

# Parents' Guide to Montana Dependent Neglect (DN) Cases

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## Disclaimer

This guide does not contain legal advice or opinions.

This guide is for general informational purposes only. It does not provide legal advice or opinions. No action or inaction should be taken based on the information in this guide. If you need legal advice or opinions, speak with your lawyer immediately. The judge or standing master should appoint a lawyer for you at the beginning of a dependent neglect (DN) case. You can contact the Office of the State Public Defender (OPD) if you have not been assigned a lawyer already. This guide does not promise or warranty the accuracy or completeness of these materials for any particular purpose. Any and all liability based on actions that may or may not be taken in reliance upon the information in this guide is disclaimed.

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## About this Guide

This guide is for parents who are involved in a dependent neglect (DN) case in Montana. Although every family is unique, and every case is different, the purpose of this guide is to help parents understand what might generally occur during the case and help them prepare for it.

Dependent neglect cases begin when a parent, guardian, or other caregiver is accused of child abuse, neglect, or abandonment. Children are removed from their homes when the Montana Child and Family Services Division (CFSD) believes the children are not safe there. In these cases, CFSD either has temporary legal custody of a child or asks a District Court give them temporary legal custody. Custody is the legal responsibility of caring for a child and their well-being.

The court process can be hard to understand and stressful for many parents. You may feel angry, frustrated, or scared. You are not alone in having these feelings. Knowing what to expect can help.

**Legal terms** can be confusing. You can ask your lawyer if you do not understand something. There is also a **Key Terms Glossary** at the end of this guide that provides general definitions for certain terms.

If you have specific questions about what happens during hearings, the people involved, or the process, again, you can ask your lawyer. There is also a **Table of Contents** at the beginning of this guide that identifies particular topics and questions you may have.

It is in your best interest to stay in close contact with your lawyer throughout the DN case. They seek to protect your rights and interests and pursue your goals. Speak with your lawyer right away if you have questions or need legal advice. The court will appoint a lawyer for you. If you do not know who your lawyer is, email the Office of the State Public Defender at [opdeps@mt.gov](mailto:opdeps@mt.gov) or call 1-888-241-8657.

***For more general information on dependent neglect (DN) cases, please visit the Montana Court Improvement Program's website at [cip.mt.gov](http://cip.mt.gov), which has a link to eLearning guides, including one for parents about DN cases.***

## Rights and Responsibilities

As a parent, you have rights and responsibilities during a dependent neglect (DN) case. Every case and family is unique. **The list below may not include all of your particular rights and responsibilities. If you need advice or have questions about all of your rights and responsibilities, please ask your lawyer.**

### What are your rights as a parent?

- You have the **right to legal representation** throughout your DN case. You have the right to a lawyer or attorney.
- You have the **right to speak with and seek legal advice from your lawyer.**
- You have the **right to speak with the child protection investigator and child reunification specialist** from the Child and Family Services Division (CFSD) to plan for your case.
- You have the **right to admit or deny any allegations** about you or your family.
- You have the **right to be informed about all court appearances, conferences, and scheduled meetings** so you have time to prepare with the help of your lawyer.
- You have the **right to be heard** at court appearances, conferences, and scheduled meetings.
- You have the **right to have your lawyer present witnesses and other evidence** at hearings.
- You have the **right to have your lawyer question witnesses** in court hearings.
- You have the **right to an interpreter** if you do not understand English or have difficulty hearing.

### What are your responsibilities as a parent?

- **Take your DN case seriously.** It can help protect your parental rights and demonstrate your commitment to your child's well-being. Remember, **your rights as a parent are at stake.**
- **Attend court appearances, conferences, and meetings to actively participate, understand what is happening, and ensure your voice is heard.**
- **Communicate with your lawyer frequently and regularly** to share information and ask questions or seek legal advice.
- **Work with your attorney to develop case plans.** You can also choose to collaborate with the child protection investigator and the child reunification specialist from CFSD to develop plans and continue working on those plans throughout the DN case.
- Make sure your lawyer, child protection investigator, child reunification specialist, special advocate, and the court all have **your current contact information** so you can receive important information and updates.

- **Share information about any special needs your child may have** for case planning and your child’s protection. Special needs may include a formal diagnosis, medications, support at school, or something unique to your child, such as a toy, game, or activity.
- **Stay informed about what you need to do** and when you need to complete tasks.
- **Follow through with your tasks and finish on time.** DN cases move quickly. Addressing safety issues promptly can increase the likelihood of your family being reunited.

## **Types of Parents in a Dependent Neglect (DN) Case**

### **Parents involved with the safety concerns**

Sometimes parents were involved with the safety concerns that led to the child’s removal. These parents are identified by the Child and Family Services Division (CFSD) as **contributing to the circumstances that led to the child’s removal from the home**. The court documents should explain the state’s specific safety concerns about these parents, which may include abuse, neglect, or abandonment.

These safety concerns may involve actions the parents did or did not take that put the child at risk. These parents were often the child’s custodial parent at the time of removal, but not always. The goal of CFSD is to address these safety concerns and determine what services or support may be needed to safely reunite the family, if possible.

### **Parents not involved with the safety concern**

Some parents were not involved in the safety concerns that led to their child’s removal. They **did not create the circumstances that led to their child's removal from the home**. These parents may be referred to as “**non-offending parents**.” There should be no allegations of abuse or neglect against these parents in the court documents.

Often, but not always, these parents did not have custody of the child at the time of removal and are considered the non-custodial parent. Any abuse or neglect likely occurred while the child was in the custodial parent's care.

### **What rights does the parent who wasn't responsible for the removal have?**

**Every parent has the right to care for their child if they are fit, willing, and able to do so safely.** If your child was removed from the other parent’s home and you were not involved with

the safety concerns, you should be the first person the state will consider for your child's placement.

Before your child can be placed with you, CFSD must make sure your home is safe. This may include:

- Checking for any past child welfare or criminal history
- Talking with you about your living situation, and
- Making sure the information you share is accurate.

If there are no safety concerns and no reason to deny a placement with you, you have the right to care for your child. Under Montana law, the court can place your child with you while the other parent works on their safety plan. In some cases, the court may even dismiss the case and grant you legal custody.

If new safety concerns arise later, CFSD should investigate them to make sure your child remains safe.

## **Who will be involved with your DN case?**

In a dependent neglect (DN) case, many different individuals play key roles. Understanding what these people do will better prepare you, so you know what to expect from them.

**Throughout this guide, the terms lawyer and attorney are both used to refer to individuals licensed to represent people and entities in legal matters. You may also hear them called counsel.**

### **Your Lawyer**

**As a parent, you have the right to an attorney in a dependent neglect (DN) case filed in a Montana District Court.** The judge will appoint a lawyer for you at no cost to you. You may also hire a private attorney if you can afford one.

Your lawyer will assist you by answering your questions, providing legal advice and opinions, protecting your rights, and representing your interests. Reach out to your attorney as soon as possible. It is essential to maintain frequent and regular contact with them throughout the case.

**You can speak with your lawyer about what they can and cannot do for you. There are also things they must do**, such as ethically pursuing your goals for the case, keeping you reasonably informed, and communicating with you regularly.

However, there are things they cannot do. They cannot engage in dishonest behavior, make guarantees, misrepresent the law or facts, or pursue frivolous claims or claims without merit.

These are only some examples. Take the time to speak with your lawyer in detail about the things they must do, can do, and cannot do.

**Your private conversations with your lawyer are confidential, with some exceptions.** That means these communications generally remain private. Take time to speak with your lawyer about the confidential nature of your conversations and learn about any limitations on confidentiality that might apply. Your attorney will generally not disclose the nature of your conversations or other communications without your permission.

However, your conversations and other communications with the child protection investigator, child reunification specialist, other parties and their attorneys, service or treatment providers, special advocates such as court appointed special advocates (CASA) or guardians ad litem (GAL), the judge or standing master, and others are not usually confidential. What you tell those individuals will likely be shared with others.

