

## PATERNITY ESTABLISHMENT

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### Notice of Parental Responsibility—Single-Allegation Cases

CS 605.2

#### **SUPERSEDES**

CS 605.2, Notice of Parental Responsibility--Single-Allegation Cases, July 4, 2004

#### **REFERENCES**

MCA §§ 40-5-231-40-5-237, 40-6-101-40-6-118, Rule 301 Montana Rules of Evidence

#### **Policy**

#### **Applicability**

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

- 1) The case meets the definition of a single-allegation, unresolved paternity case given in CS 602.1 Case Initiation—Mother Oblige.
- 2) The CSSD can assert personal jurisdiction over the alleged father.
- 3) In the determination of the caseworker there is reasonable cause to proceed with the contested case against the alleged father.
- 4) The CSSD has taken the appropriate case initiation steps under CS 602.1 including obtaining birth records and mother's information; entering case information on SEARCHS; and, except in special situations, contacting the alleged father and giving him an opportunity to resolve paternity voluntarily.

See CS 602.1 for further details on jurisdiction, reasonable cause, and special situations for omitting initial contact. For multiple-allegation cases that otherwise meet the above conditions, refer to procedures in CS 605.3 Notice of Parental Responsibility—Multiple Allegation Cases.

#### **Purpose of the NPR**

The CSSD uses the Notice of Parental Responsibility (NPR) to begin the process of resolving contested paternity through genetic testing. The NPR gives the alleged father the opportunity to formally deny paternity and request a hearing, or to eliminate the need for a hearing by agreeing to genetic testing. The purpose of the hearing is to determine whether genetic testing should be ordered. The NPR is also used (1) to obtain resolution of paternity by direct consent of the alleged father or (2) to force resolution of paternity by default, if the alleged father fails to respond to the notice.

#### **Combined NPR-NOCS Process**

Except as listed below the CSSD will issue the NPR concurrently with the Notice and Order Concerning Support (NOCS) or the Subsequent Notice and Order Concerning Support. (For purposes of this section the term NOCS is used to mean either the NOCS or Subsequent NOCS document, or the overall activity of support order establishment.)

The CSSD will arrange for service of both notices (the NPR and the NOCS) and all accompanying documents in a single, combined package. Procedures for issuing and taking action on both the combined package and the NPR alone are given in this section. CS 401.3 Notice and Order Concerning Support, and CS 401.6 Subsequent Notice and Order Concerning Support give further details for NOCS procedures.

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EXCEPTIONS: The CSSD will proceed to issue an NPR without an accompanying NOCS *only* in the following situations:

- 1) The paternity case was previously barred by the statute of limitations and the case is a public assistance case. (Previously barred cases are those where the first IV-D application or referral was made before March 19, 1985, and no petition to establish paternity was filed in court within certain prescribed time limits; see historical versions of section 40-6-108, MCA for more specific parameters.) The CSSD staff attorney should be consulted in determining whether a case is subject to this restriction.
- 2) The alleged father is under the age of 18. The CSSD will not proceed to establish a support obligation until the obligor in the case is 18 years old.

#### NOTE:

**Special Requirements for Serving Minors.** In a case where the alleged father is under the age of 18 the CSSD will proceed to establish paternity; however, special requirements—including notification of the alleged father's parents—apply to service of the NPR and other subsequent actions. Consult the CSSD staff attorney before taking any action against, or making any contact with, a minor alleged father.

- 3) The CSSD has jurisdiction to establish paternity but not to establish the subsequent support order.

**NOTE: When Paternity Contacts Insufficient for Jurisdiction to Establish Support Order.** In most cases jurisdiction to establish paternity implies jurisdiction to establish the support order, but in some (rare) cases it does not. Certain jurisdictional contacts can be stronger for purposes of paternity than for order establishment, especially those that involve the alleged father's relationship with the child in the past. Consult the CSSD staff attorney whenever jurisdiction to establish a support order is based solely on one of the following conditions:

- (a) The alleged father resided with the child in Montana
  - (b) The alleged father resided in Montana and provided prenatal expenses or support for the child
  - (c) The child resided in Montana as a result of the alleged father's acts or directives
- 4) The case is a non-IV-E foster care referral. Under Montana law **only the courts** can establish child support orders in these cases. The CSSD can establish paternity but may not proceed to establishment of the support obligation. (This exception does not apply to IV-E cases.)

#### Notice of Default

The Notice of Default is an optional step in both the NPR and NOCS default processes, used at the discretion of the caseworker and subject to regional policy. Generally, the Notice of Default applies when (1) the alleged father has contacted the CSSD in response to the combined service but has not taken appropriate action on the notice in question and (2) in the discretion of the caseworker a Notice of Default would serve a useful purpose in the case by prompting the alleged father to take appropriate action on the NPR or NOCS. Appropriate action means formal agreement to the proposed CSSD action; written request for hearing; or specified cooperative action such as agreeing to genetic testing (NPR) or providing financial information (NOCS).

