

**FAMILY DIVISION OF
CIRCUIT COURT
ACTION**

The Family Division of Circuit Court in each county decides when a petition will be accepted by the court for the protection of a child. The local office must develop and maintain a protocol between the local offices, the prosecuting attorney's office and the Family Division of Circuit Court outlining procedures for submitting petitions. See PSM 713-08, Special Investigative Situations, Coordination with Friend of the Court, for requirements on determining if the family has an open Friend of the Court case when a petition is filed.

**Coordination with
the Prosecuting
Attorney's Office**

In situations in which the DHS presents a mandatory petition to the prosecuting attorney's office for filing with the court and the prosecutor refuses to file the mandatory petition with the court, DHS must file the mandatory petition directly with the court. This is a legal requirement and is not open to local office interpretation. If the Family Division of Circuit Court refuses to accept or authorize the mandatory petition directly from DHS, a copy of the unauthorized petition must be placed in the Legal Documents section of the case file.

If the prosecuting attorney's office refuses to file a non-mandatory petition with the court, the department may consider filing the petition on its own. The prosecuting attorney's refusal and the department's actions must be documented in the case record.

See also Representation of DHS By The Attorney General or Private Attorney below when the prosecuting attorney's office refuses to represent the department.

Note: The CPS worker is responsible for all of the facts included in the petition if he/she signs as the petitioner or co-petitioner.

**Absent Parent
Protocol**

The Absent Parent Protocol was developed as a resource for identifying, locating and, if appropriate, involving absent parents in child protection proceedings. The goal is to search for and locate the absent parent as early as possible in child protection proceedings to prevent disruption of a permanency plan. Expect the

court to question the specific efforts made to identify and locate absent parents. Use this protocol as a guide when attempting to locate absent parents. The protocol is available at www.michigan.gov/dhs-publications in the Children's Protective Services section. Refer to this document for further information.

Access to Vital Records

Two types of birth records are available from the Department of Community Health (DCH) Vital Records and Health Statistics (VRHS): administrative and certified copies. As defined by law (MCL 333.2883(2) and 400.115a(f)), each has a different use within the department. An administrative copy may be used for the basic functions of the department. A certified copy must be used when it is required by the court or when the birth certificate will be given to the child for personal use.

See FOM 903-9, Non-Scheduled Payments DHS-634, Reimbursement for Birth Certificates section, for more information on obtaining a birth certificate for a child.

A Parent's Guide to the Child Protective Process

Any time CPS files a petition on behalf of a child under the Child Protection Law, CPS must provide the child's parents and/or legal guardian a copy of A Parent's Guide to Child Protective Processes, A Handbook For Parents With Children In Foster Care (DHS Pub-31).

Mandatory Petition-Court Jurisdiction

Child Protection Law, Section 8d(1)(e) (MCL 722.628d(1)(e))

The Child Protection Law (CPL), Section 8d(1)(e), requires a petition if the department determines that there is a preponderance of evidence of child abuse or neglect and the prosecuting attorney determines (indicated by a criminal charge or the prosecutor's legal opinion) that there is a violation, involving the child, of a crime listed or described in the following sections of the CPL and the penal code:

- MCL 722.628a(1)(b) - Assault with intent to commit criminal sexual conduct (in violation of section 520g of the penal code, MCL 750.520g).
- MCL 722.628a(1)(c) - A felonious attempt or a felonious conspiracy to commit criminal sexual conduct (possible penal code violations include, but are not limited to MCL 750.157a and 750.92).
- MCL 722.628a(1)(d) - An assault on a child that is punishable as a felony (possible penal code violations include, but are not limited to MCL 750.82 - 750.89, 750.91 and 750.529).
- MCL 722.628a(1)(f) - Involvement in child sexually abusive material or child sexually abusive activity (in violation of section 145c of the penal code, MCL 750.145c).
- MCL 750.136b(1)-(4) - First- or second-degree child abuse. Examples of what may constitute first- or second-degree criminal child abuse include, but are not limited to:
 - Intentionally causing serious mental or physical harm.
 - Intentionally committing an act that may cause serious mental or physical harm.
 - A person's omission causes serious physical or mental harm.

