
OVERVIEW

In most cases, safety concerns for children may be resolved through active engagement with families and provision of services, without court involvement. When efforts to achieve and maintain a child's safety in their own home or with family have failed, or where the Child Protection Law (CPL), MCL 722.621 et seq., requires, a petition must be filed. A petition can be filed to maintain placement of the child with their family, to request court ordered participation in services, to request removal of a perpetrator from the home, or for placement of a child outside of the home.

When filing a court petition, the least intrusive relief needed to keep a child safe should be requested. Petitions seeking to remove a child from their home should only be filed in extreme cases when all efforts to assure child safety have failed or the child cannot be protected short of removal.

The assigned caseworker files the petition on behalf of Michigan Department of Health and Human Services (MDHHS), but the Family Division of Circuit Court in each county decides whether to authorize or grant the petition.

DEFINITIONS

Power of Attorney

A written agreement in which a parent or guardian of a child delegates any or all their powers regarding the care, custody, or property of the child to another adult.

Severe Physical Injury/Serious Physical Harm

Severe physical injury means serious physical harm to a child, as defined in MCL 750.136b. Serious physical harm means any physical injury that seriously impairs the child's health or physical well-being, including but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

Sexual Abuse

A confirmed case that involves sexual penetration, sexual contact, attempted sexual penetration, or assault with intent to penetrate as

those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a.

WORKING WITH LEGAL COUNSEL

The local MDHHS office must work with the prosecuting attorney's office (or alternate counsel) to develop and maintain a protocol outlining procedures for submitting petitions.

When a caseworker presents a mandatory petition to the prosecuting attorney's office for filing with the court and the prosecutor refuses to file the petition, the caseworker **must** then file the petition directly with the court. If the Family Division of Circuit Court refuses to accept or authorize the mandatory petition, a copy of the unauthorized petition must be scanned and uploaded into the Document tab of the Investigation Task page in the electronic case record.

If the prosecuting attorney's office (or alternate legal counsel) refuses to file a non-mandatory petition with the court, the caseworker may file the petition directly with the court. Document the prosecuting attorney's refusal and any action taken in social work contacts.

Attorney General Representation

If the local prosecuting attorney refuses to represent the department in a mandatory child welfare action, the local office must request representation by the attorney general or a private attorney; [see FOM 903-9, Case Service Payments](#), for information on receiving reimbursement for costs.

PETITIONS

Various circumstances outlined below require that a caseworker file a petition for court jurisdiction over a child. The following considerations should be made if filing a petition:

- All petitions do not warrant a request for removal of the child.
- The least intrusive relief necessary for protection of the child should be requested.

- Circumstances may exist in which a caseworker must also include a request for termination of parental rights.

Non-offending Parent Evaluation

When a mandatory petition is required and there is a non-offending parent, the caseworker must evaluate whether the child should remain or be placed with the non-offending parent. The caseworker must consider whether the non-offending parent failed to protect the child. The evaluation, specific to the non-offending parent, must include the following:

- The ability and willingness to keep the child safe from the perpetrator by preventing access.
- The ability to adequately care for the child and provide love and affection to the child.
- The ability to follow through with any trauma response services for the child/family, if recommended.
- Evidence of current or previous failure to protect the child or any other children.
- Evidence of attempts to influence the child's portrayal of the events that led to the current court action.
- Other relevant factors, including best interests of the child.

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

Supervisor Approval

Prior to presenting a petition to the court caseworkers must review the case concerns with their supervisor, or designee. If the relief requested is for removal of the child from their home, the supervisor/designee must review and approve the decision to petition the court. Approval by the supervisor or designee must be based on review of the following:

- Compliance with CPL (MCL 722.637 and 722.638).
- Review of current safety concerns and protective interventions.
- Review of case history and services provided to the family.
- Discussion and identification of alternatives to removal of the child, when appropriate.

Mandatory Petition- Court Jurisdiction

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

A caseworker must submit a petition if there is evidence of child abuse or neglect and one or more of the following are true:

- The child is not safe, and a petition is needed to ensure the child's safety.
- A petition is required under another provision of the CPL.
- The department previously classified the case as a Category II and the child's family does not voluntarily participate in services.
- The abuse or neglect is caused by one of the following crimes:
 - 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.
 - MCL 722.628a(1)(d) - An assault on a child that is punishable as a felony.
 - Child abuse in the 3rd degree is not included as an offense that requires a mandatory petition; however, this does not prevent DHHS from filing a petition and/or getting another opinion from the local prosecutor.