**Your lawyer represents you and no one else in the DN case.** Each parent generally receives their own attorney because the parents' interests may differ. Your lawyer must take ethical steps to achieve your goals for the case. For example, they will collect and review essential documents and investigate on your behalf. They should provide you with copies of the key documents and discuss them with you.

You can access these documents, in addition to information about upcoming court dates, online through the public defender's client portal. You should receive instructions on how to access the portal from the public defender's office. If you have questions about that process, you can ask your lawyer.

Your attorney will speak with the other parties involved with the case, their lawyers, child protection investigators, child reunification specialists, and the judge or standing master. They may file motions asking the court to make certain decisions on your behalf; request hearings; and question witnesses, present testimony and other evidence, and argue on your behalf. Together, you and your attorney can prepare for court appearances, conferences, and scheduled meetings. Your lawyer will pursue strategies to advance your goals for the case.

Because your attorney represents you, they need your current contact information to reach you. You should also have your lawyer's contact information. Contact them if you have questions, concerns, or new information about yourself or the case. You should expect them to reach out to you as well. They can provide you with legal advice and opinions, as well as any new information they learn about the case.

## **Child Protection Investigators and Child Reunification Specialists**

Child protection investigators and child reunification specialists are sometimes referred to by their former title, "child protection specialists," or CPS. They may also be called "caseworkers" or "social workers." They work for the Montana Child and Family Services Division (CFSD), which is part of the Department of Public Health and Human Services (DPHHS). CFSD and DPHHS together are often called "the Department."

**A child protection investigator looks into allegations of child abuse, neglect, or abandonment.** If they believe a child is safe at home, the child remains there. They remove children from their homes when they believe it is not safe and cannot be made safe right away. Child protection investigators may be referred to as “intake workers.”

**A child reunification specialist usually takes over after a court case is filed.** They help you and your family access services and treatment so you can live together safely. Except for a very small percentage of DN cases involving allegations of severe maltreatment or extreme criminal behavior, the child reunification specialist will work with you to try to reunify your family in a safe, stable home. They may be called an “ongoing worker.”

Child protection investigators and child reunification specialists appear in court, prepare reports, and make recommendations to the judge or standing master. They may also testify at court hearings. They will provide information about the case to you, your lawyer, the court, and other people involved with the case.

**Your conversations and other communications with a child protection investigator or child reunification specialist, even if your lawyer is present, are not confidential.** This means the child protection investigator or child reunification specialist can tell the court and others what you said or otherwise communicated to them without your permission.

## **The Judge or Standing Master**

**The judge or standing master may be referred to as “the court.”**

**A District Court Judge will oversee your court hearings and, generally, the entire court case.** They want to make sure your child is safe throughout the court process and that you have a fair chance to resolve any safety concerns. The judge is neutral and objective. They listen to all sides and make decisions. They consider the law, your rights as a parent, and your child’s rights and best interests. The judge will also review the parties' agreements.

**The judge may appoint a standing master to oversee the case and perform duties similar to those of a judge.** They may oversee hearings, except for termination of parental rights hearings. Only a judge can preside over a termination of parental rights hearing. A standing master must be a licensed attorney. Like the judge, a standing master is neutral and objective and works to ensure your child’s safety while giving you a fair opportunity to address any safety concerns.

If your child was removed from their home, the judge or standing master will determine whether the state did enough to prevent the removal. They will decide whether removing your child from their home was necessary due to safety concerns. The court can order that your child be returned home if it finds it is safe to do so. However, if the judge or standing master decides your child had to be removed, they will make sure that proper services are in place for your family. This could include support, information, resources, and treatment. Treatment focuses on addressing specific issues, such as substance abuse or mental health issues.

The judge or standing master can order you to participate in services through a treatment plan. You may attend meetings and discussions to develop an appropriate treatment plan. If these services result in positive changes in your life and are all successfully completed, your child should be able to return home.

### **The State's Lawyer (Deputy County Attorney, County Attorney, or Assistant Attorney General)**

The state's lawyer **represents the state of Montana in dependent neglect (DN) cases** and works closely with the child protection investigator and child reunification specialist from the Montana Child and Family Services Division (CFSD).

The state's lawyer could be a deputy county attorney, the county attorney, or an assistant attorney general. Sometimes, private attorneys are contracted to represent the state. They decide whether to file a DN case and then work to prove the state's case to the court. If your child was removed from their home, the state's lawyer must prove that appropriate efforts were made to prevent the removal and that the removal was necessary to protect your child. Throughout a DN case, they must also show that CFSD is making appropriate efforts to reunify your family in a safe home.

The state's lawyer may seek termination of parental rights if the child cannot return home safely after services are offered to the parents through a treatment plan. When there has been extreme abuse or severe criminal behavior, the state's attorney may pursue termination of parental rights at the beginning of the case. However, in the vast majority of DN cases, the state will offer services to the parents in an attempt to resolve safety concerns. In cases where parental rights are terminated, the state seeks a safe, long-term placement for the child with a caregiver other than the parents.

**The state's lawyer is not your lawyer. Your conversations and other communications with the state's lawyer, even if your lawyer is present, are not confidential.** This means the state's attorney can tell the court and others what you said or otherwise communicated to them without your permission.

### **Special Advocates (Court Appointed Special Advocates (CASA) or Guardians ad Litem (GAL)**

CASAs and GALs advocate on behalf of children who have experienced abuse, neglect, or abandonment. They are appointed by judges or standing masters to **advocate for children's best interests**. Generally, they stay with each case until it is closed and the child is in a safe, permanent home.

Their work on behalf of children includes learning about the child and their family and life; regularly visiting the child; speaking up for the child's best interests in court; and making recommendations about the child's placement and needed services.

CASAs and GAL's report to the court what they believe is in your child's best interest. They can review documents, may seek to speak with you or others involved in the case, appear in court and at conferences and meetings to discuss your child's best interest and case planning. You and your lawyer may contact your child's special advocate. You may ask your attorney to be present if you speak with the CASA or GAL.

**The special advocate is not your lawyer. Your conversations and other communications with the special advocate, even if your lawyer is present, are not confidential.** This means the special advocate can tell the court and others what you said or otherwise communicated to them without your permission.

## **The Child's Lawyer**

The judge or standing master in a Montana dependent neglect (DN) case will assign an attorney to represent your child at no cost to you or your child. **Children in Montana, like parents, have the right to a lawyer in all DN cases.**

**The child's lawyer seeks to represent the child's expressed wishes for the case. The child's wishes are not necessarily the same as the child's best interest.** For example, a child may want to go home right away, but that may not be in their best interest because it is not yet safe. The child's wishes may also not be what you want.

The child's attorney speaks with the child, tries to find out what the child wants, pursues the child's expressed wishes, and represents the child's position and goals for the case. Remember, the special advocate, not the child's lawyer, advocates for the child's best interest. With younger or less mature children, a child's attorney may have to determine what the child's wishes are. For instance, they may assume an infant who cannot speak wants to live with their parents, if it is safe.

If possible, the child's lawyer will review the case documents and developments with the child and provide legal advice and opinions to them. With less mature children, this may not be possible. The child's attorney may file motions, request hearings, question witnesses, argue, and present witness testimony and other evidence in court. Their job is to pursue your child's wishes and goals for the case.

**The child's attorney is not your lawyer. Your conversations and other communications with the child's lawyer, even if your lawyer is present, are not confidential.** This means the child's lawyer can tell the court and others what you said or otherwise communicated to them without your permission.

## How Does a Dependent Neglect (DN) Case Get to Court?

**The Child and Family Services Division (CFSD) receives a report of child abuse, neglect, or abandonment.**

**Anyone can report genuine concerns about a child's safety and well-being to CFSD.** Some people, such as teachers, police officers, and medical doctors, are required to report to CFSD when they believe a child is being abused, neglected, or abandoned. These individuals are referred to as "mandatory reporters."

