

VIRGINIA ADMINISTRATIVE CODE
TITLE 22. SOCIAL SERVICES
VAC AGENCY NO. 40 DEPARTMENT OF SOCIAL SERVICES
CHAPTER 705. CHILD PROTECTIVE SERVICES

22 VAC 40-705-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Abuser or neglector" means any person who is found to have committed the abuse and/or neglect of a child pursuant to Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.1-248.6:1 of the Code of Virginia, under which an individual who is found to have committed abuse and/or neglect may request that the local department's records be amended.

"Appellant" means anyone who has been found to be an abuser and/or neglector and appeals the founded disposition to the director of the local department of social services, an administrative hearing officer, or to circuit court.

"Assessment" means the process by which child protective services workers determine a child's and family's needs.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i)

parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

"Case record" means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

"Central Registry" means a subset of the child abuse and neglect information system ~~of CANIS~~ and is the name index ~~with identifying information~~ of individuals named as an abuser and/or neglector in founded child abuse and/or neglect ~~complaints or~~ reports not currently under administrative appeal, maintained by the Department ~~department~~.

"Child Abuse and Neglect Information System (CANIS)" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. ~~CANIS~~ It is composed of three parts: the statistical information system with nonidentifying information; the Central Registry of founded complaints not on appeal; and a database that can be accessed only by the Department ~~department~~ and local departments that contains ~~consisting of~~ all nonpurged CPS reports ~~investigation information~~.

"Child protective services" means the identification,

receipt and immediate ~~investigation of~~ response to complaints and reports of alleged child abuse and/or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child protective services worker" means one who is qualified by virtue of education, training and supervision and is employed by the local department to respond to child protective services complaints and reports of alleged child abuse and/or neglect.

"Chronically and irreversibly comatose" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner other than reflexive activity of muscles and nerves for low-level conditioned response and from which to a reasonable degree of medical probability there can be no recovery.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of child abuse and/or neglect or whose involvement may help ensure the safety of the child.

"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to §63.1-248.2:5 of the Code of Virginia.

"Consultation" means the process by which the alleged abuser

and/or neglector may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse and/or neglect against that person pursuant to §63.1-248.6:1 A of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means that local departments of social services, if designated to do so by the Department, may respond to valid reports or complaints of child abuse or neglect by conducting either an investigation or a family assessment.

"Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Family Advocacy Program representative" means the professional employed by the United States Armed Forces who has responsibility for the program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up and reporting of family violence, pursuant to 22 VAC 40-720-20.

"Family assessment" means the formal information gathering process needed to determine:

- a. the immediate safety needs of the child;
- b. the protective and rehabilitative services needs of the child and family that will deter abuse or neglect;

- c. risk of future harm to the child;
- d. and alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unwilling or unable to participate in services.

"First source" means any direct evidence establishing or helping to establish the existence or nonexistence of a fact. Indirect evidence and anonymous complaints do not constitute first source evidence.

"Founded" means that a review of the facts shows by a preponderance of the evidence that child abuse and/or neglect has occurred. A determination that a case is founded shall be based primarily on first source evidence; in no instance shall a determination that a case is founded be based solely on indirect evidence or an anonymous complaint.

"He" means he or she.

"His" means his or her.

"Identifying information" means name, social security number, address, race, sex, and date of birth.

"Indirect evidence" means any statement made outside the presence of the child protective services worker and relayed to the child protective services worker as proof of the contents of the statement.

"Investigation" means the formal information gathering process utilized by the local department ~~in determining~~

~~whether or not child abuse or neglect has occurred.~~ to determine:

- a. the immediate safety needs of the child;
- b. the protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
- c. risk of future harm to the child;
- d. alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unwilling or unable to participate in services;
- e. whether or not abuse or neglect has occurred;
- f. if abuse or neglect has occurred, who abused or neglected the child;
- g. and a finding of either founded or unfounded based on the facts collected during the investigation.

"Investigative narrative" means the written account of the investigation contained in the child protective services case record.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in §63.1-209 of the Code of Virginia.

"Local department" means the city or county local agency of social services or department of public welfare in the Commonwealth of Virginia responsible for conducting investigations of child abuse and/or neglect complaints or reports pursuant to §63.1-248.6 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is

known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to §63.1-248.3 of the Code of Virginia.

"Monitoring" means contacts with the child, family and collaterals which provide information about the child's safety and the family's compliance with the service plan.

