

Child and Family Services Policy Manual: Legal Procedure Court-Ordered Treatment Plan/Stipulation

Treatment Plan A written treatment plan to be submitted to the court for approval must be developed in those cases where the agency will be involved with the family for an extended period of time. A court-ordered treatment plan must be developed after a petition has been filed.

Definition The court-ordered **treatment plan** is a written agreement between the Department and the parent or guardian, ordered by the court (see MCA § 41-3-405), that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child.

Court-Ordered Treatment Plan The court may order a treatment plan under the following conditions:

- a) the parent(s) admit the allegations of an abuse and neglect petition;
- b) the parent(s) stipulate to the allegations of abuse or neglect; or
- c) the court has made an adjudication that the child is a youth in need of care.

Parents may voluntarily agree to the provisions of a treatment plan prior to an adjudication. However, if the Child Protection Specialist presents a treatment plan to the parents prior to the adjudication of the child as abused or neglected, the parents must be informed of their right to refuse to sign the treatment plan.

NOTE: If a parent refuses to sign a treatment plan, but a judge has ordered compliance with it, the parent is obligated to comply with the court-ordered treatment plan or risk termination of their parental rights. Non-compliance with, or unsuccessful completion of the treatment plan, is one of the prerequisites for termination of parental rights. (See Mont. Code Ann. § 41-3-609 for criteria for termination other than a failed treatment plan.)

In many child abuse and neglect cases where the state is seeking involuntary termination of parental rights, a court-ordered treatment plan is one of the prerequisites for termination of parental rights. (See Section 302-6, Termination

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of the Parent-Child Legal Relationship/Permanent Legal Custody, for further information on termination of parental rights and exceptions to the requirement for a court-approved treatment plan.)

Purpose of Court-Ordered Treatment Plans

The purpose of the court-ordered treatment plan is to define, for the parent(s), the conditions which must be met to enable the parent(s) to have the child safely returned to the home.

A written court-ordered treatment plan should be developed in conjunction with the parents of the child. The plan provides direction and clarification for parents who are sometimes overwhelmed by the agency involvement and often unsure of the agency's expectations. As a therapeutic tool that outlines the actions necessary to achieve reunification of the family, the court-ordered treatment plan specifies obligations for both the parents and the Child Protection Specialist. (If necessary, plans may include other parties, such as live-in boyfriends or other adults residing in the child's home.)

Court-ordered treatment plans also provide a record for the court and the Child Protection Specialist as to what efforts have been made to rehabilitate the parents.

Although the goal of a court-ordered treatment plan is to reunite the child with the child's parent(s) or guardian, it is an important part of the process if termination of parental rights becomes necessary.

Content - Required Provisions

Court-ordered treatment plans **must** include the following:

- identification of the problems or conditions that resulted in the abuse or neglect;
- treatment goals or objectives for each condition or requirement established in the plan;
- if the child has been removed from the home, the conditions or requirements that must be established for the safe return of the child to the family;
- the projected time necessary to complete each of the treatment objectives;

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- specific treatment objectives that clearly define the separate roles and responsibilities of all the parties addressed in the treatment plan. The objectives should be reasonable, measurable, attainable and designed to fit the reasonable capabilities and existing circumstances of the family involved; and.
- the signature of the parent or parents or guardian, unless the plan is ordered by the court.

Discretionary Provisions

The court-ordered treatment plan **may** include but is not limited to any of the following remedies, requirements, or conditions:

- the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of the treatment plan;
- the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the State of Montana;
- the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;
- the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;
- the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of an investigation;
- the requirement that the child be placed in a temporary medical facility or a facility for protection of the youth;
- the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate; and
- the requirement that the parent(s) furnish the necessary information to complete the DPHHS-CFS-107, Parts 2A and 2B, Birth Parent Social and Medical History.

