

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

SUPERSEDES

CS 602.1 Case Initiation--Mother Obligee, January 14, 2003

REFERENCES

MCA§40-5-231 through 40-5-237, 40-6-101 through 40-6-118, 42-2-201 et seq., 50-15-210, & Rule 301, Montana Rules of Evidence

Definitions

The following definitions apply to the terms used in this section:

- 1) Alleged father--a man who is named as a possible father of the child, who has not been excluded by genetic testing, and who is not a presumed father according to these definitions.
- 2) Irrebuttable presumption--the presumption created when (a) or (b) below applies. An irrebuttable presumption has the same force and effect as an administrative or court order adjudicating paternity; it may be set aside by the authorizing jurisdiction only for fraud, duress, or material mistake of fact.
 - a. There is a voluntary acknowledgment of paternity on file with the Montana Office of Vital Statistics either with the child's Montana birth certificate or in the acknowledgment registry for out-of-state births, and the acknowledgment was signed on or after July 1, 1997, and neither parent rescinded the acknowledgment before the earlier of 60 days after the acknowledgment was signed, or a support order was established where both parents were parties to the establishment proceedings.
 - b. There is an irrebuttable presumption of paternity under the laws of an Indian territory or another state.
- 3) Multiple-allegation--a case involving more than one alleged or presumed father.
- 4) Negative (genetic testing results) results conclusively showing the man could not be the natural father of the child.
- 5) Paternity case--a case in which the child is born to an unmarried mother or to a married mother who claims the married father is not the true father; no man has genetically tested positive; there is no court or administrative order declaring paternity; there is no irrebuttable presumption of paternity; and single- or multiple-allegation conditions apply.
- 6) Positive (genetic testing results) results showing a probability of 95% or higher the man is the natural father of the child.
- 7) Presumed father--a man for whom a rebuttable presumption applies, and who has not been excluded by genetic testing.
- 8) Presumption--the basis the CSED uses to establish a support order in the absence of a paternity order. A presumption may be rebuttable or irrebuttable depending on the facts that created it. As used in the procedures in this section, the term presumption means a rebuttable presumption.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

- 9) Rebuttable presumption--the presumption created when any of the situations in (a) through (h) below applies. A rebuttable presumption may be refuted by a preponderance of the evidence in a court of law, or by genetic testing that excludes the man as the child's natural father.
- a. The child is born of the marriage (during the marriage or within 300 days after its termination or legal separation).
 - b. There is a voluntary acknowledgment of paternity on file with the Office of Vital Statistics either with the child's Montana birth certificate or in the acknowledgment registry for out-of-state births that was signed before July 1, 1997, or was signed after July 1, 1997, has not been rescinded by either parent, and has not yet become irrebuttable.
 - c. There is a notice of intent to claim paternity dated prior to October 1, 1997, on file with the proper Montana agency, the mother has not denied the claimant is the father, and the child has now been born.
 - d. There is a registration (of parental interest) on file in the Putative Father Registry maintained by the Office of Vital Statistics, and the registration has not been revoked.
 - e. There is a court order obligating the alleged father to support the child.
 - f. Results of genetic testing show a 95% or higher probability of paternity.
 - g. Paternity is established or rebuttably presumed in an Indian territory or another state, but there is no order declaring paternity.
 - h. There is case evidence supporting one of the following situations **and** the CSED staff attorney has entered a SEARCHS case note approving the use of the presumption in the specific circumstances:
 - i. There is a marriage after the child is born, and the alleged father signs a written voluntary promise of child support.
 - ii. There is a marriage after the child is born, and the alleged father's name is listed on the birth certificate with his consent.
 - iii. The alleged father has represented the child to be his natural child.
- 10) Resolving/resolution--the CSED process that causes a change in case activity status from paternity to order establishment; may be by presumption or order.
- 11) Single-allegation--a paternity case involving only one alleged father and no presumed fathers; or a paternity case involving one presumed father whose paternity is denied by the mother, and no other alleged or presumed fathers.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

Policy

Conditions for Case Initiation

The procedures in this section apply only when the following conditions are met:

- 1) The case meets the definition of a paternity case given in DEFINITIONS above. Note that in cases where there is either an irrebuttable presumption or an order declaring paternity, the case is not a paternity case but a support order establishment case. This is true even if (1) there are allegations or rebuttable presumptions against other men, or (2) the obligor genetically tests negative.
- 2) The child's natural mother is the obligee in the case. (When the obligee is not the natural mother but a third party, see CS 602.2 Case Initiation—Third Party Obligee for procedures).

NOTE:

Proceeding for Unknown, Unlocated Allegations. The CSED does not delay in initiating a case under these procedures solely because an alleged father's name or location is not known; the name or location may be discovered during or as a result of the procedures.

