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# Custody Diversion Protocol

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A collaborative protocol for the Department of Social Services - Children's Division, Juvenile Office and the Department of Mental Health and contracted providers.

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Revised 2015

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## Purpose of the Protocol

- The following protocol has been developed to divert youth from entering or remaining in state custody **solely to access mental health services**.
- Families who have children experiencing a mental health crisis may be faced with a great deal of stress due to conflicting information or information that encourages them to relinquish custody so they can obtain mental health treatment for their child.
- This protocol has been established on the belief that no parent/legal guardian should **voluntarily** have to relinquish custody of their child in order to access mental health services, if clinically appropriate services and supports, either within or outside the home setting, can be provided to the youth and parent/legal guardian.
- Many families may not be aware of community-based services that are alternatives to residential or acute hospital settings.
- It is the role of the Children’s Division, Department of Mental Health, and Juvenile Office staff to collaboratively recognize the family’s need for help and provide them with objective information about realistic and least restrictive treatment options.
- The Custody Diversion Protocol is established to identify potential service needs for children who are currently accessing services and for those who may need to access mental health services.
- The Diversion Protocol **should only** be initiated when the parent/legal guardian wants to relinquish custody of their child in order to access mental health services.
- The Custody Diversion Protocol does not replace or bypass the Child Abuse and Neglect (CA/N) investigation process. If abuse and neglect is suspected the CA/N Hotline should be contacted as required by law, RSMo 210.115, and Children’s Division will proceed as specified in statute and policy.

## Initial Entry through Children’s Division (CD) or Juvenile Office (JO) Representative

- If a parent/legal guardian contacts a representative of a CD or JO noting that they wish to voluntarily relinquish custody of their child to the state, the CD or JO staff must assess the basis of the voluntary relinquishment and if it is solely to access mental health services.
- This protocol is not meant to replace or detract from the standard referral process to a Department of Mental Health’s (DMH) Administrative Agent/Community Mental Health Center (CMHC), Division of Developmental Disabilities’ Regional Office (DD-RO), or

substance use disorder treatment agency (ADA provider). If the family has not contacted DMH, the CD or JO should facilitate a referral to the CMHC, DD-RO, or ADA provider.

- ***If the basis of the voluntary relinquishment is solely to access mental health services, the Custody Diversion Protocol must be initiated.***
- To initiate the Custody Diversion Protocol process the CD or JO must complete the top half of the Screening/Feedback Form (**Attachment A- Screening/Feedback Form**), after obtaining parent/legal guardian permission, and forward it to the custody diversion designee (Designee) for the Community Mental Health Center (CMHC) within 24 hours of the time the parent/legal guardian requests relinquishment (**Attachment B - List of Custody Diversion designees for the CMHCs**).
  - CD or JO staff should inform the parent/legal guardian that a level of care assessment will be completed by the CMHC as soon as possible, but within 3 business days of receipt of the Screening/Feedback Form.
  - If the child is currently in a psychiatric hospital, the parent/legal guardian and the hospital should be informed that no decisions will likely occur for 3-7 days.
- The completion of the Screening/Feedback Form ensures that the protocol is being applied under appropriate circumstances. The Custody Diversion Protocol is initiated upon completion of the top half of the Screening/Feedback Form by the CD or JO and receipt of the Screening/Feedback Form by the Designee. If this is not completed by the CD or JO the protocol will not have been initiated.
- If a recent standard referral for assessment has been made to the CMHC, DD-RO or ADA provider and the parent/legal guardian still wants to voluntarily relinquish custody, the CD or JO staff should assist the parent/legal guardian in contacting the Designee. Staff should also explain that custody will not be accepted at this time and an assessment process must first occur.
  - In an emergency situation, placement or services should be expedited by CD. Lack of funding is not an indication of an emergency situation.
- If a parent/legal guardian comes in person to the local CD or JO with their child, staff should explain the custody diversion process and contact the Designee on behalf of the parent/legal guardian in their area. Staff should also explain that custody will not be accepted at this time and an assessment process must first occur, with the child returning home at this time.
- If the parent/legal guardian refuses to take the child home, the agency contacted (CD or JO) by the parent/legal guardian should immediately call an emergency meeting (in person or by phone) with the contacts of the other agencies (JO, DMH provider, or CD) and develop an

emergency plan. The assessment process outlined below should then continue to be followed by the Designee.