See PSM 718-5, CPS Appendix F- The Michigan Penal Code, for a listing of the penal code violations.

Child Protection Law, Section 17 (MCL 722.637)

The Child Protection Law, Section 17, requires that a petition for court jurisdiction be filed within 24 hours of determining a preponderance of evidence exists that a child has been:

- Sexually abused.
- Severely physically injured due to abuse or neglect, including abuse or neglect that results in the death of the child. Severe physical injury means an injury to the child that requires medical treatment or hospitalization and that seriously impairs the child's health or physical well-being.
- Exposed to or had contact with, methamphetamine production.

Note: If there is a preponderance of evidence that a parent or legal guardian failed to protect a child of any of the above even if the perpetrator of the above is not a person responsible (such as sibling-on-sibling violence that causes a severe injury or a neighbor who sexually abuses a child), a petition must be filed.

Exception: The department is not required to file a petition for court jurisdiction as indicated above, under Section 17 of the CPL, if the department determines that the parent or legal guardian is not a suspected perpetrator of the abuse/neglect and the department determines that all of the following apply:

- The parent or legal guardian did not neglect or fail to protect the child.
- The parent or legal guardian does not have a historical record that shows a documented pattern of neglect or failing to protect the child.
- The child is safe in the parent's or legal guardian's care.

Child Protection Law, Section 18 (MCL 722.638)

Section 18 of the CPL requires a petition for court jurisdiction when a preponderance of evidence that a parent, guardian, custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home abused a child or a sibling of the child and the abuse included one or more of the following:

- Abandonment of a young child.
- Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- Battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.

Note: In MiSACWIS the acts listed above are referred to as Egregious Acts.

**Mandatory
Petition-Request
for Termination of
Parental Rights**

In **any** of the circumstances listed above, from Section 18 of the CPL, if it is a parent who is determined to be the perpetrator or the parent has placed the child at an unreasonable risk of harm due to that parent's failure to take reasonable steps to intervene to eliminate that risk, the petition to the court **must** include a request for termination of parental rights.

This also applies to **any** investigation in which a **preponderance of evidence of child abuse and/or neglect is found to exist** (current risk of harm to the child) **and**:

- The parent's rights to another child were previously terminated as a result of abuse/neglect proceedings, either in Michigan or another state.
- The parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of chapter XIA of 1939 PA 288, MCL 712A.2, or similar law of another state and the proceeding involved abuse or neglect that included one or more of the following:
 - Abandonment of a young child.
 - Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
 - Battering, torture, or other severe physical abuse.
 - Loss or serious impairment of an organ or limb.
 - Life-threatening injury.
 - Murder or attempted murder.
 - Voluntary manslaughter.
 - Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

Note: In MiSACWIS the acts listed above are referred to as Egregious Acts.

In the case of a new child in the family or household, an investigation must be completed to determine whether there is a preponderance of evidence of abuse and/or neglect to the new child in the family; see PSM 712-6, CPS Intake - Special Cases, and PSM 713-08, Special Investigative Situations, Children Currently in Out-of-Home Placements/Prior Termination of Parental Rights, sections.

If there is a preponderance of evidence of child abuse and/or neglect to the new child, a petition for court jurisdiction must still be filed but the request for termination of parental rights is not required if it is **not** the parent whose parental rights were previously terminated who:

- Presents the risk to the child.
- Placed the child at an unreasonable risk due to the parent's failure to take reasonable steps to intervene to eliminate that risk.

See PSM 712-6, CPS Intake - Special Cases, and PSM 713-08, Special Investigative Situations, Children Currently in Out-of-Home Placements/Prior Termination of Parental Rights, sections.

Termination of Parental Rights Petition - Non- Offending Parent

If the perpetrator is not a parent and a non-offending parent/guardian has acted appropriately to protect the child (for example if the parent did not know that the perpetrator presented a risk of harm), evaluate the following factors in conjunction with preparing a mandatory petition for court jurisdiction and termination of parent rights:

- Is the non-offending parent and child safe from the perpetrator?
- Is there a pattern of behavior indicating that the non-offending parent has previously failed to protect the child or other children?
- Is the non-offending parent willing and able to prevent perpetrator access to the child?
- Does the non-offending parent attempt to influence the child's portrayal of the events that led to the conclusion of abuse, sexual abuse, or neglect that led to the current court action?

