

The State Removed the Children; Now What Happens?

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Emergency Protective Services

Petition for Immediate Protection and Emergency Protective Services

- filed when the social worker must make an emergency removal of the child from the parent's home. An ex parte order of immediate protection is issued upon filing the petition and additional reliefs may be granted after the show cause hearing.

Evidentiary standard: Non-ICWA case when a child is placed in foster care: Probable cause that the child has been or is at risk of abuse, neglect, or abandonment. ICWA case when a child is placed in foster care: Clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

Child and Family Services Manual Policy 301-1

If the Social Worker removes -

- "Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical custody of the youth that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services." – MCA 41-3-301 (1)
- If child removed – social worker must submit an affidavit to the County Attorney AND the parent, if possible, within 2 working days of the removal – MCA 41-3-301 (5)
- A Petition must be filed within 5 working day, excluding weekends and holidays, unless other protective measures are put in place acceptable to CFS – Id.
- If Dept. decides to file Petition – social worker is required to interview parents, if parent reasonably available, prior to filing Petition - MCA 41-3-301 (7)

Show Cause Hearing

- Timing MCA 41-3-432 (1)(a) & (c)
- Must be within 20 days of filing Petition
- Exceptions
 - Stipulation of the parties OR
 - Order for the court
- Only continue upon a showing of substantial injustice

ICWA Concerns MCA 41-3-432 (1)(b)

- ICWA expert required if Dept. seeks to place outside home
- Must show continued custody by parent (or Indian custodian) is likely to result in serious emotional or physical harm
- Burden of proof - Clear and Convincing

BURDEN MCA 41-3-432 (2)

- Department has the burden
- Burden is PROBABLE CAUSE
 - What is Probable Cause –
 - If the facts and circumstances within the social workers personal knowledge are sufficient to warrant a reasonable person to believe that child has been abused or neglected or is at risk of abuse or neglect. (social worker training?)
- Important to keep burden on Department

Evidence at Hearing MCA 41-3-432 (3)

- Consider all evidence
- Provide opportunity for:
 - Parent
 - Guardian
 - Other person having custody
- To provide testimony
- Hearsay of affected child admissible
- Parent, guardian or other person may get counsel pursuant to 41-3-425
- Hearsay otherwise admissible? Shouldn't be
 - Preliminary matters
 - Guise of social worker is expert and can rely on hearsay forming opinion

Court Advisement MCA 41-3-432 (4)

- Court shall explain procedure to be followed in case and explain parties' rights
- Right to counsel
- Right to challenge allegations in Petition
- Must be given opportunity to admit or deny
- Must inquire about notice provisions under ICWA and if ICWA applicable

Required Findings MCA 41-3-432 (5)

- Must (but not limited to) make written findings:
 - Whether child returned if emergency removal, remain in temporary out-of-home care or removed if not previously removed
 - If removal, why continuation in the home is contrary to child's best interests and welfare
 - Whether Department made reasonable effort to avoid protective placement or make it possible to be placed at home safely
 - Financial support under 41-3-446
 - If another hearing is needed, what date and time.

Permissive Findings MCA 41-3-432 (6)

- Court may consider at the Show Cause:
 - Terms and conditions for parental visitations
 - Services needed
 - Examinations
 - Evaluations
 - Counseling
 - Immediate Services
 - Protection??

AFTER HEARING MCA 41-3-432 (7)(8)(9)

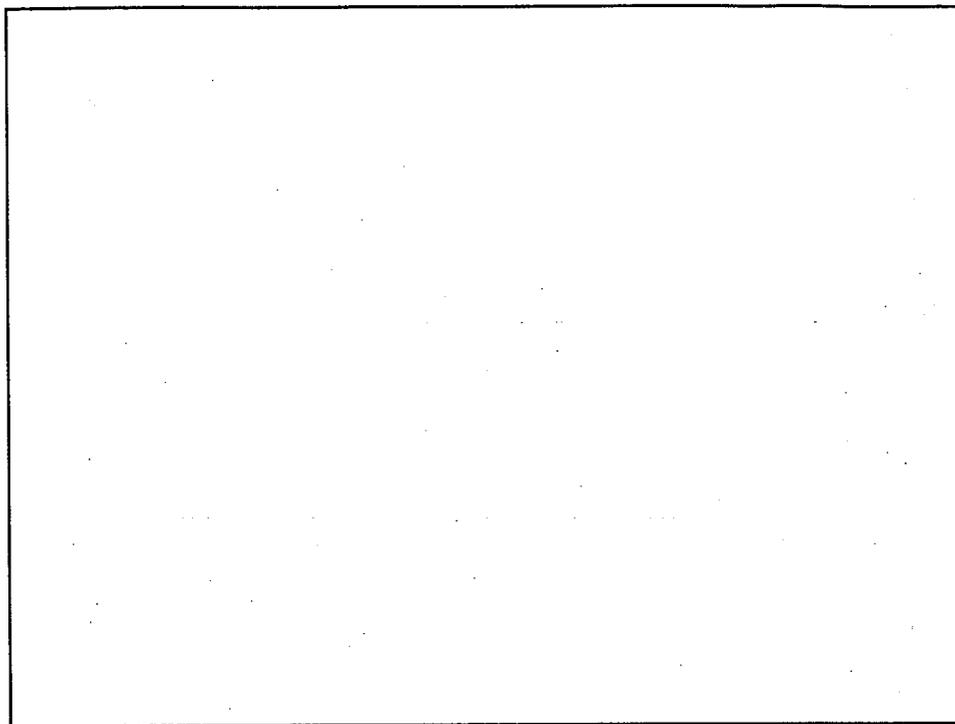
- Order relief requested or amend previous immediate protection order. Order must be in writing.
- If child not returned – parents may request citizen review board – 41-3-1010 – must be within 30 days
- ADJUDICATION if (MCA 41-3-437 (1) and (2))
 - Court determines by preponderance of the evidence child is youth in need of care
 - Court must determine nature of abuse and neglect and establish facts that resulted in state intervention
 - Evidence must be admissible under rules of evidence
 - Court can find YNC at Show Cause
- Adjudicatory Hearing must be within 90 days of Show Cause – TIA from Show Cause to Adjudication?

Going forward...

- Should we avoid show cause hearings?
- How do we prepare for show cause
 - CFS file?
 - Formal discovery?
- If kids are older, trying to ally with child's attorney – wishes of kids to be home
- ICWA expert?

Other Beginning Deadlines

- An initial investigation of an anonymous report must result in the development of independent, corroborative, and attributable information within 48 hours for the investigation to continue. 41-3-202, MCA.
- If a report is unfounded, the report must be destroyed within 30 days. 41-3-202, MCA.
- Within 60 days after beginning an investigation, the investigating social worker must report to the department and, upon request, to the family. 41-3-202, MCA.
- If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in temporary out-of-home placement must be returned to the parents within 2 working days unless an abuse and neglect petition is filed by the department. 41-3-302, MCA.
- At least 3 working days before a permanency hearing, the department must and the guardian ad litem, attorney, or advocate may submit a report regarding the child to the entity that will conduct the review. 41-3-445, MCA.



COPY

District Court Judge
Fourth Judicial District
Missoula County Courthouse
200 West Broadway
Missoula, MT 59802

FILED OCT 05 2009

SHIRLEY E. FAUST, CLERK
By Diane Overholzer
Deputy

MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY

IN THE MATTER OF DECLARING

Cause No. DN-09- [REDACTED]
Department No. 4
Judge Douglas G. Harkin

[REDACTED]
A YOUTH IN NEED OF CARE.

ORDER TO SHOW CAUSE,
ORDER GRANTING EMERGENCY
PROTECTIVE SERVICES AND
NOTICE OF SHOW CAUSE
HEARING

Upon reading the Petition for Emergency Protective Services,
Adjudication as a Youth in Need of Care and Temporary Legal Custody and
the Affidavit and Report in Support thereof alleging that [REDACTED]
[REDACTED] (Youth) is abused or neglected or in danger of being abused or
neglected within the meaning of Mont. Code Ann. § 41-3-102, the Court
hereby finds:

1. That there is probable cause to believe that child is abused or
neglected or in danger of being abused or neglected and further that
immediate protection of the child is required. This finding is supported by
the facts in the Affidavit and Report to the Court attached to the Petition.

In making this determination, the Court has considered the parents'
statements, if any, included with the petition and any accompanying affidavit
or report to the Court.

6

1 2. That it has been established that the Department of Public
2 Health and Human Services removed the above-named Youth from the
3 home because the Youth was in immediate or apparent danger of harm as
4 is more fully described in the Affidavit and Report to the Court by Joy Clark
5 Akin, CFS Child Protection Specialist Social Worker in support of the
6 Petition.