Change in Case Status by Presumption or Exclusion

As the CSED obtains new presumptions, or excludes alleged or presumed fathers by genetic testing, the paternity status of a case may change. For example, a single-allegation case **ceases to be a paternity case** when the CSED obtains or discovers a presumption of any type for the alleged father; a multiple-allegation case becomes a single-allegation case when the CSED excludes all but one alleged or presumed father; and a multiple-allegation case ceases to be a paternity case when the CSED obtains a genetic testing presumption for one of the men in the case. Once paternity is resolved, the case is considered a support order establishment case, and the CSED proceeds as in CS 401.3 Notice and Order Concerning Support or CS 401.6 Subsequent Notice and Order Concerning Support.

Information Gathering

The primary tool for initiating a paternity case is the Paternity Affidavit CS 602-1C. This form is used to gather essential information from the mother relating to the paternity of the child. In addition, to the paternity affidavit the caseworker also checks certain other sources for information about the paternity. These sources may include the following:

- The existing case file, the public assistance referral or the non-public assistance application.
- The CSED Paternity Clearinghouse of hospital acknowledgments beginning in February 1994.
- The CSED Paternity Registry--paternity orders and genetic testing results submitted by the CSED. This is rarely used, as the cases represented are no longer in CSED paternity status.
- Birth records which are maintained by the Office of Vital Statistics.
- The Putative Father Registry--claims of parental interest maintained by the Office of Vital Statistics.

PATERNITY ESTABLISHMENT

Case Initiation—Mother Obligee

CS 602.1

- The Paternity Acknowledgment Registry for Out-of-State Births which is maintained by the OVS. This is a not often used as most of the acknowledgments in the registry were obtained and submitted by the CSED.
- Further information obtained by the caseworker directly from the mother.
- Other information obtained from the Office of Public Assistance (OPA)/ the mother or other sources.
- The records and paternity determination procedures of another state or jurisdiction.

The order in which the caseworker administers the paternity affidavit and accesses these other sources depends on the facts of the case, as shown in the detailed procedures of this section. Generally, the caseworker is attempting to find the most efficient way to assemble reliable information relating to 1) the identity of possible fathers, 2) any existing presumptions previously unknown to the CSED, 3) Montana's jurisdiction to establish paternity, and 4) the basis for proceeding against each alleged father. Information from other sources may repeat, support, expand, or contradict information in the completed paternity affidavit.

Proceeding in Multiple-Allegation Cases

In initiating a multiple-allegation case the caseworker follows the procedures in this section for **each** alleged or presumed father, heeding restrictions as noted later in this policy. The caseworker determines, according to the facts of the case, whether to proceed with a particular case initiation step for all of the alleged or presumed fathers, or to proceed for certain alleged or presumed fathers first, using the resulting information to determine when and if to resume case initiation for the others.

Exceptions to serial processing include the following:

- 1) Paternity Affidavits are usually administered for all known alleged and presumed fathers at the same time.
- 2) Steps involving records searches are performed only once for each case.
- 3) For every located alleged or presumed father identified in a case referral or application, the CSED is required to promptly notify the man of the mother's written claim of paternity against him, regardless of whether the CSED intends to proceed further against the man at that time; see section CS 601.3 Notification of Paternity Claim for procedures.) Note that a case may start out as a single-allegation case and become a multiple-allegation case. For example, the CSED may receive a completed paternity affidavit and find that the mother has named other possible fathers.

Opportunity for Cooperation by Alleged or Presumed Father

The procedures in this section are designed not only to gather information, but also to provide an opportunity for the alleged or presumed father to cooperate in resolving the paternity in the early stages of the process. Specifically, the CSED provides an opportunity for the alleged or presumed father to request genetic testing to determine the probability of paternity, or in single-allegation cases, to admit paternity under oath, allowing the CSED to enter a consent order establishing paternity based on the admission. Either of these options eliminates the need for legal notice and hearing to resolve the paternity allegation.

PATERNITY ESTABLISHMENT

Case Initiation—Mother Oblige

CS 602.1

Administering the Paternity Affidavit

Except as noted below the CSED sends the mother one paternity affidavit for each known alleged or presumed father (if any returned affidavit names others, the CSED then sends additional affidavits). The mother is asked in the CS602-1A Paternity Letter to Mother with Affidavit to complete the affidavit, provide her notarized signature, and return the it to the CSED within 10 calendar days.

EXCEPTION: If the CSED discovers and confirms a presumption for the alleged father in a single-allegation case, the paternity affidavit is not required.

If the affidavit is not timely returned, the CSED notifies the public assistance agency the mother has not cooperated with the CSED, or begins case closure in the non-public assistance case. In public assistance cases where the mother is not included in the assistance benefit, the CSED subpoenas the completed affidavit from the mother using the process of subpoena duces tecum, and the investigative subpoena authority, described in CS 405.12 Investigative Subpoena. Also, in a public assistance case if the returned affidavit names men who were not included in the original referral, the CSED cannot proceed against these men until they are added to the referral electronically. If the mother does not timely provide revised information to the IV-A agency, the CSED notifies the public assistance agency the mother has not cooperated with the CSED.

