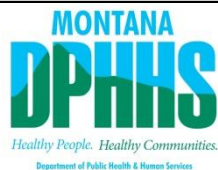


Department of Public Health and Human Services – Procedure



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Procedure:	<i>(PRO) Legal Intervention Post-Adjudication</i>
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1. PURPOSE

The purpose of this procedure is to outline the legal steps for Child and Family Services Division (CFSD) for staff when supporting families in court procedures upon a child being Adjudicated as a Youth in Need of Care.

A court-ordered Treatment Plan is intended to be a good faith, joint effort by both CFSD and the parent to preserve the parent child relationship and the family unit. The court-ordered treatment plan should provide direction and clarification for the parent to address the identified challenges within the time frames established by the court. It is a tool that outlines the actions necessary to achieve permanency, and specifics obligations for both the parent and CFSD. Court-ordered Treatment Plans are developed with the parent to support the parent in meeting the following outcomes:

- 1. Children are, first and foremost, protected from abuse and neglect.
- 2. Children have permanency and stability in their living situations.
- 3. Parents have enhanced their capacity to provide for the children’s needs.

2. SCOPE

This procedure applies to all cases when Temporary Legal Custody (TLC) has been granted to CFSD. This procedure continues throughout the life of the case until the child achieves permanency or ages out of child welfare system.

3. RESPONSIBILITY

The Child Protection Specialist (CPS) is responsible for ensuring that the requirements contained in this procedure are met. There are multiple Montana Code Annotated (MCA) statutes and federal regulations listed throughout this procedure. The CPS is responsible for reading and understanding these statutes and regulations.

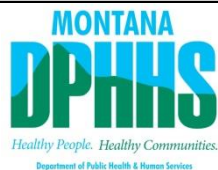
The Child Protection Specialist Supervisor (CPSS) is responsible for supervising and supporting the CPS to ensure the CPS understands and meets their responsibilities within this procedure. Should the CPS be unavailable to complete the requirements of the procedure, the CPSS will then ensure that the requirements contained this procedure are met.

Permanency Planning Specialist (PPS), or other assigned staff, is responsible for the requirements set forth in this procedure regarding “Adoptive Decisions Support Services (ADSS).”

4. DEFINITIONS

Hyperlink MT Definition and Acronyms

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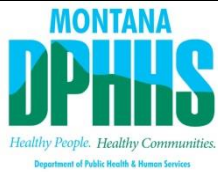
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5. PROCEDURE

1. Treatment Planning:

- A. Upon providing the parent with the “Notification to Parent,” the CPS will engage the parent in discussing the services and supports needed for a proposed Treatment Plan to be presented to the court. It is important for the CPS to engage actively with the parents in the development of the plan. The CPS may consider making use of engagement tools accessible to their region such as Family Engagement Meetings (FEM) and Family Support Team Meetings (FST). The CPS worker will consider the following when developing the proposed Treatment Plan with the parent:
 - a. Individualizing the plan to the parents by utilizing their input;
 - b. Ensuring it is specific to the child’s needs and the circumstances surrounding the family;
 - c. Recognizing the conditions leading to the intervention by CFSD, and
 - d. Including service options to achieve the parent’s goals and objectives.
- B. Following the identification of the components of a Treatment Plan with the parents, the CPS will develop a draft Treatment Plan, utilizing the approved template from their local County Attorney (CA) or Attorney General’s (AG) office.
 - a. Because Treatment Plans are time limited, the CPS are will ensure plans are:
 - i. Clearly written in plain language, which states the intention of the plan and the consequences that may result if it is not followed or is unsuccessful; and,
 - ii. Flexible enough to accommodate changes in the parent’s circumstances.
 - b. The CPS will ensure that Treatment Plans include the following:
 - i. Identification of the problems or conditions that resulted in the abuse or neglect.
 - ii. Treatment goals or objectives for each condition or requirement established in the plan, and in the case of a child who has been removed from the home, the Treatment Plan requirements will be correlated with the established “Conditions for Return.”
 - iii. Projected timeframes necessary to complete each of the treatment objectives.
 - iv. Specific treatment objectives that clearly define the separate roles and responsibilities of all the parties addressed in the Treatment Plan. The CPS will ensure the objectives are tailored to the existing circumstances of the parents involved by being:
 - 1. Reasonable;
 - 2. Measurable; and,
 - 3. Attainable.

