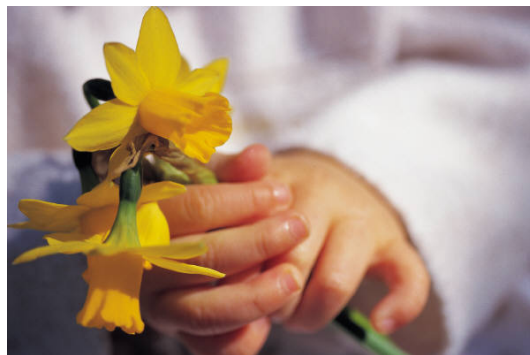


Michigan Absent Parent Protocol:

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



MICHIGAN ABSENT PARENT PROTOCOL: Identifying, Locating, and Notifying Absent Parents in Child Protective Proceedings

January 31, 2008

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This project is funded by a federal Children's Justice Act grant to the Governor's Task Force on Children's Justice administered through the Michigan Department of Human Services, under the Child Abuse Prevention and Treatment Act, Administration for Children and Families, Department of Health and Human Services, CFDA 93.643, being section 107(a), (b),(c), (d), (e) and (f) as amended (42 USC 5101 *et seq.*); and the Victims of Crime Act of 1984, as amended (42 USC 10601 *et seq.*). In addition, this is a joint project of the State Court Administrative Office and the Governor's Task Force on Children's Justice, chaired by the Honorable Elizabeth A. Weaver, Justice of the Michigan Supreme Court. Individuals from the State Court Administrative Office, the Department of Human Services, the Children's Ombudsman's Office, the Early Childhood Investment Corporation, and the Child Welfare Institute contributed to the development of this protocol.

Michigan Absent Parent Protocol

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A. Introduction and Purpose

The Absent Parent¹ 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 absent parents to ensure that all viable placement options for children are considered. The interrelated principles that guided the development of this protocol include:

1. Parental rights must be protected. A parent has an inherent right to the care, custody, and upbringing of his or her child. The Supreme Court has consistently protected these rights against state's unwarranted usurpation. In *Santosky v Kramer*, 455 US 745 (1982), the Supreme Court declared "...the fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the 14th Amendment, and does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State."

2. Absent parents should be identified, located, and contacted as quickly as possible. An absent parent who may have an interest in creating a parental relationship with the child is more likely to become involved in the case service plan if included early in the proceedings. Permanency for the child may be delayed when an absent parent asserts parental rights after a permanency plan has been established. Therefore, it is important to begin the search for an absent parent at the very beginning of a case.

3. 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 lends credence to this effort by ensuring, as part of a court review, that absent parents are aggressively pursued.

4. The Protocol must take full advantage of new technologies. New and enhanced access to databases and other information sources can greatly facilitate the search for absent parents.

5. Absent mothers should be identified and located within the same practice framework. Traditionally, child welfare services have tended to focus on children and their mothers. Most frequently, the child lives with the mother, and it is the father who is the absent parent; however, there are

¹ For purposes of this protocol, the term "absent parent" is defined in section B(3).

situations where the reverse is true, and it is the mother who should be identified and located within the same practice framework.

6. The Protocol can only be successful with the “buy in” of local leadership. Successful local implementation will require changing local practice to expand efforts to find 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 rights recognized by law, called a “legal father,” and a man claiming or suspected to be the father who does not have any legal rights, typically referred to as a “putative father.” [*Michigan Court Rule \(MCR\) 3.903\(a\)\(7\)*](#) defines “father” as:²

- a. A man who is married to the child’s mother at any time from the child’s conception to the child’s birth.³
- 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.

2. Putative Father

A “putative father” is an *alleged* biological father of a child. **A putative father can only exist where a child has no legal father.** If a legal father exists, a putative father may not participate in a child protective proceeding. If the legal father’s presumption of paternity is rebutted, 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, he may participate in the child protective proceedings.

² The Appendix to this document provides additional information about how a man may be established as a legal father.

³ An exception would apply if a court has determined, after notice and a hearing, that the child was conceived or born during the marriage, but is not the issue of the marriage.

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 non-custodial 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. Why Involve Absent Parents?

1. Familial Connections

A young person's identity is strongly influenced by his or her family. Locating an absent parent could introduce a child to a side of his or her family previously unknown. In addition to identifying the absent parent for possible placement, that parent may have relatives who are qualified and willing to care for the child. Locating an absent parent may also provide valuable health information about the parent which could affect the child. Children may also benefit from their parent's social security benefits and inheritance.

