

# **Pre-Hearing Conference (PHC) Facilitator Training Manual**

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# THE DEVELOPMENT OF PRE-HEARING CONFERENCES IN MONTANA

## PHC Basics

Pre-hearing conferences (PHCs) are often the parties' first opportunity to discuss critical topics. Their purpose is to establish trust between the parties and begin meaningful discussions.

PHC facilitators remain calm, objective, and ensure the parties are respectful of each other while promoting an open and neutral environment. They provide structure to the discussions by focusing on the critical topics of **placement of the children, family time, services for the family, and conditions of return**. The parties determine whether the children can return home immediately and, if not, they discuss where the children will live and what conditions need to be met before the children can return home safely.

PHCs are conversations about these critical topics designed to develop a plan to reunite the family. At the time of a PHC, every party's goal is to work towards family reunification in all but the most severe cases. Thus, it is an excellent time to build a team to create a case plan. Ideally, productive discussions will continue and evolve throughout a DN case based on the groundwork established during a PHC.

## The Pre-Hearing Conference Pilot Court Era (2013-2023)

In Montana, PHCs began in 2013 with a Yellowstone County PHC pilot court project in the courtroom of Judge Ingrid Gustafson, who is now Montana Supreme Court Justice. Experienced personnel from Pima County, Arizona, provided initial training for this project. During that pilot court project, PHCs quickly spread to the other courtrooms in Yellowstone County.

In 2015, the Montana Court Improvement Program (CIP) replicated the PHCs in Lewis and Clark, Flathead, and Gallatin counties. PHCs later expanded to Butte-Silver Bow, Cascade, Park, Sweet Grass counties, and the Fifth and Seventh judicial districts. Similar conferences called "Intervention Conferences" have been held in Missoula County for many years, pre-dating PHCs in Montana.

The PHC pilot court project sought to improve the outcomes and timelines for dependency and neglect (DN) cases. These goals were achieved through a collaborative team approach involving PHC facilitators, child protection specialists (CPS) from the Montana Child and Family Services Division (CFSD), attorneys from County Attorney's Offices and the Attorney General's Office, guardians ad litem (GALs), court appointed special advocates (CASA), tribal representatives, attorneys for parents and children and, perhaps most importantly, parents.

PHCs during the pilot court era were set before the first court appearance. At that time, show cause hearings were typically the first court appearances. Show cause hearings were held within 20 days of the filing of the initial petition and affidavit. Thus, PHCs were generally set about 20 days after a DN case was filed with a Montana District Court or about 27 days after a child's removal.

Beginning in 2020, some courtrooms in Yellowstone and Flathead counties began piloting earlier initial court hearings called Emergency Protective Services (EPS) hearings. Those hearings were scheduled within five business days of the children's removal. PHCs in those specific pilot courts were held shortly before the EPS hearings.

### **Statewide PHCs and EPS Hearings (began July 1, 2023)**

In 2021, a study of the PHC pilot court project was completed by Dr. Alicia Summers of the Capacity Building Center for Courts based on data collected from Gallatin, Flathead, and Lewis and Clark counties, which were CIP's original sites. Data was collected from DN cases that were filed between 2014 and 2018. Case outcomes were compared from DN cases filed before the pilot project when no PHCs were held to later cases in which PHCs were held during the pilot court era.

The study found that a significantly greater number of children were returned to a parent or parents when a PHC was held. There was a 9% higher reunification rate when PHCs were being held.

The study also revealed that DN cases took significantly less time to resolve when PHCs were being held. Cases reached permanency almost two months sooner when PHCs were held. Thus, it was shown that PHCs were attaining their goals of improved outcomes with more families reunified and case resolutions occurring sooner.

Between the 2021 and 2023 legislative sessions, interim legislative committees and workgroups focused on issues concerning DN cases and child welfare in Montana. In an effort to improve the process, the Montana Legislature passed House Bill 16 (HB 16) during the 2023 session. The Governor later signed the bill, which became law on July 1, 2023. Due in part to the success of the PHC pilot court project, the new law makes PHCs available to all parents and children with a DN case in Montana. *MCA 41-3-307*. Thus, the pilot court era of PHCs ended, and PHCs became a regular part of all DN cases.

Another portion of HB 16 requires EPS hearings within five business days of a child's removal. *MCA 41-3-306*. Through the 2023 laws, a PHC should be made available to the parents within five days of removal and before the EPS hearings. This setting is much earlier than PHCs were typically held during the pilot court era. The earlier timing of PHCs and the addition of EPS hearings significantly altered the initial procedure for DN cases in Montana.

Since 2023, there have been some challenges while implementing PHCs statewide. To help streamline PHCs, CIP created and distributed a fact sheet outlining how the process can work efficiently. There will likely be changes to laws and new bills affecting child welfare in Montana during the 2025 legislative session.

The following materials are designed to assist new and experienced PHC facilitators in developing a sustainable procedure for PHCs in their jurisdiction based on historical PHC practices, considering the structure and purpose of the 2023 laws, and based on the knowledge gained over the past year concerning those 2023 laws.

## **PRE-HEARING CONFERENCE (PHC) APPROACH**

**As a PHC facilitator, you should seek to minimize adverse impacts on children and families when children are removed from their homes while helping to develop a safe plan to reunify the family. The following section outlines the purpose, process, participants, and goals for PHCs.**

### **1. Purpose**

The purpose of a PHC is to discuss critical topics early in a DN case before an emergency protective services (EPS) hearing. PHCs seek to establish trust between the parties by fostering open discussions. A facilitator moderates a PHC to ensure all parties have equal footing and can speak openly and honestly.

The critical topics discussed during PHCs are:

- **Placement of the children**
- **Family time between children, parents, and extended family, kin, and friends**
- **Services for the family, including safety and case planning**
- **Conditions of return for the children to go home immediately, soon, or later in the DN case**

### **2. Process**

PHCs are not court hearings. They should not look, sound, or feel like one.

#### **Timing**

Due to 2023 laws, PHCs should be set within five days of a child's removal and before an EPS hearing. EPS hearings are held within five business days of removal. PHCs should be 30-45 minutes long, but can use more time if available. Some PHCs are shorter, but this is not ideal.

#### **Location**

PHCs are now mostly held remotely by video conference. However, some jurisdictions have in-person PHCs in an available jury or conference room at a District Court. Unoccupied courtrooms may also be used. In-person PHCs are held at the courthouse instead of the Child and Family Services Division's (CFSD) offices to emphasize neutrality.

#### **Information Sharing**

The judge does not participate in PHCs, and the PHC facilitator does not attend court hearings. A party can request that all or part of the PHC discussions not be shared with the judge since PHCs could be considered settlement discussions. However, information from the PHC can provide the court with better insight into the case, creating more productive hearings.

## **PHC Introductions**

At the beginning of a PHC, the facilitator introduces themselves and thanks the parents for participating since they are crucial to the process. The PHC facilitator explains that they are not a party to the case and do not represent any of the parties. They are neutral, objective, and work for the courts. The facilitator then asks each person to introduce themselves and state their role. If there are questions about the role of participants during introductions (e.g., CASA, GAL, tribal representative, etc.), they should be encouraged to explain their role.

The participants either sign an attendance sheet if the PHC is in-person or the facilitator takes attendance if the PHC is remote. A parent's or other participant's signature or attendance does not reflect an agreement to all or part of the PHC discussions. The facilitator is merely tracking who is present.

The facilitator discusses the purpose of the PHC and the critical topics that will be addressed during the PHC: placement, family time, services, and what needs to happen for the children to return home safely. They ensure parents and other participants understand what will happen during the PHC.

The participants are asked to be respectful of each other. Only one person should speak at a time. This provides an opportunity for all to listen and also be heard.

The facilitator explains to the parties that they will later appear before a judge for an EPS hearing and potentially subsequent hearings. The participants are informed that facilitators do not appear in court and cannot give legal advice to anyone present. If the parties have legal questions, they are directed to their attorney for explanations.

