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INTRODUCTION TO CHILD PROTECTIVE SERVICES

1.1 Virginia Children's Services Practice Model

The Virginia Children's Service Practice Model sets forth a vision for the services that are delivered by all child serving agencies across the Commonwealth. The practice model is central to decision making; present in all meetings; and in every interaction with a child or family. Guided by this model, the Virginia Department of Social Services (VDSS) is committed to continuously improving services for children and families by implementing evidence based practices, utilizing the most accurate and current data available, and improving safety and well-being of children and families. The Practice Model is founded on these principles:

- All children and communities deserve to be safe.
- Practice is family, child, and youth-driven.
- Children do best when raised by families.
- All children and youth need and deserve a permanent family.
- Partnering with others is important to support child and family success in a system that is family-focused, child-centered, and community-based.
- How we do our work is as important as the work we do.

Child Protective Services is just one component on a continuum of family services in Virginia that values the strengths of families.

The Code of Virginia authorizes the VDSS to establish the Child Protective Services (CPS) Program. The purpose of CPS is to identify abused and neglected children and to provide services to prevent further abuse and neglect and to strengthen families by

enhancing parental capacity to nurture their children in a safe environment. The CPS Program is based on the following assumptions and values:

- CPS is a process that incorporates past, present and future.
- Implicit in the definition of abuse or neglect is the assumption of harm to the child or children, both real and threatened.
- CPS services and interventions should support the family.
- People can and do change, within the limitations of the individual, his or her environment, time and a worker's skills and perception.
- CPS services are available without regard to income.
- CPS services can be provided to children and their families when no formal complaint has been made, but for whom potential or threat of harm exists.

1.2 Legal authority and definitions

Child Protective Services are provided by local departments of social services (LDSS) under the supervision of the VDSS as authorized by § 63.2-1501 et seq. of the Code of Virginia. The Code of Virginia prescribes that each LDSS maintain the ability to receive and respond to reports alleging abuse or neglect of children.

To further clarify and support the Code of Virginia, the State Board of Social Services has promulgated regulations to guide the operation of CPS programs in Virginia.

The VDSS has developed and maintains this chapter within the larger guidance manual to assist the LDSS in administering the CPS program.

The Virginia Administrative Code 22 VAC 40-705-10 provides the following definitions.

> "Department" means the Virginia Department of Social Services.
>
> "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 or family assessments of child abuse and/or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.
>
> "Child protective services" means the identification, receipt and immediate 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.

1.2.1 Services for persons with limited English proficiency

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from discriminating against individuals on the basis of race, color, or national origin. This has been interpreted to require meaningful access to information and services for those persons with limited English proficiency. Agencies receiving federal funding are mandated to comply with these requirements. Information is available on the VDSS public website about the Department-wide Policy on Access for Individuals with Limited English Proficiency.

1.2.2 Services for Native American or Alaskan Eskimo children

All children who have Native American or Alaskan Eskimo heritage may also be subject to the Indian Child Welfare Act. In the event such a child is in imminent danger and does not live on a recognized reservation, the Child Protective Services worker has the authority to exercise emergency removal of the child. If an LDSS suspects or knows that the child who is the subject of the emergency removal is of American Indian or Alaskan Eskimo heritage, and the child belongs to a federally recognized tribe located outside Virginia, the LDSS shall contact the tribe. A list of recognized tribes and List of Indian Child Welfare Act Designates is provided by the U. S. Department of the Interior Bureau of Indian Affairs.

The LDSS must immediately contact the Child Protective Services Unit in the Division of Family Services before taking any action to place one of these children.

For further discussion of this issue see Appendix A: Indian Child Welfare Act (ICWA).

1.3 CPS guidance manual format

The CPS guidance manual, which is incorporated into the larger VDSS "Child and Family Services Manual," is organized in the following order:

Pertinent Code of Virginia sections are cited for easy reference, but usually not quoted verbatim – if it is quoted, it will be indented and denoted with a blue vertical line. The online version of this chapter provides linkages to the Code of Virginia and Virginia Administrative Code. Familiarity with and access to the laws of Virginia are important to the LDSS, because the CPS program is based on state and federal law.

The federal Child Abuse Prevention and Treatment Act (CAPTA) is one of the key pieces of legislation that guides child protection. CAPTA was signed into law in 1974 (P.L. 93-247). It was reauthorized in 1978, 1984, 1988, 1992, 1996, and 2003, and with

each reauthorization, amendments have been made to CAPTA that have expanded and refined the scope of the law. CAPTA was most recently reauthorized on December 20, 2010 by the CAPTA Reauthorization Act of 2010 *(P.L. 111-320, or 42 U.S.C. 5101 et seq.).*

The basis for government's intervention in child maltreatment is grounded in the concept of *parens patriae*—a legal term that asserts that government has a role in protecting the interests of children and in intervening when parents fail to provide proper care. It has long been recognized that parents have a fundamental liberty, protected by the Constitution, to raise their children as they choose. The legal framework regarding the parent-child relationship balances the rights and responsibilities among the parents, the child, and the State, as guided by Federal statutes. This parent/child relationship identifies certain rights, duties, and obligations, including the responsibility of the parents to protect the child's safety and well-being. If parents, however, are unable or unwilling to meet this responsibility, the State has the power and authority to take action to protect the child from harm. Over the past several decades, Congress has passed significant pieces of legislation that support the States' duty and power to act on behalf of children when parents are unable or unwilling to do so.

The Virginia Administrative Code has the impact of law for social services departments in Virginia. Regulations are approved by the State Board of Social Services and either restate law or provide clarification.

The four most relevant regulations for CPS are:

- 22 VAC 40-700-10 et seq. Child Protective Services Central Registry Information.
- 22 VAC 40-705-10 et seq. Child Protective Services Regulations.
- 22 VAC 40-720-10 et seq. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.
- 22 VAC 40-730-10 et seq. Investigation Of Child Abuse And Neglect In Out Of Family Complaints.

CPS guidance will follow the Code of Virginia and regulation to provide further guidance or explanation, if needed. At times, the Code of Virginia or CPS regulation will require no further explanation, so the Code of Virginia may only be cited, and/or the regulation provided, and no further guidance given. Anything written in *italics* indicates that it is new with this version of guidance.

Note that this guidance manual is set up to follow a logical sequence based upon how the CPS process proceeds with some generic issues at the beginning and end. There is additional information that supports best practice in the appendices of each section.

Additional information about CPS guidance:

- A transmittal will be issued when new guidance is developed usually in January and/or July of each year.
- The transmittal itself has two columns – the first column provides the section of guidance that has been revised, and the second column provides a brief description of the guidance revisions.
- Broadcasts advise the LDSS of transmittals reflecting changes and also provide other important, new information. These broadcasts are available on the DSS website. They should be reviewed and placed in your hard copy guidance manual.

1.4 CPS guidance development process

CPS guidance is based on the following:

- The Child Abuse Prevention and Treatment Act (CAPTA) is a federal law that lays the foundation for all state CPS programs.
- The Code of Virginia as enacted by the General Assembly builds on federal law and/or addresses issues unique to Virginia.
- The State Board of Social Services approves regulations.
- Best practice may dictate guidance changes.

While most guidance comes from law and regulation, VDSS continually receives input from local agencies. The CPS Advisory Committee is composed of local CPS staff who provide input and recommendations to the VDSS for CPS guidance. The VDSS also obtains information from three Citizens Review panels, which include the Child Fatality Review Team, Governor's Advisory Board on Child Abuse and Neglect, and the Court Appointed Special Advocate/Criminal Justice Act (CASA/CJA) Advisory Board.

The state regional CPS specialists provide case consultation and technical assistance to the LDSS, thus providing feedback from each region of the state. Check with your supervisor to determine how to access these specialists.

All CPS regulations are periodically reviewed and amended based on changes to the Code of Virginia as well as public comment. The VDSS issues a broadcast to announce the review of CPS regulations and the public comment period.

1.5 Uniform training plan for Child Protective Services workers

The Virginia Administrative Code mandates uniform training requirements for CPS workers and supervisors. The uniform training requirements establish minimum standards for all CPS workers and supervisors in Virginia.

> (22 VAC 40-705-180 A). The department shall implement a uniform training plan for child protective services workers and supervisors. The plan shall establish minimum standards for all child protective services workers and supervisors in the Commonwealth of Virginia.
>
> (22 VAC 40-705-180 B). Workers shall complete skills and policy training specific to child abuse and neglect investigations and family assessments within the first two years of their employment.
>
> (22 VAC 40-730-130). Requirements: A. In order to be determined qualified to conduct investigations in out of family settings, local CPS staff shall meet minimum education standards established by the department including: 1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and 2. Completion of out of family policy training.

1.5.1 Training requirements for CPS workers to conduct investigations and family assessments

All Child Protective Services staff who are designated to respond to reports of child abuse and neglect, or manage or supervise any CPS investigation or family assessment, shall complete the following as soon as possible after their hire date, but no longer than within their probationary period, or one year, whichever is longer.

1.5.1.1 First-year mandatory training requirements

- Complete CWS 2000 / Child Protective Services New Worker Policy / Guidance Training with OASIS within the first three months of performing CPS functions.
- Complete the following mandatory courses:
  - Course CWS 2011/Intake, Assessment and Investigation in Child Protective Services.
  - Course CWS 2021/Sexual Abuse.
  - Course CWS 2031/Sexual Abuse Investigations.
- Complete the following mandatory course, if providing CPS ongoing services:

- Course CWS 2010/Ongoing Services in Child Protective Services.

1.5.1.2 Second-year mandatory training requirements

The following required courses shall be completed by all CPS workers within one year after the first one-year period (within two years of the start of CPS employment with an LDSS):

- Course CWS 5305/ Advanced Interviewing: Motivating Families for Change
- Course DVS 1001/Understanding Domestic Violence.

  or

  Course DVS 1031/Domestic Violence and its Impact on Children pursuant to § 63.2-1502 of the Code of Virginia.
- Course CWS 2141/Out of Family Investigations – if conducting designated out of family investigations pursuant to 22 VAC 40-730-130.

1.5.1.3 Additional training requirements

In addition, the following courses shall be completed by all CPS workers and/or supervisors within one year after the first one-year period (within two years of the start of CPS employment with an LDSS) if a specific need is assessed by the worker and supervisor. Even when a specific need is not identified, the VDSS encourages workers to complete the following required courses:

- Course CWS 1002/Exploring Child Welfare (online).
- Course CWS 1011/Casework Process & Case Planning in Child Welfare.
- Course CWS 1021/Effects of Abuse & Neglect on Child and Adolescent Development.
- Course CWS 1031/Separation and Loss Issues in Human Service.
- Course CWS 1051/Crisis Intervention.
- Course CWS 4010/ Transformation: Promoting Change by Valuing and Engaging Families (online).
- Course CWS 4020/ Introduction to Virginia's Family Partnership Meetings.

- Course CWS 5307/Assessing Safety, Risk and Protective Capacities in Child Welfare.

- Course CWS 5011/Case Documentation.

1.5.1.4 Additional training requirement for CPS supervisors

In accordance with 22 VAC 40-705-180 A, which became effective March 4, 2009, the following course shall be completed by CPS supervisors hired after July 1, 2010:

- Course CWS 5701/Child Welfare Supervision

Senior workers who supervise CPS are encouraged to attend as well.

1.5.2 LDSS must ensure worker compliance

It is the responsibility of the LDSS to ensure that staff performing CPS duties within their agency have met the minimum standards.

1.5.2.1 Direct supervision required when new worker is conducting investigation of sexual abuse allegation

Direct supervision of new CPS staff during sexual abuse investigations must be provided by a supervisor or an experienced CPS worker who has completed the minimum training requirements. Direct supervision requires a close review of all investigation and disposition decisions made in the process of the investigation including documentation of the review.

1.5.3 Training for staff not designated as CPS but performing CPS functions

The following course must be completed by local service workers who provide intake functions or respond to reports of abuse or neglect only during nights or weekends while "on call" and were hired after July 1, 2012:

- *CWS 2000 / Child Protective Services New Worker Policy/Guidance Training with OASIS.*

1.6 Multidisciplinary teams

Child Protective Services are best provided in the context of community-based collaboration and support. The Code of Virginia § 63.2-1503 J provides the statutory authority for The LDSS to develop multidisciplinary teams. 22 VAC 40-705-150 E provides regulatory authority for an LDSS to support the development of multidisciplinary teams.

> (22 VAC 40-705-150 E). Local departments shall support the establishment and functioning of multidisciplinary teams pursuant to § 63.2-1503 J of the Code of Virginia.

The purpose of multidisciplinary teams shall be to promote, advocate, and assist in the development of a coordinated service system directed at the early diagnosis, comprehensive treatment, and prevention of child abuse and neglect. It is the responsibility of the director or superintendent of the LDSS to foster the creation and coordination of multidisciplinary teams either personally or through his designee. Functions of multidisciplinary teams shall include:

- Identifying abused and neglected children.
- Coordinating medical, social and legal services for the children and their families.
- Helping to develop innovative programs for detection and prevention of child abuse and neglect.
- Promoting community concern and action in the area of child abuse and neglect.
- Disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat abuse and neglect.

1.6.1 Composition of multidisciplinary teams

The Virginia Administrative Code provides the regulatory framework for the composition of multidisciplinary teams:

> (22 VAC 40-705-10). "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 § 63.2-1503 J of the Code of Virginia. Citizen representatives may also be included.

1.6.2 Family assessment and planning teams

The Code of Virginia § 63.2-1503 J also provides that family assessment and planning teams established by a locality may be considered multidisciplinary teams.

1.6.3 Investigation consultation multidisciplinary teams

The Code of Virginia § 63.2-1503 K allows multidisciplinary teams to provide consultation and assistance in conducting investigations. Multidisciplinary teams can provide better coordination between the professionals who are involved in complicated and serious CPS investigations to help avoid repeated interviews of a child.

1.6.4 Cooperation and exchange of information between the LDSS and multidisciplinary teams

The Code of Virginia § 63.2-1503 J establishes statutory authority for The LDSS to develop agreements that govern the work of the multidisciplinary teams including the exchange of information among team members. LDSS are encouraged to develop written protocols for the operation of local multidisciplinary teams.

Multidisciplinary teams involved in case consultation can have access to confidential case information. All members of a multidisciplinary team abide by laws and policies related to confidentiality. More information about confidentiality and CPS can be found in the Section 9, Confidentiality, of this manual.

1.7 Family partnership meetings

Family engagement is a relationship focused approach that provides structure for decision making that empowers both the family and the community in the decision making process. Family partnership meetings are grounded by value-driven principles that include:

- All families have strengths.
- Families are the experts on themselves.
- Families deserve to be treated with dignity and respect.
- Families can make well-informed decisions about keeping their children safe when supported.
- Outcomes improve when families are involved in decision making.
- A team is often more capable of creative and high quality decision making than an individual.

Family partnership meetings may be held any time to solicit family input regarding safety, services and permanency planning; however, for every family involved with the child welfare agency these are the decision points at which a family partnership meeting should be held:

- Once a CPS investigation or family assessment has been completed and the family is identified as “very high” or “high” risk and the child is at risk of out of home placement.
- Prior to removing a child, whether emergency or considered.

- Prior to any change of placement for a child already in care, including a disruption in the adoptive placement.
- Prior to a change of goal.
- When requested by parent (birth, foster, adoptive or legal guardian), youth, or service worker.

The worker and supervisor should discuss the convening and timing of a family partnership meeting at these critical decision points. All family partnership meetings must be documented in the automated data system. For more guidance regarding family partnership meetings, please refer to the Family Engagement manual at the following locations:

DSS internal website

DSS public website

Course CWS4030 – Facilitator Training for Virginia's Family Partnership Meetings is designed for individuals within the locality that will be responsible for facilitating family partnership meetings.

1.8 Structured Decision Making

Structured Decision Making (SDM) is a process that uses a set of research and evidence-based assessment tools to help case workers make appropriate decisions at key stages in the child welfare process, from screening referrals to closing cases. When partnered with clinical judgment and supervision, these tools are designed to increase the consistency of casework decisions and improve the validity of those decisions, thereby better protecting children from harm. The assessment tools apply to all CPS decisions, with the exception of out-of-family reports, which only require the use of the Intake Tool. The assessment tools must be completed in the automated data system. When accessed via the automated data system, each assessment tool has definitions available that assist the worker with making the best choices on the tool. It is critical that workers refer to the definitions in the tools for consistency in completing the tools. Guidance on when to use each tool is offered in subsequent parts of this manual.

1.9 Appendix A: Indian Child Welfare Act (ICWA)

1.9.1 Public Law 95-608, Indian Child Welfare Act of 1978

1.9.1.1 Background

Under this Federal Act, passed in 1978, Indian Tribes were granted extensive jurisdiction in child welfare cases involving Indian children, recognizing "that there is no resource that is more vital to the continued existence and integrity of Indian Tribes than their children." Please refer to the Department of the Interior Bureau of Indian Affairs or the National Indian Child Welfare Association for more information on ICWA.

1.9.1.2 Purpose

The ICWA was enacted to prevent the continued removal by state agencies, courts and private agencies of large numbers of Indian children from their families and their culture.

1.9.1.2.1 Overview

The Act "established minimum standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture."

1.9.1.3 Applicable children

These are all children who have Native American or Alaskan Eskimo, or Aleut heritage of a federally recognized tribe. Federally recognized tribes are listed each year in the Federal Register. The most recent Federal Register 2010 List of Indian Child Welfare Act Designates is located on the Bureau of Indian Affairs website. Because Virginia has no federally recognized tribes, a child belonging to a Virginia tribe is not currently subject to the Indian Child Welfare Act.

1.9.1.4 Responsibilities of LDSS workers

If such a child belongs to a tribe located outside Virginia, does not live on a recognized reservation (there are no federally recognized tribal reservations in Virginia), and is in imminent danger, the Child Protective Service worker has the authority to exercise summary removal.

- An LDSS may temporarily place a child.
- The LDSS shall immediately contact the Bureau of Indian Affairs Eastern Regional Office by telephone (615-564-6740) (Gloria York, 615-564-

6740) or via its website for guidance on ICWA for notification procedures of the proper tribe.

1.9.1.5 ICWA applies to four types of custody proceedings

The ICWA applies to four types of Indian child custody proceedings, to include foster care placements, termination of certain parental rights, pre-adoption placements, and adoption placements.

1.9.1.6 Placing Indian child in foster care

According to the ICWA, when an Indian child is placed in foster care, the placement agency or party shall place the child (in the absence of good cause to deviate) with

- A member of the Indian child's extended family (including non-Indian members of the family);
- A foster home licensed or approved by the child's tribe;
- An Indian foster home licensed or approved by a non-Indian agency or authority; or
- An institution for children that has the approval of an Indian tribe.

1.9.1.7 Indian tribal courts maintain exclusive jurisdiction over Indian children living on reservations

The ICWA vests Indian tribal courts with exclusive jurisdiction over Indian Children who live on federally recognized Indian reservations.

1.10 Appendix B: Virginia tribes (not subject to ICWA)

1.10.1 Treaty of 1677

Virginia tribes are organized as chartered corporations and their recognition from the state dates to their treaty with the Colony of Virginia in 1677. These tribes are eligible for federal recognition, and it is expected that federal recognition may be granted.

1.10.2 Federal funding for Virginia tribes

Virginia tribes do benefit from federal funds for education and community development the same as do federally recognized tribes.

1.10.3 Specific Virginia tribes recognized by the Commonwealth of Virginia

Virginia tribes include the Chickahominy, Eastern Chickahominy, Mattaponi, Monacan, Nansemond, Pamunkey, Rappahannock, and Upper Mattaponi.

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DEFINITIONS OF ABUSE AND NEGLECT

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DEFINITIONS OF ABUSE AND NEGLECT

3.1 Introduction

The statutory and regulatory authority establishing the foundation for the categories of abuse and neglect are found in Chapter 15 of the Code of Virginia and 22 VAC 40-705-30 of the Virginia Administrative Code. This section also contains footnotes of relevant court decisions impacting the definition of abuse and neglect for the CPS program.

The Virginia Administrative Code defines abuser or neglector as:

> (22 VAC 40-705-10). "Abuser or Neglector" means any person who is found to have committed the abuse and/or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

The Virginia Administrative Code establishes five (5) categories of abuse or neglect, including:

- Physical abuse.
- Physical neglect.
- Medical neglect.
- Mental abuse or neglect.
- Sexual abuse.

3.2 Injury and threat of injury or harm to a child

Inherent within each category of abuse or neglect is an actual injury or the existence of a threat of an injury or harm to the child. Although there are five categories of abuse or neglect, there are only two kinds of injuries possible; an injury may be a physical injury or a mental injury. Also, an injury may be an actual injury or a threatened injury. The threat of injury has been upheld by the courts.[1]

The CPS worker must consider the circumstances surrounding the alleged act or omission by the caretaker influencing whether the child sustained an injury or whether there was a threat of an injury or of harm to the child. The evidence may establish circumstances that may create a threat of harm.

3.3 Physical abuse

3.3.1 Statutory and regulatory definition

The Code of Virginia § 63.2 -100 provides the statutory definition of physical abuse. The Virginia Administrative Code provides the same definition of physical abuse:

> (22 VAC 40-705-30 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, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248 of the Code of Virginia.

3.3.2 Types of physical abuse

The types of physical abuse include but are not limited to:

3.3.2.1 Asphyxiation

Asphyxiation means being rendered unconscious as a result of oxygen deprivation.

[1] "[T]he statutory definitions of an abused or neglected child do not require proof of actual harm or impairment having been experienced by the child. The term 'substantial risk' speaks in futuro." *Jenkins v. Winchester Dep't of Soc. Servs.*, 12 Va. App. 1178, 1183, 409 S.E.2d 16, 19 (1991). "The Commonwealth's policy is to protect abused children and to prevent further abuse of those children. This policy would be meaningless if the child must suffer an actual injury from the behavior of his or her parent . . . . [T]he statute [does not] impose such trauma upon a child." *Jackson v. W.*, 14 Va. App. 391, 402, 419 S.E.2d 385, 391 (1992).

3.3.2.2 Bone fracture

- Chip fracture. A small piece of bone is flaked from the major part of the bone.
- Simple fracture. The bone is broken, but there is no external wound.
- Compound fracture. The bone is broken, and there is an external wound leading down to the site of fracture or fragments of bone protrude through the skin.
- Comminuted fracture. The bone is broken or splintered into pieces.
- Spiral fracture. Twisting causes the line of the fracture to encircle the bone in the form of a spiral.

3.3.2.3 Head injuries

- Brain damage. Injury to the large, soft mass of nerve tissue contained within the cranium or skull.
- Skull fracture. A broken bone in the skull.
- Subdural hematoma. A swelling or mass of blood (usually clotted) caused by a break in a blood vessel located beneath the outer membrane covering the spinal cord and brain.

3.3.2.4 Burns/scalding

- Burn. Tissue injury resulting from excessive exposure to thermal, chemical, electrical or radioactive agents.
- Scald. A burn to the skin or flesh caused by moist heat from vapors or steam.

The degree of a burn must be classified by a physician and is usually classified as:

- First degree. Superficial burns, damage being limited to the outer layer of skin, scorching or painful redness of the skin.
- Second degree. The damage extends through the outer layer of the skin into the inner layers. Blistering will be present within 24 hours.
- Third degree. The skin is destroyed with damage extending into underlying tissues, which may be charred or coagulated.

3.3.2.5 Cuts, bruises, welts, abrasions

- Cut. An opening, incision, or break in the skin.
- Bruise. An injury that results in bleeding within the skin, where the skin is discolored but not broken.
- Welt. An elevation on the skin produced by a lash or blow. The skin is not broken.
- Abrasions. Areas of the skin where patches of the surface have been scraped off.

3.3.2.6 Internal injuries

An injury that is not visible from the outside, such as an injury to the organs occupying the thoracic or abdominal cavities.

3.3.2.7 Poisoning

Ingestion, inhalation, injection, or absorption of any substance given to a child that interferes with normal physiological functions. The term poison implies an excessive amount as well as a specific group of substances. Virtually any substance can be poisonous if consumed in sufficient quantity.

3.3.2.8 Sprains/dislocation

- Sprain. Trauma to a joint which causes pain and disability depending upon the degree of injury to ligaments. In a severe sprain, ligaments may be completely torn.
- Dislocation. The displacement of a bone from its normal position in a joint.

3.3.2.9 Gunshot wounds

Wounds resulting from a gunshot.

3.3.2.10 Stabbing wounds

Wounds resulting from a stabbing.

3.3.2.11 Munchausen syndrome by proxy

A condition characterized by habitual presentation for hospital treatment of an apparent acute illness, the patient giving a plausible and dramatic history, all of which is false.[2] Munchausen syndrome by proxy occurs when a parent or guardian falsifies a child's medical history or alters a child's laboratory test or actually causes an illness or injury in a child in order to gain medical attention for the child, which may result in innumerable harmful hospital procedures.[3] This classification must be supported by medical evidence.

3.3.2.12 Bizarre discipline

Bizarre discipline means any actions in which the caretaker uses eccentric, irrational, or grossly inappropriate procedures or devices to modify the child's behavior. The caretaker's actions must result in physical harm to the child or create the threat of physical harm to the child.

Bizarre discipline is also a type of mental abuse or neglect.

3.3.2.13 Abusive Head Trauma, traumatic inflicted brain injury, or shaken baby syndrome; battered child syndrome

Abusive Head Trauma, also known as traumatic inflicted brain injury or shaken baby syndrome, and battered child syndrome are caused by non-accidental trauma.

- Abusive Head Trauma, also known as traumatic inflicted brain injury or shaken baby syndrome, is a medical diagnosis that must be made by a physician. This type of injury occurs during violent shaking of an infant or young child causing the child's head to whip back and forth. The shaking causes the child's brain to move about, causing blood vessels in the skull to stretch and tear. The child may suffer one or several of the following injuries: retinal hemorrhages; subdural or subarachnoid hemorrhages; cerebral contusions; skull fracture; rib fractures; fractures in the long bones and limbs; metaphyseal fractures; axonal shearing (tearing of the brain tissue); and cerebral edema (swelling of the brain). The absence of external injury does not rule out a diagnosis of shaken baby syndrome.

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[2] Dorland's Illustrated Medical Dictionary 1295 (26th ed. 1981).

[3] Zumwalt & Hirsch, Pathology of Fatal Child Abuse and Neglect, in Child Abuse and Neglect 276 (R. Helfer & R. Kempe eds., 4th ed. 1987).

- Battered child syndrome refers to a "constellation of medical and psychological conditions of a child who has suffered continuing injuries that could not be accidental and are therefore presumed to have been inflicted by someone close to the child, usually a caregiver. Diagnosis typically results from a radiological finding of distinct bone trauma and persistent tissue damage caused by intentional injury, such as twisting or hitting with violence."[4] The battered child syndrome "exists when a child has sustained repeated and/or serious injuries by non-accidental means."[5] Battered child syndrome must be diagnosed by a physician.

  Presenting signs and symptoms of this type of injury include: irritability, convulsions, seizures, lethargy or altered level of consciousness, coma, respiratory problems, vomiting, and death.[6]

3.3.2.14 Exposure to sale or manufacture of certain controlled substances

The sale of drugs by a caretaker in the presence of a child can pose a threat to the child's safety. Manufacturing drugs, especially in methamphetamine laboratories, can expose children to serious toxins. There is more information about specific toxins in the appendix [appendix in section 4] as well as information about Schedule 1 and Schedule 2 drugs on the Department of Justice website.

CPS reports alleging this type of physical abuse shall be reported to the Commonwealth Attorney and to local law enforcement. The CPS worker should not be the first responder to a setting where the manufacture of drugs is suspected.

There is a sample protocol for a joint response to these reports with local law enforcement and emergency personnel in the appendix [section 4].

3.3.2.15 Other physical abuse

Most types of physical abuse of a child can be defined in one of the above types. However, if the child has suffered a type of physical abuse that is not one of the above specified types, the CPS worker may document the type as Other Abuse and specifically describe the type of physical abuse.

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4 Black's Law Dictionary, 172 (9th ed. 2009).

5 *Estelle v. McGuire*, 502 U.S. 62 (1991).

6 Monteleone, Dr. James A., and Dr. Armand E. Brodeur, *Child Maltreatment: A Clinical Guide and Reference*, 14-16 (G.W. Medical Publishing 1994).

3.3.3 Substantial risk of death, disfigurement, or impairment of bodily functions

The CPS worker may determine that a physical abuse definition has been met when the information collected during the family assessment or investigation establishes that the caretaker created a substantial risk of death, disfigurement, or impairment of bodily functions.

3.4 Physical neglect

3.4.1 Statutory and regulatory definition

The Code of Virginia § 63.2-100 provides the statutory foundation for the definition of physical neglect. The Virginia Administrative Code provides the regulatory definition for physical neglect:

> (22 VAC 40-705-30 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 or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2 –100 of the Code of Virginia. This also includes a child under the age of 18 whose parent or other person responsible for his care knowingly leaves the child alone in the same dwelling as a person, not related by blood or marriage, who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.
>
> (22 VAC 40-705-30 B1). Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

3.4.2 Types of physical neglect

The types of physical neglect include but are not limited to:

3.4.2.1 Abandonment

Abandonment means conduct or actions by the caretaker implying a disregard of caretaking responsibilities. Such caretaker actions or conduct includes extreme lack of interest or commitment to the child, or leaving the child without a caretaker and without making proper arrangements for the care of the child and with no plan for the child's care, or demonstrating no interest or intent of returning to take custody of the child.

The Code of Virginia §§ 18.2-371, 40.1-103, 8.01-226.5:2, and 63.2-910.1 provide immunity from liability to hospital and rescue squad staff who receive an abandoned infant and provide an affirmative defense in the criminal and civil statutes to any parent who is prosecuted as a result of leaving an infant with these personnel. Hospital and rescue squad staffs are still expected to report these instances of child abandonment and the LDSS is required to respond to these reports of child abandonment. Even though these statutes allow an affirmative defense for a parent abandoning her infant under certain conditions, this action still meets the definition of abandonment for a CPS response.

3.4.2.2 Inadequate supervision

The child has been left in the care of an inadequate caretaker or in a situation requiring judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate. Inadequate supervision includes minimal care or supervision by the caretaker resulting in placing the child in jeopardy of sexual or other exploitation, physical injury, or results in status offenses, criminal acts by the child, or alcohol or drug abuse.

3.4.2.3 Inadequate clothing

Failure to provide appropriate and sufficient clothing for environmental conditions or failure to provide articles of proper fit that do not restrict physical growth and normal activity.

3.4.2.4 Inadequate shelter

Failure to provide protection from the weather and observable environmental hazards, which have the potential for injury or illness, in and around the home.

3.4.2.5 Inadequate personal hygiene

Failure to provide the appropriate facilities for personal cleanliness to the extent that illness, disease or social ostracism has occurred or may occur. In the case of a young child, the caretaker must not only provide such facilities but also make use of them for the child.

3.4.2.6 Inadequate food

Failure to provide and ensure an acceptable quality and quantity of diet to the extent that illness, disease, developmental delay, or impairment has occurred or may result.

3.4.2.7 Malnutrition

Chronic lack of necessary or proper nutrition in the body caused by inadequate food, lack of food, or insufficient amounts of vitamins or minerals. This condition requires a medical diagnosis.

3.4.2.8 Knowingly leaving a child with a person required to register as violent sex offender

The following three elements are required for this type of physical neglect:

- The parent has knowingly left the child alone with a person not related by blood or marriage.
- That person has been convicted of an offense against a minor.
- That person is required to register as a violent sexual offender pursuant to the Code of Virginia § 9.1-902.

Some of the offenses for which registration as a violent sexual offender include:

- Abduction with intent to defile.
- Rape.
- Forcible sodomy.
- Object sexual penetration.
- Aggravated sexual battery.
- Sexual battery where the perpetrator is 18 years of age or older and the victim is under the age of six.
- Taking indecent liberties with children.
- Taking indecent liberties with child by person in custodial or supervisory relationship.

In addition, the Code of Virginia requires registration as a violent sexual offender of persons who have committed certain offenses multiple times.

To determine if the report should be validated for this type of physical neglect, the CPS worker must determine if the person is required to register as a violent sexual offender on the Virginia State Police Sex Offender and Crimes Against Minors Registry. This registry provides a complete list of offenses and the specific section of the Code of Virginia for which registration as a Sex Offender

is required. Each registered offender's web profile will identify the person as either a Violent Sexual Offender or Sexual Offender. In this definition, the alleged abuser is the child's parent or other caretaker who has left the child with a person, not related by blood or marriage, required to register as a violent sex offender.

If the allegations do not meet this specific definition of physical neglect/leaving child with a known sex offender, the LDSS should evaluate the information to determine if the report should be validated as physical neglect/inadequate supervision by the child's parent or guardian. A child may still be at risk of abuse or neglect by a person who is required to register on the Sex Offender and Crimes Against Minors Registry, but who is not identified as a violent sex offender or who is related to the child by blood or marriage.

If in the course of responding to the physical neglect report, there is reason to suspect the child has been sexually abused, the local worker must enter a separate CPS referral into the automated data system for the sex abuse allegation, the alleged abuser and victim. Refer to Section 3, Complaints and Reports, for new allegations in an existing referral. Sexual abuse complaints shall be placed in the Investigation Track.

3.4.2.9 Failure to thrive

> (22 VAC 40-705-30 B 2 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.
>
> (22 VAC 40-705-30 B 2 b). Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

Failure to thrive describes several conditions in infants and children. Failure to thrive can be caused by a number of medical problems. In some children, failure to thrive can be caused by extreme neglect. Failure to thrive describes the malnourished and depressed condition of infants, implying not only growth deficits, but also disorders of behavior and development. Failure to thrive is classified as organic failure to thrive or nonorganic failure to thrive. Only nonorganic failure to thrive is considered to be a type of physical neglect or mental neglect. For a further discussion about failure to thrive, see Appendix B: Failure to thrive syndrome.

3.4.2.10 Other physical neglect

Most types of physical neglect a child has suffered can be defined in one of the above types. However, if the child has suffered a type of physical neglect that is not one of the above specified types, the CPS worker may document the type as Other Physical neglect and specifically describe the type of physical neglect.

3.4.3 Family poverty and lack of resources

> (22 VAC 40-705-30 B). 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.

The LDSS should not render a founded disposition of physical neglect when the neglect resulted from poverty and a lack of available resources. If the neglect resulted from poverty, then the LDSS may provide services in lieu of making a founded disposition. However, in situations where resources are available, a founded disposition may be warranted if, after appropriate services are offered, the caretakers still refuse to accept.

3.4.3.1 Multiple occurrences or one-time incident

> (22 VAC 40-705-30 B1). Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

3.5 Medical neglect

3.5.1 Statutory and regulatory definition

The statutory foundation for the definition of medical neglect can be found in the Code of Virginia § 63.2-100. The regulatory definition of medical neglect follows:

> (22 VAC 40-705-30 C). Medical neglect occurs when there is the failure by the caretaker to obtain and 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 § 63.2-100 of the Code of Virginia. However a decision by parents or other persons legally responsible for the child to refuse a particular medical treatment for a child with life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person legally responsible for the child and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person legally responsible for the child and the child have considered alternative treatment options; and (iv) the parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest. Medical neglect also includes withholding of medically indicated treatment.

Parents and caretakers have a legal duty to support and maintain their children, including the provision of necessary medical care. Preventive health care, such as obtaining immunizations and well-baby check-ups, is a matter of parental choice.

Failure to obtain preventive health care for children does not constitute medical neglect.

3.5.2 Types of medical neglect

Medical neglect includes the caretaker failing to obtain immediate necessary medical, mental or dental treatment or care for a child. Medical neglect also includes when the caretaker fails to provide or allow necessary emergency care in accordance with recommendations of a competent health care professional.

3.5.2.1 Emergency medical care or treatment

Medical neglect includes a caretaker failing to obtain necessary emergency care or treatment. Cases of acute illness are usually considered emergencies. The clearest examples involve life-saving medical care or treatment for a child.

Other examples include parents refusing to allow a blood transfusion to save a child in shock, or parents refusing to admit a severely dehydrated child to the hospital. Medical neglect includes any life-threatening internal injuries and the parents or caretakers do not seek or provide medical treatment or care. Additional examples include, but are not limited to, situations where the child sustains a fracture, a severe burn, laceration, mutilation, maiming, or the ingestion of a dangerous substance and the caretaker fails or refuses to obtain care or treatment.

3.5.2.2 Necessary medical care or treatment

Medical neglect includes a caretaker failing to provide or allow necessary treatment or care for a child medically at risk with a diagnosed disabling or chronic condition, or disease. Such cases may involve children who will develop permanent disfigurement or disability if they do not receive treatment. Examples include children with congenital glaucoma or cataracts, which will eventually develop into blindness if surgery is not performed; a child born with a congenital anomaly of a major organ system.

Another example: Caretaker fails to provide or allow necessary treatment or care for a child medically diagnosed with a disease or condition. Diseases or conditions include, but are not limited to, those requiring continual monitoring, medication or therapy, and are left untreated by the parents or caretakers. Children at greatest medical risk are those under the care of a sub-specialist.

For example, a child has a serious seizure disorder and parents refuse to provide medication; parents' refusal places child in imminent danger. Another example: When a child with a treatable serious chronic disease or condition has frequent hospitalizations or significant deterioration because the parents ignore medical recommendations.