7 3. For the reasons as set forth in the Affidavit and Report to the
8 Court, no services could have been provided to the family which would have
9 prevented or eliminated the need for the emergency removal.

10 4. At this time, removal from the home is necessary because
11 continuation in the home would be contrary to the welfare of the Youth and
12 an out-of-home placement is in the best interests of the Youth for the
13 reasons explained in the Affidavit and Report to the Court.

14 5. The Department has made reasonable efforts to avoid
15 protective placement of the Youth and/or to make it possible to safely
16 return the Youth to the Youth's home. No services could have been
17 provided to the family which would have prevented or eliminated the need
18 for the emergency removal. Active efforts have been made to provide
19 remedial services and rehabilitative programs designed to prevent the
20 breakup of the family in the past and these efforts have been unsuccessful.
21 At this time, custody by either parent is likely to result in serious emotional
22 or physical damage to the Youth.

23 **IT IS HEREBY ORDERED:**

24 1. The Department of Public Health and Human Services, Child
25 and Family Services Division (CFS) is hereby awarded emergency
26 protective services over the above-named Youth beginning immediately and
27
28

1 continuing until the show cause hearing or until further order of the Court,
2 including the following:

3 a. The right of entry into the home or prospective
4 home of the youths by a peace officer or by a CFS
5 Social Worker.

6 b. The right to place the child in temporary
7 medical or out-of-home care, including but not
8 limited to care provided by a non-custodial parent,
9 kinship or foster family, group home or institution.

10 c. The authorization to consent to medical,
11 dental and psychological care for the children and
12 to require the parents of the child to assume full
13 responsibility for any services that may be provided.

14 d. The right to require medical, dental,
15 educational or psychological evaluations of the
16 youth by professionals of petitioner's choice.

17 e. The authorization to obtain educational
18 services for and educational or Youths Court
19 records of the child.

20 f. The right to assistance of any law officer of
21 the State of Montana or any agency thereof in the
22 carrying out of the provisions and intent of this
23 Petition.

24 g. The right to obtain the medical records of the
25 above-named youth, including but not limited to the
26 medical records concerning prenatal activity of the
27 natural mother and psychological, counseling
28 and/or substance abuse records of the children.
CFS is further designated as the child's personal
representative as set out in the Federal Health
Insurance Portability and Accountability Act
(HIPAA) regulations.

h. The right to approve, arrange, and supervise
visitation with the child.

i. The right to exchange information in CFS
case records, county attorney records; and court
records with doctors, psychologists, parties to this
action, and others as necessary to carry out CFS'
Protective Services.

j. The right to authorize travel for said youth
inside or outside the state while the Order for

Protective Services is in effect unless otherwise modified by the Court.

k. The right, pursuant to Mont. Code Ann. § 41-3-446, to inquire into the financial ability of the parents, guardian or other person having custody of the youth to contribute to the costs for the care, custody and treatment of the youth; and to request an order requiring contribution for those costs.

l. The right to require that the parents, guardian or other person having physical or legal custody furnish information that the Court may designate and obtain evaluations that may be necessary to determine whether the child is a youth in need of care.

m. The right to require the parents, guardian or other person having physical or legal custody to provide CFS with the name and address of the other parent, if known, unless parental rights have been terminated.

n. The right to require the parents, guardian or other person having physical or legal custody to provide all their vital statistical information and the same for their child, including copies of birth certificates, social security cards and criminal histories and any enrollment or eligibility for enrollment with a Native American Tribe.

o. The right to require the parents to provide CFS with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding.

2. [REDACTED] (Mother) and [REDACTED] (Father) are hereby ordered not to take or allow anyone else to take [REDACTED] from CFS' placement or from Missoula County without CFS' prior approval.

3. [REDACTED] (Mother) and [REDACTED] (Father) are hereby ordered to not have contact with the above-named Youth except as arranged and approved by Child and Family Services.

1 4. [REDACTED] (Mother) and [REDACTED]
2 (Father) shall keep CFS informed of their addresses and telephone
3 numbers, including any change in addresses or telephone numbers prior to
4 any move. [REDACTED] (Mother) and [REDACTED]
5 (Father) keep CFS informed of the identity of all people residing in the
6 home, temporarily or otherwise, prior to any change. It is further ordered
7 that [REDACTED] (Mother) and [REDACTED] (Father) shall
8 contact the CFS Child Protection Specialist Social Worker every week or
9 as CFS recommends and keep in contact with their Court-appointed
10 attorneys.

11 5. Individuals are hereby appointed through the State of Montana
12 Office of Public Defender, 610 Woody, Missoula, Montana, as counsel and
13 Guardian ad Litem for the above-named Youth. **Problem**

14 Authority to obtain information. In addition to the other duties and
15 powers provided by law, the Guardian ad Litem shall have the power to
16 obtain records of the child and the parents, [REDACTED]
17 (Mother) and [REDACTED] (Father). Upon presentation of this Order
18 to any agency, hospital, school, organization, persons or office including
19 the Clerk of this Court, Division of Social Services, Human Services
20 Agencies, pediatricians, psychologists, psychiatrists, police and sheriff
21 departments, mental health clinics, chemical dependency evaluations, etc.,
22 the aforementioned shall permit the Guardian ad Litem to inspect and/or
23 copy any records relating to the child and parents and allow the Guardian
24 ad Litem to speak to all principals in the case.

25
26 Confidentiality. The Guardian ad Litem assigned to this cause shall
27 maintain any information received from any source as confidential and will
28

1 in addresses or telephone numbers prior to any move. [REDACTED]
2 and [REDACTED] shall keep CFS informed of the identity of all
3 people residing in the home, temporarily or otherwise, prior to any change.
4 It is further ordered that [REDACTED] and [REDACTED] shall
5 contact the CFS Child Protection Specialist Social Worker every week or
6 as CFS recommends and keep in contact with their Court-appointed
7 attorneys.

8 5. Individuals are hereby appointed through the State of Montana
9 Office of Public Defender, 610 Woody, Missoula, Montana, as counsel and
10 ~~Guardian ad Litem~~ for the above-named youth. *Counsel for the youth & CASA*

11 Authority to obtain information. In addition to the other duties and
12 powers provided by law, the ~~Guardian ad Litem~~ shall have the power to
13 obtain records of the child and the parents, [REDACTED] and [REDACTED]
14 [REDACTED]. Upon presentation of this Order to any agency, hospital,
15 school, organization, persons or office including the Clerk of this Court,
16 Division of Social Services, Human Services Agencies, pediatricians,
17 psychologists, psychiatrists, police and sheriff departments, mental health
18 clinics, chemical dependency evaluations, etc., the aforementioned shall
19 permit the ~~Guardian ad Litem~~ to inspect and/or copy any records relating to
20 the child and parents and allow the ~~Guardian ad Litem~~ to speak to all
21 principals in the case. *Counsel for the youth & CASA*

22 Confidentiality. The Guardian ad Litem assigned to this cause shall
23 maintain any information received from any source as confidential and will
24 not disclose same except in reports to the Court and other parties to this
25 cause.
26
27
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1 not disclose same except in reports to the Court and other parties to this
2 cause.

3 6. An attorney is hereby appointed through the State of Montana
4 Office of Public Defender, 610 Woody, Missoula, Montana as counsel for
5 [REDACTED], natural mother of the above-named Youth.

6 7. An attorney is hereby appointed through the State of Montana
7 Office of Public Defender, 610 Woody, Missoula, Montana as counsel for
8 [REDACTED], natural father of the above-named Youth.

9 8. A representative(s) of the Court Appointed Special Advocate
10 (CASA) Volunteer is hereby appointed to assist in determining the welfare
11 and best interests of the child. The CASA representative(s) shall have
12 authority to inspect and /or copy any records relating to the child and the
13 parents; shall maintain any information received from any source as
14 confidential except as to the parties in this action; shall be notified of any
15 hearings or other proceedings concerning the child; shall be considered a
16 party to the case; and shall be deemed agents of the Court and as such
17 are granted judicial immunity.
18

19 **NOTICE OF SHOW CAUSE HEARING**

20 **IT IS FURTHER ORDERED** that [REDACTED] (Mother)
21 and [REDACTED] (Father) shall immediately comply with the terms of
22 this Order and appear before this Court on the 20th day of October,
23 2009, at 10:00 (a.m.) p.m. to show cause, if any, why they have not
24 complied or should not comply with this Order and why the relief requested
25 in the Petition should not be granted. You are ordered to appear at this
26 hearing. You will be given the opportunity to admit or deny the allegations
27 contained in the petition and to provide testimony. You also have the right
28

1 to be represented by an attorney or request appointment of counsel if
2 indigent. Failure to comply with this Order, or to show cause why you have
3 not complied, could result in the court holding you as parents in contempt
4 of court or placing the Youth in the temporary legal custody of the
5 Department of Public Health and Human Services of Montana until further
6 order of this Court.