**A child protection investigator looks into the report.**

**CFSD must investigate reports it receives of suspected child abuse, neglect, or abandonment.**

If the child is safe at home, the child will remain there. If, after investigating, the child protection investigator believes the child is not safe and cannot be made safe at home right away, the investigator will remove the child from the home.

CFSD gives parents a written notice of removal if they are available at the time of their child's removal. The public defender's office should receive a copy of the notice of removal within 24 hours of the child's removal. The notice of removal should include the reasons for the child's removal and provide contact information for the child protection investigator, their supervisor, and the public defender's office.

**An affidavit is drafted by the child protection investigator.**

If a child is removed from their home, the child protection investigator must prepare an affidavit for the state's lawyer. **An affidavit is a sworn document that outlines the child protection investigator's safety concerns and the reasons for the child's removal.** The affidavit should be provided to the state's lawyer and the public defender's office within two business or working days of the child's removal. The parents should also receive a copy, if possible. Business or working days do not include weekends or holidays under Montana law.

If the state's lawyer believes there are sufficient safety concerns, they will file the affidavit and a petition in the appropriate Montana District Court. This process opens a DN case. Otherwise, the state's attorney may determine that there are insufficient safety concerns. No DN case will be filed, and the child must be returned home immediately.

## **A petition and affidavit are filed in a Montana District Court.**

The petition and affidavit must be filed with the court within five business or working days of the child's removal. Because business or working days do not include weekends or holidays under Montana law, this usually takes about a week.

The affidavit is sworn to be true and explains the reasons why CFSD decided to remove the child from their home. It should also include any statements you or another parent made. The petition asks the court to approve the state's request for specific actions.

**The petition and affidavit together inform the judge or standing master of the reasons for the child's removal.** The petition may request that the court take immediate steps to protect the child, including ordering that the child remain outside the home. CFSD can also request additional investigation and temporary legal custody of the child.

In rare cases involving allegations of extreme child abuse or severe criminal behavior, the state may seek termination of parental rights at the beginning of a DN case. However, in most DN cases, CFSD does not seek termination of parental rights in the initial petition to the court. CFSD almost always works with the parents and family to reunite them in a safe, stable home.

## **The judge or standing master decides if the dependent neglect (DN) case proceeds.**

The judge or standing master reviews the petition and affidavit and determines whether there are sufficient safety concerns to proceed with the DN case. Otherwise, the court may dismiss the DN case, and the child is returned home.

If the case continues beyond the court's initial review of the petition and affidavit, the judge or standing master will set a date and time for the initial court hearings. The first hearing, an emergency protective services (EPS) hearing, must also be held within five business or working days of a child's removal.

## **What is the Indian Child Welfare Act (ICWA)?**

**The Indian Child Welfare Act, or ICWA, is a federal law that seeks to protect Native American children, families, and tribes.** It was enacted by the U.S. Congress in 1978 to address long-standing discrimination against Native Americans and the alarming number of Native American children removed from their families and placed in non-native homes, isolated from their Tribe, their history, and their culture. The law refers to Native Americans as American Indians and Alaska Natives.

In 2023, Montana enacted a similar state law, the Montana Indian Child Welfare Act, or **MICWA**. Both ICWA and MICWA are currently in effect.

**For ICWA and MICWA to apply to a dependent neglect (DN) case, the child must be an “Indian child” as defined by those laws.**

**By law, an Indian child is an unmarried person under the age of 18 who is either:**

- **a member of a federally recognized Indian Tribe, or**
- **is eligible for membership in a federally recognized Indian Tribe and is the biological child of a member of a federally recognized Indian Tribe.**

Federally recognized tribes are Native American tribes and Alaska Native villages recognized by the United States federal government.

**Indian Child Welfare Act (ICWA) and Montana Indian Child Welfare Act (MICWA) cases are handled differently than other dependent neglect (DN) cases.**

The following must happen:

- In a possible ICWA case, the Child and Family Services Division (CFSD) must reach out to all potential tribes to find out whether the child is an Indian child. **Only the child’s Tribe or tribes can determine whether the child is a member or eligible for membership.**
- The court uses ***stricter standards*** when reviewing an ICWA case.
- CFSD must make greater efforts in an ICWA case. **Active efforts** are required to avoid removing an Indian child from their home. Active efforts must also be made to reunify the family. In non-ICWA cases, only reasonable efforts are required.
- The **child’s Tribe may get involved** to protect the child’s rights as a member or person eligible for membership. The Tribe could even choose to become a party to the case.
- **The matter may be transferred to the Tribal Court.** However, parents have an absolute right to object. If either parent objects to the transfer, the case stays in the Montana District Court.

If your child is a member or possibly eligible for membership in a Native American Tribe or an Alaska Native Village, be sure to speak with your attorney about that as soon as possible.

## **Who are Indian Custodians?**

**An Indian custodian is a Native American who has custody of an Indian child.** Custody could be through tribal law, custom, or state law. A parent could also give an Indian custodian physical care, custody, and control of their child. An Indian custodian might be a relative or tribal member with formal custody of a child through tribal or state law. However, an Indian custodian may be caring for an Indian child through less formal means, such as tribal customs or temporarily through permission from the child’s parents. The term Indian custodian is

broadly interpreted to include all Native Americans caring for an Indian child through legal orders, tribal customs, and parental permission.

Indian custodians have rights under the Indian Child Welfare Act (ICWA) and the Montana Indian Child Welfare Act (MICWA) that are similar to those of parents because of their role as culturally appropriate caregivers.

However, unlike parents, an Indian custodian's rights are not constitutionally guaranteed. Their rights are established through ICWA and MICWA. Like parents in a dependent neglect (DN) case, Indian custodians have the right to be appointed an attorney. However, there are some differences between the rights of parents and those of Indian custodians. If an Indian custodian is involved with your case, be sure to ask your lawyer about those differences.

***For more general information concerning ICWA, MICWA, and Indian custodians, please visit the Montana Court Improvement Program's website at [cip.mt.gov](http://cip.mt.gov), where you will find information concerning ICWA and a link to eLearning guides, including an eLearning guide about ICWA.***

## **Court Hearings**

### **Who leads court hearings?**

**A Montana District Court Judge typically presides over hearings in dependent neglect (DN) cases.** That means the judge is in charge. The judge makes decisions, including whether your child can remain at home or return home safely.

In some jurisdictions, judges refer cases to a **"standing master."** A standing master is **a lawyer who can act as a judge during most DN hearings.** However, a standing master cannot preside over termination of parental rights hearings. A judge must preside over termination hearings.

**There are no juries in Montana DN cases.** Either a judge or a standing master makes the court's decisions.

### **Where will the court hearings be held?**

Court hearings may be held **in a courtroom, by video conference, or even by telephone.** To be prepared, make sure you find out ahead of time whether the hearing will be held in person or remotely.

## **When will court hearings happen?**

**Dates and times will be set for all court hearings.** Sometimes hearings may need to be rescheduled. Stay in close contact with your lawyer so you are aware of any changes to the court's schedule. Make sure your lawyer, the court, child protection investigator, and child reunification specialist know how to reach you if something comes up.

## **Who participates in court hearings?**

The following people may participate in court hearings:

- The judge or standing master
- Parents, guardians, and other caregivers
- Child protection investigators and/or child reunification specialists from the Child and Family Services Division (CFSD)
- Lawyers for the state, parents, and child
- The special advocate for your child, such as a court appointed special advocate (CASA) or guardian ad litem (GAL)
- Tribal representatives, if the case involves an Indian child as defined by the Indian Child Welfare Act (ICWA) and the Montana Indian Child Welfare Act (MICWA)
- Resource parents, also known as foster parents
- Service or treatment providers
- Friends and relatives of the family, and
- The child, if appropriate.

In addition, other people may be called to testify as witnesses during court hearings.