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#### Time Frames

Federal time frames for establishing support orders are very strict, and do not allow extra time for establishing paternity. The caseworker must manage all paternity and NOCS decisions and actions in this section in a way most likely to meet the following expedited process requirement:

*The CSSD must establish a support order or dismiss the action within 6 months after service of the NOCS. This time frame applies regardless of whether the CSSD must also establish paternity in the case.*

#### Procedures

**CAUTION:** In third-party obligee cases see CS 602.2 Case Initiation—Third-Party Obligee for proper procedures in all steps involving the mother below.

#### Procedures for Caseworker

1. Determining the NPR Package Determines whether a combined NPR-NOCS package is appropriate (see POLICY, this section), if so, proceeds to step 2 Combine NPR-NCS Package

If a combined package is not appropriate, proceeds with the NPR alone, as follows:

- a. Prepares and issues for service on the alleged father an NPR package containing items (2) through (5), and if applicable item (8), from step 2. Retains copies in the case file.
  - b. Obtains service of the NPR package by personal service; \*acknowledgment; or certified mail restricted delivery, return receipt requested.
  - c. Continues with actions in steps 3 through 29 as applicable, disregarding references to a NOCS case or actions. Upon resolution of paternity, monitors the status of the case, and proceeds to CS 401.3 Notice and Order Concerning Support or CS 401.6 Subsequent Notice and Order Concerning Support if and when applicable.
2. Combined NPR-NOCS Package. Prepares and issues for service on the alleged father a combined PR/NOCS package containing:
    - CS 605.2D Cover Letter for Combined NPR-NOCS Package
    - CS 605.2A Notice of Parental Responsibility
    - CS 606.2A Admission of Paternity and Application for Paternity Consent Order, accompanied by the CSSD information sheet, *Paternity Information for Parents*.

**NOTE:** 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.

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- CS-606.2B Statement Concerning Paternity (containing Denial of Paternity and Request for Hearing)
- CS-606.2F Consent to Genetic Testing
- CS-401.3A Notice and Order Concerning Support or CS-401.6A, Subsequent Notice and Order Concerning Support
- CS-404.6A Financial Affidavit
- Where service by certified mail is not appropriate or cannot be obtained use CS-401.3C Sheriff's Praecepte or \*CS-405.1 Acknowledgment of Receipt of Notice and Waiver of Service  
\*Special provision for service by acknowledgement. Sends the original acknowledgment form for the obligor's return. If the obligor does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure.

#### NOTE 1:

**In addition to sending the Notice and Acknowledgment form** retain a copy in the case file. Replace the copies of the acknowledgment form with the *signed* originals upon their return.

#### NOTE 2:

**Combined Praecepte.** When a sheriff's praecipe is used, the caseworker is responsible for adapting the praecipe for service of both notices. In most cases a single praecipe, instructing the sheriff to serve **both** the NPR and the NOCS on the man named, is appropriate. In some cases, two praecipes may be needed. For example, where the sheriff's office specifically requires a separate praecipe for each notice, or where the return of service following a combined praecipe will not include the names of the individual notices.

3. Service of Notice. Obtains service of the notice package by certified mail, restricted delivery, return receipt requested, personal service of the package through the sheriff or a civil process server or acknowledgment. Monitors for return of the appropriate documents or for contact by the alleged father, within 20 calendar days of service.

#### NOTE:

**Out-of-State Service.** When service is to occur outside Montana, and certified mail has not been effective, the caseworker should attempt to identify the best option--in terms of time and cost--for service in the local jurisdiction. Process servers (both sheriffs' offices and private process servers) vary in fees charged, prepayment requirements, reliability, and delivery time. If payment is required in advance, the caseworker must arrange for a state warrant; supervisor approval is required for advance payment.

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4. NOCS Action Against the Mother or a Custodian. Concurrently with service of the above notices on the alleged father, follows applicable procedures in CS 401.3 or 401.6 relating to the mother or a third-party custodian.
5. Response to the NPR. Takes action appropriate to the alleged father's timely response to the notice package as follows:

**NOTE 1:**

**Timely Response.** If an alleged father responds after the 20-day period has passed, but before any default order in step 7 is entered, the response is treated as timely.

**NOTE 2:**

**Responder's Intent.** In processing the response to the combined NPR-NOCS package, the caseworker should consider whether a returned document represents the alleged father's true intention for the corresponding notice. If there is evidence it does not, the caseworker should contact the alleged father and clarify the response. For example, the alleged father may return the NOCS Request for Hearing in an attempt to contest the paternity allegation.

