

Michigan Absent Parent Protocol

Identifying, Locating, and Notifying Absent Parents in Child Protective Proceedings



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State Court Administrative Office
Child Welfare Services
Michigan Hall of Justice
925 W. Ottawa
PO Box 30048
Lansing, MI 48909
517-373-1956

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A. Introduction and Purpose

The Absent Parent Protocol (“Protocol”) was developed to provide guidance for identifying and locating absent parents of children involved in the child welfare system. The Protocol was developed in response to a broad-based consensus that failure to identify and involve absent parents is a barrier to timely, permanent placement for children. The Protocol provides information on the need for, and methods of, locating an absent parent to ensure that all viable placement options for children in foster care are considered. The interrelated principles that guided the development of this protocol include:

1. Constitutional and Legal Rights of Families

A parent has a constitutional right to the care, custody, and upbringing of his or her child. The United States Supreme Court has consistently protected these rights against a state’s unwarranted interference. In *Stanley v Illinois*, 405 US 645 (1972), the Court held that fathers of children born out of wedlock had a fundamental right to their children and that due process requires equal treatment for children born to parents outside of wedlock. In *Santosky v Kramer*, 455 US 745 (1982), the Court declared that “the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the 14th Amendment”

The Michigan Supreme Court has held that “due process requires a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.” *In Re Sanders*, 495 Mich 394 (2014). As such, all parents involved in a child protective proceeding should be located and notified of the case as soon as possible so they may preserve their parental rights to the care and custody of their children.

2. Benefits of Identifying and Locating Absent Parents Early in Case

A young person’s identity is strongly influenced by his or her family. Locating and engaging an absent parent may lead to several positive outcomes for children who have been removed from their home, or who are at risk for removal. In addition to identifying an absent parent for possible placement, that parent may have appropriate relatives who are willing to care for the child. Finding and involving absent parents in child protective proceedings increases the options for the child to be placed in a safe and nurturing family environment. Locating an absent parent may also provide valuable information about the parent’s health history which could affect the child. Children may also benefit from their parent’s social security benefits and inheritance.

Efforts to locate an absent parent should begin before court intervention to help establish familial connections and increase permanency options for the child. An absent parent who has an interest in creating or preserving a parental relationship with his or her child is more likely to become involved if included early in the proceedings. Permanency for the child may be delayed when an absent parent isn’t identified or engaged early in the case. Therefore, it is critical to begin the search for an absent parent at the very beginning of a case.

3. Judicial Leadership.

A court's leadership can significantly influence the effort to locate absent parents. A successful protocol for identifying, locating, and involving absent parents depends on a local system that requires attention to the issue at every proceeding. Although locating absent parents is primarily the responsibility of non-court staff, the court has the responsibility to ensure that caseworkers aggressively pursue the identity and location of absent parents. For example, the court may include directions in the court order detailing what additional efforts the caseworker should take to locate the absent parent.

4. Use of Technology.

The court and Department of Health and Human Services (DHHS) workers must take full advantage of new technologies. New and enhanced access to social media, databases, and other information sources can greatly facilitate the search for absent parents.

B. Definitions

1. Legal Father

In a child protective proceeding, a child's parents are his or her mother, father (as defined by law), or both. It is important to distinguish between a father who has parental rights recognized by law, called a "legal father," and a man claiming or suspected of being the father who does not have any legal rights, typically referred to as a "putative father."

[MCR 3.903\(a\)\(7\)](#) defines "father" as:¹

- a. A man who is married to the child's mother at any time from the child's conception to the child's birth.
- b. A man who legally adopts the child.
- c. A man who has been determined to be the child's legal father in an order of filiation or judgment of paternity.
- d. A man judicially determined to have parental rights.
- e. A man whose paternity is established by the completion and filing of an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act, MCL 722.1001 *et. seq.*

Note: The definition of legal father in this Protocol applies only to children born in Michigan. Laws of other states may vary.