## **Why is it important to go to court?**

It is important to go to court **to make sure your voice is heard.** Going to court **allows you to be involved in planning for your child's safe return home.**

During court hearings, the judge or standing master makes critical decisions intended to keep your child safe and make sure your family receives the help you may need to create a safe, stable home for your child. The court decides whether your child can safely remain at home or return there. The judge or standing master may place your child with the Child and Family Services Division (CFSD). If your child is placed with CFSD, they will determine where your child lives temporarily.

You can provide the court with important information. For example, your child could live with a reliable relative or close family friend. You can provide the court and CFSD with your relatives' and friends' contact information so they can be evaluated as placement options for your child.

If you do not attend court, remain in close contact with your lawyer, and participate in other discussions, your voice will not be heard. You will miss the opportunity to participate in crucial decisions. Most importantly, you will not be involved in creating a plan for your child's safe return home.

## **Pre-Hearing Conferences (PHC)**

### **What is a pre-hearing conference?**

**Pre-hearing conferences are meetings held outside of court. They are not court hearings.** Pre-hearing conferences are sometimes called PHCs. They give you a chance to ask questions and talk about your concerns with the other people involved with the case.

**The purpose of a pre-hearing conference is to discuss important issues related to you, your family, and your child at the beginning of a dependent neglect (DN) case.** One of the goals of pre-hearing conferences is to help the people involved begin working as a team toward the safe reunification of your family. There will likely be discussions about whether your child can go home right away.

During the pre-hearing conference, if your child cannot go home at that time, you will discuss **four main issues:**

- **Placement for your child** or where they will live
- **Family time** between you and your child, including visitation
- **Services and treatment** for you, your family, and your child, and
- **What needs to happen for your child to return home safely.**

You will also discuss important legal issues regarding:

- Upcoming hearings
- Related court cases
- Whether your child is an Indian child as defined by the Indian Child Welfare Act (ICWA) and Montana Indian Child Welfare Act (MICWA), and
- The child's paternity, or who the father is.

A pre-hearing conference is only the beginning of the discussions. Conversations about these subjects should continue throughout a DN case.

### **Who leads the pre-hearing conference?**

**A PHC facilitator leads the pre-hearing conference.** They are neutral and objective and cannot provide legal advice or opinions. If you need legal advice or an opinion, you can ask your lawyer.

### **Judges and special masters do not participate in pre-hearing conferences.**

The Montana Court Administrator's Office pays for and trains PHC facilitators. They do not work for the Child and Family Services Division (CFSD) or any other party. A facilitator does not make decisions about your case. Their only involvement is during the pre-hearing conferences. The PHC facilitator makes sure you and everyone in the room are treated with respect and can speak openly and honestly.

### **Where will the pre-hearing conference be held?**

A pre-hearing conference will be held either in person or through a remote video platform like Zoom. In-person pre-hearing conferences will be held at the courthouse in a jury room, conference room, or courtroom. However, most jurisdictions now hold pre-hearing conferences remotely by video conference.

### **When does the pre-hearing conference happen?**

A pre-hearing conference must be held **within five business or working days of your child's removal and before the first court hearing, called an emergency protective services (EPS) hearing**. Because business or working days under Montana law do not include weekends or holidays, pre-hearing conferences are usually held about a week after a child is removed from their home.

### **Who should participate in the pre-hearing conference?**

The following people are encouraged to take part in pre-hearing conferences:

- Parents, guardians, and other caregivers of the child
- Child protection investigators and/or child reunification specialists from CFSD
- Lawyers for the state, parents, and child
- Special advocates, such as court appointed special advocates (CASA) or guardians ad litem (GAL)
- Resource parents, also known as foster parents
- Service or treatment providers, if allowed by the parties
- Family members and friends, if appropriate and allowed by the parties
- Tribal representatives, if the case involves an Indian child as defined by the Indian Child Welfare Act (ICWA) and the Montana Indian Child Welfare Act (MICWA), and
- The child, if appropriate.

Judges and standing masters do not participate in pre-hearing conferences.

People who attend pre-hearing conferences sometimes report what occurred to the court. If you do not want something from the pre-hearing conference shared with the judge or special master, let your attorney know before your first court appearance.

### **What happens after the pre-hearing conference?**

After the pre-hearing conferences, you and the other parties will attend an emergency protective services (EPS) hearing before the judge or standing master. Depending on the jurisdiction, this court appearance may happen immediately after the pre-hearing conference or within a few days. Some discussions from the pre-hearing conference may be shared with the court. The judge or standing master may have questions about you, your child, and the status of the case. They may also ask about your child's placement, family time, including visitation, and any services or treatment you may be willing to begin.

*For more general information about pre-hearing conferences (PHC), please visit the Montana Court Improvement Program's (CIP) website at [cip.mt.gov](http://cip.mt.gov), where you will find information about pre-hearing conferences and links to eLearning guides, including pre-hearing conference guides for facilitators and stakeholders, including parents.*

## **Emergency Protective Services (EPS) Hearings**

### **What is an emergency protective services hearing?**

An emergency protective services hearing, or EPS hearing, is **the first court hearing in a dependent neglect (DN) case**. Because it is a court hearing, a judge or special master will be in charge.

**The main purpose of an EPS hearing is for the court to decide whether the child's out-of-home placement should continue beyond the hearing.** In other words, they determine whether your child can return home right away.

You have the right to an emergency protective services (EPS) hearing. After consulting with your attorney, you can decide whether you want to contest this hearing. During a contested hearing, you can challenge your child's continued removal from their home. Since there is little time to prepare for an EPS hearing, talk to your lawyer as soon as possible to decide whether you want to contest the EPS hearing.

## **What is discussed during an emergency protective services hearing?**

If the judge or standing master decides that your child's removal from their home should continue beyond the EPS hearing, the court will address other issues, including:

- **What visitation and other family time will look like, and**
- **Whether your relatives or close family friends could provide a safe place for your child to live.**

You may also discuss some of the matters you already talked about during the pre-hearing conference (PHC). This could include:

- Upcoming hearings
- Related court cases
- Paternity, or who the father is
- Whether the child is an Indian child as defined by the Indian Child Welfare Act (ICWA) and Montana Indian Child Welfare Act (MICWA), and
- What needs to happen for your child's safe return home.

If you agree to some services or treatment, there may be discussions about an early treatment plan.

## **Where will an emergency protective services hearing be held?**

An emergency protective services (EPS) hearing may be held in person at the courthouse, by remote video conference, or by telephone, as needed. If held in person, it takes place in the judge's or standing master's courtroom.

## **When does an emergency protective services hearing happen?**

An EPS hearing occurs **after the pre-hearing conference (PHC) and within five business days of a child's removal**. Under Montana law, business or working days do not include weekends or holidays. Thus, these hearings usually happen about a week after a child's removal.

## **What happens after an emergency protective services hearing?**

If the judge or standing master decides that your child's out-of-home placement should not continue, your child should be returned home right away.

If the court finds that your child cannot return home immediately, the dependent neglect (DN) case will continue, with your child remaining out of the home. The case will proceed to the show cause hearing, which is held within 21 days of filing the initial petition and affidavit in the District Court.

## Show Cause Hearing

### What is a show cause hearing?

A show cause hearing gives parents and other parties an opportunity to contest the court's decision to grant emergency protective services. It also provides another chance to challenge the child's removal. **The judge or standing master will decide:**

- **Whether your child can return home right away**
- **Whether the Child and Family Services Division (CFSD) did enough to prevent the removal of your child, and**
- **Whether CFSD made sufficient efforts towards your child's safe return home.**

### How can a show cause hearing be contested?

You have the right to a show cause hearing. After speaking with your attorney, you can decide whether to contest the hearing and challenge your child's continued removal. If you want to contest the show cause hearing, your attorney must **request one within 10 days of your being served with the initial petition and affidavit.**

If there is a good reason for a delay in requesting a contested show cause hearing, let your lawyer know why. Some courts have permitted contested show cause hearings when the request is late, but it is not wise to take that risk. You may lose your right to a contested show cause hearing if your request is late.

