

Child and Family Services Policy Manual: Legal Procedure Non-Custodial, Unknown, or Cannot-be-Located Parent

Policy

The public policy of the State of Montana is to compel in proper cases the parent of a child to perform the moral and legal duty owed to the child and to ensure that all children have a right to a healthy and safe childhood in a nurturing permanent family. To meet the intent of this public policy, noncustodial parents must be considered placement options for children in the child welfare system.

When a child must be removed from the home of the custodial parent because of child abuse or neglect, the non-custodial parent is the first placement option for the child considered by the Child Protection Specialist. In general, placement of the child with the noncustodial parent is more favored than placement with a member of the child's extended family. Placement with a non-custodial parent is presumed to be in the best interests of the child.

Background

Unless the Department has documented evidence to indicate that the child should not be placed with the non-custodial parent because of safety concerns, the non-custodial parent should be the first placement option considered.

Legal/birth parents have the right to parent their children unless a court finding or circumstances negate that right. As a corollary, children have the right to be placed with their legal/birth parents unless that parental authority has been abused.

Under Mont. Code Ann. § 40-6-221, the legal parents of a minor child are equally entitled to parent the child. The circumstances under which one parent is entitled to solely parent the child are if the other parent: a) is dead; b) is unable or refuses to exercise parenting; or c) has abandoned the family.

The Montana Supreme Court cited to this statute in In the Matter of JB, 278 Mont. 160, 923 P.2d 1096, 1996, a termination of parental rights case. In this case, the Supreme Court determined that when the parental rights of one parent are terminated, the parent whose rights have not been terminated has legal custody of the child (absent an adjudication of youth in need of care based upon the parenting behavior of the parent whose rights had not been terminated).

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Extended family members do not have priority over placement with the child's noncustodial parent. Because birth parents have the legal right to parent their children, this right cannot be abridged by extended family members utilizing a "best interests of the child" argument.

In In Re the Matter of the Parenting of J.N.P., 2001 MT 120, 305 Mont. 351, P.3d (2001), the great-aunt and uncle of a child left in their care petitioned for a parenting plan. The district court dismissed their petition because no termination or suspension of parental rights had occurred. The extended family members appealed. The Montana Supreme Court held that Montana case law does not permit the destruction of a birth parent's fundamental right to the custody of his/her child based simply on the subjective determination of the child's best interest.

**Placement with
Non-Custodial
Parent**

The non-custodial parent is someone who maintains his/her parental rights to a child but does not have physical custody of the child. The non-custodial parent may have visitation but the child does not live in his/her home.

The non-custodial parent is the first placement option for the child unless the Child Protection Specialist has documented good cause to the contrary exists indicating placement with the non-custodial parent could not assure the child's safety. The Child Protection Specialist must document and provide a written copy to the non-custodial parent as to why such placement is not in the child's best interests.

If the Child Protection Specialist determines the child will be placed with the non-custodial parent, the DPHHS-CFS-032, Noncustodial Parent Placement Agreement should be completed and executed. (See page 11 of this policy.)

After filing a petition for immediate protection and emergency protective services, the following relief may be included in the *ex parte* order issued by the court:

- a) the right to place the child with, among others, the noncustodial parent; and
- b) the requirement that the parent provide the Child Protection Specialist with the name and address of the other parent, if known, unless parental rights to the child

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have been terminated.

The court may also require the Child Protection Specialist to involve the noncustodial parent if the child is adjudicated a youth in need of care. Included in the provisions the court may order are:

- a) the court can require the Child Protection Specialist to evaluate the noncustodial parent as a possible caretaker if the Child Protection Specialist has not already done so;
- b) the court can order the Child Protection Specialist to continue efforts to notify the noncustodial parent;
- c) the court can order the child placed with the noncustodial parent on a temporary basis while the “custodial” parent works his/her treatment plan; and
- d) the court can order the child placed with the noncustodial parent on a permanent basis.

Diligent Search

The parental rights of both parents must be addressed upon initiation of court action. If a child abuse and neglect petition is filed under the Child Abuse and Neglect statute to initiate a proceeding under Mont. Code Ann. § Title 41, chapter 3, both parents must be named on all petitions.