- Are there other factors, including best interests of the child, that should be considered by the court in determining whether to authorize jurisdiction over the child, whether to authorize removal from the non-offending parent and whether to authorize the petition for termination of parental rights?

The petition and/or supporting documents submitted to the court must include all relevant facts, including facts which give the court all information available concerning the non-offending parent's involvement, lack of involvement or even knowledge of the risk the perpetrator presented to the child.

Birth Match

Birth Match is an automated system that notifies the local DHS office when a child is born to a parent who has previously had parental rights terminated in a child protective proceeding, caused the death of a child due to abuse and/or neglect or has been manually added to the match list. Consider having a perpetrator's name added to the match list in serious child abuse/neglect cases when termination of parental rights will not be requested or ordered. See PSM 713-09, Completion of Investigation, for how and when to request that a perpetrator's name be added to the birth match list.

Mandatory Petitions - Plea Agreements

Do not initiate or negotiate a plea agreement with regard to a mandatory termination petition. If DHS legal counsel (Assistant Attorney General, Prosecuting Attorney or private counsel) advises that a plea agreement is appropriate and necessary to secure the protection of a child, obtain supervisory approval before supporting a plea agreement on the record.

If supervisory review results in the decision to oppose a plea agreement, inform legal counsel that DHS does not support the plea agreement and, if given the opportunity, state so on the record. If time constraints prevent the attainment of supervisory review/approval, the worker must neither support nor oppose a plea agreement.

Document in the DHS-154 or DHS-152 whether or not the plea agreement was supported by DHS and why. If supported, document the supervisor's approval of the plea agreement.

**Termination
Petitions - Case
Conference**

If the department is not required to petition for termination of parental rights at the initial disposition hearing, but is giving consideration to doing so:

- Hold a conference among the appropriate department staff (CPS, foster care and other staff as needed) to agree on the course of action.
- Notify the attorney and attorney-guardian ad litem representing the child of the time and place of the conference, so that they may attend.

If an agreement is not reached at this conference, the local office director or designee must resolve the disagreement after consulting with the attorneys representing both the department and the child. See FOM 722-1, Foster Care-Entry Into Foster Care, Transfer of Service and Case Management Responsibility from CPS to Foster Care, for other situations requiring case conferences.

**Temporary
Custody Petition -
Not Mandated**

If none of the mandatory petition conditions exist, the department must still consider filing a petition, in any of the following situations:

- Court authority is needed to remove a child from a situation hazardous to his/her health, welfare, morals or emotional well-being.
- A child is able to remain in his/her own home only if the authority of the court is invoked to require the person(s) responsible to make specific changes in conditions.
- A child has been chronically neglected, department efforts to improve conditions have failed, and a decision has been made by the worker and supervisor that removal of the child from the home is the best plan for the child. Document that reasonable efforts were provided or attempted and that services did not eliminate the need for removal.

Guardianships

During a CPS investigation, another caretaker may seek to obtain or obtain a guardianship for a child under investigation as a victim of abuse and/or neglect. If a petition is required by the Child Protection Law or is needed to ensure child safety, a petition **must** be filed. The fact that a guardianship is being sought or was obtained by the family is **not** a reason to not file a petition. See PSM 713-08, Special Investigative Situations, Guardianships section, for more information on when a family seeks to obtain or obtains a guardianship for a child during the investigation.

Supplemental/ Amended Petitions

If the department becomes aware of additional confirmed abuse or neglect of a child whose case has been adjudicated by the court, CPS must file a supplemental petition and testify at the adjudication hearing, if necessary. If the case has not yet been adjudicated but adjudication is pending, file an amended petition and testify at the adjudication hearing, if necessary.