- 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 including:
 - Intentionally causing serious mental or physical harm.
 - Intentionally committing an act that would likely cause serious mental or physical harm, regardless of whether harm occurs.
 - 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.

Note: Caseworkers must remember when requesting a petition that a request for removal is not necessary in all required petition situations. Relief requested should be least intrusive necessary to protection of the child or resolution of the emergency.

Child Protection Law, Section 17 (MCL 722.637)

A caseworker must submit a petition within 24 hours after determining that the parent or legal guardian either perpetrated or failed to protect the child from:

- Sexual abuse. See *Definitions* in this policy item.
- Severe physical injury, due to abuse or neglect. See *Definitions* in this policy item.
- Exposure to, or had contact with, methamphetamine production.

A caseworker is not required to submit a petition if it is determined that the parent or legal guardian is not a suspected perpetrator of the abuse/neglect and 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

A caseworker must submit a petition when it is determined there is 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, has abused the child or a sibling of the child and the abuse includes 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.

The department must also submit a petition when it is determined that there is a risk of harm, child abuse, or child neglect to the child and either of the following is true:

- The parent's rights to another child were **involuntarily terminated** under section 2(b) of MCL 712A.2, or similar law of another state, and the parent has failed to rectify the conditions that led to the prior termination of parental rights.
- The parent's rights to another child were **voluntarily terminated** following the initiation of proceedings under section 2(b) of MCL 712A.2, or similar law of another state, the parent has failed to rectify the conditions that led to prior termination of parental rights, and the proceeding involved abuse 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: If a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the department shall include a request for termination of parental rights at the initial dispositional hearing.

Mandatory Termination Petitions - Plea Agreements

Caseworkers must not initiate or negotiate a plea agreement with a mandatory termination petition. If the prosecutor's office (or alternate legal counsel) advises that a plea agreement is appropriate, the caseworker must first obtain supervisory approval before supporting a plea agreement on the record.

If the supervisor does not support a plea agreement, the caseworker must inform legal counsel that the department does not support the plea agreement and state the department's opposition on the record. If time constraints prevent the attainment of supervisory review/approval, the worker must neither support nor oppose a plea agreement.

The caseworker must document in social work contacts whether the plea agreement was supported by the department and why. If

supported, document the supervisor's approval of the plea agreement.

**Non-Mandatory
Termination
Petitions - Case
Conference**

If the department is not required to petition for termination of parental rights at the initial disposition hearing but is considering doing so, the caseworker must hold a conference with the appropriate agency personnel (CPS, foster care, etc.) to agree upon the course of action. The caseworker shall notify the attorney representing the child of the time and place of the conference and the attorney 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.

**Non-Mandatory
Court Jurisdiction
Petition -
Temporary
Custody**

Where no conditions requiring a mandatory petition exist, the caseworker may consider filing a petition when:

1. Court authority is needed to order the parent to do something to allow the child to remain safely in their own home.
2. Court authority is needed to secure safety of the child.
3. If requesting removal, caseworkers must document through use of social work contacts, and on the petition that reasonable efforts were provided or attempted and that services did not eliminate the need for removal.

When one or more of the following conditions exist, the juvenile code (MCL 712A.2) 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 their health or morals, who is subject to a substantial risk of harm to their mental well-being, who is abandoned by their parents, guardian, or other custodian, or who is without proper custody or guardianship.

- 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.

Note: Caseworkers must remember when requesting a petition that a request for removal is not necessary for all petitions. The relief requested should be the least intrusive to ensure protection of the child, or resolution of the emergency.

Supplemental/ Amended Petitions

If a caseworker becomes aware of additional confirmations of abuse/neglect for 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 adjudication is pending, CPS must file an amended petition and testify at the adjudication hearing, if necessary.

The caseworker must immediately notify the court if new facts or evidence becomes known which contradict the alleged abuse/neglect contained within a previously filed petition already authorized by the court.

COURT PROCESS Court Hearing

The department bears the burden of proof as a petitioner. The caseworker signing the petition is responsible for being able to prove the facts contained within the petition. When filing a petition with the Family Division of Circuit Court, the caseworker should be prepared to present the following:

- The severity of the safety concerns for the child.
- Evidence and proof supporting the determination of abuse or neglect. Evidence may be contained in documents obtained

from collateral sources; for example, police records, school, and attendance reports, visiting nurse and medical reports.