Period of Conception

The paternity affidavit is used not only to gather evidence supporting a paternity allegation, but also to check on the biological validity of the allegation. The caseworker uses the date the child was born (or in the case of a premature or overdue birth, the date the child should have been born) to determine the probable period of conception. If the dates the mother gives in the affidavit for sexual contact with the alleged father do not coincide with the period of conception, the allegation is dropped from the case.

To determine the starting and ending dates of the probable period of conception the caseworker counts backward 286 and 246 days, exactly, from the child's birth date. This allows for accepted ranges in both the date of fertilization and the period of gestation. Various tools are available to regions for calculating the period of conception, including the manually operated paternity wheel and Excel spreadsheet.

NOTE:

Period of Conception Not Reducible. To allow for consideration of all possible allegations (including future allegations) in the case, it is essential to enter and retain on system the **entire** period of conception, even when it appears paternity will be established based on sexual contact on a specified date.

Contact with the Alleged or Presumed Father

Upon receiving a written paternity claim from the mother, the CSED sends the notification letter required in section CS 601.3. Then upon determining jurisdiction, the CSED initiates the paternity case by sending CS601-3A Paternity Claim Notification to the alleged father. This non-confrontational letter informs the alleged or presumed father he has been named as the father of the child; it also explains the process of establishing paternity and the options available for resolving the allegation without legal action. The letter includes CS606-2F Consent to Genetic Testing, which offers the alleged or presumed father the opportunity to resolve the matter through voluntary genetic testing. In a single-allegation case the Notification of Paternity Claim letter also includes the Admission of Paternity for the alleged father to sign and return notarized to the CSED. In multiple-allegation cases the standard Notification of Paternity Claim letter **does not** include an admission of paternity document.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

NOTE 1:

Admission of Paternity in Multiple-Allegation Cases. In a multiple-allegation case the CSED will not accept an admission of paternity before it obtains positive genetic testing results for the alleged or presumed father (see restrictions in policy below). If positive testing results are obtained, it will be appropriate (and desirable) **at that time** to seek an admission. If the CSED receives a signed admission of paternity in a single-allegation case that becomes a multiple-allegation case, the admission is not acceptable until the CSED obtains positive genetic testing results for the admitting man, and he signs a multiple-allegation variation of the admission acknowledging there were other alleged or presumed fathers in the case.

NOTE 2:

Concurrent Processes. Due to the strict time frames affecting paternity establishment, the CSED must contact the alleged or presumed father and administer the paternity affidavit within the same time period. If the returned paternity affidavit contains a new allegation, the CSED sends the mother an affidavit for the new allegation, and concurrently will send the corresponding Notice of Paternity Claim.) **It is generally not appropriate to wait for return of the affidavit to send Notice of Paternity Claim letter.**

NOTE 3:

Options for Using the Notice of Paternity Claim Letter. The following options are available for the CSED's initial contact with the alleged or presumed father:

- 1) Contact through the mother (single-allegation cases only) the mother may be better able than the CSED to persuade the alleged father of the advantages of cooperation. If so, the caseworker can elect to send the Notice of Paternity Claim letter and the admission of paternity to the mother along with the paternity affidavit. A revised CS 602-1A Paternity Letter to Mother with Affidavit asks for assistance in delivering and obtaining the signature of the alleged father on the Notice of Paternity Claim letter and Admission of Paternity.
- 2) Omitting the Notification of Paternity Claim Letter--in certain situations it may be necessary or advisable to forego the initial contact, and to proceed with other actions for the man according to the facts of the case. Examples of these situations and appropriate CSED actions are as follows:
 - a. The CSED must omit the Notification of Paternity Claim Letter when the alleged or presumed father is under the age of 18. (Upon receipt of the returned affidavit, proceed directly to service of process, observing the special requirements for service of minors in CS 605.2 Notice of Parental Responsibility—Single Allegation Cases.)
 - b. The CSED may omit the Notification of Paternity Claim Letter when one of the following instances applies:
 - There is reason to believe the alleged or presumed father will remove himself from the CSED's jurisdiction if he is informed of the paternity case (upon receipt of the returned affidavit, proceed directly to service of process CS 605.2 or 605.3 Notice of Parental Responsibility—Multiple Allegation Cases).
 - It appears from the facts of the case the allegation will not be supported by the returned affidavit (await the returned affidavit; if action is necessary, proceed directly to service of process in CS 605.2 or 605.3).

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

- Multiple-allegation cases only-- The chances of being able to resolve the paternity without involving the alleged or presumed father are very good (attempt to resolve paternity for the other allegations; if action is finally necessary for this man, upon receipt of the returned Affidavit proceed directly to service of process, CS 605.3).