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect pursuant to §63.1-248.6 ~~K~~ F of the Code of Virginia. Citizen representatives may also be included.

"Notification" means informing designated and appropriate individuals of the local department's actions and the individual's rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence which is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department

pursuant to §§ 63.1-248.5:1 and 63.1-248.5:1.01 of the Code of Virginia.

"Reasonable diligence" means the exercise of justifiable and appropriate persistent effort.

"Report" means either a complaint as defined in this section or an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which ~~investigation~~ of a complaint from the general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in §63.1-248.2 of the Code of Virginia.

"Safety plan" means an immediate course of action designed to protect a child from abuse or neglect.

"Service plan" means a plan of action to address the service needs of a child and/or his family in order to protect a child and his siblings, to prevent future abuse and neglect, and to preserve the family life of the parents and children whenever possible.

"Terminal condition" means a condition caused by injury, disease or illness from which to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is chronically and irreversibly comatose.

"Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect

occurred.

"Valid report or complaint" means the local department of social services has evaluated the information and allegations of the report or complaint and determined that the local department shall conduct an investigation or family assessment because the following elements are present:

1. the alleged victim child or children are under the age of eighteen at the time of the complaint or report;
2. the alleged abuser is the alleged child's parent or other caretaker;
3. the local department receiving the complaint or report is a local department of jurisdiction; and
4. the circumstances described allege suspected child abuse or neglect.

"Withholding of medically indicated treatment" means the failure to respond to the infant's life-threatening condition by providing treatment (including appropriate nutrition, hydration, and medication) which in the treating physician's or physicians' reasonable medical judgment will most likely be effective in ameliorating or correcting all such conditions.

22 VAC 40-705-20. General policy regarding complaints or reports of child abuse and neglect.

It is the policy of the Commonwealth of Virginia to require complaints and/or reports of child abuse and neglect for the following purposes:

1. Identifying abused and neglected children;

2. Assuring protective services to such identified children;

3. Preventing further abuse and neglect;

4. Preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate care.

22 VAC 40-705-30. Types of abuse and neglect.

A. Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions.

B. Physical neglect occurs when there is the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent's or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to §63.1-248.2 of the Code of Virginia. In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

1. Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to

health or safety.

2. Physical neglect may include failure to thrive.

a. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

b. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

C. Medical neglect occurs when there is the failure by the caretaker to obtain or follow through with a complete regimen of medical, mental or dental care for a condition which if untreated could result in illness or developmental delays pursuant to § 63.1-248.2 of the Code of Virginia. Medical neglect also includes withholding of medically indicated treatment.

1. A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to §63.1-248.2 of the Code of Virginia shall not for that reason alone be considered a neglected child.

2. For the purposes of this regulation, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:

a. The infant is chronically and irreversibly comatose;

b. The infant has a terminal condition and the provision of such treatment would:

(1) Merely prolong dying;

(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(3) Otherwise be futile in terms of the survival of the infant; or

c. The infant has a terminal condition and the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

D. Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

Mental abuse or neglect may include failure to thrive.

1. Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.

2. Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

E. Sexual abuse occurs when there is any act of sexual exploitation or any sexual act upon a child in violation of the law which is committed or allowed to be committed by the child's parents or other persons responsible for the care of the child pursuant to §63.1-248.2 of the Code of Virginia.

22 VAC 40-705-40. Complaints and reports of suspected child abuse and/or neglect.

A. Persons who are mandated to report are those individuals defined in §63.1-248.3 of the Code of Virginia.

1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.

2. Mandated reporters shall disclose all information which is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports which document the basis for the complaint and/or report.

3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.

B. Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to §63.1-248.4 of the Code of Virginia.

C. Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

D. Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to §63.1-248.5 of the Code of Virginia.

E. When the identity of the reporter is known to the department or local department, these agencies shall make every effort to protect the reporter's identity.

F. If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to §63.1-248.5:1 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse and/or neglect and is convicted shall be guilty of a Class 4 misdemeanor for a first offense pursuant to §63.1-248.5:1.01 of the Code of Virginia.

1. A subsequent conviction results in a Class 2 misdemeanor.

2. Upon receipt of notification of such conviction, the department will retain a list of convicted reporters.

3. The subject of the records may have the records purged upon presentation of proof of such conviction.

H. To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to §63.1-248.4 of the Code of Virginia.

1. The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that ~~the complaint or report is investigated.~~ an investigation or family assessment is conducted.