## **Discussions**

The PHC facilitator asks initial questions about the Child Protection Specialists (CPS), ICWA, and the presence or absence of parties, attorneys, and parents. The children and their status, strengths, and needs are addressed, usually followed by similar discussions concerning the parents. Conversations concerning parents include whether paternity has been established, parental strengths, support networks, and potential services designed so the children can return home safely. The placement of the children is discussed with a particular emphasis on whether they can go home immediately, soon, or be placed with relatives or kin. There is a focus on family time, creating a workable visitation plan, and reducing or eliminating the need for supervised visitation when appropriate. PHCs conclude with a summary of the conditions of return and preparation for the upcoming court hearings.

## **Conditions of Return**

The term "conditions of return" is generally not used during PHCs since it may be confusing to the parents and other participants. The term may also make the CPS nervous. Instead, facilitators typically ask, "What needs to happen for the children to return home safely?"

Since the primary purpose of an EPS hearing is for the judge to determine whether the children's removal will continue beyond that hearing, PHC discussions regarding conditions of return should begin with questions about whether the children can return home immediately or whether conditions could be put in place for them to return home quickly. In some PHCs, these discussions may begin immediately following the introductions, not towards the end of a PHC. If the children cannot return home soon, then the facilitator will delve into questions about the conditions that are needed for the children to safely return home later. These discussions will also likely be part of the conversation concerning services for the family.

### **3. Participants**

A team made up of parties, attorneys, and other participants is encouraged to attend and collaborate during PHCs. If possible, all relevant players should be present. Support persons for the parents and extended family are encouraged to attend. These individuals can assist with the reunification process. Hopefully, they will continue supporting the family after a DN case is dismissed.

However, a party may ask that a non-party not be allowed to participate in the PHC. These requests do not apply to foster or resource parents, CASAs, or GALs. If such a request is made, you must respect that party's decision. Non-party friends, family, or treatment providers can provide support and valuable insights. However, they can sometimes be disruptive and inappropriate.

The following individuals are encouraged to actively participate in PHCs:

- **Parents, guardians, or Indian custodians**
- **Child Protection Specialists (CPS)**
- **Attorneys for the state, parents, and children**
- **Court Appointed Special Advocates (CASA)**
- **Guardians ad Litem (GALs)**
- **Foster parents (sometimes referred to as resource parents)**
- **Family members and friends (if permitted by parties)**
- **Service providers (if permitted by parties)**
- **Children (if developmentally appropriate)**

### **4. Goals**

PHCs seek to establish trust between the parties and encourage them to talk about how the children may safely return home. The goals for PHCs are to engage the parties in the process, increase the reunification rate of families, and decrease the time it takes to reach permanency in the DN case. PHCs create an environment where the parties can speak openly and honestly about the children's best interests, safety issues, and potential remedies for those issues. Ideally, the parties move from an adversarial position towards a collaborative process.

## PRE-HEARING CONFERENCE (PHC) LANGUAGE

The following PHC language is an overly extensive example of how a facilitator might conduct a PHC. As a PHC facilitator, your time will be limited, so expecting to discuss all the questions below is unrealistic. That said, the language below provides ideas for addressing each critical topic. Every DN case is unique and has its own theme, even when there are similarities in the fact patterns. Focus on those themes as they become apparent during PHCs. This language is merely a guide to questions that could be discussed. Over time, you will develop your own style and questions based on your experience and jurisdiction.

Good morning and welcome to \_\_\_\_\_ for a pre-hearing conference in the matter of \_\_\_\_\_.

I am \_\_\_\_\_, and I will be facilitating this pre-hearing conference.

I am not the social worker, child protective specialist (CPS), or a party to this case. This is not a court hearing, and I am not a judge. I am a neutral and objective facilitator for this pre-hearing conference. I do not represent you, the Child and Family Services Division (CFSD), or any other party. I am employed by the courts to facilitate pre-hearing conferences. I cannot provide legal advice to anyone here. If you have a legal question about court proceedings, I encourage you to take the time to speak with your attorney about the process and timeline. It is essential to discuss the timeline with your attorney, as there are time limitations that the judge must enforce. If you need to take a break to speak with your attorney at any point, please ask, and we will provide a brief opportunity for you to do so. When we are finished with this pre-hearing conference, you will have an emergency protective services hearing before Judge \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_.

I would like to welcome \_\_\_\_\_ and \_\_\_\_\_, the parents of the children \_\_\_\_\_, to this pre-hearing conference. Thank you for being here today to have some meaningful discussions about your family. We will try to design a plan so your children will hopefully be able to return home safely. We appreciate your participation in these discussions and look forward to hearing from you. The judge will also appreciate you appearing at all court hearings. Your voice is essential to this process.

While I encourage everyone to be open and honest today, there are a few ground rules for this pre-hearing conference:

- Please focus on the “best interest of the children.”
- Please be courteous, respectful, and listen to everyone. This pre-hearing conference is not a time to point fingers and make inappropriate comments. That will not get us closer to reunifying this family. It is a time for open and frank discussions. We will begin working together as a team, hoping to reunify this family in a safe and healthy home.
- Please allow one person to speak at a time and let them finish their thought without interruption so we can all hear. You should expect the same from others.



I realize this process may be new to some of you, so let me briefly explain the purpose of today's pre-hearing conference.

We are here primarily to discuss **four critical topics** concerning the family:

- Where are the children currently placed, or where are they living? Are there better options for **placement**? *[For instance, could they return home?]* Are there relatives or close family friends *[kin]* they could live with?
- What is the plan for **family time** and visitation? Are there potential options to increase family time while maintaining safety?
- What **services**, treatment, or tasks are needed for the family to reunify in a safe and healthy home? Let's try to prioritize services to have a workable plan moving forward.
- Can the children safely **return home**? If not, what must occur before they can? *[As facilitators, we try to avoid the term Conditions of Return because parents may not understand the term. Also, the CPS may become concerned they will be held to only those conditions they bring up during the PHC.]*

Our **goals** during the pre-hearing conference will be to:

- Reach agreements as a team whenever possible regarding placement of the children, family time, services for the family, and what needs to happen for the children to return home safely.
- When we cannot agree, we need to respect each other's perspectives and explain our position in an understandable way to the other parties.

Beginning on my right, please introduce yourself and provide your relationship to the children or the case. For example – are you a parent, a lawyer for the mother, intake CPS, etc.? I will pass around an attendance sheet *[or take attendance if it is a remote PHC]* so we know who is here today. If you sign the attendance sheet *[or attend a remote video pre-hearing conference]*, it does not mean you agree with everything or anything said today. It just indicates you were here for the discussions. However, our goal is to reach some areas of agreement today.

Please remember these proceedings are generally confidential. That means you should not share the facts or nature of these discussions with persons not involved with the case. You can share with parties to this case, service providers, and your attorney.

During this pre-hearing conference, I will be taking notes. Attorneys may request a copy of my notes. *[It is unusual for attorneys to ask for the PHC facilitator's notes.]* I will not provide a copy to the judge. However, parties may choose to share information from this pre-hearing conference with the judge at your upcoming court hearings. If there is something from the pre-hearing conference you don't want to be shared with the judge, please let everyone know. *[PHCs could be considered settlement conferences. Therefore, the nature of PHC discussions may not be available to the court.]*

**Initial Questions** *[These are mainly for attorneys and CPS. If an attorney has not met with their client, give them a few minutes to do so before beginning the PHC.]*

- Child Protection Specialists (CPS) – Who is the intake CPS? Will they continue with the case, or will there be an ongoing CPS? Are both the intake and ongoing CPS here today? If not, have they discussed plans for the case with each other? Will they discuss the plans from today's pre-hearing conference later?
- Parents and parties – Are all parents/guardians/Indian custodians here today? *[If they are absent]* Do we know who they are and where they live? *[If not]* Does anyone have any information to help identify and locate them? *[If they know about the PHC]* Does anyone know why they are not here today? Are any other parties missing today? *[If yes]* Does anyone know why they are not here? Can we reach missing parents or parties today by phone or video? *[Try to include them if possible]*
- Indian Child Welfare Act (ICWA) - Is this an ICWA case? *[Have the term ICWA explained to the parents if they do not know about ICWA.]* Is it unclear whether ICWA applies and could some discussion today help resolve the issue? What tribe(s), if any, is/are involved? Have they been notified about the case and today's pre-hearing conference? Have the children been enrolled in a tribe? Are the parents tribal members? *[Ask the parents]* Do you have any Native American ancestry? What needs to be done to clarify the status of ICWA? Who will be responsible for making sure that gets done?