Restrictions in Multiple-Allegation Cases

Montana statute and CSED policy allow establishment of paternity in multiple-allegation situations ONLY when one of the RULES listed on the following page applies. Note that voluntary genetic testing is the key to resolving a multiple-allegation case at this stage: positive genetic testing not only provides a presumption for the man tested, but also automatically excludes all other men in the paternity case. The caseworker must determine how to proceed to obtain voluntary testing from the necessary man or men in the shortest time and must be prepared to proceed immediately to contested case procedures in CS 605.3 to obtain an order for genetic testing if a necessary man will not cooperate. See CS 604.1 Genetic Testing for specific policy on negotiating voluntary genetic testing and payment of testing costs.

Rules for Resolving Paternity in Multiple-Allegation Cases

The following RULES assume genetic testing will result in either a presumption (positive results) or an exclusion (negative results). The rules also assume it will be impossible to obtain positive genetic testing results for more than one man in a case. If either assumption should prove false, consult your CSED staff attorney.

RULE 1: The CSED will enter a Paternity Consent Order if either of the following applies:

- 1) An AF or PF signs an Admission of Paternity (multiple-allegation version) AND the same AF or PF genetically tests positive (if there are other PFs, the order should include language overcoming the other presumptions).
- 2) An AF or PF signs an Admission of Paternity (multiple-allegation version) but does not undergo genetic testing, AND all other AFs and PFs are excluded by genetic testing*.

RULE 2: If RULE 1 does not apply, the CSED will proceed with establishment of a support order (without entering a paternity order) if either of the following applies:

- 1) An AF or PF genetically test positive.
- 2) One PF in the case does not undergo genetic testing AND all other AFs and PFs are excluded by genetic testing*.

RULE 3: The CSED will enter a Paternity Default Order for an AF or PF only if default conditions (failure to respond to notice or appear as ordered) apply AND all other AFs and PFs are excluded by genetic testing*. [This RULE is not applicable to case initiation procedures, except where the AF or PF defaults after a Consent to Genetic Testing.]

RULE 4: The CSED will proceed with establishment of a support order, regardless of the status of any other allegations or presumptions in the case, if it discovers an irrebuttable presumption, or a judicial or administrative order declaring paternity. This RULE is superior to RULES 1, 2, and 3.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Oblige

CS 602.1

*In highly unusual cases where genetic testing is not available to exclude an AF or PF, it may be possible to exclude the AF or PF by an action in district court or—upon a determination by the CSED staff attorney based on the facts of the case—to proceed as if the AF or PF were excluded.

AF = alleged father (no presumption)

PF = presumed father (rebuttable presumption)

Advantage of Consent to Genetic Testing

In arranging for voluntary genetic testing the caseworker should attempt to have the man sign a Consent to Genetic Testing. This removes any future requirement for a hearing under CS 605.3, obtains the man's agreement to pay genetic testing costs, and in certain situations (see RULES) allows the CSED to enter a Paternity Default Order if the man does not appear for testing.

Voluntary Genetic Testing Requirements of Mother

It may happen that an alleged or presumed father is willing to participate in genetic testing but the mother will not cooperate. In this situation the CSED, after making every effort to obtain her cooperation, notifies the public assistance agency the mother has not cooperated, or begins case closure proceedings in the non-public assistance case. (In public assistance cases where the mother is not included in the assistance benefit, the CSED subpoenas the cooperation of the mother by adaptation of the Genetic Testing Subpoena.)

Determining Jurisdiction

The following guidance does not apply to cases where the mother or the alleged or presumed father is Native American. To determine jurisdiction in Native American cases, refer to CS 250.1 Native American Jurisdiction.

The CSED does not need jurisdiction to resolve paternity in non-contested cases under this section. However, in cases where application of the case facts, voluntary genetic testing, admission of paternity, or a combination of these is not sufficient to resolve paternity, the CSED must assert jurisdiction over an alleged or presumed father before proceeding in a contested case (CS 605.2 and 605.3) against him. The CSED has a basis for asserting jurisdiction over an alleged or presumed father if any of the following conditions applies:

- 1) He is served by personal service or by certified mail with notice in Montana.
- 2) He submits to Montana jurisdiction by consent, by waiver of contest, or by entering a general appearance.
- 3) He resided with the child in Montana.
- 4) He resided in Montana and provided prenatal expenses or support for the child.
- 5) The child resided in Montana as a result of his acts or directives.
- 6) He engaged in sexual contact in Montana and the child may have been conceived by that contact.
- 7) There is any other basis for jurisdiction under the Montana and U.S. constitutions.

If none of the above conditions applies (the CSED has no basis for asserting jurisdiction), the CSED may attempt to create a basis by requesting the alleged or presumed father sign a waiver of jurisdiction, satisfying condition 2).