2. Putative Father

A "putative father" is an *alleged* biological father of a child. **A putative father can only exist if a child has no legal father.** If a legal father exists, a putative father may not participate in a child protective proceeding.² If the legal father's paternity is revoked

¹ The Appendix to this document provides additional information about how a man may be established as a legal father.

² According to *In Re CAW*, 259 Mich App 181; 673 NW2d 470 (2003), termination of parental rights of the legal father does not offer a path of standing to a putative father. Termination of parental rights does not determine that a legal father was never a father, but only that the legal father's legal rights have been terminated.

under the Revocation of Paternity Act³, or if no legal father exists, the court may conduct a putative father hearing to identify the alleged father, notify him, and allow him to legally establish paternity of the child. Once a putative father legally acknowledges paternity of a child or the court determines that he is the child's legal father under the Paternity Act, he may participate in the child protective proceeding.

3. Absent Parent

An absent parent is a person who meets one of the following criteria:

- a. The **identity** of the legal parent, or putative father if there is not a legal father, is unknown.
- b. The **location** of the legal parent, or putative father if there is not a legal father, is unknown.

For purposes of this Protocol, a noncustodial parent in a domestic relations case is not considered an absent parent unless his or her location is unknown. In addition, an incarcerated parent is not considered an absent parent for purposes of this protocol. [MCR 2.004](#) governs the procedures to ensure proper notice of child protective proceedings to an incarcerated parent.

C. Children's Protective Services and Foster Care Coordination

Throughout the course of a child protective proceeding, foster care⁴ and Children's Protective Services (CPS) caseworkers may be involved in identifying and locating absent parents. As described in [DHS Policy PSM 715-4](#), CPS retains responsibility for the case if the child remains in his or her own home (including when a child is placed with a noncustodial parent) and the court requests continued department supervision, or if the child is in out-of-home placement on an emergency basis expected to last 7 days or less. When removal of the child is necessary and the child is made a temporary court ward, case responsibility is transferred to foster care staff. As a result, both foster care and CPS caseworkers may be actively seeking an absent parent and coordination between the two is important to increase the likelihood of finding the absent parent.

³ <http://legislature.mi.gov/doc.aspx?mcl-Act-159-of-2012>.

⁴ For purposes of this protocol, the term "foster care" refers to both DHHS foster care and private agencies contracted by DHHS to provide foster care services.

1. Children's Protective Services Early Contact with Parents

DHHS Policy [PSM 715-3](#) instructs CPS workers to use this Absent Parent Protocol as a guide when attempting to locate absent parents. The stated goal in the policy is to search for and locate the absent parent as early as possible in child protection proceedings to prevent disruption of a permanency plan.

DHHS Policy [PSM 713-03](#) requires CPS workers to make face-to-face contact with the parents, including non-custodial parents, as soon as possible in all child abuse/neglect complaints that are assigned for field investigation stating:

The parents (including non-custodial parents) and other persons responsible for the health and welfare of the child and the alleged perpetrator, all other appropriate children, and significant adults must be interviewed as soon as possible after the complaint assignment, or the reasons for not doing so must be documented in the DHS-154, Children's Protective Services Investigation Report. The DHS-154 Investigation Report must be used for all CPS investigation narratives.

2. Identifying the Legal Father

To identify whether there is a legal father in a case, DHHS foster care Policy [FOM 722-06G](#) requires caseworkers to do the following:

- a.** Determine whether the mother was married at the time of conception and/or the child's birth by talking with the mother and relatives. Obtain as much information as possible about the absent parent from the custodial parent, relatives, and friends (e.g., the absent parent's name, date of birth, current and prior addresses, current and prior telephone numbers, names of friends, and employment).
- b.** Obtain divorce and child support information, including the county where these proceedings may have occurred, by interviewing the custodial parent and/or relatives.
- c.** Review the birth certificate to see if a father is listed.
- d.** Ask the child about his/her father. Determine if the child or someone s/he knows is aware of the father's possible whereabouts.
- e.** Contact the Friend of the Court to ascertain if anyone has been paying support.
- f.** Contact the Family Division of Circuit Court to determine whether there is an order of filiation filed.
- g.** Contact the state registrar to determine whether there is an affidavit of parentage filed.