- a. **No Response.** If the alleged father does not contact the CSSD or contacts the CSSD but does not follow with action appropriate to the NPR, follows the procedures in CS 606.1 for obtaining a Paternity Default Order and performing the necessary SEARCHS processing; concurrently, takes appropriate action in step 6 for establishment of the support order.

**NOTE:**

**Option for Notice of Default.** If regional policy allows, and if in the discretion of the caseworker a Notice of Default would apply (see POLICY), the caseworker may choose to add this step to the default action in 5a above by proceeding as follows:

Prepares and sends to the alleged father by regular mail and according to procedures in CS 405.4 Notice of Default, adjusting the language to fit the paternity default situation. If the alleged father responds to the Notice of Default by taking action in any of steps 5b through 5e within 10 working days, proceeds according to that step. If not, proceeds as in step 5a above.

- b. **Agreement to Genetic Testing.** If the alleged father returns a signed Consent to Genetic Testing, or contacts the CSSD and orally agrees to genetic testing, follows the procedures in CS 604.1 Genetic Testing for scheduling the appointments and notifying the alleged father and the mother; seeking a Consent to Genetic Testing if one has not been obtained; monitoring the appearance of the alleged father, the mother, and the child; taking action after any failure to appear; obtaining the testing results; and settling costs. Returns to this section to process the testing results; proceeds at that time with the NOCS case as in step 6 Proceeding with the NOCS Case.

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- c. Admission of Paternity. If the alleged father returns a signed Admission of Paternity and Application for Paternity Consent Order, follows the procedures in CS 606.2 Paternity Consent Order for obtaining a Paternity Consent Order and performing the necessary SEARCHS processing; concurrently, proceeds with the NOCS case as in step 6.
- d. Request for Hearing. If the alleged father returns a signed Statement Concerning Paternity, or an equivalent document requesting a hearing on the NPR, directly to the Office of Administrative Law Judge (OALJ), proceeds to step 11 Processing the Hearing Request. If the alleged father returns a hearing request directly to the region, immediately notes the date of receipt, reviews the request, and proceeds **that day** in step 5d(i) or 5d(ii) below. Upon resolution of paternity, proceeds with the NOCS case as in step 6.
  - i. If the request indicates the alleged father is willing to undergo genetic testing and does not claim any defenses described in step 12a, contacts the alleged father **that day** (the day the request is received) for clarification of the request. Explains there appears to be no reason for a hearing, and proceeds in sub step A or B below as applicable.
    - A. If the alleged father states he does not want to proceed to hearing, prepares and sends a letter to the alleged father confirming the conversation, and stating the CSSD considers the hearing request withdrawn. Retains the hearing request in the case file, enters a SEARCHS case note documenting the conversation and the letter, and proceeds with genetic testing as in step 5b.
    - B. If the alleged father states he does want to proceed to hearing, or if the alleged father cannot be contacted for clarification that day, proceeds as in step 5d(ii) below.
- NOTE:**

**Extended Pre-Hearing Contact.** Before ending any conversation with the alleged father in the above paragraph (B), it may be advantageous to skip directly to step 12c Pre-hearing Contact with the Alleged Father, Elements of the Case, to identify the contested elements of the case while the alleged father is still available, then return to step 5d(ii) below.
- ii. If the request does not indicate an agreement to genetic testing, or if it claims a defense described in step 12a Pre-hearing Contact with the Alleged Father, Defenses, immediately faxes the request, along with any dates the caseworker will be unable to attend a hearing, to the OALJ. Sends the original request to the OALJ by regular mail and enters a SEARCHS case note. If necessary, researches the issues raised in the hearing request. Proceeds to step 12 Pre-hearing Contact with the Alleged Father.
- e. Proof Against Paternity or CSSD Action. If the alleged father contacts the CSSD and proves he could not be the child's biological father (see NOTE below), or proves a defense listed in step 12a, dismisses both the NPR and the NOCS using two (separate) forms CS-403.1F Motion and Order to Dismiss Administrative Notice, adapted as necessary; updates the SEARCHS CHL and CAP screens; and proceeds to step 22.

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#### NOTE:

**Proof against Biological Paternity.** Proof the alleged father could not be the child's biological father must be conclusive and **must be approved by the CSSD staff attorney**. Generally, proof must be in the form of a showing the alleged father could not have had access to the child's mother during the probable time of conception (for example, he was on board a ship at sea or in prison) or medical statements affirming he was physically incapable of fathering a child during the time the child was conceived.