PATERNITY ESTABLISHMENT
Case Initiation—Mother Oblige

CS 602.1

To assert jurisdiction in any of the above conditions the CSED must serve notice on the man by personal service or certified mail. Where one of the above conditions applies and the alleged or presumed father is located out of state, federal regulations require that the CSED assert its own jurisdiction to establish paternity whenever possible. This means the CSED must attempt to obtain service on the man directly through personal service for example, by a sheriff or certified mail.

Where the CSED cannot assert jurisdiction over a particular alleged or presumed father in a case, the case is referred to the state most likely to be able to assert jurisdiction over him.

Contested Case Determining Reasonable Cause

If paternity cannot be resolved under this section, the CSED must initiate contested case actions against the appropriate men under CS 605.2 or 605.3. To serve notice in a contested paternity case, the CSED must have reasonable cause to believe an alleged or presumed father could be the child's natural father. Generally this means there is some indication the man had sexual contact with the mother during the possible period of conception. In most cases the information on the returned paternity affidavit or if applicable the documentation establishing a presumption of paternity is sufficient to establish reasonable cause for proceeding against the man named. In questionable cases, consult the CSED staff attorney.

Time Frames

CAUTION! Federal time frames affecting paternity establishment are very strict. The caseworker must manage all decisions and actions in this section in a way most likely to meet the following federal requirements:

- 1) If paternity is not resolved under this section, the CSED must, for each alleged or presumed father not excluded, within 90 days after the man was located, serve notice on him of both parental responsibility and financial/medical support.
- 2) If paternity is resolved under this section, the CSED must, within 90 days after the man determined to be the father was located, serve notice on him of financial/medical support.

Procedures

REMINDER: Except where otherwise noted, the following procedures apply to the same man from beginning to end.

Procedures for Caseworker

1. System Processing In conjunction with the case working actions taken under these procedures performs the following required system processing:
 - a. Upon receiving the case, and upon identifying any additional allegations, reviews the following SEARCHS screens and enters data as needed:

Screen	Required Data (partial listing)
CAP	Information for the mother, child, and AF/PF, including the relationship for all non-child participants; shows the child attached to the mother.
CHL	Shows the AF/PF attached to the child; also shows the paternity history of the child (critical for federal reporting).

PATERNITY ESTABLISHMENT

Case Initiation—Mother Obligee

CS 602.1

PAR	Information for the mother, child, and AF/PF re: date of birth, place of birth, address (for the AF/PF there must be a home address), and any Native American designation.
PAN	The mother's maiden name, all of the mother's aliases (former married names), and any AF/PF aliases.
API	The physical description of the AF/PF.

If necessary in a public assistance case, consults CHIMES-EA for information, and enters the information on the above SEARCHS screens.

- b. Whenever in steps 2 through 14 the status of a participant changes from an alleged to a presumed father, or the participant is removed from the case (by exclusion, for example), updates SEARCHS via the CHL screen and, if applicable, notifies the public assistance agency of the change in the participant's status.
- c. If at any point in steps 2 through 14 paternity is resolved in the case, updates SEARCHS via the CHL screen to show the date and method of establishment, and the participant determined to be the father; if applicable, notifies the public assistance agency paternity has been established.

NOTE:

CHL Screen Critical. Proper completion and updating of the CHL screen is essential for compliance with federal audit requirements. See the latest SEARCHS instructions for proper updating of the establishment method, the at-issue status, and other reporting-related CHL information.

2. Preparing the Case Upon receipt of a public assistance referral or a non-public assistance application in a case in which paternity is at issue, prepares the case for informal or formal action by proceeding in steps 2a through 2c below.
 - a. Immediate Notification of the Alleged/Presumed Father. Prepares and sends form CS-601-3A Notification of Paternity Claim Letter, to the alleged or presumed father according to the procedures in CS 601.3 Notice of Paternity Claim. (NOTE: This step may not be delayed for, or combined with, the father's paternity packet sent in step 3c, unless all requirements under CS 601.3 for timeliness and confidentiality of notification can be satisfied.) Monitors for circumstances requiring the use of form CS-601.3B, Paternity Claim Follow-Up Letter, and takes action as in CS 601.3.
 - b. Out-of-State Births. If the child was not born in Montana, investigates whether paternity has been established by order or irrebuttable presumption in another state. If so, obtains a copy of the order or other documentation for the case file, updates SEARCHS as in step 1c, and proceeds to establish the support order. END OF PATERNITY PROCESS If not, identifies any rebuttable presumption created in another state, and retains the information in the file; proceeds to step 3.

NOTE 1:

Montana Acknowledgments. The proper filing of the state of Montana's form, Acknowledgment of Paternity, creates a rebuttable or irrebuttable presumption of paternity in Montana, regardless of the child's place of birth.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

NOTE 2:

Non-U.S. Births. For purposes of paternity establishment, Canada and all U.S. territories and possessions are treated as states. For births in foreign countries consult the CSED legal staff for possible adaptation of case initiation and subsequent procedures.