2. Increased Permanency Planning Options

Finding and involving absent parents in child protective proceedings increases the options for child placement in a safe and nurturing environment. [MCR 3.965](#) recognizes the importance of finding relatives by requiring the court to ask the parent, guardian, or legal custodian about the identities of the child's relatives who may be available to provide care. In addition, [MCL 712a.13a](#) 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.⁴

3. Absent Parent's Right to a Jury Trial

An absent parent's right to a jury trial depends on being identified and notified **before** adjudication. A party to a child protective proceeding may demand that a jury decide whether the facts alleged in the petition bring the child within the

⁴ [DHS Policy CFP 715-2](#) provides guidance for conducting expedited placement evaluations for the child's non-custodial parent and family members.

court's jurisdiction. The demand for a jury trial must be filed no later than 21 days before trial, unless the court excuses a late filing in the interests of justice. However, once jurisdiction over a child has been established through one parent's plea or at a trial against one parent, another parent has no right to demand a jury trial. Therefore, identifying and involving the absent parent as early as possible preserves the parent's judicial rights.

4. Evidentiary Issues

If the petitioner seeks termination of parental rights on the same grounds that allowed the court to take jurisdiction over the child, legally admissible evidence is not required to establish a statutory basis for termination of parental rights. However, if an absent parent is not named as a respondent before termination of parental rights is requested, and the allegations against the absent parent are new or different from those that allowed the court to take jurisdiction over the child, then legally admissible evidence must be used to establish a statutory basis for termination of the absent parent's rights. While the absent parent is rightfully entitled to such protection, the stricter evidentiary standards could prevent the admission of information concerning the absent parent that would have been admissible if the absent parent had been named as a respondent in the action prior to adjudication. Therefore, as stated previously, **early** identification and involvement of the absent parent in proceedings will allow the case to progress faster and eliminate unnecessary delays.

D. Early Efforts to Identify the Absent Parent

1. Determining When to Initiate a Search for an Absent Parent

The procedures in this Protocol should be initiated at the earliest stages of the proceedings and continue during the case as necessary.⁵ Efforts to locate the absent parent should be initiated or continued when it is likely that a child will be placed in out-of-home care, when the child is placed in out-of-home care on an emergency basis, and throughout the course of the case until the absent parent is located or all efforts have been exhausted. Child welfare workers should inquire at the beginning of the case whether the child or parents are American Indian. When a child is determined to be an Indian child subject to the Indian Child Welfare Act (ICWA), the worker must make active efforts⁶ to involve the relatives [[25 USC 1901](#), *et seq.*].

Throughout the course of a child protective proceeding, both foster care and CPS may be involved. For purposes of this protocol, the term foster care refers to both DHS foster care and private agencies contracted by DHS to provide foster care services. As described in [DHS Policy CFP 715-4](#), CPS retains service and case

⁵ For concurrent planning purposes, the search should begin at the very first hearing alleging child abuse or neglect.

⁶ Under ICWA, child welfare agencies must prove that they have used "active efforts" (a higher standard than "reasonable efforts") to provide remedial services and rehabilitative programs to prevent the breakup of the Native American family, and that these efforts have failed.

management responsibility if the child remains in his/her own home and the court requests continued department supervision, or if the child is in out-of-home placement on an emergency basis expected to last less than 21 days. When removal of the child is necessary and the child is made a temporary ward, responsibility for case management and services to the child and family is then transferred to foster care staff. As a result, during the time between the preliminary hearing and the adjudication of the case, both foster care and CPS staff may be actively seeking an absent parent. Coordination between the two is important to eliminate duplicative efforts, and increase the likelihood of finding the absent parent.

CPS and foster care staff should document **all efforts** to identify and locate the absent parent. The documentation should be accessible to each caseworker, and can also be used if an affidavit for alternate service becomes necessary.

2. Diligent Efforts – Required Actions

At a minimum, absent parent searches should include the following actions:

- a. **Interview the child’s custodial parent, relatives, and friends.**
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. **Where developmentally and age-appropriate, ask the child about his or her absent parent.** Children are often very cognizant of information regarding their parents and can offer important insight.
- c. **Check telephone books, internet, and other available directories.**
There are numerous resource directories available on the Internet (e.g., www.yahoo.com, www.addresses.com, and www.google.com offer free “people search” services). Additionally, the website <http://peoplesearch.net> allows you to search for a person solely by phone number.
- d. **Conduct an inquiry in the DHS Service Workers Support System (SWSS), Client Information Management System (CIMS), Bridges, Infoview, and other available databases.**
- e. **Review the child’s birth certificate and other vital records.** The child’s birth certificate may contain information about the child’s father⁷. DHS workers may submit a request for an administrative copy of a birth certificate via email to the Department of Community Health (DCH) at no cost to local offices. [Form DHS 261](#) (DHS

⁷ Before 1994, a man could have been named on a child’s birth certificate, but being named, in and of itself, did not establish legal paternity.