3.5.2.3 Necessary dental care or treatment

Medical neglect includes a caretaker's failure to provide or allow necessary dental treatment or care for a child. Necessary dental care does not include preventive dental care.

3.5.2.4 Necessary mental care or treatment

Medical neglect includes a caretaker failure to provide or allow necessary mental treatment or care for a child who may be depressed or at risk for suicide.

3.5.2.5 Other medical neglect

Most types of medical neglect a child may suffer can be defined in one of the above types. However, if the child has suffered a type of medical neglect that is not one of the above specified types, the CPS worker may document the type as Other Medical Neglect and specifically describe the type of medical neglect.

3.5.3 Factors to consider when determining if medical neglect definition has been met

It is the parent's responsibility to determine and obtain appropriate medical, mental and dental care for a child. What constitutes adequate medical treatment for a child must be decided on its own particular facts. The focus of the CPS response is whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

3.5.3.1 Treatment or care must be necessary

The statutory definition of medical neglect requires that the caretaker neglects or refuses to provide necessary care for the child's health. Therefore, the LDSS must establish that the caretaker's failure to follow through with a complete regimen of medical, mental, or dental care for a child was necessary for the child's health. The result of the caretaker's failure to provide necessary care could be illness or developmental delays.

The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well being but is not essential to life, the issue becomes more complicated in determining whether the medical care is necessary.

3.5.3.2 Parent refuses treatment for life-threatening condition

Pursuant to the Code of Virginia § 63.2-100, a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care when all the following conditions are met:

- The decision is made jointly by the parents or other person legally responsible for the child and the child.
- The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment.
- The parents or other person legally responsible for the child and the child have considered alternative treatment options.
- The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

(22 VAC 40-705-10). "Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

3.5.4 Child under alternative treatment

> (22 VAC 40-705-30 C1). 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 § 63.2-100 of the Code of Virginia, shall not for that reason alone be considered a neglected child.

The Code of Virginia provides that no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal child abuse and neglect.[7] This exemption means that a founded disposition cannot be based only upon the religious practices of the parents or caretakers. A founded disposition can be rendered for other reasons. For example, if the parent caused the injury in the first place, the religious exemption would not apply. The religious exemption to a founded disposition of abuse or neglect is designed to protect a family's right to freedom of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.[8]

Should there be a question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the LDSS should seek the court's assistance. The court should decide whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

3.5.5 Medical neglect of infants with life-threatening conditions

The Virginia Administrative Code 22 VAC 40-705-30 C states that medical neglect includes withholding of medically indicated treatment. The definition section of 22 VAC 40-705-10 et seq. defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the LDSS must be aware of the ancillary definitions and guidance requirements.

> (22 VAC 40-705-10). "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

7 See Code of Virginia § 18.2-371.1 C. Any parent, guardian or other person having care, custody, or control of a minor 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 shall not, for that reason alone, be considered in violation of this section.

8 The United States Supreme Court held in 1944 that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

physicians' reasonable medical judgment will be most likely to be effective in ameliorating or correcting all such conditions.

This definition applies to situations where parents do not attempt to get a diagnosis even when the child's symptoms are severe and observable.

3.5.5.1 Withholding of medically indicated treatment when treatment is futile

(22 VAC 40-705-30 C2). 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

(4) 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.

3.5.5.2 Definitions of chronically and irreversibly comatose and terminal condition

(22 VAC 40-705-10). "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.

(22 VAC 40-705-10). "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.

3.6 Mental abuse or mental neglect

3.6.1 Statutory and regulatory authority

The Code of Virginia § 63.2-100 defines abused or neglected child. The Virginia Administrative Code defines mental abuse or neglect.

> (22 VAC 40-705-30 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 such child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.

3.6.2 Caretaker's actions or omissions

Mental abuse or mental neglect includes acts or omissions by the caretaker resulting in harm to a child's psychological or emotional health or development. As a result of the caretaker's action or inaction, the child demonstrates or may demonstrate psychological or emotional dysfunction.

Mental abuse or mental neglect may result from caretaker actions or inactions such as: overprotection, ignoring, indifference, rigidity, apathy, chaotic lifestyle, or other behaviors related to the caretaker's own mental problems.

Mental abuse or mental neglect may result from caretaker behavior, which is rejecting, chaotic, bizarre, violent, or hostile. Such behavior may include bizarre discipline. Bizarre discipline means any actions in which the caretaker uses eccentric, irrational or grossly inappropriate procedures or devices to modify the child's behavior. The consequence for the child may be mental injury or the denial of basic physical necessities or the threat of mental injury or denial of basic physical necessities.

Mental abuse or mental neglect includes the caretaker verbally abusing the child resulting in mental dysfunction. The caretaker creates a climate of fear, bullies and frightens the child. The caretaker's actions include patterns of criticizing, intimidating, humiliating, ridiculing, shouting or excessively guilt producing. Such behavior by the caretaker may result in demonstrated dysfunction by the child or the threat of harm to the child's mental functioning.

Mental abuse or mental neglect may also include incidents of domestic violence when the domestic violence may result in demonstrated dysfunction by the child or the threat of dysfunction in the child's mental functioning.

3.6.3 Professional documentation required for mental abuse or mental neglect

When making a founded disposition of mental abuse or mental neglect, the CPS worker must obtain professional documentation supporting a nexus between the actions or inactions of the caretaker and the mental dysfunction demonstrated by the child or the threat of mental dysfunction in the child. Professional documentation may include psychiatric evaluations or examinations, psychological evaluations or examinations, written summaries and letters. Professional documentation may be authored by psychiatrists, psychologists, Licensed Professional Counselors (L.P.C.) and Licensed Clinical Social Workers (L.C.S.W.), or any person acting in a professional capacity and providing therapy or services to a child or family in relationship to the alleged mental abuse. An employee of the LDSS may not serve as both the CPS investigator and the professional who documents mental abuse or mental neglect.

Failure to thrive describes several conditions in infants and children. Failure to thrive can be caused by a number of medical problems. In some children, failure to thrive can be caused by extreme neglect. Failure to thrive describes the malnourished and depressed condition of infants, implying not only growth deficits, but also disorders of behavior and development. Failure to thrive is classified as organic failure to thrive or nonorganic failure to thrive. Only nonorganic failure to thrive is considered to be a type of physical neglect or mental neglect. For a further discussion about failure to thrive, see Appendix B: Failure to thrive syndrome.

3.6.4 Organic failure to thrive

> (22 VAC 40-705-30 D1). 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.
>
> (22 VAC 40-705-30 D2). Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.

Failure to thrive is used to designate growth failure both as a symptom and as a syndrome.[9] As a symptom, it occurs in early childhood with a variety of acute or chronic illnesses that are known to interfere with normal nutrient intake, absorption, metabolism, or excretion, or to result in greater-than-normal energy requirements to sustain or promote growth. In these instances, it is referred to as organic failure to thrive and is not considered to be a child abuse or neglect.

[9] Berkow, M.D., Robert, Andrew J. Fletcher, M.B., Mark H. Beers, M.D., and Anil R. Londhe, Ph.D., Internet Edition-The Merck Manual, *Section 15, Pediatrics and Genetics, 191. Developmental Problems,* (17th ed. 1992).

3.6.5 Nonorganic failure to thrive

Nonorganic failure to thrive is considered to be physical neglect or mental abuse or neglect. Nonorganic failure to thrive most commonly refers to growth failure in the infant or child who suffers from environmental neglect or stimulus deprivation.[10] Nonorganic failure to thrive generally indicates the absence of a physiologic disorder sufficient to account for the observed growth deficiency.

Most children with nonorganic failure to thrive will manifest growth failure before one year of age, and in many children growth failure will become evident by 6 months of age. Nonorganic failure to thrive may be due to impoverishment, poor understanding of feeding techniques, improperly prepared formula, or inadequate supply of breast milk. Nonorganic failure to thrive is an interactional disorder in which parental expectations, parental skills and the home environment are intertwined with the child's development.[11] If left untreated, failure to thrive can lead to restricted growth and mental development. In extreme cases, it can be fatal.

3.6.5.1 Establish nexus with caretaker's action or inaction and the nonorganic failure to thrive

When making a disposition, the CPS worker must establish a link between the caretaker's actions or inactions and the fact that the child suffers from nonorganic failure to thrive.

When responding to an allegation of failure to thrive, the LDSS should consider whether the caretaker sought accredited medical assistance and was aware of the seriousness of the child's affliction. The LDSS should consider whether the parents or caretakers provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances.

3.7 Sexual abuse

3.7.1 Statutory and regulatory definition

The Code of Virginia § 63.2-100 defines abuse and neglect.

> (22 VAC 40-705-30 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 § 63.2-100 of the Code of Virginia.

[10] Id.

[11] Monteleone, Dr. James A., and Dr. Armand E. Brodeur, *Child Maltreatment: A Clinical Guide and Reference*, 14-16 (G.W. Medical Publishing 1994).

The above regulatory definition includes any sexual act upon a child that violates the Code of Virginia. Although there is a definition of criminal sexual abuse in § 18.2-67.10 6, the CPS worker should consult with the local Commonwealth's Attorney or law enforcement. For a discussion about physical evidence and child sexual abuse, please see Appendix D: Sexual abuse.

3.7.2 Types of sexual abuse

All CPS sexual abuse reports shall be investigated. The types of sexual abuse include but are not limited to:

3.7.2.1 Sexual exploitation

Sexual exploitation includes but is not limited to:

- The caretaker of the child allowing, permitting or encouraging a child to engage in prostitution as defined by the Code of Virginia.

- The caretaker of the child allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child engaging in any sexual act as defined by the Code of Virginia.

3.7.2.2 Other sexual abuse

Most types of sexual abuse a child may suffer can be defined in one of the specified types. However, if the child has suffered a type of sexual abuse that is not one of the specified types, the CPS worker may document the type as Other Sexual Abuse and specifically describe the type of sexual abuse. Other sexual abuse may include, but is not limited to:

- Indecent solicitation of a child or explicit verbal or written enticement for the purpose of sexual arousal, sexual stimulation or gratification.

- Exposing the male or female genitals, pubic area or buttocks, the female breast below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state to a child for the purpose of sexual arousal or gratification.

- Forcing a child to watch sexual conduct.

  "Sexual conduct" includes actual or explicitly simulated acts of masturbation, sodomy, sexual intercourse, bestiality, or physical contact in an act of apparent sexual stimulation or gratification with a person's clothed or unclothed genitals, pubic area, buttocks, or breast.

- Pursuant to § 18.2-370.6 of the Code of Virginia, French kissing a child younger than 13 years of age by an adult caretaker.

3.7.2.3 Sexual molestation

Sexual molestation means an act committed with the intent to sexually molest, arouse, or gratify any person, including, but not limited to:

- The caretaker intentionally touches the child's intimate parts or clothing directly covering such intimate parts.
- The caretaker forces the child to touch the caretaker's, or another person's intimate parts or clothing directly covering such intimate parts.
- The caretaker forces another person to touch the child's intimate parts or clothing directly covering such intimate parts. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.
- The caretaker causes or assists a child under the age of 13 to touch the caretaker's, the child's own, or another person's intimate parts or material directly covering such intimate parts.

3.7.2.4 Intercourse and sodomy

Intercourse or sodomy includes acts commonly known as oral sex (cunnilingus, anilingus, and fellatio), anal penetration, vaginal intercourse, and inanimate object penetration.

3.7.3 Establishing sexual gratification or arousal

To make a founded disposition of sexual abuse in some cases, the LDSS may be required to establish sexual gratification or arousal. It may not be necessary to prove actual sexual gratification, including but not limited to that one of the parties achieved sexual gratification. However, it may be necessary to establish that the act committed was for the purpose of sexual gratification. The Virginia Administrative Code does not specify which party (the perpetrator or the alleged victim child) needs to be the party intended to be sexually gratified.

In some cases there will be physical evidence of sexual gratification, including but not limited to the presence of semen. Sexual gratification or arousal may be inferred by the totality of the circumstances surrounding the alleged act.[12] Sexual gratification

[12] For example, in McKeon V. Commonwealth, 211 Va. 24, 175 S.E.2d 282 (1970), the Virginia Supreme Court held that a man who exposed his genitals to a child 35 feet away did not violate Va. Code '18.1-214 (1950). The defendant claimed that he had a robe on, and that, although there was a breeze, he did not believe his private parts became exposed. The child alleged that the man was standing on his porch smiling with his hands on his hips and

may be established by considering the act committed and the alleged abuser's explanation or rationale for the act.[13] The act itself may be probative of the caretaker's intent to arouse or sexually gratify.[14] It may be helpful to consider the definition of lascivious intent or intent to defile, since establishing lascivious intent or intent to defile is necessary in many child sexual abuse criminal offenses.[15] When attempting to show that an act committed was for the purpose of sexual gratification, the LDSS must consider the evidence in its totality.

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his genitals exposed. The Court said that, even accepting the child's testimony as true, the Commonwealth failed to prove lascivious intent:

[T]here is no evidence that the defendant was sexually aroused; that he made any gestures toward himself or to her, that he made any improper remarks to her; or that he asked her to do anything wrong. The fact that defendant told [the victim] to turn around and that he was smiling at the time, when she was 35 feet away from him, is not proof beyond a reasonable doubt that he knowingly and intentionally exposed himself with lascivious intent.

In McKeon V. Commonwealth, the Court looked for another evidence indicating that the alleged perpetrator intentionally exposed himself to the child and found none. If the alleged perpetrator had made any comments or actions to the child suggesting that the child look at his exposed genitals, then the court may have held differently. If the alleged perpetrator had been sexually aroused and exposed himself directly to the child, the court may have sustained the conviction. However, in Campbell v. Commonwealth 227 Va. 196, 313 SE.2d 402 (1984), the court found the evidence that the perpetrator gestured to an eight-year-old girl 87 feet away from him, pulled his pants down to his knees, then gestured again was sufficient to establish lascivious intent.

[13] For example, in Walker v. Commonwealth 12 Va. App. 438, 404 S.E.2d 394 (1991), the court found the evidence sufficient to establish criminal intent in defendant's touching the vagina of a seven-year-old daughter of his girlfriend even though he claimed to be touching her to determine if she and some boys in the neighborhood had been touching each other. The court found the alleged perpetrator's explanation for touching the child's vaginal area to be woefully unsatisfactory.

[14] In some investigations, evidence establishing the act will be sufficient, in and of itself, to establish sexual gratification or arousal. For example, in Moore v. Commonwealth, 222 Va. 72, 77, 278 S.E.2d 822, 825 (1981), the court found the evidence establishing that the perpetrator touched his penis to the child's buttocks was sufficient to show defendant's lascivious intent.

[15] Lascivious is defined as "tending to excite; lust; lewd; indecent; obscene." Black's Law Dictionary 897, (8th ed. 2004). Defile is defined as "4. To morally corrupt (someone). 5. *Archaic*. To debauch (a person); to deprive (a person) of chastity." Black's Law Dictionary 455 (8th ed. 2004)

3.8 Appendix A: Battered child syndrome

Battered Child Syndrome refers to "a constellation of medical and psychological conditions of a child who has suffered continuing injuries that could not be accidental and are therefore presumed to have been inflicted by someone close to the child, usually a caregiver. Diagnosis typically results from a radiological finding of distinct bone trauma and persistent tissue damage caused by intentional injury, such as twisting or hitting with violence."[16] The battered child syndrome "exists when a child has sustained repeated and/or serious injuries by non-accidental means."[17]

Obvious physical signs are cuts, bruises, broken bones, or burns. Although all of these injuries can easily be caused by accidents, examinations of battered children usually find that the injuries are not compatible with the account of the accident. The exam may reveal evidence of past injuries as well. Often, the perpetrator is careful to avoid areas of the child's body that are open to view, such as the head and arms. Subsequently, teachers, friends, and others who come into contact with the child may never suspect there is a problem unless they are aware of specific behaviors commonly exhibited by battered children. Watch for surreptitious or manipulative behavior, limited impulse control, angry outbursts, and poor judgment as to what is safe or unsafe. The child may become withdrawn, use drugs or alcohol, do poorly in school, and seem to have no focus or purpose.[18]

[16] Black's Law Dictionary, 172 (9th ed. 2009).
[17] *Estelle v. McGuire*, 502 U.S. 62 (1991).
[18] UCSO Healthcare, *Health Guide* "Battered Child Syndrome."

3.9 Appendix B: Failure to thrive syndrome

3.9.1 Organic and nonorganic failure to thrive

Failure to thrive syndrome describes the malnourished and depressed condition of infants, implying not only growth deficits, but also disorders of behavior and development.

3.9.1.1 Organic failure to thrive

Failure to thrive is used to designate growth failure both as a symptom and as a syndrome. As a symptom, it occurs in patients with a variety of acute or chronic illnesses that are known to interfere with normal nutrient intake, absorption, metabolism, or excretion, or to result in greater-than-normal energy requirements to sustain or promote growth. In these instances, it is referred to as organic FTT.

3.9.1.2 Nonorganic failure to thrive

Nonorganic failure to thrive is an interactional disorder in which parental expectations, parental skills, and the resulting home environment are intertwined with the child's developmental capabilities. Since the mother is the primary caretaker in most families, this syndrome has been associated with maternal deprivation (see physical neglect-failure to thrive definition) and/or emotional abuse. Failure to thrive syndrome has been referred to as psychosocial dwarfism disorder. It is characterized by physical and developmental retardation associated with a dysfunctional mother – infant relationship. Nonorganic failure to thrive involves the parents' failure to provide nurturance and attachment to the child.

When the term is used to designate a syndrome, it most commonly refers to growth failure in the infant or child who suffers from environmental neglect or stimulus deprivation. It is then designated nonorganic failure to thrive, indicating the absence of a physiologic disorder sufficient to account for the observed growth deficiency.

3.9.1.3 Mixed etiology

Using the most restrictive definition, only those children who were full-term and normally grown at birth and who, by careful investigation, have no congenital or acquired illness are included in the group designated Nonorganic failure to thrive. Organic failure to thrive and nonorganic failure to thrive are not mutually exclusive. There can be children who have growth failure of mixed etiology. This mixed etiology group includes children who were born prematurely but have evidence of disproportionate growth failure in later infancy; children who have or have had some defect that cannot sufficiently explain the current

growth failure (e.g., successful cleft palate repair in the past); and children who are frustrating (e.g., because of a neurologically impaired suck) or extremely aversive (e.g., because of a deformity) to the care giver.

3.9.1.4 Inadequate causes

In failure to thrive of any etiology, the physiologic basis for impaired growth is inadequate nutrition to support weight gain. In nonorganic failure to thrive, lack of food may be due to impoverishment, poor understanding of feeding techniques, improperly prepared formula, or inadequate supply of breast milk.

The psychological basis for nonorganic failure to thrive appears to be similar to that seen in hospitals, a syndrome observed in infants kept in sterile environments who suffer from depression secondary to stimulus deprivation. The non-stimulated child becomes depressed, apathetic, and ultimately anorexic. The unavailability of the stimulating person (usually, the mother) may be secondary to that person's own depression, poor parenting skills, anxiety in or lack of fulfillment from the caretaking role, sense of hostility toward the child, or response to real or perceived external stresses (demands of other children, marital dysfunction, a significant loss, or financial difficulties).

Nonorganic failure to thrive may be considered the result of a disordered interaction between mother and child in which the child's temperament, capacities, and responses help shape maternal nurturance patterns. Failure to thrive is not necessarily the effect of poor care giving by an inadequate or troubled mother. Nonorganic failure to thrive can be the result of a variety of interactional disorders ranging from the severely disturbed or ill child, whose care poses a major challenge to even the most competent parent, to the potentially most undemanding and compliant child being cared for by a mentally ill parent without adequate social, emotional, financial, cognitive, or physical resources. Within these extremes are maternal-child "misfits" in which the demands of the child, although not pathologic, cannot be adequately met by the mother, who might, however, do well with a child of different needs or even with the same child but under different life circumstances.

3.9.2 Characteristics of failure to thrive

3.9.2.1 Appearance

- Short stature (height and weight consistently fall fellow the third percentile on the Standard Growth Chart.
- Unusually thin.
- Infantile proportions.

- Potbelly (with episodes of diarrhea).
- Skin dull, pale, and cold.
- Limbs pink or purple, cold and mottled.
- Edema of the feet, legs, hands, and forearms.
- Poor skin care, excoriations, abrasions, and ulcers.
- Sparse, dry hair with patches of alopecia (hair loss).
- Dejection (avoid personal contact) and apathy (avoid eye contact).
- May have bruises, small cuts, burns, or scars (appear to be insensitive to pain and have self inflicted injuries).

3.9.2.2 Behavior

- Passive with or without catatonia.
- Rocking or head banging.
- Retarded speech and language.
- Delayed development.
- Solitary and unable to play.
- Insomnia and disrupted sleep.
- Easily bullied.
- Gorging food and scavenging from garbage cans, wastebaskets, toilet bowl, or dog/cat dish.

Note: During their convalescent stay in a hospital, they have marked growth spurts that relapse as soon as they return to their home environment.

3.9.2.3 Progress in the hospital

- Rapid recover of growth and liveliness.
- Slower progress with speech and language.
- Affection seeking, but may be casual or indiscriminate.

- Attention seeking.
- Severe tantrums at the slightest frustration.
- Rocking and head banging when upset.
- Continues to want to eat and drink more than can reasonably consume and may scavenge food.

3.9.2.4 Long-term behaviors

- Speech and language immaturity.
- Gorging of food that may last six months or more.
- Restlessness with short attention span.
- Rocking and head banging if stressed.
- Difficulties with peer group and learning in school.
- Soiling and wetting (encopretic and enuresis).
- Stealing and lying.
- Tantrums and aggression.

3.9.2.5 Investigating allegation involving suspected failure to thrive syndrome

Nonorganic failure to thrive requires a medical diagnosis. Organic failure to thrive has to be ruled out. During the investigation, the worker should gather as much information as possible about the child and pass it on to the examining physician.

3.9.2.5.1 Basis of medical diagnosis

Engaging the parents in the search for the basis of the problem and its treatment is essential and helps to foster their self-esteem. This avoids blaming those who may already feel frustrated or guilty because of an inability to perform the most basic of parental roles—adequate nurturance of their child. The family should be encouraged to visit as often and as long as possible. They should be made to feel welcome and the staff should support their attempts to feed the child, provide toys as well as ideas that promote parent-child play and other interactions, and avoid any comments that state

or imply parental inadequacy, irresponsibility, or other fault as the cause of the failure to thrive.

3.9.2.5.2 Child's growth history

The growth chart, including measurements obtained at birth if possible, should be examined to determine the child's trend in growth rate. Except in severe cases where malnutrition is obvious, the diagnosis of FTT should not be based on a single measurement, because of the wide variations existing in the normal population.

3.9.2.5.3 The child's dietary history

A detailed dietary history is essential, including techniques for preparation and feeding of formula or adequacy of breast milk supply, and feeding schedule. Observation of the primary care givers feeding the infant to evaluate their technique as well as the child's vigor of sucking should be undertaken as soon as possible. Easy fatigability may indicate underlying exercise intolerance; enthusiastic burping or rapid rocking during feeding may result in excessive spitting up or even vomiting; disinterest on the part of the care giver may be a sign of depression or apathy, indicating a psychosocial environment for the infant that is devoid of stimulation and interaction.

An assessment of the child's elimination pattern to determine abnormal losses through urine, stool, or emesis should be undertaken to investigate underlying renal disease, a malabsorption syndrome, pyloric stenosis, or gastro esophageal reflux.

3.9.2.5.4 Past medical history

Past medical history inquiries should be directed toward evidence of intrauterine growth retardation or prematurity with uncompensated growth delay; of unusual, prolonged, or chronic infection; of neurologic, cardiac, pulmonary, or renal disease; or of possible food intolerance.

3.9.2.5.5 Family history

The family history should include information about familial growth patterns, especially in parents and siblings; the occurrence of diseases known to affect growth (e.g., cystic fibrosis); or recent physical or psychiatric illness that has resulted in the infant's primary care giver being unavailable or unable to provide consistent stimulation and nurturance.

3.9.2.5.6 Social history

The social history should include attention to family composition; socioeconomic status; desire for this pregnancy and acceptance of the child; parental depression; and any stresses such as job changes, family moves, separation, divorce, deaths, or other losses. Infants in large or chaotic families or infants who are unwanted may be relatively neglected because of the demands of other children, life events, or parental apathy; financial difficulties may result in over dilution of formula to "stretch" the meager supply; breast-feeding mothers who are under stress or are poorly nourished themselves may have decreased milk production.

3.9.2.5.7 Physical examination

Physical examination should include careful observation of the child's interaction with individuals in the environment and evidence of self-stimulatory behaviors (rocking, head banging). Children with Nonorganic FTT have been described as hyper vigilant and wary of close contact with people, preferring interactions with inanimate objects if they are interactive at all. Although Nonorganic FTT is more consistent with neglectful than abusive parenting, the child should be examined carefully for any evidence of abuse. A screening test of developmental level should be performed and followed up with a more sophisticated development assessment if indicated.

3.9.3 Bibliography

The Merck Manual. Pediatrics and Genetics, Section 15. (16th ed. 1992). The Seventeenth Edition of the Merck Manual will be available in early 1998).

Bennett, S. Failure to Thrive, Pediatric Child Health 1(3):206-210, 1996.

Monteleone, J., & Brodeur, A. Child Maltreatment: A Clinical Guide and Reference, 159 (G.W. Medical Publishing 1994).

3.10 Appendix C: Munchausen syndrome by proxy

Munchausen syndrome by proxy in adults is "a condition characterized by habitual presentation for hospital treatment of an apparent acute illness, the patient giving a plausible and dramatic history, all of which is false."[19] "Munchausen syndrome by proxy occurs when a parent or guardian falsifies a child's medical history or alters a child's laboratory test or actually causes an illness or injury in a child in order to gain medical attention for the child which may result in innumerable harmful hospital procedures."[20] Munchausen syndrome by proxy involves an apparent deeply caring caretaker who repeatedly fabricates symptoms or provokes actual illnesses in her helpless infant or child.

Maybe the most important aspect of this syndrome is the immense ability of the caretaker to fool doctors and the susceptibility of physicians to that person's manipulations. The hospital, which is the most common setting for Munchausen syndrome by proxy cases, is where as much as 75% of the Munchausen syndrome by proxy related morbidity occurs as a consequence of attempts by physicians to diagnose and treat the affected child or infant. More than 98% of Munchausen syndrome by proxy cases involve female perpetrators.

3.10.1 Commonly fabricated illnesses and symptoms

The most common fabrications or modes of symptom inducement in Munchhausen syndrome by proxy involve seizures, failure to thrive, vomiting and diarrhea, asthma, and allergies and infections.

3.10.2 Indicators for suspecting and identifying Munchausen syndrome by proxy

- A child who has one or more medical problems that do not respond to treatment or that follow an unusual course that is persistent, puzzling, and unexplained.
- Physical or laboratory findings that are highly unusual, discrepant with history, or physically or clinically impossible.
- A parent, usually the mother, who appears to be medically knowledgeable and/or fascinated with medical details and hospital gossip, appears to enjoy the hospital environment, and expresses interest in the details of other patients' problems.

19 Dorland's Illustrated Medical Dictionary 1295 (26th ed. 1981).
20 Zumwalt & Hirsh, *Pathology of Fatal Child Abuse and Neglect*, Child Abuse and Neglect 276 (R. Helfer & Kempe eds., 4th ed. 1987).

- A highly attentive parent who is reluctant to leave her child's side and who herself seems to require constant attention.

- A parent who appears to be unusually calm in the face of serious difficulties in her child's medical course while being highly supportive and encouraging of the physician, or one who is angry, devalues staff, and demands further intervention, more procedures, second opinions, and transfers to other more sophisticated facilities.

- The suspected parent may work in the health care field herself or profess interest in a health-related job.

- The signs and symptoms of a child's illness do not occur in the parent's absence (hospitalization and careful monitoring may be necessary to establish this casual relationship).

- A family history of similar sibling illness or unexplained sibling illness or death.

- A parent with symptoms similar to her child's own medical problems or an illness history that itself is puzzling and unusual.

- A suspected parent with an emotionally distant relationship with her spouse; the spouse often fails to visit the patient and has little contact with physicians even when the child is hospitalized with serious illness.

- A parent who reports dramatic, negative events, such as house fires, burglaries, car accidents, that affect her and her family while her child is undergoing treatment.

- A parent who seems to have an insatiable need for adulation or who makes self-serving efforts at public acknowledgment of her abilities.

3.10.3 Bibliography

Monteleone, J., & Brodeur, A. Child Maltreatment: A Clinical Guide and Reference, 159 (G.W. Medical Publishing 1994).

Zumwalt & Hirsh, Pathology of Fatal Child Abuse and Neglect, Child Abuse and Neglect 276 (R. Helfer & R. Kempe eds., 4th ed. 1987).

The Merck Manual. Pediatrics and Genetics, Section 15. (16th ed. 1992).

3.11 Appendix D: Sexual abuse

The information below is compiled from articles and medical journals listed in the bibliography. The information is not intended to be comprehensive. If further information or clarification is needed consult a physician or the sources listed in the bibliography.

3.11.1 Physical examinations for possible sexual abuse

A normal physical examination is common in child sexual abuse. An absence of physical findings in sexually abused children can be explained in a number of ways. Many types of sexual molestation do not involve penetration and will not leave physical findings. Evidence of ejaculate may not be present if the child has washed, urinated, or defecated and if more than 72 hours has elapsed since the assault. The hymen is elastic and penetration by a finger or penis, especially in an older child, may cause no injury or may only enlarge the hymenal opening. Moreover, injuries can heal rapidly. Hymenal healing occurs in 6 to 30 days and can be complete. Partial hymenal tears can heal as soon as 9 days after injury, while extensive tears may take up to 24 days to heal.

3.11.1.1 Medical categorization of the physical examination for sexual abuse

Medical professionals commonly will classify the findings of the physical examination into one of four categories:

- Category I: Normal Appearing Genitalia. The majority (60% or more) of abused children fall into this category.

- Category II: Nonspecific Findings. Abnormalities of the genitalia that could have been caused by sexual abuse but are also seen in girls who are not victims of sexual abuse. Included in this category are redness or inflammation of the external genitalia, increased vascular pattern of the vestibular and labia mucosa, presence of purulent discharge from the vagina, small skin fissures or lacerations in the area of the posterior fourchette, and agglutination of the labia minora. Nonspecific Findings are often seen in children who have not been sexually abused.

- Category III: Specific Findings. The presence of one or more abnormalities strongly suggesting sexual abuse. Such findings include recent or healed lacerations of the hymen and vaginal mucosa, hymenal opening of one or more centimeters, proctoepisiotomy (a laceration of the vaginal mucosa extending to involve the rectal mucosa) and indentations on the vulvar skin indicating teeth marks (bite marks). This category also includes patients with laboratory confirmation of a venereal disease (e.g., gonorrhea). Category III is suspicious or highly suspicious for sexual abuse.

- Category IV: Definitive Findings. Any presence of sperm or sexually transmitted disease. Category IV is conclusive of sexual abuse, especially with children under 12 years of age. Older children may be sexually active.

3.11.1.2 Classification of physical findings in sexual abuse examinations

Specific physical findings are strongly indicative of sexual abuse beyond reasonable doubt as follows:

- Clear-cut tears, fresh or old scars; significant distortion of the normal shape of the hymen and/or hymenal bruising.

- Lacerations, scars, bruises, and healing abraded areas, often accompanied by neovasularization, of the posterior fourchette.

- Anal dilation greater than 15 mm transverse diameter with gentle buttock traction with the child in knee-chest position. Large anal scars in the absence of a history that could explain the scars.

3.11.1.3 Possible physical indicators in sexually abused girls

Certain types and locations of hymenal injuries are often seen after sexual abuse. The hymenal membrane at its midline (6 o'clock position) attachment along the posterior rim of the introitus, during actual or attempted penetration, is the portion of the hymen most likely to be damaged. A narrowed (attenuated) hymen at this position is usually indicative of an injury. Mounds, projections, or notches on the edge of the hymen and the exposure of intravaginal ridges increase the possibility of abuse. Generally, attempted forced vaginal penetration results in hymenal tears and fissures between the 3 and 9 o'clock positions and may extend across the vestibule and fourchette. Other physical signs indicating abuse include:

3.11.1.4 Erythema, inflammation, and increased vascularity

In sexual abuse cases, redness of the skin or mucous membranes due to congestion of the capillaries. Normal vaginal mucosa has a pale pink coloration.

3.11.1.5 Increased friability

A small dehiscence (or breakdown) of the tissues of the posterior fourchette may be precipitated by the examination, with occasional oozing of blood. This is usually associated with labial adhesions. When the adherent area is large, greater than 2 mm, the suspicion of abuse should be greater.

3.11.1.6 Angulation of the hymenal edge

There may be V-shaped or angular configuration of the edge of the hymen. The hymenal edge should be smooth and round. Angulation often marks a healed old injury.

3.11.1.7 Labial adhesions

Although labial adhesions are a nonspecific finding often seen in girls with no history of sexual abuse, they may also be a manifestation of chronic irritation and can be seen in children who have been abused.

3.11.1.8 Urethral dilation

Urethral dilation may be an abnormal physical finding in sexually abused girls. Mild to moderate urethral dilation is probably normal, although higher grades may be considered a manifestation of sexual abuse, probably the result of digital manipulation of the urethral orifice.

3.11.1.9 Hymenal or vaginal tear

Deep breaks in the mucosa of the vagina and hymen are referred to as tears. These injuries can be seen with accidental injuries as well as with abuse. Often they occur when a history of impaling is given.

Genital injuries should be considered abuse until proven otherwise. The bony pelvis and labia usually protects the hymen from accidental injury. Straddle injuries from falls onto a pointed object, the object rarely penetrates through the hymenal orifice into the vagina. A violent stretching injury, as seen when a child does a sudden, forceful split on a slippery surface, can cause midline lacerations. These injuries can also be caused during sexual abuse by forceful, sudden abduction of the legs.

3.11.1.10 Discharge

Vaginal secretions are of various consistencies, colors and odors. The usual cause of vaginal discharge in a nonspecific vaginitis. Nonspecific vaginitis is seen most often in children between two and seven years of age. Some genital discharges are not caused by infection or inflammation. The signs of nonspecific vaginitis are vaginal inflammation and discharge. The child may or may not have symptoms. The only complaint may be a yellowish stain on the child's underpants noticed by the mother. The character of the discharge, the appearance of the vaginal mucosa, and the child's symptoms do not help to identify the etiologic agent or the type of bacterial causing the infection.

3.11.1.11 Fissures

Superficial breaks in the skin or mucous membranes fissures may ooze blood and be painful. They heal completely and leave no sequelae unless they become infected in which case they may result in a small scar or an anal tag.

3.11.1.12 New or healed lacerations

Lacerations are deep breaks in the skin or mucous membranes of the vagina or anus. They often leave scar formation after healing.

3.11.1.13 Enlarged hymenal introital opening

One criterion often used to make a diagnosis of sexual abuse is an enlargement of hymenal introital opening. A vaginal introital diameter of greater than four (4) mm is highly associated with sexual contact in children less than 13 years of age. The size of the hymenal opening can vary with increasing age and pubertal development of the child. Other factors such as the position of the child during the measurement, the degree of traction placed on the external genitalia, and the degree of relaxation of the child can influence the measurements. The nature of the abuse and the time elapsed since the abuse can also change genital findings.

3.11.1.14 Sexually transmitted diseases

Transmission of sexually transmitted diseases outside the perinatal period by nonsexual means is rare. Gonorrhea or syphilis infections are diagnostic of sexual abuse after perinatal transmission has been ruled out. Herpes type 2, Chlamydia, Trichomoniasis, and condyloma infections are extremely unlikely to be due to anything but abuse, particularly in children beyond infancy.

3.11.1.15 Sperm

If the abuse occurred within 72 hours, the physical examination may reveal the presence of sperm. The survival time of sperm is shortened in prepubertal girls because they lack cervical mucus; if there is a delay before an examination, the likelihood of finding sperm is diminished.

3.11.1.16 Physical findings associated with anal sexual abuse

Anal assaults comprise a significant proportion of child sexual abuse attacks. Genital injuries or abnormalities are more often recognized as possible signs of abuse, while anal and perianal injuries may be dismissed as being associated with common bowel disorders such as constipation or diarrhea. The anal sphincter is pliant and, with care and lubrication, can easily allow passage of a penis or an object of comparable diameter without injury. The anal sphincter and anal canal are elastic and allow for dilation. Digital penetration usually does

not leave a tear of the anal mucosa or sphincter. Penetration by a larger object may result in injury varying from a little swelling of the anal verge to gross tearing of the sphincter. If lubrication is used and the sphincter is relaxed, it is possible that no physical evidence will be found. Even penetration by an adult penis can occur without significant injury. After penetration, sphincter laxity, swelling, and small mucosal tears of the anal verge may be observed as well as sphincter spasm. Within a few days the swelling subsides and the mucosal tears heal. Skin tags can form as a result of the tears. Repeated anal penetration over a long period may cause a loose anal sphincter and an enlarged opening. Physical indicators of anal sexual abuse include, but are not limited to:

3.11.1.17 Perineal erythema

Reddening of the skin overlying the perineum as well as the inner aspects of the thighs and labia generally indicates that there has been intra crural intercourse (penis between legs and laid along the perineum). Erythema in this area, however, also results from diaper rash, poor hygiene, or after scratching and irritation from pinworms.