### **Children's Update**

- Has paternity been established for all of the children? *[If yes]* How was it established? *[If not]* What needs to be done? Who is going to get that done? How long will it take?
- How are the children doing? *[Ask the parents, CPS, foster or resource parents, and any treatment providers to update everyone on how the children are doing. Try to get everyone's input, starting with the parents if they have had contact with the children.]*
- What are the strengths of the children? *[Start with the parents if possible.]* How do they express those strengths? How do those strengths help the children in their day-to-day lives?
- Are the children enrolled in school? *[Assuming they are school-aged]* Was there a change in schools? *[If yes]* How did that go? How are they doing in school? Do the children have special needs in school? Who will be responsible for following through with the children's educational needs and any special needs? Can the parents participate in any school activities? Can the parents be kept aware of how the children are doing in school on an ongoing basis? *[If yes]* How will that occur?
- Have the children had any assessments? *[If yes]* What are the results of those assessments? Are they already engaged in any services? Do the children need any other services? *[If yes]* What is being done to set up those services? Can the parents participate in those services? *[If not]* Can the parents be kept aware of how the children are doing with services on an ongoing basis? *[If yes]* How will that occur?
- *[Ask everyone]* Are there any immediate concerns about the children? Do the children have any special needs? *[Special needs go beyond the professional diagnostic term.]* Is there something or someone special the children need or want? Do they have medical or dental needs? *[If yes]*

What has been done, and what can be done about those concerns or special needs? How will the children's needs be met?

### **Parents' Status and Case Planning**

- Are there any related cases? *[criminal, domestic relations, orders of protection, other DN cases, etc.]* *[If yes]* What types of cases? Where are those cases now? Are any of those cases currently pending? *[If yes]* Are there upcoming hearings scheduled?
- What are the strengths of the parents? How do they express those strengths? How do those strengths help the parents in their day-to-day lives? How do those strengths help them raise their children?
- Who are the parents' support persons and extended family they would like involved in this case? Are they here today? How can they help support the parents and this family? How would the parents like them to be involved? How can we make sure they are involved?
- *[Ask the parents first]* What services could help you parent better? Have you begun any services at this point? *[If yes]* How is that going? Have you discussed other services with the CPS? Which services have you agreed to begin? What has been done to set up those services?
- *[Ask the CPS]* Have you discussed possible services with the parents? *[If yes]* What have you discussed? Have the parents already begun any of those services? *[If yes]* How is that going? What services must be engaged in before you believe the children can be safely returned home? *[This is a question regarding "Conditions of Return," intentionally designed without using that term.]*
- *[Prioritize]* What services do you believe the parents should address right now? Have the parents agreed to any of the services already? What services do you think the parents will need to pursue as the case progresses? Which are the highest priorities? How can we get those services in place right away?
- *[Ask the parents]* Do you agree with the services proposed by the CPS? *[If not]* Do you agree with some of them? Which ones do you agree to begin? Which services do you disagree with, and why?
- *[Ask the parents]* What barriers, if any, could prevent you from completing services? *[their schedule, transportation, housing, lack of a phone, income, etc.]*
- *[Summarize and clarify any agreements or disagreements regarding services. If anything needs to be done, summarize what needs to be done and who will do it. Give everyone a chance to comment on those subjects.]*
- *[Ask the CPS]* Can you think of anything else you might ask the parents to do? *[This gives the parents fair warning that other services may be required down the road and provides for some discussion about that possibility.]*

### **Placement**

- *[Ask the CPS]* Where are the children living? With whom are the children currently placed? Why are they placed there? Is it a good placement?

- *[Ask the parents if the children are not home or transitioning home]* Have you met the foster or resource parents? Do you think the current living arrangement is safe? Are you comfortable with the current placement? Do you think the children's placement is the best option for now? Do you believe the children could return home now?
- *[If a non-custodial/non-offending parent is available, ask that parent]* Do you want your children placed with you? *[If yes, ask the CPS]* Is that possible at this time? *[If not]* Why not? *[Be prepared for the custodial parent to become upset by these discussions.]* What must occur before the children can be placed with the non-offending parent? *[Use their name.]* *[Ask the non-offending parent]* Are you willing to do those things?
- *[If the children are not at home, transitioning home, or with a relative, ask the CPS]* Have any relatives, close family friends, or kin been identified as potential placement options? *[Have the CPS or an attorney explain the meaning of kin beyond blood relatives.]* *[If yes]* Where are we in the process of working with relatives or kin as potential placement options? What still needs to be done? *[If the children are not with relatives or kin, ask the parents]* Would you like the CPS to look at any of your relatives or kin as potential placement options for your children? *[If yes]* Can you provide the names and contact information for those relatives or kin so the CPS can contact them?
- *[Summarize and clarify any agreements or disagreements regarding placement. If anything needs to be done, summarize what must be done and who will do it. Give everyone a chance to comment on those subjects.]*

### **Family Time**

- *[Ask the CPS]* Have the parents spent time with their children since their removal? *[If yes]* Where and how often? What is the current plan for family time, if any? How is the current plan working? What can we do to improve the plan for family time?
- *[Ask the parents]* Are you in agreement with the current plan for family time? *[If not]* What would you like to change?
- *[If the parents want more family time, less supervision, or community-based time, ask the CPS]* Are there options to increase family time? What are the plans for family time moving forward? Does family time need to be supervised at this point for safety reasons? *[In other words, are there really safety issues concerning visitation requiring supervised visits?]* *[If yes]* What are the barriers to less restrictive family time? What can be done to alleviate those safety concerns? Can a friend or relative without criminal or child protection issues assist with family time?
- Can the parents have additional contact with the children by telephone or online? *[If yes]* What would the plan be for those contacts? Can the parents attend the children's appointments and other activities? *[Sporting events, school or club activities, performances, medical or dental appointments, etc.]*
- *[Ask the CPS]* What is the plan for contact with extended family? *[If the children are not placed together]* What is the plan for sibling contact? How will the children maintain contact with their friends?

- *[Summarize and clarify any agreements or disagreements regarding family time. If anything needs to be done, summarize what needs to be done and who will do it. Give everyone a chance to comment on those subjects.]*

### **Conditions of Return**

- *[Ask the CPS] **Can the children safely return home now?** [This question is crucial since the 2023 passage of HB 16 (MCA 41-3-306), which requires the judge to decide during the EPS hearing whether the children’s removals will continue beyond that hearing. Thus, we need to discuss this critical question before the EPS hearing. **In some cases, consider addressing whether the children can return home at the beginning of a PHC following introductions or at the beginning of placement discussions.** In cases where it appears possible for the children to return home immediately or soon, this could be the theme of a PHC.] [If yes] How will that occur? [If not] Could conditions be implemented so the children can return home soon? [Could one parent or person leave the home? Could the parent or parents move in with someone else or have someone else move into their home for safety purposes? Are there other options? This is a time to think outside the box.] [If not] What must be accomplished so the children can return home? Do those services need to be completed before the children can be transitioned home? [The answer should be no. Children generally transition home while the parents continue to work on services.] If the children are returned home, would the parents need to continue to work on services while the case is open? [Probably, yes] What would need to happen for you [the CPS] to feel comfortable asking the County Attorney or Assistant Attorney General to dismiss this case with the children at home? [Thus, Conditions of Return are discussed without actually using that term.]*

### **Preparing for Court**

- *Are you [all parties] ready to proceed to an emergency protective services hearing? If not, why not? Is anyone planning to contest the emergency protective services hearing? Is anyone planning to challenge the show cause hearing? What are the plans for those hearings? [If no one is planning to contest the emergency protective services or show cause hearings] What are your [all parties’] positions on adjudication and disposition? Do you plan to contest those hearings? Are any family engagement meetings scheduled at this point? [Family engagement meetings are an excellent opportunity to continue PHC discussions.] [If not] Would it be a good idea to schedule one to continue the conversations that began today? [Of course it would.] Do you [all parties] believe status or review hearings would be a good idea to continue these discussions? [Status or review hearings are an excellent opportunity to ensure these types of discussions continue in court throughout a DN case.]*

*[Review the basic plan as agreed to by the parties by reviewing your PHC facilitator notes with them. Address areas where there has not been agreement and encourage continuing discussions concerning those topics. Ask the attorneys whether there is anything else they would like to address. Ask everyone if*

*they have any questions or concerns they would like to discuss. If they have questions or concerns, discuss those subjects if appropriate.]*

## **PRE-HEARING CONFERENCE (PHC) FACILITATOR NOTES**

**The following five pages are PHC draft notes used by facilitators to stay on track during a PHC. As a PHC facilitator, you should have either an electronic or printed version with you while facilitating a PHC. The draft notes are designed to remind you about the critical topics you need to address as a facilitator during a PHC.**

It is a good idea to take brief notes during the PHC to ensure you cover all of the relevant subjects. Review your initial notes for accuracy at the end of a PHC. If attorneys want a copy, create a final version for them later and provide those notes to all attorneys. Requests for copies of the facilitator notes are rare. Facilitator notes are not provided to judges.

