PERSON (CHILD SUPPORT) means (1) an agent or attorney with authority to seek to recover support under the IV-D State Plan; (2) a court with authority to issue an order for support against a noncustodial parent; (3) the custodial parent, legal guardian, attorney, or agent of a child not receiving public assistance; or (4) a state IV-8 (child welfare services) or IV-E (foster care) agency. [42 USC 653(c)]

AUTHORIZED PURPOSE (CHILD SUPPORT) means establishing parentage or establishing, setting the amount of, modifying, or enforcing child support obligations. [42 USC 653(a)(2)]

AUTHORIZED PERSON (CUSTODY, VISITATION, KIDNAPING) means (1) a state or federal agent or attorney with authority to enforce child custody or visitation; (2) a court with jurisdiction to make or enforce a child custody or visitation determination; or (3) a state or federal agent or attorney with authority to investigate, prosecute, or enforce laws against child kidnaping. [42 USC 663(d)(2)]

AUTHORIZED PURPOSE (CUSTODY, VISITATION, KIDNAPING) means making or enforcing child custody or visitation determinations, or enforcing child kidnaping laws. [42 USC 663(a)]

CSSD Locate Unit

1. Upon receiving a locate-only request for parent locate services from an authorized person for an authorized purpose, determines whether the parent or custodian to be located is a participant in a CSSD case.

Form of Request: A locate-only request for purposes of child support requires a signed application and contract; a locate-only request for purposes of custody, visitation, or enforcement of parental kidnaping laws requires a judicial request.

CSSD Case: A CSSD case means a IV-D or region 90 (non-IV-D) case maintained on system.

- a. If the subject is a CSSD participant and **there is no DVI** attached to the participant for any case on SEARCHS, proceeds in 1a(i) or 1a(ii) below, and takes no further action in this section.
 - i. Releases the information according to regular CSSD procedures.
 - ii. Explains that as an alternative to parent locate services the CSSD can provide full child support enforcement services and sends the applicant a CSSD non-public assistance application. Note that this option applies only if the applicant is a custodian who is seeking a noncustodial parent for purposes of child support enforcement.
- b. If the subject is a SEARCHS participant and **there is a DVI** attached to the participant for any case on SEARCHS, proceeds to step 2 below; also proceeds if applicable in step 1a(ii) above.



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NOTE: Global Application of DVI for Locate-Only Requests. Because there is no existing SEARCHS case involving the applicant and the SEARCHS participant, and because the DVI normally protects a participant's information only within the case in which it is set, the DVI would be ineffective against an applicant for locate-only services. Therefore, CSSD policy extends the non-disclosure to all locate requests received from outside applicants.

- c. If the subject is not a SEARCHS participant, attempts to locate the subject using automated interfaces and specific inquiries according to regular locate-only procedures.
 - i. If the subject is located, releases the information according to regular procedures, and takes no further action in this section.
 - ii. If the subject cannot be located, submits a locate request to the Federal Parent Locator Service (FPLS) according to the requirements at 45 CFR 303.70.
 - A. If the FPLS responds by disclosing available information, releases the information according to regular procedures, and takes no further action in this section.
 - B. If the FPLS notifies Montana that information cannot be disclosed because there is a family violence indicator attached to the subject in the federal case registry component of the FPLS, proceeds to step 2.
2. Informs the applicant that disclosure is prohibited and that the information can be disclosed only if a Montana district court determines disclosure would not be harmful to the subject or to the child see NOTE 1 below.

If the applicant wishes to pursue a court determination, briefly explains the override process, see NOTE 2 below; generates and sends information sheet CS-101.5C Judicial Override of Disclosure Prohibition; enters a case note for the information sheet sent to the applicant; and proceeds to step 7.

NOTE 1: Identifying the proper Montana court. If a Montana court has issued a separation, divorce, paternity, support, custody, or visitation order in a cause number involving the applicant and the subject, the issuing court is the proper court to make the disclosure determination. Otherwise, any Montana district court can make the determination if it accepts jurisdiction.

NOTE 2: Court Processing. The override process comprises the following actions involving the district court:

- 1) The applicant petitions the district court for a determination regarding release of the information.
- 2) If the court grants the petition, it sends the locate unit a written request for a one-time override of the non-disclosure restriction.
- 3) If the request is in order, the locate unit obtains the applicable protected information and provides it to the court.
- 4) The court reviews the information and makes a determination. If the determination is in favor of the applicant, the court releases some or all of the information to the applicant.



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3. In a CSSD locate case, electronically submits a locate request to the FPLS at the time of case opening. Submits subsequent electronic requests whenever the caseworker "forces" an FPLS request via the LOC screen, or any key locate data element changes.

Regional Caseworker

4. Upon receiving a response to an FPLS request in step 3 stating disclosure is prohibited for reasons of family violence, determines whether a request for judicial override is appropriate. If so, contacts the locate unit to request initiation of a request for judicial override. The locate unit will take over the process at this point. If and when the court finally determines that release of the information is appropriate, the locate unit will provide the locate information to the caseworker as in step 12. If a request for judicial override is not appropriate, takes no further action in this section.

Locate Unit

5. Upon being contacted by a regional caseworker seeking a request for judicial override in a CSSD locate case, refers the case to a staff attorney.

Staff Attorney

6. Prepares and sends a petition to the appropriate Montana district court to initiate the override process for the release of the FPLS information.