3. Diligent Efforts to Locate an Absent Parent

Pursuant to DHHS policy, at a minimum, absent parent searches must include the actions listed below, which should be initiated as early in the proceedings as possible and continue throughout the course of the case until the parent is located or all efforts have been exhausted. When a child is determined to be an Indian child subject to the Indian Child Welfare Act⁵ (ICWA) or Michigan Indian Family Preservation Act, the worker must make “active efforts”⁶ to conduct a diligent search for extended family members and contact the tribal representative or the designated agent. Failure to locate an absent parent has been a barrier to timely permanent placement of children.

Location efforts must be documented in the case service plan. DHHS Policy [FOM 722-06G](#) requires foster care workers to conduct, and document in all case service plans and social work contacts, the following location efforts:

- a. Statewide Bridges inquiry.
- b. Secretary of State inquiry.
- c. Search of telephone book or an online phone book.
<http://www.whitepages.com>
- d. US Post Office address search.
- e. Friend of the Court inquiry.
- f. Check with county clerk’s office for vital statistics.
- g. Contact the last place of employment.
- h. Follow up on leads provided by friends and relatives.
- i. Legal publication (court action).
- j. Search of social networking sites.
- k. Contact local jails and state prisons.
- l. Offender Tracking System inquiry.
<http://www.state.mi.us/mdoc/asp/otis2.html>.

The federal Adoption and Safe Families Act authorizes the use of the Federal Parent Locator Service (FPLS) in child protective proceedings. If the absent parent’s social security number is known, the FPLS **must** be used. The FPLS obtains information from:

- a. The Department of Defense.
- b. Federal Bureau of Investigation.
- c. National Directory of New Hires.
- d. Veterans Administration.
- e. Social Security Administration, including employer/beneficiary names and addresses.

To request information from the FPLS, caseworkers may send an email to:
MDHHS-OCS-Locates@michigan.gov .

⁵ [25 US Code 1901](#), *et seq.*

⁶ <http://legislature.mi.gov/doc.aspx?mcl-712B-3>.

4. Information Sharing

If the CPS caseworker has been unable to identify or locate an absent parent, all relevant information known to CPS should be provided in a timely manner to the assigned foster care worker, including:

- a. Efforts to locate the absent parent that are pending at the time of the transfer, and
- b. Efforts that need continued attention.

D. Court Procedures

1. Child Protection Petition

A petition in a child protective proceeding must identify both legal parents to the child or, if there is not a legal father, identify (if possible) a putative father. If a legal father exists, only he can be named as a respondent in a petition. If a father's identity is unknown, that fact should be stated in the petition.

2. Service of Process for an Absent Parent

MCL 712A.13 and MCR 3.920 require a party in a child protective proceeding to receive personal service of the summons. However, MCR 3.920(B)(4)(b) allows the court, if the court finds that personal service is impracticable or cannot be achieved, to direct that the summons be served in any manner reasonably calculated to give notice of the child protective proceeding and an opportunity to be heard, including notice by publication. SCAO's Motion for Alternate Service ([JC 46](#)) and Order for Alternate Service ([JC 47](#)) may be used for this purpose. Diligent efforts to locate and personally serve an absent legal parent are required before asking the court to approve a motion for alternate service. To demonstrate that diligent efforts have been made to locate an absent parent, a caseworker should use the Affidavit of Efforts to Locate Absent Parent ([JC 83](#)). The affidavit outlines the efforts made to identify and locate the absent parent, and should be submitted to the court along with the Motion for Alternate Service of Process. A motion for alternate service must show that the substituted method of service is best suited to provide actual notice of the proceedings to the absent parent.

3. Court Inquiry on the Record about Efforts to Locate the Absent Parent

Courts must ensure that caseworkers continue efforts to identify and locate an absent parent until the parent is located, or **all** efforts are exhausted. When conducting any hearing during the case, the court should routinely inquire about, and include in the court order, the efforts that were made to locate the absent parent. Involvement from the absent parent at the earliest stages will decrease court delays and speed the child's permanency.

a. Question the Custodial Parent.