7 Service of process is directed as provided for in Mont. Code Ann. §§
8 41-3-428 and 41-3-429.

9
10 DATED this 5th day of October, 2009.

11
12
13 
14 District Court Judge

15 **NOTICE** (pursuant to Mont. Code Ann. § 41-3-422(15):
16 **PLEASE TAKE NOTICE** that the Court is required by Federal and
17 State laws to hold a permanency hearing to determine the permanent
18 placement of the child no later than 12 months after a judge determines
19 that the child has been abused or neglected or 12 months after the first 60
20 days that the child has been removed from the child's home.
21 If child is in foster care for 15 of the last 22 months, State law
22 presumes that termination of parental rights is in the best interests of the
23 child and the State is required to file a petition to terminate parental rights.
24 Completion of a treatment plan does not guarantee return of the
25 child.
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WHAT

A GUIDE TO

THE

CHILD and FAMILY

SERVICES DIVISION (CFSD)

child protection services (cps)

HAPPENS

August 2009

NEXT?

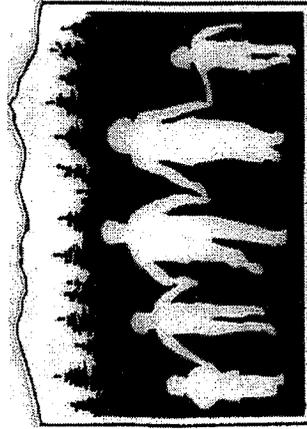


TABLE OF CONTENTS

A NOTE ABOUT THIS GUIDE	1	.....	INFORMAL PARENT SUPPORT	.....	11
EXPLANATION OF TERMS AND ABBREVIATIONS	1	.....	SERVICES THAT MAY BE RECOMMENDED OR REQUIRED	.....	11
WHAT DOES THE CHILD AND FAMILY SERVICES DIVISION DO?	2	.....	WHAT HAPPENS TO YOUR CASE INFORMATION?	.....	11
WHAT IS A REPORT?	2	.....	APPEAL PROCEDURES	.....	12
WHO MADE THE REPORT TO THE CHILD ABUSE HOTLINE?	2	.....	SOME CLOSING THOUGHTS	.....	13
DEFINITIONS OF CHILD ABUSE AND NEGLECT	3	.....	REGIONAL ADMINISTRATORS CITIES AND PHONE NUMBERS NON-DISCRIMINATION INFORMATION	.....	13
WHAT DOES A CP SPECIALIST DO?	4	.....		
WILL LAW ENFORCEMENT BE INVOLVED?	5	.....		
POSSIBLE OUTCOMES OF THE ASSESSMENT OR INVESTIGATION	6	.....		
WILL YOUR CHILD BE TAKEN FROM THE FAMILY HOME?	6	.....		
IF YOU ARE THE PARENT OF AN INDIAN CHILD	7	.....		
POSSIBLE LEGAL INTERVENTIONS	8	.....		

A NOTE ABOUT THIS GUIDE

This guide is to help you understand what happens during a Child and Family Services Division assessment and investigation. We know that being involved in an investigation of child abuse or neglect can be stressful and frightening. Knowing what to expect can make it less difficult.

The purpose of this booklet is to provide answers to the questions that are most often asked after a report of possible child abuse or neglect has been received by the Child and Family Services Division Child Abuse Hotline. During any child abuse or neglect assessment and investigation, you can expect to be treated with respect. Please keep in mind the safety of your child is the first priority. The child protection specialist (cp specialist) or the supervisor will try to answer your questions about the assessment and investigation process.

As the mission statement of the Child and Family Services Division states, we work to "KEEP CHILDREN SAFE AND FAMILIES STRONG". We want to assist your family with that goal.

The State of Montana recognizes that the privacy of the family will not be violated unless there is some compelling state interest that justifies the state's intervention. The compelling state interest is the safety and health of the child.

EXPLANATION OF TERMS AND ABBREVIATIONS

This list includes terms and abbreviations that are used in this booklet or which you may hear from the cp specialist, the supervisor, or during

court hearings.

DPHHS	Department of Public Health and Human Services
CFSD	Child and Family Services Division
CPS	Child Protective Services
CP Specialist	Child Protection Specialist
ICWA	Indian Child Welfare Act
EPS	Emergency Protective Services
TIA	Temporary Investigative Authority
TLC	Temporary Legal Custody
TPR	Termination of Parental Rights
PLC	Permanent Legal Custody
GAL	Guardian ad Litem
CASA	Court Appointed Special Advocate
FGDM	Family Group Decision-Making (a meeting)
FCRC	Foster Care Review Committee
CI	Centralized Intake

WHAT DOES THE CHILD AND FAMILY SERVICES

DIVISION DO?

The Department of Public Health and Human Services (DPHHS), Child and Family Services Division (CFSD) is designated by Montana law as the agency responsible for the protection of children who are abandoned, neglected or abused. CFSD is given the duty to respond to reports of child abuse or neglect and to provide protective services when necessary, including the authority to interview a child and take temporary or permanent custody of a child when ordered to do so by the court.

The Department's authority to intervene in people's families is given by Montana law. The Department must strictly adhere to the specific requirements of the statutes in providing protective services to children in need of such care. Laws governing protective services to children in Montana can be found in Montana Code Annotated, Title 41, Chapter 3. Copies are in all public libraries in Montana and are also available on the internet. You may visit the State of Montana website, <http://www.dphhs.mt.gov>

WHAT IS A REPORT?

A report, or a referral, is a statement that someone is concerned for a child's welfare or safety. When a report of suspected abuse or neglect is received by the Montana Statewide toll-free Child Abuse Hotline, it is sent to the appropriate CFSD office. A staff person from CFSD, a law enforcement officer, or the county attorney is required by law to assess and investigate the allegations. In Montana, most often the child

protection specialist (cp specialist) and/or the supervisor conduct the assessment and investigation to determine if there is abuse or neglect present.

It is the role of CFSD staff to help assure that children are safe from harm, and to assist parents and families in finding solutions to problems that may interfere with their child's safety.

WHO MADE THE REPORT TO THE CHILD ABUSE HOTLINE?

According to Montana law, the name of the person who made the report must remain confidential. Any person who believes that a child is being abused or neglected MAY report a suspected situation to the Hotline. Some persons are REQUIRED by law to report if they suspect child abuse or neglect. These persons include, but are not limited to, cp specialists, teachers, law enforcement officers, child care workers, and health care providers.

DEFINITIONS OF TYPES OF CHILD ABUSE AND NEGLECT

Child abuse or neglect:

- a) means actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child; or abandonment.
- b) The term includes:
 - i) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare.
 - ii) includes exposing a child or allowing a child to be exposed to the criminal distribution of dangerous drugs, the criminal production or

manufacture of dangerous drugs, the operation of an unlawful clandestine laboratory. Dangerous drugs means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

Physical Abuse:

Physical abuse means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma (injury to the brain), burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

Physical Neglect:

Physical neglect occurs when there is either failure to provide basic necessities to a child, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to the weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

Sexual Abuse:

Sexual abuse means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest of a child by a parent, guardian, adult residing in the child's home, foster parent, day care staff, employee of an institution or residential setting.

Sexual Exploitation:

Sexual Exploitation is defined as allowing or encouraging a child to engage in prostitution or films, photographs, using a child in an exhibition of sexual conduct, etc., i.e., "kiddy porn".

Psychological Abuse or Neglect:

Psychological abuse or neglect means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home. The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

Medical Neglect:

Medical neglect is the failure of a parent or guardian or other person responsible for a child's welfare, to provide adequate health care, although reasonably able to do so. Adequate health care for a child means medical or nonmedical remedial care if such care is covered by medical insurance.

Educational Neglect:

Educational Neglect is the complete failure to educate or enroll a school-aged child in an education program.

These definitions do not include all the possibilities for abuse and neglect of children. Age and developmental abilities of each child must be considered in determining if the risk of harm is "substantial" or the amount of supervision or care required to keep a child safe from harm.

Lack of cleanliness becomes neglectful when a child's health is endangered. Inadequate nutrition may exist when a child fails to gain weight or loses weight consistently and the parent does not seek treatment for the child. Use or misuse of alcohol and/or other drugs by a child's caretaker may cause the child to be abused or neglected. Being an observer of frequent violence between parents or caretakers can constitute psychological abuse to children. Please talk with your child protection specialist or the supervisor, if you have questions about what behaviors by caretaking adults might be abusive or neglectful to children.

