

SUPERSEDES

[New Section]

REFERENCES

MCA 40-4-204(8)

Introduction

Periodically a situation is encountered where the physical care and keeping of a child in a case differs from the legal custody and parenting arrangement indicated in a Montana District Court Order or a support obligation established by the Child Support Services Division (CSSD). Under these circumstances, the question of whether or not to provide ongoing services arises.

As of October 1, 1993 child support orders issued by both a Montana District Court and CSSD Administrative Orders “follow the child”. Support orders issued after that time are required to designate that the support payee is the person or agency with custody of the child, or a person designated by the legal custodian as a caretaker of the child or an assignee or agency who is the assignee of the child support obligation. If an order issued on or after October 1, 1993 neglects to include the provision, the support obligation still follows the child, by operation of law. This law, however, does **not** apply to court orders issued in Montana prior to October 1, 1993 or to orders issued in other states.

When a child moves out of the home of a custodial parent and into the home of a third-party for an extended period, it is often referred to as the 24-hour babysitting rule. Generally, the case scenario is a de facto change in physical custody and decisions regarding the collection and redirection of child support need to be made.

Policy

Applicability

This section contains policy and procedure for providing ongoing CSSD services to those cases in which circumstances require a child reside with a third-party for an extended period, or where the physical custody of the child has changed to the obligor, or a person or agency not originally named in the parenting plan. This applies to paternity, establishment, or enforcement cases.

Scope of Action

The third-party does not have to be a relative of the child or custodial parent for the 24-hour babysitting rule to apply. For instance, if a child were to move into the home of an adult friend the 24-hour babysitting rule could apply. The assumption is that the custodial parent has reached an agreement with the third-party for reimbursement of the child’s expenses. In such a situation, the custodian acts as a pass-through for the child support payment from the obligor.

The exception to this rule occurs when the child moves in with the obligor parent of the CSSD case, or the child is in a state institution, treatment facility, or a federal Job Corps program. In these instances, the CSSD will **not** enforce ongoing current support for the custodial parent.

CASE MANAGEMENT—CASE STATUS

Physical Change of Child Custody

CS 201.9

When a child is in a state institution or treatment facility and the custody of the child is transferred to the state, the custodial parent is not entitled to receive current support from the obligor parent during the period where the state has custody of the child. In addition, when the third-party is the federal Job Corps program, the federal government assumes responsibility for the child's support and similar to the state having custody, the 24-hour Babysitting Rule does not apply.

Child and Family Services and Current Support

Frequently a child in an open case is placed with a state agency, such as Child and Family Services (CFS/foster care). In some of these instances, the CSSD learns of the placement through the parent or in information from CHIMES EA. Evidence that the child has been placed in state custody may also be found in a copy of the court order placing the child in state custody, through contact with the CSSD Foster Care liaison, the foster care worker, or information in the Child and Adult Protective Services (CAPS) system. Even when there is evidence of the child's placement a referral from CFS is necessary for the CSSD to provide services.

Upon confirming that a child has been placed with a state agency, including tribal foster care, close current support accounts. The arrears amount that accrued prior to the child's placement in state custody are still owed to the custodial parent and the CSSD will continue to seek recovery of the arrears.

Exception:

When a child is placed in foster care, a temporary investigative authority (TIA) period may be instituted. During the 90-day TIA period, the custodial parent may still be eligible for public assistance benefits and is still entitled to receive current child support payments. Accounts for the custodial parent during the TIA period should not be placed on hold.

For a case involving Tribal Social Services, placement of the child should be verified by the CSSD Foster Care liaison or by obtaining a copy of the tribal order, see Tribal Social Services below.

Foster Care

Upon learning that the child has been placed in foster care, including tribal foster care, the case should be evaluated for the following information:

1. Proof the child is in state or tribal foster care through contact with the CSSD Foster Care liaison, the foster care worker, confirmation through CAPS or receipt of the placement order.
2. The child has been or is expected to remain in foster care longer than 90 days, and is no longer receiving TANF or Medicaid benefits in the custodial parent's household.
3. The state or tribal agency has assumed custody of the child, either temporarily or permanently.

Non-paid Foster Care Placements

In a non-paid foster care placement, the custodial parent is no longer eligible for current support, see the chart below. Non-paid foster care occurs when a child is placed with a foster family that is not licensed and therefore not eligible to receive foster care payments. In most non-paid placements, the child is placed with a family member in a kinship placement. If the family chooses to go through the licensing process, the status can change from a non-paid placement to a paid placement. A non-paid foster care custodian can apply for a child only TANF grant and Medicaid on behalf of the child or can apply for CSSD services by submitting a non-TANF application.

NOTE:

The CSSD does not provide services to CFS when a child is placed in a non-paid foster care placement because there is no debt to reimburse.