3.11.1.18 Swelling of the perianal tissues

Circumferential perianal swelling appears as a thickened ring around the anus and has been called the tire sign. It is an acute sign and can reflect traumatic edema.

3.11.1.19 Fissures

Breaks in the skin/mucosal covering of the rectum, anus, anal skin occur as a result of overstretching and frictional force exerted on the tissues. This can occur following passage of a hard stool or abusive traumatic penetration of the anus. Tiny superficial cracks in the verge or perianal skin often result from scratching with pinworms or with excoriation from acute diarrhea or diaper rash.

3.11.1.20 Large tears

Large breaks in the skin extending into the anal canal or across the perineum are usually painful and can cause anal spasm. Tears often heal with scarring and leave a skin tag at the site of the trauma.

3.11.1.21 Skin changes

Repeated acts of penetration will lead to changes in the anal verge skin. Repeated friction and stretching of the fibers of the corrugated cutis and muscle results in thickening and smoothing away of the anal skin folds. The skin appears smooth, pink, and shiny, with a loss of normal fold pattern. The

presence of these skin changes suggests chronicity of abuse. Scars are evidence of earlier trauma.

3.11.1.22 Funneling

Funneling is a traditional sign of chronic anal sexual abuse but its presence in children has been questioned. The appearance of funneling or a hollowing-out of the perianal area is caused by loss of fat tissue or fat atrophy of the subcutaneous area. Although this is often associated with chronic anal sex, it has also been described to occur in non-abused children.

3.11.1.23 Hematoma and/or bruising

Subcutaneous accumulations of old and new blood and bruising are strong indicators of trauma. It would be very unlikely for these to occur without a history to explain them. These injuries are not likely to be accidental.

3.11.1.24 Anal warts

Anal warts can occur as an isolated physical finding or in conjunction with other signs consistent with abuse, either anal or genital. Anal warts in children under age two years whose mother has a history of genital warts are most likely not the result of abuse. If no history of genital warts is elicited, the family should be evaluated for their presence. In children over four years of age with new genital warts, abuse should be considered and the child carefully interviewed by an experienced evaluator. Evaluation of genital warts is difficult in the nonverbal child.

3.11.1.25 Physical findings and abnormalities mistaken for anal sexual abuse

Perianal abnormalities are often seen in children with Crohn disease or Hirschsprung disease. The anal canal gapes in children with significant constipation. The distended rectum, with a normal anorectal reflex, initiates the gaping. Stool is often seen in the anal canal. Small fissures can also be seen. These children may have trouble with fecal soiling, which causes reddening of the perianal area. Unfortunately, children who were anally abused often suffer from functional constipation, which results in a damaged anal sphincter and fecal soiling. The pain and injury that follow the anal assault may cause spasm of the sphincter and result in functional constipation.

3.11.1.26 Conditions that can be mistaken for sexual abuse

- Lichen scierosis et atrophicus
- Accidental straddle injuries

- Accidental impaling injuries
- Nonspecific vulvovaginitis and proctitis
- Group A streptococcal vaginitis and proctitis
- Diaper dermatitis
- Foreign bodies
- Lower extremity girdle paralysis as in myelomeningocele
- Defects which cause chronic constipation, Hirschprung disease, anteriorly displaced anus
- Chronic gastrointestinal disease, Crohn disease
- Labial adhesions
- Anal fissures

Some dermatologic, congenital, traumatic, and infectious physical findings can be mistaken for sexual abuse. The most common dermatologic condition confused with trauma from sexual assault is lichen sclerosis. It can present in a variety of ways from mild irritation of the labia and vaginal mucosa to dramatic findings such as subepidermal hemorrhages of the genital or anal area involving the labia and vaginal mucosa and/or the anus. Monteleone, J., & Brodeur, A. Child Maltreatment: A Clinical Guide and Reference, 159 (G.W. Medical Publishing 1994).

3.11.2 Common questions and issues

These questions and answers are taken from Monteleone, J., & Brodeur, A. Child Maltreatment: A Clinical Guide and Reference, 159 (G.W. Medical Publishing 1994).

Can a child be born without a hymen to explain physical findings described?

There is no documented case of an infant girl born without a hymen.

Can excessive masturbation or the use of tampons explain abnormal vaginal findings?

Masturbation and tampons do not cause injury to the hymen or internal genital structures. There is no evidence that use of tampons causes trauma to the hymen. Masturbation in girls usually involves clitoral or labial stimulation and does not cause hymenal injury. Children who masturbate excessively or insert foreign objects into body orifices usually show no genital or anal injuries.

Can a child contract a sexually transmitted disease by merely sharing the same bed, toilet seat or towel with an infected individual?

In general, as the title implies, sexually transmitted diseases are sexually transmitted.

Can horseback riding, gymnastics or dancing cause permanent genital changes?

Injuries can occur with physical activities. When such injuries involve the genitalia, the event is very dramatic and will be reported immediately. If a physician finds hymenal changes after a child has disclosed sexual abuse or during a routine examination, injury from one of these activities is not being investigated because it would not be a reasonable explanation for the changes.

3.11.3 Bibliography

Bays, J., and Jenny, C., Genital Conditions Confused with Child Sexual Abuse, Child Abuse & Neglect, v. 17, 91-110, (1990).

Bays, J. and Chadwick, D. Medical Diagnosis of the Sexually Abused Child, Child Abuse & Neglect, 17:91-110, 1993.

Camps, F.E., (E.D.). Gradwohl's Legal Medicine. Baltimore, MD: Williams & Wilkins Company (1968).

DeJong, A., and Finkel, M., Sexual Abuse of Children, Current Problems in Pediatrics, v. XX, 490-567, 1990.

Heger, A., & Emans, D., American Academy of Pediatrics: Introital Diameter as the Criterion for Sexual Abuse, Pediatrics 85:222-223, 1990.

Herman-Giddens, M. & Frothingham, T., Prepubertal Female Genitalia: Examination for Evidence of Sexual Abuse, Pediatrics, 80:203-206, 1987.

Hobbs, C.J., & Wynne, J.M., Sexual Abuse of English Boys and Girls: The Importance of Anal Examination, Child Abuse & Neglect, 13:195-210, (1989).

McCann, J., Voris, J., Simon, M., & Wells, R., Perianal Findings in Prepubertal Children Selected for Nonabuse: A Descriptive Study, Child Abuse & Neglect 13:179-193, 1989.

McCann, J., Voris, J., Simon, M., & Wells, R., Comparison of Genital Examination Techniques in Prepubertal Girls, Pediatrics 85:182-187, 1990.

McCann, J., Voris, J., Simon, M., & Wells, R., Perianal Findings in Prepubertal Children Selected for Nonabuse: A Descriptive Study, Pediatrics 86:428-439, 1990.

McCann, John, M.d., Robert Wells, M.D., Simon, M.D., and Joan Voris, M.D., Genital Findings in Prepubertal Girls Selected for Nonabuse: A Descriptive Study, Pediatrics Vol. 86 No. 3 September 1990.

McCann, J., Voris, J., & Simon, M., Genital Injuries Resulting from Sexual Abuse: A Longitudinal Study, Pediatrics 89:307-317, 1992.

Monteleone, J., & Brodeur, A. Child Maltreatment: A Clinical Guide and Reference, 159 (G.W. Medical Publishing 1994).

Monteleone, J., Brewer, J., Scalzo, A., Doerhoff, F., Munkel, W., Heaney, S., Bowen, K., Scherzinger, P., & LaRock, T., Urethral Dilation as a Physical Finding in Sexual Abuse, VII International Congress on Child Abuse and Neglect Book of Abstracts (1988).

Paradise, J., Predictive Accuracy and the Diagnosis of Sexual Abuse, Pediatric Clinic North America, v. 37, 839-862, 1989.

Paul, D.M., The Medical Examination in Sexual Offenses Against Children, Medical Science Law, 17:251-258, 1977.

Pokorny, S.F., & Kozinetz, C.A. Configuration and Other Anatomic Details of the Prepubertal Hymen, Adolescent and Pediatric Gynecology, 1, 97-103 (1988).

Teixeira, W., Hymenal Colposcopic Examination in Sexual Offenses, American Journal of Forensic Medicine Pathol v. 3, 209-214, 1981.

White, S, Ingram, D. and Lyna, P., Vaginal Introital Diameter in the Evaluation of Sexual Abuse, Child Abuse & Neglect 10:111-114, 1986. Also, Heger, A. & Emans, S.J., American Academy of Pediatrics: Introital Diameter as the Criterion for Sexual Abuse, Pediatrics 85:222-223, 1990.

Woodling, B., and Heger, A., The Use of the Colposcope in the Diagnosis of Sexual Abuse in the Pediatric Age Group, Child Abuse & Neglect, 10:111-114 (1986).

3

COMPLAINTS AND REPORTS

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COMPLAINTS AND REPORTS

6.1 Legal basis

The Code of Virginia § 63.2-1503 B and C mandates that local departments of social services (LDSS) maintain the capability to receive reports and complaints alleging abuse or neglect on a 24-hour, 7-days-a-week basis.

Throughout this section, indented text marked with a blue, vertical line denotes verbatim content from the Code of Virginia or the Virginia Administrative Code.

6.2 24-Hour hotline and receiving complaints and reports

The Virginia Administrative Code (VAC) provides that a person may make a report or complaint by telephoning the toll-free Child Abuse and Neglect Hotline of the Virginia Department of Social Services (VDSS) or by contacting a LDSS.

> (22 VAC 40-705-40 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 § 63.2-1510 of the Code of Virginia.

The statewide toll-free CPS Hotline (**1-800-552-7096**) shall be available 24 hours a day, seven days a week. After receiving a complaint or report of child abuse or neglect, the CPS State Hotline worker will refer the complaint or report to the LDSS immediately or no later than the next working day.

6.3 Persons who may make a complaint or report

The Code of Virginia §§ 63.2-1509 and 63.2-1510 provide the authority for persons to report suspected abuse or neglect and allows any person who suspects that a child is abused or neglected to make a complaint or report. The Code of Virginia § 63.2-1509 further identifies certain persons who are mandated to report suspected abuse or neglect. The Virginia Administrative Code defines the terms "complaint" and "report."

> (22 VAC 40-705-10). "Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § 63.2-100 of the Code of Virginia.
>
> (22 VAC 40-705-10). "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 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 § 63.2-100 of the Code of Virginia.

6.3.1 Mandated reporters

The Virginia Administrative Code defines mandated reporters and their reporting responsibilities:

> (22 VAC 40-705-10). "Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to § 63.2-1509 of the Code of Virginia.

> (22 VAC 40-705-40 A). Persons who are mandated to report are those individuals defined in § 63.2-1509 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.

6.3.1.1 Who are mandated reporters?

The Code of Virginia identifies those persons who are mandated reporters. These persons shall report suspected abuse or neglect that they suspect when in their professional or official capacity.

*Mandated reporter training and other resources for mandated reporters are available from the Virginia Department of Social Services at (*http://www.dss.virginia.gov/family/cps/index2.cgi*).*

(§ 63.2-1509 A of the Code of Virginia Effective *July 1, 2012*). The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;

2. Any hospital resident or intern, and any person employed in the nursing profession;

3. Any person employed as a social worker;

4. Any probation officer;

5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;

6. Any person providing full-time or part-time child care for pay on a regularly planned basis;

7. Any mental health professional;

8. Any law-enforcement officer or animal control officer;

9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;

10. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;

11. Any person, *18 years of age or older*, associated with or employed by any *public or* private organization responsible for the care, custody or control of children; and

12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1.

13. Any person, *18 years of age or older*, who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect.

This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance.

15. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5, unless such personnel immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith*;*

16. Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team;

17. Administrators or employees, 18 years of age or older, of public or private day camps, youth centers and youth recreation programs; and

18. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client.

Effective July 1, 2012 foster and adoptive parents and respite providers are considered mandated reporters due to their association with a public organization that is responsible for the care, custody and control of children as referenced in § 63.2-1509 A 11.

6.3.1.2 Certain mandated reporters may make a report to *the person in charge or their designee*

(§ 63.2-1509 A of the Code of Virginia Effective *July 1, 2012*). If the information is received by a teacher, staff member, resident, intern or nurse in the course of

professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. *If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee, pursuant to this subsection, such person shall notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the Department's toll-free child abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.*

(22 VAC 40-705-40 A). Pursuant to §63.2-1509 A of the Code of Virginia, teachers, staff members residents, interns or nurses, while in the course of their professional services in a hospital, school or similar institution may notify the person in charge of the institution or department, or his designee, who shall then make a report to either the local department or to the Department's toll-free child abuse and neglect hotline.

6.3.1.3 Mandated reporter shall disclose all relevant information even if not the complainant

The Code of Virginia § 63.2-1509 A specifies when a mandated reporter makes a report of suspected abuse or neglect, the reporter shall disclose all the information that is the basis of the report to the LDSS. This includes any records or reports documenting the basis of the allegation.

All mandated reporters, even if they are not the complainant, shall cooperate with the LDSS and shall make related information, records and reports about the child who is the subject of the report available to the LDSS for the purpose of validating a CPS referral and for completing a CPS response unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232(g)).

Provision of such information, records, and reports by a health care provider shall not be prohibited by the Code of Virginia § 8.01-399.

Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

Although obtaining parental consent to obtain information is always preferable, consent is not required for the release of information for the purpose of validating a referral or completing an investigation or family assessment.

6.3.1.4 Failure by mandated reporter to report abuse or neglect

According to the Code of Virginia § 63.2-1509 D**,** a person required to report who fails to do so *as soon as possible, but* ***not longer than 24 hours*** *after having a reason to suspect a reportable offense* of child abuse or neglect shall be fined not more than $500 for the first failure and for any subsequent failures *not less than $1000.* If the LDSS becomes aware of an incident involving a mandated reporter who failed to report pursuant to the Code of Virginia §§ 63.2-1509 A and B, the LDSS must report the incident to the local Commonwealth's Attorney.

If a person knowingly and intentionally fails to report cases involving rape, sodomy, or object sexual penetration, they shall be guilty of a Class 1 misdemeanor.

If a person has actual knowledge that the same matter has already been reported they are not required to contact the LDSS or the state hotline.

6.3.1.5 Physicians reporting venereal disease

Physicians who diagnose venereal disease in a child 12 years of age or under shall make a CPS report to the LDSS. Physicians need not report cases of venereal disease when they reasonably believe that the infection was caused congenitally or by means other than sexual abuse. The Code of Virginia § 32.1-36 A provides that practicing physicians and laboratory directors shall report patients' diseases as prescribed by the State Board of Medicine. See the Code of Virginia § 32.1-36 A and B.

6.3.2 Other persons may make a report of alleged child abuse or neglect

> (22 VAC 40-705-40 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 § 63.2-1510 of the Code of Virginia.

Any individual suspecting that a child is abused or neglected may make a complaint to the VDSS or to an LDSS. The person can make the complaint to the LDSS in the county or city where the alleged victim child resides or where the alleged abuse or neglect occurred. The person may also make the complaint by calling the CPS State Hotline (**1-800-552-7096**).

6.3.3 Complaints and reports may be made anonymously

> (22 VAC 40-705-40 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.

Reports or complaints alleging abuse or neglect may be made anonymously and the LDSS cannot require the individual to reveal his identity as a condition of accepting the report. All reports shall be documented in the automated data system and evaluated for validity and a CPS response regardless of whether or not the caller is identified.

6.3.4 Issues related to reporting

6.3.4.1 Immunity from liability for persons making a report

> (22 VAC 40-705-40 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 § 63.2-1512 of the Code of Virginia.

The following persons are immune from any civil or criminal liability unless it is proven that such person acts with malicious intent:

- Any person making a report or complaint of child abuse or neglect.
- Any person who participates in a judicial proceeding resulting from either making a report or taking a child into immediate custody.

6.3.4.2 Protecting the identity of the reporter or complainant

> (22 VAC 40-705-40 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.

When the complainant is known to the LDSS, every effort shall be made to protect that person's anonymity. However, the complainant shall also be informed that his anonymity cannot be assured if the case is brought into court.

6.4 Actions upon receipt of complaint or report

6.4.1 Statutory authorities and responsibilities

The Code of Virginia § 63.2-1503 requires an LDSS to determine the validity of all reports and to decide whether to conduct a family assessment, if designated to do so, or an investigation, if the report or complaint alleging child abuse or neglect is valid.

6.4.2 Document receipt of complaint or report in automated data system

Pursuant to the Code of Virginia § 63.2-1505 B 2, when a complaint or report alleging abuse or neglect is received, the LDSS shall enter the report into the automated data system.

6.4.3 The LDSS shall record all complaints and reports in writing

> (22 VAC 40-705-50 A). All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system and either screened out or determined valid within 5 days of receipt. 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.

All complaints or reports made to the VDSS or an LDSS shall be documented in the information system. A person may make the initial complaint or report alleging abuse or neglect orally or in writing. The LDSS must document the report or complaint in the automated data system within three working days, regardless of whether the complaint or report is determined to be valid or invalid. *Timeliness of the initial response is calculated from the date and time the referral was received, not validated or assigned.*

6.4.3.1 New allegations in an existing family assessment or investigation

When a report has been accepted as valid and the investigation or family assessment response is initiated and subsequent allegations are made, the type of allegation and the time elapsed since the initial report will determine whether the new allegation is treated as a new report or assessed within the context of the existing response. If the allegations do not provide any new or different information, they may be added into the initial investigation or family assessment. If the additional allegations address new types of abuse/neglect and **five (5) or more days** have elapsed since the first report, the additional allegations should be taken as a new report and screened using the CPS Intake Tool.

6.5 Determine validity of complaint or report

When an LDSS receives a report or complaint of abuse or neglect, the LDSS must determine whether the complaint or report is valid **within five (5) days** of receiving the complaint. Criteria are established for determining whether a complaint or report is valid. Each criterion must be satisfied before a complaint or report can be valid. Only valid reports or complaints of abuse or neglect shall receive a family assessment or an investigation. It is important to make the validity decision as soon as possible after the

report has been received so that the urgency of the response can be accurately determined. Response time is calculated from the date and time the referral *was received, not validated or assigned.*

When determining validity, the LDSS must use the CPS Intake Tool for all reports of child abuse and neglect including new reports during open cases. The CPS Intake Tool must be completed in the automated data system as soon as possible, but no later than three working days, upon receipt of the report by the LDSS. It is critical that the intake worker using the CPS Intake Tool review the definitions available on the tool when making selections on the checklist. Selections made on the CPS Intake Tool must relate to supporting narrative in the automated data system. The CPS Intake Tool with definitions is located on the forms page on the DSS internal website or in Appendix D: CPS Intake Tool of this section.

6.5.1 Definition of valid complaint or report

The Code of Virginia § 63.2-1508 and the Virginia Administrative Code define a valid complaint.

> (22 VAC 40-705-50 B). In all valid complaints or reports of child abuse and/or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. 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 as defined in § 63.2-100 of the Code of Virginia.

6.5.2 Determine whether the complaint or report is valid

There are four criteria that must be addressed when determining whether the complaint or report is valid. Each question must be satisfied in order to have a valid report. The four elements are:

6.5.2.1 Question 1: Is the alleged victim child under eighteen years of age?

> (22 VAC 40-705-50 B 1). The alleged victim child or children are under the age of 18 at the time of the complaint and/or report.

The LDSS can only respond with a family assessment or an investigation to valid complaints or reports involving children under the age of 18 at the time of the report or complaint. If the alleged victim is over the age of 18, the LDSS should refer that person to the local attorney for the Commonwealth, Adult Protective Services, or other appropriate services provided in the locality.

6.5.2.1.1 Emancipated minor

If the alleged victim child is under the age of 18 and has been legally emancipated, then the LDSS has the discretion of not completing a family assessment or investigating the complaint.

The LDSS may determine a report of abuse or neglect as invalid if a court has emancipated the alleged victim of the abuse or neglect pursuant to the Code of Virginia §§ 16.1-331 and 16.1-332.

The Code of Virginia §§ 16.1-331, 16.1-332, and 16.1-333 require petitioning the juvenile court and the court conducting a hearing before making a finding of emancipation. The LDSS must confirm that the child has been legally emancipated before invalidating the complaint or report.

6.5.2.1.2 Alleged victim child is married

There is no specific Code of Virginia or Virginia Administrative Code provision prohibiting the validation of a complaint involving an alleged victim child who is married. When an LDSS receives a complaint involving a married child, the first issue the LDSS may address is whether the alleged victim child is emancipated. If the alleged victim child is married and emancipated, then the LDSS should invalidate the complaint or report.

A husband or wife of the alleged victim cannot be considered a caretaker.

6.5.2.2 Question 2: Is the alleged abuser or neglector a caretaker?

> (22 VAC 40-705-50 B 2). The alleged abuser is the alleged victim child's parent or other caretaker.

The second element of a valid complaint is whether the alleged abuser or neglector is a caretaker. The Virginia Administrative Code defines caretaker as:

> (22 VAC 40-705-10). "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.

Inherent within the definition of a caretaker is that the individual was responsible for providing care and supervision for the child or assumed responsibility for providing care and supervision for the child. There are four (4) categories of caretaker. Each category is divided into subcategories to assist in clarifying who may be a caretaker. Those categories and subcategories include but are not limited to:

- Parent or other person legally responsible for the child's care including:
  - Birth parent.
  - Adoptive parent.
  - Stepparent.
- Any other individual who has assumed caretaking responsibility by virtue of an agreement (whether formal or informal) with the legally responsible person including but not limited to:
  - Relatives (including siblings under 18).
  - Foster parents.
  - Babysitter.
  - Day care personnel.
- Individuals responsible by virtue of their position of authority or position, including but not limited to:
  - Teacher or other school personnel.
  - Institutional staff.
  - Scout troop leaders.
- When they are living in the home with the child, the following are assumed to be responsible for the child's care:
  - Grandparents.
  - Other relatives age 18 or over.
  - Paramour of parent.
  - Sibling age 18 or over.

When determining whether a person is responsible for the care of a child, the CPS worker should consider the amount of authority for the care, control and discipline of the child delegated to the person acting as a caretaker. The CPS worker may consider these issues when determining whether a person is a caretaker.

- What is the person's relationship with the child?
- What is that person's role or function toward the child?
- Was the primary responsibility of the person toward the child one of supervision and providing care, or was the person providing a professional or expert service?
- How do the child and the child's usual caretaker view this relationship and role?
- How does the community view this relationship and role?
- Have the parents or other person specifically delegated formally or informally the caretaking role for this person?

The CPS worker may consider these issues when determining if a minor is a caretaker and alleged abuser or neglector.

- Was it appropriate for the juvenile to have been put in a caretaking role? Was the supervision plan appropriate?
- Was the alleged abuse by the minor indicative of his or her own abuse? (i.e., sexual knowledge or behavior that is age inappropriate)
- What is the age difference between the alleged abuser and the victim; was this peer interaction?

Special consideration must be given to the needs of minor caretakers who are abusive. The report may be screened out or an unfounded investigation in relation to the minor as the abuser, because it is determined that the minor was inappropriately placed in a caretaking role by his parent or guardian. However, the behaviors of the minor may indicate a need for services. In these reports, the CPS worker must notify law enforcement that a possible criminal act has occurred.

6.5.2.3 Question 3: Is abuse or neglect alleged to have occurred?

> (22 VAC 40-705-50 B 4). The circumstances described allege suspected child abuse and/or neglect as defined in § 63.2-100 of the Code of Virginia.

The complaint or report must describe a type of abuse or neglect as defined in 22 VAC 40-705-30 and/or section 2: Definitions of Abuse and Neglect of this guidance manual.

6.5.2.3.1 General factors to consider when determining if abuse or neglect definition has been met

The CPS worker must consider the following questions to determine if the definition of physical abuse has been met.

- What was the action or inaction of the caretaker?
- Did the child sustain an injury or is there evidence establishing that the child was threatened with sustaining an injury?
- Does the evidence establish a nexus, or causal relationship between the action or inaction of the caretaker and the physical injury or threatened physical injury to the child?
- Was the injury, or threat of injury, caused by non-accidental means?

6.5.2.3.2 Establish injury or threat of an injury

The report or complaint must allege a threat of injury or actual injury to the child to satisfy the definition of abuse or neglect. The Code of Virginia and the Virginia Administrative Code do not require that the child sustain an actual injury.

6.5.2.3.3 Establish nexus between caretaker's actions or inaction and the injury or threatened injury to the child

The complaint or report must allege a link between the actions or inaction of the caretaker, regardless of the caretaker's intent, and the injury to the child or the threat of injury to the child.

6.5.2.3.4 "Other than accidental means"

The injury or threat of injury to the child must have occurred as a result of "other than accidental means." The caretaker's actions must be carefully considered when determining whether the injury or threat of injury sustained by the child was caused accidentally.

For example, the complaint alleged that the caretaker caused bruises and abrasions on the child's ankles and wrists. The caretaker asserted that he did not intend to cause the injuries to the child; he intended to restrain the five-year-old boy with a rope. However, the evidence shows that the caretaker tied the child's legs at the ankles and tied the wrists to a chair,

and when the child jerked in several different directions for over 20 minutes to try to get loose, injuries occurred to these parts of the body. The caretaker did not accidentally tie the child and leave him for 20 minutes. Although the caretaker did not intend to cause the injuries to the child, the caretaker did intend to tie the child, and could reasonably expect this child would try to get loose. The caretaker's act of restraining this child with a rope was intended and could have caused more serious harm. The result of the caretaker's actions was not unforeseen or unexpected. Therefore, the injury was not accidental.

In the alternative, a black eye to the child's face while playing catch with the caretaker would be considered accidental. The fact that the ball bounced off the child's mitt and struck the child's eye was not intended. In the first example, the caretaker intended to discipline his child by restraining with a rope for 20 minutes. The intended act of restraining the child caused the injury to the child. In the second example, the caretaker did not intend for the ball to bounce off the child's mitt and hit the child's face. The action causing the black eye was accidental.

6.5.2.3.5 Determine if medical neglect definition has been met

It is the parent's responsibility to determine and obtain appropriate medical, mental and dental care for a child. What constitutes adequate medical treatment for a child cannot be determined in a vacuum free of external influences, but rather, each case must be decided on its own particular facts. The focus of the CPS response are whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

- **Treatment or care must be necessary**. The statutory definition of medical neglect requires that the parent neglects or refuses to provide necessary care for the child's health. Therefore, the LDSS must establish that the caretaker's failure to follow through with a complete regimen of medical, mental or dental care for a child was necessary for the child's health. The result of the caretaker's failure to provide necessary care could be illness or developmental delays. The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well being but is not essential to life, the issue becomes more complicated in determining whether the medical care is necessary.

- **Assess degree of harm (real or threatened) to the child**. When assessing whether the medical, mental or dental treatment is necessary for the child's health, the LDSS should consider the degree of harm the child suffered as a result of the lack of care. If the child has yet to suffer harm, then the LDSS should assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.

  In addition to harm, the LDSS should consider the type of medical, mental or dental condition involved and whether the condition is stable or progressive. Whether the condition is stable or progressive may be an issue in determining the severity of the condition and the necessity of treatment. If the condition of the child is stable, then the LDSS may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the LDSS may give lesser deference to the caretaker's authority.

- **Parent refuses treatment for life-threatening condition**. Pursuant to the Code of Virginia § 63.2-100, a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care when all the following conditions are met:

  - The decision is made jointly by the parents or other person legally responsible for the child and the child.
  - The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment.
  - The parents or other person legally responsible for the child and the child have considered alternative treatment options.
  - The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

The Virginia Administrative Code provides definitions of some of the terms in the Code of Virginia.

(22 VAC 40-705-10). "Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

- **Assess caretaker's rationale**. The most singular underlying issue in determining whether a child is being deprived of adequate medical care, and therefore, a medically neglected child, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by ignorance or misunderstanding. The LDSS should consider whether the caretakers obtained accredited medical assistance and were aware of the seriousness of their child's affliction. The LDSS should weigh the possibility of a cure if a certain mode of treatment is undertaken and whether the caretakers provided their child with a treatment. The LDSS should consider whether the caretakers sought an alternative treatment recommended by their physician and have not totally rejected all responsible medical authority.

- **Assess financial capabilities and poverty**. The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by financial reasons or poverty. Parents or caretakers should not be considered neglectful for the failure to provide necessary medical treatment unless they are financially able to do so or were offered financial or other reasonable means to do so. In such situations, a founded disposition may be warranted if, after appropriate counseling and referral, the parents still fail to provide the necessary medical care.

6.5.2.3.6 Child under alternative treatment

> (22 VAC 40-705-30 C1). 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 § 63.2-100 of the Code of Virginia, shall not for that reason alone be considered a neglected child.

The Code of Virginia provides that no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal child abuse and neglect.[21] This exemption means that a founded disposition cannot be based only upon the religious practices of the parents or caretakers. A founded disposition can be rendered for other reasons. For example, if the parent caused the injury in the first place, the religious exemption would not apply. The religious exemption to a founded disposition of abuse or neglect is designed to protect a family's right to freedom of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.[22]

Should there be question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the LDSS should seek the court's assistance. The court should decide whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

6.5.2.3.7 Medical neglect of infants with life-threatening conditions

The Virginia Administrative Code 22 VAC 40-705-30 C states that medical neglect includes withholding of medically indicated treatment. The definition section of 22 VAC 40-705-10 et seq. defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the LDSS must be aware of the ancillary definitions and guidance requirements.

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21 See § 18.2-371.1C of the Code of Virginia. Any parent, guardian or other person having care, custody, or control of a minor 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 shall not, for that reason alone, be considered in violation of this section.

22 The United States Supreme Court held in 1944 that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

(22 VAC 40-705-10). "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 be most likely to be effective in ameliorating or correcting all such conditions.

This definition applies to situations where parents do not attempt to get a diagnosis even when the child's symptoms are severe and observable.

- **Withholding of medically indicated treatment when treatment is futile**.

(22 VAC 40-705-30 C 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;

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

(4) Be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

- **Definitions of chronically and irreversibly comatose and terminal condition**.

(22 VAC 40-705-10). "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.

> (22 VAC 40-705-10). “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.

6.5.2.4 Question 4: Does the LDSS have jurisdiction to conduct the family assessment or investigation?

The Code of Virginia § 63.2-1503 A provides the LDSS with the jurisdictional authority to conduct investigations of reports or complaints alleging child abuse and neglect. Jurisdiction determines which LDSS has primary responsibility for responding to a valid complaint or report of abuse or neglect. The Virginia Administrative Code addresses the issue of jurisdiction:

> (22 VAC 40-705-50 B 3). The local department receiving the complaint or report is a local department of jurisdiction.

The Virginia Administrative Code further defines jurisdiction as:

> (22 VAC 40-705-10). "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.

The LDSS that first receives a report must ensure that the complaint or report is either determined valid and therefore conducts a family assessment or investigation or the agency receiving the report determines which is the appropriate agency of jurisdiction and transfers the information to that agency immediately, first placing a call of notification to the receiving agency. In determining jurisdiction, the LDSS receiving the complaint or report alleging abuse or neglect is the LDSS in the county or city where:

- The alleged victim child resides, or
- The alleged abuse or neglect is believed to have occurred, or
- If neither of the above is known, where the alleged abuse/neglect was discovered.

6.5.2.4.1 Lack of jurisdiction not sufficient to invalidate complaint or report

If an LDSS receives a complaint or report alleging abuse or neglect and the complaint is invalid solely because the LDSS lacks jurisdiction, then the LDSS must transfer the complaint or report to the LDSS with proper jurisdiction. If the complaint or report belongs out of state, then the LDSS must make a referral to the appropriate agency in the other state.

6.5.2.4.2 The LDSS first receiving the complaint or report shall ensure complaint or report, if valid, receives a response

> (22 VAC 40-705-40 H 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 a family assessment or an investigation is conducted.

The Virginia Administrative Code specifically places responsibility on the LDSS who first receives the complaint or report alleging abuse or neglect to ensure that a family assessment or investigation is conducted if the complaint or report is valid. The purpose of this section is to ensure that a valid report or complaint does not go uninvestigated because of a question of jurisdiction.

6.5.2.4.3 Transfer jurisdiction of complaint to another LDSS

22 VAC 40-705-40 H 1 requires the LDSS of jurisdiction first receiving a valid complaint to ensure that the complaint receives a family assessment or investigation. The LDSS first receiving the complaint must forward all information related to the complaint. The LDSS first receiving the complaint must also ensure that the other LDSS is going to conduct a family assessment or an investigation. The LDSS transferring the report to another LDSS must document the transfer in the automated data system.

6.5.2.4.4 Responsibilities of LDSS receiving the complaint

The LDSS to which the report is being transferred should inform the original LDSS whether they will or will not conduct the family assessment or investigation. If an LDSS refuses, that LDSS must immediately inform the requesting LDSS and document the reasons why the LDSS cannot assume primary responsibility for the family assessment or investigation. If the LDSS cannot agree as to who should assume the primary responsibility, then a CPS regional program consultant should be contacted immediately. Regardless, the responsibility for ensuring a response remains with the LDSS that first receives the valid complaint.

6.5.2.4.5 Assistance between LDSS of jurisdiction

> (22 VAC 40-705-40 H 2). A local department may ask another local department which is a local department of jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.

An LDSS may ask another LDSS of jurisdiction to assist in conducting the CPS family assessment or investigation. Assistance shall be provided upon request. Assistance may include conducting courtesy interviews of the alleged victim child, the alleged victim child's parents or other caretakers, and the alleged abuser or neglector. Assistance may also include arranging for appointments, scheduling meetings, counseling sessions, or any other professional contacts and services for the alleged victim child and siblings, the child's parents or other caretakers, or alleged abuser or neglector.

- **When a party relocates outside of the investigating LDSS's jurisdiction**. The Code of Virginia § 63.2-1503 H specifically addresses the circumstances when a party to a report or complaint of abuse or neglect relocates outside of the jurisdiction of the investigating LDSS.

  When the alleged victim child, and/or the child's parents or other caretakers who are the subject of the family assessment or investigation relocate out of the jurisdiction of the LDSS responsible for the family assessment or investigation, the LDSS of jurisdiction shall notify the Child Protective Services Unit of the LDSS where the parties relocated, whether inside or outside of Virginia. The LDSS of jurisdiction may seek assistance from the other LDSS in completing the investigation. The notified LDSS shall respond to the receiving LDSS's request for assistance in completing the family assessment or investigation. Any LDSS in Virginia so requested shall comply.

- **LDSS shall share relevant case record information**. When one LDSS requests another LDSS to assist in completing a family assessment or an investigation or providing services, the requesting LDSS shall contact the receiving LDSS by telephone before transferring the record within the child abuse and neglect information system. The receiving LDSS shall then arrange protective and rehabilitative services as needed or appropriate, and assist in a timely completion of the investigation. All written notification and letters (i.e., disposition letters and notification of appeal rights) remain the responsibility of the original LDSS of jurisdiction conducting the family assessment or investigation. The LDSS of jurisdiction shall continue to retain case materials not entered into the automated data

system and provide the receiving LDSS with relevant portions of the case record necessary to provide services or to complete the investigation or family assessment.

> (22 VAC 40-705-40 H3). A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

- **Cooperative agreements between LDSS**. An LDSS may request assistance from an LDSS that is not a primary LDSS of jurisdiction. When one LDSS requests assistance from a neighboring locality in completing a family assessment or an investigation, both LDSS shall develop a cooperative agreement in which the specific request, parameters, follow-up requirements, and related topics are addressed.

6.5.2.4.6 The appearance of a conflict of interest

Family assessments or investigations involving recognized figures, local or county officials, former employees, and other persons who are well known within the community may raise the appearance of a conflict of interest for an LDSS. In order to assure that the response to such cases is and appears to be impartial, the LDSS of jurisdiction may contact a neighboring locality and develop the appropriate guidelines for completion of the family assessment or investigation. The LDSS must develop a cooperative agreement to ensure that the report receives an appropriate response. When considering transferring a report or complaint of child abuse or neglect because of the appearance of a conflict of interest, the LDSS may seek guidance from the CPS Regional Specialist.

6.5.2.4.7 Family assessments or investigations involving employees of an LDSS

The Code of Virginia § 63.2-1509 provides the juvenile and domestic relations district court the authority to determine jurisdiction of the investigation if the alleged abuser or neglector is an employee of the LDSS where the report or complaint was received. The purpose of this statute is to ensure a fair investigation and preserve impartiality.

The Virginia Administrative Code states:

> (22 VAC 40-705-40 H4). 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 shall assign the report to a local department that is not the employer of the subject of the report pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia.

- **Jurisdiction: assignment of investigation by court to LDSS**. If an LDSS is assigned a report by the Court, the family assessment or investigation should be conducted like any other.

6.5.2.4.8 LDSS cannot assume jurisdiction if abuse or neglect occurred in another state and the alleged abuser does not reside in Virginia

An LDSS shall not assume jurisdiction of an investigation or family assessment if the alleged abuse or neglect occurred in another state and the alleged abuser does not reside in Virginia, even if the alleged victim resides in Virginia at the time of the report. An LDSS should report the suspected abuse or neglect to child protective services in the state where the abuse or neglect occurred. If the other state requests assistance in conducting the investigation or family assessment, the LDSS should comply. If services are needed for the child or family, the LDSS may open the case for services.