2. A local department may ask another local department which is a local department of jurisdiction to assist in conducting the investigation or family assessment. If assistance is requested, the local department shall comply.

3. A local department may ask another local department through a cooperative agreement to assist in conducting the investigation or family assessment.

4. If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge may assign the report ~~for investigation~~ to the court services unit or to a local department that is not the employer of the

subject of the report pursuant to §§ 63.1-248.3 and 63.1-248.4 of the Code of Virginia.

22 VAC 40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system ~~writing on the intake document~~. A record of all reports and complaints made to a local department or to the Department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

B. ~~In All~~ all valid complaints or reports of child abuse and/or neglect ~~The~~ the local department of social services shall determine whether to conduct an investigation, or if designated as a differential response agency by the Department according to 63.1-248.6:01, a family assessment shall be investigated. A valid complaint or report is one in which:

1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;

2. The alleged abuser is the alleged victim child's parent or other caretaker;

3. The local department receiving the complaint or report is a local department of jurisdiction; and

4. The circumstances described allege suspected child abuse

and/or neglect.

C. The local department shall not investigate or conduct a family assessment in complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

D. The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to §63.1-248.6 E 5 of the Code of Virginia.

E. Pursuant to §63.1-248.6L, local departments shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the Commonwealth's Attorney.

E.F The local department shall report to the following when the death of a child is involved:

1. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner pursuant to §63.1-248.6 E 9 of the Code of Virginia.

2. When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the Commonwealth and the local law-enforcement agency pursuant to §63.1-248.6 E 5 of the Code of Virginia.

3. The local department shall contact the Department immediately upon receiving a complaint involving the death of a child and at the conclusion of the investigation.

F.G Valid Complaints or reports which meet the criteria for investigation shall be screened for high priority based on the following:

1. The immediate danger to the child;
2. The severity of the type of abuse or neglect alleged;
3. The age of the child;
4. The circumstances surrounding the alleged abuse or neglect;
5. The physical and mental condition of the child; and
6. Reports made by mandated reporters.

G.H The local department shall initiate an immediate response. investigation When a local department of social services has been designated as a differential response agency by the Department, the response shall be an investigation or family assessment.

Any valid report may be investigated, but in accordance with §63.1-248.6:02B, the following shall be investigated: (i)sexual abuse, (ii)child fatality, (iii)abuse or neglect resulting in a serious injury as defined in §18.2-371.1, (iv)child has been taken into the custody of the local department of social services, or (v)cases involving a

caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

1. The purpose of an investigation is to collect the information necessary to determine or assess the following:

a. Immediate safety needs of the child;

b. Whether or not abuse or neglect has occurred;

c. Who abused or neglected the child;

d. To what extent the child is at risk of future harm, either immediate or longer term;

e. What types of services can meet the needs of this child or family; and

f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2. The purpose of a family assessment is to engage the family in a process to collect the information necessary to determine or assess the following:

a. Immediate safety needs of the child;

b. To what extent the child is at risk of future harm, either immediate or longer term;

c. What types of services can meet the needs of this child or family; and

d. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

2.3 The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and ~~is under investigation~~ determined valid or persons who are the subject of a valid report ~~that is under investigation~~ if the whereabouts of such persons are unknown to the local department pursuant to §63.1-248.6 G E-10 of the Code of Virginia.

3.4 The local department shall document its attempts to locate the child and family.

4.5 In the event the alleged victim child or children cannot be found, the 45-60-day time frame to complete the investigation, pursuant to §63.1-248.6:01(5) ~~E-7~~ of the Code of Virginia, is stayed.

22 VAC 40-705-60. Authorities of local departments.

When ~~conducting investigations~~ responding to valid complaints or reports local departments have the following authorities:

1. To talk to any child suspected of being abused and/or

neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by §63.1-248.10 of the Code of Virginia.

2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in §63.1-248.13 of the Code of Virginia.