When a Child Protection Specialist determines that court action is necessary to protect a child from the family which does not include both the child's legal parents, the Child Protection Specialist must make a diligent effort to identify and locate the noncustodial parent. A diligent search for the noncustodial parent, includes but is not limited to the following:

- a) Obtain information (name and address of non-custodial parent or putative/legal father) from the custodial parent;
- b) If the custodial parent refuses to provide information regarding the identity or address of the noncustodial parent, request that provision of the information be included in the order for immediate protection;
- c) Conduct a Family Finding Search through the Seneca

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Center Search Service at

<https://online.senecacenter.org/WWW/Public/FamilyFinding/RequestForm.aspx>

or an Accurant search through the CPS Program Manager in Central Office; and/or

- d) Search CAPS or contact Social Security. Child Protection Specialist may also access the Federal Parent Locator Service (contact the Child Support Enforcement Division for proper procedure). If the court has granted the department care and placement responsibility, the Child Protection Specialist may submit a request for information regarding the noncustodial parent (accompanied by a copy of the court order) to the local Office of Public Assistance for a search in TEAMS.
- e) Obtain a copy of the dissolution decree if applicable.
- f) Obtain a copy of the death certificate if the other parent is deceased.
- g) Upon identification of name and address of the non-custodial parent:
 - 1) Conduct a Child Protective Services check;
 - 2) Check the Montana Correctional Offenders Network and the Violent or Sexual Offender Registry
- h) If non-custodial parent is not a placement option initiate contact with extended family who can provide support to the family and/or placement for the child (applies to emergency placement, short-term placement and long-term placement). (See Policy Section 402-4, Placement in Kinship Care Home; Section 402-3, Concurrent Planning and Placement; and Section 103-1, Family Group Decision Making.)

Remember: The search for the noncustodial parent must occur at the initiation of the child abuse and neglect action.

**Unknown or
Cannot-be-Located
Parent**

Every effort must be made to personally serve the noncustodial parent. However, if a parent is unknown or cannot be located, the court may proceed with a hearing on certain, specified

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actions. Pending service by publication on the parent who is unknown or who cannot be located, the hearing may be held and the court may grant the following relief based on personal service on one parent:

- a) Immediate Protection;
- b) Temporary Investigative Authority; and
- c) Temporary Legal Custody.

To proceed with a hearing on the above-listed action, the known parent must be served personally and service of process by publication must be initiated on the parent who is not known or cannot be located. After the hearing, the court may issue an order that will adjudicate the interests of the parent served by publication.

**Child
Protection
Specialist Action**

The Child Protection Specialist initiates the publication process by completing an affidavit stating that, after due diligence, the parent cannot be identified or found. The affidavit must include information regarding the diligent efforts made by the Child Protection Specialist to either identify or locate the noncustodial parent. If appropriate, the affidavit for service of process by publication may be combined with any other affidavit filed by the Child Protection Specialist. (See sample affidavit on page 9 of this section.)

Service by Publication

The County Attorney will request an order authorizing service of process by publication from the court. The Child Protection Specialist's affidavit regarding the action taken to identify or locate the noncustodial parent will support the County Attorney's request.

The order for service of process by publication may be issued by either the judge or the clerk of the court. Service by publication must be made by publishing notice three times, once each week for three successive weeks:

- a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the noncustodial parent, based upon the last known address or whereabouts if known of the person, if inside the State of Montana; or

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- b) if the identify or location of the noncustodial parent is unknown or if the last known address is outside the State of Montana, in a newspaper in the county in which the action is pending.

Putative Fathers

The Child Protection Specialist must make reasonable efforts to resolve issues of paternity, if any, as early as possible in child abuse and neglect proceedings. Every effort must be made to obtain service of process of a petition on a putative father. If a putative father cannot be served personally, the same procedure is used to serve him by publication as is used to serve the unknown or cannot-be-located parent by publication. The process is initiated by an affidavit from the Child Protection Specialist outlining the diligent efforts made to identify and locate the putative father.

**Termination of the
Parent-Child Legal
Relationship**

Before a termination of the parent-child legal relationship may be ordered, the court must determine whether the required procedure was followed for service of process on the parents. This includes the procedure for service of process by publication on the unidentified or cannot-be-located parent and on any putative fathers.