### When does a show cause hearing happen?

A show cause hearing occurs after an emergency protective services hearing. If, upon review of the petition and affidavit, the court determines the safety concerns are sufficient to grant emergency protective services, the show cause hearing should be **set within 21 days of the filing of the initial petition and affidavit with the court.**

Show cause hearings may be delayed if a parent is not formally served with the initial petition and affidavit, since they may not be aware that a dependent neglect (DN) case has been filed. In the case of an Indian child, as defined by the Indian Child Welfare Act (ICWA) and Montana Indian Child Welfare Act (MICWA), a show cause hearing may be delayed to make sure that all parents and the child's Tribe or tribes receive proper notice of the proceedings.

## **What happens after a show cause hearing?**

If the court continues to grant emergency protective services to the Child and Family Services Division (CFSD) and the case is not dismissed, the matter will be set for an adjudication hearing within 90 days of the show cause hearing. If the judge does not extend emergency protective services beyond the show cause hearing, the case should be dismissed, and the child returned home.

Sometimes, the next hearing, an adjudication hearing, is held during the same court appearance as the show cause hearing.

## **Adjudication Hearing**

### **What is an adjudication hearing?**

An adjudication hearing is when **the judge or standing master decides whether your child is a “youth in need of care.” A youth in need of care is a child who has been found to be neglected, abused, or abandoned.**

You have the right to an adjudication hearing to challenge whether your child is a youth in need of care. After consulting with your lawyer, you can decide whether to contest this hearing. The court will determine:

- Whether there are legal reasons for the court and the Child and Family Services Division (CFSD) to continue to be involved with your family
- Whether CFSD has made appropriate efforts to avoid your child’s removal, and
- Whether CFSD made sufficient efforts towards your child’s safe return home.

**A finding that your child is a youth in need of care could have a significant impact on your employment or volunteer activities if you have unsupervised contact with children. It may also affect your ability to serve as a foster or resource parent for other children.** Discuss these potential negative outcomes with your lawyer before the adjudication hearing.

### **When does an adjudication hearing occur?**

The adjudication hearing should take place **within 90 days of the show cause hearing** if the case remains unresolved. Sometimes, the parties agree to hold the adjudication hearing during the same court appearance as the show cause hearing.

## What happens after an adjudication hearing?

If the court determines your child is not a youth in need of care, the dependent neglect (DN) case will be dismissed, and your child will return home. If the judge or standing master determines your child is a youth in need of care, the court will take jurisdiction and set a dispositional hearing within 20 days of the adjudication hearing. The court may issue a temporary dispositional order until the dispositional hearing.

## Dispositional Hearing

### What is a dispositional hearing?

A dispositional hearing is when **the court decides what will happen to a youth in need of care while it has jurisdiction**. A dispositional hearing must be held when the judge or standing master issues an adjudication order. If the court finds your child to be a youth in need of care during the adjudication hearing, the judge or standing master has the **following options for disposition**:

- Permit your child to **remain with the custodial parent**
- Order the Child and Family Services Division (CFSD) to **evaluate a non-custodial parent as a placement option**
- **Place your child with a non-custodial parent**
- Order **limited emancipation** of your child if they are 16 years old or older, or
- Grant **temporary legal custody**.

### What is temporary legal custody?

**Temporary legal custody with the Child and Family Services Division (CFSD) is the most common disposition**. If temporary legal custody is granted to CFSD, they will have temporary custody of your child for **up to six months**. This ruling **allows CFSD to make legal decisions for your child temporarily**. With this authority, CFSD may place your child outside the home with relatives, kin, or other foster or resource care.

The state might seek additional time for temporary legal custody by requesting an extension from the court. **No extension of temporary legal custody may be longer than six months**. Temporary legal custody may also be for less than six months. However, **there could be more than one extension of temporary legal custody**.

## **When does a dispositional hearing occur?**

The dispositional hearing should happen **within 20 days of the adjudication hearing**. Sometimes, dispositional hearings occur during the same court appearance as the adjudication hearing.

## **What happens after a dispositional hearing?**

If the child can remain at home with the custodial parent, the court may impose conditions and limitations on that in-home placement. The custodial parent would likely work with the Child and Family Services Division (CFSD) to develop an in-home safety plan. Planning for an in-home placement may also occur during the pre-hearing conference, family engagement meetings, and informal discussions.

If the judge or standing master orders CFSD to investigate a non-custodial parent, CFSD will evaluate that parent to determine whether they are a safe placement option. If your child is placed with a non-custodial parent, the court may dismiss the case and issue a new custodial order in favor of that parent. The judge or standing master may also determine that the DN case will proceed with the child residing with the non-custodial parent while CFSD works with the parents to address safety concerns.

If the judge or standing master grants temporary legal custody, it is almost always given to CFSD. Temporary legal custody is the most common outcome of dispositional hearings.

# **Treatment Plans**

## **What is a treatment plan?**

**The goal of a treatment plan is to resolve the safety concerns that brought the case before the court.** The judge or standing master may order a treatment plan for each parent unless there is a good reason not to. If the court finds the child to be a youth in need of care, or if a parent admits (or stipulates) to the allegations in the initial petition, the court can order a treatment plan for them.

Treatment plan hearings are not required by law, but may be held to clarify the terms of the treatment plans. Some courts routinely hold treatment plan hearings, while others do not.

### **A treatment plan must contain the following:**

- **Identification of the problems or conditions** that led to the abuse or neglect of the child
- **Treatment goals and objectives** for each problem or condition
- **The projected time needed to complete each treatment objective**

- Specific treatment objectives that clearly **identify the separate roles and responsibilities of all parties** (parents, guardians, CFSD, etc.), and
- **Conditions for the safe return of the child.**

Treatment plans may also give the Child and Family Services Division (CFSD) the right to enter your child's home to assess compliance with the treatment plans; require medical, mental health, or substance abuse evaluations and counseling; and restrict contact with certain individuals for safety reasons. However, treatment plans may not include drug testing requirements unless the court finds that substance use contributed to the child's removal or to the child remaining out of the home.

Your treatment plan should be specifically tailored to your case, taking into account your needs, as well as those of your family and other people involved.

### **When is a treatment plan ordered?**

When the court grants temporary legal custody, a treatment plan must be ordered **within 30 days of the dispositional hearing unless there is a good reason not to order one**. Discussions about the treatment plan may occur before and during the dispositional hearing.

### **Why should you be involved in designing the treatment plan?**

The court may order a treatment plan without a parent's signature. However, parents should at least be able to review proposed treatment plans with their attorney before the court orders them. Pre-hearing conferences (PHC), family engagement meetings (FEM), and informal discussions provide you with **an opportunity to actively participate in the development of your treatment plan**. You can ensure your treatment plan is one you believe you can complete while also addressing safety concerns so your child can return home. If the state submits an inappropriate treatment plan to the court, you can object through your attorney and request a better plan from the judge or standing master.

**Failure to complete a treatment plan is the primary reason for termination of parental rights.** It is essential that you review the contents of your treatment plan with your attorney to make sure you understand the tasks and that the plan is appropriate for you.

# Family Engagement Meetings

## What is a family engagement meeting?

Family engagement meetings aim to identify family strengths, address safety concerns, and create permanency. They are led by CFSD staff and occur outside of court. They are not court hearings.

At these meetings, **the parties, family members, support persons, and treatment providers discuss important issues. One goal is to engage the family in discussions to resolve safety issues.**

A family engagement meeting, as defined by law, is a meeting with family members to develop treatment plans, make placement decisions, or both. The process may resemble a pre-hearing conference (PHC). Family engagement meetings generally occur later than pre-hearing conferences. **There may be multiple family engagement meetings, continuing throughout the case.** If possible, participants should plan for your child's safe return home.