3. To take a child into custody on an emergency removal for up to 72-96 hours under such circumstances as set forth in §63.1-248.9 of the Code of Virginia.

a. A child protective services (CPS) worker planning to take a child into 72-96-hour emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the CPS worker's part if a supervisor cannot be contacted and the situation requires immediate action.

b. When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately to an investigation.

b.c Any person who takes a child into custody pursuant to §63.1-248.9 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

e.d The local department shall have the authority to have a complete medical examination made of the child including a

written medical report and, when appropriate, photographs and x-rays pursuant to §63.1-248.13 of the Code of Virginia.

d.e. When a child in 72-96-hour custody is in need of immediate medical or surgical treatment, the local director of social services or his designee(s) may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.

e.f. When a child is not in the local department's custody, the local department cannot consent to medical or surgical treatment of the child.

22 VAC 40-705-70. Collection of information evidence.

A. When conducting an investigation the local department shall seek first-source information about the allegation of child abuse and/or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical and psychological reports; and any tape recordings of interviews.

B. When completing a family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

22 VAC 40-705-80. Investigation and family assessment contacts.

A. During the course of the investigation, the child

protective services (CPS) worker shall make and record in writing in the investigative narrative the following contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record ~~in writing in the investigative narrative~~ why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child. All interviews with alleged victim children must be audio tape recorded except when the child protective services worker determines that:

a. The child's safety may be endangered by audio taping;

b. The age and/or developmental capacity of the child makes audio taping impractical;

c. A child refuses to participate in the interview if audio taping occurs; or

d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that audio taping is not appropriate.

In the case of an interview conducted with a nonverbal child where none of the above exceptions apply, it is appropriate to audio tape record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision

not to audio tape record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an audio recording is unavailable due to equipment failure or other cause.

2. The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglector.

a. The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to §63.1-248.6:2 of the Code of Virginia.

b. The local department shall provide the necessary equipment in order to tape record the interview and retain a copy of the tape for the record.

3. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

4. The child protective services worker shall observe the environment where the alleged victim child lives.

5. The child protective services worker shall observe the site where the alleged incident took place.

6. The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

B. During the course of the family assessment, the child protective services (CPS) worker shall make and record the following contacts and observations.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings.

2. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.

3. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

22 VAC 40-705-90. Investigative and family assessment protocol.

A. In conducting an investigation ~~The~~ the child protective services (CPS) worker may enter the home if permitted to enter by a person who resides in the home after advising the person who resides in the home that he may refuse to permit entry. Only in those instances where the CPS worker has probable cause to believe that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a law-enforcement officer, may a CPS worker enter the home without permission. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for the decision to enter the house without permission.

B. In conducting family assessments the child protective services worker (CPS) may enter the home if permitted to enter by a person who resides in the home.

C. B. The child protective services worker may transport a child with parental consent, when the local department has assumed custody of that child by virtue of 72-96-hour removal authority pursuant to §63.1-248.9 of the Code of Virginia, by an emergency removal court order pursuant to §16.1-251 of the Code of Virginia, or by a preliminary removal order pursuant to §16.1-252 of the Code of Virginia.

D. E. When a child protective services worker has reason to believe that the caretaker in a valid report of child abuse or neglect ~~alleged abuser and/or neglecter~~ is abusing substances and such behavior may be related to the matter being investigated or assessed, the worker may request that person to consent to substance abuse screening or may petition the court to order such screening.

1. Local departments must develop guidelines for such screening.

2. Guidelines may include child protective services worker administration of urine screening.

22 VAC 40-705-100. Judicial proceedings.

A. A child protective services worker may petition for removal pursuant to §§16.1-251 and 16.1-252 of the Code of Virginia.

B. A child protective services worker may petition for a preliminary protective order pursuant to §16.1-253 of the Code of Virginia.

C. Whenever the local department assumes custody of a child under subsection A or B of this section, a child protective services worker shall petition the court for parental child support.

D. Any person who participates in a judicial proceeding resulting from making a child protective services report or complaint or from taking a child into custody pursuant to §§63.1-248.3, 63.1-248.4, and 63.1-248.9 of the Code of Virginia shall be immune from any civil or criminal liability in connection therewith unless it is proven that such person acted in bad faith or with malicious intent pursuant to §63.1-248.5 of the Code of Virginia.

22 VAC 40-705-110. Assessments in investigations and family assessments.

A. In both investigations and family assessments, the ~~The~~ child protective services worker shall conduct an initial assessment of the child's circumstances and threat of danger or harm, and where appropriate shall make a safety plan to provide for the protection of the child.

B. In investigations the ~~The~~ child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.

C. In all founded cases and in completed family assessments, the child protective services worker shall make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect and whether or not intervention is necessary to protect the child.