**Good Cause to the
Contrary**

If good cause to the contrary exists, the Child Protection Specialist may choose to consider placement with the non-custodial parent if the non-custodial parent requests consideration as a placement option. In this situation, documentation of good cause would result in immediate implementation of a Treatment Plan for the non-custodial parent to address current and past issues.

The circumstances under which the Child Protection Specialist may determine that good cause to the contrary exists to indicate that the child's safety could not be assured if the child were immediately placed with the non-custodial parent are limited to the following:

- a) Child Protective Services **history** which poses risk to the child;
- b) Parental rights **terminated** under a dissolution decree;

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- c) Parental rights involuntarily terminated to a child other than the child who is the subject of the current proceeding;
- d) Conviction within the last five years for a **felony** which indicates a risk to the child including, but not limited to:
 - 1) child abuse or neglect;
 - 2) spousal abuse;
 - 3) crimes against children (including child pornography);
 - 4) crime involving violence; or
 - 5) drug-related offense.
- e) Non-custodial parent refuses placement;
- f) Documented mental illness which would impair the non-custodial parent's parenting ability; or
- g) Putative parent denies paternity.

**Good Cause to the
Contrary does not Exist**

Placement of the child with his/her non-custodial parent is presumed to be in the best interests of the child. Therefore, if good cause to the contrary does not exist, the child shall be placed with the non-custodial parent. Without good cause, the Child Protection Specialist has no basis to support imposing requirements on the non-custodial parent such as:

- participation in a treatment plan addressing behavior of the non-custodial parent;
- a home study; or
- a psychological evaluation.

Although the initial plan for the child is generally reunification with the parent(s) from whom the child was removed, no statutory legal requirement exists which mandates that the child be returned to the parent from which the child was removed. The non-custodial parent can either participate in a plan to reunify the child with the custodial parent, seek custody of the child (if a custodial decree does not exist), or seek modification

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of the custodial decree.

The non-custodial parent may be the permanent placement option if such a placement is appropriate. However, if the permanent plan for the child is placement with the non-custodial parent, the safety of the child must be protected and the child's permanent placement with the non-custodial parent must be legally established.

The permanent placement of the child with the non-custodial parent may be established by the court at the end of the dispositional hearing. The Child Protection Specialist may recommend that the disposition for the child be that the court orders the placement of the child with the non-custodial parent. The Child Protection Specialist should consult with the County Attorney to determine the depth of information required to support this recommendation.

If the court approves placement of the child with the non-custodial parent, the court may so order and this order would supersede any existing custodial order. If the court orders placement of the child with the non-custodial parent, the court would dismiss the proceeding and the Child Protection Specialist would no longer provide reunification services to the parent from whom the child was removed or to the non-custodial parent.

**CAPS Entry
For Non-custodial
Parent Placement**

If it is the Department's plan to continue intervention or supervision with this family upon placement of the child with the noncustodial parent, that noncustodial parent's information is entered into **CAPS** as a provider using **NCP** (Noncustodial Parent) as the Facility Type code. The "license" status **NLR** (No license required) will auto populate on the FALD screen.

SERN Entry

PXPNP (non-paid non-custodial parent) shall be entered on the **SERN** screen. No payment shall be made to a noncustodial parent under this code.

**Child Protection
Specialist Action
Documentation**

All Child Protection Specialist placement decisions must be supported by documentation in the case file and/or CAPS. The case file must contain documentation of the safety concerns and the good cause to the contrary to support the decision if the child is not placed with the non-custodial parent.

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If the non-custodial parent is not a placement option and the Child Protection Specialist does not place the child with a relative, the Child Protection Specialist must document the reason(s) the child was not placed with relatives and **must** provide the relatives with the reason(s) the Division has made in determining not to place the child with the relative in writing.

Interstate Compact on Placement The Child Protection Specialist must comply with the Interstate Compact on the Placement of Children if the non-custodial parent does not reside in Montana. (Refer to Policy Section 402-7, Interstate Compact on the Placement of Children or consult with the Interstate Compact Administrator in the State Office.)