[MCR 3.965\(B\)\(14\)](#) requires the court to inquire of the parent, guardian, or legal custodian at a preliminary hearing regarding the identity of relatives of the child who might be available to provide care. If the father of the child has not been

identified, the court rule requires the court to ask the mother about the identity and location of the father. This is important because the definition of “relative” in [MCL 712A.13a\(1\)\(j\)](#) allows a child to be placed with the parent of a man who the court has found probable cause to believe is the putative father if there is no legal father to the child. The goal is to place the child in the most family-like setting available that is consistent with the child’s needs. An absent parent or his or her family members may be deemed a suitable placement option, eliminating the need for the child to be placed into a non-relative foster care setting.⁷

b. Question the Petitioner.

The court should inquire about the efforts made to find the absent parent at every hearing until that parent’s identity and location are established. [MCR 3.965\(D\)\(5\)](#) requires the court to direct the agency to identify, locate, and consult with the child’s relatives to determine if placement with a relative would be in the child’s best interests.

Specific Questions:

The court should ask the petitioner to state on the record the efforts taken to identify and locate the absent parent. Recommended questions include:

- i. Have you exhausted all identification and location efforts and resources within DHHS? Please state all of the DHHS resources you have accessed and the results.
- ii. Have you contacted outside agencies? If so, whom have you contacted?
- iii. Have you accessed internet search engines and social media websites? (e.g., Google, Yahoo, Facebook, Twitter, Instagram, etc.)
- iv. Have you questioned relatives and friends about the absent parent?

4. Putative Father Hearing

The court must ensure that a diligent search has been made to locate and engage an absent parent before the court can assume jurisdiction over the parent. If the court determines that no legal father exists for the child, MCR 3.921(D) allows the court, in its discretion, to take initial testimony on the tentative identity and address of the father.

a. Notice of Hearing.

If the court finds probable cause that an identified person is the natural father of the child, the court shall direct that person be served with notice to appear for a putative father hearing. If the court finds that the identity of the natural father is unknown, the court must direct that the unknown father be given notice by publication. The notice by publication must include the following information:

⁷ [DHS Policy PSM 715-2](#) provides guidance for conducting expedited placement evaluations for the child’s non-custodial parent and family members.

- i. If known, the name of the child, the name of the child’s mother, and the date and place of birth of the child,
- ii. That a petition has been filed with the court,
- iii. The time and place of the hearing at which the father is to appear to express his interest in the minor, if any; and
- iv. A statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to the appointment of counsel, and could result in termination of parental rights.

The [SCAO Form JC 79 Publication of Hearing \(Notice to Putative Father\)](#) can be used to provide notice by publication.

b. Conducting a Putative Father Hearing.

Pursuant to [MCR 3.921D](#), after providing notice to the putative or unknown father, the court may conduct a putative father hearing and determine, as appropriate, that:

- i. the putative father has been served in a manner that the court finds to be reasonably calculated to provide notice to the putative father.
- ii. a preponderance of the evidence establishes that the putative father is the child’s natural father, and the court must allow him 14 days (which may be extended for good cause shown) to establish legal paternity.
- iii. there is probable cause to believe that another identified man is the child’s natural father. In this instance, the court would proceed with providing notice to the newly identified man, and may conduct a putative father hearing in the same manner as identified above.
- iv. after diligent inquiry, the identity of the child’s biological father cannot be determined. In this instance, the court may proceed without further notice and without appointing an attorney for the unidentified father.

The court may find that the natural father waives all rights to further notice, including the right to notice of termination of parental rights, and the right to an attorney if:

- i. he fails to appear after proper notice, or
- ii. he appears, but fails to establish paternity within the time set by the court.

“[A] putative father ordinarily has no rights regarding his biological child, including the right to notice of child protective proceedings, until he legally establishes that he is the child’s father.” *In Re AMB*, 248 Mich App 144, 174 (2001). Therefore, the court cannot terminate parental rights to an identified putative father until a paternity determination has been made. Once a putative father legally establishes paternity, as described in the next section *Paternity Testing*, then at least one statutory ground for termination of his rights must be properly alleged and set forth in the termination of parental rights petition.