WHAT DOES A CHILD PROTECTION SPECIALIST DO TO ASSESS AND INVESTIGATE A REPORT?

When the Child Abuse Hotline receives a report, a trained Child and Family Services (CFSD) cp specialist is assigned to assess and investigate the validity of the report. The usual first step is to assess the immediate risk to the child, to check for past reports of abuse or neglect, and contact persons who may be able to give more information. The cp specialist may talk with a child in school or day care or visit the family in their home or in the local CFSD office. According to Montana law, a CFSD cp specialist has the right to talk with children without a parent's or guardian's permission if abuse or neglect is suspected. When sexual abuse is suspected or when serious physical injury has occurred, local law enforcement frequently takes part in interviews with children. The goal is always to assure that the child is safe or can be made safe through CFSD involvement. If the cp specialist determines that the child can safely remain in the home with CFSD intervention, he

or she may recommend services that would help decrease stress, or address other issues with the family. CFSD may provide voluntary protective services by entering into a written voluntary protective services agreement between you and the cp specialist as the CFSD representative. This voluntary agreement may be terminated by you or by CFSD at any time. You may have another person present during negotiation and signing of the voluntary protective services agreement.

The cp specialist may recommend that you and your family participate in a Family Group Decision Making meeting. Family Group Decision Making (FGDM) is a meeting about your family. It brings together you, your family, friends if you choose, the cp specialist and service providers to work as a team. The meeting is about your family taking charge of a plan to address the care and safety of your children. If you choose FGDM, you are allowing the important people in your lives to share knowledge, their concerns and the strengths they see in you and your family. They will be there to help you make the best decisions for you and your children. If you believe that a FGDM meeting would be helpful to you and your family, please talk with your cp specialist or the supervisor about scheduling this meeting.

WILL LAW ENFORCEMENT BE INVOLVED?

Law enforcement and CFSD staff often work together during an investigation of a report of possible child abuse or neglect. This is most often the case when there is reason to believe that a child has been sexually abused, has received serious injury, or is the victim of another crime. Law enforcement also may be involved if it is necessary to remove a child from a situation that could be dangerous to the child

and/or to the cp specialist.

POSSIBLE OUTCOMES OF THE ASSESSMENT AND INVESTIGATION

When the assessment and investigation of a report is completed by the cp specialist, and the information is reviewed by the supervisor, a decision is made as to whether or not abuse or neglect has occurred.

When the investigating cp specialist and the supervisor determine that there is more information or evidence that abuse or neglect occurred than information or evidence that it did not occur, the term **SUBSTANTIATED** is used. Montana law and CFSD policy are used as a guide in making this determination.

If the investigating cp specialist and the supervisor determine that the evidence found is not sufficient to show that abuse or neglect has occurred, the term **UNSUBSTANTIATED** is used.

When an investigation and assessment is completed and the investigating cp specialist and the supervisor determine that abuse or neglect, as defined by Montana law, could not have occurred, the term **UNFOUNDED** is used. Unfounded reports are removed from the record in approximately 30 days.

WILL THE CHILD BE TAKEN FROM THE FAMILY HOME?

In most cases, children remain with their parent or parents during and after an assessment and investigation by CFSD. Unless a child is in danger and cannot be protected in the home, the goal of CFSD is to keep families together. If the cp specialist determines the child to be in immediate danger, the cp specialist has the authority under Montana

statute to immediately remove the child from a dangerous situation. If the decision is made to make an emergency placement of your child, the cp specialist or the supervisor is required to provide you with the following written information:

1. A notification of the removal
2. The reason for the removal
3. Information about the future show cause court hearing

The child may be placed with the child's non-custodial parent or a member of your extended family when appropriate, or in a licensed foster home, group home or shelter care facility. If you have family members who would be willing to provide safe care for your child, please tell the cp specialist their names and how to get in touch with them. If you and the child's other parent are not living together, you will be expected to give his or her name to the cp specialist. It is often more pleasant for children to stay with a known family member.

CONCURRENT PLANNING

When children are removed from their homes because of abuse or neglect, CFSD staff work to establish permanency for those children as soon as possible. The first choice for permanency is reunification of the child with his/her family. To achieve permanency for children, concurrent plan is made simultaneously. Concurrent Planning is defined as working toward reunification of the child with his/her family while at the same time developing and implementing an alternative permanent plan. If a child has been in care for 90 days or more, the child must have a concurrent plan. If you have questions about

concurrent planning consult with your child protection specialist.

IF YOU ARE THE PARENT OF AN INDIAN CHILD

If your child is removed from your home, it is important that you let the cp specialist know that you or the child's other parent, or your child is enrolled or enrollable in an Indian tribe. Please give the name of your tribe or tribes to the cp specialist. The INDIAN CHILD WELFARE ACT (ICWA) is a federal law that governs state social services and state courts in all foster care and adoption cases involving Indian children.

If you are, or your child is American Indian, you qualify for certain protections and services through ICWA. The cp specialist is required to notify your tribe in writing to inform them that your child has been placed in care. The tribe may chose to become involved with your child's case at any time.

The cp specialist is also required to follow the placement preferences in ICWA when an Indian child is placed in foster care. Relatives (either Indian or non-Indian) are the first consideration for placement. Considered next would be placement with a member of the same tribe, then with a member of another tribe. The fourth choice under ICWA would be placement with a family recommended by the tribe. If none of these options are available and your child is in immediate danger, and no family member can be found, he or she may be placed in a non-Indian foster home.

Your or your child's tribe may request that jurisdiction of your case be transferred to tribal court. If either parent objects to this transfer, the

case will remain in state court. The tribe may become involved at any time and make recommendations regarding placement of the child or children involved.

For additional information about how ICWA may affect you and your case, talk with your cp specialist, attorney, or your tribal representative. The Indian Child Welfare Act is a federal law. If your child is Indian, and enrolled or able to be enrolled in any Indian tribe, the law must be followed.

POSSIBLE LEGAL INTERVENTIONS

"Legal intervention" means that the cp specialist will consult with the county attorney and, as a result of that consultation, the county attorney will file a document (a child abuse or neglect petition) in state district court. If this document (petition) is filed, you will be notified of the date of the court hearing regarding the petition. Upon the filing of this document with the court, the judge will appoint an attorney to represent you if you do not have the financial resources to hire one.

ORDER FOR EMERGENCY PROTECTIVE SERVICES

Cp specialists attempt to work cooperatively with families whenever possible. However, if there is a risk of immediate danger to the child, a decision may be made to place the child in protective services. If this occurs, the cp specialist or the supervisor must send a sworn affidavit to the County Attorney and a document (petition) must be filed with the district court within five working days of the child's removal from your home. The affidavit must state the reasons for the removal of the child. In addition, if possible the cp specialist must give the parent a copy of

the affidavit within two working days of the emergency removal of your child from your home.

The information contained in the affidavit must describe why the child was, or would be, in danger if he or she remained in the home. The county attorney then files a petition for Emergency Protective Services.

An Order for Emergency Protective Services is issued upon filing the petition. This Order gives CFSD the authority to place your child out of your home. If the cp specialist makes an emergency placement of your child, the cp specialist must provide you with a written notice of the reason for the removal, as soon as possible after the removal.

When the Order for Emergency Protective Services is signed, the judge will set a date for a show cause hearing. The show cause hearing should be held within 20 calendar days of filing the petition with the district court, unless you the parent, or your attorney, request a delay. At this hearing, you have the right to voice your agreement or disagreement with the actions taken by CFSD.

The judge is required to appoint an attorney to represent you if you cannot afford one. If you are in Montana and able to be located, you will be served personally with the petition, at least 5 working days before the date of the hearing. If you cannot be located to be served, the Court may appoint an attorney to represent you if in the opinion of the Court, the interests of justice require this. If a non-custodial parent cannot be located, a notice must be published in a newspaper to attempt to locate the other parent.

TEMPORARY INVESTIGATIVE AUTHORITY (TIA)

When a Temporary Investigative Authority is ordered by the judge, it gives Child and Family Services Division the legal right to conduct an in-depth investigation into the child's situation. A TIA may be ordered at the show cause hearing in addition to the Order for Emergency Protective Services. A TIA can be ordered for a maximum of 90 days.

A TIA does not give CFSD/DPHHS legal custody of your child. A Guardian ad Litem (GAL) and/or a Court Appointed Special Advocate (CASA) will be appointed to represent your child whenever any court ordered action is taken. After a TIA is ordered, your cp specialist will work with you to develop a plan to assist you in resolving the problems that led to your child being removed from your care. Please remember that you have only 90 days to successfully complete the requirements listed in your plan. At the end of 90 days, the judge must order Temporary Legal Custody if he or she determines that your child cannot be safely returned to your care.