- Staff from the JO, CD, CMHC, DD-RO, or ADA provider program **shall not** discuss voluntary placement agreements prior to the completion of the Custody Diversion Protocol process. Staff will assist the parent/legal guardian within the means of their respective agency to meet the needs of the child and parent/legal guardian through the provision of services or making referrals to other agencies for services.

### Level of Care Assessment

- When the Designee receives a Custody Diversion Protocol Screening/Feedback Form from the CD or JO, the Designee will arrange with the parent/legal guardian of the child for a level of care assessment to be completed as soon as possible but no later than 3 business days of the receipt of the Screening/Feedback Form.
  - If the child is currently in a psychiatric hospital, the level of care assessment will likely occur at the hospital within 3-7 days.
  - The standard means test may be waived for a child in need of mental health services to avoid inappropriate custody transfer to the Children's Division in accordance with 536.010 (9 CSR 10-31.014).
- The Designee will determine if there are psychiatric, developmental and/or substance use issues to be addressed. If there is a psychiatric history, then the CMHC should do the level of care assessment.
- If there is information that the child is a client of a DD-RO and/or has a diagnosis of intellectual or developmental disability, the DD-RO shall be contacted by the CMHC to participate in the level of care assessment process.
- If there is information that the child requires substance use and treatment, the CMHC should contact the local ADA provider to participate in the level of care assessment process.
- The level of care assessment shall include an examination of the following to establish the level of care needs for the child related to mental health issues:
  - The child current mental health needs;
  - The parent/legal guardian's perception of the child's needs;
  - Identification of any risk factors;
  - Past history of needs and services;
  - The capacity of the parent/legal guardian to meet the child's needs; and
  - Information from past and current caretakers.
- The parent/legal guardian and the child (if age appropriate) should be **actively** involved in the assessment, development and implementation of the plan.

- If the person completing the level of care assessment suspects abuse and neglect the CA/N Hotline should be contacted as required by law, RSMo 210.115.
- Upon completion of the level of care assessment, the Designee should complete the lower half of the received Screening/Feedback Form and forward it to the appropriate referring party.
  - If the assessment is not completed or expected to be completed within 3 working days, the agency should notify the referring party of the delay. If there is a delay, the Designee shall provide the assessment within 5 additional working days.
- The Designee should send the completed Screening/Feedback Form to the referring agency and to the DMH contact listed on the bottom of the form.
- If the parent/legal guardian refuses to have information shared and continues to ask to give up custody, it should be explained to the parent/legal guardian that a CA/N hotline call will be placed by the Designee.
- If a child is currently in a hospital outside of their county of residence, the CMHC, DD-RO or ADA provider can elect to contact the CMHC, DD-RO or ADA provider that serves the county in which the hospital operates and request a courtesy assessment. However, it is the responsibility of the CMHC, DD-RO or ADA provider in the parent/legal guardian's county of residence for making the final determination and developing, implementing, and coordinating the service plan unless specifically agreed to otherwise.

<b>Plan Coordination</b>
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- Upon completion of the level of care assessment, the CD or JO should coordinate a meeting with the Designee and /or DD-RO and ADA provider and the parent/legal guardian to discuss the results of the level of care assessment, service options, and fiscal resources necessary to develop and implement the plan.
- If the parent/legal guardian accepts the services offered, the CMHC , DD-RO, and/or ADA provider should implement the plan through the Family Support Team (FST) process.
- The plan could take one of these other additional paths:
  - CD is able to provide additional community supports to add to DMH services with support from the parent/legal guardian and the child can be maintained in the community.
  - DMH has determined that the child requires services that cannot be provided in the home and has identified an appropriate provider available through DMH resources.