- c. Native American Jurisdiction. If the child was born in Montana, determines whether the mother or alleged or presumed father is Native American.
 - If so, follows the procedures in CS 250.1 Native American Jurisdiction; returns to this section if and when Montana state jurisdiction applies.
 - If not, proceeds to step 3.

3. Case Initiation Obtains information and initiates contacts concurrently as follows:

- a. Birth Records Request. Prepares and sends to the CSED Paternity Registry at the Office of Fair Hearings (OFH) form CS 602-1D Request for Birth Records, requesting certified copies of any acknowledgment of paternity and any withdrawal of an acknowledgment of paternity.

NOTE:

Cases where Certified Birth Certificate Required. At the request of a staff attorney, or in cases when a certified copy of the Birth Certificate is required for a paternity action, a request may be submitted for a certified copy of the child's Birth Certificate. Montana's Office of Vital Statistics will provide CSED with only 1 certified copy of a child's Birth Certificate. Birth Certificates are not evidence of proof of parental responsibility and, therefore, not required to be a part of a CSED case file.

- b. Mother's Packet. Prepares and sends to the mother a paternity packet containing
 - Form CS 602-1A Letter to Mother, accompanied by the CSED information sheet, Paternity Information for Parents
 - Form CS 602-1C Paternity Affidavit
 - If the alleged or presumed father resides or may reside outside Montana Form CS-408.3C, Long Arm Jurisdiction Questionnaire
- c. Alleged/Presumed Father's Packet. Prepares and sends to the alleged or presumed father a paternity packet containing:
 - Form CS 602-1B Letter to Father--appropriate version, single- or multiple-allegation
 - Form CS 606-2F Consent to Genetic Testing
 - Single-allegation cases only Form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order, accompanied by the CSED information sheet, *Paternity Information for Parents*

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

NOTE:

Treated as Single-Allegation Case due to exclusion. If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the multiple-allegation version of the Admission form, containing informed consent language, is required. In this situation the form must be adjusted to remove the reference to positive genetic testing results.

- If the alleged or presumed father resides or may reside outside Montana Form CS 405-5, Waiver of Personal Jurisdiction.

NOTE:

Use of Waiver Optional. Where this form is not needed because long-arm jurisdiction already applies, or where there is reason to believe the use of this form may jeopardize federal time-frame compliance or the success of paternity establishment in the case, the caseworker may elect to omit it.

NOTE:

Unknown or Unlocated Father. If the alleged or presumed father cannot be named or cannot be located, the caseworker should proceed with applicable steps in these procedures wherever possible, in preparation for informal contact or service of process when the man is finally located.

CSED Paternity Registry at Office of Fair Hearings (OFH)

4. Request for Birth Records Upon receipt of a properly completed Request for Birth Records, proceeds as follows:
 - a. Accesses the automated birth records system maintained by the Montana Office of Vital Statistics, and locates the child's birth record.
 - If the system indicates there is an acknowledgment, or a withdrawal of an acknowledgment, currently on file, obtains and certifies a copy of the acknowledgment or withdrawal from the CSED Paternity Clearinghouse, the OVS physical files, or both (see NOTE 1 below).
 - If the system indicates the parents were married, makes a notation on the Request for Birth Records that OVS indicates that the parents were married.
 - If the system indicates no father on the child's birth record, makes a notation on the Request for Birth Record that no father was recorded on the child's birth record.
 - If the birth is not found on the OVS system and the birth was very recent (within the last 90 days), keeps the request and repeats the search at a later date. If the birth was not recent, makes a notation on the Request for Birth Records that the child's birth record was not located in OVS.

NOTE 1:

CSED Paternity Clearinghouse of Hospital Acknowledgments. The CSED Paternity Clearinghouse contains copies of acknowledgments of paternity filed by hospitals for births on or after February 1, 1994. All other acknowledgments, and all notices of withdrawal of paternity acknowledgment, are found only in the OVS files.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

- b. If the caseworker has requested a certified copy of the child's Birth Certificate, obtains a certified copy of the Birth Certificate from the OVS.
- c. If the caseworker has requested information on the child's parents, and there is no acknowledgment of paternity on file, completes the applicable section of the Request for Birth Records using information as available from the OVS system.
- d. Within 10 working days of receiving the Request for Birth Records mails to the caseworker the Request for Birth Records form, with any notations as indicated in Step 4a or Step 4c, along with a certified copy of any acknowledgment or withdrawal of an acknowledgment obtained in Step 4a and/or the certified copy of the Birth Certificate as indicated in Step 4b.