TEMPORARY LEGAL CUSTODY (TLC)

When Temporary Legal Custody (TLC) is ordered, CFSD/DPHHS will have the right and responsibility for the care, custody and control of your child on a temporary basis.

Your child will be adjudicated (determined) to be a Youth in Need of Care, (an abused, neglected or abandoned youth). The Court usually orders TLC for 6 months. TLC may be extended for an additional 6 months if the Court believes that more time is required. When TLC is ordered, a treatment plan is usually ordered. Please work with your

cp specialist to help decide the tasks that need to be included in this treatment plan to assist you in having your child safely returned to your care. Your successful completion of this court-ordered treatment plan is necessary if you are to reunite with your child. Be sure to communicate regularly with your cp specialist to discuss your progress in completing your treatment plan. Remember, the time you have to successfully complete the plan is limited by state and federal law.

A permanency hearing must be held within 12 months after the first 60 days in care or within 12 months of the finding that the child was abused or neglected, whichever comes first. At this hearing a report is submitted to the Court by CFSD and the Guardian ad Litem or CASA, stating the permanency plan for the child. This report must address:

1. The cp specialist's efforts to implement the permanency plan for the child;
2. All possibilities for the child's permanent placement;
3. Reasons and justifications for these options; and
4. The plan for how the placement decision will be carried out, including specific times for completing the placement plan.

Please ask your cp specialist or the supervisor to explain the requirements of the permanency hearing if you have questions.

It is in your best interest for you to begin working immediately on the tasks as outlined in your voluntary or court-ordered treatment plan. You have the power to determine whether or not you will keep the right to parent your children. CFSD wants you to succeed in making the changes in your behavior that will enable you to safely parent your

children.

TERMINATION OF PARENTAL RIGHTS (TPR) AND PERMANENT LEGAL CUSTODY (PLC)

According to Montana law and federal law, if a child remains in court ordered out-of-home care for 15 of the past 22 months, the state is required to file for Termination of Parental Rights (TPR) and Permanent Legal Custody (PLC).

Children need to know that they have a permanent family who will take care of them. A year in the life of a young child has a significant impact. Because this is true, the law dictates that CFSD is required to have two concurrent plans for children who are in the care of DPHHS/CFSD. The first plan is to return your child safely to your care. The second plan is to place your child in another permanent home through adoption or guardianship. If repeated attempts fail to correct the issues and behaviors that put your child at risk, it will be necessary for CFSD and the County Attorney to file a petition with the Court for Termination of Parental Rights. Please do keep in mind that due to federal and state laws, your time to successfully complete the requirements of your court-ordered treatment plan may be limited by the requirement that when your child is in out-of-home care for 15 of the past 22 months, CFSD is required to request that the Court file for

Termination of Parental Rights. Please talk with your cp specialist or the supervisor about this very important time limit.

INFORMAL PARENT SUPPORT (Friend of the Parent)

As the parent who is working with CFSD regarding a report of abuse or neglect, you may ask a friend or relative to accompany you through any abuse and neglect proceedings or meetings. If you choose to have someone assist you, the following is required:

- * you must sign a release of information form allowing your support person to have access to all confidential records and disclosures in your case, and
- * you and your support person must sign an agreement regarding the scope of duties and responsibilities that your support person will have regarding your case.

SERVICES THAT MAY BE RECOMMENDED OR REQUIRED

Being a parent can be frustrating, exciting and exhausting. The public policy of Montana and Montana law says that children have the right to be free from abuse and neglect. CFSD staff look for ways to assist parents in understanding, enjoying, and safely caring for their children. CFSD may refer families to community services such as parent assistance and training programs, drug and alcohol evaluations and treatment, family and individual counseling, day care programs, in-home services, anger management classes or other available services in their communities. Families may also be referred for help in housing, financial assistance, food banks, legal or employment services. Please talk with your cp specialist about any suggestions you have for services that would assist you with providing safe care for your child. It is in

your best interests to begin working on successfully completing any services that are required in the court-ordered treatment plan.

WHAT HAPPENS TO YOUR CASE INFORMATION?

All information gathered during the assessment and investigation is confidential. However, Montana law states that necessary information may be released to certain persons. This includes, but is not limited to physicians, therapists, foster parents, child protection teams, CASA and FCRC, and child care facilities such as group homes and residential care providers who might be working with your family and/or your child or children. With a release signed by you, the Friend of the Parent, if you select one, may have access to this information. Your attorney also has the right to your case information when you sign a release to him or her.

Substantiation Letter

If abuse or neglect is substantiated, you will receive a letter stating specifically what was substantiated. The letter will also say that this substantiation may impact future employment in child care, group home care, or work with developmentally disabled persons. This letter will also explain appeal procedures available to you. Please read it carefully. You have a limited time in which to request a fair hearing of the substantiated abuse or neglect found against you.

You have the right to information contained in your case file unless there are circumstances where the disclosure of file information is determined to be detrimental to the child or harmful to another person who is the subject of the information contained in the file. Under

Montana law, you do not have the right to be given the name of the person or persons who made reports of possible abuse or neglect. If you want to review material in your file, please make this request to the cp specialist or the supervisor. You will be given a form to complete, or you will be required to make your request in writing. Certain names, including the name of the reporter or reporters, will be blackened out. Information and reports from other individuals or agencies may not be included. Your cp specialist or the supervisor is required to respond to your request within 30 calendar days by disclosing the material requested or providing you a written response giving reasons for not disclosing the material. You also have the right to add written information to your file if you disagree with the information that led to substantiation, or if you have additional information you wish CFSD to know.

APPEAL PROCEDURES

You have the right to request a fair hearing to review a substantiated report of abuse or neglect. If the District Court has adjudicated (ordered) your child or children "Youth in Need of Care" and Temporary Legal Custody has been ordered, the Hearings Officer may determine that a fair hearing will not be granted because your right to due process was fulfilled by a District Court hearing. If you want a fair hearing, you are required to make this request in writing, as explained in the last paragraph of the letter informing you of the substantiation of abuse or neglect. Your written request must be received by the CFSD Administrator within 30 days after you receive the letter informing you of the substantiation of abuse or neglect. You may also submit additional

information to be reviewed at the fair hearing. If you make an appointment with your cp specialist and/or the supervisor, they will attempt to answer your questions about the appeal process.

If your request for a fair hearing is received within 30 days from the date on the substantiation letter, you will be notified in writing of the date and the time of the fair hearing. You will also be notified if your request for a fair hearing is denied due to Temporary Legal custody being ordered. Fair hearings are conducted by the DPHHS Quality Assurance Division.

SOME CLOSING THOUGHTS

You have the right to expect that your cp specialist and all CFSD staff are honest with you about your case and that they fully disclose all information about case plans. Your cp specialist is expected to treat you with respect and to be available for meeting with you when you have an appointment, and to return your phone calls within a reasonable time. When you call your cp specialist and he or she is not available, please leave a message stating your name, when you called and at what phone number you can be reached. Please treat your cp specialist with respect as well. If you have reason to believe that you are being treated unprofessionally, please talk with your cp specialist, the supervisor, or the regional administrator. The name and number of the supervisor may be provided by the cp specialist. The phone numbers of the regional administrators are listed below.

Eastern Regional Administrator, Miles City	234-1385
North Central Regional Administrator, Great Falls	727-7746

South Central Regional Administrator, Billings	657-3120
Southwestern Regional Administrator, Helena	444-2030
Western Regional Administrator, Missoula	523-4100

The Child and Family Services Division staff want you to be successful in providing safe and loving care to your child. If you want to learn about ways to teach your child, ways to discipline your child, how to communicate with your teenager, how to change patterns of behaviors you do not like (in yourself and in your child), please ask your cp specialist for some names, phone numbers, parent groups, books you might read, videos you might watch, and agencies that might assist you. All of us can learn from our mistakes as well as from our successes. We wish you and your children much success.

NON-DISCRIMINATION INFORMATION

The Department of Public Health and Human Services (DPHHS) does not discriminate on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. If you believe you have been subjected to discrimination contact the DPHHS Human Resources Division at (406) 444-3136 or the Montana Human Rights Bureau at 1-(800)-542-0807, or relay service at 711.