E. Paternity Testing

CPS and Foster Care staff have access to paternity testing services as follows:

1. Office of Child Support (OCS)

Paternity testing services are available to foster care staff by making a referral to OCS using DHS 3205 (Foster Care/Delinquent Ward Benefit Eligibility Record). The court may order the foster care worker to make a referral to the OCS. Paternity testing is available for cases in which paternity has not been established (child born out of wedlock, there is no acknowledgment of parentage, and no revocation of paternity under the Revocation of Paternity Act) and the case is referred to OCS for child support services. Note: These services are not available in cases where the court orders paternity testing without an OCS referral. There must be a Title IV-D case to access federal funding for testing.

2. DHHS Contract Services

Paternity testing services are available to CPS and foster care staff through contracted services with costs paid through DHHS Central Office. DNA Diagnostic Center (DDC) is the current provider. CPS and FC (local DHHS and Private Agency Foster Care) staff should follow local office procedures for utilizing DDC. Key factors to remember:

- a. The contracted service provider may not be used to establish child support.
- b. Workers requesting this service must verify that previous test results are not available through other sources, such as Office of Child Support or the friend of the court.
- c. Pictured identification and social security numbers for parents and children are required at the time of the appointment.

Appendix: Identifying a Legal Father

It is important to identify if there is a **legal father** before taking any steps to determine if there is a **putative father**. This appendix provides detailed information related to the five ways that a man may be established as a legal father, defined in this protocol. A man may be found to be a legal father if he:

- a. Is married to the child's mother at any time from the child's conception to the child's birth.

If the child's mother is married at any time from the child's conception to birth, the man to whom she is married is presumed to be the child's legal father. A child's legal father sometimes is not the child's biological father. For example, if an unmarried woman conceives a child with a man, then marries another man prior to the child's birth, the woman's husband is the child's legal father, not the man with whom she conceived the child. If a legal father exists, a putative father (an alleged biological father) is not identified as such or allowed to participate in a child protective proceeding.

- b. Has legally adopted the child.
- c. Has been determined to be the child's legal father in an order of filiation or judgment of paternity.

Actions under the Paternity Act are only available when a child is born out of wedlock, i.e., when the child's mother is unmarried during the entire gestation period, or, if the mother was married during the gestation period, a court has determined before the paternity act action commences that the child is not a product of the marriage.

- d. Has been judicially determined to have parental rights.
In a divorce action, there are two situations where a judge may determine that a husband who is not a child's biological father has parental rights. First, a judge may determine that a husband who is not the biological father of a child born or conceived during the marriage may be considered the natural father of that child called an "equitable father" if:

1. he and the child mutually acknowledge a relationship as father and child, or the child's mother has cooperated in the development of a father-child relationship over a period of time prior to filing for divorce,
2. he desires to have the rights afforded to a parent, and
3. he is willing to take on the responsibility of paying child support.

Second, a judge may determine that a man has parental rights, and is estopped by his conduct from denying paternity of the child, even if he is not the biological father of the child if:⁸

⁸ *Johnson v. Johnson* 93 Mich App 415 (1979).

1. the child was born during the marriage, while the parties lived together as husband and wife,
 2. he knew he was not the biological father at the time of the marriage, or
 3. if the man dissuaded the child's mother from placing the child for adoption and agreed to raise the child as his own.
- e. Has properly filed an acknowledgment of parentage in accordance with the provisions of the Acknowledgment of Parentage Act. A child's mother and biological father must both sign the acknowledgment of parentage, which must then be filed with the State Registrar. This process is only available when a child is born out of wedlock.

Procedures for allowing acknowledgments, determinations, and judgments relating to paternity to be set aside are detailed in the Revocation of Paternity Act of 2012⁹.

⁹ <http://legislature.mi.gov/doc.aspx?mcl-act-159-of-2012>