22 VAC 40-705-120. Complete the investigation or family assessment.

A. The local department shall promptly notify the alleged abuser and/or neglecter and the alleged victim's parents or guardians of any extension of the deadline for the completion of the investigation or family assessment pursuant to §63.1-248.6:01(5) ~~E—7~~ of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.

B. When completing an investigation, ~~Prior~~ prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide the alleged abuser and/or neglecter with written notice of the options available to him pursuant to subdivisions C 1 and C 2 of this section. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, a predispositional conference is not an option.

C. Otherwise, an alleged abuser and/or neglecter involved in an investigation may elect to proceed under either subdivision 1 or 2 of this subsection. If the alleged abuser and/or neglecter does not advise the local department of his decision

within 10 days of receipt of the—written notice, he will be deemed to have elected to proceed under subdivision 2 of this subsection.

1. Predispositional consultation. The purpose of the predispositional consultation shall be to allow a person suspected of committing child abuse and/or neglect the opportunity to meet with the local department conducting the investigation and discuss the local department's investigation findings prior to the disposition.

a. In order to participate in a predispositional consultation, the alleged abuser and/or neglecter must agree to waive the 45-60-day time frame to conduct the investigation, not to exceed an additional 30 working days. Further, the alleged abuser and/or neglecter must agree to waive his right to a local conference pursuant to §63.1-248.6:1 of the Code of Virginia.

b. The alleged abuser and/or neglecter shall be afforded the opportunity to informally present testimony, witnesses or documentation to representatives of the local department.

c. The local department shall consider any evidence presented by the alleged abuser and/or neglecter prior to rendering a disposition.

d. Should the local department render a founded disposition following a predispositional consultation, the local department shall notify the abuser and/or neglecter, in writing, of that person's right to appeal the local department's finding to the Commissioner of the Virginia

Department of Social Services pursuant to 22 VAC 40-705-140 and §63.1-248.6:1 A of the Code of Virginia.

2. Local conference.

a.If the alleged abuser and/or neglector elects not to participate in a predispositional consultation or does not advise the local department of his decision within 10 days of receiving written notification of the local department's findings pursuant to subsection B of this section, he will be deemed to have elected to proceed under this subdivision 2. If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records pursuant to § 63.1-248.6:1 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector.

b.The local conference shall be conducted in accordance with 22 VAC 40-705-190.

D. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.

E. The subject of the report shall be notified immediately if during the course of completing the family assessment it is

reassessed and determined to meet the requirements, as specified in §63.1-248.6:02B of the Code of Virginia, to be investigated.

22 VAC 40-705-130. Report investigation or family assessment conclusions findings.

A. Pursuant to §63.1-248.5:1 of the Code of Virginia, the local department shall report all unfounded case dispositions to the Child Abuse and Neglect Information System (~~CANIS~~) when disposition is made.

1. The Department shall retain unfounded complaints and/or reports in ~~CANIS~~ the child abuse and neglect information system to provide local departments with information regarding prior investigations.

2. This record shall be kept separate from the Central Registry and accessible only to the Department and to local departments.

3. The record of the unfounded case or family assessment shall be purged one year after the date of the complaint or report if there are no subsequent founded or unfounded complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in that one year.

4. If the individual against whom allegations of abuse and/or neglect were made or if the same child is involved in subsequent complaints and/or reports, the information from all complaints and/or reports shall be maintained until the last

purge date has been reached.

5. The individual against whom allegations of abuse and/or neglect were made may request in writing that the local department retain the record for an additional period of up to two years.

6. The individual against whom allegations of abuse and/or neglect were made may request in writing that both the local department and the department shall immediately purge the record after a court rules that the report was made in bad faith or with malicious intent pursuant to §63.1-248.5:1 of the Code of Virginia.

B. The local department shall report all founded case dispositions to the Child Abuse and Neglect Information System for inclusion in the Central Registry pursuant to §63.1-248.6:01(5) ~~§~~ 7 of the Code of Virginia and 22 VAC 40-700-30. Identifying information about the abuser and/or neglecter and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint. The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to the regulation dealing with retention in the Central Registry, 22 VAC 40-700-30.

22 VAC 40-705-140. Notification of findings.

A. Upon completion of the investigation the local child protective services worker shall make notifications as provided in this section.