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Required Notice	<p>Each court-ordered treatment plan submitted to the court for approval must contain a notice provision advising parents:</p> <ul style="list-style-type: none"> a) of timelines for hearings and required determinations; b) that the Department is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home; c) that if a child is in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the Department is required to file a petition to terminate parental rights; and d) that completion of a court-ordered treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.
Court-Ordered Treatment Plan Provisions must be individualized	<p>The specifics of a court-ordered treatment plan will differ depending on the circumstances of each case. The Child Protection Specialist should draft each plan on a case-by-case basis depending on the needs of the child and specific circumstances surrounding the family.</p>
Judicial Considerations	<p>The adequacy of the provisions of a court-ordered treatment plan constitutes the issue on appeal for many of the district court decisions which are appealed to the Montana Supreme Court. The Montana Supreme Court has stated that “treatment plans, developed prior to a termination hearing, are intended to provide a framework for a parent to meet the needs of the child, regain custody, and preserve the parent-child relationship.”</p> <p>The Court has not specifically defined what constitutes an “appropriate” treatment plan because “no bright line definition is possible in light of the unique circumstances of each case.” However, factors routinely considered by the Montana Supreme Court are:</p> <ul style="list-style-type: none"> 1) whether the parent was represented by counsel and stipulated to the treatment plan; and

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- 2) whether or not the treatment plan takes into consideration the particular problems facing both the parent and the child. In the Matter of A.C., 2001 MT 126, 305 Mont. 404, 27 P.3d 960 (2001).

Modification of Court-Ordered Treatment Plan

The court-ordered treatment plan **may not** be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

Guidelines

Effective court-ordered treatment plans:

- reflect consensus between the Child Protection Specialist and parent(s);
- are short term and time limited;
- are clearly written in plain language which states the intention of the plan and the consequences which may result if it is not followed or is unsuccessful; and
- are flexible enough to accommodate additional problems or changes in the parents' circumstances.

Time-Limited

If the court-ordered treatment plan has been developed for a child and family in which the child has been removed from the home and placed in a foster care home or facility, the court-ordered treatment plan should reflect the results of the required six month reviews. If the child has been placed in foster care for 12 months or more, the court-ordered treatment plan should reflect the results of the permanency hearing. The court hearing must have occurred no later than 12 months after the date the child was considered to have entered foster care.

Examples of Tasks for Parents

The parents' portion of the plan must contain specific activities such as: regular visits with the child; regular appointments with the Child Protection Specialist; obtaining adequate housing; attendance at alcohol or drug treatment sessions at mental health or AA; participation in employment counseling or job training; attendance at parenting classes; regular meetings with therapist; and paying support to assist in meeting child's needs while in foster care.

Examples of Tasks for the Agency

The agency's portion of the agreement must contain specific activities such as: maintaining child in foster care until a

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permanent plan can be accomplished; acting as a referral person to the employment service, vocational rehabilitation, mental health, etc.; gathering information; assisting in transporting the parent to mental health, parenting classes, etc.; bringing the child for visits with parents; and providing all reasonable supportive services, such as homemaker services. Remember, the agency is under the same obligation to adhere to the court-ordered treatment plan as is the parent(s).

Action

The Child Protection Specialist should obtain an authorization (release of information) from the parents as soon as possible to exchange information with other agencies.

According to the Montana Supreme Court, “a treatment plan is intended to be a good faith, joint effort by both the [Child Protection Specialist] and the parent to preserve the parent-child relationship and the family unit.” In the Matter of A.T. and J.T., 2003 MT 154, 316 Mont. 255, 70 P.3d 1247 (2003). Therefore, parents or other custodians of the child should be involved in all aspects of the development of the plan, including identification of the problems, consideration of treatment alternatives, and selection of specific treatment. Family Group Decision Making Meetings are also useful in helping families develop portions of the court-ordered treatment plan.

The Child Protection Specialist should explain to the parents that non-compliance or partial compliance with the court-ordered treatment plan may result in the loss of their child. The Child Protection Specialist should advise the parent(s) to obtain legal representation. The Child Protection Specialist should consult with all professionals and other persons who will be involved in the plan to clarify expectations and to define responsibilities and services which will be provided.

Monitoring And Evaluation Of Treatment Plan

The Child Protection Specialist should engage in systematic monitoring and periodic review of the court-ordered treatment plan to assess the progress toward objectives and goals. Information gathered through the monitoring and evaluation process enables the Child Protection Specialist and the family to modify the court-ordered treatment plan or develop new phases of the plan as necessary.