- The parent/legal guardian rejects the services outlined through the level of care assessment and continues to pursue giving up custody of their child. CA/N hotline should be called to assess if there is reason to suspect abuse or neglect.
- DMH has determined that the child requires services that cannot be provided in the home, has identified an appropriate out of home provider, and there are no other means of financial support. This temporary out-of-home placement occurs through a Voluntary Placement Agreement (VPA) which must be approved by CD.

<b>Voluntary Placement Agreement Protocol</b>
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- **The Voluntary Placement Agreement can only be used in conjunction with the Custody Diversion Protocol and under the following circumstances:**
  - The parent/legal guardian is a legal resident of the state of Missouri;
  - The parent/legal guardian does not receive adoption/guardianship subsidy on behalf of the child;
    - If clinically indicated, out-of-home placement services can be established by working with the Children’s Division adoption/guardianship subsidy staff associated with the child;
    - If the parent/legal guardian receives adoption/guardianship subsidy on behalf of the child from another state, the parent/legal guardian must work with the other state to determine options.
  - No reason has been found to suspect abuse or neglect in accordance with CD statute and policy;
  - There is no current referral to the JO on which the JO will be taking any level of action besides making a referral for mental health services; temporary custody is not necessary; and
  - The child is currently residing in the parent/legal guardian’s home (this excludes an acute psychiatric admission).
- The VPA can be used for short-term or up to a maximum of 180 days for out-of-home placements such as emergency respite, crisis beds, out-of-home in-depth assessments in addition to residential treatment.
- The VPA is an agreement between the parent/legal guardian and the Children’s Division.
- If the VPA is utilized, the DMH provider is responsible for locating an appropriate out-of-home placement and for monitoring that placement.
- The DMH provider should notify the CD-Residential Care Treatment Services Coordinator (RCST) of any outstanding issues related to the child and/or parent/legal guardian while the VPA is in place. The CD will arrange for monthly FST meetings immediately following placement to begin planning for the child’s needs in preparation for the child’s return to their home. The DMH provider will work closely with the child and parent/legal guardian

and referring agency in continuing to assess the need for services and accessing appropriate services.

- Issues to be addressed include:
  - The child’s progress in services,
  - The parent/legal guardian’s involvement in the treatment,
  - The need for the child to continue out-of-home placement beyond the maximum allowed 180 days; or,
  - The plan to transition that child back into their home community.
- If the parent/legal guardian rejects the transition plan and refuses to take the child home, or find alternative means to care for the child, the CA/N Hotline should be contacted as required by law, RSMo 210.115, and Children’s Division will proceed as specified in statute and policy. CD will initiate a referral to the court based on 211.031.1(1) (d ).

### **Temporary Custody**

- If the court has ordered custody pursuant to 211.031. (1)(d), then pursuant to 211.181.1(5) this team will propose a plan and submit it to the court within 30 days, per current CD policy. The court will then determine whether to return the child to the custody of the parent/legal guardian or adjudicate.
- Within 72 hours of the child placed in the temporary custody of CD, CD shall convene a meeting with all involved/interested parties, including the parent/legal guardian, to examine the child’s and parent/legal guardian’s needs and identify service options.
- CD, Juvenile Office, CMHC, DD-RO and/or ADA provider will develop a temporary plan for placement and services that best meets the child’s needs.

### **Review of Children in Children’s Division Custody and Return to Parent’s Custody**

- Children that are in CD custody solely to obtain mental health services and there isn’t probable cause or preponderance of evidence of CA/N meet the criteria under *208.204.2 and 208.204.3 RSMo* for custody to be returned to their parent/legal guardian.
- When a child is identified as meeting the above criteria (otherwise known as SB1003), the Family Support Team which includes the child’s parents, representatives from DMH, the appropriate CMHC, DD-RO or ADA provider, and any other appropriate providers should create a treatment plan to transition the child back to the custody of their parents.
- Services shall be provided in the least restrictive and most normalized environment including services and supports which are home and community based. It is not necessary for the child to be returned to the home of the parent in order for custody to be transferred.

- The plan shall outline all services and supports needed by the child and family and who shall be financially responsible for each portion.
- The treatment plan should identify a timeline for services and plans beyond CD involvement.
- The team will propose a plan to the court within 60 days of the child having been identified through consensus of the FST.