- **Transfer jurisdiction of investigation to another state**. If appropriate, the LDSS may request the other state to assume jurisdiction of the investigation. If the other state agrees to assume jurisdiction of the investigation, the LDSS should provide all information relevant to the investigation to the other state. The following information should be provided when making a referral:
  - The name, date of birth, and sex of child.
  - Any other name by which the child may be known.
  - The names of parent and/or guardian.
  - Any other names by which the parent and/or guardian may be known.
  - The current address including any directions.
  - Last known address.
  - Statement of why the referral is being made.
  - Brief social history of the child and the family.

- A brief description of the LDSS's involvement with the family.

If the other state refuses to accept jurisdiction, then the LDSS must determine whether sufficient resources are available to conduct a thorough family assessment or investigation. The LDSS may not be able to gather sufficient evidence to make a determination of whether the abuse or neglect occurred. The LDSS must clearly document in the record if the LDSS is unable to conduct the family assessment or investigation or unable to gather sufficient evidence to make a determination. The automated data system should be notified that the LDSS was unable to complete the response.

6.5.3 Invalid report or complaint

> (22 VAC 40-705-50 C). The local department shall not conduct a family assessment or investigate complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

Each of the four criteria outlined in 22 VAC 40-705-50 B must be satisfied in order to achieve a valid complaint of abuse or neglect requiring a family assessment or an investigation. If the complaint or report of abuse or neglect fails to meet any one of the criteria, then the complaint or report is not valid and the LDSS has no authority to conduct a CPS family assessment or an investigation.

6.5.3.1 Additional information for screening reports of abuse/neglect regarding public school personnel

The Code of Virginia § 63.2-1511 states that "reasonable and necessary" force should be taken into account in determining validity of reports of abuse or neglect by public school employees. Appendix A in Section 5 has additional guidance for assessing the applicability of § 63.2-1511 for CPS out-of-family reports of school employees.

6.5.3.2 Screening consideration if alleged abuser is deceased

If the alleged abuser or neglector is deceased at the time of the report or dies during the course of the investigation, the LDSS must evaluate whether the purpose of the investigation would be achieved. An investigation may be appropriate if there is a child victim in need of services or in order to prevent other abuse or neglect.

6.5.4 Required notifications if report or complaint is invalid

6.5.4.1 Notify complainant

If a report is determined to be invalid, the LDSS must inform the complainant of its lack of authority to take action.

6.5.4.1.1 Invalid complaint involving child care facility

If a report is not valid because it addresses general substandard conditions in a child care facility (such as quality of food or program issues in a day care setting or residential facility), but the conditions do not constitute abuse or neglect, the LDSS (or CPS State Hotline staff if receiving the call) shall identify the proper regulatory authority and refer the caller to that regulatory authority. If there is no regulatory authority and no valid complaint for CPS investigation, the caller shall be informed that there is no agency with the authority to intervene.

6.5.4.1.2 Non-caretaker sexual abuse: information to be provided to reporter or complainant

The intake worker should explain the following to the person making the report or complaint alleging the non-caretaker sexual abuse of a child:

- The LDSS is not the agency authorized to investigate the report.
- The LDSS is required to report this information directly to law enforcement.

6.5.4.2 Notify law enforcement of non-caretaker sexual abuse

If a report is not valid because it alleges child sexual abuse perpetrated by a person who is not in a caretaker role, the LDSS (or CPS State Hotline staff if receiving the call) is required to report the allegation to the local law enforcement agency. The worker should telephone the information to law enforcement in the jurisdiction where the abuse occurred in accordance with any local protocol or standard procedures for reporting sex offenses involving juvenile victims. If there is any reason to believe a child may be in danger, the report must be made immediately. In all other cases, the report must be made on the same day it is received. Additional procedures may be developed locally to ensure effective reporting and accountability.

6.5.4.3 Information to provide to law enforcement in non-caretaker sexual abuse

The intake worker should attempt to obtain as much information about the alleged sexual abuse as possible and forward that information to the local law

enforcement agency. The intake worker should attempt to obtain the following information:

- The identity of the child and the identity of the alleged perpetrator (name, birth date, sex, address, child's school).
- Brief description of the alleged abuse.

6.6 Certain complaints and reports shall be reported to the Commonwealth Attorney and others

6.6.1 Report certain cases of suspected child abuse or neglect

> (22 VAC 40-705-50 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 § 63.2-1503 D of the Code of Virginia.

The following complaints and reports shall be reported to the Commonwealth Attorney and others as noted.

6.6.1.1 The death of a child

Any report or complaint alleging the death of a child as a result of abuse or neglect shall be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency.

See Section 11, Child Deaths for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

6.6.1.2 An injury or threatened injury to a child involving a felony or Class I misdemeanor

A report or complaint involving an injury (actual or threatened) that may have occurred as the result of a commission of a felony or a Class 1 misdemeanor shall be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency. Felony offenses are punishable with death or confinement in a state correctional facility; all other offenses are misdemeanors.[23]

23 § 18.2-8.of the Code of Virginia.

Felonies are classified, for the purposes of punishment and sentencing, into six classes; misdemeanors are classified into four classes.[24]

6.6.1.3 Any sexual abuse, suspected sexual abuse, or other sexual offense involving a child

Any sexual abuse, suspected sexual abuse, or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in the Code of Virginia § 18.2-374.1 et seq., shall be reported to the Commonwealth Attorney's office and local law enforcement.

6.6.1.4 Any abduction of a child

Any time a report or complaint alleges the abduction of a child, the LDSS shall make a report to the Commonwealth Attorney's Office and to law enforcement.

6.6.1.5 Any felony or Class 1 misdemeanor drug offense involving a child

Any time a report or complaint alleges abuse or neglect of a child and the commission of a felony or a Class 1 misdemeanor drug offense, the LDSS shall notify the Commonwealth's Attorney office and law enforcement.

6.6.1.6 Contributing to the delinquency of a minor

Contributing to the delinquency of a minor in violation of the Code of Virginia § 18.2-371 shall be reported to the Commonwealth's Attorney office and local law enforcement.[25]

6.6.1.7 Information to provide to Commonwealth's Attorney and law-enforcement agency

When making a report to the local Commonwealth's Attorney and local law enforcement, the LDSS shall make available all of the information upon which the report is based, including records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

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24 § 18.2-9 of the Code of Virginia.

25 The Code of Virginia § 18.2-371 defines contributing to the delinquency of a minor as:
Any person eighteen years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in §16.1-228, or (ii) engages in consensual sexual intercourse with a child fifteen or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

6.6.1.8 Other criminal acts related to child abuse or neglect

Other felonies and misdemeanors, not specifically identified for reporting by the Code of Virginia, may be related to child abuse or neglect. The reporting of these offenses must be in accordance with guidance developed by the LDSS in conjunction with the community's law enforcement and judicial officials.

6.6.2 Report the death of a child

> (22 VAC 40-705-50 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 § 63.5-1503 E 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 § 63.5-1503 D 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.

The Virginia Administrative Code requires the LDSS to contact the Medical Examiner, Commonwealth's Attorney, local law enforcement, and the CPS Regional Specialist when a report or complaint alleging abuse or neglect involves the death of a child.

See Section 11, Child Deaths for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

6.6.3 Memoranda of understanding with law enforcement and Commonwealth's Attorney

The Code of Virginia § 63.2-1503 J and the Virginia Administrative Code state:

> (22 VAC 40-705-50 E)… 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.

Since many situations are required to be reported to local law enforcement and/or the Commonwealth's Attorney, children and families will be better served if there is an understanding between these organizations and the LDSS. It is recommended that these agencies develop a written agreement regarding how varied situations will be handled, how communications should flow, etc. Provisions for roles and responsibilities of all parties, cross-training of staff, updating the agreement, and resolving problems are other examples of what the agreement should include in

order for it to be an effective and continuous agreement among these agencies that are so vital to the protection of children.

6.7 Screen valid complaints and reports for priority

The LDSS must consider and analyze all the information collected at the time of the referral to determine the most appropriate response to initiate a family assessment or investigation based on the child's immediate safety or other factors.

The LDSS determines urgency of response time for valid reports by completing the response priority decision trees in the CPS Intake Tool documented in the automated data system. The response priority decision trees are designed to assist in determining how quickly to initiate the response. Selections made on the response priority decision trees must relate to supporting narrative in the automated data system.

Timeliness of the initial response is calculated from the date and time of the referral. There are three response levels:

Response 1 (R1): as soon as possible **within 24 hours** of the date and time of the referral
Response 2 (R2): as soon as possible **within 48 hours** of the date and time of the referral
Response 3 (R3): as soon as possible **within five working days** of the date and time of the referral

All decisions to override the response level must be approved by the supervisor and documented in the automated data system. Copies of the CPS Intake Tool and definitions are located on the forms webpage on the DSS internal website and in Appendix D: CPS Intake Tool of this section. Since determining urgency of response is critical for valid reports, the following guidance is provided:

> (22 VAC 40-705-50 G): Valid complaints or reports 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.

6.7.1 The immediate danger to the child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Is the child in current distress, injured, or otherwise in an unsafe environment?
- What plans do the caretakers have for the future or continued protection of the child?
- Do the caretakers view the circumstances of the child as threatening?
- Has the abuse or neglect diminished or stopped, or is the child thought to be at risk of continued abuse or neglect?

6.7.2 The severity of the type of abuse or neglect alleged

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Are there allegations or evidence of broken bones, fractures, cuts, broken skin, severe bruising, or serious maltreatment?
- What was the manner of infliction of the abuse or neglect?
- Were instruments or other items, such as guns, knives, or belts, used in the infliction of the abuse or neglect?
- Is the neglect or abuse of a continuing or chronic nature? Is there evidence establishing a pattern of abusive or neglectful behavior?
- Is the threat of abuse or neglect imminent?
- Can the caretaker be located? Is the caretaker not available?
- Is it likely that the precipitating event or one similar will reoccur?
- Are factors in the environment (both in and outside the home) observed to have an impact on the actual or potential abuse or neglect of the child?

6.7.3 The age or vulnerability of the child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Does the child's age, sex, developmental level, chronological age, or maturation level effect the child's vulnerability to abuse or neglect?
- What is the child's capacity to protect him or herself from future abuse or neglect?
- Does the child know of emergency plans or contacts to obtain safety from abuse?
- Is the child able to express thoughts or responses regarding the allegation of abuse or neglect?

6.7.4 The circumstances surrounding the alleged abuse or neglect

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- When did the abuse or neglect occur?
- Where did the abuse or neglect occur?
- Were other individuals aware or witness to the circumstances of the abuse or neglect?
- Are siblings of the victim child aware or witness to the abuse or neglect?
- Did the abuse or neglect occur during a punishment or instructional contact with the child?
- What is the likelihood that the circumstances leading to the abuse or neglect will reoccur?

6.7.5 The physical and mental condition of the child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Is the child thought to be of normal development and possess the ability to communicate during the investigation?
- Are there known illnesses, developmental delays, or other impediments to normal growth and development of the victim child?
- Are the child's responses and feelings known regarding the incident of abuse or neglect?

- Are these responses and feelings consistent or inconsistent with what would be expected in the circumstances of abuse?
- How does the child view his or her role in the abusive or neglectful situation?
- Does the child's perception of his role impact his or her vulnerability for abuse or neglect?

6.7.6 Complaints made by mandated reporters

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- When was the mandated reporter made aware of the circumstances involving the alleged abuse or neglect?
- In what capacity did the mandated reporter know the alleged victim child? What was the relationship between the alleged victim child and the mandated reporter?
- Has the reporter made a similar report on like circumstances regarding this victim child prior to this complaint?
- Has the mandated reporter discussed the circumstances with the child? With the parents? Other professionals?
- Does the mandated reporter possess other relevant information such as knowledge about the living conditions or other environmental factors?
- What actions or services are recommended by the mandated reporter?

6.7.7 Initiating a response to a valid report

Timeliness of the initial response is calculated from the date and time *when* the referral *is received*. The initial response is the first attempted or completed contact with the alleged victim, parent/caretaker, or collateral. The LDSS should make a face-to-face contact with the alleged victim child within the initial response priority level assigned, as this contact is critical. Sometimes the LDSS's initial efforts to respond to the report will not be successful such as when no one is home. In other situations, the LDSS's first contact, although not with the victim child, does provide information to assess child safety. Sometimes the initial response may be by telephone with the victim, the parent, or collateral that provides information to begin the family assessment or investigation and contributes to the initial child safety assessment.

Initial response may or may not be the same as first meaningful contact. See Section 4 of this manual for further guidance on first meaningful contact and initial safety assessment.

All contacts, attempted or completed, in the family assessment and investigation must be entered into the automated data system to document the LDSS's response to the report and to document compliance with CPS program requirements. This includes documentation of all attempted contacts as well as case planning that affect the initiation of the family assessment or investigation.

6.8 Determine the appropriate CPS response: family assessment or investigation

The Code of Virginia § 63.2-1503 I authorizes the LDSS to determine validity of a complaint or report. For all valid complaints or reports, the LDSS shall determine whether to conduct a family assessment or an investigation.

> (22 VAC 40-705-50 H). The local department shall initiate an immediate response. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with § 63.2-1506 C of the Code of Virginia, the following shall be investigated: (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in § 18.2-371.1, (iv) a child has been taken into the custody of the local department of social services, or (v) 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.

6.8.1 Make the response track decision

After the decisions regarding validity and urgency, a decision must be made as to whether to conduct a family assessment or an investigation. The Virginia Administrative Code defines family assessment and investigation as follows:

> (22 VAC 40-705-10). "Family assessment" means the collection of information necessary to determine:
> 1. The immediate safety needs of the child;
>
> 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
>
> 3 Risk of future harm to the child; and
>
> 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.

> "Investigation" means the collection of information to determine:
>
> 1. The immediate safety needs of the child;
>
> 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
>
> 3. Risk of future harm to the child;
>
> 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
>
> 5. Whether or not abuse or neglect has occurred;
>
> 6. If abuse or neglect has occurred, who abused or neglected the child; and
>
> 7. A finding of either founded or unfounded based on the facts collected during the investigation.

The track decision should be made at Intake, before responding, if at all possible. In making this decision, the *LDSS* Intake Worker and/or Supervisor should take into consideration such variables as:

- History of abuse or neglect.
- *If there is a fourth valid CPS report within 12 months, it must be investigated.*
- Type and severity of alleged abuse.
- Child's age and ability to self-protect.
- Presence of a disability that affects the child's ability to self-protect.
- Whether or not the caretaker's behavior is violent or out of control.
- Living conditions, e.g., hazardous, presence of firearms or drugs.

The LDSS completes the differential response decision on the CPS Intake Tool in the automated data system. This checklist assists with consideration of statutory mandates for the investigation track and other serious situations which may be appropriate for the investigation track. The immediate danger to the child and the severity of the alleged abuse or neglect are crucial factors to be considered. The CPS Intake Tool is located on the DSS internal website or in Appendix D: CPS Intake Tool of this section.

If sufficient information cannot be obtained from the complainant, the track assignment can be made at the point of the first meaningful contact with any parties named in the complaint. Additional local criteria for track assignment may be developed, but the criteria must be consistently applied within the locality. The chart that follows is intended to assist local CPS staff in evaluating child abuse and neglect reports for placement in a Response Track.

6.8.2 CPS Report Placement Chart

FAMILY ASSESSMENT RESPONSE	INVESTIGATION RESPONSE
No situations are mandated to be Family Assessments. (After a family has received three *valid CPS reports within 12 months*, the next report *must* be investigated).	**Mandated by Code of Virginia (§ 63.2-1506 C):** - All sexual abuse allegations - Any child fatality - Abuse or neglect resulting in serious injury as defined in § 18.2-371.1 * [also consider medical neglect of disabled infant with life threatening condition (Baby Doe)]; - Child taken into agency custody due to abuse or neglect (§ 63.2-1517) - Child taken into protective custody by physician or law enforcement, pursuant to § 63.2-1517 - All allegations regarding a caretaker in a designated out of family setting as defined in § 63.2-1506 C
	Policy mandate: All allegations regarding a caretaker in an out of family setting of any kind, i.e. foster homes, day care, residential facilities.
Examples of when this response may be most appropriate: **Physical Abuse:** Abusive treatment of a child that may or may not have caused a minor injury – no medical treatment required. **Mental Abuse**: Child is experiencing minor distress or impairment; child's emotional needs are sporadically met but there are behavioral indicators of negative impact. Child exposed to domestic violence. **Neglect:** Lack of supervision where child is not in danger at time of report; minor injuries suggesting inattention to child safety. **Substance Exposed Infant** referrals.	Examples of when this response is most appropriate, but not mandated by law: **Physical Abuse**: Physical abuse that causes or threatens to cause serious injury (other than that defined in § 18.2-371.1*); or that may require medical evaluation, treatment or hospitalization. Reports of children present during the sale or manufacture of illegal substances; and highly recommend these be investigated jointly with law enforcement. **Mental Abuse**: Child is experiencing serious distress or impairment; child's emotional needs allegedly are not being met or are severely threatened. **Neglect:** Lack of supervision that causes or may cause serious injury or illness; injury or threat of injury due to use of weapons in the home. **Non-Organic Failure to Thrive:** Child is an infant and at imminent risk of severe harm. **Child Abandonment** referrals. **Fourth valid CPS report in 12 months**

* Note that § 18.2-371.1 A includes, but is not limited to, disfigurement, fracture, severe burns or lacerations, mutilation, maiming, forced ingestion of dangerous substances, or life threatening internal injuries.

6.9 Appendix A: Issues to consider when identifying a caretaker

In determining whether a person is a caretaker, it may be helpful to consider several questions:

- What is the person's relationship with the child?
- What is that person's role or function toward the child?
- Was the primary responsibility of the person toward the child one of supervision and providing care, or was the person providing a professional or expert service?
- How do the child and the child's usual caretaker view this relationship and role?
- How does the community view this relationship and role?
- Have the parents or other person specifically delegated formally or informally the caretaking role for this person?

Practice in some communities has been to exclude some types of persons as caretakers based on the needs of the children, the abilities of families to protect them, and other remedies in place such as a professional licensing board. Some exclusions have included sheriffs, police, doctors, dentists and psychotherapists. Non-public school teachers, coaches, music teachers, etc., have also been unofficially and routinely excluded from the definition of caretaker in some locales.

Frequently there are concerns when the alleged abuser is a minor. The following considerations may guide the decisions regarding a minor as caretaker and alleged abuser:

- Was it appropriate for the juvenile to have been put in a caretaking role? Was the supervision plan appropriate?
- Was the alleged abuse by the minor indicative of his/her own abuse? (i.e. sexual knowledge or behavior that is age inappropriate)
- What is the age difference between the alleged abuser and the victim; was this peer interaction?
- What is the minor's understanding of what he did; does he realize how inappropriate it was?
- Is this acting out rather than abusive behavior?

Special consideration must be given to the needs of minor caretakers who are abusive. The report may be Unfounded in relation to the minor as the abuser, because it is determined that the minor was inappropriately placed in a caretaking role. However, the behaviors of the minor may indicate a need for services.

Each LDSS maintains the discretion to validate reports of child abuse and neglect.

6.10 Appendix B: Children home alone

Virginia state statutes do not set a specific age after which a child legally can stay alone.* Age alone is not a very good indicator of a child's maturity level. Some very mature 10-year-olds may be ready for self care while some 15-year-olds may not be ready due to emotional problems or behavioral difficulties. In determining whether a child is capable of being left alone and whether a parent is providing adequate supervision in latchkey situations, child protective services (CPS) will assess several areas. These areas include:

- **Child's level of maturity**. CPS will want to assess whether the child **is physically capable** of taking care of himself; **is mentally capable** of recognizing and avoiding danger and making sound decisions; **is emotionally ready** to be alone; knows what to do and whom to call if an emergency arises; and has special physical, emotional, or behavioral problems that make it unwise to leave be left alone. **It is important to note that a child who can take care of him/herself may not be ready to care for younger children.**

- **Accessibility of those responsible for the child**. CPS will want to determine the location and proximity of the parents, whether they can be reached by phone and can get home quickly if needed, and whether the child knows the parents' location and how to reach them.

- **The situation**. CPS will want to assess the time of day and length of time the children are left alone; the safety of the home or neighborhood; whether the parents have arranged for nearby adults to be available in case a problem arises; and whether there is a family history of child abuse or neglect.

* Some localities have ordinances concerning the age at which a child may be left without supervision.

6.11 Appendix C: Distinguishing between accidental and non-accidental injury

One of the most critical responsibilities of child welfare staff during the investigation or review of a child's death is to distinguish between accidental and non-accidental injuries. This is particularly difficult when staff must distinguish between accidents in which chronic neglect or inadequate supervision was a factor and those where neglect is not a concern. In most cases, medical input will be required to make such a determination. These situations include those where the conditions resulting in the child's death appear to be directly created by or under the control of the parent or other person responsible for the child's care, yet the death is not identified as relating to a specific type of maltreatment, as well as those deaths that are alleged or known to have occurred as a result of abuse or neglect. Consideration of the following four factors can provide guidance for this process:

- **Discrepant history**. In some cases, the nature of the injury does not match the history given by the parent or other person responsible for the child's care. To determine this requires a detailed description of the incident. What were the circumstances leading up to and following the incident? When did it occur? Who was present at the time of the incident? What were the specific medical assessment of how the injuries occurred and the detailed description of the injuries and the child's condition? What information was obtained during the onsite visit?

- **Delay in seeking medical care**. At times, the delay in seeking medical care can range from a few moments to hours. In assessing delay, it is important to realize, for example, that following a severe shaking or beating, the abuser will often place a child down in a crib or on the floor and leave the room. The child may then exhibit symptoms of intracranial pressure (vomiting, seizures, and cardio respiratory arrest). These symptoms then cause the person responsible for the abuse to contact emergency help, and that person often disassociates the symptoms from their previous actions.

- **Triggering event by the child(ren)**. This is usually age-specific behavior, such as inconsolable crying, a messy diaper, toilet training problems, etc., which triggers the abuse.

- **A crisis in the family**. A crisis may have placed additional stress on the family's capacity to cope. Crisis can take the form of unexpected or difficult pregnancy, marital differences, loss of job, or death of an extended family member.

6.12 Appendix D: CPS Intake Tool

OASIS Case Name: _____ **Referral #:** _____ **FIPS Code:** _____

Worker Name: _____ **Supervisor:** _____ **Referral Date:** ____/____/____

STEP 1: SCREENING ASSESSMENT

Section 1: Maltreatment Type

Neglect occurs when a parent or other person responsible for child's care neglects or refuses to provide care necessary for child's health; when a child is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis; when parent(s) or other person(s) responsible for child's care abandons such child.

_____ Abandonment: Child is deserted by parent/caretaker, and there are no apparent plans to return.

_____ Inadequate Supervision:

- _____ Incapacitated Caretaker (includes physical and/or mental incapacitation, use of substances)
- _____ Child has been left in the care of an inadequate caretaker or in a situation requiring judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate.
- _____ Parent/caretaker ignored/disregarded pertinent information about either the child's behavior history or self-management abilities.
- _____ Parent/caretaker locks child in or out, or expels a child from the home.
- _____ Parent/caretaker fails to protect child from abuse/neglect and/or allows continued access to child by someone who the parent/caretaker knows has previously maltreated the child.
- _____ Parent/caretaker leaves the child alone in the same dwelling with a person not related by blood or marriage who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

_____ Exploitation (non-sexual): Parent/caretaker uses child to perform illegal acts to benefit the parent/caretaker.

_____ Inadequate Basic Care (clothing, shelter, hygiene, nutrition):

- _____ Child's home environment, including lack of heat or shelter and unsanitary household conditions, is hazardous and could lead to injury or illness of the child if not resolved.
- _____ Parent/caretaker has failed to meet a child's basic needs for clothing and/or hygiene to the extent that the child's functioning is impaired or there are medical indications such as sores, infection, physical illness, or serious harm such as hypothermia or frostbite.
- _____ Child is without food (consider age of child and length of time) or is malnourished as a result of commission or omission by a parent/caretaker.

_____ Inadequate Medical/Mental Health Care:

- _____ Parent/caretaker is failing to seek, obtain, or follow through with medical attention for a specific moderate-to-serious medical or dental injury, illness, or condition for a child, including failure to use prescribed drugs (consider medication, medical condition, adverse affect, injury to self or other). Include emergency treatment, necessary care or treatment, and necessary dental care or treatment.

_____ Parent/caretaker is unwilling to obtain mental health services and intervention for a child in need of treatment or evaluation (includes suicide threats or attempts, severe emotional disorders, exhibiting behaviors dangerous to self or others, etc.).

_____ Non-organic Failure to Thrive Attributed to Physical Neglect

_____ Substance-exposed Infant

Mental Abuse 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.

_____ Emotional or Psychological: An incident or pattern of behavior directed toward a child (e.g., berating, name calling, domestic violence, rejection, etc.) by a parent/caretaker that interferes with that child's normal daily functioning and can be linked to psychological or physical ailments of the child.

_____ Exposure to Domestic Violence that results in demonstrated dysfunction by the child.

_____ Non-organic Failure to Thrive attributed to mental abuse.

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.

_____ Non-accidental or Suspicious Injury to a child by a parent/caretaker. Suspicious injuries include injuries that are inconsistent with the parent/caretaker's explanation; multiple inconsistent explanations for injuries; marks that resemble objects such as extension cords, belts, etc.; and/or injuries located in unusual areas of the body such as the inner thigh, ears, torso, etc. Include asphyxiation, bone fracture, brain damage/skull fracture/subdural hematoma, burns / scalding, cuts/bruises/welts/abrasions, internal injuries, sprains / dislocation, gunshot/stab wounds, battered child syndrome, shaken baby syndrome (include injury to child sustained during domestic violence incident).

_____ Old, Healed, or Healing Injuries that have gone untreated and appear suspicious as reported by a medical professional. Include any of the above that are not new injuries.

_____ Inappropriate Giving of Drugs to a child by a parent/caretaker, including use of illicit drugs by a breastfeeding parent that is reported by a medical professional as having adverse affects on the child. Include poisoning.

_____ Munchausen's Syndrome by Proxy or suspicion of it is reported by a medical or mental health professional who provides documentation supporting the allegation.

_____ Parent/Caretaker Action(s) Indicates Excessive Force or Threat of Force That Would Reasonably Cause Injury to a child where injuries may not have occurred or be visible, such as hitting with a fist, choking, etc. Include bizarre discipline.

_____ Exposure to Drug-related Activity: Allowing child to be present during the sale or manufacture of drugs.

_____ Verbal Threat of Serious/Life-threatening Physical Harm Toward a Child by a parent/caretaker, as evidenced by gestures/statements made by the parent/caretaker or the parent/caretaker's behavior, such as stating a fear of harming/killing the child, holding a gun to a child's head, use of a weapon, etc. Evidence of injuries need not be present.

Sexual Abuse occurs when parent(s) or other person(s) responsible for child's care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.

_____ Sexual Contact or Exploitation involving a child (under age 18) by a parent/caretaker. This includes reports of sibling/adolescent sexual contact where a caretaker role exists or consensual sex involving a child with a person who has care, custody, and control.

_____ Disclosure by a Child of an incident of sexual abuse by someone who had care, custody, and control at the time of the alleged incident, whether or not a specific offender is identified.

_____ Physical, Behavioral, or Suspicious Indicators Consistent With Sexual Abuse reported by a mandated reporter, even without disclosure.

Section 2: Screening Decision

Validated as CA/N: ____ Yes (Complete Step 2, Response Priority)

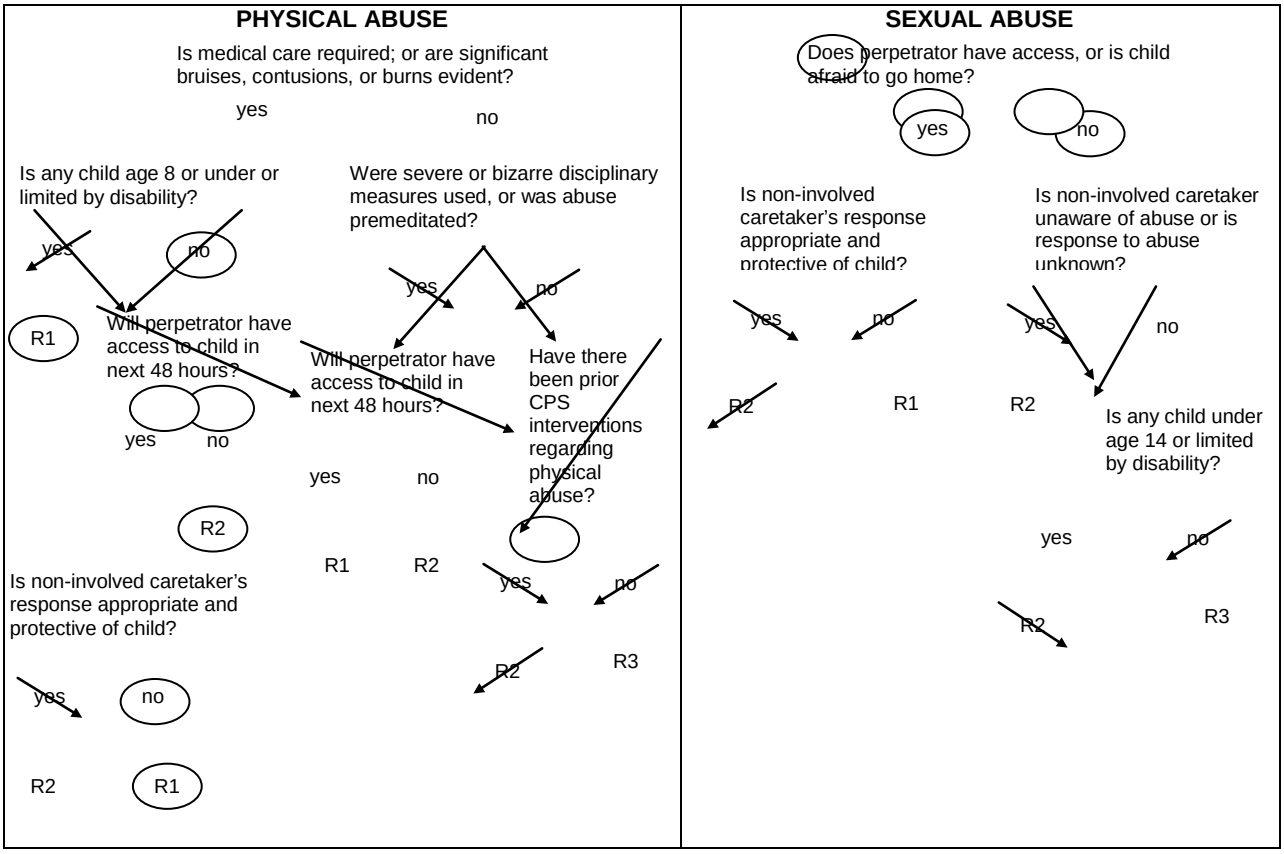
____ No (Check all alternative actions. Do not complete Response Priority):

_____ Message/Retain Invalid Report
_____ External Preventive Service Referral
_____ Internal Preventive Service Referral
_____ Judicial Referral
_____ Information Passed on to Case Manager
_____ Law Enforcement
_____ Other: _____

Additional Information:

STEP 2: RESPONSE PRIORITY

Section 1: Decision Trees



NEGLECT

(Includes medical neglect and abandonment)

Is the living situation immediately dangerous; is any child currently left unsupervised who is age 8 or under or too disabled to care for self; does child appear seriously ill or injured and in need of immediate medical care; is caretaker not available and no provision for care has been made; or is the child currently alone with, or repeatedly left alone with, a non-related violent sex offender?

yes

no

R1

Are severe parental or caretaker substance abuse, developmental disabilities, or mental illness issues present AND no other appropriate caretaker is present?

yes

no

Is any child age 8 or under or limited by disability?

R3

yes

no

R1

Have there been prior CPS interventions?

yes

no

R2

R3

MENTAL ABUSE

(Includes exposure to domestic violence)

Is caretaker's behavior toward child extreme, severe, or bizarre; or does child's behavior put self at risk and caretaker does not respond appropriately?

yes

no

R1

Does information show observable and substantial impairment in child's ability to function in a developmentally appropriate manner?

yes

no

Is any child age 8 or under or limited by disability?

R3

yes

no

R2

R3

Section 2: Overrides

Policy Override:

Shall increase to R1 whenever:

_____ a. Family is about to flee or has a history of fleeing;
_____ b. Forensic investigation would be compromised if investigation/assessment is delayed;
_____ c. Law enforcement is requesting immediate response; or
_____ d. Allegation is exposure to drug-related activity and involves a meth lab.

May decrease by one priority level whenever:

_____ a. Child is in alternate safe environment; or
_____ b. A substantial period of time has passed since the incident occurred.

Discretionary Override (requires supervisor approval***)*:**

_____ Increase one level; or
_____ Decrease one level.

Reason: _____

FINAL ASSIGNED RESPONSE TIME
R1 = as soon as possible within 24 hours
R2 = as soon as possible within 48 hours
R3 = as soon as possible within five working days

STEP 3: DIFFERENTIAL RESPONSE DECISION

Mark either investigation or assessment, and check all applicable reasons within column.

_____ **INVESTIGATION**

Mandatory investigation reasons (if one or more apply, MUST be assigned as investigation):

_____ Sexual abuse
_____ Child fatality
_____ Serious injury per 18.2-371.1
_____ Child taken into custody due to child abuse/neglect (CA/N)
_____ Child taken into custody by physician or law enforcement
_____ Out-of-family (OOF; no further SDM completed)
_____ Baby Doe
_____ Fourth report within 12 months

Suggested investigation reasons:

Physical Abuse
_____ Injury is serious, but less serious than 18.2-371.1
_____ Injury requires medical evaluation, treatment, or hospitalization
_____ Exposure to sale or manufacture of certain drugs

Mental Abuse
_____ Serious distress or impairment of child
_____ Emotional needs not met or severely threatened

Neglect
_____ Serious injury or illness due to lack of supervision
_____ Injury or threat of injury due to weapons in home
_____ Non-organic failure to thrive of infant at imminent risk of severe harm
_____ Abandonment

Other: _____

_____ **FAMILY ASSESSMENT**

_____ No mandatory investigation circumstances are present (must be checked if family assessment is selected)

Suggested assessment reasons:

Physical Abuse
_____ No injury, or injury that does not require medical treatment

Mental Abuse
_____ Minor distress or impairment
_____ Emotional needs sporadically met and behavioral indicators of impact

_____ Exposed to domestic violence but no immediate threat of harm

Neglect

_____ Lack of supervision but child not in danger at time of report
_____ Inattention to safety results in no or minor injuries
_____ Substance-exposed infant

Other: _____

SCREENING ASSESSMENT
DEFINITIONS

If one or more maltreatment types are selected in Section 1 and other validation requirements are met (child is under age 18, alleged abuser is caretaker, and jurisdiction exists), mark "yes" (validated as CA/N) in Section 2 and proceed directly to Step 2, Response Priority. DO NOT SELECT ANY OF THE FOLLOWING IF REFERRAL WILL BE SCREENED IN.

If no maltreatment types are selected in Section 1, mark "no" in Section 2. There will not be an investigation or assessment. There may be alternative actions taken or recommended. If so, check all of the following alternative actions that apply.

Message/Retain Invalid Report. The given information does not meet validity requirements and no other referrals were given to the caller. However, information about the call will be maintained in OASIS.

External Preventive Service Referral. The caller was referred to an agency in the community, such as child support enforcement, private counseling, mediation services, etc.

Internal Preventive Service Referral. The caller was referred to an existing service program within the agency OTHER THAN FOR A CA/N INVESTIGATION OR ASSESSMENT. Examples may include family preservation, homeless prevention, daycare, etc.

Judicial Referral. The caller was referred to the juvenile courts for assistance with visitation, custody matters, CHINS petitions, etc.

Information Passed on to Case Manager. Caller is providing information on an open case that does not constitute a new referral.

Law Enforcement. The caller was referred to law enforcement and/or the referral information will be relayed to law enforcement by the worker per policy, but there will be no CA/N investigation or assessment in conjunction with law enforcement response.

RESPONSE PRIORITY DEFINITIONS

PHYSICAL ABUSE

Is medical care required; or are significant bruises, contusions, or burns evident?

- Medical care includes any intervention performed by a health care professional to treat an injury. (Do not include forensic medical evaluations solely done for the purpose of documenting injury, or evaluation to determine IF there is an injury.)

- Include significant bruises, contusions, or burns that did not require medical care. Significance is gauged by considering location (e.g., injuries to soft tissue, face, abdomen, or buttocks are considered more significant than injuries over bony prominences such as elbows, knees, shins); scope (e.g., injuries over multiple body surfaces or covering larger areas are considered more significant than a small, isolated bruise); and recency of injury (e.g., new injuries are considered more significant than old scars). A pattern of injuries apparently inflicted over a period of time should be considered significant.