All families have strengths and areas that need improvement. Your family should be encouraged and supported in making well-informed decisions and plans to keep your child safe. A family engagement coordinator promotes honesty, trust, and a collaborative approach to issues. Your family should feel they have a voice, so they are more invested in the planning process. All participants have a say in these meetings. Family engagement meetings are an opportunity to work together to develop safe, permanent plans for your child's well-being.

## When does a family engagement meeting occur?

Per CFSD policy, the child protection investigator or child reunification specialist should offer parents the opportunity for a family engagement meeting within 30 days of filing the case in District Court. **Family engagement meetings can occur throughout a DN case.** Family engagement meetings may not be held if both parents are unavailable or unwilling to participate. They can be held with one parent present.

## Where will the family engagement meeting be held?

Family engagement meetings are often held **in a conference room at a Child and Family Services Division (CFSD) office.** However, **in some parts of the state, family engagement meetings are routinely held by remote videoconferencing,** such as Zoom. Before the meeting, you will be notified of the time and location, or the video conference link.

## **Who leads the family engagement meeting?**

These meetings are led by a “**family engagement meeting coordinator**” from CFSD, who is trained to conduct them.

## **Who participates in the family engagement meeting?**

An invitation list for family engagement meetings is created. That list should be developed collaboratively by the family engagement meeting coordinator, parents, family members, service and treatment providers, and the child protection investigator and/or child reunification specialist from CFSD. Invited participants include, but are not limited to:

- Parents, guardians, and other caregivers
- Child protection investigators and/or child reunification specialists
- Lawyers for the state, parents, and child
- Special advocate, such as a court appointed special advocate (CASA) or guardian ad litem (GAL)
- Family members and friends
- Resource or foster parents
- Service and treatment providers
- Counselors
- Clergy
- School personnel
- Tribal representatives, if the case involves an Indian child as defined by the Indian Child Welfare Act (ICWA) and the Montana Indian Child Welfare Act (MICWA)
- Cultural advocates
- The child, if appropriate.

Judges and standing masters do not participate in family engagement meetings.

## **What happens after the family engagement meeting?**

After a family engagement meeting, the coordinator will complete and distribute a summary and plan within 30 days. Family engagement meetings are generally confidential, but a report may be made to the court.

## Status Hearings

### What is a status hearing?

A status hearing is **an opportunity to discuss the steps needed for your child to return home safely**. During a status hearing, the parties will inform the court of the case's current status and their view of where it should go. These hearings are an excellent opportunity to explore and discuss the best options for your family and your child's well-being.

### When do status hearings occur?

It is important to note that **status hearings are not required by law**. Some judges and standing masters hold them, while others do not. They are encouraged to schedule these hearings, but they are not required to do so.

Status hearings may be held at any time during a dependent neglect (DN) case if a judge or standing master orders them. If not, **parties can request that the judge or standing master order status hearings**. It is recommended that status hearings be held every 60 to 90 days during a DN case.

## Permanency Hearings

### What is a permanency hearing?

**Permanency in a dependent neglect (DN) case means a stable, lasting living situation.** **Permanency hearings focus on the long-term plan for your child.** Like status hearings, they allow the parties to update the court on their progress. These hearings are sometimes called permanency plan hearings.

During a permanency hearing, the judge or standing master evaluates the plan for the child's placement. The people involved with the case, as well as the court, try to make sure the child can return home whenever possible. Otherwise, they seek the most permanent and appropriate long-term placement for the child.

#### Options for these permanency hearings include:

- **Reunification of the child with the custodial parent**, the parent who had custody at the time of the child's removal
- **Placement of the child with a non-custodial parent**, the parent who did not have custody at the time of the child's removal

- **Adoption**, which means the termination of all parental rights, allowing the adoptive parents to become the child’s legal parents and make decisions for the child
- **Guardianship**, which may or may not involve the termination of parental rights, giving the guardian the right to make most decisions for the child who will live with the guardian, and
- **Long-term custody** with a resource or foster parent in a planned permanent living arrangement until the child reaches the age of 18.

### **When do permanency hearings occur?**

A permanency hearing should generally be held **about one year after a dependent neglect (DN) case opens**. If the DN case remains open, permanency hearings should be **held annually until the DN case is dismissed**. Permanency hearings sometimes occur during the same court appearance as extensions of temporary legal custody and status hearings.

In rare cases, the judge or standing master may find that the child cannot return home because of extreme abuse or severe criminal behavior. **If the court finds that reunification efforts are unnecessary, a permanency hearing must be held within 30 days of that finding.**

No permanency hearing is required if a child is living at home, the DN case has already been dismissed, or the child has been adopted or placed in guardianship.

### **What happens after a permanency hearing?**

The court’s order regarding the permanency hearing should be issued within 20 days of the hearing.

## **Termination of Parental Rights**

### **Why would the state pursue termination of parental rights?**

Termination of parental rights is a court process in which the state seeks to permanently end parents' rights to the care and custody of their child through a hearing before a judge. Standing masters cannot preside over a termination of parental rights hearing.

**In most dependent neglect (DN) cases, the state gives parents a chance to address safety concerns through a treatment plan before seeking to terminate their parental rights.** It is important to understand that in most DN cases in Montana, the state does not seek to

terminate parental rights. Most parents are able to resolve the safety concerns through their treatment plan, with the child returning to the care of a parent or parents.

However, **the most common reason for terminating parental rights is a failure to complete treatment plans. Abandoning a child is also a fairly common reason for terminating parental rights.**

**In rare cases, the reason could be extreme conduct, chronic abuse, or severe criminal behavior by a parent or parents.** Under those circumstances, the state, with the court's permission, may proceed to a termination of parental rights hearing at the beginning of, or at any time during, a dependent neglect (DN) case, without offering treatment services to the parents.

### **When can the state file for termination of parental rights?**

You need to remember that, in all but extreme cases, the state must make appropriate efforts to safely reunify your family before seeking termination of parental rights. Generally, termination of parental rights is sought only after efforts to reunify the family through a treatment plan have been exhausted.

However, with some exceptions, the state must file a petition to terminate parental rights **if the child has been in non-relative foster care under the state's temporary legal custody for 15 of the past 22 months.** Therefore, it is crucial for you to complete your treatment plan services promptly so your child can return home before the state considers filing a petition to terminate parental rights.

### **Is there a court hearing?**

If the state files a petition to terminate parental rights, **parents have the right to a contested hearing before their rights can be terminated.** During a contested hearing, the state bears the burden of proving to the court that parental rights should be terminated. The parties may present evidence and argument at the hearing, and the judge determines whether the state has proven its case. There are no jury trials in Montana DN cases. Standing masters do not preside over termination hearings.

In addition to contesting a termination of parental rights hearing, **a parent may continue working on the tasks in their treatment plan while awaiting the hearing.** If a parent is making progress toward eliminating safety concerns, the state may choose not to pursue termination. As a result, parents can keep working on the treatment plan tasks in the hope that the state will decide not to pursue termination of parental rights.

**If a parent does not want to contest a termination of parental rights, they can choose to voluntarily give up their parental rights** after speaking with their lawyer and receiving counseling. **This is called relinquishing parental rights.** The judge can allow parents to give up their parental rights without receiving counseling if there is a good reason.

## **When is a termination of parental rights hearing held?**

A termination of parental rights hearing should be held **within 45 days of the filing of a petition to terminate parental rights**, unless there is a good reason not to hold the hearing within that time. It is common for a termination of parental rights hearing to be rescheduled.

