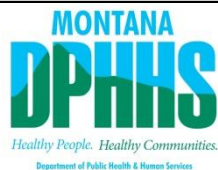


Department of Public Health and Human Services – Procedure



Category:	<i>Child and Family Services Division</i>
Procedure:	<i>(PRO) Legal Intervention Pre-Adjudication</i>
Procedure Number	

1. PURPOSE

The purpose of this procedure provides guidance to Child and Family Services Division (CFSD) staff regarding the steps they must follow when seeking legal intervention with a family and their children. Per Montana State Law, CFSD seeks judicial oversight and sanctioning if and when certain safety thresholds have been met.

CFSD seeks legal involvement of a family, with decision making authority for the children transferred to CFSD, when there is evidence that the lives of one or more children have been, or will be, adversely affected and further threatened by those responsible for their care and protection. CFSD does this with continued emphasis on engaging and supporting the family 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. Families have enhanced capacity to provide for their children’s needs.

2. SCOPE

This procedure applies to all families for whom CFSD petitions the court for:

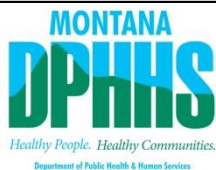
1. Emergency Protective Services (EPS) and Temporary Investigative Authority (TIA);
or
2. Emergency Protective Services and Adjudication with one of the following dispositions:
 - A. Temporary Legal Custody (TLC);
 - B. Long Term Custody (LTC);
 - C. Termination of Parental Rights with Permanent Legal Custody (PLC);
 - D. Placement with Non-Custodial Parent; or,
 - E. Limited Emancipation of a Youth 16 or Older.

This procedure begins upon the filing of petitions for EPS, TIA, or Adjudication, seeking relief in a District Court, and this procedure ends upon either the dismissal of the legal case prior to adjudication, or the adjudication of a child as a Youth in Need of Care (YINC).

3. RESPONSIBILITY

The Child Protection Specialist (CPS) is responsible for ensuring that the requirements of this procedure are met.

Department of Public Health and Human Services – Procedure



Category:	<i>Child and Family Services Division</i>
Procedure:	<i>(PRO) Legal Intervention Pre-Adjudication</i>
Procedure Number	

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.

4. DEFINITIONS

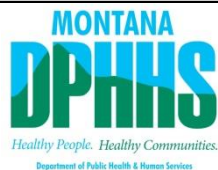
MT Definition Hyperlink

5. PROCEDURE:

A. When it is determined an affidavit for legal action is necessary, the CPS will compile an affidavit that complies with the practice standards specific to the local County Attorney (CA)'s or Attorney General's (GA) office:

1. The affidavit requesting EPS must contain:
 - a. the evidence and documentation of efforts made to prevent removal of the child;
 - b. the efforts made to complete the investigation;
 - c. the evidence and documentation of risk of harm to the child; and,
 - d. include attachments of the Immediate Danger Assessment and the In or Out of Home Protection Plan.
2. When requesting TIA, the CPS will ensure the affidavit is clear on the specific aspects of the assessment that still need to occur in order for CFSD to determine if a child is at risk of abuse and neglect.
3. If the initial affidavit is requesting EPS and TIA, an additional affidavit will be required for either dismissal or for adjudication.
4. If the CPS has completed the investigation and it is determined that adjudication of the child as a YINC will not be pursued, the CPS will submit an affidavit requesting dismissal to the County Attorney or Assistant Attorney General assigned to the task. The affidavit requesting dismissal must:
 - a. Inform the Court that the issues that led to CFSD intervention have been resolved; and
 - b. That no reason exists for further CFSD intervention or monitoring.
5. When requesting adjudication, the CPS will include in the affidavit a request for a disposition. The CPS will collaborate with the CA or AG to use the approved

Department of Public Health and Human Services – Procedure

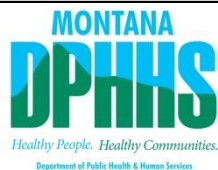


Category:	<i>Child and Family Services Division</i>
Procedure:	<i>(PRO) Legal Intervention Pre-Adjudication</i>
Procedure Number	

affidavit template for their jurisdiction at the time of filing. The CPS will provide facts to support a judicial finding for the disposition being requested, including in their affidavit information regarding the safety determination that was made, and any information required in the MCA’s cited below:

- a. Temporary Legal Custody (TLC) MCA 41-3-442
 - b. Long Term Custody (LTC) MCA 41-3-445
 - c. Termination of Parental Rights with Permanent Legal Custody MCA 41-3-423
 - d. Placement with Non-Custodial Parent MCA 41-3-438
 - e. Limited Emancipation of a Youth 16 or Older MCA 41-1-501
6. The CPS must include information specific to alleged abuse or neglect in their affidavit when either:
- a. The initial affidavit is requesting EPS and adjudication of the child as a YINC; or,
 - b. The CPS has completed their investigation under TIA authority, and it is determined that adjudication of the child as a YINC will be pursued.
7. In the case that a custodial parent is refusing to provide information regarding the identity, or contact information, of the non-custodial parent, the CPS will request that CA or AG to request this provision of information to be included in the Order for EPS.
- B. The CPS will submit the affidavit to the CA or AG within two (2) business days of the decision to initiate a legal proceeding.
- C. The CPS will meet with the parent(s) who is the subject of the affidavit within 5 business days and provide them with a copy of the affidavit and engage the family in the next steps of the process. The CPS will:
- 1. Notify the parent prior to the in-person meeting that they may have a support person present during any in-person meeting.
 - 2. Explain the court process, and let the parent know that CFSD does not control court scheduling or timelines of hearings. The parent can expect the EPS hearing to be held within 20 days.
 - a. The CPS will also share with the parent the option to have the EPS held within 5 business days, if requested by the parent. If the parent would like to pursue having an early EPS hearing, the CPS will instruct the parent to call 1-888-241-8657.

Department of Public Health and Human Services – Procedure



Category:	<i>Child and Family Services Division</i>
Procedure:	<i>(PRO) Legal Intervention Pre-Adjudication</i>
Procedure Number	

- b. When applicable, the CPS worker will discuss the Pre-Conference Hearing process with the family.
- 3. Prepare for next steps by discussing:
 - a. Conditions for Return, when applicable.
 - b. In-Home Safety Plan, when applicable.
 - c. Identifying services for Treatment Plan.

6. RELATED DOCUMENTATION

What Happens Next Handbooks

7. RELATED FEDERAL OR STATE GUIDANCE (IF APPLICABLE)

CFSD will reference the specifics statute from the list below in the procedures to which they apply:

U.S. Constitution, 9th and 14th Amendments Montana Constitution Mont. Code Annotated (MCA).

MCA 41-3-101, 102, and 103

MCA 41-3-301

MCA 41-3-422, 423, 424 and 427

MCA 41-3-432, 433, 437, and 438

MCA 41-3-440, 442, 444, and 445

MCA 52-1-101, 102, 103

Adoption and Safe Families Act of 1997, 42 U.S.C. 671(P. L 105-89)