Request for a Michigan Birth Record) contains instructions for appropriately submitting the request to DCH. To obtain a copy of marriage records or death certificates concerning a child's parents, workers should use Form DHS 262 and Form DHS 264. Each form contains instructions for appropriately submitting the request to DCH. Form DHS 263 is used to obtain divorce records.

- f. Voter Registration inquiry.** To obtain a copy of voter registration information concerning a child's parents, a request must be made on DHS or private agency letterhead to the Secretary of State.
- g. Search Department of Corrections records.** The "Offender Tracking Information System" contains information about prisoners, parolees, and probationers. The database can be accessed on the internet at <http://www.michigan.gov/corrections/0,1607,7-119-1409---.00.html>. The Federal Bureau of Prisons also has an [on-line inmate database](#) that workers can search to identify or confirm an inmate's status.
- h. Request information from the friend of the court.** MCR 3.218 allows protective services personnel access to friend of the court (FOC) records related to the investigation of alleged child abuse and neglect.
- i. Request information from the DHS Office of Child Support (OCS).⁸** OCS assistance is limited to locating an absent parent. OCS can conduct a search through the Federal Parent Locator Service (FPLS), which is a national location system that assists states in locating absent parents.⁹ The FPLS is a good resource for an initial search and is available to CPS and foster care staff.

To request an FPLS search, CPS and foster care staff may send an email to FIA-OCS-CFU-Staff1@michigan.gov (include "Locate" in the subject line or, for urgent requests,¹⁰ "Locate-Urgent") or call (866) 281-0031.

Note: When making a request to the FOC or OCS, as much of the following information, as known, should be provided:

- Full name of the absent parent (including any alias).
- Full name of the custodial parent.

⁸ Federal [OCSE PIQ 07-03](#) establishes parameters for disclosure of child support enforcement information to child welfare agencies.

⁹ FPLS includes information from, but not limited to, the National Directory of New Hires, the Social Security Administration and the Department of Defense.

¹⁰ OCS submits FPLS requests once per week, so while an urgent request may be entered into the OCS database before other requests, the FPLS response will take at least a week, and more commonly two to three weeks.

- Full name of each child.
- Dates of birth for the parents and each child.
- Social security numbers of the parents and each child.

3. Additional DHS Policy Requirements

[DHS policy CFF 722-6](#) requires a foster care worker to do the following:

- a. Determine whether the mother was married at the time of conception or birth by talking with the mother and relatives.
- b. Contact the family division of the circuit court to determine whether an order of filiation has been entered.
- c. Contact the state registrar to determine if an acknowledgment of parentage has been filed. Michigan law was modified effective March 1, 2003 to limit access to certified copies of acknowledgements filed after June 1, 1997 to a court of competent jurisdiction (MCL 333.2882). Workers may use form [DCH 569](#), and attach a copy of the court order, when making a request.

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.

E. Paternity Testing and Establishment

If the child does not have a legal father, but a putative father has been identified and located, paternity must be established before he can participate in the child protective proceedings.¹¹ The putative father is not entitled to receive notice of court hearings, or access to a court-appointed attorney until paternity is legally established. Once paternity has been legally established, he is considered a legal father, and afforded a legal father's rights.

1. Paternity Testing

CPS and foster care staff have access to paternity testing services as follows:

a. Office of Child Support

¹¹ If the child has a legal father, the putative father could only intervene in the case if there is a prior court determination that the child was born out of wedlock (e.g., a hearing pursuant to *Serafin v Serafin*, 401 Mich 629 (1977)).

Paternity testing services are available to **foster care staff** by making a referral to OCS using form [DHS 3205](#) (Foster Care/Delinquent Ward Benefit Eligibility Record). The court may order the foster care worker to make a referral to the OCS.¹² Paternity testing is available for cases in which paternity has not been established 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.

b. DHS Contract Services

Paternity testing services are available to **CPS and foster care staff** through Orchid Cellmark, with all costs paid by DHS Central Office. [DHS L-letter 07-089](#) provides guidance on how to schedule an appointment for genetic testing, and includes form [DHS 781 \(Paternity Test Request Form\)](#) which must be completed and faxed to Orchid at (937) 294-3385. Key factors to remember:

- The Orchid service may not be used to establish child support.
- Workers requesting this service must ensure that previous test results are not available through other sources such as OCS or the friend of the court.
- Pictured identification and social security numbers for parents and children are required at the time of the appointment.

For more information, refer to [DHS L-letter 07-089](#) (or subsequent L-letters on the topic).

2. Paternity Establishment – Conducting a Putative Father Hearing

[MCR 3.921\(C\)](#) provides that if a child does not have a legal father, the court may schedule a hearing to determine if there is a preponderance of the evidence to establish a putative father as the child’s biological father.