B. Individual against whom allegations of abuse and/or neglect were made.

1. When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

a. If the individual against whom allegations of abuse and/or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

b. The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in §63.1-248.5:1 of the Code of Virginia.

c. When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to §32.1-283.1 D of the Code of Virginia.

2. Pursuant to 22 VAC 40-705-120 and 22 VAC 40-705-190, when a predispositional consultation results with the local department rendering a founded disposition of abuse and/or neglect, the child protective services worker shall notify the abuser and/or neglector by letter, with a copy included in the case record. The letter shall include:

a. A clear statement that they are the abuser and/or neglector;

b. The type of abuse and/or neglect;

c. The disposition, level and retention time;

d. The name of the victim child or children; and

e. A statement informing the abuser of the right to appeal to the commissioner of the department and to have access to the case record.

3. Pursuant to 22 VAC 40-705-120 and 22 VAC 40-705-190, if a predispositional consultation did not occur and the local department renders a founded disposition of abuse and/or neglect, the child protective services worker shall notify the abuser and/or neglector by letter, with a copy included in the case record. The letter shall include:

a. A clear statement that they are the abuser and/or neglector;

b. The type of abuse and/or neglect;

c. The disposition, level and retention time;

d. The name of the victim child or children; and

e. A statement informing the abuser and/or neglecter of his right to request the local department for a local conference and to have access to the case record.

4. When the abuser and/or neglecter in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

5. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.

C. Subject child's parents or guardian.

1. When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

2. When the disposition is founded, the child protective

services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglecter, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

3. When the founded complaint of abuse or neglect does not name the the parents or guardians of the child as the abuser or neglecter, and the abuse or neglect occurred in a licensed or unlicensed child care center, a regulated family day home, a private or public school, a child-caring institution or residential facility for juveniles, the child's name shall not be entered in the central registry without consultation and permission of the parents or guardians, pursuant to 63.1-248.8. If such child's name currently appears in the central registry without permission of the parents or guardians, such parents or guardians may have the child's name removed by written request to the Department.

D. Complainant.

1. When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary

action was taken. The local worker shall file a copy in the case record.

3. When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

E. Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22 VAC 40-720-20.

22 VAC 40-705-150. Services.

A. ~~When abuse or neglect is found~~ At the completion of a family assessment or investigation, the local department shall consult with the family to provide or arrange for necessary protective and rehabilitative services to be provided to the child and his family pursuant to §63.1-248.6:01(3) ~~§ 3~~ or 63.1-248.6:02(4) of the Code of Virginia.

B. Protective services also includes preventive services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists, to be consistent with §§16.1-251, 16.1-252, 16.1-279.1, 63.1-248.6K ~~F~~, and 63.1-248.7 of the Code of Virginia.

C. Local departments shall support the establishment and functioning of multidisciplinary teams pursuant to §63.1-248.6 K ~~F~~ of the Code of Virginia.

D. The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and a child protective services case has been opened pursuant to § 63.1-248.6 G(i) ~~E-10, 11 and/or 12~~ of the Code of Virginia. The local department shall document its attempts to locate the child and family.

E. When an abused or neglected child and persons who are the subject of an open child abuse services case have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth of Virginia, and forward to such agency relevant portions of the case records pursuant to §63.1-248.6 H ~~E-11~~ of the Code of Virginia.

F. The receiving local department shall arrange necessary protective and rehabilitative services pursuant to §63.1-248.6 H of the Code of Virginia.

22 VAC 40-705-160. Releasing information.

A. In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.

1. Report to attorney for the Commonwealth and law enforcement pursuant to §63.1-248.6 E 5 of the Code of Virginia.

2. Report to the medical examiner's office pursuant to §§32.1-283.1 C and 63.1-248.6 F ~~E-9~~ of the Code of Virginia.

3. If a court mandates disclosure of information from a child abuse and neglect case record, the local department must comply with the request. The local department may challenge a court action for the disclosure of the case record or any contents thereof. Upon exhausting legal recourse, the local department shall comply with the court order.

4. When a family assessment or investigation disposition is completed ~~made~~, the child protective services worker shall notify the complainant/reporter that either a complaint/report is unfounded or that necessary action is being taken.