Procedures for Caseworker

- 5. Reviewing Birth and Paternity Records Upon receipt of the birth and paternity records requested in step 3a, reviews the information for any presumptions or exclusions, and adds or removes allegations or presumptions in the case as applicable. If necessary, updates SEARCHS as in step 1b. CAUTION: In the case of an acknowledgment that is less than 60 days old (and therefore still rebuttable) checks again for any notice of withdrawal before establishing a support order based on the presumption in CS 401.3 Notice and Order Concerning Support or CS 401.6 Subsequent Notice and Order Concerning Support.
- 6. Processing the Paternity Affidavit Monitors for return of the paternity affidavit within 10 days after the mailing date.
 - a. If the Affidavit is timely returned, reviews it for completeness, determines the period of conception according to guidance in policy, this section, and enters the dates on SEARCHS (CHL screen). Takes any or all of the following steps, as indicated by the review:
 - i. Returns the Affidavit to the mother, explaining where further information is required.
 - ii. Schedules and conducts an interview with the mother to complete the Affidavit.
 - iii. Contacts the CSED public assistance liaison for assistance in obtaining necessary information from the mother or other sources. (This option is used mostly in cases with unknown allegations, or where an in-person interview is needed in a remote location.)
 - iv. If the information in the Affidavit regarding: dates of conception and sexual contact rules out an alleged father*, removes the man from the case and updates SEARCHS as in step 1b.

In single-allegation cases contacts the mother about other possible allegations (or requests assistance from the liaison as in sub step iii above). If other allegations are identified, proceeds as in step 6a. v. below; if no other allegations are identified, enforces cooperation as for an unreturned affidavit, refer to step 6b below.

In multiple-allegation cases takes no further action for the removed man; proceeds/continues with appropriate steps for the other allegations.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

NOTE:

Unknown Allegations. An allegation against a man whose name, identity, and location are unknown is considered a valid allegation for the above purposes if the mother is willing to work with the CSED to try to identify the man. If the Affidavit contradicts an existing presumption, consults the CSED legal staff. *

- v. For any allegation not previously listed in the case records, sends a notification letter as in step 2, sends an additional paternity affidavit to the mother; in a public assistance case includes a special request to the mother to add the new allegation to the assistance application, and alerts the public assistance worker to the new allegation; if necessary, requests the assistance of the liaison as in sub step iii above. Upon return of the Affidavit updates SEARCHS as in step 1a, sends the alleged/presumed father's paternity packet (step 3c); and proceeds in this section as applicable for the new allegation.
 - vi. If the Affidavit or other information now in the case file provides a presumption, in a single-allegation case, updates SEARCHS as in step 1c and proceeds directly to establishment of a support order. END OF PATERNITY PROCESS In a multiple-allegation case updates SEARCHS as in step 1b and proceeds as applicable in steps 9 through 14, this section.
- b. If the paternity affidavit is not timely returned, takes action as follows:
- i. In a public assistance case notifies the assistance agency the mother has not cooperated. If the mother continues to not cooperate, and the public assistance referral remains open (or the referral closes but there is reason to complete the paternity establishment before closing the child support case), consults with the CSED legal staff and follows the procedures in CS 405.12 Investigative Subpoena for a subpoena duces tecum to compel the mother to complete and submit the Affidavit.
 - ii. In a non-public assistance case, begins case closure procedures.

EXCEPTION: In a single-allegation case with a confirmed presumption (Affidavit not required), updates SEARCHS as in step 1c and proceeds directly to establishment of a support order.

7. Admission of Paternity. If the alleged or presumed father returns a signed and notarized Admission of Paternity and Application for Paternity Consent Order, proceeds as follows:
- a. In a single-allegation case, updates SEARCHS as in step 1c and proceeds as in CS 606.2 Paternity Consent Order.
 - b. In a multiple-allegation case, contacts the admitting father and explains the CSED will not accept an Admission without confirmation by genetic testing; attempts to negotiate voluntary testing as in step 8.
8. Negotiating Voluntary Genetic Testing. If the alleged or presumed father contacts the CSED to discuss voluntary genetic testing, attempts to negotiate an agreement to voluntary testing according to the procedures and policy in CS 604.1 Genetic Testing. If the alleged or presumed father agrees to voluntary testing, proceeds to step 9; if not proceeds to step 13.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Obligee

CS 602.1

9. Agreement to Genetic Testing. If the alleged or presumed father signs and returns a Consent to Genetic Testing, or agrees to voluntary genetic testing after discussion with the CSED and does not sign a Consent to Genetic Testing, follows the procedures in CS 604.1 for scheduling, monitoring, obtaining results, and settling costs of genetic testing.
10. Positive Genetic Testing Results. Upon receipt of positive genetic testing results, takes concurrent actions as follows:
 - a. Sends a package to the father containing form CS-601.1R, Genetic Testing Results Cover Letter, a copy of the genetic testing results, form CS-606.2A, Admission of Paternity and Application for Paternity Consent Order (if an acceptable version has not already been obtained), accompanied by the CSED information sheet, Paternity Information for Parents. Form CS-404.6A, Financial Affidavit is optional and may be included if the father is likely to cooperate voluntarily with support order establishment; see step 10e below.