Is any child age 8 or under or limited by disability?
If the injured child has not reached his/her ninth birthday, or is as vulnerable as a child 8 or under due to known cognitive or physical disability, answer yes. All others, answer no.

Will perpetrator have access to child in next 48 hours?
If perpetrator is identified, is it likely that perpetrator will be in physical proximity of the child within 48 hours? Also include verbal/written or third-party access if the perpetrator has used such indirect contact in an attempt to influence the child's statements or threaten the child in any way.

If the perpetrator is unknown, access must be assumed. Answer yes.

Is non-involved caretaker's response appropriate and protective of child?
A non-involved caretaker is one who did not directly participate in the alleged maltreatment of the child. An appropriate and protective response may be characterized by acknowledgment that the perpetrator's actions were inappropriate; awareness of and concern for the impact of maltreatment on the child; and acceptance of the child's report of abuse. A protective response may be evidenced by setting limits on the alleged perpetrator's contact with the child, involvement with discipline, etc. Consider the emotional and physical ability of the non-perpetrating caretaker to carry out intended protective measures.

Were severe or bizarre disciplinary measures used, or was abuse premeditated?

- Did perpetrator act in ways that present high potential for serious harm (e.g., throwing a heavy object toward child's head, punching in abdomen)? Did perpetrator act in ways that suggest extremely distorted and dangerous concepts of child discipline (e.g., locking in cage, surpassing child's physical or emotional capacity to endure, exposing to severe elements)?

OR

- Is there evidence that perpetrator planned in advance to physically harm child? Answer no if caretaker planned in advance to take the action but did not intend the action to cause physical injury.

Will perpetrator have access to child in next 48 hours?
If perpetrator is identified, is it likely that perpetrator will be in physical proximity of the child within 48 hours? Also include verbal/written or third-party access if there is reason to believe the perpetrator will attempt to influence the child's statements or threaten the child in any way.

If the perpetrator is unknown, access must be assumed. Answer yes.

Have there been prior CPS interventions regarding physical abuse?
Include any prior investigation/assessment for physical abuse that was founded or where services were indicated (investigations/assessments determined to be unfounded are excluded).

SEXUAL ABUSE

Does perpetrator have access, or is child afraid to go home?

- If perpetrator is identified, is it likely that the perpetrator will be in physical proximity of the child within 48 hours? Also include verbal/written or third-party access if the perpetrator has used such indirect contact to influence the child's statements or threaten the child in any way. If the perpetrator is not identified, also answer yes.

- Does child express fear (verbally or nonverbally) of remaining at or returning home?

Is non-involved caretaker's response appropriate and protective of child?
A non-involved caretaker is one who did not directly participate in the alleged maltreatment of the child. An appropriate and protective response may be characterized by acknowledgment that the perpetrator's actions were inappropriate; awareness of and concern for the impact of maltreatment on the child; and acceptance of the child's report

of abuse. A protective response may be evidenced by obtaining medical evaluation, if indicated, and discontinuing contact between alleged perpetrator and child. Consider the emotional and physical ability of the non-perpetrating caretaker to carry out intended protective measures. Any attempt by the caretaker to influence the child's statement one way or the other is considered an inappropriate response.

Is non-involved caretaker unaware of abuse or is response to abuse unknown?
Answer yes if:

- Report is from a third party and the non-involved caretaker has not yet been informed of the allegation.
- The non-involved caretaker may have learned of the alleged abuse but the caller has no information concerning the caretaker's reaction.

Is any child under age 14 or limited by disability?
If the child has not reached his or her 14th birthday, or is as vulnerable as a child under age 14 due to known cognitive or physical disability, answer yes. All others answer no.

NEGLECT (Includes medical neglect and abandonment)

Is the living situation immediately dangerous; is any child currently left unsupervised who is age 8 or under or too disabled to care for self; does child appear seriously ill or injured and in need of immediate medical care; is caretaker not available and no provision for care has been made; or is the child currently alone with, or repeatedly left alone with, a non-related violent sex offender?

Answer yes if the following:

- Based on the child's age and developmental status, the child's physical living conditions are hazardous and immediately threatening. Examples include but are not limited to the following:
    - Exposure to animals known to be a danger.
    - Unsafe heating or cooking equipment.
    - Substances or objects accessible to the child that may endanger the health and/or safety of the child.
    - Lack of water or utilities (heat, plumbing, electricity) and no alternate or safe provisions are made.
    - Exposed electrical wires.

- Excessive garbage or rotted or spoiled food that threatens health.
- Serious illness or significant injury has occurred due to living conditions and these conditions still exist (e.g., lead poisoning, rat bites).
- Evidence of human or animal waste throughout living quarters.
- Guns and other weapons are accessible to child.
- Complete or near-complete absence of food.

OR

- Child is age 8 or under or is as vulnerable as a child age 8 or under due to known cognitive or physical disability AND:
  - Child is currently alone or is scheduled to be alone within the next 48 hours.
  - Caretaker does not attend to child to the extent that need for care goes unnoticed or unmet (e.g., caretaker is present but child can play with dangerous objects or be exposed to other serious hazards).
  - Child is being supervised by an alternate caretaker who is unable to meet child's immediate needs for care and supervision.

OR

- Child's unmet medical need may result in serious harm, serious aggravation of symptoms, increased risk of long-term or permanent injury or impairment, or death if not treated **within 48 hours**. Examples include but are not limited to the following:
  - Apparent bone injury that has not been set;
  - Apparent second- or third-degree burn that has not been medically evaluated.
  - Untreated dehydration.
  - Breathing difficulties.
  - Severe abdominal pain.
  - Loss of consciousness or altered mental status.
  - Failure to thrive.

- Untreated exposure to the elements; frostbite.

OR

Caretaker:

- Left the child without affording means of identifying the child and the child's parent or guardian.
- Is absent from the home for a period of time that creates a substantial risk of serious harm to a child left in the home.
- Left the child with another person without provision for the child's support and the other person is no longer able or willing to provide care.
- Caretaker has currently left, or repeatedly leaves, the child alone in the same dwelling as a person not related by blood or marriage who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

Are severe parental or caretaker substance abuse, developmental disabilities, or mental illness issues present AND no other appropriate caretaker is present?

Answer yes if **caretaker**:

- Is currently impaired by alcohol or other drugs to the extent that he/she is not providing for the child's needs for care and safety, and this has resulted or is likely to result in injury, illness, or harm to the child.
- Is cognitively impaired to the extent that he or she lacks basic understanding of child's needs for care and supervision, and this lack of understanding has resulted or is likely to result in injury, illness, or harm to the child.
- Is mentally ill to the extent that he/she is unable to meet child's needs for care and supervision, and this has resulted or is likely to result in injury illness, or harm to the child. Examples include but are not limited to the following:
  - Loss of touch with reality.
  - Paranoid thoughts, especially those in which child may be seen as evil.
  - Severe depression that interferes with ability to function at even most basic levels.

  - Suicidal ideation (includes all direct or indirect threats, attempts, or behavioral indicators of suicidal ideation).

- A substance-exposed newborn represents severe parental substance abuse for the purposes of this question.

AND

- No other adult is present who is able to provide for the child's protection and care.

Is any child age 8 or under or limited by disability?
If any child has not reached his/her ninth birthday, or is as vulnerable as a child 8 or under due to known cognitive or physical disability, answer yes. All others, answer no.

Have there been prior CPS interventions?
Include any prior investigation/assessment that was founded or where services were indicated (investigations/assessments determined to be unfounded are excluded).

MENTAL ABUSE (Includes exposure to domestic violence)

Is caretaker's behavior toward child extreme, severe, or bizarre; or does child's behavior put self at risk and caretaker does not respond appropriately?

Examples of extreme, severe, or bizarre behavior include the following:

- Caretaker threatens to harm self in child's presence.

- Unusual forms of discipline (e.g., child standing in corner on one leg; forcing child to wear inappropriate clothing, such as a 10-year-old being forced to wear diapers—this should NOT include incidents of inappropriate clothing due to poverty or current fashion).

- Murder or torture of people or pets in front of child.

- Child's extreme rejection from family (e.g., abnormally long time-outs based on child's age and developmental level; family acts as if child does not exist).

- Child singled out for detrimental treatment.

- Caretaker is constantly belittling child or has unrealistic expectations of child.

OR

- Child is suicidal, self-mutilating, or engaging in other behavior that has caused or is likely to cause serious physical injury or death, AND caretaker is unable or unwilling to provide monitoring, support, mental health services, or hospitalization necessary to protect child.

Does information show observable and substantial impairment in child's ability to function in a developmentally appropriate manner?
Examples include chronic somatic complaints; enuresis/encopresis not due to medical condition; long-term withdrawal/depression/isolation from family or school activities; severe aggressive behavior; cruelty toward animals; fire setting.

Is any child age 8 or under or limited by disability?
If any child has not reached his/her ninth birthday, or is as vulnerable as a child 8 or under due to known cognitive or physical disability, answer yes. All others, answer no.

OVERRIDES

Policy Overrides

Shall increase to R1 whenever:

- **Family is about to flee or has a history of fleeing**. Family is preparing to leave the jurisdiction to avoid investigation/assessment, or has fled in the past.

- **Forensic investigation would be compromised if investigation/assessment is delayed**. Physical evidence may be lost or altered; attempts are being made to alter statements, conceal evidence, or coordinate false statements.

- **Law enforcement is requesting immediate response**.

- **Allegation is exposure to drug-related activity and involves a meth lab**.

May decrease by one priority level whenever:

- **Child is in alternate safe environment**. Child is no longer living where alleged abuse/neglect occurred, or is temporarily away and will not return for 48 hours if overriding to R2 or five working days if overriding to R3.

- **A substantial period of time has passed since the incident occurred**. The incident happened long ago and there is reason to believe no additional incidents have occurred since then.

CPS INTAKE TOOL PROCEDURES

The intake tool assists workers with two decisions:

- The purpose of the screening assessment (Step 1) is to assess whether calls meet the definitional criteria for a child A/N investigation/assessment.

- The response priority decision trees (Step 2) are designed to assist in determining how quickly to initiate the first meaningful contact for assigned investigations/assessments. By answering a series of questions, the trees aid in determining the priority level for responding to a case. Each priority level includes a suggested timeframe for response.

  Response 1 (R1) = as soon as possible within 24 hours
  Response 2 (R2) = as soon as possible within 48 hours
  Response 3 (R3) = as soon as possible within five working days

Which Cases: The screening assessment (Step 1) is completed for all calls alleging child A/N. This includes telephone and all other means of report, and includes new reports of child A/N on open cases.

The response priority (Step 2) is completed for all valid reports of child A/N.

Who: The local intake worker.

When: As soon as possible upon receipt of the report.

Decisions: The screening assessment (Step 1) assists the worker in determining whether a report meets child A/N investigation / assessment definitions.

The response priority (Step 2) assists workers in determining when they must initiate the first meaningful contact. R1 reports require that the first meaningful contact occurs **as soon as possible within 24 hours**; R2 reports require that the first meaningful contact occurs **within 48 hours**; and R3 reports require that the first meaningful contact occurs **within five working days**. The timelines referenced in the decision trees commence at the time the report is made.

Appropriate Completion: **Step 1: Screening Assessment**

In Section 1, mark the specific criteria for all allegations indicated in the report under the appropriate maltreatment category.

In Section 2, indicate whether the report is being validated as a child A/N report by checking either "yes" or "no." If any of the maltreatment criteria were checked and the other validity criteria are met (child under age 18, alleged perpetrator is a caretaker, and jurisdiction exists), the report should be validated as child A/N. Reports that do not meet any of the screen-in criteria should not be validated as child A/N reports.

For reports that are not validated as a child A/N report, indicate with a check mark if the referral meets criteria for some alternative action (e.g., external preventive service referral*).*

For "duplicate referrals" (an allegation is reported, accepted, and assigned for an investigation/assessment one day, and then a few days later, a different caller makes the same allegation on the same family, based on the same set of issues - it is the same thing reported twice) in OASIS, treat the duplicate referral as "Invalid – Duplicate Referral." On the SDM intake tool: 1) in Section 1, check none of the allegation sub-types; 2) in Section 2, check "No" (not validated as child A/N); and 3) in Section 2, under "Other Information," type in "Duplicate Referral" and if available, give the referral number for the original validated referral. Do not complete the response priority or differential response sections of the intake tool.

Step 2: Response Priority

Information gathered by agency staff must be analyzed to assess the urgency for response. The response priority decision trees structure this analysis to determine a response priority level. The decision trees ask a series of questions depending on the type of alleged maltreatment (physical abuse, sexual abuse, neglect, and mental abuse). Answers to each question, consisting of "yes" or "no" responses, will lead to another question, and ultimately, a response priority level.

If more than one type of maltreatment is alleged, complete all applicable decision trees to determine the most urgent response priority level. Once a response of R1 has been obtained, it is not necessary to complete additional trees.

Overrides: After reviewing all necessary decision trees, consider whether or not an override should be applied.

A policy override to R1 shall be applied whenever:

- Family is about to flee or has a history of fleeing;
- Forensic investigation would be compromised if investigation/ assessment is delayed;
- Law enforcement is requesting immediate response;
- Allegation is exposure to drug-related activity and involves a meth lab.

A policy override may be used to decrease response by one level whenever:

- Child is in an alternate safe environment;
- A substantial period of time has passed since the incident occurred.

A discretionary override may be applied if, after completion of all necessary decision trees and application of policy overrides, worker and supervisor determine that there are unique conditions not captured by the tool that warrant a different response priority. A discretionary override may increase or decrease the response time by one level.

Step 3: Differential Response Decision

The final step in assigning a valid referral is to determine whether the referral will be assigned as an investigation or an assessment. These decisions are currently guided by state statute and local policy. The worker will check whether the referral is assigned as an investigation or as a family assessment, and check all applicable reasons for this decision. If assigned as an assessment, "No mandatory investigation circumstances are present" must be checked. NOTE THAT THIS IS NOT A STRUCTURED DECISION AT THIS TIME.

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COMPLAINTS AND REPORTS

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COMPLAINTS AND REPORTS

9.1 Legal basis

The Code of Virginia § 63.2-1503 B and C mandates that local departments of social services (LDSS) maintain the capability to receive reports and complaints alleging abuse or neglect on a 24-hour, 7-days-a-week basis.

Throughout this section, indented text marked with a blue, vertical line denotes verbatim content from the Code of Virginia or the Virginia Administrative Code.

9.2 24-Hour hotline and receiving complaints and reports

The Virginia Administrative Code (VAC) provides that a person may make a report or complaint by telephoning the toll-free Child Abuse and Neglect Hotline of the Virginia Department of Social Services (VDSS) or by contacting a LDSS.

> (22 VAC 40-705-40 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 § 63.2-1510 of the Code of Virginia.

The statewide toll-free CPS Hotline (**1-800-552-7096**) shall be available 24 hours a day, seven days a week. After receiving a complaint or report of child abuse or neglect, the CPS State Hotline worker will refer the complaint or report to the LDSS immediately or no later than the next working day.

9.3 Persons who may make a complaint or report

The Code of Virginia §§ 63.2-1509 and 63.2-1510 provide the authority for persons to report suspected abuse or neglect and allows any person who suspects that a child is abused or neglected to make a complaint or report. The Code of Virginia § 63.2-1509 further identifies certain persons who are mandated to report suspected abuse or neglect. The Virginia Administrative Code defines the terms "complaint" and "report."

> (22 VAC 40-705-10). "Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § 63.2-100 of the Code of Virginia.
>
> (22 VAC 40-705-10). "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 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 § 63.2-100 of the Code of Virginia.

9.3.1 Mandated reporters

The Virginia Administrative Code defines mandated reporters and their reporting responsibilities:

> (22 VAC 40-705-10). "Mandated reporters" means those persons who are required to report suspicions of child abuse and/or neglect pursuant to § 63.2-1509 of the Code of Virginia.

> (22 VAC 40-705-40 A). Persons who are mandated to report are those individuals defined in § 63.2-1509 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.

9.3.1.1 Who are mandated reporters?

The Code of Virginia identifies those persons who are mandated reporters. These persons shall report suspected abuse or neglect that they suspect when in their professional or official capacity.

*Mandated reporter training and other resources for mandated reporters are available from the Virginia Department of Social Services at (*http://www.dss.virginia.gov/family/cps/index2.cgi*).*

(§ 63.2-1509 A of the Code of Virginia Effective *July 1, 2012*). The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department's toll free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;

2. Any hospital resident or intern, and any person employed in the nursing profession;

3. Any person employed as a social worker;

4. Any probation officer;

5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;

6. Any person providing full-time or part-time child care for pay on a regularly planned basis;

7. Any mental health professional;

8. Any law-enforcement officer or animal control officer;

9. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;

10. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;

11. Any person, *18 years of age or older*, associated with or employed by any *public or* private organization responsible for the care, custody or control of children; and

12. Any person who is designated a court-appointed special advocate pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1.

13. Any person, *18 years of age or older*, who has received training approved by the Department of Social Services for the purposes of recognizing and reporting child abuse and neglect.

This subsection shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court.

14. Any person employed by a local department as defined in § 63.2-100 who determines eligibility for public assistance.

15. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5, unless such personnel immediately reports the matter directly to the attending physician at the hospital to which the child is transported, who shall make such report forthwith*;*

16. Any athletic coach, director or other person 18 years of age or older employed by or volunteering with a private sports organization or team;

17. Administrators or employees, 18 years of age or older, of public or private day camps, youth centers and youth recreation programs; and

18. Any person employed by a public or private institution of higher education other than an attorney who is employed by a public or private institution of higher education as it relates to information gained in the course of providing legal representation to a client.

Effective July 1, 2012 foster and adoptive parents and respite providers are considered mandated reporters due to their association with a public organization that is responsible for the care, custody and control of children as referenced in § 63.2-1509 A 11.

9.3.1.2 Certain mandated reporters may make a report to *the person in charge or their designee*

(§ 63.2-1509 A of the Code of Virginia Effective *July 1, 2012*). If the information is received by a teacher, staff member, resident, intern or nurse in the course of

professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith. *If the initial report of suspected abuse or neglect is made to the person in charge of the institution or department, or his designee, pursuant to this subsection, such person shall notify the teacher, staff member, resident, intern or nurse who made the initial report when the report of suspected child abuse or neglect is made to the local department or to the Department's toll-free child abuse and neglect hotline, and of the name of the individual receiving the report, and shall forward any communication resulting from the report, including any information about any actions taken regarding the report, to the person who made the initial report.*

(22 VAC 40-705-40 A). Pursuant to §63.2-1509 A of the Code of Virginia, teachers, staff members residents, interns or nurses, while in the course of their professional services in a hospital, school or similar institution may notify the person in charge of the institution or department, or his designee, who shall then make a report to either the local department or to the Department's toll-free child abuse and neglect hotline.

9.3.1.3 Mandated reporter shall disclose all relevant information even if not the complainant

The Code of Virginia § 63.2-1509 A specifies when a mandated reporter makes a report of suspected abuse or neglect, the reporter shall disclose all the information that is the basis of the report to the LDSS. This includes any records or reports documenting the basis of the allegation.

All mandated reporters, even if they are not the complainant, shall cooperate with the LDSS and shall make related information, records and reports about the child who is the subject of the report available to the LDSS for the purpose of validating a CPS referral and for completing a CPS response unless such disclosure violates the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232(g)).

Provision of such information, records, and reports by a health care provider shall not be prohibited by the Code of Virginia § 8.01-399.

Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

Although obtaining parental consent to obtain information is always preferable, consent is not required for the release of information for the purpose of validating a referral or completing an investigation or family assessment.

9.3.1.4 Failure by mandated reporter to report abuse or neglect

According to the Code of Virginia § 63.2-1509 D**,** a person required to report who fails to do so *as soon as possible, but* ***not longer than 24 hours*** *after having a reason to suspect a reportable offense* of child abuse or neglect shall be fined not more than $500 for the first failure and for any subsequent failures *not less than $1000.* If the LDSS becomes aware of an incident involving a mandated reporter who failed to report pursuant to the Code of Virginia §§ 63.2-1509 A and B, the LDSS must report the incident to the local Commonwealth's Attorney.

If a person knowingly and intentionally fails to report cases involving rape, sodomy, or object sexual penetration, they shall be guilty of a Class 1 misdemeanor.

If a person has actual knowledge that the same matter has already been reported they are not required to contact the LDSS or the state hotline.

9.3.1.5 Physicians reporting venereal disease

Physicians who diagnose venereal disease in a child 12 years of age or under shall make a CPS report to the LDSS. Physicians need not report cases of venereal disease when they reasonably believe that the infection was caused congenitally or by means other than sexual abuse. The Code of Virginia § 32.1-36 A provides that practicing physicians and laboratory directors shall report patients' diseases as prescribed by the State Board of Medicine. See the Code of Virginia § 32.1-36 A and B.

9.3.2 Other persons may make a report of alleged child abuse or neglect

> (22 VAC 40-705-40 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 § 63.2-1510 of the Code of Virginia.

Any individual suspecting that a child is abused or neglected may make a complaint to the VDSS or to an LDSS. The person can make the complaint to the LDSS in the county or city where the alleged victim child resides or where the alleged abuse or neglect occurred. The person may also make the complaint by calling the CPS State Hotline (**1-800-552-7096**).

9.3.3 Complaints and reports may be made anonymously

> (22 VAC 40-705-40 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.

Reports or complaints alleging abuse or neglect may be made anonymously and the LDSS cannot require the individual to reveal his identity as a condition of accepting the report. All reports shall be documented in the automated data system and evaluated for validity and a CPS response regardless of whether or not the caller is identified.

9.3.4 Issues related to reporting

9.3.4.1 Immunity from liability for persons making a report

> (22 VAC 40-705-40 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 § 63.2-1512 of the Code of Virginia.

The following persons are immune from any civil or criminal liability unless it is proven that such person acts with malicious intent:

- Any person making a report or complaint of child abuse or neglect.
- Any person who participates in a judicial proceeding resulting from either making a report or taking a child into immediate custody.

9.3.4.2 Protecting the identity of the reporter or complainant

> (22 VAC 40-705-40 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.

When the complainant is known to the LDSS, every effort shall be made to protect that person's anonymity. However, the complainant shall also be informed that his anonymity cannot be assured if the case is brought into court.

9.4 Actions upon receipt of complaint or report

9.4.1 Statutory authorities and responsibilities

The Code of Virginia § 63.2-1503 requires an LDSS to determine the validity of all reports and to decide whether to conduct a family assessment, if designated to do so, or an investigation, if the report or complaint alleging child abuse or neglect is valid.

9.4.2 Document receipt of complaint or report in automated data system

Pursuant to the Code of Virginia § 63.2-1505 B 2, when a complaint or report alleging abuse or neglect is received, the LDSS shall enter the report into the automated data system.

9.4.3 The LDSS shall record all complaints and reports in writing

> (22 VAC 40-705-50 A). All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system and either screened out or determined valid within 5 days of receipt. 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.

All complaints or reports made to the VDSS or an LDSS shall be documented in the information system. A person may make the initial complaint or report alleging abuse or neglect orally or in writing. The LDSS must document the report or complaint in the automated data system within three working days, regardless of whether the complaint or report is determined to be valid or invalid. *Timeliness of the initial response is calculated from the date and time the referral was received, not validated or assigned.*

9.4.3.1 New allegations in an existing family assessment or investigation

When a report has been accepted as valid and the investigation or family assessment response is initiated and subsequent allegations are made, the type of allegation and the time elapsed since the initial report will determine whether the new allegation is treated as a new report or assessed within the context of the existing response. If the allegations do not provide any new or different information, they may be added into the initial investigation or family assessment. If the additional allegations address new types of abuse/neglect and **five (5) or more days** have elapsed since the first report, the additional allegations should be taken as a new report and screened using the CPS Intake Tool.

9.5 Determine validity of complaint or report

When an LDSS receives a report or complaint of abuse or neglect, the LDSS must determine whether the complaint or report is valid **within five (5) days** of receiving the complaint. Criteria are established for determining whether a complaint or report is valid. Each criterion must be satisfied before a complaint or report can be valid. Only valid reports or complaints of abuse or neglect shall receive a family assessment or an investigation. It is important to make the validity decision as soon as possible after the

report has been received so that the urgency of the response can be accurately determined. Response time is calculated from the date and time the referral *was received, not validated or assigned.*

When determining validity, the LDSS must use the CPS Intake Tool for all reports of child abuse and neglect including new reports during open cases. The CPS Intake Tool must be completed in the automated data system as soon as possible, but no later than three working days, upon receipt of the report by the LDSS. It is critical that the intake worker using the CPS Intake Tool review the definitions available on the tool when making selections on the checklist. Selections made on the CPS Intake Tool must relate to supporting narrative in the automated data system. The CPS Intake Tool with definitions is located on the forms page on the DSS internal website or in Appendix D: CPS Intake Tool of this section.

9.5.1 Definition of valid complaint or report

The Code of Virginia § 63.2-1508 and the Virginia Administrative Code define a valid complaint.

> (22 VAC 40-705-50 B). In all valid complaints or reports of child abuse and/or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. 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 as defined in § 63.2-100 of the Code of Virginia.

9.5.2 Determine whether the complaint or report is valid

There are four criteria that must be addressed when determining whether the complaint or report is valid. Each question must be satisfied in order to have a valid report. The four elements are:

9.5.2.1 Question 1: Is the alleged victim child under eighteen years of age?

> (22 VAC 40-705-50 B 1). The alleged victim child or children are under the age of 18 at the time of the complaint and/or report.

The LDSS can only respond with a family assessment or an investigation to valid complaints or reports involving children under the age of 18 at the time of the report or complaint. If the alleged victim is over the age of 18, the LDSS should refer that person to the local attorney for the Commonwealth, Adult Protective Services, or other appropriate services provided in the locality.

9.5.2.1.1 Emancipated minor

If the alleged victim child is under the age of 18 and has been legally emancipated, then the LDSS has the discretion of not completing a family assessment or investigating the complaint.

The LDSS may determine a report of abuse or neglect as invalid if a court has emancipated the alleged victim of the abuse or neglect pursuant to the Code of Virginia §§ 16.1-331 and 16.1-332.

The Code of Virginia §§ 16.1-331, 16.1-332, and 16.1-333 require petitioning the juvenile court and the court conducting a hearing before making a finding of emancipation. The LDSS must confirm that the child has been legally emancipated before invalidating the complaint or report.

9.5.2.1.2 Alleged victim child is married

There is no specific Code of Virginia or Virginia Administrative Code provision prohibiting the validation of a complaint involving an alleged victim child who is married. When an LDSS receives a complaint involving a married child, the first issue the LDSS may address is whether the alleged victim child is emancipated. If the alleged victim child is married and emancipated, then the LDSS should invalidate the complaint or report.

A husband or wife of the alleged victim cannot be considered a caretaker.

9.5.2.2 Question 2: Is the alleged abuser or neglector a caretaker?

> (22 VAC 40-705-50 B 2). The alleged abuser is the alleged victim child's parent or other caretaker.

The second element of a valid complaint is whether the alleged abuser or neglector is a caretaker. The Virginia Administrative Code defines caretaker as:

> (22 VAC 40-705-10). "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.

Inherent within the definition of a caretaker is that the individual was responsible for providing care and supervision for the child or assumed responsibility for providing care and supervision for the child. There are four (4) categories of caretaker. Each category is divided into subcategories to assist in clarifying who may be a caretaker. Those categories and subcategories include but are not limited to:

- Parent or other person legally responsible for the child's care including:
  - Birth parent.
  - Adoptive parent.
  - Stepparent.
- Any other individual who has assumed caretaking responsibility by virtue of an agreement (whether formal or informal) with the legally responsible person including but not limited to:
  - Relatives (including siblings under 18).
  - Foster parents.
  - Babysitter.
  - Day care personnel.
- Individuals responsible by virtue of their position of authority or position, including but not limited to:
  - Teacher or other school personnel.
  - Institutional staff.
  - Scout troop leaders.
- When they are living in the home with the child, the following are assumed to be responsible for the child's care:
  - Grandparents.
  - Other relatives age 18 or over.
  - Paramour of parent.
  - Sibling age 18 or over.

When determining whether a person is responsible for the care of a child, the CPS worker should consider the amount of authority for the care, control and discipline of the child delegated to the person acting as a caretaker. The CPS worker may consider these issues when determining whether a person is a caretaker.

- What is the person's relationship with the child?
- What is that person's role or function toward the child?
- Was the primary responsibility of the person toward the child one of supervision and providing care, or was the person providing a professional or expert service?
- How do the child and the child's usual caretaker view this relationship and role?
- How does the community view this relationship and role?
- Have the parents or other person specifically delegated formally or informally the caretaking role for this person?

The CPS worker may consider these issues when determining if a minor is a caretaker and alleged abuser or neglector.

- Was it appropriate for the juvenile to have been put in a caretaking role? Was the supervision plan appropriate?
- Was the alleged abuse by the minor indicative of his or her own abuse? (i.e., sexual knowledge or behavior that is age inappropriate)
- What is the age difference between the alleged abuser and the victim; was this peer interaction?

Special consideration must be given to the needs of minor caretakers who are abusive. The report may be screened out or an unfounded investigation in relation to the minor as the abuser, because it is determined that the minor was inappropriately placed in a caretaking role by his parent or guardian. However, the behaviors of the minor may indicate a need for services. In these reports, the CPS worker must notify law enforcement that a possible criminal act has occurred.

9.5.2.3 Question 3: Is abuse or neglect alleged to have occurred?

> (22 VAC 40-705-50 B 4). The circumstances described allege suspected child abuse and/or neglect as defined in § 63.2-100 of the Code of Virginia.

The complaint or report must describe a type of abuse or neglect as defined in 22 VAC 40-705-30 and/or section 2: Definitions of Abuse and Neglect of this guidance manual.

9.5.2.3.1 General factors to consider when determining if abuse or neglect definition has been met

The CPS worker must consider the following questions to determine if the definition of physical abuse has been met.

- What was the action or inaction of the caretaker?
- Did the child sustain an injury or is there evidence establishing that the child was threatened with sustaining an injury?
- Does the evidence establish a nexus, or causal relationship between the action or inaction of the caretaker and the physical injury or threatened physical injury to the child?
- Was the injury, or threat of injury, caused by non-accidental means?

9.5.2.3.2 Establish injury or threat of an injury

The report or complaint must allege a threat of injury or actual injury to the child to satisfy the definition of abuse or neglect. The Code of Virginia and the Virginia Administrative Code do not require that the child sustain an actual injury.

9.5.2.3.3 Establish nexus between caretaker's actions or inaction and the injury or threatened injury to the child

The complaint or report must allege a link between the actions or inaction of the caretaker, regardless of the caretaker's intent, and the injury to the child or the threat of injury to the child.

9.5.2.3.4 "Other than accidental means"

The injury or threat of injury to the child must have occurred as a result of "other than accidental means." The caretaker's actions must be carefully considered when determining whether the injury or threat of injury sustained by the child was caused accidentally.

For example, the complaint alleged that the caretaker caused bruises and abrasions on the child's ankles and wrists. The caretaker asserted that he did not intend to cause the injuries to the child; he intended to restrain the five-year-old boy with a rope. However, the evidence shows that the caretaker tied the child's legs at the ankles and tied the wrists to a chair,

and when the child jerked in several different directions for over 20 minutes to try to get loose, injuries occurred to these parts of the body. The caretaker did not accidentally tie the child and leave him for 20 minutes. Although the caretaker did not intend to cause the injuries to the child, the caretaker did intend to tie the child, and could reasonably expect this child would try to get loose. The caretaker's act of restraining this child with a rope was intended and could have caused more serious harm. The result of the caretaker's actions was not unforeseen or unexpected. Therefore, the injury was not accidental.

In the alternative, a black eye to the child's face while playing catch with the caretaker would be considered accidental. The fact that the ball bounced off the child's mitt and struck the child's eye was not intended. In the first example, the caretaker intended to discipline his child by restraining with a rope for 20 minutes. The intended act of restraining the child caused the injury to the child. In the second example, the caretaker did not intend for the ball to bounce off the child's mitt and hit the child's face. The action causing the black eye was accidental.

9.5.2.3.5 Determine if medical neglect definition has been met

It is the parent's responsibility to determine and obtain appropriate medical, mental and dental care for a child. What constitutes adequate medical treatment for a child cannot be determined in a vacuum free of external influences, but rather, each case must be decided on its own particular facts. The focus of the CPS response are whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

- **Treatment or care must be necessary**. The statutory definition of medical neglect requires that the parent neglects or refuses to provide necessary care for the child's health. Therefore, the LDSS must establish that the caretaker's failure to follow through with a complete regimen of medical, mental or dental care for a child was necessary for the child's health. The result of the caretaker's failure to provide necessary care could be illness or developmental delays. The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well being but is not essential to life, the issue becomes more complicated in determining whether the medical care is necessary.

- **Assess degree of harm (real or threatened) to the child**. When assessing whether the medical, mental or dental treatment is necessary for the child's health, the LDSS should consider the degree of harm the child suffered as a result of the lack of care. If the child has yet to suffer harm, then the LDSS should assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.

  In addition to harm, the LDSS should consider the type of medical, mental or dental condition involved and whether the condition is stable or progressive. Whether the condition is stable or progressive may be an issue in determining the severity of the condition and the necessity of treatment. If the condition of the child is stable, then the LDSS may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the LDSS may give lesser deference to the caretaker's authority.

- **Parent refuses treatment for life-threatening condition**. Pursuant to the Code of Virginia § 63.2-100, a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care when all the following conditions are met:

  - The decision is made jointly by the parents or other person legally responsible for the child and the child.
  - The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment.
  - The parents or other person legally responsible for the child and the child have considered alternative treatment options.
  - The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

The Virginia Administrative Code provides definitions of some of the terms in the Code of Virginia.

(22 VAC 40-705-10). "Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Sufficiently mature" is determined on a case-by-case basis and means that a child has no impairment of his cognitive ability and is of a maturity level capable of having intelligent views on the subject of his health condition and medical care.

"Informed opinion" means that the child has been informed and understands the benefits and risks, to the extent known, of the treatment recommended by conventional medical providers for his condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"Alternative treatment options" means treatments used to prevent or treat illnesses or promote health and well-being outside the realm of modern conventional medicine.

"Life-threatening condition" means a condition that if left untreated more likely than not will result in death and for which the recommended medical treatments carry a probable chance of impairing the health of the individual or a risk of terminating the life of the individual.

- **Assess caretaker's rationale**. The most singular underlying issue in determining whether a child is being deprived of adequate medical care, and therefore, a medically neglected child, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by ignorance or misunderstanding. The LDSS should consider whether the caretakers obtained accredited medical assistance and were aware of the seriousness of their child's affliction. The LDSS should weigh the possibility of a cure if a certain mode of treatment is undertaken and whether the caretakers provided their child with a treatment. The LDSS should consider whether the caretakers sought an alternative treatment recommended by their physician and have not totally rejected all responsible medical authority.

- **Assess financial capabilities and poverty**. The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by financial reasons or poverty. Parents or caretakers should not be considered neglectful for the failure to provide necessary medical treatment unless they are financially able to do so or were offered financial or other reasonable means to do so. In such situations, a founded disposition may be warranted if, after appropriate counseling and referral, the parents still fail to provide the necessary medical care.

9.5.2.3.6 Child under alternative treatment

> (22 VAC 40-705-30 C1). 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 § 63.2-100 of the Code of Virginia, shall not for that reason alone be considered a neglected child.

The Code of Virginia provides that no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal child abuse and neglect.[26] This exemption means that a founded disposition cannot be based only upon the religious practices of the parents or caretakers. A founded disposition can be rendered for other reasons. For example, if the parent caused the injury in the first place, the religious exemption would not apply. The religious exemption to a founded disposition of abuse or neglect is designed to protect a family's right to freedom of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.[27]

Should there be question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the LDSS should seek the court's assistance. The court should decide whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

9.5.2.3.7 Medical neglect of infants with life-threatening conditions

The Virginia Administrative Code 22 VAC 40-705-30 C states that medical neglect includes withholding of medically indicated treatment. The definition section of 22 VAC 40-705-10 et seq. defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the LDSS must be aware of the ancillary definitions and guidance requirements.

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26 See § 18.2-371.1C of the Code of Virginia. Any parent, guardian or other person having care, custody, or control of a minor 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 shall not, for that reason alone, be considered in violation of this section.

27 The United States Supreme Court held in 1944 that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

(22 VAC 40-705-10). "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 be most likely to be effective in ameliorating or correcting all such conditions.

This definition applies to situations where parents do not attempt to get a diagnosis even when the child's symptoms are severe and observable.

- **Withholding of medically indicated treatment when treatment is futile**.

(22 VAC 40-705-30 C 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;

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

(4) Be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

- **Definitions of chronically and irreversibly comatose and terminal condition**.

(22 VAC 40-705-10). "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.

> (22 VAC 40-705-10). “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.

9.5.2.4 Question 4: Does the LDSS have jurisdiction to conduct the family assessment or investigation?

The Code of Virginia § 63.2-1503 A provides the LDSS with the jurisdictional authority to conduct investigations of reports or complaints alleging child abuse and neglect. Jurisdiction determines which LDSS has primary responsibility for responding to a valid complaint or report of abuse or neglect. The Virginia Administrative Code addresses the issue of jurisdiction:

> (22 VAC 40-705-50 B 3). The local department receiving the complaint or report is a local department of jurisdiction.