- All efforts made by the department to improve the situation to prevent the need for court involvement. Emphasis should be made to indicate how the direct services were:
 - Adequate.
 - Applicable to the problem.
 - Sufficient in frequency and duration.
 - Appropriate to parental capacity.
- Reasonable efforts to prevent removal, in cases where removal of the child is requested.
- Potential placement options for the child, including the non-custodial parent, or relatives.

In presenting the department's position, the caseworker should provide information that was gathered and recorded as a part of the investigation.

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; see *Problem Court and Administrative Hearing Orders* below for required further action.
- 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.
- Issue an order removing the perpetrator from the home.
- Make the child a temporary court ward and leave the child in their own home.
- Make the child a temporary court ward and remove the child from their home and place the child with the department for care, supervision, and out-of-home placement.

- Remove the child from their home, terminate parental rights, and make the child a permanent court ward.

Problem Court and Administrative Hearing Orders

If the court or referee refuses to authorize a petition, dismisses the petition, or if the court order conflicts with CPL, the caseworker must notify their supervisor. The supervisor must notify the Children's Services Legal Division (CSLD) to determine if further legal action is necessary. The supervisor must include the following in the email to the CSARequestforLegalResearch@michigan.gov:

- Petition.
- Pertinent Court Order.
- A brief description of the conflict.
- Synopsis of the local prosecutor's position or alternative counsel's position.
- Explanation of any action they plan to take.

Mediation

A court may order mediation in child abuse/neglect cases. Mediation, as applied in child protective proceedings, is defined in MCR 3.970(A)(2) as a process in which "a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable settlement." It is a judicially initiated process ordered by a court and is not a department reimbursable service.

A court may order mediation at any stage in the child protection proceeding after consultation with the parties. The order must at least:

- Specify, or make provision for selection of a mediation provider.
- Provide time limits for initiation and completion of the mediation process.

The court cannot order a party to pay for a fee for mediation services.

Objection to Mediation

A party may object to mediation, orally or in writing, based on one or more of the following:

- Domestic violence unless attorneys for both parties will be present at the mediation session.
- Inability of one or both parties to negotiate for themselves at the mediation unless attorneys for both parties will be present at the mediation session.
- Reason to believe that one or both parties' health or safety would be endangered by mediation.
- A showing that the parties have made significant efforts to resolve the issues such that mediation is likely to be unsuccessful.
- For other good cause shown.

The caseworker should consult with the department's attorney to determine if MDHHS should make an objection on the record to the use of mediation in a case. However, simply making objections to mediation alone does not excuse a party from participating in the process. The court must act upon the objections.

Attendance and Participation at Mediation

The court may direct the parties and their attorneys (if ordered) to attend mediation proceedings. If an opposing party's attorney is ordered to attend and the department's attorney is not, the caseworker should object and request that the department's attorney also be ordered to attend. Such an order should be treated as a problem court order; see *Problem Court and Administrative Hearing Orders* in this item for more information.

The court may further order that the parties to the action, including the caseworker:

- Attend the mediation proceeding or be immediately available by some other means at the time of the proceeding; and

- Participate in the proceeding.

The caseworker may not bring anyone who is not a party to the action unless agreed to by the mediator and the notice is given to the attorneys on the case. If the court orders attorneys for the parties to attend, the attorney for the department must also attend. When other parties have their attorneys present, caseworkers must also have an attorney present. If attorneys for the other parties are present to participate in mediation and the department attorney is not, the caseworker should immediately bring this discrepancy to the attention of the mediator and request discontinuation of the mediation on that basis.

If the caseworker, or any party ordered by the court to participate in mediation fails to appear in accordance with the provisions of MCR 3.970, the caseworker or party may be held in contempt of court.

Mediation Process

The mediator may direct the caseworker to submit to either the mediator or the court in advance or bring to the mediation, documents or summaries providing information about the case.

The caseworker and/or legal counsel for MDHHS must, if ordered, participate in the mediation, and may ask to meet separately with the mediator throughout the mediation process.

Mediation will continue until one of the following occurs:

- An agreement is reached.
- The mediator determines that an agreement is not likely to be reached.
- The end of the first mediation session.
- Until a time agreed to by the parties.

Withdrawal from Mediation

Additional sessions may be held if it appears to the mediator that the process may result in an agreement. However, after the caseworker attends the first mediation session, the department may withdraw from the mediation process. The caseworker and/or legal

counsel for the department are not required to return for further sessions. There is no penalty for failing to appear for any subsequent sessions. Although not required under MCR 3.970, it is recommended that withdrawal from the mediation process be submitted to the court and parties in writing.