**Information Request** In addition to the actions in steps 5a through 5e above, sends a copy of the CSSD's Paternity Establishment Handbook (regional supply) to the appropriate person or persons if the alleged father or the mother contacts the CSSD with specific questions about a paternity hearing or other proceedings in the contested case or the alleged father requests a hearing and step 5d(ii) applies.

6. Proceeding with the NOCS Case. Upon resolution of paternity, takes action in CS 401.3 or CS 401.6 according to the alleged father's timely response to the NOCS.

EXCEPTION: If conditions for an NPR default (step 5a) or an NPR consent (step 5c) apply, does not wait for resolution via a final paternity order, but proceeds with any applicable default or consent action in CS 401.3 or CS 401.6 concurrently with the paternity default or consent process. *Advises the OALJ of the concurrent paternity process when transmitting any NOCS-related documents under this exception.*

#### NOTE:

**Coordinating NOCS Actions. IMPORTANT!** The caseworker is responsible for managing the timing and completion of **all** CSSD actions following service of the NPR-NOCS package. To comply with strict federal time frames for expedited process in support order establishment, **it is essential the CSSD proceed with the next step in the NOCS case as soon as it becomes appropriate.**

#### Administrative Law Judge (ALJ)

7. Paternity Default or Consent Order. Upon receipt of a paternity default or paternity consent package from the caseworker, proceeds as in CS 606.1, Paternity Default Order or CS 606.2, Paternity Consent Order; coordinates any accompanying NOCS actions as in step 8 below.

#### OALJ

8. Coordinating the NOCS Action. Upon receipt of any NOCS-related documents, checks SEARCHS for resolution of paternity and proceeds as follows:
  - a. If paternity has been resolved, proceeds as in CS 401.3 or CS 401.6
  - b. If paternity has not been resolved and the NOCS-related documents have been submitted by the caseworker under the EXCEPTION in step 6, processes the requested support order concurrently with the paternity consent order or the final paternity default order, as applicable. The document is a hearing request from the alleged father or the mother in response to the NOCS, delays processing the hearing request until the alleged father's paternity is resolved; notifies the caseworker of the NOCS delay.

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#### Caseworker

9. Reactivating the NOCS Case. Upon resolution of paternity in a case in which the OALJ has delayed processing the NOCS action in step 8b, reactivates the NOCS case by notifying the OALJ by telephone, electronically, or in writing. Paternity is resolved for purposes of NOCS reactivation when one of the following events occurs a:
  - CSSD Paternity Default Order is issued
  - CSSD Paternity Consent Order is issued
  - paternity order is issued by the district court
  - genetic testing results establishing the man as the father are received at the OALJ's Paternity Registry

#### OALJ

10. Processing the Hearing Request. Upon receipt of a signed Statement Concerning Paternity (hearing request) or the equivalent from the alleged father, determines whether the request is timely. If so, sends a copy of the hearing request to the caseworker, determines whether an Order to Respond applies, and proceeds to step 10a or 10b, as applicable. If the request is not timely, proceeds to step 10c.

#### NOTE 1:

**Timely Request.** A request is timely if it is received within 20 calendar days after the SEARCHS date of service of the NPR, or after 20 calendar days have passed but before any default order in step 7 is entered.

#### NOTE 2:

**Order to Respond.** An Order to Respond applies if both of the following conditions are met:

- The hearing request indicates the alleged father is willing to undergo genetic testing
  - The hearing request does not allege any defenses described in step 12a
- a. Timely Request/No Order to Respond. Upon being informed of the caseworker's unavailable dates, prepares, obtains the ALJ's signature on, and issues a Notice and Order for Genetic Testing Hearing setting the hearing date at least 45 days from the issue date, and setting a date for the exchange of witness lists and exhibits. Sends copies to the alleged father, the obligee, and the caseworker, and retains the original for the OALJ file. (The CSSD is required by law to send a copy of the notice of hearing to the obligee; the obligee may attend and observe the hearing as a nonparty or may testify as a witness if called. The requirement for notice of hearing does not extend to the mother in a third-party obligee case.)



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#### ALJ/ OALJ

Upon request of a party to the hearing, issues subpoenas as required to compel the appearance of witnesses or to obtain evidence.

#### OALJ

Upon request of a party holds a discovery conference to discuss the scope of discovery; prepares, obtains the ALJ's signature on, and issues an order setting discovery due dates; if necessary, arranges for a continuance of the genetic testing hearing. If the alleged father and the CSSD disagree on the scope of discovery, sets a hearing for the ALJ to determine the limits on discovery issues.