The Montana Supreme Court has addressed whether or not a parent has complied with the court-ordered treatment plan. The Court has addressed the issue of partial compliance and

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repeatedly held that “partial compliance with a treatment plan is insufficient to preclude termination of parental rights”. In the Matter of M.T., T.T., D.T., and B.W., 2002 MT 174, 310 Mont. 506, 51 P.3d 1141 (2002).

The Court has also stated “well-intentioned efforts toward successful completion of a treatment plan do not demonstrate either the completion or the success of the plan. In the Matter of J.W. and K.D., 2001 MT 86, 305 Mont. 149, 23 P.3d 916 (2001). Therefore, the Montana Supreme Court has also addressed the issue of parental compliance with the provisions of a treatment plan but no resulting change in behavior. The Court, in the above-cited case, made clear that “Indeed, a treatment plan can be unsuccessful even when the required tasks are completed.” In other words, not only must the parent comply with the treatment plan, but the treatment plan must also be successful in modifying the parent’s behavior.

CAPS

The Child Protection Specialist may use the related CAPS screens to develop a court-ordered treatment plan. On PROB (Problem List), identify the concerns for the client(s). On TASK (Task List), identify all of the actions needed to be taken by all parties to resolve the concerns. On LINK (Problem - Task Link screen), match the tasks with the problems for each client. Use DocGen 334 to complete the process and print a treatment plan.

Exceptions to Required Treatment Plan

See Section 302-6 for a discussion of those situations in which parental rights can be involuntarily terminated without a court-ordered treatment plan.

Stipulations

A stipulation is a voluntary agreement signed by the parent(s) in which the parent(s) agree to specific issues relevant to the child abuse and neglect proceeding. The signed stipulation is submitted to the court to support the petition filed by the Department.

The issues to which the parties in a child abuse/neglect proceeding may stipulate are limited. The parent may not stipulate to a treatment plan without an acknowledgment that the child is or has been abused or neglected. Subject to court approval, a parent may stipulate to any of the following:

- a) the child meets the definition of a youth in need of care by the preponderance of the evidence;

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- b) a court-ordered treatment plan, if the child has been adjudicated a youth in need of care;
- c) the disposition; or
- d) extension of the timeframes required in a child abuse or neglect proceeding except for the timeframe for a permanency hearing.

Issues related to Stipulations

Stipulations must be utilized in a judicious manner because of possible complications associated with their use. The Supreme Court has issued a caution regarding the use of stipulations by stating “. . . the fundamental nature of the rights of a parent requires that the process by which a stipulation is drafted and signed needs to be closely scrutinized.” In the Matter of the Custody and Parental Rights of M.W. and C.S., 2001 MT 78, 305 Mont. 80, 23 P.3d 206 (2001).

The Child Protection Specialist must consider the following when assessing the appropriateness of a stipulation in a specific case:

- 1) If a parent is willing to stipulate that the child meets the definition of a youth in need of care by a preponderance of the evidence, an adjudicatory hearing must be held during which the stipulation is presented to the court. The adjudication **must** occur after an adjudicatory hearing. Therefore, a stipulation cannot be executed in lieu of an adjudicatory hearing; and,
- 2) If the child who is the subject of the stipulation is an Indian child and the parents are willing to stipulate that the child is a youth in need of care, the parents must stipulate that the child meets the definition by clear and convincing evidence, not by a preponderance of the evidence. If the child is placed in out-of-home care and the stipulation provides the basis for an adjudication, the adjudicatory hearing must be held. During the adjudicatory hearing, the court must hear testimony from a Qualified Expert Witness that continued placement of the child with the parent(s) is likely to result in serious physical or emotional harm to the child.

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References

Mont. Code Ann. § 41-3-102 and 41-3-609.
Mont. Code Ann. § 41-3-434.
Mont. Code Ann. § 41-3-443.
42 USC 671 Sec. 471.
Indian Child Welfare Act, 25 USC 1901, et seq.

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