If the CSSD obtains proof that a non-paid foster care case has changed to a paid foster care placement the now paid custodian receiving CSSD services is no longer eligible to receive current support. A paid foster care custodian is not entitled to receive foster care payment *and* child support at the same time. When this occurs, current accounts on the case should be closed. If arrears amounts have accrued, prior to the case becoming a paid placement, those arrears are still owed and the CSSD will continue to seek recovery of the arrears. This applies even if the CSSD has not received a foster care referral.

Tribal Social Services

For a case involving tribal foster care, attempts to verify that the child is in the custody or ward of the tribal court may be necessary. Contact the CSSD Foster Care Liaison for assistance as they may be able to provide a copy of the tribal court order. If known, contact the tribal foster care worker for a copy of the tribal court order. Document attempts to verify custody of the child, and any documentation received.

The Department of Corrections and the CSSD

The CSSD does not accept referrals from the Department of Corrections (DOC). The DOC has its own child support enforcement program.

Upon learning a child might be in the care of the DOC, the case should be reviewed to confirm placement. Confirmation can be obtained through the CSSD Foster Care liaison, a DOC worker, CAPS or by receipt of the commitment order. If the placement is confirmed the custodial parent is no longer entitled to receive current support payments.

Declaration of Physical Care and Keeping of Minor Child

When an obligor parent claims the day-to-day care and keeping of the minor child the caseworker should contact the custodial parent or the initiating state to confirm the change in custody. If the custodial parent disputes the alleged custody arrangement, the matter may need to be decided by a court of law.

The CS 201.9 Declaration of Physical Care and Keeping of Minor Child(ren) can be sent to the obligor in cases where the custodial parent disputes the change in custody, or when the caseworker is unable to locate the custodial parent. It is the responsibility of the obligor parent to complete and return the signed Declaration of Physical Care and Keeping of Minor Child(ren) to the CSSD.

Circumstances under which it is **not** necessary to send the Declaration:

- the custodial parent does not dispute the change in custody
- there is a change in the child’s TANF custodian
- a state or federal agency has assumed custodial care and keeping of the child
- the obligor has assumed care and keeping of the child upon the death of the custodial parent
- there is a new court order with a new parenting plan

If the court order naming the obligor as custodian is questionable, consult regional legal staff.

Redirection of Child Support Payment to the Third-party Custodian

The third-party must open a CSSD case through a public assistance referral, or by submitting a non-TANF application for CSSD services. Upon case opening, review the support order. If the order follows the child, current support can be redirected in the third-party case. If the support order is not a Montana order, or does not follow the child, contact the initiating state or CSSD regional legal unit for information on how to proceed.

If the custodial parent disputes custody of the child, the caseworker should place current accounts on hold and not redirect payments to the third-party case until the dispute is resolved. If necessary, the third-party may pursue a modification of the court’s parenting order. Consult with the regional legal staff if questions arise.

Under no circumstances can a payment be redirected to a third-party without an open CSSD case with that third-party.

Ongoing CSSD services to a Third-party

While providing services to a third-party, the CSSD may become aware that the child has left the custody of that third-party and moved into the home of another party. When this occurs, the CSSD **does not apply** the 24-hour Babysitting Rule to the third-party.

Close the current accounts, if there are arrears continue to seek the recovery of the amounts. If there are no arrears case closure can be pursued under the criteria and procedures found in CS 201.5 Identifying Closed Case Status.

**Applying the 24-hour Babysitting Rule
Applies to Montana Orders Only***

	Is the CP eligible for ongoing CSSD services?	Use document cs 201.9 Declaration of Physical Care and Keeping of Minor Child(ren)	Is CP eligible for ongoing Paternity/ Establishment services?
Child moves in w/third-party relative (i.e., grandma, aunt) or a friend	Yes. The CSSD will enforce the current support obligation & distribute collections to the CP	<ul style="list-style-type: none"> • If a non-TANF application for services is received • If the custody of the child is disputed it may be necessary to send cs 201.9 	Yes. CSSD will seek to establish paternity and an order for the CP
Child enters into (non-paid or paid) foster care or treatment facility & custody of the child is transferred to the state	No. The CP is no longer entitled to current support paid by the obligor	No Declaration is needed	No. The CP is no longer entitled to current support
Child enters into the federal Job Corps program or Montana Youth Challenge Academy	No. The government assumes responsibility for the child. Current support is no longer due from the obligor	No Declaration is needed Send 60-day Case Closure letter	No. The CP is no longer entitled to current support
Child moves in with the obligor	No. The CP is no longer entitled to current support	<ul style="list-style-type: none"> • Yes. Send the Declaration. If the CP disputes the alleged change in custody, the matter needs to be decided by a court of law • Do not send the Declaration if the change in custody occurred due to the CP's Death 	No. The CP is no longer entitled to current support

The 24-hour Babysitting Rule ends when the third-party applies for CSSD services either through a TANF referral or a Non-TANF application

Never distribute collections directly to a third-party custodian without an application or referral from that third-party.

Does **not** apply to court orders issued in Montana prior to October 1, 1993 **or** to orders issued in other states*.