Special Note: If a case has been petitioned to court and the circumstances, facts, evidence, etc., that the court used to decide to authorize the petition change, immediately notify the court of the new information. For example, if a petition was filed due to a severe nonaccidental physical injury to a child and medical providers determine after the petition was filed that the injury was accidental, the court must be notified immediately.

Court Jurisdiction

The juvenile code provides for jurisdiction of a child:

- Whose parent or other person legally responsible for the care and maintenance of the child, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.

or

- Whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian, is an unfit place to live.

Death of a Child Under the Court's Jurisdiction

If DHS becomes aware that a child under the court's jurisdiction has died, DHS must notify the court within 24 hours or next business day of the child's death.

Court Hearing

If it is necessary to file a petition with the Family Division of Circuit Court, be aware that the court may request the following information:

- How serious is the situation?
- What concrete proof does the department have to support its finding of abuse and/or neglect? Since the burden of proof is on the petitioner, the case record must contain any necessary reports from collateral sources such as police records, school and attendance reports, visiting nurse and medical reports, etc.
- What has the department done in an attempt to improve the situation to prevent the need for placement of the child? Particular emphasis should be on the direct services provided.
- What efforts were made to provide services before the child's removal was requested? Was the presenting problem sufficiently defined?
- Were services:
 - Adequate?
 - Applicable to the problem?
 - Sufficient in frequency and duration?
 - Appropriate to parental capacity?
- If services did not prevent removal, why not?
- Can a non-custodial parent or relative be found with whom the child can be safely placed, as an alternative to licensed foster care? Describe the family's extended family network and discuss potential placements that will meet the child's current

needs. If unlicensed caregivers are interested and capable, what services are needed to support the placement?

In presenting the department's position, factual information which is gathered and recorded as a part of the worker's investigation should be presented to the court.

Court Decisions

Once a petition has been filed, the court has several options in disposing of the petition:

- Dismiss the petition, with or without warning.

Note: If the court or referee refuse to authorize or dismisses the petition, with or without warning and regardless of the basis for dismissal, the Office of Legal Services and Policy (CLS) must be notified **immediately** to determine if the court's decision should be appealed or other additional steps are required. The petition along with the pertinent court order should be forwarded to CLS for review and tracking. The worker must also provide a synopsis of the local prosecutors position and any action that they plan to take regarding the dismissed petition. This information **must** be sent as an attachment to The Office of Legal Services and Policy inbox at CLSRequestsforLegalResearch@michigan.gov.

- Postpone a decision pending the provision of further services designed to improve the situation.
- Authorize the filing of the petition and setting an adjudicative hearing.
- Make the child a temporary court ward and leave him/her in his/her own home.
- Make the child a temporary court ward and removing him/her from his/her home and place the child with the department for care, supervision, and out-of-home placement.
- Make the child a permanent court ward, thus terminating parental rights, and removing the child from his/her home.

**Representation of
DHS By The
Attorney General
or Private Attorney**

If the local prosecuting attorney will not represent the department in a mandatory child welfare action, the local office can request representation by the Attorney General or a private attorney. See FOM 903-9, Non-Scheduled Payments DHS-634, information on receiving reimbursement for costs.

**Problem Court and
Administrative
Hearing Orders**

Copies of court orders or orders from administrative hearings which are in apparent conflict with the Child Protection Law or CPS policy, or are otherwise problematic, are to be sent within one working day of receipt to Child Welfare Field Operations Administration.

Include a brief description of the conflict, as perceived by the local office, and a copy of the order.

**CHILDREN ABSENT
WITHOUT LEGAL
PERMISSION
(AWOLP)**

If unable to locate a child when there is a court order removing a child from a parent, legal guardian, or other person responsible, the CPS worker must notify law enforcement (state police, local police, or the sheriff's department) within one hour.

Within 24 hours of not being able to locate a child, the CPS worker will notify:

- The court of jurisdiction.
- The parents, if appropriate.
- Lawyer-guardian ad litem (LGAL).

The CPS worker should also obtain an apprehension order for the child, if one has not already been obtained.