OFFICE OF THE STATE PUBLIC DEFENDER

RANDI HOOD
CHIEF PUBLIC DEFENDER

DN CASE OVERVIEW FORM

Parent/Client	Relationship to child(ren)		
Address			
Mailing Address			
Phone	Message Phone		
Employed By	Employer Phone		
Child(ren)	(DOB)	(DOB)	(DOB)
Attorney for child(ren)			
GAL	Phone		
CASA	Phone		
Other Parent(s)	Attorney	Phone	
	Attorney	Phone	
Intake Appointment			
Follow up appointments			
Parent's immediate goals			
Long term goals			
Possible placement options	Address and Phone		
DPHHS (or CFS) Intake Social Worker	Phone		
Case Social worker	Phone		
Case Supervisor	Phone		
Therapists/counselors	for	Phone	
(or "Treatment Providers")	for	Phone	

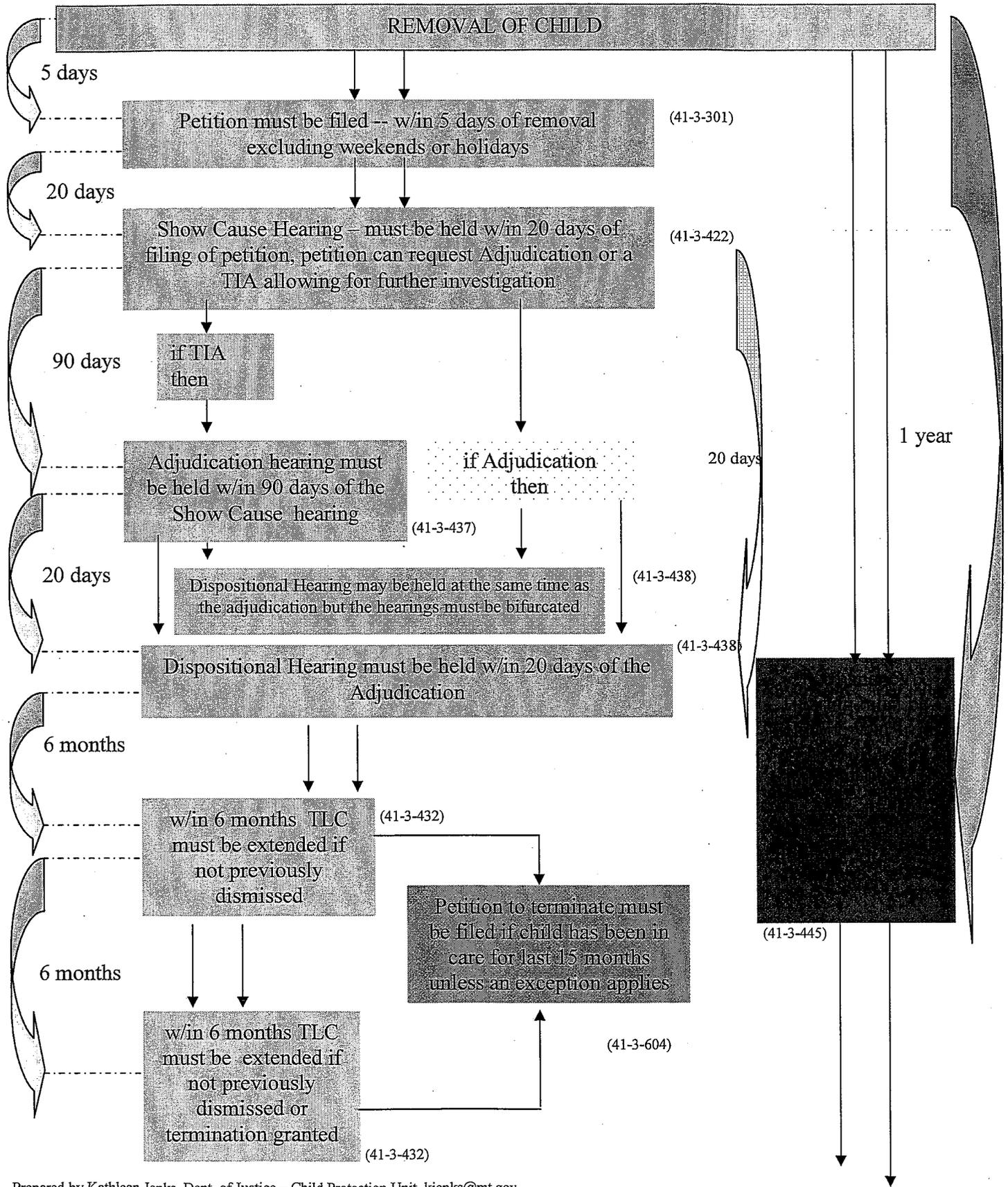
- Advise of contact and necessity of information up-dates
- Advise of difference between TIA and TLC and timelines
- Advise of treatment plan tasks/requirements (cde, treatment, parenting class, anger management, psych eval, mental health treatment, releases, visitations, appointments with social worker, no contact order, etc.)
- Advise of FGDM
- Advise of potential worst consequences (permanent custody, Timelines, adoption)
- Advise of collateral consequences (criminal charges, other children in home even if not related, unborn children, divorce/separation, parenting plan, etc.)
- Advise parents represented by different attorneys – client confidentiality
- Advise social worker represented by State – need to work with social worker, leave legal battles to attorneys
- Advise visitation with child(ren) likely through social worker and/or Family Support Network – to observe parenting skills
- Advise of next court appearance

CASE TIMELINE

ACTION	DATE
AFFIDAVIT OF INTAKE SOCIAL WORKER	
PETITION FOR EPS, ADJUDICATION, AND TLC (or EPS & TIA)	
SHOW CAUSE:	
TIA:	
TLC:	
XTLC:	
XTLC:	
Status Hearing:	
Status Hearing:	
OTHER HEARINGS:	
PERMANENCY HEARING	
PERMANENCY HEARING	
Hearing on Placement	
FGDM	
PETITION FOR PERMANENT CUSTODY	
Termination Hearing	
DISMISSAL	

Simplified MCA Abuse and Neglect Timeline for Judicial Hearings

(this flowchart assumes that reasonable efforts are required)



1 TREATMENT PLAN

2 The Department seeks to include provisions in the natural father's treatment
3 plan that did not serve as the basis for the abuse and neglect petition in this matter.
4 The natural father has acknowledged that he consumes marijuana for pain
5 management. The Department seeks to correct this potentially illegal behavior
6 through evaluation and testing. The natural father hereby files the following
7 Memorandum regarding the requirements of treatment plans under Montana law
8 and persuasive authority.

9 A treatment plan is defined by Montana statute.

10 "Treatment plan" means a written agreement between the department and
11 the parent or guardian of a court order that includes action that must be taken
12 to resolve the condition of conduct of the parent or guardian that resulted in
13 the need for protective services for the child. The treatment plan may
14 involve court services, the department, and other parties, if necessary, for
15 protective services.

16 Montana Code Annotated § 41-3-102 (30). By definition the treatment plan is
17 designed to "resolve the condition of conduct of the parent or guardian that
18 resulted in the need for protective services for the child."

19 A treatment plan may be ordered if the parents admit to the allegations of an
20 abuse or neglect petition; the parents stipulate to the allegations of an abuse or
neglect petition; or the court makes an adjudication that the child is a youth in need
of care. M.C.A. § 41-3-443 (1) (a)-(c). Every treatment plan is statutorily required
to contain the following information:

- 1 (a) the identification of the problems or conditions that resulted in the
abuse or neglect of a child;
- 2 (b) the treatment goals and objectives for each condition or requirement
3 established in the plan. If the child has been removed from the home, the
4 treatment plan must include but is not limited to the conditions or
5 requirements that must be established for the safe return of the child to the
6 family. (sic)
- 7 (c) the projected time necessary to complete each of the treatment
objectives;
- 8 (d) the specific treatment objectives that clearly identify the separate roles
and responsibilities of all parties addressed in the treatment plan; and
- 9 (e) the signature of the parent or parents or guardian, unless the plan is
ordered by the court.

8 M.C.A. § 41-3-443 (2). The statute goes on to authorize specific remedies,
9 requirements, or conditions but does not give an exclusive list. M.C.A. § 41-3-443

10 (3). These include the right to entry into the home, medical or psychiatric
11 diagnosis and treatment, psychological treatment or counseling, alcohol or
12 substance abuse evaluation or counseling (if necessary), restrictions on association
13 with or contacting individuals, placement of the child in temporary medical or out-
14 of-home care, and/or require a parent to “furnish services that the court may
15 designate.” *Id.* The focus of the treatment plan is to correct the behavior that
16 caused the removal. This is clear from the last paragraph of the warning required
17 by statute. M.C.A. § 41-3-443 (5)(d). Montana statute requires a parent to be
18 warned “that completion of a treatment plan does not guarantee the return of a
19 child and that completion of the plan without a change in behavior that caused
20 removal in the first instance may result in termination of parental rights.” *Id.* The

1 treatment plan must focus on the problems or conditions that resulted in the abuse
2 or neglect of the child, M.C.A. § 41-3-443 (2)(a); it is the first requirement every
3 treatment plan. In the present case the Department has identified a potential
4 problem to correct that did not result in the abuse or neglect of the children in this
5 case.