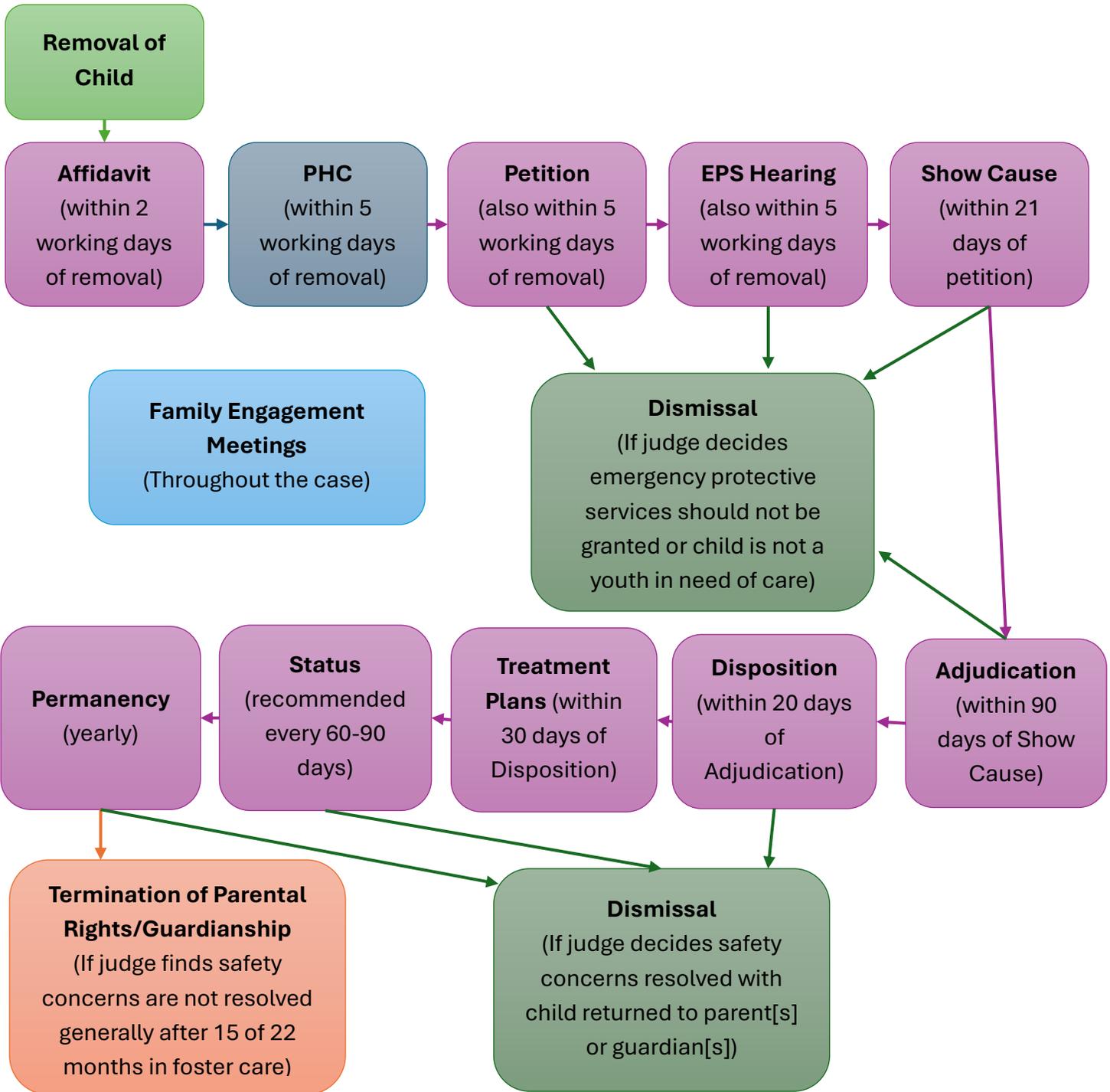
## **What happens after the termination of a parental rights hearing?**

**If parental rights are not terminated, the dependent neglect (DN) case will continue**, and the child's status will likely remain unchanged unless the court modifies the conditions or dismisses the case. **The parents would retain their parental rights.** The Child and Family Services Division (CFSD) would likely continue to have temporary legal custody of the child, who would probably remain outside the home.

**If parental rights are terminated, CFSD is generally granted permanent legal custody of the child, with the authority to consent to adoption or guardianship, subject to the court's approval.** A parent whose rights have been terminated is no longer a party to the District Court case. However, **parents have the right to appeal their termination.** If parental rights are terminated, a parent should immediately discuss the matter with their attorney, as there are time limits for appealing the decision to the Montana Supreme Court.

In DN cases, a Notice of Appeal must be filed with the Clerk of the Montana Supreme Court within 30 days of the entry of the judgment or order from which an appeal is taken to preserve the client's right to appeal. For that reason, it is a good idea to speak with your lawyer before and after a termination of parental rights hearing about your right to appeal. If you find this process confusing, be sure to talk with your lawyer about your right to appeal and the time limits for doing so.

# COURT PROCEEDINGS CHART



## Conclusion

Dependent neglect (DN) cases can be frightening and confusing. Hopefully, this guide has provided you with helpful information. Knowing what to expect during a DN case can help you prepare for what is happening and what may occur.

You need to take your DN case seriously and actively participate in the process. Your parental rights are at stake. Stay actively involved in case planning and ask questions when you do not understand something. Make your voice heard throughout the DN case for the benefit of yourself, your child, and your family.

**This guide is meant to provide only general information for parents involved in a DN case. It does not offer legal advice or opinions. Contact your lawyer immediately if you have questions or need legal guidance. Your attorney's professional guidance and expertise can be invaluable to you.**

Only your attorney should give you legal advice and opinions. Your lawyer protects your rights and interests and advocates for your case goals. Staying in close and frequent contact with your attorney is in your best interest. If you have questions about what you have read here or about your DN case, your lawyer is the person you should ask.

***For more general information on dependent neglect (DN) cases, please visit the Montana Court Improvement Program's website at [cip.mt.gov](http://cip.mt.gov), which has a link to eLearning guides, including one for parents about DN cases.***

# Key Terms Glossary

The following are not legal definitions. This list is provided as general information only to help you better understand some of the terms in this guide and those you may hear during a dependent neglect (DN) case. This glossary does not include all of the terms you may hear. Ask your lawyer if you need more information about what these terms or others mean, or if you would like the exact legal definitions.

## Abandonment

Abandonment occurs when a parent:

- Leaves a child in a way that makes it reasonable to believe that the parent does not intend to resume care of the child
- Willfully gives up physical custody of a child for at least six months without letting the child and the person caring for the child know about any intention to resume physical custody or to make permanent legal arrangements for the care of the child, or
- When there is an unknown parent who has been unknown for at least 90 days, and reasonable efforts to identify and locate the parent have failed.

## Abuse

The term child abuse and neglect includes actual physical or psychological harm to a child, a substantial risk of such harm, or abandonment of a child. Forms of abuse may include, but are not limited to, physical abuse, sexual abuse, exploitation, and emotional abuse.

## Adjudication Hearing

An adjudication hearing is a court proceeding in which the judge or standing master determines whether a child is a “youth in need of care.” A youth in need of care is a child under the age of 18 who has been found by the court to have been abused, neglected, or abandoned. An adjudication hearing should occur within 90 days of the show cause hearing.

## Adoptive Parent

An adoptive parent is someone who becomes a child’s legal parent through a court order after the biological parents’ rights are terminated. They take on the responsibilities of parenting a child who is not their biological child. Adoptive parents assume the rights and duties of a legal parent.

## Affidavit (Initial)

The initial affidavit is a document that is sworn to be true and prepared by the child protection investigator from the Child and Family Services Division (CFSD). It is provided to the state’s

lawyer (Deputy County Attorney, County Attorney, or Assistant Attorney General), the Office of the State Public Defender (OPD), and the parents, if possible. The affidavit explains the reasons for a child's removal and for immediate protection and emergency protective services. It should be completed within two business or working days of a child's removal and provided to the District Court with the initial petition within five business or working days of the child's removal from their home. Business or working days do not include weekends or holidays under Montana law.