**Information
Provided to the
AWOLP
Centralized
Locator Unit**

Provide the following information to the AWOLP Centralized Locator Unit (see AWOLP Bulletins on DHS-Net (Other Links/DHS Letter Series) for contact information) within one business day of not being able to locate a child:

- Child information (including name; DOB; description, if known; CPS case number; parents' information; last known address; and any other pertinent information).
- Indicate reason for absence:
 - Never in care.
 - Abduction.
 - Location known, but not approved.
 - Runaway.
 - Other.
- Indicate risk to the child:
 - Is at serious risk.
 - Is 11 years of age or younger.
 - Foul play is suspected.
 - None of the above.
- List possible location(s) where the child may be found.
- Document action taken to find the child.
- Contact name for local law enforcement.

**Unauthorized
Leave Report to
Court/Law
Enforcement**

Complete the Unauthorized Leave Report to Court/Law Enforcement form (DHS-3198A) within one business day of not being able to locate a child and:

- Send one copy to the court of jurisdiction.

- Send/take one copy to the local law enforcement to ensure that the child/youth is entered on the Law Enforcement Information Network (LEIN) as MISSING and ENDANGERED.
- Send one copy to the AWOLP Centralized Locator Unit.
- Retain a copy in the case file.

Confirm and document in the case file that the child has been entered on LEIN. To confirm, the CPS worker should conduct a LEIN clearance or contact the AWOLP Locator Unit to have a LEIN clearance done. If local law enforcement will not place the child on LEIN, document in the case record and forward this information to the AWOLP Centralized Locator Unit.

Note: Coordinate any ongoing efforts to locate a missing child, such as diligent search (below), with the assigned foster care worker.

Diligent Search

As soon as possible, but within two business days, the CPS and/or foster care worker must commence a diligent search for the child. Actions required are:

- Review any available case records/MiSACWIS records to identify information on the potential location of child/youth (family members, unrelated caregiver, friends, known associates, churches, neighborhood center, etc.).
- Contact the school that the child last attended. Verify that the child is not in attendance.
- Determine if there are friends/teachers of the child that may have information. (Before friends of the child are contacted, DHS must have permission of the parent/legal guardian of the friend.)
- Contact the local school district office(s) to determine if the child has been enrolled in a new school.
- Complete automated systems checks to search for child or known family members (Secretary of State, LEIN, etc.).
- Document all contacts in the DHS-154, Investigation Report, or DHS-152, Updated Services Plan.

The CPS/FC worker must notify the court, law enforcement, and the AWOLP Central Locator Unit of the results of the diligent search.

At a minimum, the CPS/FC worker will repeat a diligent search during every reporting period. Document all efforts to locate the child and any child-initiated contacts in the case file. This information must also be documented in the DHS-154, foster care ISP, USP, and court reports.

The CPS/FC worker must continue to notify law enforcement of any new information to aid in efforts to locate the child.

AWOLP Centralized Locator Unit Actions

The AWOLP Centralized Locator Unit will take the following actions:

- Receive notification that the child is AWOLP.
- Notify local office via reply email of determination or need for additional information.
- Determine if child information will be placed on the Child Locator website.

Note: Not all AWOLP children will be placed on the Child Locator website; for example, when a child is age 19 or older.

END OF LIFE DECISIONS

CPS has become involved in situations in which a child has been placed on life support systems and medical professionals question the decision-making of the parent/guardian or no parent/guardian can be located. When faced with this situation, after investigation, CPS may find it necessary to petition the Family Division of Circuit Court. If it is necessary to petition the court, the following guidelines must be followed:

- Contact the parents to confirm that they have not and will not authorize medical treatment for the child. Parents are to be told the department will file a petition with Family Division of Circuit Court.

- The petition must be reviewed and approved by the CPS worker's immediate supervisor and the county director or designee.
- The petition must state only the facts as provided by medical professionals (for example, direct quotes from doctors, medical reports, etc.).
- The petition must request the court make an appropriate decision regarding the provision of care for the child and not offer any recommendations regarding the court's decision.

See PSM 716-8, Medical Neglect of Disabled Infants and Other Forms of Medical Neglect.