6 There is no bright line rule regarding what constitutes an appropriate
7 treatment plan because the facts and circumstances of each case are different. In re
8 D.B., 2007 MT 246, P32, 339 Mont. 240, P32, 168 P.3d 691, P32. If the case
9 reaches the point of termination the State must prove by clear and convincing
10 evidence that the treatment plan was appropriate. In re D.B., 2007 MT 246, P33,
11 339 Mont. 240, P33, 168 P.3d 691, P33. Stipulation of the parties by itself does
12 not establish the appropriateness of the treatment plan. In re R.H., 250 Mont. 164,
13 169, 819 P.2d 152, 155 (Mont. 1991). The Department has a duty to act in good
14 faith in developing a treatment plan and the duty of good faith does not end once
15 the court orders the plan. In re D.B., 2007 MT 246, P33, 339 Mont. 240, P33, 168
16 P.3d 691, P33. Again, in developing a treatment plan the first requirement is to
17 identify the problems or issues that led to the child being abuse or neglected or
18 being at risk of being abused or neglected. Father's use of marijuana was not
19 identified as a problem or issue that led to the _____ boys being abused or
20 neglected or at risk of abuse and neglect.

1 Although Montana case law is not well developed regarding the
2 appropriateness of abstinence of marijuana in a treatment plan, other states are
3 persuasive and are clear that the use of marijuana has to be related to the condition
4 that renders the parent unfit or led to the removal of the child in the first instance.
5 A sampling of a few cases from the around the United States is instructive on the
6 issue.

7 In Jennifer A. v. Superior Court, 117 Cal. App.4th 1322, 12 Cal. Rptr. 3d
8 572 (Cal. App. 2004), the California Appellate Court was critical of the lack of
9 evidence to support a finding that use of marijuana would negatively impact the
10 return of the children in the matter. “Unauthorized possession of marijuana is
11 illegal. (Health & Saf. Code, § 11357.) The record does not support a finding,
12 however, that the Mother’s marijuana use, as shown by the record, means the
13 children’s return to the Mother would create a substantial risk of detriment to the
14 physical and emotional well-being of the children in light of the factors in this case
15 militating in favor of their return.” *Id.*, 117 Cal. App. 4th 1322, 1346, 12 Cal. Rptr.
16 3d 572, 590.

17 In H.F.G. v. E.G.; P.G., 196 S.W.3d 45, 49 (Mo. App. 2005), the Court of
18 Appeals of Missouri was clear that “[h]ere, the circuit court found that the parents
19 use marijuana. While the finding addresses the parents’ usage, it fails to address
20

1 drug 'dependency' and how the drug usage prevents the parents from providing the
2 care, custody, and control over Child. Therefore, this finding is also insufficient."

3 In Adoption of Zoltan, 881 N.E.2d 155, 160, (Mass. App. 2008), the
4 Appeals Court of Massachusetts was clear that the use of marijuana or alcohol had
5 to impact the individual's ability to parent. "Similarly, the mother's admitted prior
6 marijuana and alcohol use, by itself, does not significantly impact the issue of
7 parental fitness as measured by the controlling statute, (cite omitted), 'alcohol or
8 drug addiction' is a factor a judge may consider when 'the condition makes the
9 parent ... unlikely to provide minimally acceptable care. However, when that
10 connection cannot be made, such a condition has only limited significance to a
11 determination of parental unfitness." Id.

12 The common theme in Montana law and case law around the nation is that
13 the problem the Department seeks to remedy must relate to the reason for the case
14 being filed, the children removed, the finding of abuse/neglect or some identifiable
15 deficiency in the father's ability to parent. The Department cannot show that
16 marijuana use in this case was the reason the children were removed or somehow
17 impacts Father's ability to parent his children. The inclusion of a condition
18 requiring abstinence from marijuana and treatment is not supported by the law.

1 Brian Smith
Office of the State Public Defender
2 610 Woody Street
Missoula, Montana 59802
3 Telephone: (406) 523-5140
Facsimile: (406) 523-5141

4 Attorneys for D.F.
5
6
7

8 MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

9 IN THE MATTER OF

Dept. No. 4

10 C.F.,

Cause No. DN-09-__

11 Youth In Need of Care.

RESPONDENT FATHER'S FIRST
DISCOVERY REQUESTS

12
13 **TO:** DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES,
CHILD AND FAMILY SERVICES, AND THEIR ATTORNEY
14 MATTHEW LOWY, DEPUTY MISSOULA COUNTY ATTORNEY.

15 COMES NOW D.F., natural father of the above-referenced youth, by and
16 through his attorney Brian Smith, and submits the following discovery requests
17 pursuant to M.C.A. §41-3-437 (2) and Rules 33, 34 and 36 of the Montana Rules
18 of Civil Procedure. You are hereby required to answer under oath the following
19 Interrogatories, Requests for Production and Requests for Admissions within thirty
20 (30) days from the time service is made upon you.

1 In answering these interrogatories, you are requested to furnish information
2 that is available to you, including information in the possession of your
3 investigators, employees, agents, representatives, attorneys, investigators for your
4 attorneys, and any other person or persons acting on your behalf.

5 In answering these interrogatories and requests for production, the following
6 instructions and definitions apply:

7 "You" includes the Department, and any and all investigators, employees,
8 agents, representatives, attorneys, and investigators for your attorneys or any other
9 person acting on behalf of the Plaintiff.

10 "Document" shall be construed in its broadest sense, and includes documents
11 written or electronic, including but not limited to records kept electronically,
12 emails, hand written, and copies of originals.

13 In answering these interrogatories, you are required to furnish all
14 information within the scope of the interrogatories that is personally known to you
15 or subject to your reasonable inquiry, including information in the possession of or
16 within the knowledge of your attorneys, accountants, advisors, investigators,
17 insurers, agents and representatives, and any other persons directly or indirectly
18 employed by, or connected with, you or your attorneys and anyone else otherwise
19 subject to your control.

20 If any interrogatory has subparts, answer each subpart separately and in full,

1 and do not limit your answer to the interrogatory as a whole. If these
2 interrogatories cannot be answered in full, answer to the extent possible, specify
3 the reasons for your inability to answer the remainder, and state whatever
4 information and knowledge you have regarding the unanswered portion. With
5 respect to each interrogatory, in addition to supplying the information asked for
6 and identifying the specific documents referred to, identify and describe all
7 documents to which you refer or rely upon in preparing your answers.

8 If in any interrogatory or subpart to any interrogatory you assert that the
9 answer can be found, in whole or in part, in the answers to another interrogatory,
10 please state the number of the interrogatory or interrogatories where the answer
11 may be found and, if applicable, the subpart(s) where the answer may be found.
12 Also, state whether the interrogatory or interrogatories referenced as containing the
13 answer have the full and complete answer, and if not, supply the balance of the
14 answer.

15 You are under a continuing duty to supplement and you are required to
16 correct any response which you know is incorrect or later learn to be incorrect.

17 If it is claimed that the attorney-client privilege or any other privilege is
18 applicable to any meeting or any written or oral communication, the identification
19 of which is sought by these interrogatories, with respect to that meeting or that
20 written or oral communication:

- 1 a. State the date and place of the meeting or communication;
- 2 b. Identify each person who attended, participated in, overheard or
- 3 received the communication; and
- 4 c. State the basis upon which the claim of privilege is asserted.

5 INTERROGATORY NO. 1: Identify all persons by name, address and

6 telephone number, who were consulted in answering these Requests.

7 ANSWER:

8 INTERROGATORY NO. 2: Please identify every person known or

9 believed to have knowledge of the facts out of which this case arises, and describe

10 the substance of his/her knowledge.

11 ANSWER:

12 REQUEST FOR ADMISSION NO. 1: Please admit that you failed to

13 provide reasonable efforts to prevent the removal of the child from the home.

14 ANSWER:

15 INTERROGATORY NO. 3: If your response to Request for Admission

16 No. 1 is anything but an unqualified admission, please:

- 17 (a) State all of the facts which support your response;
- 18 (b) Identify all persons with knowledge of those facts, and
- 19 (c) Identify all documents which support your response.

20 ANSWER:

1 REQUEST FOR PRODUCTION NO. 1: Please produce all of the

2 Documents identified in your response to Interrogatory No. 3.

3 RESPONSE:

4 INTERROGATORY NO. 4: You referred to in your Petition to Terminate

5 Parental Rights certain incidents and occurrences concerning the care of the child

6 that is the subject of this action. Please identify all persons by name, address, and

7 telephone number who were involved with or have information concerning each of

8 the incidents and/or occurrences. (For ease of reference the dates of the incidents

9 and/or occurrences are listed below, with reference to the page number of Petition.)