- b. Timely Request/Order to Respond Immediately prepares, obtains the ALJ's signature on, and issues an Order to Respond, explaining there appears to be no reason for a hearing, and setting a date by which the alleged father must submit a written clarification confirming or withdrawing his hearing request. The response date is 10 calendar days plus 3 mailing days after the Order to Respond is issued. Sends copies to the alleged father and the caseworker, retains the original for the OALJ file, and enters the appropriate SEARCHS event.

If the alleged father timely responds in writing confirming he is requesting a hearing, enters the appropriate SEARCHS event and proceeds with the request as in step 10a.

- i. If the alleged father does not timely respond in writing, or timely responds but withdraws or fails to confirm the hearing request, enters the appropriate SEARCHS event and proceeds to step 24 Issuing the Genetic Testing Subpoena. (The event sends a tickler prompting the caseworker to set up genetic testing and to send a Genetic Testing Subpoena to the OALJ to be issued.)

#### NOTE:

**Determining the Alleged Father's Intent.** In cases where a response in sub step (i) or (ii) above is unclear, the OALJ must obtain a determination from the Administrative Law Judge as to whether the hearing request is confirmed.

- c. Untimely Request Prepares obtains the ALJ's signature on, and issues an order denying the hearing for an untimely request. Sends copies to the alleged father and the caseworker and retains the original for the OALJ file.

#### Caseworker

11. Processing the Hearing Request. Upon receiving a copy of a hearing request from the OALJ, within 3 working days informs the OALJ of any dates the caseworker will be unable to attend a hearing. If necessary, researches the issues raised in the hearing request, proceeds to step 12 below.

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12. Pre-Hearing Contact with the Alleged Father. As soon as possible following receipt of the hearing request, contacts the alleged father concerning the status of the paternity case, and proceeds in steps 12a through 12c as applicable. If unable to contact the alleged father before a hearing is held, documents the attempts and skips to step 13 Hearing Checklist.

If an Order to Respond is issued in the case, monitors for results while proceeding with discussions in this step; if the OALJ requests a Genetic Testing Subpoena, coordinates actions as in step 14 Request for Genetic Testing Subpoena.

- a. Defenses If the alleged father has claimed an absolute defense against CSSD paternity action or has raised some other defense in the case (statute of limitations, lack of personal jurisdiction, physical defenses described in step 5e), discusses the facts of the defense. If applicable, arranges to obtain copies of any documents supporting the alleged father's claim.

**NOTE:**

**Absolute Defenses Defined.** Absolute defenses are facts that are not subject to further proof and that prevent the CSSD from proceeding with a paternity action. Examples of absolute defenses include (1) there is a current court order or irrebuttable presumption establishing another man as the father, (2) the CSSD served the NPR on the alleged father by mistake, intending to serve another man, (3) genetic testing has already excluded the alleged father, or (4) a paternity action for the same child is pending in another jurisdiction (so the CSSD does not have subject matter jurisdiction in the case).

- i. If the alleged father proves the defense, dismisses the NPR and the NOCS as in step 5e; dismisses any scheduled hearing as in step 17 Dismissing or Vacating the Hearing; updates the SEARCHS CHL and CAP screens; and proceeds to step 22 Alleged Father Excluded.
- ii. If the alleged father does not prove the defense, proceeds to step 12b.
- b. Cooperation Seeks the alleged father's voluntary cooperation in resolving paternity; if successful, proceeds in step 12b(i) or 12b(ii) below, as applicable. If not successful, proceeds to step 12c.
- i. If the alleged father agrees to voluntary testing and the OALJ has not yet scheduled a hearing, informs the OALJ and proceeds as in step 5b or if the OALJ has already scheduled a hearing, proceeds as directed in step 16 Arranging Genetic Testing after a hearing is Scheduled.

Proceeds in, or returns to, step 12c if it appears a hearing may be required despite the alleged father's oral agreement to testing.

**NOTE:**

**Negotiating Voluntary Genetic Testing.** At the caseworker's discretion, and only if conditions in CS 604.1 for waiving the genetic testing fee apply, the caseworker may agree to waive the testing fee in return for the alleged father's voluntary participation before the hearing. (If the CSSD is forced to order genetic testing via the hearing process and results are positive, the cost will be charged to the alleged father regardless of his agreement.)