This draft form is intended to remind you which areas have already been discussed during a PHC and which areas still need to be addressed. The order of topics may change based on your experience and preference. For instance, in some cases, you may want to discuss whether the children can go home immediately after the introductions or at the beginning of placement discussions. Since a potential early return home is the focus of EPS hearings, and those hearings closely follow PHCs, you must address this question at some point during PHCs.

You will often need to skip around and retrace your steps when information comes out early in a PHC. These notes are merely a guide that can help structure your discussions. Bullet points at the beginning of the notes remind even experienced facilitators about important introductory matters. The final page is an attendance sheet that is passed around at the beginning of an in-person PHC. Everyone present should print their name, sign the attendance sheet, and provide their role. During a remote video PHC, you will need to take attendance and enter each participant's role.

These notes have evolved to reflect input from experienced PHC facilitators and stakeholders. There is a renewed emphasis on safety, exploring the possibility of an early return home, and conditions of return. This includes finding out whether the children can return home at the time of the PHC. The strengths of children and families are formally addressed. Barriers to completing services are discussed to ensure the plan is workable. Conversations about services were moved to the sections concerning children and parents for a more holistic approach. There are conversations about the parents' support network and contact between children and extended family and friends. We believe the newer version of the notes has improved the flow and content of PHCs.

## PRE-HEARING CONFERENCE FACILITATOR NOTES

Child(ren)'s Name/s: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Case Number: DN-\_\_\_\_\_ - \_\_\_\_\_

## Introductions

- Introduce yourself, explaining your objectivity and neutrality
- Welcome and thank the parent(s) for participating
- Briefly explain the PHC's purpose and process
- Ask everyone to introduce themselves and sign the attendance sheet or take attendance in a remote video PHC

## Initial Questions

- Who is the intake CPS? \_\_\_\_\_
- Who is/will be the ongoing CPS? \_\_\_\_\_
- Are all parents and parties present? Y N  
If not, who is missing, and do we know why? \_\_\_\_\_
- Does ICWA apply? Y N  
If yes, what tribe(s)? \_\_\_\_\_

### Child(ren)'s Status

- Has paternity been established? Y N  
If not, what needs to be done? \_\_\_\_\_
- General status of the child(ren)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Strengths of the child(ren)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- School-aged child(ren) - How is/are the child(ren) doing in school?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



- Are assessments or screenings needed? Y N  
\_\_\_\_\_  
\_\_\_\_\_
- Are there special needs? Y N  
\_\_\_\_\_  
\_\_\_\_\_
- Are there medical, mental health, or dental needs? Y N  
\_\_\_\_\_  
\_\_\_\_\_

#### **Parent or Parents' Status**

- Are there any related cases? Y N  
If yes, what type (criminal, domestic relations, etc.)? \_\_\_\_\_  
Are hearings scheduled in those cases? \_\_\_\_\_
- Strengths of the parent(s)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- Who are the parent(s)' support persons, extended family, and kin they would like included in this process? How do they want them involved?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What services does/do the parent(s) believe would help them to care for their child(ren) safely?  
***If possible, ask the parent(s) first.***  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What services does the Child Protection Specialist (CPS) believe would help the parent(s) to care for their child(ren) safely?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What are the priorities for services?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- How can we get those services started ASAP? What are the next steps for CFSD and the parents(s)?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- What are the parent(s)' potential barriers to completing services?
  - Transportation \_\_\_\_\_
  - Housing \_\_\_\_\_
  - Phone \_\_\_\_\_
  - Income \_\_\_\_\_
  - Employment \_\_\_\_\_
  - Health insurance \_\_\_\_\_
  - Others \_\_\_\_\_

### **Placement**

- With whom is/are the child(ren) placed, and why?  
\_\_\_\_\_
- Agreements and disagreements concerning placement, and why?  
\_\_\_\_\_  
\_\_\_\_\_
- Are there relative/kinship/ICWA options not yet considered?  
\_\_\_\_\_  
\_\_\_\_\_

### **Family Time**

- Has/Have the parent(s) seen their child(ren)? If so, where and how often?  
\_\_\_\_\_
- Are there options to safely increase family time, and what is CFSD's plan moving forward?  
(Relatives, kin, friends, community visits, etc.)  
\_\_\_\_\_  
\_\_\_\_\_
- What are the barriers to less restrictive family time if family time is currently supervised?  
\_\_\_\_\_  
\_\_\_\_\_
- What is the plan for contact with extended family and friends?  
\_\_\_\_\_  
\_\_\_\_\_
- Agreements and Disagreements concerning family time?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Conditions for Return**

- Can the child(ren) safely return home now? Y N

- If not (Ask the CPS), what needs to occur for the child(ren) to return home?

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**Preparing for Court**

- Are we able to proceed with the EPS hearing? Y N

- Are we able to proceed with the show cause hearing? Y N

- Is anyone planning to contest either of those hearings? Y N

- What are the plans for the EPS and show cause hearings?

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- What are the plans for the adjudication and dispositional hearings?

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- Is a family engagement meeting (FEM) scheduled? \_\_\_\_\_

**Additional Notes**

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## ATTENDANCE SHEET – PRE-HEARING CONFERENCE

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Child(ren)'s Name(s) \_\_\_\_\_ DN \_\_\_\_\_ - \_\_\_\_\_

Print Name

Signature

Role

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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## **REMOTE VIDEO PRE-HEARING CONFERENCES**

In early 2020, when the COVID-19 pandemic started to affect Montana's courts, many court hearings, conferences, and meetings, including PHCs, had to move to remote video conferences. There was little or no time to prepare for this abrupt change. Through the hard work and ingenuity of PHC facilitators, judges, court personnel, attorneys, CPS, and GALs/CASAs, PHCs in Montana were able to make that switch. These individuals created a process for scheduling and conducting remote video PHCs in all pilot court jurisdictions. Their hard work and dedication in making this happen cannot be overstated.

In 2021, as hearings began returning to traditional courtroom settings, some PHC pilot court jurisdictions also returned to the courthouse for in-person PHCs. There are undoubtedly benefits to in-person PHCs, mainly due to observations and interactions with all participants speaking openly in the same room. These benefits should not be discounted.

However, traditional in-person PHCs, by their very nature, require multiple parties and participants to travel to a Montana District Court. This can be time-consuming under the best circumstances and require a great deal of travel in rural jurisdictions. Attorneys may not be available locally to represent parents and children. They may be physically located far from the courthouse. A facilitator may not live in the jurisdiction.

Due to 2023 law, PHCs must be made available for parents within five days of children's removals and before an EPS hearing. This leaves little time for the participants to adjust their schedules so they can attend PHCs and EPS hearings. Thus, most jurisdictions have opted to use remote video PHCs. This format allows the parties and participants, including facilitators, to attend a PHC from their home, office, or elsewhere without an excessive burden on time, travel, and scheduling.

Remote video PHCs are not a one-size-fits-all process. Due to the varying nature of court proceedings throughout Montana, you will likely need to adapt remote video PHCs to address the needs of your specific jurisdiction.

### **Contact Information**

PHC facilitators need to be provided contact information for the attorneys, CPS, and CASAs or GALs. As a facilitator, make sure you receive the contact information well before PHCs. With this information, you can ensure those individuals have the link they need to appear at a PHC and can provide that link to their clients and other potential participants.

### **Access to Remote PHCs**

Some parents and other participants may not have a computer, tablet, or smartphone to access a remote video PHC. While it is ideal for parents to participate by video during a remote PHC, they should also be able to access remote video PHCs through a phone call.