Confidentiality in Mediation

In general, mediation communications are confidential, subject only to disclosure under the provisions of MCR 2.412(D). However, previously uninvestigated allegations of abuse or neglect identified during the mediation process are not confidential and may be disclosed; see [SRM 131, Confidentiality](#).

END OF LIFE DECISIONS

In situations where 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, CPS may find it necessary to petition the Family Division of Circuit Court. The following activities must be completed prior to petitioning the court:

- Contact the parents to confirm they have not and will not authorize medical treatment for the child. Parents are to be informed that the department will file a petition with Family Division of Circuit Court.
- Review and approval of the petition by the caseworker'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 that the court make an appropriate decision regarding the provision of care for the child and should not offer any recommendations regarding the court's decision.

See [PSM 716-8, Medical Neglect of Disabled Infants and Other Forms of Medical Neglect](#).

**ADDITIONAL
CONSIDERATIONS****A Parent's Guide
to the Child
Protective Process**

If CPS files a petition on behalf of a child under the CPL, CPS must provide the child's parents and/or legal guardian a copy of [DHS PUB-31, A Parent's Guide to Working With Foster Care](#).

Right To Be Heard

The caseworker must ensure children know and understand their right to attend and have input in court hearings based on the child's age and level of development. The caseworker must relay the child's desires to have input into their court hearings to the L-GAL or GAL to ensure the child an opportunity to be heard regarding their case. The L-GAL or GAL will relay this information to the court. Discussion with youth regarding their right to be heard and the relaying of the information to the L-GAL or LGAL must be documented within the social work contacts section in the electronic case management record.

**Absent Parent
Protocol**

The [Absent Parent Protocol](#) is a resource for identifying, locating, and involving absent parents in child protection proceedings. The caseworker must search for and locate the absent parent as early as possible in child protection proceedings to prevent disruption of a permanency plan.

The court may question the specific efforts made to identify and locate absent parents.

**Children Absent
Without Legal
Permission
(AWOLP)**

For more information on steps to take when a child is AWOLP; see [FOM 722-03A, Absent Without Legal Permission \(AWOLP\)](#).

Child Located in Another State

When a court order has been issued ordering removal of a child not physically present in Michigan, the department must contact the other state's CPS equivalent. If the other state is willing to take custody of the child, then the court of the other state and the Michigan court must communicate in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (see MCL 722.1101 et seq.).

For the department to take physical custody of a child in another state, the department must have **both** of the following:

- A written court order:
 - Naming the department; and
 - Ordering MDHHS staff to pick up the child;
- Written consent to return the child to Michigan from the LGAL.

Death of a Child Under the Court's Jurisdiction

Upon notification that a child under the court's jurisdiction has died, the caseworker must notify the court immediately, but no later than the next business day; see [SRM 172, Child/Ward Death Alert Procedures and Timeframes](#).

Friend of the Court

In cases where there is Friend of the Court (FOC) involvement, FOC must be notified of any family court action initiated by the department; see [PSM 713-08, Special Investigative Situations](#), for requirements on coordination with FOC.

Guardianships

During CPS involvement, another caretaker may seek to obtain legal guardianship of a supposed child abuse/neglect victim. Caseworkers need to consider if child safety can be assured through the guardianship. If a petition is required by the CPL or is needed to ensure child safety, a petition must be filed. The fact that a guardianship is being sought or was obtained is not sufficient

basis to not file a petition; see [PSM 713-08, Special Investigative Situations](#), for more information on when a family seeks to obtain or obtains a guardianship for a child during the investigation.

Power of Attorney

A parent's initiation of a power of attorney does not alleviate the need to file a court petition in cases where a petition is required by law or needed for child safety.

Vital Records

The court may request that the caseworker provide a copy of the child's birth certificate to the court. When requesting in-home jurisdiction, the CPS caseworker may need to provide a copy.

MDHHS Vital Records and Health Statistics (VRHS) division has two formats for vital records, administrative copies, and certified copies. The caseworker may provide an administrative copy to the court unless the court requests a certified copy.

See [FOM 910, Obtaining Vital Records](#), for information on obtaining a birth certificate for a child.

POLICY CONTACT

For more information contact the Child-Welfare-Policy@michigan.gov.