The Virginia Administrative Code further defines jurisdiction as:

> (22 VAC 40-705-10). "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.

The LDSS that first receives a report must ensure that the complaint or report is either determined valid and therefore conducts a family assessment or investigation or the agency receiving the report determines which is the appropriate agency of jurisdiction and transfers the information to that agency immediately, first placing a call of notification to the receiving agency. In determining jurisdiction, the LDSS receiving the complaint or report alleging abuse or neglect is the LDSS in the county or city where:

- The alleged victim child resides, or
- The alleged abuse or neglect is believed to have occurred, or
- If neither of the above is known, where the alleged abuse/neglect was discovered.

9.5.2.4.1 Lack of jurisdiction not sufficient to invalidate complaint or report

If an LDSS receives a complaint or report alleging abuse or neglect and the complaint is invalid solely because the LDSS lacks jurisdiction, then the LDSS must transfer the complaint or report to the LDSS with proper jurisdiction. If the complaint or report belongs out of state, then the LDSS must make a referral to the appropriate agency in the other state.

9.5.2.4.2 The LDSS first receiving the complaint or report shall ensure complaint or report, if valid, receives a response

> (22 VAC 40-705-40 H 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 a family assessment or an investigation is conducted.

The Virginia Administrative Code specifically places responsibility on the LDSS who first receives the complaint or report alleging abuse or neglect to ensure that a family assessment or investigation is conducted if the complaint or report is valid. The purpose of this section is to ensure that a valid report or complaint does not go uninvestigated because of a question of jurisdiction.

9.5.2.4.3 Transfer jurisdiction of complaint to another LDSS

22 VAC 40-705-40 H 1 requires the LDSS of jurisdiction first receiving a valid complaint to ensure that the complaint receives a family assessment or investigation. The LDSS first receiving the complaint must forward all information related to the complaint. The LDSS first receiving the complaint must also ensure that the other LDSS is going to conduct a family assessment or an investigation. The LDSS transferring the report to another LDSS must document the transfer in the automated data system.

9.5.2.4.4 Responsibilities of LDSS receiving the complaint

The LDSS to which the report is being transferred should inform the original LDSS whether they will or will not conduct the family assessment or investigation. If an LDSS refuses, that LDSS must immediately inform the requesting LDSS and document the reasons why the LDSS cannot assume primary responsibility for the family assessment or investigation. If the LDSS cannot agree as to who should assume the primary responsibility, then a CPS regional program consultant should be contacted immediately. Regardless, the responsibility for ensuring a response remains with the LDSS that first receives the valid complaint.

9.5.2.4.5 Assistance between LDSS of jurisdiction

> (22 VAC 40-705-40 H 2). A local department may ask another local department which is a local department of jurisdiction to assist in conducting the family assessment or investigation. If assistance is requested, the local department shall comply.

An LDSS may ask another LDSS of jurisdiction to assist in conducting the CPS family assessment or investigation. Assistance shall be provided upon request. Assistance may include conducting courtesy interviews of the alleged victim child, the alleged victim child's parents or other caretakers, and the alleged abuser or neglector. Assistance may also include arranging for appointments, scheduling meetings, counseling sessions, or any other professional contacts and services for the alleged victim child and siblings, the child's parents or other caretakers, or alleged abuser or neglector.

- **When a party relocates outside of the investigating LDSS's jurisdiction**. The Code of Virginia § 63.2-1503 H specifically addresses the circumstances when a party to a report or complaint of abuse or neglect relocates outside of the jurisdiction of the investigating LDSS.

  When the alleged victim child, and/or the child's parents or other caretakers who are the subject of the family assessment or investigation relocate out of the jurisdiction of the LDSS responsible for the family assessment or investigation, the LDSS of jurisdiction shall notify the Child Protective Services Unit of the LDSS where the parties relocated, whether inside or outside of Virginia. The LDSS of jurisdiction may seek assistance from the other LDSS in completing the investigation. The notified LDSS shall respond to the receiving LDSS's request for assistance in completing the family assessment or investigation. Any LDSS in Virginia so requested shall comply.

- **LDSS shall share relevant case record information**. When one LDSS requests another LDSS to assist in completing a family assessment or an investigation or providing services, the requesting LDSS shall contact the receiving LDSS by telephone before transferring the record within the child abuse and neglect information system. The receiving LDSS shall then arrange protective and rehabilitative services as needed or appropriate, and assist in a timely completion of the investigation. All written notification and letters (i.e., disposition letters and notification of appeal rights) remain the responsibility of the original LDSS of jurisdiction conducting the family assessment or investigation. The LDSS of jurisdiction shall continue to retain case materials not entered into the automated data

system and provide the receiving LDSS with relevant portions of the case record necessary to provide services or to complete the investigation or family assessment.

> (22 VAC 40-705-40 H3). A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

- **Cooperative agreements between LDSS**. An LDSS may request assistance from an LDSS that is not a primary LDSS of jurisdiction. When one LDSS requests assistance from a neighboring locality in completing a family assessment or an investigation, both LDSS shall develop a cooperative agreement in which the specific request, parameters, follow-up requirements, and related topics are addressed.

9.5.2.4.6 The appearance of a conflict of interest

Family assessments or investigations involving recognized figures, local or county officials, former employees, and other persons who are well known within the community may raise the appearance of a conflict of interest for an LDSS. In order to assure that the response to such cases is and appears to be impartial, the LDSS of jurisdiction may contact a neighboring locality and develop the appropriate guidelines for completion of the family assessment or investigation. The LDSS must develop a cooperative agreement to ensure that the report receives an appropriate response. When considering transferring a report or complaint of child abuse or neglect because of the appearance of a conflict of interest, the LDSS may seek guidance from the CPS Regional Specialist.

9.5.2.4.7 Family assessments or investigations involving employees of an LDSS

The Code of Virginia § 63.2-1509 provides the juvenile and domestic relations district court the authority to determine jurisdiction of the investigation if the alleged abuser or neglector is an employee of the LDSS where the report or complaint was received. The purpose of this statute is to ensure a fair investigation and preserve impartiality.

The Virginia Administrative Code states:

> (22 VAC 40-705-40 H4). 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 shall assign the report to a local department that is not the employer of the subject of the report pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia.

- **Jurisdiction: assignment of investigation by court to LDSS**. If an LDSS is assigned a report by the Court, the family assessment or investigation should be conducted like any other.

9.5.2.4.8 LDSS cannot assume jurisdiction if abuse or neglect occurred in another state and the alleged abuser does not reside in Virginia

An LDSS shall not assume jurisdiction of an investigation or family assessment if the alleged abuse or neglect occurred in another state and the alleged abuser does not reside in Virginia, even if the alleged victim resides in Virginia at the time of the report. An LDSS should report the suspected abuse or neglect to child protective services in the state where the abuse or neglect occurred. If the other state requests assistance in conducting the investigation or family assessment, the LDSS should comply. If services are needed for the child or family, the LDSS may open the case for services.

- **Transfer jurisdiction of investigation to another state**. If appropriate, the LDSS may request the other state to assume jurisdiction of the investigation. If the other state agrees to assume jurisdiction of the investigation, the LDSS should provide all information relevant to the investigation to the other state. The following information should be provided when making a referral:
  - The name, date of birth, and sex of child.
  - Any other name by which the child may be known.
  - The names of parent and/or guardian.
  - Any other names by which the parent and/or guardian may be known.
  - The current address including any directions.
  - Last known address.
  - Statement of why the referral is being made.
  - Brief social history of the child and the family.

- A brief description of the LDSS's involvement with the family.

If the other state refuses to accept jurisdiction, then the LDSS must determine whether sufficient resources are available to conduct a thorough family assessment or investigation. The LDSS may not be able to gather sufficient evidence to make a determination of whether the abuse or neglect occurred. The LDSS must clearly document in the record if the LDSS is unable to conduct the family assessment or investigation or unable to gather sufficient evidence to make a determination. The automated data system should be notified that the LDSS was unable to complete the response.

9.5.3 Invalid report or complaint

> (22 VAC 40-705-50 C). The local department shall not conduct a family assessment or investigate complaints or reports of child abuse and/or neglect that fail to meet all of the criteria in subsection B of this section.

Each of the four criteria outlined in 22 VAC 40-705-50 B must be satisfied in order to achieve a valid complaint of abuse or neglect requiring a family assessment or an investigation. If the complaint or report of abuse or neglect fails to meet any one of the criteria, then the complaint or report is not valid and the LDSS has no authority to conduct a CPS family assessment or an investigation.

9.5.3.1 Additional information for screening reports of abuse/neglect regarding public school personnel

The Code of Virginia § 63.2-1511 states that “reasonable and necessary” force should be taken into account in determining validity of reports of abuse or neglect by public school employees. Appendix A in Section 5 has additional guidance for assessing the applicability of § 63.2-1511 for CPS out-of-family reports of school employees.

9.5.3.2 Screening consideration if alleged abuser is deceased

If the alleged abuser or neglector is deceased at the time of the report or dies during the course of the investigation, the LDSS must evaluate whether the purpose of the investigation would be achieved. An investigation may be appropriate if there is a child victim in need of services or in order to prevent other abuse or neglect.

9.5.4 Required notifications if report or complaint is invalid

9.5.4.1 Notify complainant

If a report is determined to be invalid, the LDSS must inform the complainant of its lack of authority to take action.

9.5.4.1.1 Invalid complaint involving child care facility

If a report is not valid because it addresses general substandard conditions in a child care facility (such as quality of food or program issues in a day care setting or residential facility), but the conditions do not constitute abuse or neglect, the LDSS (or CPS State Hotline staff if receiving the call) shall identify the proper regulatory authority and refer the caller to that regulatory authority. If there is no regulatory authority and no valid complaint for CPS investigation, the caller shall be informed that there is no agency with the authority to intervene.

9.5.4.1.2 Non-caretaker sexual abuse: information to be provided to reporter or complainant

The intake worker should explain the following to the person making the report or complaint alleging the non-caretaker sexual abuse of a child:

- The LDSS is not the agency authorized to investigate the report.
- The LDSS is required to report this information directly to law enforcement.

9.5.4.2 Notify law enforcement of non-caretaker sexual abuse

If a report is not valid because it alleges child sexual abuse perpetrated by a person who is not in a caretaker role, the LDSS (or CPS State Hotline staff if receiving the call) is required to report the allegation to the local law enforcement agency. The worker should telephone the information to law enforcement in the jurisdiction where the abuse occurred in accordance with any local protocol or standard procedures for reporting sex offenses involving juvenile victims. If there is any reason to believe a child may be in danger, the report must be made immediately. In all other cases, the report must be made on the same day it is received. Additional procedures may be developed locally to ensure effective reporting and accountability.

9.5.4.3 Information to provide to law enforcement in non-caretaker sexual abuse

The intake worker should attempt to obtain as much information about the alleged sexual abuse as possible and forward that information to the local law

enforcement agency. The intake worker should attempt to obtain the following information:

- The identity of the child and the identity of the alleged perpetrator (name, birth date, sex, address, child's school).
- Brief description of the alleged abuse.

9.6 Certain complaints and reports shall be reported to the Commonwealth Attorney and others

9.6.1 Report certain cases of suspected child abuse or neglect

> (22 VAC 40-705-50 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 § 63.2-1503 D of the Code of Virginia.

The following complaints and reports shall be reported to the Commonwealth Attorney and others as noted.

9.6.1.1 The death of a child

Any report or complaint alleging the death of a child as a result of abuse or neglect shall be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency.

See Section 11, Child Deaths for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

9.6.1.2 An injury or threatened injury to a child involving a felony or Class I misdemeanor

A report or complaint involving an injury (actual or threatened) that may have occurred as the result of a commission of a felony or a Class 1 misdemeanor shall be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency. Felony offenses are punishable with death or confinement in a state correctional facility; all other offenses are misdemeanors.[28]

28 § 18.2-8.of the Code of Virginia.

Felonies are classified, for the purposes of punishment and sentencing, into six classes; misdemeanors are classified into four classes.[29]

9.6.1.3 Any sexual abuse, suspected sexual abuse, or other sexual offense involving a child

Any sexual abuse, suspected sexual abuse, or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in the Code of Virginia § 18.2-374.1 et seq., shall be reported to the Commonwealth Attorney's office and local law enforcement.

9.6.1.4 Any abduction of a child

Any time a report or complaint alleges the abduction of a child, the LDSS shall make a report to the Commonwealth Attorney's Office and to law enforcement.

9.6.1.5 Any felony or Class 1 misdemeanor drug offense involving a child

Any time a report or complaint alleges abuse or neglect of a child and the commission of a felony or a Class 1 misdemeanor drug offense, the LDSS shall notify the Commonwealth's Attorney office and law enforcement.

9.6.1.6 Contributing to the delinquency of a minor

Contributing to the delinquency of a minor in violation of the Code of Virginia § 18.2-371 shall be reported to the Commonwealth's Attorney office and local law enforcement.[30]

9.6.1.7 Information to provide to Commonwealth's Attorney and law-enforcement agency

When making a report to the local Commonwealth's Attorney and local law enforcement, the LDSS shall make available all of the information upon which the report is based, including records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

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29 § 18.2-9 of the Code of Virginia.

30 The Code of Virginia § 18.2-371 defines contributing to the delinquency of a minor as:
Any person eighteen years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in §16.1-228, or (ii) engages in consensual sexual intercourse with a child fifteen or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347.

9.6.1.8 Other criminal acts related to child abuse or neglect

Other felonies and misdemeanors, not specifically identified for reporting by the Code of Virginia, may be related to child abuse or neglect. The reporting of these offenses must be in accordance with guidance developed by the LDSS in conjunction with the community's law enforcement and judicial officials.

9.6.2 Report the death of a child

> (22 VAC 40-705-50 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 § 63.5-1503 E 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 § 63.5-1503 D 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.

The Virginia Administrative Code requires the LDSS to contact the Medical Examiner, Commonwealth's Attorney, local law enforcement, and the CPS Regional Specialist when a report or complaint alleging abuse or neglect involves the death of a child.

See Section 11, Child Deaths for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

9.6.3 Memoranda of understanding with law enforcement and Commonwealth's Attorney

The Code of Virginia § 63.2-1503 J and the Virginia Administrative Code state:

> (22 VAC 40-705-50 E)… 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.

Since many situations are required to be reported to local law enforcement and/or the Commonwealth's Attorney, children and families will be better served if there is an understanding between these organizations and the LDSS. It is recommended that these agencies develop a written agreement regarding how varied situations will be handled, how communications should flow, etc. Provisions for roles and responsibilities of all parties, cross-training of staff, updating the agreement, and resolving problems are other examples of what the agreement should include in

order for it to be an effective and continuous agreement among these agencies that are so vital to the protection of children.

9.7 Screen valid complaints and reports for priority

The LDSS must consider and analyze all the information collected at the time of the referral to determine the most appropriate response to initiate a family assessment or investigation based on the child's immediate safety or other factors.

The LDSS determines urgency of response time for valid reports by completing the response priority decision trees in the CPS Intake Tool documented in the automated data system. The response priority decision trees are designed to assist in determining how quickly to initiate the response. Selections made on the response priority decision trees must relate to supporting narrative in the automated data system.

Timeliness of the initial response is calculated from the date and time of the referral. There are three response levels:

Response 1 (R1): as soon as possible **within 24 hours** of the date and time of the referral
Response 2 (R2): as soon as possible **within 48 hours** of the date and time of the referral
Response 3 (R3): as soon as possible **within five working days** of the date and time of the referral

All decisions to override the response level must be approved by the supervisor and documented in the automated data system. Copies of the CPS Intake Tool and definitions are located on the forms webpage on the DSS internal website and in Appendix D: CPS Intake Tool of this section. Since determining urgency of response is critical for valid reports, the following guidance is provided:

> (22 VAC 40-705-50 G): Valid complaints or reports 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.

9.7.1 The immediate danger to the child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Is the child in current distress, injured, or otherwise in an unsafe environment?
- What plans do the caretakers have for the future or continued protection of the child?
- Do the caretakers view the circumstances of the child as threatening?
- Has the abuse or neglect diminished or stopped, or is the child thought to be at risk of continued abuse or neglect?

9.7.2 The severity of the type of abuse or neglect alleged

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Are there allegations or evidence of broken bones, fractures, cuts, broken skin, severe bruising, or serious maltreatment?
- What was the manner of infliction of the abuse or neglect?
- Were instruments or other items, such as guns, knives, or belts, used in the infliction of the abuse or neglect?
- Is the neglect or abuse of a continuing or chronic nature? Is there evidence establishing a pattern of abusive or neglectful behavior?
- Is the threat of abuse or neglect imminent?
- Can the caretaker be located? Is the caretaker not available?
- Is it likely that the precipitating event or one similar will reoccur?
- Are factors in the environment (both in and outside the home) observed to have an impact on the actual or potential abuse or neglect of the child?

9.7.3 The age or vulnerability of the child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Does the child's age, sex, developmental level, chronological age, or maturation level effect the child's vulnerability to abuse or neglect?
- What is the child's capacity to protect him or herself from future abuse or neglect?
- Does the child know of emergency plans or contacts to obtain safety from abuse?
- Is the child able to express thoughts or responses regarding the allegation of abuse or neglect?

9.7.4 The circumstances surrounding the alleged abuse or neglect

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- When did the abuse or neglect occur?
- Where did the abuse or neglect occur?
- Were other individuals aware or witness to the circumstances of the abuse or neglect?
- Are siblings of the victim child aware or witness to the abuse or neglect?
- Did the abuse or neglect occur during a punishment or instructional contact with the child?
- What is the likelihood that the circumstances leading to the abuse or neglect will reoccur?

9.7.5 The physical and mental condition of the child

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- Is the child thought to be of normal development and possess the ability to communicate during the investigation?
- Are there known illnesses, developmental delays, or other impediments to normal growth and development of the victim child?
- Are the child's responses and feelings known regarding the incident of abuse or neglect?

- Are these responses and feelings consistent or inconsistent with what would be expected in the circumstances of abuse?
- How does the child view his or her role in the abusive or neglectful situation?
- Does the child's perception of his role impact his or her vulnerability for abuse or neglect?

9.7.6 Complaints made by mandated reporters

The following information should be gathered, when possible, and should be evaluated in addition to the specifics of the complaint:

- When was the mandated reporter made aware of the circumstances involving the alleged abuse or neglect?
- In what capacity did the mandated reporter know the alleged victim child? What was the relationship between the alleged victim child and the mandated reporter?
- Has the reporter made a similar report on like circumstances regarding this victim child prior to this complaint?
- Has the mandated reporter discussed the circumstances with the child? With the parents? Other professionals?
- Does the mandated reporter possess other relevant information such as knowledge about the living conditions or other environmental factors?
- What actions or services are recommended by the mandated reporter?

9.7.7 Initiating a response to a valid report

Timeliness of the initial response is calculated from the date and time *when* the referral *is received*. The initial response is the first attempted or completed contact with the alleged victim, parent/caretaker, or collateral. The LDSS should make a face-to-face contact with the alleged victim child within the initial response priority level assigned, as this contact is critical. Sometimes the LDSS's initial efforts to respond to the report will not be successful such as when no one is home. In other situations, the LDSS's first contact, although not with the victim child, does provide information to assess child safety. Sometimes the initial response may be by telephone with the victim, the parent, or collateral that provides information to begin the family assessment or investigation and contributes to the initial child safety assessment.

Initial response may or may not be the same as first meaningful contact. See Section 4 of this manual for further guidance on first meaningful contact and initial safety assessment.

All contacts, attempted or completed, in the family assessment and investigation must be entered into the automated data system to document the LDSS's response to the report and to document compliance with CPS program requirements. This includes documentation of all attempted contacts as well as case planning that affect the initiation of the family assessment or investigation.

9.8 Determine the appropriate CPS response: family assessment or investigation

The Code of Virginia § 63.2-1503 I authorizes the LDSS to determine validity of a complaint or report. For all valid complaints or reports, the LDSS shall determine whether to conduct a family assessment or an investigation.

> (22 VAC 40-705-50 H). The local department shall initiate an immediate response. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with § 63.2-1506 C of the Code of Virginia, the following shall be investigated: (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in § 18.2-371.1, (iv) a child has been taken into the custody of the local department of social services, or (v) 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.

9.8.1 Make the response track decision

After the decisions regarding validity and urgency, a decision must be made as to whether to conduct a family assessment or an investigation. The Virginia Administrative Code defines family assessment and investigation as follows:

> (22 VAC 40-705-10). "Family assessment" means the collection of information necessary to determine:
> 1. The immediate safety needs of the child;
>
> 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
>
> 3 Risk of future harm to the child; and
>
> 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.

> "Investigation" means the collection of information to determine:
>
> 1. The immediate safety needs of the child;
>
> 2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
>
> 3. Risk of future harm to the child;
>
> 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
>
> 5. Whether or not abuse or neglect has occurred;
>
> 6. If abuse or neglect has occurred, who abused or neglected the child; and
>
> 7. A finding of either founded or unfounded based on the facts collected during the investigation.

The track decision should be made at Intake, before responding, if at all possible. In making this decision, the *LDSS* Intake Worker and/or Supervisor should take into consideration such variables as:

- History of abuse or neglect.
- *If there is a fourth valid CPS report within 12 months, it must be investigated.*
- Type and severity of alleged abuse.
- Child's age and ability to self-protect.
- Presence of a disability that affects the child's ability to self-protect.
- Whether or not the caretaker's behavior is violent or out of control.
- Living conditions, e.g., hazardous, presence of firearms or drugs.

The LDSS completes the differential response decision on the CPS Intake Tool in the automated data system. This checklist assists with consideration of statutory mandates for the investigation track and other serious situations which may be appropriate for the investigation track. The immediate danger to the child and the severity of the alleged abuse or neglect are crucial factors to be considered. The CPS Intake Tool is located on the DSS internal website or in Appendix D: CPS Intake Tool of this section.

If sufficient information cannot be obtained from the complainant, the track assignment can be made at the point of the first meaningful contact with any parties named in the complaint. Additional local criteria for track assignment may be developed, but the criteria must be consistently applied within the locality. The chart that follows is intended to assist local CPS staff in evaluating child abuse and neglect reports for placement in a Response Track.

9.8.2 CPS Report Placement Chart

FAMILY ASSESSMENT RESPONSE	INVESTIGATION RESPONSE
No situations are mandated to be Family Assessments. (After a family has received three *valid CPS reports within 12 months*, the next report *must* be investigated).	**Mandated by Code of Virginia (§ 63.2-1506 C):** - All sexual abuse allegations - Any child fatality - Abuse or neglect resulting in serious injury as defined in § 18.2-371.1 * [also consider medical neglect of disabled infant with life threatening condition (Baby Doe)]; - Child taken into agency custody due to abuse or neglect (§ 63.2-1517) - Child taken into protective custody by physician or law enforcement, pursuant to § 63.2-1517 - All allegations regarding a caretaker in a designated out of family setting as defined in § 63.2-1506 C
	Policy mandate: All allegations regarding a caretaker in an out of family setting of any kind, i.e. foster homes, day care, residential facilities.
Examples of when this response may be most appropriate: **Physical Abuse:** Abusive treatment of a child that may or may not have caused a minor injury – no medical treatment required. **Mental Abuse**: Child is experiencing minor distress or impairment; child's emotional needs are sporadically met but there are behavioral indicators of negative impact. Child exposed to domestic violence. **Neglect:** Lack of supervision where child is not in danger at time of report; minor injuries suggesting inattention to child safety. **Substance Exposed Infant** referrals.	Examples of when this response is most appropriate, but not mandated by law: **Physical Abuse**: Physical abuse that causes or threatens to cause serious injury (other than that defined in § 18.2-371.1*); or that may require medical evaluation, treatment or hospitalization. Reports of children present during the sale or manufacture of illegal substances; and highly recommend these be investigated jointly with law enforcement. **Mental Abuse**: Child is experiencing serious distress or impairment; child's emotional needs allegedly are not being met or are severely threatened. **Neglect:** Lack of supervision that causes or may cause serious injury or illness; injury or threat of injury due to use of weapons in the home. **Non-Organic Failure to Thrive:** Child is an infant and at imminent risk of severe harm. **Child Abandonment** referrals. **Fourth valid CPS report in 12 months**

* Note that § 18.2-371.1 A includes, but is not limited to, disfigurement, fracture, severe burns or lacerations, mutilation, maiming, forced ingestion of dangerous substances, or life threatening internal injuries.

9.9 Appendix A: Issues to consider when identifying a caretaker

In determining whether a person is a caretaker, it may be helpful to consider several questions:

- What is the person's relationship with the child?
- What is that person's role or function toward the child?
- Was the primary responsibility of the person toward the child one of supervision and providing care, or was the person providing a professional or expert service?
- How do the child and the child's usual caretaker view this relationship and role?
- How does the community view this relationship and role?
- Have the parents or other person specifically delegated formally or informally the caretaking role for this person?

Practice in some communities has been to exclude some types of persons as caretakers based on the needs of the children, the abilities of families to protect them, and other remedies in place such as a professional licensing board. Some exclusions have included sheriffs, police, doctors, dentists and psychotherapists. Non-public school teachers, coaches, music teachers, etc., have also been unofficially and routinely excluded from the definition of caretaker in some locales.

Frequently there are concerns when the alleged abuser is a minor. The following considerations may guide the decisions regarding a minor as caretaker and alleged abuser:

- Was it appropriate for the juvenile to have been put in a caretaking role? Was the supervision plan appropriate?
- Was the alleged abuse by the minor indicative of his/her own abuse? (i.e. sexual knowledge or behavior that is age inappropriate)
- What is the age difference between the alleged abuser and the victim; was this peer interaction?
- What is the minor's understanding of what he did; does he realize how inappropriate it was?
- Is this acting out rather than abusive behavior?

Special consideration must be given to the needs of minor caretakers who are abusive. The report may be Unfounded in relation to the minor as the abuser, because it is determined that the minor was inappropriately placed in a caretaking role. However, the behaviors of the minor may indicate a need for services.

Each LDSS maintains the discretion to validate reports of child abuse and neglect.

9.10 Appendix B: Children home alone

Virginia state statutes do not set a specific age after which a child legally can stay alone.* Age alone is not a very good indicator of a child's maturity level. Some very mature 10-year-olds may be ready for self care while some 15-year-olds may not be ready due to emotional problems or behavioral difficulties. In determining whether a child is capable of being left alone and whether a parent is providing adequate supervision in latchkey situations, child protective services (CPS) will assess several areas. These areas include:

- **Child's level of maturity**. CPS will want to assess whether the child **is physically capable** of taking care of himself; **is mentally capable** of recognizing and avoiding danger and making sound decisions; **is emotionally ready** to be alone; knows what to do and whom to call if an emergency arises; and has special physical, emotional, or behavioral problems that make it unwise to leave be left alone. **It is important to note that a child who can take care of him/herself may not be ready to care for younger children.**

- **Accessibility of those responsible for the child**. CPS will want to determine the location and proximity of the parents, whether they can be reached by phone and can get home quickly if needed, and whether the child knows the parents' location and how to reach them.

- **The situation**. CPS will want to assess the time of day and length of time the children are left alone; the safety of the home or neighborhood; whether the parents have arranged for nearby adults to be available in case a problem arises; and whether there is a family history of child abuse or neglect.

* Some localities have ordinances concerning the age at which a child may be left without supervision.

9.11 Appendix C: Distinguishing between accidental and non-accidental injury

One of the most critical responsibilities of child welfare staff during the investigation or review of a child's death is to distinguish between accidental and non-accidental injuries. This is particularly difficult when staff must distinguish between accidents in which chronic neglect or inadequate supervision was a factor and those where neglect is not a concern. In most cases, medical input will be required to make such a determination. These situations include those where the conditions resulting in the child's death appear to be directly created by or under the control of the parent or other person responsible for the child's care, yet the death is not identified as relating to a specific type of maltreatment, as well as those deaths that are alleged or known to have occurred as a result of abuse or neglect. Consideration of the following four factors can provide guidance for this process:

- **Discrepant history**. In some cases, the nature of the injury does not match the history given by the parent or other person responsible for the child's care. To determine this requires a detailed description of the incident. What were the circumstances leading up to and following the incident? When did it occur? Who was present at the time of the incident? What were the specific medical assessment of how the injuries occurred and the detailed description of the injuries and the child's condition? What information was obtained during the onsite visit?

- **Delay in seeking medical care**. At times, the delay in seeking medical care can range from a few moments to hours. In assessing delay, it is important to realize, for example, that following a severe shaking or beating, the abuser will often place a child down in a crib or on the floor and leave the room. The child may then exhibit symptoms of intracranial pressure (vomiting, seizures, and cardio respiratory arrest). These symptoms then cause the person responsible for the abuse to contact emergency help, and that person often disassociates the symptoms from their previous actions.

- **Triggering event by the child(ren)**. This is usually age-specific behavior, such as inconsolable crying, a messy diaper, toilet training problems, etc., which triggers the abuse.

- **A crisis in the family**. A crisis may have placed additional stress on the family's capacity to cope. Crisis can take the form of unexpected or difficult pregnancy, marital differences, loss of job, or death of an extended family member.

9.12 Appendix D: CPS Intake Tool

OASIS Case Name: _____ **Referral #:** _____ **FIPS Code:** _____

Worker Name: _____ **Supervisor:** _____ **Referral Date:** ____/____/____

STEP 1: SCREENING ASSESSMENT

Section 1: Maltreatment Type

Neglect occurs when a parent or other person responsible for child's care neglects or refuses to provide care necessary for child's health; when a child is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis; when parent(s) or other person(s) responsible for child's care abandons such child.

_____ Abandonment: Child is deserted by parent/caretaker, and there are no apparent plans to return.

_____ Inadequate Supervision:

- _____ Incapacitated Caretaker (includes physical and/or mental incapacitation, use of substances)
- _____ Child has been left in the care of an inadequate caretaker or in a situation requiring judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate.
- _____ Parent/caretaker ignored/disregarded pertinent information about either the child's behavior history or self-management abilities.
- _____ Parent/caretaker locks child in or out, or expels a child from the home.
- _____ Parent/caretaker fails to protect child from abuse/neglect and/or allows continued access to child by someone who the parent/caretaker knows has previously maltreated the child.
- _____ Parent/caretaker leaves the child alone in the same dwelling with a person not related by blood or marriage who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

_____ Exploitation (non-sexual): Parent/caretaker uses child to perform illegal acts to benefit the parent/caretaker.

_____ Inadequate Basic Care (clothing, shelter, hygiene, nutrition):

- _____ Child's home environment, including lack of heat or shelter and unsanitary household conditions, is hazardous and could lead to injury or illness of the child if not resolved.
- _____ Parent/caretaker has failed to meet a child's basic needs for clothing and/or hygiene to the extent that the child's functioning is impaired or there are medical indications such as sores, infection, physical illness, or serious harm such as hypothermia or frostbite.
- _____ Child is without food (consider age of child and length of time) or is malnourished as a result of commission or omission by a parent/caretaker.

_____ Inadequate Medical/Mental Health Care:

- _____ Parent/caretaker is failing to seek, obtain, or follow through with medical attention for a specific moderate-to-serious medical or dental injury, illness, or condition for a child, including failure to use prescribed drugs (consider medication, medical condition, adverse affect, injury to self or other). Include emergency treatment, necessary care or treatment, and necessary dental care or treatment.

_____ Parent/caretaker is unwilling to obtain mental health services and intervention for a child in need of treatment or evaluation (includes suicide threats or attempts, severe emotional disorders, exhibiting behaviors dangerous to self or others, etc.).

_____ Non-organic Failure to Thrive Attributed to Physical Neglect

_____ Substance-exposed Infant

Mental Abuse 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.

_____ Emotional or Psychological: An incident or pattern of behavior directed toward a child (e.g., berating, name calling, domestic violence, rejection, etc.) by a parent/caretaker that interferes with that child's normal daily functioning and can be linked to psychological or physical ailments of the child.

_____ Exposure to Domestic Violence that results in demonstrated dysfunction by the child.

_____ Non-organic Failure to Thrive attributed to mental abuse.

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.

_____ Non-accidental or Suspicious Injury to a child by a parent/caretaker. Suspicious injuries include injuries that are inconsistent with the parent/caretaker's explanation; multiple inconsistent explanations for injuries; marks that resemble objects such as extension cords, belts, etc.; and/or injuries located in unusual areas of the body such as the inner thigh, ears, torso, etc. Include asphyxiation, bone fracture, brain damage/skull fracture/subdural hematoma, burns / scalding, cuts/bruises/welts/abrasions, internal injuries, sprains / dislocation, gunshot/stab wounds, battered child syndrome, shaken baby syndrome (include injury to child sustained during domestic violence incident).

_____ Old, Healed, or Healing Injuries that have gone untreated and appear suspicious as reported by a medical professional. Include any of the above that are not new injuries.

_____ Inappropriate Giving of Drugs to a child by a parent/caretaker, including use of illicit drugs by a breastfeeding parent that is reported by a medical professional as having adverse affects on the child. Include poisoning.

_____ Munchausen's Syndrome by Proxy or suspicion of it is reported by a medical or mental health professional who provides documentation supporting the allegation.

_____ Parent/Caretaker Action(s) Indicates Excessive Force or Threat of Force That Would Reasonably Cause Injury to a child where injuries may not have occurred or be visible, such as hitting with a fist, choking, etc. Include bizarre discipline.

_____ Exposure to Drug-related Activity: Allowing child to be present during the sale or manufacture of drugs.

_____ Verbal Threat of Serious/Life-threatening Physical Harm Toward a Child by a parent/caretaker, as evidenced by gestures/statements made by the parent/caretaker or the parent/caretaker's behavior, such as stating a fear of harming/killing the child, holding a gun to a child's head, use of a weapon, etc. Evidence of injuries need not be present.

Sexual Abuse occurs when parent(s) or other person(s) responsible for child's care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.

_____ Sexual Contact or Exploitation involving a child (under age 18) by a parent/caretaker. This includes reports of sibling/adolescent sexual contact where a caretaker role exists or consensual sex involving a child with a person who has care, custody, and control.

_____ Disclosure by a Child of an incident of sexual abuse by someone who had care, custody, and control at the time of the alleged incident, whether or not a specific offender is identified.

_____ Physical, Behavioral, or Suspicious Indicators Consistent With Sexual Abuse reported by a mandated reporter, even without disclosure.

Section 2: Screening Decision

Validated as CA/N: ____ Yes (Complete Step 2, Response Priority)

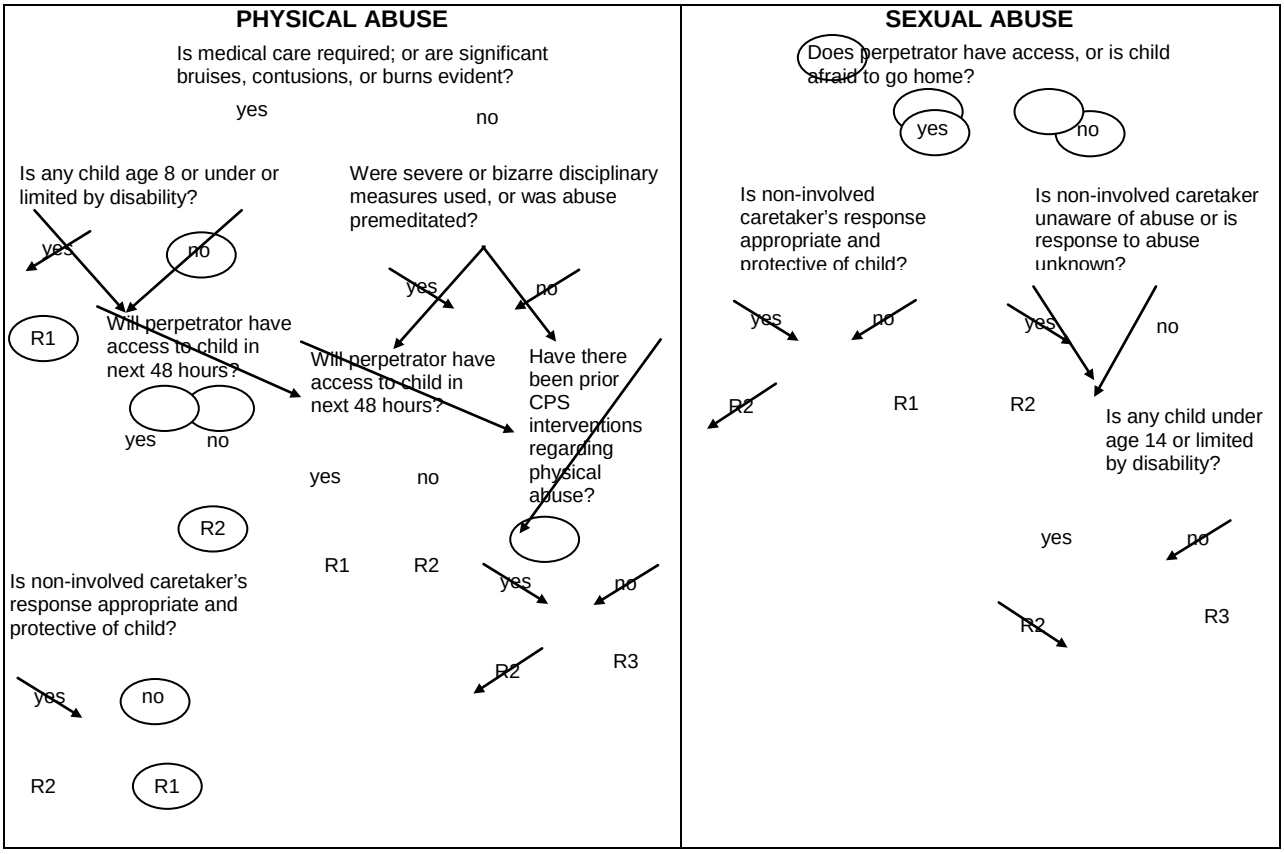
____ No (Check all alternative actions. Do not complete Response Priority):

_____ Message/Retain Invalid Report
_____ External Preventive Service Referral
_____ Internal Preventive Service Referral
_____ Judicial Referral
_____ Information Passed on to Case Manager
_____ Law Enforcement
_____ Other: _____

Additional Information:

STEP 2: RESPONSE PRIORITY

Section 1: Decision Trees



NEGLECT

(Includes medical neglect and abandonment)

Is the living situation immediately dangerous; is any child currently left unsupervised who is age 8 or under or too disabled to care for self; does child appear seriously ill or injured and in need of immediate medical care; is caretaker not available and no provision for care has been made; or is the child currently alone with, or repeatedly left alone with, a non-related violent sex offender?

yes

no

R1

Are severe parental or caretaker substance abuse, developmental disabilities, or mental illness issues present AND no other appropriate caretaker is present?

yes

no

Is any child age 8 or under or limited by disability?