### **Video Link**

Each facilitator has their own link for remote PHCs. The parties and stakeholders are provided with the specific facilitator's link for remote access to the PHC. The parties and stakeholders also receive the date and time for the PHC in advance.

Some jurisdictions have set up a dedicated link for remote video PHCs and other court appearances. In those courts, the parties and stakeholders simply need to know the date and time for the PHC. Sometimes, court personnel must host those PHCs since the court link may require a state employee to host the meeting. There could be an issue if the judge is using the court's remote link for something else. If that occurs, the PHC facilitator should provide their remote link as an alternative means for conducting the PHC.

### **During Remote Video PHCs**

PHC facilitators should ask each participant to identify themselves and their role at the beginning of each PHC. This is particularly important when participants are not on video or are not identified on-screen by their name. Participants should be encouraged to use video if possible since it enhances the quality of remote PHCs. The facilitator needs to ensure that no unwanted persons are present during the PHC.

As with any PHC, a party can generally request that a non-party not be allowed to participate in the PHC. This rule does not apply to foster or resource parents, CASAs, and GALs. For instance, if a father is on video with his new partner, the mother can ask that the new partner not be allowed to participate in the PHC. While removing a non-party from an in-person PHC is usually more manageable, the facilitator should request that any unwanted non-party leave the vicinity of a remote video conference. The PHC facilitator should then seek to confirm that the unwanted person is no longer in a position where they can see or hear the discussions.

The participants cannot fill out attendance sheets during a remote video PHC. Hence, the facilitator should let the parties know that they will be taking attendance. Like with an attendance sheet, let them know that their attendance does not mean they agree with any or all decisions made during a PHC.

Remote video PHCs should never be recorded. While recording PHCs for educational or record-keeping purposes may be tempting, there is too much risk for abuse. The participants need to be reminded that PHC discussions are generally confidential. While some portions may later be shared with service providers, attorneys, and CPSs, these discussions should not be shared with individuals not involved with the DN case. Some of the conversation may be shared with the judge if no party objects to that disclosure.

## PHC SCHEDULING

The position of PHC Scheduler was created shortly after the statewide PHC and EPS hearings laws went into effect on July 1, 2023. The Montana courts employ the PHC Scheduler. The PHC Scheduler should receive notification about the need for a PHC shortly after a child is removed from their home. They then inform facilitators about the need for a PHC in their jurisdiction. A facilitator is selected to conduct the PHC. Every jurisdiction in Montana should be following this process.

As a PHC facilitator, you may also receive notice of upcoming PHCs through informal communications from a CPS, the County Attorney's or Attorney General's Office, or the Office of State Public Defender (OPD). If you receive informal notification of the need for a PHC, please ensure the PHC Scheduler is also aware of that need as soon as possible.

**The following two pages are a short fact sheet created by the Montana Court Improvement Program and Court Administrator's Office recommending practices for scheduling PHCs throughout Montana. The fact sheet is based on lessons learned during the first full year of implementing PHCs statewide. It has already been provided to stakeholders throughout the state, including judges, attorneys, and CFSD. Feel free to give a copy of the fact sheet to anyone needing one in your jurisdiction since they may have forgotten or new stakeholders may have come on board.**

***If you would like a laminated copy of the fact sheet, please contact the office of the Court Improvement Program at [jburk3@mt.gov](mailto:jburk3@mt.gov).***

## **PRE-HEARING CONFERENCE (PHC) FACT SHEET**

As of July 1, 2023, pre-hearing conferences (PHCs) must be available when a child has been removed from their home in a DN case. (MCA 41-3-307)

PHCs must be made available to parents, guardians, and other custodians. They must be held within five days of the child's removal and before the emergency protective services (EPS) hearing. The EPS hearing is required to occur within five business days of removal.

PHCs work best in districts that have preset days and times. Reserving two days and times a week is best, with at least one day between the two. This ensures a PHC can be held within five days of removal.

To ensure the process for scheduling PHCs is efficient, the following three steps should be taken:

1. At or before the removal, CPS emails the Department's attorney, OPD (at [opdeps@mt.gov](mailto:opdeps@mt.gov)), the Court, CASA/GAL, and the PHC Scheduler to notify them of the removal.
2. The PHC Scheduler, who has previously been provided with the preset days and times each jurisdiction sets aside for PHCs, locates a facilitator, and confirms that person's availability. At the same time, the judge or clerk of court sets the EPS hearing, and OPD appoints counsel for the children and parents. (MCA-41-3-425)
3. The PHC scheduler sends a second email to the Department's attorney, CPS/CPSs, CASA/GAL, and OPD with the name and Zoom link of the facilitator.



The purpose of a PHC is to talk about important issues related to parents and their children early in a child abuse and neglect case, with the goal of beginning to work as a team towards reunifying the family.

**PHCs should address four main issues:**

1. Placement – are parents okay with their children’s current placement? If not, are there relatives or friends who might be appropriate?
2. Family time – can family time be improved or increased? How much supervision is needed to keep the children safe?
3. Services/treatment for parents and family – what services are needed for parents and their children, and will parents agree to begin them?
4. Conditions of return – can the children safely return home? If not, what must be done before that can occur?

## LEGAL PROCESS AND TIMING OF DN CASES

Below is an outline of the process and timing for Montana DN cases. A flow chart is provided at the end. While PHC facilitators do not need a complete understanding of the legal process, knowing what may occur can help you appreciate your importance at the beginning of a DN case. These materials will help you gain some recognition about what the parents and parties will be going through so you can help create a workable plan for them. This knowledge should remind you during a PHC to quickly focus on the issues that will ultimately determine a DN case's resolution.

**NOTICE OF REMOVAL** – Parents or other persons with legal or physical custody of the children must be notified immediately or as soon as possible of an emergency protective placement and the reasons for that placement. *MCA 41-3-301(1)(b)*. Due to 2023 law, OPD should also receive the notice of removal within 24 hours of a child's removal. *MCA 41-3-301(1)(c)*. This notice is a written document called the "Notice of Removal."

**AFFIDAVIT OF REMOVAL** – A CPS should submit an affidavit to the County Attorney's or Attorney General's Office and the parents, if possible, within two working days of removal. *MCA 41-3-301(6)*. Due to 2023 law, the affidavit should also be provided to OPD within two working days of removal. *MCA 41-3-301(6)*. This document provides the court with information about the family and removal so the judge can determine whether to grant emergency protective services.

**INITIAL PETITION** – The County Attorney's or Attorney General's Office should file the initial petition with the court within five working days of removal. *MCA 41-3-301(6)*. The CPS's affidavit of removal is filed with the petition. Initial petitions can request emergency protective services, temporary investigative authority (TIA), and temporary legal custody (TLC). In cases of extreme conduct, the state could seek termination of parental rights without offering reunification services. *MCA 41-3-422(1)(a)*.

**CONTESTING EMERGENCY PROTECTIVE SERVICES** – The parents or other persons with legal or physical custody of the children have ten days to contest emergency protective services after receiving the petition and affidavit, thus seeking a contested show cause hearing. *MCA 41-3-427(1)(e)*.

**PRE-HEARING CONFERENCES** – Due to 2023 law, PHCs should be made available statewide to the parents or other persons with legal or physical custody of the children before the EPS hearing and within five days of a child's removal. *MCA 41-3-307(1)*.

**EMERGENCY PROTECTIVE SERVICES (EPS) HEARINGS** – The court should set an EPS hearing within five business days of a child's removal. During an EPS hearing, the judge must decide whether the child's removal from their home will continue beyond the hearing date. If the court determines that continued out-of-home placement is needed, the judge shall establish

guidelines for visitation and review options for relative or kinship placements, making appropriate recommendations. *MCA 41-3-306*.

**SHOW CAUSE HEARINGS** – Except as provided in the Indian Child Welfare Act (ICWA) and the Montana Indian Child Welfare Act (MICWA), a show cause hearing must occur within 20 days of the petition’s filing. *MCA 41-3-432(1)*. This hearing allows the parents to challenge the granting of emergency protective services based on the initial petition and affidavit. Continuances should only be granted if there would otherwise be “substantial injustice.” *MCA 41-3-432(1)(c)*.