At the hearing, if the court determines by a preponderance of the evidence that a man is the child’s biological father, the court must allow him 14 days (which may be extended for good cause shown) to establish legal paternity. Alternatively, the court may find probable cause to believe that another identified man is the child’s biological father and proceed in the same manner as identified above. Finally, the court may determine that a diligent inquiry has been conducted and the identity of the child’s biological father cannot be determined.

¹² Sixty-six percent of the cost for testing is paid through federal reimbursement with the remaining 34% paid through county funds.

If the man fails to appear at the hearing after proper notice, or appears but fails to establish legal paternity, the court may find that the man waives all rights to further notice, including the right to notice of termination of parental rights.

F. Court Procedures

1. Petitions

A petition must identify both legal parents or, if there is not a legal father, identify (if possible) a putative father. Failure to ensure that a parent is named as a respondent when it is appropriate to do so is a frequent reason for permanency delays. If a legal father exists, only he can be named as a respondent in a petition requesting termination of parental rights. If a father's identity is unknown, that should be stated in the petition and an Affidavit of Efforts to Locate Absent Parent ([JC 83](#)) should be completed. The affidavit outlines the efforts made to identify and locate the absent parent, and is submitted to the court along with a Motion for Alternate Service of Process ([JC 46](#)).

2. Amendments to Petitions

While this protocol emphasizes inclusion of an absent parent as a respondent in an original petition, in some cases foster care or CPS staff will discover information after the original petition is filed. When an absent parent is identified or located, or additional information is discovered about the absent parent after the original petition was filed, the petitioner should amend the petition to include allegations against that parent.

3. Ensuring Service of Process for an Absent Parent

a. Summons

MCR 3.920, generally, requires a party 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 proceedings and an opportunity to be heard, including 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](#)). 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.

b. Notice of Hearing (Putative Father)

If the court finds that the identity of the father is unknown, MCR 3.921 requires the court to direct notice by publication. In such a case, the notice must **not** contain the putative father's name, but must contain the following information:

- The names of the child and the child's mother, and the child's place of birth.
- That a petition has been filed with the court.
- The time and place of the hearing at which the father is to appear to express his interest in the minor, if any.
- A statement that willful 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.

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

Courts must ensure that workers continue efforts to identify and locate the absent parent until the parent is located, or all efforts are exhausted. When conducting a hearing, the court should diligently inquire as to the efforts being made to locate the absent parent. Involvement of the absent parent at the earliest stages will decrease court delays and speed the child's permanency. The court should conduct the following actions at each hearing, until the absent parent has been identified and located.

a. Question the Custodial Parent

[MCR 3.965\(B\)\(13\)](#) requires the court to ask the parent, guardian, or legal custodian about 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.

b. Question the Petitioner

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

c. Specific Questions

SCAO recommends that the court ask the petitioner to state on the record the efforts made to identify and locate the absent parent. Recommended questions include:

- Have you exhausted all location efforts and resources within DHS? (e.g., OCS, database searches, etc). Please state all of the DHS resources you have accessed and the results.
- Have you contacted outside agencies? (e.g., DCH, Secretary of State, etc.) If so, whom have you contacted?
- Have you accessed available internet search engines? (e.g., google, yahoo, etc.)
- Have you questioned relatives and friends about the absent parent?

5. Termination of Parental Rights of Absent Parent

Generally, putative fathers do not have any parental rights recognized by law. 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 *Section E: Paternity Testing and Establishment*, then at least one statutory ground for termination of his rights must be properly alleged and set forth in the petition (e.g., abandonment, failure to provide proper care or custody, etc.).

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, as identified in the definition of legal father 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. Only the child’s mother or legal father may attempt to rebut this presumption of the child’s legitimacy. If the presumption is rebutted, the court in a child protective proceeding may find that the child was “not an issue of the marriage,” but the court may not make a legal determination that the putative father is the child’s legal father. Instead, the child’s putative father must establish legal paternity under the Paternity Act or another law of this state, or if the child’s mother consents, under the Acknowledgment of Parentage Act.

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 man is an “equitable father” if:

1. he is married to the child’s mother, but is not the biological parent of a child born or conceived during the marriage,
2. 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,
3. he desires to have the rights afforded to a parent, and
4. he is willing to take on the responsibility of paying child support.

Second, a judge may determine that a man should be estopped (prevented) from denying he is a child's legal father if the man is married to the child's mother. A court may do this even if the husband is not the child's biological father, does not want the rights afforded to a parent, and refuses to pay child support. A judge may assign that man parental rights if it would be unfair not to do so. For example, a judge may assign the man parental rights if he married the child's mother while she was pregnant knowing that he was not the child's biological father, or if the man dissuaded the child's mother from placing the child for adoption and agreed to raise the child as his own. The circumstances outlined in this section do not apply to unmarried couples.

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.