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- ii. If the alleged father submits a signed Admission of Paternity and Application for Paternity Consent Order, dismisses the hearing as in step 17, updates SEARCHS (CAP and CHL screens), and proceeds as in step 5c.
  - c. Elements of the Case Reviews the elements of the case with the alleged father. Using the CSSD's Alleged Father Interview Guide, identifies any elements of the case the alleged father intends to contest at hearing. Contestable elements include service of notice, authority to act, jurisdiction, sexual contact, and (if applicable) presumption of paternity. If necessary, gathers additional, specific information about the alleged father's relationship with or access to the mother, or about the existence of a presumption. Proceeds to step 13.
13. Hearing Checklist. After completing the discussion in step 12c above (or if unable to contact the alleged father at all before the hearing), documents the discussion or attempt and prepares CS-605.2H Hearing Checklist. Sends the original to the OALJ; sends a copy to the alleged father and retains a copy for the case file; enters a SEARCHS event for the checklist issued.
14. Request for Genetic Testing Subpoena. Upon being notified by the OALJ that a Genetic Testing Subpoena can be issued as a result of an Order to Respond, proceeds as follows:
  - a. If a subpoena is needed in the case, schedules genetic testing as in CS 604.1, and proceeds to step 23 Preparing the Genetic Testing Subpoena.
  - b. If a subpoena is not needed, or may not be needed, because the alleged father has agreed to testing, signed an admission, or proved a defense in step 12, informs the OALJ and proceeds with resolution of paternity as applicable. If a subpoena later becomes necessary (for example, if the alleged father fails to appear for voluntary testing and has not signed a consent), proceeds in step 14a.

#### Caseworker

15. Hearing Preparation. Participates in discovery as necessary; compiles exhibits for use as evidence at the hearing and prepares a list of witnesses and exhibits. Checks SEARCHS for any reason to protect addresses or other personal information contained in the exhibits. For example, both the Paternity Affidavit and the Statement Concerning Paternity contain an address entered by the person returning the form--that is, the mother and the alleged father, respectively. If found, ensures that the protected information is removed from the copies sent to the other hearing participants (see paragraph below), and informs the OALJ of the information to be protected.

Copies the exhibits and the list; sends the originals to the OALJ; sends one copy to the alleged father and retains one copy for the case file. Does not send copies to the mother or obligee, except where the person will be called as a witness to testify at the hearing and needs a particular exhibit in relation to the testimony.

Arranges for testimony at the hearing, including the testimony of the mother (in cases where the mother is unavailable, consults the CSSD staff attorney). Requests subpoenas as necessary to produce witnesses or documents, using the procedures in CS 405.8. Subpoenas for obtaining information prior to hearing are subject to the discovery deadline; subpoenas compelling only the person's appearance at the hearing are not.

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**NOTE:**

**Evidence at Hearing.** Evidence presented at the hearing must support a reasonable probability the man had sexual intercourse with the mother during the probable time of conception. Refer to CS 602.5 Evidence at Hearing for guidance on identifying and evaluating possible evidence, and on preparing the case for hearing.

16. Arranging Genetic Testing after a Hearing Is Scheduled. If after the hearing is set the alleged father agrees to voluntary genetic testing, proceeds as in step 5b. In addition, resolves the hearing date as follows in conjunction with step 17 Dismissing or Vacating the Hearing:
  - a. If the alleged father has signed a Consent to Genetic Testing, dismisses the hearing.
  - b. If the alleged father is not willing to sign a Consent to Genetic Testing and the testing date is later than the hearing date, vacates the hearing date. If the alleged father appears and participates in testing, dismisses the hearing; if the alleged father fails to appear, contacts the OALJ to reschedule the hearing and proceeds to step 15.

**NOTE:**

**Caseworker Discretion in Vacating Hearing.** In this situation the caseworker may elect to proceed with the requested hearing despite the voluntary agreement. This determination should be based on the facts of the case (for example, the alleged father is likely not to appear for testing; or, there is a special need for a hearing record in the case).

- c. If the alleged father is not willing to sign a Consent to Genetic Testing and the testing date is earlier than the hearing date, allows the hearing date to stand, pending the alleged father's appearance at testing. If the alleged father appears and participates in testing, dismisses the hearing; if the alleged father fails to appear, proceeds with the hearing.
17. Dismissing or Vacating the Hearing. If at any time in step 12 or 16 it becomes necessary to vacate the hearing date or to dismiss the hearing, prepares CS-605.2C Motion and Order to Vacate/Dismiss Hearing Date, selecting the dismiss or vacate option as directed; sends the form to the OALJ, with copies to the alleged father, the obligee, and the case file.

**AJ**

18. Conducting the Hearing. Conducts the hearing in accordance with the requirements of MCA 40-5-226, 40-5-233 and 40-5-253, including questioning witnesses and determining outstanding issues. If the alleged father fails to appear at the hearing, deems the hearing request withdrawn and proceeds as in CS 606.1 Paternity Default Order.

Immediately after the hearing is opened, holds a status conference to identify the issues being contested. Where possible, obtains the alleged father's stipulation to uncontested elements of the CSSD's case, and the parties' agreement to entry of uncontested exhibits. If the alleged father has claimed any absolute defenses, or any other defenses that would make genetic testing unnecessary, determines the defenses before proceeding with the evidence or testimony of the hearing.