Locate Unit

7. Upon receipt of a request from a Montana district court for override of the FPLS family violence indicator, enters a SEARCHS case note for the request received.
 - a. If the request is based on a petition from the Montana locate unit in step 6, proceeds immediately to step 8.
 - b. If the request is based on a petition from an applicant in step 1, works with the locate unit staff attorney to determine whether the request is made on behalf of an authorized person and for an authorized purpose see the definitions at the beginning of this Part. If so,
 - for a request concerning a SEARCHS participant, proceeds to step 9.
 - for a request concerning a non-SEARCHS participant, proceeds to step 8.

If not, with the guidance of a staff attorney informs the court the request cannot be processed and explains why the applicant or purpose is not authorized or what documentation is lacking; takes no further action in this section until proper authorization or documentation is provided.

8. Prepares an override request package comprising CS-101.5D Request for Override of Disclosure Prohibition all fields must be fully completed pursuant to 45 CFR 303.70; CS-101.5E, Director's Attestation for Override Request; a copy of the district court's request received in step 7; and any additional documentation needed to allow the federal Office of Child Support Services (OCSS) to verify the validity of the override request.

Sends the package to OCSS via certified mail, return receipt requested. Enters a SEARCHS case note for the package sent and proceeds to step 10.



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NOTE: OCSS/FPLS Processing. Upon receipt, OCSS will review the request for the necessary authorization and documentation. If the request is in order OCSS will obtain the protected information from the FPLS, identify the specific information appropriate to the request, and transmit the identified information to the locate unit in a secure package by a special delivery mechanism for example, Federal Express requiring a recipient signature. Appropriate information is defined according to the purpose of the request, see step 9 below. The information provided by OCSS will also include the name of the state that set the family violence indicator in the federal case registry (a component of FPLS). OCSS will notify the state that set the indicator that a Montana court has obtained an override of the indicator.

9. For an override request approved in step 7 concerning a SEARCHS participant, extracts the appropriate information from SEARCHS. Limits the printed extract to the following data, according to the purpose of the request:
 - a. For the purpose of child support--information about the parent's location, employment, and wages including eligibility for any group health coverage, and assets.
 - b. For the purpose of custody, visitation, or kidnaping enforcement the parent or child's most recent address and place of employment.

Staff Attorney

10. Upon receipt in step 8, or extraction in step 9 of the requested information, prepares CS-101.5F Information Resulting from Judicial Override. Attaches the protected information and sends the package by certified mail, return receipt requested, to the requesting district court; enters a SEARCHS case note for the protected information received (or extracted) and forwarded. Does not make or retain a copy of the protected information. Monitors for confirmation of service. Proceeds as applicable in 10a or 10b below.
 - a. For information requested in a CSSD locate case, does not enter the FPLS information on system or disclose it to the regional caseworker.

NOTE: Separation of the CSSD Locate Unit from CSSD Regional Processing. In cases where the locate unit submitted the override request on behalf of the CSSD for the purpose of locating a CSSD obligor, the protected FPLS information must remain protected until the court determines the information can be released to the CSSD. In this situation the locate unit operates as a separate "arm" of the IV-D agency and may not share information with the CSSD field services office.

- b. For information extracted in step 9, if the DVI was set by the CSSD, informs the regional caseworker, or interstate regional manager for region 90, if applicable that a Montana district court has obtained an override. A staff may, at its option, take proactive steps to inform the CSSD participant or provide information to the court, as described in Part III, step 2.

If the case is a Region 90 case and the DVI was set by the clerk of court, takes no further action in this step.



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11. Provides the following additional information to the court upon request:
 - a. If the subject is a non-SEARCHS participant, the contact address or telephone number for the state that set the indicator prohibiting disclosure.
 - b. If the subject is a SEARCHS participant, specific case information as available to assist the court in making an informed and meaningful determination.
12. For a determination requested in a CSSD locate case, monitors for the decision of the court. Upon being informed the court will release the information, arranges for the secure delivery of the information to the regional office and alerts the caseworker.

Regional Caseworker

13. Upon receiving protected FPLS information from the court in a CSSD locate case, loads the information on system, sets a DVI in all of the obliger's cases on SEARCHS, and enters a case note explaining how the information was obtained and why it is protected.

III. Judicial override initiated by another state

Locate Unit

1. Upon being notified by the federal Office of Child Support Enforcement (OCSS) that another state's court has obtained an override of a DVI placed by Montana, enters a SEARCHS case note documenting the override and identifying the state whose court will make the disclosure determination. If the DVI was set by the CSSD, also informs the regional caseworker or interstate regional manager for region 90, if applicable.

CSSD Regional Staff/Region 90 Supervisor

2. (Optional) Upon notification by the locate unit in step 1, and according to the facts of the case and applicable regional policy, takes proactive steps as necessary to notify the CSSD participant of the pending determination and possible release, provide information to the other state for the consideration of the court making the determination, or in any other way promote a meaningful determination or appropriate protection.

NOTE: Prior Notification. Contact with Placing State Not Required. Federal law does not require the court in an overriding state to notify the alleged victim prior to making the determination or prior to disclosing information on the alleged victim's whereabouts. Nor does the law require the court to contact the "placing" state for information about the alleged domestic violence. The contacts in this step are available at the region's option to address any gaps this situation may create.

3. Upon the request of the overriding court through the CSSD Locate Unit, provides assistance in the decision-making process as needed. For example, provides further information concerning the circumstances of the DVI, or in a CSSD case only facilitates the protected person's participation in a telephone hearing conducted by the overriding court.