**PARENTAL FITNESS** - All parents are entitled to hearings on their fitness to care for their children when children are removed from the parent’s care. The United States Supreme Court continues to recognize that parental rights are constitutionally protected. *Stanley v. Illinois, 405 US 645 (1972)*. Fit parents are presumed to act in their children’s best interest and the state should not inject itself into the private realm of the family when parents are fit. *Troxel v. Granville, 530 U.S. 57 (2000)*.

**TEMPORARY INVESTIGATIVE AUTHORITY (TIA)** – TIA allows CFSD to investigate child abuse or neglect allegations further. TIA does not grant legal custody to CFSD. TIA lasts no more than 90 days. *MCA 41-3-433*. There is no statutory authority for an adjudication or dispositional hearing seeking only TIA. When there is a request for TIA, it is generally granted during a show cause hearing.

**ADJUDICATION HEARINGS** – These hearings should occur within 90 days of show cause hearings when the state is seeking temporary legal custody. *MCA 41-3-437(1)*. For the DN case to proceed past an adjudication hearing, the state must show that the children are “youth in need of care.” Otherwise, the case should be dismissed with the children returning home. A youth in need of care is a child who has been abused, neglected, or abandoned. *MCA 41-3-102(36)*.

**DISPOSITIONAL HEARINGS** – If the court found the children to be youth in need of care during the adjudication hearing, a disposition hearing should be held within 20 days of the adjudication hearing. *MCA 41-3-438(1)*. Temporary legal custody is usually granted to CFSD at disposition. The judge could also place the children with a non-custodial non-offending parent or have the children return home to the custodial parent with a safety plan. *MCA 41-3-438(3)*.

**TEMPORARY LEGAL CUSTODY (TLC)** – TLC provides CFSD with temporary authority to make custodial decisions for the children. The judge may grant TLC for no longer than six months. *MCA 41-3-442(2)*. TLC can be extended by court order for up to an additional six months. There could be several extensions of TLC during a DN case.

**NON-OFFENDING PARENTS** - The court may enter a dispositional hearing order placing children with a non-custodial non-offending parent. This order supersedes any existing custody orders, including orders from domestic relations cases. It may or may not be part of an order dismissing a DN case. *MCA 41-3-438(3)*.

A non-offending parent is a parent who has no allegations of abuse or neglect against them or any significant safety concerns concerning them. A parent is not a non-offending parent under Montana law if they are a substantial risk of physical or psychological harm to their children. The judge can place children with a non-custodial non-offending parent because there is no issue of fact about their fitness to care for their children since no allegations of unfitness were made against them. *In re SS and SS, 2012 MT 78*.

**TREATMENT PLANS** – The court may order treatment plans after adjudicating the children to be youth in need of care. *MCA 41-3-443(1)*. Treatment plans must be ordered no later than 30 days after the dispositional hearing, except for good cause. *MCA 41-3-443(7)*. Due process generally requires that the parents be given sufficient time and notice of a treatment plan's provisions to make the changes needed for their children to return home safely. Failure by parents to fully comply with treatment plan terms is the most common reason for the termination of parental rights. Since it could take months before treatment plans are ordered, PHCs are an excellent opportunity to begin discussions regarding the services the parents will need to complete.

**STATUS OR REVIEW HEARINGS** – As a best practice, it is recommended that status or review hearings be scheduled every 60-90 days during a DN case. There is no statutory requirement for these hearings. However, at these hearings, the court can inquire about reunification progress. Status or review hearings can assist parties with the resolution of any outstanding issues. The parties can discuss what has happened and plan for the case going forward. Without these hearings, party discussions might not occur and issues may not be brought to the court's attention for several months.

**EXTENSIONS OF TEMPORARY LEGAL CUSTODY** – TLC granted by the court lasts no longer than six months without a further hearing. If the state wants TLC to continue for longer than six months, they must file a petition for an extension before TLC expires. *MCA 41-3-442(4)*. If the state files for an extension and the court finds grounds to justify an extension of TLC, the judge can grant up to six additional months of TLC. A shorter period could also be given. There may be several extensions of TLC during a case. If the state does not file for an extension of TLC, it must file a petition for placement with a non-custodial parent, permanent legal custody through termination of parental rights, long-term custody, guardianship, or dismissal.

**PERMANENCY HEARINGS** – There is an annual review hearing that is required by law. That hearing is called a permanency hearing. It is designed for a review of the children's permanency plans. The first permanency hearing should occur within 12 months after the children were adjudicated youth in need of care or after the children's first 60 days of removal, whichever comes first. Subsequent permanency hearings should occur every 12 months until the case is resolved. *MCA 41-3-445 (1)(a)*. Permanency hearings are not required when a case has been dismissed, children are not removed from their home, are returned to a parent or parents, or are legally adopted or placed in guardianship.

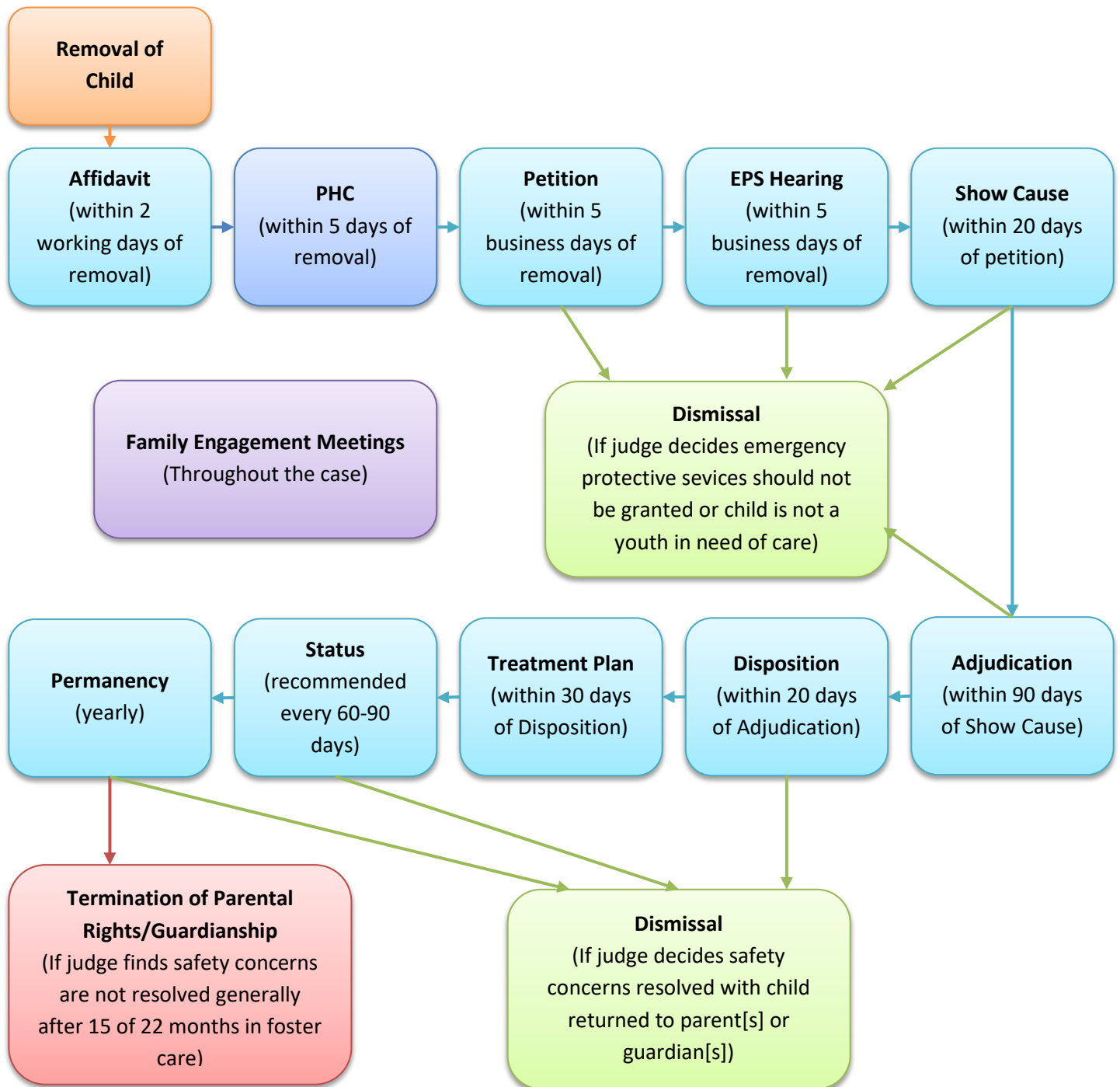
In severe and exceptional DN cases, when a determination has been made that efforts to provide preservation or reunification services are unnecessary, a permanency hearing must occur within 30 days of those findings. *MCA 41-3-445(1)(a)*. During a PHC in one of these cases, the parties may choose to discuss termination of parental rights since services may not be offered to one or both of the parents.