NOTE:

Case has Multiple-Allegations before Testing. If the case involved multiple allegations before genetic testing, the single-allegation version of the Admission is not acceptable.

- b. Sends a package to the mother containing a cover letter (regional or custom) explaining the results and the next CSED actions, and, if applicable, requesting her cooperation in returning the Financial Affidavit, a copy of the genetic testing results, form CS-404.6A, Financial Affidavit (optional).
- c. Sends the original genetic testing results (the entire package, including the results, the chain of custody, and the photographs) to the CSED Paternity Registry at the OFH.
- d. Updates SEARCHS and, if applicable, notifies the public assistance agency as in step 1c (does not send a copy of the actual testing results to the assistance agency). In multiple-allegation cases, also updates SEARCHS as in step 1b to show the exclusion of all other alleged and presumed fathers in the case.

NOTE:

Confidentiality of Testing Results. The printed testing results received from the contracted testing laboratory, listing the probability of paternity and other scientific data, are confidential. The caseworker may give to the public assistance agency only the general information that genetic testing did or did not provide a presumption of paternity.

- e. Immediately proceeds to establishment of a support order as in CS 401.3 or CS 401.6.

11. Additional Paternity-Related Steps after Positive Testing. Following notification of the father about positive results, takes action as follows:
 - a. If the father signs and returns the Admission (or if an acceptable Admission has already been obtained), updates SEARCHS for the Admission as in step 1c and proceeds as in CS 606.2. (NOTE: This step is applicable even after a support order is established.)
 - b. If the father contacts the CSED and continues to deny paternity, proceeds as in CS 606.4 Referral to District Court. Continues with support order establishment, step 10e, during the referral process.

PATERNITY ESTABLISHMENT
Case Initiation—Mother Oblige

CS 602.1

12. Negative Genetic Testing Results. Upon receipt of negative genetic testing results, takes actions as follows:
- a. Sends a package to the man tested containing a cover letter (regional or custom) explaining the results a copy of the genetic testing results.
 - b. Sends a package to the mother containing a cover letter (regional or custom) explaining the results and, if applicable, requesting the mother's cooperation in naming other allegations a copy of the genetic testing results.
 - c. Sends the original genetic testing results the entire package, including the results, the chain of custody, and the photographs to the CSED Paternity Registry at the OFH. Retains a copy for the file.
 - d. Updates SEARCHS and notifies the public assistance agency as in step 1b, does not send a copy of the actual testing results to the assistance agency--see the NOTE in step 10d. Also, in a single-allegation case, reviews the case information and questions the mother about other possible allegations. If other allegations, including unknowns, are identified, proceeds as in step 6a.v. for each new allegation. If no other allegations are identified, proceeds as in step 6b.

In a multiple-allegation case, retains the results in the case file as evidence excluding the man as the father, and takes no further action for the excluded man; proceeds (or continues) with the appropriate steps for the other allegations.

13. Determining Jurisdiction for a Contested Case. For cases where paternity cannot be resolved under this section, determines whether jurisdiction can be asserted based on the criteria listed in policy, this section. If so, proceeds to step 14.

If not, identifies the proper responding state for an interstate referral, and proceeds as follows:

- a. If a waiver of jurisdiction was not sent with CS601-3A in step 3, prepares and sends form CS-405.5, Waiver of Personal Jurisdiction, and proceeds with an interstate referral as in step 13b. (The interstate referral may be delayed pending a response to the waiver of jurisdiction, but only to the extent the time frames for interstate compliance in the case permit.) If the waiver is returned, dismisses the interstate referral, and proceeds to step 14.
- b. If a waiver of jurisdiction was sent with the Notification of Paternity Claim in step 3 and not returned, begins the process to refer the case to the other state for paternity establishment. Monitors for completion of the action by the other state; upon completion updates SEARCHS as in step 1c and proceeds to establishment of a support order. END OF PATERNITY PROCESS

NOTE:

Jurisdiction in Foreign Country. If jurisdiction appears to lie with a foreign country, the caseworker should consult the CSED staff attorney.

14. Determining Reasonable Cause for a Contested Case Determines whether reasonable cause exists to proceed with a contested case against this alleged or presumed father, based on the requirements listed under Contested Case, policy in this section. If it does, follows procedures in CS 605.2 Notice of Parental Responsibility—Single-Allegation Cases or 605.3 Notice of parental Responsibility—Multiple-Allegation Cases. If it does not, either remove the man from the case, updating SEARCHS as in step 1b; processes other allegations, or retain the man as a participant in the case; attempts to obtain further information to support reasonable cause.