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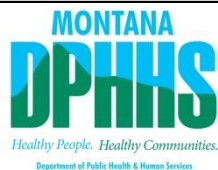
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- C. After submitting the Treatment Plan to the CA or AG, the CPS will meet with the parent and their attorney to:
 - a. Provide a copy of the proposed Treatment Plan.
 - b. Explain how completing the Treatment Plan will:
 - i. Resolve the identified safety concerns.
 - ii. Assist in meeting the Conditions for Return.
 - iii. Support keeping the child in the home or returning the child home.
 - iv. Discuss federal timelines, including termination of parental rights outlined in MCA 41-3-604.
 - c. Obtain the signature of the parent unless they decline to sign. If the parent declines to sign, the CPS will inform the parent and their attorney that the proposed treatment plan will be submitted to the court and the court has the authority to order the approval of the Treatment Plan.
- D. The CPS will file the proposed Treatment Plan with the CA or AG’s office to be presented to the court prior to the Dispositional Hearing.
- E. If at any point it is determined to be necessary to modify the Treatment Plan, the CPS will:
 - a. Meet with the family and involved attorneys to discuss the proposed modifications;
 - b. Modify and update the Treatment Plan to address all of the targeted safety concerns; and,
 - c. Submit the proposed modified Treatment Plan to the CA or AG for submission to the Court for review and approval.
- F. In the case where a parent needs additional time to complete the tasks on their court-ordered Treatment Plan, or there are circumstances for a child which requires the child to remain in the TLC of CFSD, the CPS will collaborate with the CA or AG to use the approved affidavit template for their jurisdiction at the time of filing, in order to request an extension of TLC.
- G. If TLC is expected to last more than six (6) months, the CPS must submit a TLC extension affidavit using the approved template at the time of filing for their jurisdiction with their CA or AG’s office prior to the TLC expiring.

2. Permanency Hearings

- A. Permanency Hearings are mandatory for all cases when CFSD possesses temporary or permanent legal custody of a child. The CPS will ensure that CFSD’s obligations for meeting legal requirements, including the time frames, for holding Permanency Hearings are met by submitting an affidavit to their CA or AG at least five (5) business days prior to the Permanency Hearing Court date. The affidavit will use the template in use by their jurisdiction at the time of filing as this template is used by the CA or AG to prepare and submit the petition to the Court in order for the following legal requirements to be met:
 - a. Permanency Hearing Time Frames:

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- i. A Permanency Hearing must be held:
 - 1. Within 30 days of the determination that reasonable efforts to provide preservation or reunification services are not necessary:
 - 2. No later than twelve (12) months after the following, whichever comes first:
 - A. The initial court finding the child has been subjected to abuse or neglect; or,
 - B. The child’s first 60 days of removal from the home.
 - 3. At least every twelve months for as long as the case remains open unless the child was never removed from the home.
 - A. If a Permanency Hearing is not held within twelve months from the month the child is considered to have entered foster care and every twelve months thereafter, the child loses Title IV-E eligibility for the period of time between when the permanency hearing should have been held until and when the permanency hearing is actually held.