**PETITIONS FOR PERMANENT LEGAL CUSTODY AND TERMINATION OF PARENTAL RIGHTS** – A petition for permanent legal custody and termination of parental rights must be filed when children have been in foster care under the physical custody of the state for a period of 15 of the last 22 months or in severe and exceptional cases when efforts to reunify have been excused. *MCA 41-3-604(1)*.

Exceptions to the requirement for filing a petition for termination of parental rights include:

1. The children are in the care of a relative,
2. CFSD has failed to provide necessary services, or
3. “Compelling reasons” exist for not filing the petition.

## COURT PROCEEDINGS CHART



## **TIPS FOR FACILITATORS**

**The following material contains observations from the author, PHC facilitators, and stakeholders who have designed and conducted PHCs in various Montana jurisdictions for over ten years. These items are offered as tips for new and experienced facilitators.**

### **General**

1. A PHC isn't a typical mediation. In a PHC, generally, all parties have the same goal at the beginning of a DN case. In typical civil lawsuits, the parties' purposes in mediation are often in direct opposition. However, in PHCs, the parties are all seeking to reunify the family except in severe and extreme cases of maltreatment. As a facilitator, when things get off course during a PHC, you can remind everyone they have the same overall reunification goal. While their thoughts about the timeline and how to reach this goal may differ, everyone should be seeking reunification. This reminder can help you keep them moving in the same positive direction.

### **Party and Attorney Hostilities**

2. Not everyone will like what you are doing. As a PHC facilitator, you may hear, "This is a waste of time," and "You're asking us to do extra work." You may be told there isn't enough time to prepare for PHCs within five days. Some attorneys may believe you are taking sides or overstepping your role. Outside of PHCs, you could offer to speak with these attorneys to explore their perspectives and explain your own. Remind attorneys and other stakeholders about the fact sheet contained within the training manual. You may learn from these discussions and adjust your style or better explain your position during upcoming PHCs. Research has shown that PHCs increase the reunification rate for families and shorten the time to permanency. When parents actively engage in PHCs, they are more likely to have their children return home.
3. Parents may be hostile toward the CPS, CFSD, and the entire DN case process. Nothing derails a PHC faster than parents who only want to talk about how angry they are. This can cause the CPS to become highly defensive. While CFSD may have ample justification for the children's removal, it is only natural for the parents to be upset with the CPS who removed their children. It's also natural for that CPS to feel strongly about their decision to remove the children. It's a decision not taken lightly. Sometimes, it may be a good idea to remind everyone that these emotions are natural, but they're not helpful to the discussions. As a PHC facilitator, you're trying to help design a plan to reunite the family in a safe home. It's important to remember you're not there to determine whether the removal was appropriate. That's for the judge to decide.
4. Parents in these cases may not be highly functional at the time of the PHC. They could be going through drug withdrawal, actively using drugs, or have mental health conditions, making it difficult

for them to engage in and follow the conversation. Only a few days have passed since the children's removal. The parents might be emotionally distraught. They may not be well educated or may have limited mental capacities. When parents get off track, listening to what they say is essential. Then, politely steer them back to the structured discussion. You can remind them of the limited time available and the importance of the PHC conversation.

5. Parties and lawyers sometimes show up late. You have a short time to conduct a PHC. Give people a grace period of a few minutes, and then get started. Attorneys soon realize that PHCs will begin on time, and they need to arrive on time, or PHCs will start without them. When people come late, give them a brief introduction and summary of the discussion thus far, then continue. **If a lawyer is absent, significant or potentially damaging issues should never be discussed with their client.** Do not allow other parties or attorneys to question a client without their attorney being present. Ethically, lawyers should not speak with a person they know to be represented without their attorney present or without previous permission from that attorney to talk with their client.

### **Stipulations**

6. Parents will often agree to stipulate to emergency protective services during a PHC. This stipulation can present an opportunity to discuss whether they plan to contest the EPS and show cause hearings or are willing to stipulate to adjudication and disposition. Everyone may know that the judge will grant jurisdiction and temporary legal custody because of severe and apparent safety concerns. Why have an additional court date or two and wait another month or more for jurisdiction and temporary legal custody to be established? If there is an early stipulation to jurisdiction, treatment plans can be ordered sooner, and the parents can begin actively working toward reunification through those plans.

### **Locating Missing Parents**

7. If a parent is absent, they may not have been notified about the PHC. The state may not know how to locate them. Ask whether anyone in the room has any ideas about contacting the missing parent. There is usually some information available about finding a missing parent. Someone may have information concerning that parent's relatives, social media, or a place they've lived or worked. While missing parents can sometimes be served by publication, that process rarely allows them to participate actively. Parents who don't know about a DN case will not be involved.
8. Sometimes, a parent with contact information for a missing parent will not provide it. They may have justifiable concerns about that absent parent and not want that person ever to have further contact with their children. They could also be hiding information about the other parent because they believe the missing parent might be viewed as a better parent who could gain custody of the children. Montana law provides the court with an opportunity at disposition to dismiss the case



and place the children with a non-custodial non-offending parent. Disposition can be revisited throughout a DN case.

### **Topics of Focus – A Theme**

9. A “theme” is usually revealed during a PHC. It can be hard to determine the theme until the discussions begin. There is usually something the parties want to talk about that is more important to them than other items. For example, there may be a good reason why the parents wish to contest the case. For an ICWA case, a parent may want their tribe involved and the children placed with a relative. There are times as a PHC facilitator that you will need to throw out the PHC script and focus on the theme for the duration of a PHC.
10. The parties may get off-topic or stray from helpful conversations into unproductive and sometimes hostile areas. It is vital for you to politely interrupt and gently steer the conversation back on course. As a PHC facilitator, you can remind people about the PHC’s purpose and goals and how crucial the discussions are for the family and children.
11. Sometimes, the parties will do an excellent job focusing on critical topics. In that case, get your ego out of the way and let them talk without interruption. Sitting quietly and taking notes is okay when there is a flow to the conversation. These types of discussions help develop trust between parties. A PHC is only the beginning of open communication between the parties. Be sure to summarize their discussions near the end of a PHC and encourage them to continue talking throughout the DN case.

### **Available Services**

12. Based on your experience, you will accumulate knowledge about services available in your jurisdiction. It’s okay to provide that information for discussion. You could tell the parties, “Last week in another PHC, I heard about a program that deals with this specific issue and its name is \_\_\_\_\_. Would it be possible for the CPS to set up a referral with that organization? Would that make sense? What does everyone think of that idea?”

### **Indian Child Welfare Act (ICWA)**

13. It’s essential to discuss ICWA as soon as possible. In 2023, a similar state act was enacted called the Montana Indian Child Welfare Act (MICWA). Early conversations about ICWA and MICWA

during a PHC can help avoid delays and legal issues in a DN case. More importantly, these discussions help protect the rights of Native Americans and their tribes. If there are questions about tribal membership or eligibility for membership, make sure people take responsibility for getting answers to those questions. Only a tribe can determine if children are members or eligible for membership. Discuss what efforts have been made to contact the potential tribe or tribes. The earlier tribes are informed about the case, the better. The Montana Supreme Court has made it clear that it is crucial to resolve ICWA issues during a DN case.

***If you'd like to learn more about ICWA and MICWA, please refer to the ICWA eLearning course, available through a link on the Court Improvement Program's website at [cip.mt.gov](http://cip.mt.gov).***

14. Native American children are sometimes placed in non-relative and non-Native American homes for long periods. During PHCs, explore culturally appropriate placements before the children become firmly attached to a different kind of foster or resource family. A serious problem can arise when termination of parental rights may occur a year or more down the road, and a discussion ensues about moving the children from a home where they are firmly attached to a home with relatives or tribal members. This process can be very difficult for the children. This issue can be avoided by establishing a relative or other culturally appropriate placement early in the DN case. PHCs should play a role in these early placement discussions.