References

Mont. Code Ann. § 40-6-221
 Mont. Code Ann. § 41-3-101 et seq.
 Mont. Code Ann. § 41-3-427
 Mont. Code Ann. §§ 41-3-428 and 429
 Mont. Code Ann. §§ 41-3-437 and 438
 Mont. Code Ann. § 41-3-608

Rev. 10/03
 Rev. 10/05
 Rev. 10/07
 Rev. 10/11
 Rev. 08/12
 Rev. 10/13

**SAMPLE CHILD PROTECTION SPECIALIST AFFIDAVIT
FOR SERVICE BY PUBLICATION**

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN THE MATTER OF:)
 (JOHN DOE AND JANE DOE),)
))
YOUTH IN NEED OF CARE.)
_____)

No. _____

**AFFIDAVIT FOR
SERVICE BY
PUBLICATION**

STATE OF MONTANA))
) : ss.
COUNTY OF _____)

(Name), being first duly sworn on oath, states:

1. That (Name) is a Child Protection Specialist for the Department of Public Health and Human Services.

OPTIONS FOR #2

2. That (Name of Absent Parent), the natural (mother or father) of (Name of Youth) cannot be identified or found for service of process of the citation and Petition for (Immediate Protection) or (Temporary Investigative Authority) or (Temporary Legal Custody) in this matter.

OR

2. That the unknown putative father of (Name of Youth) cannot be identified or found for service of process of the citation and Petition for (Immediate Protection) or (Temporary Investigative Authority) or (Temporary Legal Custody) in this matter.
3. After due diligence, (Name of Absent Parent) or (Unknown Parent) cannot be identified, located or served.
4. (List efforts to identify and/or serve - use information from Child Protection Specialist Affidavit or report to the Court.)

5. That the State of Montana has a valid cause of action which in the interest of the above-named youth must be fully pursued before this Court and that it is necessary to serve process upon (*Name of Absent Parent*) or (*Unknown Parent*) by publication.

DATED this _____ day of _____, _____.

(Child Protection Specialist Name)

(Child Protection Specialist Title), DPHHS

State of Montana
County _____

On this _____ day of _____, _____; personally appeared _____ before me a notary public for the State of Montana; personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that s/he executed the same.

NOTARY PUBLIC FOR THE STATE OF MONTANA

Printed name of Notary Public

Notary Public for the State of Montana

Residing at _____

My commission expires _____

NONCUSTODIAL PARENT PLACEMENT AGREEMENT

Agreement between the Child and Family Services
Division, _____

County,

And,

_____ (Noncustodial Parent)

Under the terms of this agreement, the undersigned agrees to provide care to the following children:

- 1) _____
- 2) _____
- 3) _____

The undersigned attests that:

- 1) My parental rights to the above-named child(ren) remain intact and that no court of competent jurisdiction has terminated the parent-child legal relationship between me and my child(ren).
- 2) I understand that the initial plan for my child(ren) will be reunification with the parent from whom, because of child safety issues, the child(ren) were removed.
- 3) I understand that the permanent plan for my child(ren) is the following:

 _____ reunification with the children's custodial parent. If this is the plan for my children, I will cooperate with my child(ren)'s Child Protection Specialist to effectuate this plan.

 _____ no reunification with the children's custodial parent. If this is the plan for my children, I will pursue obtaining custody of my children so the child abuse and neglect proceeding involving my children may be dismissed.
- 4) I understand that my child(ren)'s Child Protection Specialist will conduct a search to determine if I have a child protective services history which poses a risk to my child(ren).
- 5) I have not been convicted (within the last five years) of a felony which indicates that placement in my home poses a risk to my child(ren). A felony conviction which poses a risk to my child(ren) includes, but is not limited to, a conviction for:
 - a) child abuse or neglect;
 - b) spousal abuse;
 - c) crimes against children (including child pornography);
 - d) crime involving violence; or
 - e) drug-related offense.

6) If I do not reside in the State of Montana, I understand that my child(ren)'s Child Protection Specialist must comply with the requirements of the Interstate Compact on the Placement of Children, Mont. Code Ann. § 41-4-101 et seq.

Dated this _____ day of _____

Noncustodial Parent

Child Protective Specialist
Child and Family Services Division