R3

yes

no

R1

Have there been prior CPS interventions?

yes

no

R2

R3

MENTAL ABUSE

(Includes exposure to domestic violence)

Is caretaker's behavior toward child extreme, severe, or bizarre; or does child's behavior put self at risk and caretaker does not respond appropriately?

yes

no

R1

Does information show observable and substantial impairment in child's ability to function in a developmentally appropriate manner?

yes

no

Is any child age 8 or under or limited by disability?

R3

yes

no

R2

R3

Section 2: Overrides

Policy Override:

Shall increase to R1 whenever:

_____ a. Family is about to flee or has a history of fleeing;
_____ b. Forensic investigation would be compromised if investigation/assessment is delayed;
_____ c. Law enforcement is requesting immediate response; or
_____ d. Allegation is exposure to drug-related activity and involves a meth lab.

May decrease by one priority level whenever:

_____ a. Child is in alternate safe environment; or
_____ b. A substantial period of time has passed since the incident occurred.

Discretionary Override (requires supervisor approval***)*:**

_____ Increase one level; or
_____ Decrease one level.

Reason: _____

FINAL ASSIGNED RESPONSE TIME
R1 = as soon as possible within 24 hours
R2 = as soon as possible within 48 hours
R3 = as soon as possible within five working days

STEP 3: DIFFERENTIAL RESPONSE DECISION

Mark either investigation or assessment, and check all applicable reasons within column.

_____ **INVESTIGATION**

Mandatory investigation reasons (if one or more apply, MUST be assigned as investigation):

_____ Sexual abuse
_____ Child fatality
_____ Serious injury per 18.2-371.1
_____ Child taken into custody due to child abuse/neglect (CA/N)
_____ Child taken into custody by physician or law enforcement
_____ Out-of-family (OOF; no further SDM completed)
_____ Baby Doe
_____ Fourth report within 12 months

Suggested investigation reasons:

Physical Abuse
_____ Injury is serious, but less serious than 18.2-371.1
_____ Injury requires medical evaluation, treatment, or hospitalization
_____ Exposure to sale or manufacture of certain drugs

Mental Abuse
_____ Serious distress or impairment of child
_____ Emotional needs not met or severely threatened

Neglect
_____ Serious injury or illness due to lack of supervision
_____ Injury or threat of injury due to weapons in home
_____ Non-organic failure to thrive of infant at imminent risk of severe harm
_____ Abandonment

Other: _____

_____ **FAMILY ASSESSMENT**

_____ No mandatory investigation circumstances are present (must be checked if family assessment is selected)

Suggested assessment reasons:

Physical Abuse
_____ No injury, or injury that does not require medical treatment

Mental Abuse
_____ Minor distress or impairment
_____ Emotional needs sporadically met and behavioral indicators of impact

_____ Exposed to domestic violence but no immediate threat of harm

Neglect

_____ Lack of supervision but child not in danger at time of report
_____ Inattention to safety results in no or minor injuries
_____ Substance-exposed infant

Other: _____

SCREENING ASSESSMENT
DEFINITIONS

If one or more maltreatment types are selected in Section 1 and other validation requirements are met (child is under age 18, alleged abuser is caretaker, and jurisdiction exists), mark "yes" (validated as CA/N) in Section 2 and proceed directly to Step 2, Response Priority. DO NOT SELECT ANY OF THE FOLLOWING IF REFERRAL WILL BE SCREENED IN.

If no maltreatment types are selected in Section 1, mark "no" in Section 2. There will not be an investigation or assessment. There may be alternative actions taken or recommended. If so, check all of the following alternative actions that apply.

Message/Retain Invalid Report. The given information does not meet validity requirements and no other referrals were given to the caller. However, information about the call will be maintained in OASIS.

External Preventive Service Referral. The caller was referred to an agency in the community, such as child support enforcement, private counseling, mediation services, etc.

Internal Preventive Service Referral. The caller was referred to an existing service program within the agency OTHER THAN FOR A CA/N INVESTIGATION OR ASSESSMENT. Examples may include family preservation, homeless prevention, daycare, etc.

Judicial Referral. The caller was referred to the juvenile courts for assistance with visitation, custody matters, CHINS petitions, etc.

Information Passed on to Case Manager. Caller is providing information on an open case that does not constitute a new referral.

Law Enforcement. The caller was referred to law enforcement and/or the referral information will be relayed to law enforcement by the worker per policy, but there will be no CA/N investigation or assessment in conjunction with law enforcement response.

RESPONSE PRIORITY DEFINITIONS

PHYSICAL ABUSE

Is medical care required; or are significant bruises, contusions, or burns evident?

- Medical care includes any intervention performed by a health care professional to treat an injury. (Do not include forensic medical evaluations solely done for the purpose of documenting injury, or evaluation to determine IF there is an injury.)

- Include significant bruises, contusions, or burns that did not require medical care. Significance is gauged by considering location (e.g., injuries to soft tissue, face, abdomen, or buttocks are considered more significant than injuries over bony prominences such as elbows, knees, shins); scope (e.g., injuries over multiple body surfaces or covering larger areas are considered more significant than a small, isolated bruise); and recency of injury (e.g., new injuries are considered more significant than old scars). A pattern of injuries apparently inflicted over a period of time should be considered significant.

Is any child age 8 or under or limited by disability?
If the injured child has not reached his/her ninth birthday, or is as vulnerable as a child 8 or under due to known cognitive or physical disability, answer yes. All others, answer no.

Will perpetrator have access to child in next 48 hours?
If perpetrator is identified, is it likely that perpetrator will be in physical proximity of the child within 48 hours? Also include verbal/written or third-party access if the perpetrator has used such indirect contact in an attempt to influence the child's statements or threaten the child in any way.

If the perpetrator is unknown, access must be assumed. Answer yes.

Is non-involved caretaker's response appropriate and protective of child?
A non-involved caretaker is one who did not directly participate in the alleged maltreatment of the child. An appropriate and protective response may be characterized by acknowledgment that the perpetrator's actions were inappropriate; awareness of and concern for the impact of maltreatment on the child; and acceptance of the child's report of abuse. A protective response may be evidenced by setting limits on the alleged perpetrator's contact with the child, involvement with discipline, etc. Consider the emotional and physical ability of the non-perpetrating caretaker to carry out intended protective measures.

Were severe or bizarre disciplinary measures used, or was abuse premeditated?

- Did perpetrator act in ways that present high potential for serious harm (e.g., throwing a heavy object toward child's head, punching in abdomen)? Did perpetrator act in ways that suggest extremely distorted and dangerous concepts of child discipline (e.g., locking in cage, surpassing child's physical or emotional capacity to endure, exposing to severe elements)?

OR

- Is there evidence that perpetrator planned in advance to physically harm child? Answer no if caretaker planned in advance to take the action but did not intend the action to cause physical injury.

Will perpetrator have access to child in next 48 hours?
If perpetrator is identified, is it likely that perpetrator will be in physical proximity of the child within 48 hours? Also include verbal/written or third-party access if there is reason to believe the perpetrator will attempt to influence the child's statements or threaten the child in any way.

If the perpetrator is unknown, access must be assumed. Answer yes.

Have there been prior CPS interventions regarding physical abuse?
Include any prior investigation/assessment for physical abuse that was founded or where services were indicated (investigations/assessments determined to be unfounded are excluded).

SEXUAL ABUSE

Does perpetrator have access, or is child afraid to go home?

- If perpetrator is identified, is it likely that the perpetrator will be in physical proximity of the child within 48 hours? Also include verbal/written or third-party access if the perpetrator has used such indirect contact to influence the child's statements or threaten the child in any way. If the perpetrator is not identified, also answer yes.

- Does child express fear (verbally or nonverbally) of remaining at or returning home?

Is non-involved caretaker's response appropriate and protective of child?
A non-involved caretaker is one who did not directly participate in the alleged maltreatment of the child. An appropriate and protective response may be characterized by acknowledgment that the perpetrator's actions were inappropriate; awareness of and concern for the impact of maltreatment on the child; and acceptance of the child's report

of abuse. A protective response may be evidenced by obtaining medical evaluation, if indicated, and discontinuing contact between alleged perpetrator and child. Consider the emotional and physical ability of the non-perpetrating caretaker to carry out intended protective measures. Any attempt by the caretaker to influence the child's statement one way or the other is considered an inappropriate response.

Is non-involved caretaker unaware of abuse or is response to abuse unknown?
Answer yes if:

- Report is from a third party and the non-involved caretaker has not yet been informed of the allegation.
- The non-involved caretaker may have learned of the alleged abuse but the caller has no information concerning the caretaker's reaction.

Is any child under age 14 or limited by disability?
If the child has not reached his or her 14th birthday, or is as vulnerable as a child under age 14 due to known cognitive or physical disability, answer yes. All others answer no.

NEGLECT (Includes medical neglect and abandonment)

Is the living situation immediately dangerous; is any child currently left unsupervised who is age 8 or under or too disabled to care for self; does child appear seriously ill or injured and in need of immediate medical care; is caretaker not available and no provision for care has been made; or is the child currently alone with, or repeatedly left alone with, a non-related violent sex offender?

Answer yes if the following:

- Based on the child's age and developmental status, the child's physical living conditions are hazardous and immediately threatening. Examples include but are not limited to the following:
    - Exposure to animals known to be a danger.
    - Unsafe heating or cooking equipment.
    - Substances or objects accessible to the child that may endanger the health and/or safety of the child.
    - Lack of water or utilities (heat, plumbing, electricity) and no alternate or safe provisions are made.
    - Exposed electrical wires.

- Excessive garbage or rotted or spoiled food that threatens health.
- Serious illness or significant injury has occurred due to living conditions and these conditions still exist (e.g., lead poisoning, rat bites).
- Evidence of human or animal waste throughout living quarters.
- Guns and other weapons are accessible to child.
- Complete or near-complete absence of food.

OR

- Child is age 8 or under or is as vulnerable as a child age 8 or under due to known cognitive or physical disability AND:
  - Child is currently alone or is scheduled to be alone within the next 48 hours.
  - Caretaker does not attend to child to the extent that need for care goes unnoticed or unmet (e.g., caretaker is present but child can play with dangerous objects or be exposed to other serious hazards).
  - Child is being supervised by an alternate caretaker who is unable to meet child's immediate needs for care and supervision.

OR

- Child's unmet medical need may result in serious harm, serious aggravation of symptoms, increased risk of long-term or permanent injury or impairment, or death if not treated **within 48 hours**. Examples include but are not limited to the following:
  - Apparent bone injury that has not been set;
  - Apparent second- or third-degree burn that has not been medically evaluated.
  - Untreated dehydration.
  - Breathing difficulties.
  - Severe abdominal pain.
  - Loss of consciousness or altered mental status.
  - Failure to thrive.

- Untreated exposure to the elements; frostbite.

OR

Caretaker:

- Left the child without affording means of identifying the child and the child's parent or guardian.
- Is absent from the home for a period of time that creates a substantial risk of serious harm to a child left in the home.
- Left the child with another person without provision for the child's support and the other person is no longer able or willing to provide care.
- Caretaker has currently left, or repeatedly leaves, the child alone in the same dwelling as a person not related by blood or marriage who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

Are severe parental or caretaker substance abuse, developmental disabilities, or mental illness issues present AND no other appropriate caretaker is present?

Answer yes if **caretaker**:

- Is currently impaired by alcohol or other drugs to the extent that he/she is not providing for the child's needs for care and safety, and this has resulted or is likely to result in injury, illness, or harm to the child.
- Is cognitively impaired to the extent that he or she lacks basic understanding of child's needs for care and supervision, and this lack of understanding has resulted or is likely to result in injury, illness, or harm to the child.
- Is mentally ill to the extent that he/she is unable to meet child's needs for care and supervision, and this has resulted or is likely to result in injury illness, or harm to the child. Examples include but are not limited to the following:
  - Loss of touch with reality.
  - Paranoid thoughts, especially those in which child may be seen as evil.
  - Severe depression that interferes with ability to function at even most basic levels.

  - Suicidal ideation (includes all direct or indirect threats, attempts, or behavioral indicators of suicidal ideation).

- A substance-exposed newborn represents severe parental substance abuse for the purposes of this question.

AND

- No other adult is present who is able to provide for the child's protection and care.

Is any child age 8 or under or limited by disability?
If any child has not reached his/her ninth birthday, or is as vulnerable as a child 8 or under due to known cognitive or physical disability, answer yes. All others, answer no.

Have there been prior CPS interventions?
Include any prior investigation/assessment that was founded or where services were indicated (investigations/assessments determined to be unfounded are excluded).

MENTAL ABUSE (Includes exposure to domestic violence)

Is caretaker's behavior toward child extreme, severe, or bizarre; or does child's behavior put self at risk and caretaker does not respond appropriately?

Examples of extreme, severe, or bizarre behavior include the following:

- Caretaker threatens to harm self in child's presence.

- Unusual forms of discipline (e.g., child standing in corner on one leg; forcing child to wear inappropriate clothing, such as a 10-year-old being forced to wear diapers—this should NOT include incidents of inappropriate clothing due to poverty or current fashion).

- Murder or torture of people or pets in front of child.

- Child's extreme rejection from family (e.g., abnormally long time-outs based on child's age and developmental level; family acts as if child does not exist).

- Child singled out for detrimental treatment.

- Caretaker is constantly belittling child or has unrealistic expectations of child.

OR

- Child is suicidal, self-mutilating, or engaging in other behavior that has caused or is likely to cause serious physical injury or death, AND caretaker is unable or unwilling to provide monitoring, support, mental health services, or hospitalization necessary to protect child.

Does information show observable and substantial impairment in child's ability to function in a developmentally appropriate manner?
Examples include chronic somatic complaints; enuresis/encopresis not due to medical condition; long-term withdrawal/depression/isolation from family or school activities; severe aggressive behavior; cruelty toward animals; fire setting.

Is any child age 8 or under or limited by disability?
If any child has not reached his/her ninth birthday, or is as vulnerable as a child 8 or under due to known cognitive or physical disability, answer yes. All others, answer no.

OVERRIDES

Policy Overrides

Shall increase to R1 whenever:

- **Family is about to flee or has a history of fleeing**. Family is preparing to leave the jurisdiction to avoid investigation/assessment, or has fled in the past.

- **Forensic investigation would be compromised if investigation/assessment is delayed**. Physical evidence may be lost or altered; attempts are being made to alter statements, conceal evidence, or coordinate false statements.

- **Law enforcement is requesting immediate response**.

- **Allegation is exposure to drug-related activity and involves a meth lab**.

May decrease by one priority level whenever:

- **Child is in alternate safe environment**. Child is no longer living where alleged abuse/neglect occurred, or is temporarily away and will not return for 48 hours if overriding to R2 or five working days if overriding to R3.

- **A substantial period of time has passed since the incident occurred**. The incident happened long ago and there is reason to believe no additional incidents have occurred since then.

CPS INTAKE TOOL PROCEDURES

The intake tool assists workers with two decisions:

- The purpose of the screening assessment (Step 1) is to assess whether calls meet the definitional criteria for a child A/N investigation/assessment.

- The response priority decision trees (Step 2) are designed to assist in determining how quickly to initiate the first meaningful contact for assigned investigations/assessments. By answering a series of questions, the trees aid in determining the priority level for responding to a case. Each priority level includes a suggested timeframe for response.

  Response 1 (R1) = as soon as possible within 24 hours
  Response 2 (R2) = as soon as possible within 48 hours
  Response 3 (R3) = as soon as possible within five working days

Which Cases: The screening assessment (Step 1) is completed for all calls alleging child A/N. This includes telephone and all other means of report, and includes new reports of child A/N on open cases.

The response priority (Step 2) is completed for all valid reports of child A/N.

Who: The local intake worker.

When: As soon as possible upon receipt of the report.

Decisions: The screening assessment (Step 1) assists the worker in determining whether a report meets child A/N investigation / assessment definitions.

The response priority (Step 2) assists workers in determining when they must initiate the first meaningful contact. R1 reports require that the first meaningful contact occurs **as soon as possible within 24 hours**; R2 reports require that the first meaningful contact occurs **within 48 hours**; and R3 reports require that the first meaningful contact occurs **within five working days**. The timelines referenced in the decision trees commence at the time the report is made.

Appropriate Completion: **Step 1: Screening Assessment**

In Section 1, mark the specific criteria for all allegations indicated in the report under the appropriate maltreatment category.

In Section 2, indicate whether the report is being validated as a child A/N report by checking either "yes" or "no." If any of the maltreatment criteria were checked and the other validity criteria are met (child under age 18, alleged perpetrator is a caretaker, and jurisdiction exists), the report should be validated as child A/N. Reports that do not meet any of the screen-in criteria should not be validated as child A/N reports.

For reports that are not validated as a child A/N report, indicate with a check mark if the referral meets criteria for some alternative action (e.g., external preventive service referral*).*

For "duplicate referrals" (an allegation is reported, accepted, and assigned for an investigation/assessment one day, and then a few days later, a different caller makes the same allegation on the same family, based on the same set of issues - it is the same thing reported twice) in OASIS, treat the duplicate referral as "Invalid – Duplicate Referral." On the SDM intake tool: 1) in Section 1, check none of the allegation sub-types; 2) in Section 2, check "No" (not validated as child A/N); and 3) in Section 2, under "Other Information," type in "Duplicate Referral" and if available, give the referral number for the original validated referral. Do not complete the response priority or differential response sections of the intake tool.

Step 2: Response Priority

Information gathered by agency staff must be analyzed to assess the urgency for response. The response priority decision trees structure this analysis to determine a response priority level. The decision trees ask a series of questions depending on the type of alleged maltreatment (physical abuse, sexual abuse, neglect, and mental abuse). Answers to each question, consisting of "yes" or "no" responses, will lead to another question, and ultimately, a response priority level.

If more than one type of maltreatment is alleged, complete all applicable decision trees to determine the most urgent response priority level. Once a response of R1 has been obtained, it is not necessary to complete additional trees.

Overrides: After reviewing all necessary decision trees, consider whether or not an override should be applied.

A policy override to R1 shall be applied whenever:

- Family is about to flee or has a history of fleeing;
- Forensic investigation would be compromised if investigation/ assessment is delayed;
- Law enforcement is requesting immediate response;
- Allegation is exposure to drug-related activity and involves a meth lab.

A policy override may be used to decrease response by one level whenever:

- Child is in an alternate safe environment;
- A substantial period of time has passed since the incident occurred.

A discretionary override may be applied if, after completion of all necessary decision trees and application of policy overrides, worker and supervisor determine that there are unique conditions not captured by the tool that warrant a different response priority. A discretionary override may increase or decrease the response time by one level.

Step 3: Differential Response Decision

The final step in assigning a valid referral is to determine whether the referral will be assigned as an investigation or an assessment. These decisions are currently guided by state statute and local policy. The worker will check whether the referral is assigned as an investigation or as a family assessment, and check all applicable reasons for this decision. If assigned as an assessment, "No mandatory investigation circumstances are present" must be checked. NOTE THAT THIS IS NOT A STRUCTURED DECISION AT THIS TIME.

5

OUT-OF-FAMILY INVESTIGATIONS

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5

OUT-OF-FAMILY INVESTIGATIONS

14.1 Introduction

If a CPS report involves a caretaker *who does not reside in* the victim child's home, that investigation is deemed an "out-of-family investigation." There are many types of settings and situations that are considered "out-of-family" settings. These settings include those regulated by other agencies such as state licensed and religiously exempted child day care centers, regulated family day homes, private and public schools, group residential facilities, hospitals, or institutions. Out-of-family settings may also include settings that are not externally regulated such as camps, athletic leagues, children's clubs, babysitters who are not required to be regulated, babysitting coops, and "sleepovers" at friends' or relatives' homes. Depending on the setting, there are certain regulations and policies that apply to the conduct of these CPS investigations.

This section sets forth the requirements and guidance for responding to child abuse and neglect reports in "out-of-family" settings. Complaints of abuse and neglect in out-of-family settings differ from complaints in the child's family setting because:

- The alleged abuser(s) in "out-of-family" settings may be caring for the alleged victim(s) as part of their job duties.
- The outcome of the CPS investigation may have administrative, regulatory and/or personnel implications.
- CPS is mandated by Code of Virginia § 63.2-1506 C to respond to certain types of these valid allegations as Investigations (not Family Assessments).

There is a checklist of all requirements to conduct a designated out-of-family investigation in Appendix B: Checklist for designated out-of-family investigations.

14.2 Authorities

In addition to Virginia Administrative Code 22 VAC 40-705 et. seq. that provides the regulatory authority for the general conduct of the CPS program, the Virginia Administrative Code 22 VAC 40-730 et. seq. provides additional requirements for CPS to conduct out-of-family investigations in designated settings.

> (22 VAC 40-730-20). Complaints of child abuse or neglect involving caretakers in out of family settings are for the purpose of this *(regulation)* chapter complaints in state licensed and religiously exempted child day centers, regulated family day homes, private and public schools, group residential facilities, hospitals or institutions.
>
> These complaints shall be investigated by qualified staff employed by local departments of social services or welfare.
>
> Staff shall be determined to be qualified based on criteria identified by the department. All staff involved in investigating a complaint must be qualified.
>
> In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in 22 VAC 40-730-30 through 22 VAC 40-730-130.

All CPS authorities, procedures, and requirements applicable to in home investigations found in Part 4 Family Assessment and Investigation apply to the investigation of complaints in an out-of-family setting. This section sets forth the additional requirements to respond to CPS reports in these settings.

14.2.1 Minimum standards for CPS workers to conduct out-of-family investigations

> (22 VAC 40-730-130 A). In order to be determined qualified to conduct investigations in out of family settings, local CPS staff shall meet minimum education standards established by the department including:
>
> 1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and
>
> 2. Completion of out of family policy training (Course Name: CWS 2141).
>
> B. The department and each local agency shall maintain a roster of personnel determined qualified to conduct these out of family investigations.

14.3 Definitions

The Virginia Administrative Code 22 VAC 40-730-10 defines the following words and terms, when used in conjunction with this chapter, to have the following meanings, unless the context clearly indicates otherwise:

(22 VAC 40-730-10). "Caretaker," for the purpose of this chapter, means any individual determined to have the responsibility of caring for a child.

"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services

"Child day center" means a child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision, protection, and well-being of children during absence of a parent or guardian, as defined in § 63.2-100 of the Code of Virginia. For the purpose of this chapter, the term shall be limited to include only state licensed child day centers and religiously exempted child day centers.

“Child Placing Agency” means those privately contracted agencies responsible for the training of specialized foster families and the intensive case management of the foster child.

"Department" means the Department of Social Services.

"Disposition" means the determination of whether abuse or neglect occurred.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day centers, state regulated family day homes, and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

"Family day home," for the purpose of this chapter, means a child day program as defined in § 63.2-100 of the Code of Virginia where the care is provided in the provider's home and is state regulated; locally approved or regulated homes are not included in this definition.

"Local agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints as per § 63.2-1503 of the Code of Virginia.

"Physical plant" means the physical structure/premises of the facility.
"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities, and respite care facilities.

14.3.1 Additional definitions used in CPS out-of-family investigations

The following definitions are also commonly used in the guidance and **procedures to conduct out-of-family investigations:**

“Licensed Child Placing Agency” means those privately contracted agencies responsible for the training of specialized foster families and the intensive case management of the foster child.

“Hospitals and Institutions,” for the purpose of this chapter, means the residential placement responsible for the care and treatment of a child for behavioral and/or psychological reasons. These include juvenile detention and residential treatment facilities.

“Locally Approved” means the process where a local agency has approved and prepared a family for placement of local foster children or a home for placement of daycare children.

“Religiously exempt day care center” means a child day center that is exempted from several licensing requirements and regular inspections due to its mission as a religious facility.

14.4 Responsibilities to conduct out-of-family investigations

14.4.1 Determine validity of report or complaint in out-of-family settings

The criteria used to determine validity of an allegation in an out-of-family setting are the same as that in an allegation of an “in-home” setting. These criteria are discussed in Section 3: Complaints and Reports.

14.4.2 Determine track decision

The Code of Virginia § 63.2-1506 C requires CPS reports in certain out-of-family settings to be investigated. These settings include programs that are subject to state regulatory oversight and where the relationship between the alleged victim child and caretaker is more professional than familial. In addition, CPS reports in locally approved provider settings must be investigated.

Some CPS reports involve a caretaker who is a relative not residing in the child's household (e.g., grandparent, aunt/uncle, etc.) or other person who has a more familial relationship with the alleged victim child. These reports may be placed in the Family Assessment Response Track (*Refer to* Section 4*)* if there are no other elements of the report that require an investigation.

14.4.3 Identify the regulatory agency

- The Department of Social Services (VDSS) licenses or certifies facilities such as child day centers, including religiously exempt child day centers, licensed and voluntarily registered family day homes, and certain child care institutions and group homes. Contact information for VDSS Regional Licensing Offices is available on the public website.

- The Department of Juvenile Justice (DJJ) operates juvenile correctional centers and halfway houses throughout the state. For investigations involving state-operated facilities, contact the appropriate facility superintendent. Contact information for these facilities is available on the DJJ website. *Also contact the* Inspector General's Office.

- The Department of Juvenile Justice (DJJ) also certifies locally-operated detention homes and group homes. For investigations involving locally-operated detention homes and group homes, contact the DJJ Serious Incident Report (SIR) 24-hour hotline at 804-212-8803, or the Certification Manager at (804) 516-9491 to notify the appropriate Certification Analyst and to coordinate assistance for the investigation.

- The Department of Behavioral Health and Developmental Services (DBHDS) operates or licenses group homes; treatment facilities for children with substance abuse issues, developmental disabilities, and brain injuries; psychiatric hospitals that provide day or residential services to children; training centers; and state mental hospitals. Contact the DBHDS Office at 804-786-1747 to reach the appropriate licensing specialist. Contact information is also available on the DBHDS website.

- Private day schools

  The Department of Education (DOE) regulates some private day schools. Contact Information is available on the DOE website. Private residential facilities

  DOE will no longer be a lead licensing agency for any children's residential facility. They will license school programs located in a residential facility separately.

  If a complaint for child abuse or neglect occurs in the school program you will need to alert the regulatory agency for the facility and DOE. DOE contacts are:

  Director of Federal Program Monitoring at 804-225-2768

  Educational facilities are listed on the DOE web page. Click on residential schools for students with disabilities.

14.4.4 Facilities with no regulatory authority

> (22 VAC 40-730-50A). In a facility for which there is not a state regulatory authority, such as in schools, the CPS worker shall ask the facility administrator or school superintendent to designate a person to participate in the joint investigative process.

In an out-of-family investigation with no regulatory authority, the designated staff person participating in the investigation is not considered a co-investigator with the CPS worker. The CPS worker should review the investigative process and confidentiality requirements with the facility designee, whose function is to minimize duplication of investigation efforts by CPS and the facility. The CPS worker may exclude the designee from interviews as necessary.

14.4.5 Develop joint investigative plan

> (22 VAC 40-730-40 2). The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary joint investigation plan.

The CPS worker and the appointed regulatory staff person shall confer on the preliminary investigation plan. The CPS worker and the regulatory staff person shall plan how each will be kept informed of the progress of the investigation, and must confer at the conclusion of the investigation to inform the other of their respective findings and to discuss corrective action.

14.4.5.1 If regulatory staff is unavailable

If a designated regulatory staff person is not available to participate in the investigation process in a timely manner, the CPS worker should commence the investigation separately; however, efforts must be made to begin coordination and information-sharing as quickly as possible.

14.4.6 Notify CPS Regional Consultant

> (22 VAC 40-730-60 B). The regional consultant shall be responsible for monitoring the investigative process and shall be kept informed of developments which substantially change the original case plan.

The CPS worker shall inform the CPS regional consultant of all out-of-family investigations as soon as possible. *This may be done by sending an e-mail and including the following information:*

- *Referral # and Locality*
- *Type of Abuse*
- *Daycare/Facility/School Name*
- *Brief case summary.*

14.5 Conduct out-of-family investigation

14.5.1 Joint interviews and information sharing

> (22 VAC 40-730-40 2a). The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

The LDSS shall share the complaint information with the regulatory authority who may appoint a staff person to participate in the investigation. The CPS worker and regulatory staff person should discuss informational needs, the feasibility of joint interviews, and develop an investigative plan.

14.5.2 Joint investigation must meet requirements for LDSS and regulatory authority

(22 VAC 40-730-40 2b). The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

14.5.3 Joint investigation with law enforcement and facility

(22 VAC 40-730-50 B). When CPS and law enforcement will be conducting a joint investigation, the CPS worker shall attempt to facilitate a coordinated approach among CPS, law enforcement and the regulatory authority or facility designee.

14.5.4 Notify facility administrator

(22 VAC 40-730-70 A). The CPS worker shall initiate contact with the facility administrator at the onset of the investigation.

B. The CPS worker shall inform the facility administrator or his designee of the details of the complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in the plan for investigation, including decisions about who is to be present in the interviews. If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, which may be the board of directors, etc. If there is no superior, the CPS worker may use discretion in sharing information with the administrator.

C. Arrangements are to be made for:

1. Necessary interviews;

2. Observations including the physical plant; and

3. Access to information, including review of pertinent policies and procedures.

D. The CPS worker shall keep the facility administrator apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

The facility administrator is the on-site individual responsible for the day-to-day operation of the facility. The worker shall inform the administrator or designee of the allegations in the complaint. If there is no apparent conflict of interest in doing so, the administrator or designee should be invited to assist with the planning of the investigation. If the administrator or designee chooses not to be involved in the planning process, he shall nevertheless be informed of the progress of the investigation.

14.5.4.1 When the facility administrator or designee is the alleged abuser or neglector

If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, such as the chairman of the board of directors or the superintendent of schools. If there is no superior, the worker may use discretion in deciding what information to share with the administrator.

14.5.5 Interview alleged victim and notify child's parent

14.5.5.1 Interview with alleged victim child

Collect following information during the alleged victim interview:

- Demographic information (date of birth, sex, grade in school, etc.).
- Child's developmental level.
- Child's description of the incident including but not limited to:
  - Child's statements about what happened. Include direct quotes of the child if appropriate.
  - Child's statements about the impact of the incident on him.
- Results of any tests or evaluation of the child's injury, behavior, or other characteristics.
- Prior history of abuse or neglect involving the child. The history of any prior abuse or neglect can be provided by any source.

14.5.5.2 Electronic recording

> *(22 VAC 40-705-80 B1)*. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings. All interviews with alleged victim children must be electronically recorded …

In 2005, the Virginia Supreme Court of Appeals issued a ruling to affirm the regulatory requirement that victim interviews in an investigation must be electronically recorded according to *22 VAC 40-705-80* or clearly document the specific and detailed reasons for not taping victim interviews as well as the documentation that the decision was made in consultation with a supervisor. A copy of this decision, known as the *West Decision*, is available on the website of the Virginia Court of Appeals case #2144042. Refer to *Section 4.8.2.1* for exceptions to taping victim interviews.

The CPS worker shall conduct at least one face-to-face interview with the alleged victim child and should conduct this face-to-face contact within the response priority level assigned. During the interview, the CPS worker should inform the child about the investigation and what will occur during the investigation. The CPS worker shall observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning.

14.5.5.3 Notify parent or guardian of interview with child

The *mother and father,* guardian or agency holding custody should be informed of their child's interview and the investigative process in advance; when this is not practical, they shall be informed as quickly as possible after the interview.

The investigative process should be explained to the child's parents, guardian, or agency holding custody. The child's *mother and father,* guardian or agency holding custody should be interviewed to obtain information about the child and about their knowledge of the allegations and the facility.

The child's *mother and father,* guardian, or agency holding custody should be kept informed of sufficient information to involve them in planning and support for the child.

14.5.6 CPS worker determines who may be present during interview with child

> (22 VAC 40-730-80). Contact with the alleged victim child. The CPS worker shall interview the alleged victim child and shall determine along with a regulatory staff person or facility administrator or designee who may be present in the interview. Where there is an apparent conflict of interest, the CPS agency shall use discretion regarding who is to be included in the interview.

When the CPS worker is conducting an interview with the alleged victim child, the CPS worker shall determine who may be present during the interview, taking into consideration both the comfort of the child and other parties' need to have first-hand information. The CPS agency has the final authority over who may be present if there is no consensus between CPS worker, regulatory staff, and/or facility administrator or designee when issues arise such as the discomfort of the interviewee or an apparent conflict of interest.

All other alleged victim interview requirements for investigations must be followed (see Part 4, Family Assessments and Investigations).

14.5.7 Interview alleged abuser or neglector

> (22 VAC 40-730-90). Contact with the alleged abuser or neglector.
>
> A. The CPS worker shall interview the alleged abuser or neglector according to a plan developed with the regulatory staff person, facility administrator, or designee. Where there is an apparent conflict of interest, the CPS agency shall use discretion regarding who is to be included in the interview. At the onset of the initial interview with the alleged abuser or neglector, the CPS worker shall notify him in writing of the general nature of the complaint and the identity of the alleged victim child to avoid any confusion regarding the purpose of the contacts.
>
> B. The alleged abuser or neglector has the right to involve a representative of his choice to be present during his interviews.

The alleged abuser or neglector shall be given written notice of the CPS report, "Child Protective Services: A Guide to Investigative Procedures in Out of Family Settings."

All alleged abuser/neglector interview requirements for investigations must be followed (see Part 4, Family Assessment and Investigation).

14.5.8 Interview collateral children and parents or guardians

> (22 VAC 40-730-100). Contact with collateral children. The CPS worker shall interview non-victim children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's parent, guardian or agency holding custody. If the situation warrants contact with the child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.

14.5.9 Observe environment where the alleged abuse or neglect occurred

> (22 VAC 40-705-80 B5). The child protective services worker shall observe the site where the alleged incident took place.

14.6 Assess Immediate Danger to the Child

The Virginia Administrative Code provides regulatory authority to conduct the safety assessment in out-of-family investigations:

> (22 VAC 40-730-30). If the complaint information received is such that the local agency is concerned for the child's immediate safety, contact must be initiated with the facility

> administrator immediately to ensure the child's safety. If, in the judgment of the child protective services/CPS worker, the situation is such that the child or children should be immediately removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a plan which addresses the child's or children's immediate safety needs.

The safety assessment focuses on the child and the child's immediate needs. Factors to consider when assessing the immediate situation of the child include:

- Whether the child has sustained a mental or physical injury warranting immediate attention or care;
- Whether an emergency or crisis situation exists meriting immediate action to protect the child;
- Whether the child is at risk of serious abuse or neglect in the near future.

14.6.1 Assess Immediate Needs of the Family or Facility

After assessing the immediate safety needs of the child, the worker must evaluate the immediate needs of the family or facility. Factors to consider include:

- If the child has been injured or harmed, whether the family or facility has the capabilities or capacity to protect the child from further harm;
- Whether an emergency or crisis situation exists and the family's or facility's ability to cope;

14.6.2 Assess Immediate Danger to the Other Children in the Family or Facility

After assessing the immediate safety needs of the child and family or facility, the worker must evaluate the immediate needs of any other children in the care of the family or facility. Factors to consider include:

- Whether any other child in the family or facility has sustained a mental or physical injury warranting immediate attention or care
- Whether any other children are at risk of harm or danger
- Whether an emergency or crisis situation exists meriting immediate action to protect the other child(ren) in the home or facility

- Whether the family or facility has the capability or capacity to protect other children from further harm;

14.6.3 Make Safety Decision

After safety and protective factors have been assessed, the CPS worker must make a decision about the safety of the child(ren) in the home or facility. The safety decision should be made on the basis of the needs of the least safe child in the home or facility, if there is more than one child. One of the following safety decisions must be determined and documented in the automated data system and shared with the family or facility.