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#### NOTE:

**Scope of Hearing.** The scope and purpose of the hearing is limited to the single issue of whether there is a reasonable probability of sexual contact during the probable period of conception. If so, the CSSD can order genetic testing. The purpose of the hearing is *not* to determine paternity or non-paternity.

#### Caseworker

19. Caseworker Role at the Hearing. Attends and appears as a witness at the hearing. If the alleged father stipulates to elements of the CSSD's case, withdraws the exhibits corresponding to those elements. Requests that the ALJ enter a judgment for genetic testing costs (see CS 604.1 for use of a judgment in cost recovery). If it will be beneficial in proceeding with the case, requests that the ALJ enter an oral order at the time of the hearing. (An oral order does not replace the written order issued in step 20.)
20. Hearing Decision and Order. The following steps apply:

#### ALJ

- a. Issues a decision and order advising the parties of the results of the hearing.

#### OALJ

- b. Sends copies of the decision and order to the alleged father, the obligee, and the caseworker, retaining the original for the OALJ file; enters the appropriate SEARCHS events.

#### Caseworker

21. Hearing Results. Upon receiving the results of the hearing takes action as follows:
  - a. If the ALJ has deemed the alleged father's hearing request withdrawn, follows the appropriate procedures in CS 606.1 for initiating a Paternity Default Order; proceeds with the NOCS case as in step 6  
  
If the ALJ has determined there is no reasonable probability basis for ordering genetic testing, dismisses the NOCS as in 401.3 and, after consultation with the CSSD staff attorney either pursues and obtains additional evidence against the alleged father and issues a new NPR-NOCS or updates SEARCHS (CHL and CAP screens) to exclude the alleged father, and proceeds to step 22.
  - b. If the ALJ has determined reasonable probability exists and the alleged father should be required to submit to genetic testing, schedules genetic testing as in CS 604.1 and proceeds to step 23.
22. Alleged Father Excluded. If the alleged father is excluded by genetic testing, or action against him is dropped before or as a result of a hearing (step 5e or step 21b), contacts the mother about other possible fathers. Proceeds with case initiation for any new allegations including unknowns. If no other allegation is identified, notifies the assistance agency the mother has not cooperated; or, begins case closure in a non-public assistance case; or, obtains an investigative subpoena (CS 405.12) to compel the mother to cooperate, see CS 602.1 for proper use of this option.

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23. Preparing the Genetic Testing Subpoena. Prepares and sends to the OALJ, retaining a copy for the case file, a subpoena package containing,
- CS-605.2B Genetic Testing Subpoena, listing the date, time, and place of the appointment for the alleged father.
  - CS-401.3C Sheriff's Praecipe for personal service of the subpoena on the alleged father or if appropriate to the situation, CS-405.1 \*Acknowledgment of Receipt of Notice and Waiver of Service, requesting the alleged father's signature in place of personal service.

Also, if a subpoena is required to secure the participation of the mother and child, prepares and sends to the OALJ a separate subpoena package for the mother's appointment.

\*Special provision for service by acknowledgement. Sends the original acknowledgment for the obligor's return. If the obligor does not respond in writing to the acknowledgment within 20 calendar days after the date of mailing, the CSSD must issue the package for service by sheriff or private process server only, in accordance with the Montana Rules of Civil Procedure.

In addition to sending CS-405.1 Notice and Acknowledgment form retain a copy of the form in the case file. Upon return of the *signed* acknowledgment keep in the case file.

#### NOTE 1:

**Service of Subpoena Before Testing Date.** If sheriff's service cannot be assured before the scheduled testing date, it may be necessary to obtain private service of process.

#### NOTE 2:

**Determining the Need for Subpoena of the Mother.** A subpoena is appropriate only when (1) the ordinary processes of case closure or reduction of public assistance benefits are not available and (2) the mother is not expected to cooperate voluntarily. Generally, the success of attempts to schedule the genetic testing appointment, or the nature of previous contacts with the mother, will indicate whether she is likely to cooperate. Subpoenas are most common in third-party obligee cases where there has been little (or unproductive) contact with the child's natural mother, and in public assistance cases where the mother has been cited for non-cooperation.

#### OALJ

24. Issuing the Genetic Testing Subpoena. Upon receipt of a subpoena package prepared in step 23, obtains the ALJ's signature on the subpoena document, and makes copies. Sends the original issued subpoena, a copy, and the praecipe to the sheriff for service or if applicable, sends the original subpoena and the acknowledgment to the alleged father. Sends a copy of the issued subpoena to the caseworker.