5. Any individual, including an individual against whom allegations of child abuse and/or neglect were made, may exercise his Privacy Protection Act (§2.1-377 et seq. of the Code of Virginia) rights to access personal information related to himself which is contained in the case record including, with the individual's notarized consent, a search of the Central Registry pursuant to §2.1-342 of the Code of Virginia.

6. When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.

7. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC §5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide

case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

8. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC §5101 et seq.), the department shall develop guidelines to allow for public disclosure in instances of child fatality or near fatality.

9. An individual's right to access information under the Privacy Protection Act is stayed during criminal prosecution pursuant to §2.1-384 7 of the Code of Virginia.

10. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22 VAC 40-720-20.

11. Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to §63.1-274.6 of the Code of Virginia.

12. The local department shall release child protective services information to a court appointed special advocate pursuant to §9-173.12 of the Code of Virginia.

13. The local department shall release child protective services information to a court-appointed guardian ad litem pursuant to §16.1-266 E of the Code of Virginia.

B. The local department may use discretion in disclosing or releasing child protective services case record information,

investigative and on-going services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to §63.1-209 A of the Code of Virginia.

C. The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered, in accordance with §63.1-248.6:1 of the Code of Virginia, 42 USC §5101 et seq., and federal regulations (45 CFR Part 1340).

D. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.1-209 of the Code of Virginia, pursuant to §63.1-248 of the Code of Virginia, the local department must be satisfied that:

1. The information will be used only for the purpose for which it is made available;

2. Such purpose shall be related to the goal of child protective or rehabilitative services; and

3. The confidential character of the information will be preserved to the greatest extent possible.

22 VAC 40-705-170. Access to Central Registry.

A. The department will complete a search of the Central Registry upon request by a local department, upon receipt of a notarized signature of the individual whose name is being

searched authorizing release of such information or a court order specifying a search of the Central Registry.

B. When the name being searched is found in the Central Registry, the department shall contact the local department responsible for the investigation to verify the information.

22 VAC 40-705-180. Training.

A. The department shall implement a uniform training plan for child protective services workers. The plan shall establish minimum standards for all child protective services workers in the Commonwealth of Virginia.

B. Workers shall complete skills and policy training specific to child abuse and neglect investigations within the first year of their employment.

C. In order to comply with §63.1-248.1-248.2:1, all local departments must ensure that staff involved in the differential response system attend the training provided by the Department. An agency shall become designated as a CPS differential response agency by the Department after staff have received the training.

22 VAC 40-705-190. Appeals

A. Appeal is the process by which the abuser and/or neglecter may request amendment of the record when the investigation into the complaint has resulted in a founded disposition of child abuse and/or neglect.

B. If the alleged abuser and/or neglector elects not to participate in a predispositional consultation or does not advise the local department of his decision within 10 days of receiving written notification of the local department's findings pursuant to 22 VAC 40-705-120 B, he will be deemed to have elected to proceed under 22 VAC 40-705-120 C 2.

If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records, pursuant to §63.1-248.6:1 A of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector. The local department shall notify the Child Abuse and Neglect Information System (CANIS) that an appeal is pending.

C. Whenever an appeal is requested and a criminal charge is also filed against the appellant for the same conduct involving the same victim child as investigated by the local department, the appeal process shall be stayed until the criminal prosecution in circuit court is completed pursuant to §63.1-248.6:1 C of the Code of Virginia. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within

the time frames provided by law and regulation pursuant to §63.1-248.6:1 C of the Code of Virginia.

D. The local department shall conduct an informal, local conference and render a decision on the appellant's request to amend the record within 45 days of receiving the request. If the local department either refuses the appellant's request for amendment of the record as a result of the local conference, or if the local department fails to act within 45 days of receiving such request, the appellant may, within 30 days thereafter and in writing, request the commissioner for an administrative hearing pursuant to §63.1-248.6:1 A of the Code of Virginia.

E. The appellant may request, in writing, an extension of the 45-day requirement for a specified period of time, not to exceed an additional 60 days. When there is an extension period, the 30-day time frame to request an administrative hearing from the Commissioner of the Department of Social Services shall begin on the termination of the extension period pursuant to §63.1-248.6:1 A of the Code of Virginia.

F. Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In case of any information withheld, the appellant shall be advised of the general nature of the information and

the reasons, of privacy or otherwise, that it is being withheld, pursuant to §63.1-248.6:1 A of the Code of Virginia.

G. The director of the local department, or a designee of the director, shall preside over the local conference. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the local conference pursuant to §63.1-248.6:1 A of the Code of Virginia.