10 //

11 //

12 ANSWER:

13 REQUEST FOR PRODUCTION NO. 2: To each and every incident and/or

14 occurrence referred to in Interrogatory No. 4, please provide copies of any and all

15 documents or recordings in your possession or available to you including, but not

16 limited to, reports, statement, notes, summaries, emails, electronic records,

17 photographs, diagrams, drawings, pictures, audio recordings, video recordings,

18 medical records, or medical reports.

19 RESPONSE:

20 INTERROGATORY NO. 5: With reference to almost 45 separate incidents

1 alleged in the Petition to Terminate Parental Rights and detailed in Interrogatory
2 No. 4, please state the relevance each incident has to the issue of termination of
3 D.F.'s rights.

4 ANSWER:

5 INTERROGATORY NO. 6: To the extent not already covered by
6 Interrogatory No 4, please identify all persons by name, address, and telephone
7 number who were involved with or have information concerning the allegations in
8 the Petition to terminate parental rights.

9 ANSWER:

10 INTERROGATORY NO. 7: Please state the dates of all therapy sessions
11 regarding the Youth since she was removed from the home including the length of
12 the therapy sessions, the place of the therapy sessions and the professional
13 providing the therapy sessions.

14 ANSWER:

15 REQUEST FOR PRODUCTION NO. 3: Please provide a copy of any and
16 all records, notes, billing records or statements from the professional which reflect
17 the therapy sessions identified in Interrogatory No. 7.

18 RESPONSE:

19 REQUEST FOR PRODUCTION NO. 4: Please provide a copy of all
20 agreements that you have entered into with the professionals providing services

1 identified in Interrogatory No. 7, including but not limited to memorandums of
2 agreement, employment or services contracts.

3 RESPONSE:

4 INTERROGATORY NO. 8: List the name and address of each witness you
5 intend to call to testify on behalf of the State of Montana in these proceedings
6 whose name(s) are not provided in the preceding interrogatory. For each witness
7 in this answer or identified previously, please state a synopsis of the testimony that
8 the witness will provide and the address and telephone number at which the
9 witness may be contacted for an interview.

10 ANSWER:

11 REQUEST FOR PRODUCTION NO. 5: Please provide copies of any and
12 all witness statements, reports, charts, diagrams, photos or other documentary
13 evidence that you have in your possession, or in the possession of any of the
14 parties identified in the introduction to these Requests, pertaining to the events that
15 are the subject of this proceeding.

16 RESPONSE:

17 INTERROGATORY NO. 9: : Please identify every expert you intend to
18 call to testify in the trial of this case, state the subject matter on which each such
19 expert is expected to testify, and state the substance of the facts and opinions to
20 which each such expert is expected to testify.

1 ANSWER:

2 REQUEST FOR PRODUCTION NO. 6: Please produce a CV for all
3 witnesses that have been identified as experts.

4 RESPONSE:

5 INTERROGATORY NO. 10: Please describe the qualifications, training
6 and experience necessary to become an expert in the social work.

7 ANSWER:

8 INTERROGATORY NO. 11: Please describe the qualifications, training
9 and experience necessary to become an expert in the more specific social work
10 area of child protective services.

11 ANSWER:

12 REQUEST FOR PRODUCTION NO. 7.: Please provide copies of any and
13 all documents and exhibits that you intend to introduce at time of hearing in this
14 matter.

15 RESPONSE:

16 REQUEST FOR ADMISSION NO. 2: Please admit that you would not
17 have removed the child from the home absent allegations of sexual abuse.

18 ANSWER:

19 INTERROGATORY NO. 12: If your response to Request for Admission
20 No. 2 is anything but an unqualified admission, please:

- 1 (a) State all of the facts which support your response;
2 (b) Identify all persons with knowledge of those facts, and
3 (c) Identify all documents which support your response.

4 ANSWER:

5 REQUEST FOR PRODUCTION NO. 8: Please produce all of the
6 Documents identified in your response to Interrogatory No. 12.

7 RESPONSE:

8 REQUEST FOR ADMISSION NO. 3: Please admit that you do not intend
9 to offer reasonable efforts to reunify the family.

10 ANSWER:

11 INTERROGATORY NO. 13: If your response to Request for Admission
12 No. 3 is anything but an unqualified admission, please:

- 13 (a) State all of the facts which support your response;
14 (b) Identify all persons with knowledge of those facts, and
15 (c) Identify all documents which support your response.

16 ANSWER:

17 REQUEST FOR PRODUCTION NO. 9: Please produce all of the
18 Documents identified in your response to Interrogatory No. 13.

19 RESPONSE:

20 DATED this _____ day of September, 2009.

Office of the State Public Defender

Brian Smith
Attorney for D.F., Father

CERTIFICATE OF SERVICE

I, the undersigned hereby certify that on the ____ day of September, 2009,
personally delivered a copy of the foregoing Respondent Father's First Discovery

Requests to:

Matthew Lowy, Deputy County Attorney
Missoula County Attorney's Office
Missoula County Courthouse
Missoula, MT 59802

**National CASA/GAL Volunteer Training
Curriculum**

VOLUNTEER MANUAL

2nd Edition



**A POWERFUL VOICE
IN A CHILD'S LIFE.™**

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ROLE OF COUNSEL FOR CHILDREN AND YOUTH

During the course of numerous site reviews over the last four years, OPDS has noticed significantly inconsistent practices regarding the role of appointed counsel for children in both dependency and delinquency cases.

For example, some attorneys believe that it is not necessary to meet and confer with child clients.

It is hoped that this statement will clarify what OPDS believes to be the role of counsel for children in dependency cases and youth in delinquency cases. The statement is being sent to all public defense providers. If you have questions about the role of counsel as outlined in this statement, please contact OPDS's General Counsel, Paul Levy at (503) 378-2478.

Role of Counsel in Dependency Cases

In juvenile dependency cases, the role of the attorney appointed to represent a child will depend on the age of the child and the child's capacity for considered judgment.

An attorney for a child capable of considered judgment must advocate for the child's expressed wishes. The attorney for a child not capable of considered judgment must advocate for the child's best interest as determined by the attorney's independent investigation and exercise of sound judgment. Some children are capable of considered judgment with respect to some decisions that need to be made in the case but not with respect to others. Standard 3.4 of the Specific Standards for Representation in Juvenile Dependency Cases of the Oregon State Bar's Principles and Performance Standards¹ outlines the analysis to be used in deciding the appropriate type of advocacy in a given case.

Regardless of that ultimate determination, the child is a "client" and OPDS contracts require the contractor to speak to and conduct initial interviews, in person, with clients who are in custody within 24 hours of appointment whenever possible; and to arrange for contact, including notification of a scheduled interview time, within 72 hours of appointment for all clients who are not in custody. Children are not excepted from this rule.

In addition, Rule 1.14 of the Oregon Rules of Professional Conduct (ORPC) requires counsel for persons with diminished capacity (which includes children not capable of considered judgment) to maintain, as far as reasonably possible, a normal client-lawyer relationship with the client. The ORPC require attorneys to

¹ The full text of the 2005 version of the Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases can be found on the bar's website at http://www.osbar.org/surveys_research/performancestandard/index.html.

maintain contact with their clients, **to keep them reasonably informed** about the status of their cases (ORPC Rule 1.4), **to promptly comply** with reasonable requests for information (*Id*), **to explain** matters to the extent reasonably necessary to permit the client to make informed decisions about matters regarding which the client is capable of exercising considered judgment (*Id*), **to abide by** the decisions of a client who is capable of considered judgment concerning the objectives of representation (ORPC Rule 1.2), and **to consult** with the client regarding the means by which the objectives of representation are to be pursued (*Id*). These rules apply regardless of the client's age or capacity.²

Role of Counsel in Delinquency Cases

Attorneys for youth in juvenile delinquency proceedings are bound to advocate for the expressed wishes of the youth. While the attorney has a responsibility to advise the youth of legal options that the attorney believes to be in the youth's best interest and to identify potential outcomes of various options, the attorney must represent the expressed wishes of the juvenile at every stage of the proceedings. The attorney owes the same duties to a juvenile under the Rules of Professional Conduct as an attorney owes to an adult criminal defendant.

If an attorney determines that a youth is not capable of aiding and assisting in the youth's defense, the attorney shall move the court to dismiss or amend the petition, as discussed in Standard 2.8(2) of the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases.

² For those attorneys who lack the information or skills to have an age appropriate discussion with a young or disabled client, an online training will be available beginning in November, 2007 at the following link: <http://www.cwpsalem.pdx.edu/teen/>.