[step 25 deleted]

#### Caseworker

26. Appearance for Genetic Testing. Monitors the genetic testing appointments for appearance and

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participation of the appropriate persons, as described in CS 604.1, and takes action as follows:

- a. If the alleged father fails to appear for the testing appointment, prepares default forms CS-606.1A and CS-606.1B and proceeds as in CS 606.1; proceeds with the NOCS case as in step 6.
- b. If the un subpoenaed mother fails to appear with the child for the testing appointment, contacts the mother and attempts to reschedule. If the mother refuses to appear takes action as follows:

**NOTE:**

**Option to Proceed Against Mother Immediately.** Upon the mother's failure to appear, the caseworker may elect to proceed directly to the following actions.

- i. In a public assistance case (mother obligee) 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), obtains a Genetic Testing Subpoena (step 23 Preparing the Genetic Testing Subpoena) to enforce the appearance of the mother and child.
- ii. In a non-public assistance case (mother obligee), begins case closure procedures. (EXCEPTION: In a father-applicant case, proceeds as in sub step (iii) below.)
- iii. In a third-party obligee case, obtains a Genetic Testing Subpoena (step 23) to enforce the appearance of the mother and child.

**NOTE:**

**Failure to Obey Genetic Testing Subpoena.** If the mother fails to appear for genetic testing after being served with a Genetic Testing Subpoena, the caseworker should consult with the CSSD staff attorney about obtaining a district court order or initiating some other appropriate remedy (contempt, license suspension) to compel her submission.

27. Processing the Genetic Testing Results. If all parties appear for genetic testing, follows the procedures in 604.1 for obtaining the results and settling costs.
  - a. If the results of genetic testing are positive, takes concurrent actions as follows:
    - i. Sends a package to the father containing 601.1R, Genetic Testing Results Cover Letter, a copy of the genetic testing results, 606.2A, Admission of Paternity and Application for Paternity Consent Order and any applicable forms for continuing the NOCS process for example, a Notice of Default, an amended NOCS.
    - ii. Sends a package to the mother containing a cover letter (regional or custom) explaining the results and any coordination with the NOCS process, a copy of the genetic testing results and any applicable forms for continuing the NOCS process.

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- iii. Sends the original results (the entire package, including the results, the chain of custody, and the photographs) to the CSSD Paternity Registry maintained by the OALJ; retains a copy for the case file.
- iv. Performs the necessary SEARCHS processing on the CHL and CAP screens to establish the alleged father as the father; if applicable, notifies the public assistance agency of paternity establishment (does *not* send a copy of the actual testing results to the assistance agency).

**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.

- v. Completes resolution of the paternity case as in step 29; simultaneously, returns to the NOCS case (reactivating the case if necessary as in step 9 Reactivating the NOCS Case) and proceeds as in step 6.
- b. If the results of genetic testing are negative, takes concurrent actions as follows:
- i. Sends a package to the father containing a cover letter (regional or custom) explaining the results, and a copy of the genetic testing results.
  - ii. Sends a package to the mother containing a cover letter (regional or custom) explaining the results and requesting the mother provide the names of other possible fathers as in the NOTE below and a copy of the genetic testing results.

**NOTE:**

**Request for Other Names.** In a non-public assistance case the cover letter informs the mother the CSSD may begin case closure if she does not provide other names. In a public assistance case the cover letter directs the mother to provide the names to the public assistance agency for referral to the CSSD.

- iii. Sends the original results (the entire package, including the results, the chain of custody, and the photographs) to the CSSD Paternity Registry maintained by the OALJ; retains a copy for the file.
- iv. Performs the necessary SEARCHS processing on the CAP and CHL screens to exclude the alleged father; if applicable, notifies the public assistance agency of the change in the participant's status (does *not* send a copy of the actual testing results to the assistance agency, see the NOTE in step 27a(iv) Processing the Genetic Testing Results).
- v. Dismisses the NOCS as in step 5e Response to the NPR, Proof against Paternity or CSSD action.
- vi. Reviews the case information and proceeds as in step 22 Alleged Father Excluded.

[step 28 deleted]



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29. Additional Paternity Steps after Positive Testing. Following notification of the father about positive genetic testing results, and while proceeding with the NOCS case, takes action as follows:
- a. If the father signs and returns the Admission, updates SEARCHS (CHL screen) for the admission and proceeds as in CS 606.2 Paternity Consent Order.
  - b. If the father contacts the CSSD and continues to deny paternity, follows the procedures in CS 606.4 Referral to District Court.

**NOTE:**

**Concurrent NOCS Actions.** The father has 20 days from receipt of positive genetic testing results to file an objection. The CSSD does not stay NOCS action during this response period but proceeds with **the** next appropriate NOCS step while the response period runs.