1. The appellant may be represented by counsel pursuant to §63.1-248.6:1 A of the Code of Virginia.

2. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof pursuant to §63.1-248.6:1 A of the Code of Virginia.

3. The director of the local department, or a designee of the director, shall notify the appellant, in writing, of the results of the local conference within 45 days of receipt of the written request from the appellant unless the time frame has been extended as described in subsection E of this section. The director of the local department, or the designee of the director, shall have the authority to sustain, amend, or reverse the local department's findings. Notification of the results of the local conference shall be mailed, certified with return receipt, to the appellant. The local department shall notify the Child Abuse and Neglect Information System (CANIS) of the results of the local conference.

H. If the appellant is unsatisfied with the results of the local conference, the appellant may, within 30 days of receiving notice of the results of the local conference, submit a written request to the commissioner for an administrative hearing pursuant to §63.1-248.6:1 B of the Code of Virginia.

1. The commissioner shall designate a member of his staff to conduct the proceeding pursuant to §63.1-248.6:1 B of the Code of Virginia.

2. A hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions or scheduling problems.

3. After a party's written motion and showing good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed or required to testify, pursuant to §63.1-248.6:1 B of the Code of Virginia.

4. Upon petition, the juvenile and domestic relations district court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review pursuant to §63.1-248.6:1 B of the Code of Virginia.

5. Upon providing reasonable notice to the other party and

the hearing officer, a party may, at his own expense, depose a nonparty and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings shall not be deposed. The hearing officer is authorized to determine the number of depositions that will be allowed pursuant to §63.1-248.6:1 B of the Code of Virginia.

6. The local department shall provide the hearing officer a copy of the investigation record prior to the administrative hearing. By making a written request to the local department, the appellant may obtain a copy of the investigation record. The appellant shall be informed of the procedure by which information will be made available or withheld from him.

In any case of information withheld, the appellant shall be advised of the general nature of the information and the reasons that it is being withheld pursuant to §63.1-248.6:1 B of the Code of Virginia.

7. The appellant and the local department may be represented by counsel at the administrative hearing.

8. The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to §63.1-248.6:1 B of the Code of Virginia.

9. The local department shall have the burden to show that the preponderance of the evidence supports the founded disposition. The local department shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

10. The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

11. The hearing officer may allow either party to submit new or additional evidence at the administrative hearing if it is relevant to the matter being appealed.

12. The hearing officer shall not be bound by the strict rules of evidence. However, the hearing officer shall only consider that evidence, presented by either party, which is substantially credible or reliable.

13. The hearing officer may allow the record to remain open for a specified period of time, not to exceed 14 days, to allow either party to submit additional evidence unavailable for the administrative hearing.

14. In the event that new or additional evidence is presented at the administrative hearing, the hearing officer may remand the case to the local department for reconsideration of the findings. If the local department fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer shall render a decision, pursuant to §63.1-248.6:1 B of the Code of Virginia.

I. Within 60 days of the close of receiving evidence, the hearing officer shall render a written decision. The hearing officer shall have the authority to sustain, amend, or reverse the local department's findings. The written decision of the

hearing officer shall state the findings of fact, conclusions based on regulation and policy, and the final disposition. The decision will be sent to the appellant by certified mail, return receipt requested. Copies of the decision shall be mailed to the appellant's counsel, the local department and the local department's counsel. The hearing officer shall notify the Child Abuse and Neglect Information System (CANIS) of the hearing decision. The local department shall notify all other prior recipients of the record of the findings of the hearing officer's decision.

J. The hearing officer shall notify the appellant of the appellant's further right of review in circuit court in the event that the appellant is not satisfied with the written decision of the hearing officer. Appeals are governed by Part 2A of the Rules of the Supreme Court of Virginia. The local department shall have no further right of review pursuant to § 63.1-248.6:1 B of the Code of Virginia.

K. In the event that the hearing officer's decision is appealed to circuit court, the department shall prepare a transcript for that proceeding. That transcript or narrative of the evidence shall be provided to the circuit court along with the complete hearing record. If a court reporter was hired by the appellant, the court reporter shall prepare the transcript and provide the court with a transcript.

I certify that this regulation is full, true, and correctly dated.

Sonia Rivero, Commissioner
Virginia Department of Social Services

Date: September 28, 2000