- B. In writing the affidavit, the CPS will describe the services provided and include a recommendation regarding and supporting the child’s Permanency Plan Goal. The potential Permanency Plan Goals are as follows:
 - a. **Reunification** with the parent from whom the child was removed from. In this case the CPS will:
 - i. Monitor the Trial Home Visit until the statutory criteria for dismissal is met MCA 41-3-424.
 - ii. Submit a dismissal affidavit to their local CA or AG office, utilizing the approved template for their jurisdiction requesting dismissal.
 - b. **Permanent placement with the noncustodial parent**, superseding any existing custodial order. In this case, the CPS will:
 - i. Submit a dismissal affidavit to their local CA or AG office, utilizing the approved template for their jurisdiction requesting dismissal.
 - c. **Guardianship** with a selected prospective guardian. In this case the CPS will:
 - i. Ensure the completion of the Guardianship Finalization Checklist referenced in procedure 4.5.1 Guardianship Completion to ensure the child meets the eligibility criteria for guardianship referenced in MCA 41-3-444, and
 - ii. Submit an affidavit utilizing the approved template for their jurisdiction requesting the approval of guardianship to the CA or AG, upon receiving notice from the Foster Care Guardianship Program Manager that all documents and checklist requirements have been met.
 - d. **Adoption** by a resource family. In this case, the CPS will:

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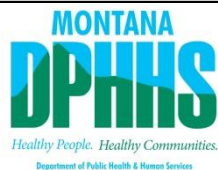
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- i. Ensure the Adoption Finalization Checklist is completed, and
 - ii. Submit an affidavit to the CA or AG requesting dismissal utilizing the approved template for their jurisdiction at the time of filing, once the adoption has been finalized.
- e. **Long Term Custody and Planned Permanent Living Arrangement** when the court finds that reunification of the child with the child's parent or guardian is not in the best interests of the child, the CPS will:
- i. Ensure the arrangement meets the statutory criteria in MCA 41-3-455.
 - ii. Document at each permanency hearing the:
 1. Efforts to place the child permanently with a parent, relative, or in a guardianship or adoptive placement.
 2. Compelling reasons why it is not in the best interest of the child to be placed permanently with a parent, relative or in a guardianship or adoptive placement, and that PPLA remains the best option for the child.
 3. Steps that have been taken to ensure that the foster family or congregate care facility follows the Reasonable and Prudent Parenting Standard and whether the child has regular opportunities to participate in age or developmentally appropriate activities; and
 4. Request to the court to ask the child about his/her desired permanency outcomes.
 5. For children 14 years of age or older, the Permanency Plans must meet additional statutory requirements found in MCA 41-3-445.
 - iii. Submit an affidavit utilizing the approved template for their jurisdiction to the CA or AG requesting LTC and PPLA.
- f. **Termination of Parental Rights (TPR)** must be considered if a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required, a petition to terminate parental rights must be filed unless an exception outlined in MCA 41-3-604 or in the Adoption and Safe Families Act (ASFA) is met. In this case, the CPS will submit an affidavit to the CA or AG utilizing the approved template for their jurisdiction at the time requesting the termination of the parent-child legal relationship and the granting of Permanent Legal Custody to CFSD.
- i. When ICWA does not apply, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided if the circumstances of a case meet the criteria in MCA 41-3-423.

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- ii. If the whereabouts of a parent or putative father are unknown, the CPS will submit an affidavit to the CA or AG stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The CPS will work with the CA or AG to meet the statutory criteria for service by publication in MCA 41-3-429.
- iii. In the case where a parent wants to Relinquish their rights, they CPS will ensure “Adoptive Decisions Support Services (ADSS)” will be offered by the PPS, or other assigned staff.
 - 1. The PPS, or other assigned staff, will submit an affidavit to the CA or AG utilizing the approved template for their jurisdiction at the time regarding the parents request to relinquish their parental rights.

6. RELATED DOCUMENTATION

- Notification to Parent
- Guardianship Finalization Checklist
- Adoption Finalization Checklist

7. RELATED FEDERAL OR STATE GUIDANCE (IF APPLICABLE)

CFSD will reference the specific Montana Code Annotated (MCA) statute in Title 41 from the list below in the procedures to which they apply:

- M.C.A § 41-3-102
- M.C.A § 41-3-423
- M.C.A § 41-3-429
- M.C.A § 41-3-434
- M.C.A § 41-3-443
- M.C.A § 41-3-444
- M.C.A § 41-3-455
- M.C.A § 41-3-604
- M.C.A § 41-3-609

- U.S. Constitution, 671 Section 471
- Indian Child Welfare Act, 25 USC 1901, et seq. 5
- Adoption and Safe Families Act of 1997