Procedures for Caseworker

When circumstances require that a child reside with a third-party for an extended period, determine the custodial parent's eligibility ongoing CSSD services and payments by reviewing the physical custody of the child.

1. The 24-hour babysitting rule applies in circumstances where a child resides with a third party such as a grandma, an aunt or a friend for an extended period, and a referral from that third party has not been received.
 - a. If the child is in a paternity or establishment case, follow procedures as in CS 602.1 Case Initiation—Mother Oblige and in CS 401.3 Notice and Order Concerning Support.
 - b. If the child is in an enforcement case, continue to enforce the current support obligation and distribute collections to the custodial parent. Under no circumstances can a payment be redirected to a third party without an open CSSD case from that third party.
 - c. Consult with regional legal staff on questions that may arise.

When circumstances require that a child reside with a third-party for an extended period, but the 24-hour babysitting rule **does not** apply, review the scenarios below and follow the applicable procedures.

2. A public assistance referral is received or the third-party submits a non-TANF application for CSSD services, proceed with the following:
 - a. Review the support order. If it is a Montana order issued after October 1, 1993, the order follows the child. If the support order is not a Montana order or does not follow the child, contact the initiating state or regional legal unit for information on how to proceed.
 - b. If custody of the child is disputed send CS 201.9 Declaration of Physical Care and Keeping of Minor Child(ren) to the party claiming custody of the child. Inform the third-party it may be necessary to pursue a modification of the court's parenting order. Place current accounts on hold and do not redirect payments until the dispute is resolved.
 - c. Document in case notes

NOTE:

While providing services to a third-party in a CSSD case, the CSSD may become aware that the child has left the custody of that third-party and moved into the home of another party. When this occurs, the CSSD does **not** apply the 24-hour babysitting rule to another party. Close the current accounts and if there are arrears continue to seek the recovery of the amounts. If there are no arrears case closure can be pursued under the criteria and procedures found in CS 201.5 Identifying Closed Case Status.

3. Child enters into foster care or a treatment facility and custody of the child is transferred to the state, the custodial parent is no longer entitled to ongoing CSSD services or current support.
 - a. Foster care or treatment facility
 - 1) Review the case for evidence of the child’s placement through contact with the CSSD Foster Care liaison, the foster care worker, or information in CAPS.

Exception:
During the 90-day TIA period, the custodial parent may still be eligible for public assistance benefits and is still entitled to current child support payments. Accounts for the custodial parent during this period should not be placed on hold or closed.
 - 2) Close current support accounts on the custodial parent’s case; the arrears amount that have accrued are still owed continue to seek recovery. If there are no arrears, case closure can be pursued under the criteria and procedures found in CS 201.5 Identifying Closed Case Status.
 - 3) Document in case notes the confirmation received regarding the child placement into foster care.
 - 4) Upon receipt of a referral or application for CSSD services, open a case for CFS or for the non-paid foster care custodian.
 - b. Tribal Social Services
 - 1) Confirm the placement with tribal social services by contacting the CSSD Foster Care liaison or the tribal worker to obtain a copy of the tribal order.
 - 2) Close current support accounts on the foster care case; the arrears amount that have accrued are still owed continue to seek recovery. If there are no arrears, case closure can be pursued under the criteria and procedures found in CS 201.5 Identifying Closed Case Status.
 - 3) Document in case notes the confirmation received regarding the change in placement to tribal foster care.
4. Child enters into the federal Job Corps program or Montana Youth Challenge Academy. The custody of the child is transferred, and the government assumes responsibility for the child. The custodial parent is no longer entitled to current support.
 - a. Send a letter to the custodial party to confirm the change in custody:
 - If there are arrears owed send CS 510-8B CP Action letter to confirm the change in custody.
 - If no arrears are owed send CS 201-5B 60-day Closure letter.

CASE MANAGEMENT—CASE STATUS

Physical Change of Child Custody

CS 201.9

- b. Place holds on the current support accounts until confirmation of custody is received.
 - c. Upon receiving confirmation of a change in custody, close current support accounts on the case; the arrears amount that have accrued are still owed continue to seek recovery. If there are no arrears, case closure can be pursued under the criteria and procedures found in CS 201.5 Identifying Closed Case Status.
 - d. Document in case notes
5. Child moves in with the obligor. The custodial parent is no longer entitled to ongoing CSSD services or current support.
- a. Contact the custodial parent or the initiating state to confirm the change in custody.
 - b. If the custodial parent cannot be located or disputes the alleged custody arrangement, send the Declaration of Physical Care and Keeping of Minor Child(ren) to the obligor. If the custodial parent disputes the alleged custody arrangement, the matter may need to be decided by a court of law.

NOTE:

Do not send the cs 209.1 Declaration of Change in Child Custody if the change in custody occurred due to the death of the custodial parent.

- c. If custody is not disputed, close current support accounts on the case; the arrears amount that have accrued are still owed continue to seek recovery. If there are no arrears, case closure can be pursued under the criteria and procedures found in CS 201.5 Identifying Closed Case Status.
- d. Document in case notes