### **Paternity**

15. If paternity is not legally established, it must be discussed during a PHC. Otherwise, it could become a complicated legal issue later. At the very least, children should have the opportunity to know who their father is. A father may be able to provide children with a safe, stable, and happy home. If some paperwork needs to be taken care of, make sure people take responsibility for getting that done. If there are questions regarding paternity, gather all potential fathers' names and their contact information if available. This information could help identify the actual father. If potential fathers are present during a PHC, ask whether they would be willing to take a paternity test. If they agree, guide the discussions to help set up that testing as soon as possible.

### **Related Court Cases**

16. Make sure you ask about any related court cases. Parties and their representatives may be unaware of those cases or not understand their importance. Other cases could significantly affect the current PHC and DN case. If there is some type of no contact court order between the parents, you may need to hold separate PHCs for each parent. Criminal matters or domestic relations orders often change the dynamics of a PHC. Other DN cases involving siblings can be important because the parents may already have pending or previous treatment plans. How the parents are

doing or did with those treatment plans could have an impact on the planning for the current DN case.

### **Family Engagement Meetings (FEMs)**

17. If a FEM has not been scheduled, you should encourage the parties and CPS to consider setting one within the next few weeks. FEMs address many of the same subjects as PHCs and thus allow the parties to continue the discussions begun during PHCs. Unlike PHCs, FEMs can repeatedly occur throughout a DN case enabling the parties to continue to address issues that might arise through facilitated conversations.

### **Children's Needs**

18. Make sure you ask the parents about the needs of their children. The parents' viewpoint is often discounted when deciding what services the children may need. While the parents could be struggling with their own issues and may have neglected or abused their children, they are still the most likely source of information concerning their children. Parents can help identify concerns that may not be readily apparent to the other parties and participants.
19. School can be a big issue for children entering foster care. The children may have struggled in school due to poor parenting skills or their own issues. Also, children may need to change schools when entering foster care. They might have changed schools numerous times in their life. For children struggling in school, the most important conversations during PHCs could concern in-school services and seeking to stabilize their school placements.
20. Special needs can mean more than a professional diagnosis. While questioning the parties and participants about any special needs the children may have, don't just focus on things that can be professionally diagnosed. Look for items that are special for the children. For example, a child may have a game, toy, or clothing that is particularly important to them. Talk about how that child could have access to those things. Children may have friends or relatives with whom they are very close. Ensure those relationships will continue during foster care. These are the kinds of things that can provide a degree of normalcy and stability for children while they are in foster care.

### **Placement of the Children**

21. During the discussions regarding placement, it is essential to ascertain whether the parents have met the foster care providers. If the parents meet the foster or resource parents and believe their

children are safe, the parents can focus on the changes they need to make so their children can return home safely. Parents who work well with foster or resource parents are more likely to understand what their children are going through. Ideally, the children will observe this positive relationship between parents and foster or resource parents and benefit from that relationship.

22. Find out about any relatives, kin, and close family friends strongly bonded with the children. These individuals can be placement or family time and visitation assistance options. At the time of the children's removal, parents are often highly emotional or otherwise dysfunctional. They can't always focus on the conversation. During earlier conversations, parents may not have understood the importance of relatives and kin. Ensure they know how important it can be to explore relative and kinship placements. Discussions about family friends and relatives are a vital part of almost every PHC.
23. During placement discussions, parents may ask whether their children can return home immediately. With the 2023 implementation of statewide EPS hearings in Montana, discussing whether the out-of-home placement will continue is essential. During EPS hearings held shortly after PHCs, judges must determine whether the children's removal will continue beyond those hearings. Thus, that subject must be addressed during PHCs before EPS hearings. When the subject of a return home is brought up, determine whether the state believes the children could go home immediately and whether any conditions need to be in place for that to happen. If the children can't return home at the time of an EPS hearing, this conversation can lead nicely into productive discussions about services necessary before the children can return home safely.
24. It sometimes makes sense to discuss an in-home safety plan during a PHC. The parties may agree that safety measures could be implemented so the children can return home. For example, a relative might be able to move into the family home as a safety service provider. The parents and children could move into the home of a safe relative or close family friend. There are numerous ways for children to live safely with their parents. This is a subject that may require thinking outside the box. Safety planning is a valuable topic to explore during a PHC.

### **Family Time**

25. It's important to discuss options for increasing family time and reducing supervision. A workable visitation plan is a critical piece of family time. Remember, however, that family time is more than just visitation. Family time can help preserve the children's identity and reduce the trauma of removal. Don't get boxed in by the idea of a "one-hour supervised visit." Consider actual family time, not just "visitation." Does visitation really need to be supervised? If so, why? Are there

relatives or family friends available to supervise? Can family time occur in the community or a more familiar setting? Are there therapeutic or community options for increasing family time? Can there be contact by phone or video conference? Can the parents attend school or club activities? Can parents go to medical or dental appointments? Throwing out questions about increased and unsupervised family time to the group for discussions can be highly productive.

### **Services and Treatment**

26. Treatment plans should be individualized. Each parent, and perhaps each child, may have different needs. Find out what services they have begun already. What does the state want them to do, and why? What are the highest priority services? What are the parents willing to do? What do the parents think they should be doing? While a PHC is not a binding agreement, parties will generally make an effort to abide by the agreements they made during a PHC. Thus, services designed to reunify the family can begin long before the court orders treatment plans. PHC discussions could be the beginnings of individualized treatment plans fully developed by the parties later.
27. Find out what strengths and weaknesses the children and parents have. How do those have an impact on the family and the ability of its members to function? Strengths may give the family opportunities that are not otherwise available. They can be the bedrock upon which to build reunification. Weaknesses can be the key to determining the services needed. This individualized focus during PHCs may help the parties later create treatment plans tailored to the family's needs.
28. Determine whether there are any barriers to completing services. A perfect plan doesn't work if the parents don't have enough time or the ability to address the services required. Barriers can be as simple as having access to transportation, mail, or a phone. They may be more complicated, like trying to fit services around a busy work or family schedule. By addressing these potential barriers early, the parents are given a better opportunity to resolve the issues that brought the case before the court.

### **Conditions of Return – What Needs to Happen for the Children to Return Home Safely**

29. For planning and transparency, conditions of return should be discussed with the parents present. Even within a few days of removal, the CPS should have taken the time to evaluate what they believe must occur for the children to return home safely. A PHC is an excellent opportunity to get the parties talking about conditions of return. PHCs can also give the other participants a chance to help design those conditions of return. Through these discussions, parents can plan accordingly

because they will be able to clearly see what they need to do so their children can return home safely.

30. When discussing conditions of return during a PHC, it is not a good idea to use the term “conditions of return.” This term can confuse parents and often makes the CPS uncomfortable. The CPS may be concerned that they will later be held accountable if they do not provide all of the conditions of return during the PHC. The subject can be approached by asking all the participants, “What needs to happen for the children to go home safely?” A follow-up question could be, “Is it possible other concerns might arise as the case proceeds?” These questions can make the expectations for the parents more transparent. They will also understand that services could change as the DN case progresses.

## FINAL THOUGHTS

There are going to be good days and tough days as a PHC facilitator.

Some days, people will be open to positive and productive discussions to plan for the reunification of the family. The CPS and the parents will already be working together. You'll simply need to clarify and expand their plans.

However, there will be days when you can't establish trust between the parties because there's been too much water under the bridge. Some attorneys will not accept a team approach and believe arguing is the only way to represent a client. Participants may feel you're somehow taking sides. There will be parents who just aren't functional enough to participate fully. Some parents will not show up. There will be times when all of the materials outlined in this manual just don't seem to work.

On good days, get as much out of the process as possible by fully developing a reunification plan. Also, keep in mind the family's long-term goal of never having to go through this process again. On tough days, keep your cool and try to get something useful out of the PHC, even if it's something small. It's a rare PHC when you can't accomplish something.

Through PHCs, you have a chance to help people begin the process of putting a family back together in a safe and healthy home. What do you get to do in your professional life that's better than that?