## **Attorney**

An attorney may also be called a lawyer or counsel. They are professionals licensed to provide legal representation to individuals or other entities. A parent has the right to legal representation in a dependent neglect (DN) case.

## **Contest**

To contest is to oppose something. In a dependent neglect (DN) case, the parties may contest an opinion, allegation, or accusation. A contested court hearing involves the presentation of evidence, testimony, and argument by opposing parties, with the judge or standing master making a determination. There are no juries in DN hearings in Montana.

## **Custody**

Custody is the legal responsibility for making major decisions and providing care for a child. In a dependent neglect (DN) case, when the Child and Family Services Division (CFSD) has temporary legal custody of a child, it can place the child with a resource or foster parent. If CFSD has permanent legal custody of a child after the termination of parental rights, with the court's consent, it can place the child with an adoptive resource or in a guardianship.

## **Custodial Parent**

At the time of the child's removal from the home, the custodial parent was responsible for the child's daily care and made legal decisions on the child's behalf. The child primarily lived with the custodial parent at the time of the child's removal.

## **Dependent Neglect (DN) Case**

A dependent neglect (DN) case is a civil action, not a criminal matter, brought by the state of Montana concerning allegations of child abuse, neglect, or abandonment by a parent or other caregiver. In Montana, these cases are commonly referred to as DN cases.

## **Dismissal**

Dismissal occurs when the judge or standing master decides that the dependent neglect (DN) case does not need to continue. A party may ask the court to dismiss the case. A dismissal could mean that the child:

- Returned to a custodial parent or parents
- Was placed with a non-custodial parent
- Was adopted
- Was placed in a guardianship, or
- Reached the age of 18 and aged out of foster care by becoming an adult.

## **Disposition**

Disposition occurs when the judge or standing master determines the legal status and placement of a youth in need of care. The court can:

- Grant temporary legal custody. This is the most common disposition. Temporary legal custody is almost always granted to the Child and Family Services Division (CFSD).
- Allow the child to remain with the custodial parent
- Order CFSD to evaluate a non-custodial parent to see whether they are a safe placement option
- Place the child with the non-custodial parent, or
- Emancipate a child 16 years or older. This means the child would have rights similar to those of an adult.

## **Dispositional Hearing**

A dispositional hearing is a proceeding in which the court determines the disposition for a youth in need of care. The judge determines the child's legal status and placement. This hearing should be held within 20 days of the adjudication hearing.

## **Emergency Protective Services**

Emergency protective services are designed to protect the child from allegations of abuse, neglect, or abandonment. A petition for immediate protection and emergency protective services must be filed in District Court when a child is removed from the home due to an immediate or apparent danger of harm and placed in protective care. An order for emergency protective services may not be issued for longer than 90 days.

## **Emergency Protective Services (EPS) Hearing**

An emergency protective services hearing is the first hearing in a dependent neglect (DN) case. These hearings are held within five business or working days of a child's removal. Business or

working days do not include weekends or holidays under Montana law. At this hearing, the court decides whether the child's removal should continue. If the judge or standing master determines that the child's removal should not continue, the child will be returned home immediately. If the judge or standing master decides that the child's out-of-home placement should continue, they must establish guidelines for family time, including visitation, review options for relative or kinship placement of the child, and make other recommendations as appropriate. If the parents and parties agree, the court may direct the development of a treatment plan before the next hearing, a show cause hearing.

## **Foster Parent**

Foster parents are also called resource parents. They are individuals who temporarily care for the child while a dependent neglect (DN) case is open.

## **Guardian**

Guardians are individuals whom the court appoints to make legal decisions and care for the child through a guardianship. There is a court order, a guardianship, authorizing them to care for and be legally responsible for the child when the child's parents are unable to do so safely. Parental rights may or may not be terminated before a guardianship is established.

## **Hearing**

A court hearing is an appearance before a judge or a standing master in their courtroom, or remotely. It is a proceeding where discussions, legal arguments, and evidence may be presented to resolve issues of fact or law.

## **Lawyer**

A lawyer may also be called an attorney or counsel. They are professionals licensed to provide legal representation to individuals or other entities. A parent has the right to legal representation in a dependent neglect (DN) case.

## **Neglect**

The term child abuse and neglect includes actual physical or psychological harm to a child, a substantial risk of such harm, or abandonment of a child. Forms of child neglect may include, but are not limited to, depriving a child of basic needs such as appropriate food, shelter, and clothing; failing to provide cleanliness and supervision; or exposing or allowing the child to be exposed to an unreasonable risk of physical or psychological harm.

## **Petition (Initial)**

The initial petition is a document drafted by the state's lawyer. It provides the court and parties with information about the reason for a child's removal. A dependent neglect (DN) case is

opened when the initial petition is filed with the initial affidavit. The state can request immediate protection, emergency protective services, and temporary legal custody. In extreme or severe cases, the state may request termination of parental rights. The initial petition and initial affidavit must be filed in the appropriate District Court within five business or working days of a child's removal. Business or working days do not include weekends or holidays under Montana law.

## **Permanency Hearing**

A yearly court hearing that focuses on the most appropriate long-term plan for the child. These hearings are sometimes called permanency plan hearings.

## **Permanency Plan**

A plan for the long-term placement and care of the child. The options for permanency include:

- Returning to live with a custodial parent or parents
- Placement with a non-custodial parent
- Adoption
- Guardianship, or
- Long-term custody in a planned permanent living arrangement until the child reaches the age of 18.

## **Pre-Hearing Conference (PHC)**

Pre-hearing conferences begin work with a team of parties and other participants, designed to bring the family back together. PHCs are initial meetings, not court hearings. They must be held within five working days of a child's removal and before the emergency protective services (EPS) hearing. The main topics of discussion are:

- The child's placement
- Family time, including visitation between parents and the child
- Services or treatment for the parents and family, and
- What needs to happen for the child to return home safely.

Legal issues also discussed include:

- Related court cases
- Paternity, who the child's father is, and
- Whether the Indian Child Welfare Act (ICWA) and the Montana Indian Child Welfare Act (MICWA) apply to the case.

## **Show Cause Hearing**

A show cause hearing allows the parties to contest the removal of the child and the granting of emergency protective services based on the state's initial petition and affidavit. The judge or standing master decides whether the child can return home immediately. The court also determines whether the Child and Family Services Division (CFSD) made sufficient efforts to prevent the child's removal and to make it possible for the child to return home safely. The show cause hearing should occur within 21 days of the initial court filing.

## **Status Hearing**

A court hearing where the people involved inform the judge about the dependent neglect (DN) case and what they think should happen next. The parties provide an update and potential next steps. Long-term placement options for the child may also be discussed. These hearings, sometimes called review hearings, are not required by law.

## **Termination of Parental Rights**

Ending the rights of parents to make legal decisions and care for their child. The state's lawyer files a petition to terminate parental rights if efforts to reunify the family have been exhausted. The state may also seek termination early in a dependent neglect (DN) case if there are allegations of extreme or severe conduct by the parents. In most DN cases, the state does not seek termination of parental rights.

Parents have the right to contest a petition to terminate their parental rights during a court hearing before a judge. However, a parent may also agree to give up or relinquish their parental rights without a contested hearing.

After all parental rights are terminated, the court may grant permanent legal custody to the Child and Family Services Division (CFSD). With the court's approval, CFSD can proceed with an adoption or guardianship for the child. Parents have the right to appeal the termination of their parental rights to the Montana Supreme Court if they do so within the time provided by law.

## **Treatment Plan**

A legal plan outlining the safety concerns that led to the child's removal and providing actions to address those concerns so the child may return home safely. Failure to complete a treatment plan is the most common reason for the termination of parental rights in Montana.

## **Youth in Need of Care**

A youth in need of care is a child under the age of 18 who the court has determined to have been abused, neglected, or abandoned. The court determines whether the child is a youth in need of care during an adjudication hearing.