- **SAFE**. There are no children likely to be in immediate danger of serious harm at this time. No safety plan is required.

- **CONDITIONALLY SAFE**. *Protective* safety interventions *have been taken* and have resolved the unsafe situation for the present time. A safety plan is required to document the interventions.

- **UNSAFE**. Without controlling intervention(s) a child is in immediate danger of serious harm. A court order or safety plan is required to document intervention.

14.6.4 Emergency removal of child in out-of-family investigations

If the CPS worker is concerned for the child's immediate safety and the situation is such that the child should be immediately removed from the facility, the mother, father, guardian or agency holding custody and the facility administrator shall be notified immediately to mutually develop a plan providing for the child's safety. Written notification shall be provided to the mother, father, guardian or agency holding custody and the facility at the time of the removal.

> (22 VAC 40-730-40). The authority of the local agency to investigate complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.
>
> (22 VAC 40-730-40 1). For complaints in state regulated facilities and religiously exempted child day centers, the local agency shall contact the regulatory authority and share the complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.

14.7 Risk assessment and Disposition

14.7.1 Risk assessment

The CPS worker must make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect and whether or not an intervention is necessary to protect the child.

The decision on risk of future harm should be based on the assessment of individual, family, facility, and other risk factors. Any identified services for the family or caretaker should be based on the needs identified, which is documented in the automated information system. The outcome of the Risk Assessment will influence the type and intensity of services to be provided. One of these outcomes must be documented in the automated data system.

- **Low**. The assessment of risk related factors indicates that *there is a low likelihood of future abuse or neglect and no further* intervention is necessary.
- **Moderate**. The assessment of risk related factors indicates that *there is a moderate likelihood of future abuse or neglect and* minimal intervention *may be needed.*
- **High**. The assessment of risk related factors indicates *that there is* a *high* likelihood *of future abuse or neglect without* intervention.
- **Very High***.* The assessment of risk-related factors indicates *there is* a *very* high likelihood *of future abuse or neglect without* intervention.

The CPS worker and supervisor must consult with CPS regional consultant prior to making a finding and notifying the alleged abuser/neglector of the disposition. This shall not interfere with the requirement to complete the investigation in the legislatively mandated time frame of 45 (or 60 days when an extension is documented to be necessary)

14.7.2 Disposition

(22 VAC 40-705-10). "Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

> (22 VAC 40-705-110 C). In investigations the child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.

After collecting evidence and before expiration of the time frames for completing the investigation, the investigating service worker shall determine the disposition. The Virginia Administrative Code provides the definition of disposition.

> (22 VAC 40-705-10). "Disposition" means the determination of whether or not child abuse and/or neglect has occurred.

14.7.2.1 Unfounded disposition

The definition of an unfounded disposition as defined in the Virginia Administrative Code is:

> (22 VAC 40-705-10). "Unfounded" means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

However, an unfounded disposition may not mean that abuse or neglect did not occur, but rather that the evidence obtained during the investigation did not reach the preponderance level.

14.7.2.2 Founded disposition

The definition of a founded disposition as defined in the Virginia Administrative Code is:

> (22 VAC 40-705-10). "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.

14.7.2.3 Preponderance of the evidence

The Virginia Administrative Code defines a preponderance of the evidence as:

> (22 VAC 40-705-10). "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.

As the standard of proof in making a founded disposition of abuse or neglect, a preponderance of the evidence means that the evidence offered in support of the allegation is of greater weight than the evidence offered in opposition. The evidence gathered should be evaluated by its credibility, knowledge offered and information provided.

14.7.2.4 First source evidence

First source evidence and indirect evidence are defined in the Virginia Administrative Code:

> (22 VAC 40-705-10). "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.
>
> "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.

In no instance can a founded disposition be based solely on indirect evidence or an anonymous complaint.

- **First source or direct evidence**. First source or direct evidence means evidence that proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. First source evidence includes the parties and witnesses to the alleged abuse or neglect. First source evidence also includes: witness depositions; police reports; photographs; medical, psychiatric and psychological reports; and any electronic recordings of interviews.

  Direct evidence may include witnesses or documents. For example, first source evidence would include a witness who actually saw the alleged act or heard the words spoken. First source evidence would also include the examining physician's report establishing that the child sustained a spiral fracture.

- **Indirect evidence**. Indirect evidence, also known as circumstantial evidence, is evidence based on inference and not on personal knowledge or observation.[6] Indirect evidence relies upon inferences and presumptions to prove an issue in question and may require proving a chain of circumstances pointing to the existence or non-existence of certain facts.

  There is no clear distinction between the reliability and credibility of first source evidence and indirect evidence. It remains incumbent upon the LDSS to weigh the credibility of all the evidence when determining a disposition. Indirect evidence may be used in support of a founded disposition; however, indirect evidence cannot be the sole basis for the disposition.

Refer to **Section 4.8.11.5**

14.7.2.5 Determine level of founded disposition

A founded disposition must be categorized into one of three levels. Categorization is dependent on the nature of the act and the seriousness of the

harm or threatened harm to the child as a result of maltreatment. In all founded cases, there may be circumstances influencing the severity of the abusive or neglectful incident. The circumstances may increase or decrease the severity of harm or threatened harm.

The level for a founded disposition must be supported by a preponderance of the evidence. The evidence supporting the level must be documented in the record. The facts supporting the level will relate to the type and pattern of abuse/neglect, the vulnerability of the child, the effect or potential effect of the abuse/neglect, and the action or inaction of the caretaker.

14.7.2.5.1 Level 1

> (22 VAC 40-700-20 1). Level 1. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.

Injuries or conditions that resulted in or were likely to have resulted in serious harm include but are not limited to:

- For physical abuse, the situation requires medical attention in order to be remediated; the injury may be to the head, face, genitals, or is internal and located near a vital organ; injuries located in more than one place; the injuries were caused by the use of an instrument such as a tool or weapon; an inappropriate drug was administered or a drug was given in an inappropriate dosage; child exposed to the production or sale of methamphetamine or other drug and is not able to self-protect.

- For neglect situations, the condition would be one where the child's minimal needs are rarely met for food, clothing, shelter, supervision, or medical care; the child is frequently unsupervised or unprotected; the child is left by the caretaker with no plan for the child's care or no information about the caretaker's whereabouts or time for return; or a young child is left alone for any period of time.

- For mental abuse or neglect, the child has engaged in self-destructive behavior, or has required psychiatric hospitalization, or required treatment for severe dysfunction or for presenting a danger to self or others, or for problems related to the caretaker behavior.

- For sexual abuse, the situation would be one where there was genital contact, or force or threat was used, or the abuse had taken place over a period of time and there were multiple incidents.

- For medical neglect, caretaker failed to provide medical care in a life threatening situation or a situation that could reasonably be expected to result in a chronic debilitating condition.

- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to bullets 2 and 3 above.

14.7.2.5.2 Level 2

> (22 VAC 40-700-20 2). Level 2. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.

Injuries or conditions that resulted in or were likely to have resulted in moderate harm include but are not limited to:

- For physical abuse, the injury necessitates some form of minor medical attention; injury on torso, arms, or hidden place (such as arm pits); use of tool that is associated with discipline such as a switch or paddle, exposure to the production or sale of methamphetamine or other drugs and the child may not be able to self protect.

- For neglect situations, the condition would be one where the child's minimal needs are sporadically met for food, clothing, shelter, supervision, or medical care; or a pattern or one-time incident related to lack of supervision caused or could have caused moderate harm.

- For mental abuse or neglect, the situation would be one where the child's emotional needs are rarely met; the child's behavior is problematic at home or school;

- For sexual abuse, minimal or no physical touching but exposure to masturbation, exhibitionism, etc. Caretaker makes repeated sexually provocative comments to the child; child is exposed to pornographic materials.

- For medical neglect, the situation is one in which a doctor has prescribed care to eliminate pain or remedy a condition but the caretaker has not followed through with appointments or recommendations; the child's condition is not acute or life threatening but could be detrimental to the child's mental or physical health.

- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to bullets 2 and 3 above.

14.7.2.5.3 Level 3

> (22 VAC 40-700-20 3). Level 3. This level includes those injuries/conditions, real or threatened, that result in minimal harm to a child.

Injuries or conditions that resulted in or were likely to have resulted in minimal harm include but are not limited to:

- For physical abuse, the situation requires no medical attention for injury, including minimal exposure to the production or sale of methamphetamine or other drugs.
- In physical neglect, child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; supervision marginal, poses threat of danger to child.
- For mental abuse or neglect, the situation would be one where the child's emotional needs are met sporadically with evidence of some negative impact on the child's behavior.
- For sexual abuse, there was no or minimal physical touching or exposure to sexual acts such as masturbation, exhibitionism, etc. Caretaker's actions or behavior, such as making sexually suggestive comments to the child, causes or creates a threat of minimal harm to the child.
- For medical neglect, the situation may be one in which the child's life is not in danger, the child is not experiencing discomfort at this time, but the medical authority reports medical treatment is needed to avoid illness or developmental delay.
- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, refer to bullets 2 and 3 above.

14.8 Concerns for other children in the care of the alleged abuser/neglector

In certain out-of-family investigations, the type or extent of abuse/neglect may increase the concern for other children in the care of the alleged abuser/neglector including children in the alleged abuser/neglector's household or other workplace/out-of-family setting.

If the information gathered during the investigation gives the LDSS a concern for the safety of other children in the care of the alleged abuser, then the LDSS may wish to

consult with legal counsel to determine what additional actions may be needed and permitted. These could include, but are not limited to, new referrals for investigations/assessments, voluntary family service cases, notification to other out-of-family settings, referral to the regulatory agency, and consultation with law enforcement.

14.9 Conduct investigations involving public school employees

The Code of Virginia sets out special conditions when investigating complaints of abuse and/or neglect by public school employees in their official or professional capacity. *§ 63.2-1511 does not apply to private schools or their employees who are solely licensed by the Commonwealth and not operated by the Commonwealth. When in doubt, verify with the Monitoring Specialist, Department of Education-State Operated Programs at #804-786-0581. Listings of private schools that are solely licensed by the state can be located at* http://www.vcpe.org/*.*

> (§ 63.2-1511). A. If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child in the course of his educational employment, the complaint shall be investigated in accordance with §§ 63.2-1503, 63.2-1505, and 63.2-1516.1. Pursuant to § 22.1-279.1, no teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth shall subject a student to corporal punishment. However, this prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control. In determining whether the actions of a teacher, principal or other person employed by a school board or employed in a school operated by the Commonwealth are within the exceptions provided in this section, the local department shall examine whether the actions at the time of the event that were made by such person were reasonable.
>
> B. For purposes of this section, "corporal punishment," "abuse," or "neglect" shall not include physical pain, injury or discomfort caused by the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control as permitted in clause (i) of subsection A or the use of reasonable and necessary force as permitted by clauses (ii), (iii), (iv), and (v) of subsection A, or by participation in practice or competition in an interscholastic sport, or participation in physical education or an extracurricular activity.
>
> C. If, after an investigation of a complaint under this section, the local department determines that the actions or omissions of a teacher, principal, or other person employed by a local

> school board or employed in a school operated by the Commonwealth were within such employee's scope of employment and were taken in good faith in the course of supervision, care, or discipline of students, then the standard in determining if a report of abuse or neglect is founded is whether such acts or omissions constituted gross negligence or willful misconduct.

14.9.1 Additional requirements when a public school employee is the subject of the complaint or report

In addition to the four validity criteria for all CPS complaints or reports, pursuant to Code of Virginia § 63.2-1511.B, the LDSS shall consider whether the school employee used reasonable and necessary force to maintain order and control. The use of reasonable and necessary force does not constitute a valid CPS report. Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees

When the investigation is completed, the standard to make a founded disposition in addition to the preponderance of the evidence is whether such acts or omissions constituted "gross negligence" or "willful misconduct." Otherwise, such acts should be considered within the scope of employment and taken in good faith in the course of supervision, care or discipline of students.

The Supreme Court of Virginia defines "gross negligence" as "that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness."[31]

The term "willful misconduct" is not commonly used, rather the most common term is "willful and wanton conduct," which the Supreme Court of Virginia defines as follows:

In order that one may be [found to have committed] willful [sic] or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless indifference to consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.[32]

The term "willful misconduct" is most often used in Workers' Compensation cases. It refers to the behavior of the injured employee and usually means that the employee violated a rule or directive of the employer and that action led to the injury.

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31 Ferguson v. Ferguson, 212 Va. 86, 92, 181 S.E.2d 648, 653 (1971); see also Meagher v. Johnson, 239 Va. 380, 383, 389S.E.2d 310, 311(1990).

32 Infant C. v. Boy Scouts of America, 239 Va. 572, 581, 391 S.E.2d 322, (1990).

The courts have used the term "willful misconduct" in discussing cases of gross negligence. This definition of "willful and wanton conduct" is used to define "willful misconduct" in this manual. See Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees for further information.

> (§ 63.2-1511) D. Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

14.9.2 Local protocols for CPS investigations involving public school employees

The Virginia Code requires that each LDSS protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services. Recommended procedures can be found in Appendix B: Guidelines for investigations of school personnel.

> (§ 63.2-1516.1). Investigation procedures when school employee is subject of the complaint or report; release of information in joint investigations.
>
> A. Except as provided in subsection B of this section, in cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the local department conducting the investigation shall comply with the following provisions in conducting its investigation:
> 1. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.
> 2. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.
> 3. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.
> 4. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.
6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:
a. The identity of the person making the report.
b. Information provided by any law-enforcement official.
c. Information that may endanger the well-being of the child.
d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

C. Failure to comply with investigation procedures does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.
(2003, cc. 986, 1013.)

14.10 Notifications for out-of-family investigations

Refer to Part 4: Family Assessment and Investigation for notification requirements for all CPS investigations. There are additional notifications required in out-of-family investigations in designated settings.

(§ 63.2-1516.1). B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

C. Failure to comply with investigation procedures does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.

14.10.1 Consult with Regional Consultant

(22 VAC 40-730-60 C). At the conclusion of the investigation the local agency shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and

> policy requirements for determining whether or not abuse or neglect occurred. However, the statutory authority for the disposition rests with the local agency. This review shall not interfere with the requirement to complete the investigation in the legislatively mandated time frame.

The CPS worker and supervisor shall consult with the regional consultant to review the investigation finding before notifying anyone of the disposition. Although the LDSS is responsible to make the investigation disposition, the regional consultant shall review the investigation and provide technical assistance if needed to ensure the LDSS has conducted the investigation according to CPS regulation and guidance. *This may be done by sending an e-mail and including a brief case summary and justification for the final disposition.*

14.10.2 Written notification to alleged abuser or neglector.

> (§ 63.2-1516.1). 4. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.
> 5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.
> 6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:
> a. The identity of the person making the report.
> b. Information provided by any law-enforcement official.
> c. Information that may endanger the well-being of the child.
> d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

14.10.2.1 Notification of Unfounded Disposition

The alleged abuser or neglector shall be notified in writing that the complaint was determined to be unfounded. A copy of the notification shall be filed in the record and documented in the automated data system. The notification shall include the length of time the CPS report will be retained in the automated data system; the individual's right to request the record be retained for an additional period; and the right to access information about himself in the investigative record.

Although verbal notification of an unfounded investigation is not required by regulation, CPS workers are encouraged to discuss the outcome of the investigation as well as any services the family may need or request.

(22 VAC 40-705-140 B1). 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.

14.10.2.2 Notification of Founded Disposition

The written notification to the abuser or neglector of the founded disposition(s) must be in a letter and a copy must be included in the case record. The letter must include:

- A clear statement that the individual is the abuser and/or neglector.
- The category of abuse and/or neglect.
- The disposition, level, and retention time, including statement about effect of multiple complaints on retention.
- The name of the victim child or children.
- A statement informing the abuser of his or her right to appeal the finding and to have access to the case record.
- A statement informing the abuser that pursuant to § 63.2-1505 of the Code of Virginia, if the abuser is a teacher in a public school division in Virginia, the local school board shall be notified of the founded disposition.

LDSS are encouraged to send the disposition letter by certified mail as further documentation of the notification to the abuser or neglector.

14.10.2.2.1 Additional notification to alleged abuser in certain founded sexual abuse investigations

The Code of Virginia § 63.2-1514 A requires that all records related to founded cases of child sexual abuse involving injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child shall be maintained by the LDSS for a period of 25 years from the date of the complaint. All investigation records founded on or after July 1, 2010 for sexual abuse investigations level 1 shall be maintained by the LDSS 25 years from the date of the complaint. This retention timeframe will not be

reflected in the Central Registry past the purge dates set out in 22 VAC 40-700-30.

For all sexual abuse investigations founded level 1 on or after July 1, 2010, the written notification shall include a statement informing the alleged abuser that the investigation record shall be maintained by the LDSS for 25 years past the date of the complaint pursuant to § 63.2-1514 A of the Code of Virginia; however, this retention time will not be reflected in the Central Registry past the purge date of 18 years as set out in 22 VAC 40-700-30.

14.10.2.2.2 Inform abuser or neglector of appeal rights

The abuser or neglector must be informed of his right to appeal the founded disposition. This must be done verbally and in writing as soon as the disposition is reached. In addition, the abuser or neglector must be given a brochure, "Child Protective Services Appeals and Fair Hearings" that outlines the administrative appeal process. The LDSS must document in the automated data system that the abuser or neglector was given the appeal brochure and was informed verbally of his or her appeal rights.

14.10.2.2.3 Notify abuser or neglector verbally

The verbal notification to the abuser or neglector of the founded disposition(s) should include the disposition, level, and retention time, including effect of multiple complaints on retention and inform the abuser of his or her right to appeal to finding and to have access to the case record. The worker must document in the automated data system, the date the verbal notification took place. If the verbal notification did not occur, the CPS worker should document the reasons in the automated data system.

Refer to Section 4.8.11.4.2 for further instructions.

14.10.2.3 Services to abuser/neglector in an out-of-family investigation

Services can be provided to an abuser/neglector in a founded out-of-family investigation when the risk assessment is high or moderate for the victim child or to other children to whom the abuser/neglector may have access. Open the CPS on-going case in the name of that person in the automated data system.

14.10.3 Notification to facility administrator and regulatory staff

(22 VAC 40-730-110). Report the findings. Written notification of the findings shall be submitted to the facility administrator and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged abuser or neglector is notified.

> If the facility administrator is the abuser or neglector, written notification of the findings shall be submitted to his superior if applicable.

The CPS worker shall provide a verbal notification of the disposition and a written report of the findings to the facility administrator and, if applicable, to the involved regulatory staff person, to the local approval agent and/or the Superintendent in a public school, as soon as practicable after the disposition is made.

This report of the findings shall include:

- Identification of the alleged abuser or neglector and victim, the type of abuse or neglect, and the disposition.
- A summary of the investigation and an explanation of how the information gathered supports the disposition.

14.10.4 Notification to parent, guardian, or custodial agency of victim child

> (22 VAC 40-705-140 C2). 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 neglector, 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.

The *mother and father,* guardian or custodial agency of the child shall be notified in writing of the disposition of the complaint involving their child. Verbal notification and explanation of the findings are also required. The worker may use discretion in determining the extent of investigative findings to be shared; however, sufficient detail must be provided for the child's custodian to know what happened to his child and to make plans for any needed support and services.

The Code of Virginia § 63.2-1515 requires that when the child has been abused in certain out-of-family settings the parental notification must advise the parents that the child's name will only be retained in the Central Registry if the parent or guardian grants permission within 30 days of the supervisory approval of the findings.

The notification letter to *mother and father,* guardian or custodial agency must include the following information:

"If you want your child's name to remain in the Central Registry for as long as the record of the investigation is retained, send a letter to the CPS Unit, Virginia Department of Social Services, 801 East Main Street, Richmond, Virginia 23219. Include your child's name, date of birth, address, and description of the relationship of the abuser to the child."

When the *mother, father,* guardian or custodial agency requests the child's name to be retained, the disposition level will determine the purge date for the identifying information on the child.

14.10.5 Document all notifications in the automated data system

Each written notification shall be documented in the automated information system, identifying all recipients, and identifying where a copy of each written notification can be found.

14.10.6 All other inquiries referred to facility administrator

The CPS worker must refer any inquiries about the findings to the facility administrator or his superior and, when applicable, to the regulatory authority.

14.11 Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees

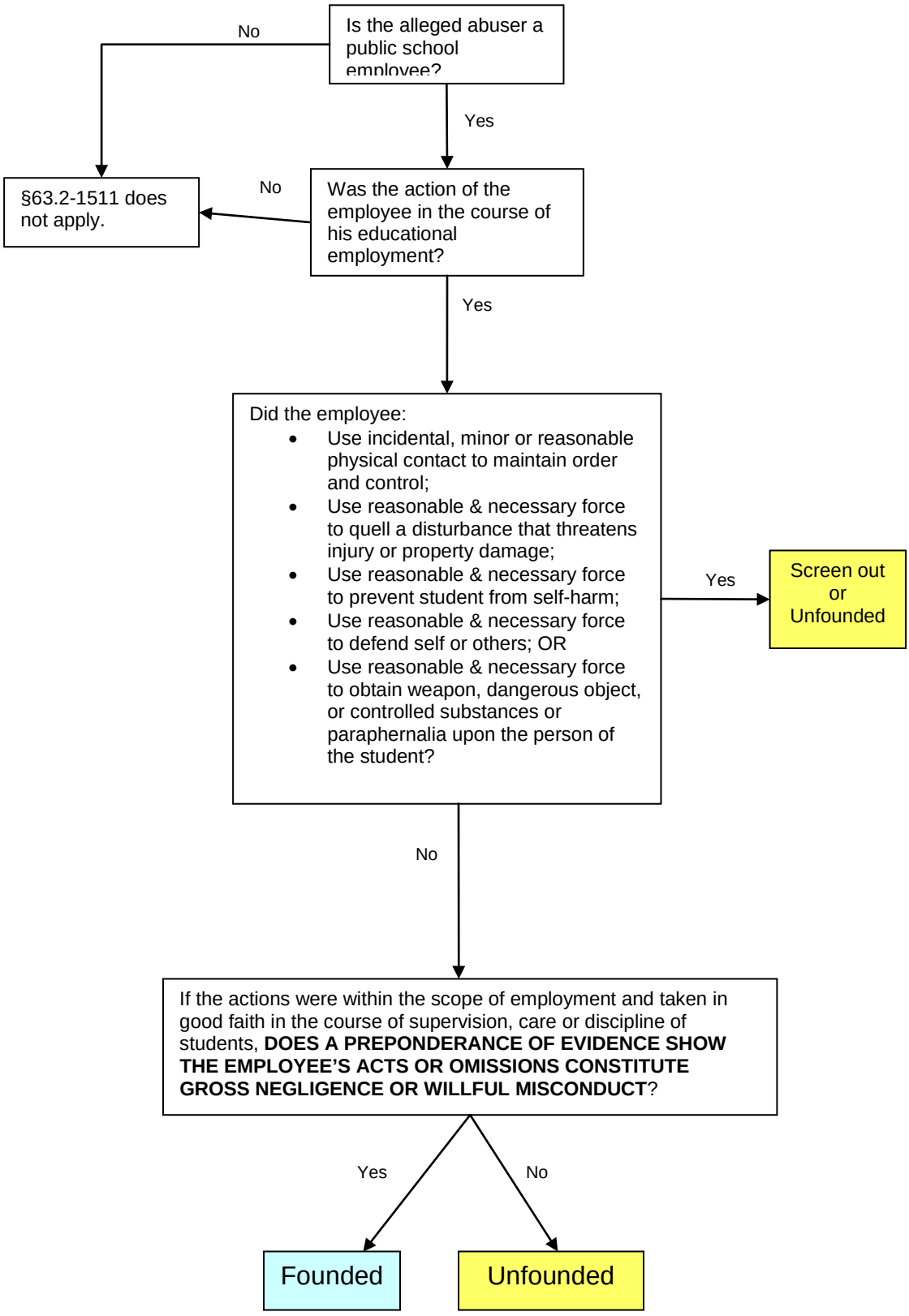
This document is intended as a guideline for CPS out-of-family investigations involving school personnel in order to review the requirements of § 63.2-1511 of the Code of Virginia which apply to screening validity and dispositional assessments. Section 5 of the CPS chapter provides additional guidance for LDSS in conducting CPS investigations in out-of-family settings including schools. Click the link for the statute and relevant regulation 22 VAC 40-730.

CPS allegations against public school employees have additional considerations which go beyond the normal procedures and requirements for CPS investigations. Obtaining a preponderance of evidence to support the standard of gross negligence and willful misconduct for school complaints is difficult considering that there are many players (e.g., school administrators, licensing/regulatory inspectors, law enforcement, parents, or the community) involved in the process. The statutory standard looks at the behavior of the alleged *abuser/neglector* which must rise to the level of gross negligence or willful misconduct. While this may not "feel" right for the parent, alleged victim, or others who may be impacted by the incident, this standard is set in statute.

In the flow chart that follows, at each decision point there is a list of corresponding discussion questions for consideration pertaining to § 63. 2-1511 moving through the CPS decision process from validity through disposition for allegations against school employees. This is not an exhaustive list of questions (as there are always infinite facts/possibilities to consider in CPS), but a starting point to examine the unique circumstances of each allegation and investigation. Please note that in many circumstances, the answers to each question may not be clear until the investigation has been initiated and more information is needed to proceed through the decision tree, while the answer to other questions may become clear once the investigation comes to a close and an analysis is made.

As with any CPS report or investigation, it is critical to document the facts and evidence gathered to support assessment decisions. Dispositional documentation must address the unique requirements of § 63. 2-1511 of the Code of Virginia related to public school employment, reasonable and necessary force, and gross negligence or willful misconduct.

ASSESSING APPLICABILITY OF §63.2-1511 FOR CPS INVESTIGATION



IS THE ALLEGED ABUSER/*NEGLECTOR* A PUBLIC SCHOOL EMPLOYEE?

If a teacher, principal or other person employed by a local school board or employed in a school operated by the Commonwealth is suspected of abusing or neglecting a child then proceed under § 63.2-1511. *§ 63.2-1511 does not apply to private schools or their employees who are solely licensed by the Commonwealth and not operated by the Commonwealth. When in doubt, verify with the Monitoring Specialist, Department of Education-State Operated Programs at #804-786-0581. Listings of private schools that are solely licensed by the state can be located at http://www.vcpe.org/.*

(IF NO, § 63.2-1511 does not apply.)

IF YES,

WAS THE ACTION OF THE EMPLOYEE IN THE COURSE OF HIS EDUCATIONAL EMPLOYMENT?

Information to gather and consider may include, but is not limited to:

- Was the alleged abuser/neglector acting within the scope of his employment regarding supervision, care or discipline of students?
- What are the job duties, role and responsibilities of the alleged abuser/neglector? (As indicated by the alleged abuser, administrator, or collaterals?)
- Where did the incident occur and under what circumstances?
- Was the alleged abuser/neglector acting on an assignment as part of his employment?

(IF NO, § 63.2-1511 does not apply.)

IF YES,

DID EMPLOYEE USE INCIDENTAL, MINOR OR REASONABLE PHYSICAL CONTACT TO MAINTAIN ORDER AND CONTROL; USE REASONABLE AND NECESSARY FORCE TO QUELL A DISTURBANCE THAT THREATENS INJURY OR PROPERTY DAMAGE; USE REASONABLE AND NECESSARY FORCE TO PREVENT STUDENT FROM SELF-HARM; USE REASONABLE AND NECESSARY FORCE TO DEFEND SELF OR OTHERS; OR USE REASONABLE AND NECESSARY FORCE TO OBTAIN WEAPON, DANGEROUS OBJECT, OR CONTROLLED SUBSTANCES OR PARAPHERNALIA UPON THE PERSON OF THE STUDENT? (§ 63.2-1511(A) "…prohibition of corporal punishment shall not be deemed to prevent (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control.")

Information to gather and consider may include, but is not limited to:

- Was there a disturbance where the situation was out of control or going to get out of control?
- Did the alleged abuser use incidental, minor or reasonable physical contact or other actions designed to maintain order and control?
- Were there real or potential threats of physical injury to anyone or damage or potential damage to property?
- Was any student in danger of inflicting physical harm on himself? Were there any weapons, dangerous objects, controlled substances or paraphernalia involved in the incident?
- Was the level of force necessary? Were there any less restrictive or less forceful options used or available to control situation?
- If alleged abuser felt the need for self-defense, what was the perceived threat? What was said by victim, alleged abuser, or others? Were there other options available to the alleged abuser to defend himself before resorting to the use of force? Did the alleged abuser say anything to de-escalate or incite the situation? What explanation did the alleged abuser provide for behavior?
- What did victim and collaterals say about behavior of the alleged abuser/neglector?
- What are school policies regarding discipline, training, restraint, and escalating action?

IF YES, SCREEN OUT / UNFOUND: The use of reasonable and necessary force when acting to maintain order and control, quell a disturbance etc. does not constitute a valid report pursuant to 22 VAC 40-730-115 B1. Information to make this determination may not be available at initial intake; therefore, an investigation would be initiated. The investigation must be unfounded if after gathering evidence, the LDSS determines that the alleged abuser used reasonable and necessary force. **It is critical to document the facts and decision in the assessment of reasonable and necessary force.**

IF NO,

IF THE ACTIONS WERE WITHIN THE SCOPE OF EMPLOYMENT AND TAKEN IN GOOD FAITH IN THE COURSE OF SUPERVISION, CARE OR DISCIPLINE OF STUDENTS, DOES A PREPONDERANCE OF EVIDENCE SHOW THE EMPLOYEE'S ACTS OR OMISSIONS CONSTITUTE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT?

Excerpt from CPS Manual Part V: **"**The Supreme Court of Virginia defines "gross negligence" as "that degree of negligence which shows indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of [another]. It must be such a degree of negligence as would shock fair minded [people] although something less than willful recklessness." In order that one may be [found to have committed] willful [sic] or wanton conduct, it must be shown that he was conscious of his conduct, and conscious, from his knowledge of existing conditions, that injury would likely or probably result from his conduct, and that with reckless

indifference to consequences he consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result."

Information to consider may include, but is not limited to:

- Would behavior, action, or inaction of alleged abuser shock fair minded people?
- Should the alleged abuser know/suspect that outcome would occur? Was the alleged abuser aware that injury/threat of injury would likely occur based on evidence of similar incidents/history?
- Was there willful misconduct (deliberate, conscious decision to act or not act)?

IF NO = UNFOUNDED

IF YES,

FOUNDED

Analysis of preponderance of evidence clearly documents FACTS to support requirements of § 63.2-1511:

- Alleged abuser acting in good faith within the scope of employment as public school employee.
- Alleged abuser's actions were not reasonable or necessary to quell disturbance etc.
- FACTS/EVIDENCE supports finding determination of gross negligence or willful misconduct.

It is critical to clearly document the assessment of these factors supported by evidence in the dispositional assessment.

14.12 Appendix B: Guidelines for investigations of school personnel

14.12.1 Investigations of child abuse and neglect when the child is alleged to have been abused/neglected by a school employee

Responsibilities of local school divisions:

- The local school site administrator, or designee, if there is no conflict of interest, may participate in the planning of the investigation when the report names a school employee as the alleged abuser or neglector.
- If the investigation involves a school employee as the alleged abuser/neglector, the local school division shall cooperate with the needs of the CPS worker, and provide the following resources, as appropriate:
    - Room/private space for interviews of staff and children.
    - Accompaniment to the site of the alleged abuse/neglect.
    - Pertinent policies, procedures and records.
    - Names, functions, and roles of involved parties;
    - Work schedules of staff.
    - Phone numbers of collateral children's parents/guardians in order for the CPS worker to gain permission to interview them.
- Allow the local CPS worker to interview the alleged victim child and siblings in private, without the presence of school personnel, in order to protect the family's right to privacy.

Responsibilities of the LDSS:

- Conduct an immediate investigation upon receiving a report about suspected incidents of child abuse or neglect.
- If the investigation requires the CPS worker to go onto school premises, the local CPS worker shall inform the site administrator or designee of the allegations being investigated, the subjects named in the report [alleged abuser*/neglector* and alleged victim child(ren)], and the CPS role and expectations, including private space to interview the victim child.
- If the investigation involves a school employee as the alleged abus*er/neglector*, and if there is no conflict of interest, the CPS worker shall

invite the site administrator or designee to participate in the planning of a joint investigation.

- If the investigation involves a school employee as the alleged abuser/*neglector,* the CPS worker must request from the administrator the following resources, as appropriate:
  - Room/private space for interviews of staff and children.
  - Accompaniment to the site of the alleged abuse/*neglect.*
  - Pertinent policies, procedures and records.
  - Names, functions, and roles of involved parties.
  - Work schedules of staff.
  - Phone numbers of collateral children's parents/guardians in order to gain permission for the CPS worker to interview them.
- If the investigation involves a school employee as the alleged abuser/*neglector*, the CPS worker shall interview the alleged abuser/*neglector* according to a plan developed jointly with the facility administrator or designee. Where there is an apparent conflict of interest, the CPS worker shall use discretion regarding who is to be present in the interview.
- If the investigation involves a school employee as the alleged abuser/*neglector*, the CPS worker shall inform the alleged abuser/*neglector* that he has the right to involve a representative of his choice to be present during the interviews. The CPS worker should also inform him if anyone other than the CPS worker is planning to be present.
- If the investigation involves a school employee as the alleged abuser/*neglector*, the CPS worker shall provide him the allegations in writing, and offer to tape record the interview, and provide a copy to the alleged abuser/*neglector* at the earliest convenience.
- If the investigation involves a school employee as the alleged abuser/*neglector*, the CPS worker shall interview collateral staff witnesses, as appropriate, according to a plan developed jointly with the facility administrator or designee. Where there is an apparent conflict of interest, the CPS worker shall use discretion regarding who is to be present in the interview.
- If the investigation involves a school employee as the alleged abuser/*neglector,* the CPS worker shall keep the facility administrator or

designee apprised of the progress of the investigation on an ongoing basis until the investigation is completed.

- The CPS worker shall complete the investigation and make a disposition with 45 (or 60 days when an extension is documented to be necessary), unless the alleged abuser/*neglector* waives these time frames.

- If the investigation involves a school employee as the alleged abuser/*neglector*, when the investigation is completed and a disposition is made, the CPS worker shall verbally notify both the alleged abuser/*neglector* and the facility administrator. The alleged abuser/*neglector* should be informed first, or at the same time as the administrator or designee.

- If the investigation involves a school employee as the alleged abuser/*neglector*, a written report of the findings shall be submitted to the facility administrator, with a copy to the school's Superintendent, and with a copy to the alleged abuser/neglector along with his disposition notification letter and appeal notification. This report of findings shall include a summary of the investigation, with an explanation of how the information gathered supports the disposition.

- The LDSS shall inform the *mother and father,* guardian or custodial agency or agency holding custody of the victim child written notification of the disposition, with a verbal follow-up. The CPS worker may use discretion in determining the extent of investigative findings to share with the parent; however, sufficient detail must be provided for the child's custodian to know what happened to his child, to make plans for the child, and to provide needed support and services.

- If the initial report was made by a school employee, that individual shall receive a written communication from the LDSS informing him that the investigation has been completed, and either that the disposition was "Unfounded," or that "Appropriate action has been taken."

14.12.2 Follow-up to the investigation

- The LDSS may provide post-investigative protective and/or treatment services, and follow-up contacts to the child, family, and named abuser/*neglector*.

- When a school employee is named as the abuser/neglector, the local school division may provide post-investigation corrective action, as deemed appropriate by the school, for the school facility and any personnel, including the named abuser/*neglector.*

14.12.3 Confidentiality

- Information shall be shared between appropriate staff of the LDSS and local school divisions which is accurate, complete, timely, and pertinent so as to assure fairness in determination of the disposition of the complaint.

- Appropriate precautions shall be taken by both local entities to safeguard the information maintained as a result of the investigation in accordance with the VDSS confidentiality laws governing child abuse and neglect investigations, except that information obtained from local school division shall be safeguarded in accordance with the confidentiality regulations which govern such information.

14.13 Appendix C: Checklist for designated out-of-family investigations

	CPS RESPONSIBILITY	DATE	*CONTACT INFORMATION*
1.	Receive report and enter into OASIS.		
2.	Report to Commonwealth Attorney and law enforcement all class 1 misdemeanors / felonies, as per local guidelines.		
3.	Contact CPS Program Specialist (plan investigation strategy).		
4.	If report involves school personnel, refer to Appendix A: Guide for Assessing Applicability of § 63.2-1511 in CPS Out-of-Family Investigations of School Employees for guidance on these investigations.		
5.	Contact Regulatory agency, obtain name of staff who will investigate report jointly.		
6.	Contact that regulatory staff person to coordinate strategy of investigation.		
7.	Contact facility administrator to inform of impending visit (or announce presence to administrator upon arrival to facility).		
8.	Meet the licensing or regulatory person, if possible, at facility and go together to meet the administrator. Explain differing roles and expectations.		
9.	Advise administrator (or designee) of the allegations in the complaint. Invite their input for preliminary plans.		
10.	Request of administrator the following resources, as appropriate: • Private room/space to interview staff and children • Accompaniment to site of alleged abuse • Pertinent policies, records, guidelines • Names, function, roles of all involved parties • Work schedules of alleged abuser/neglector and other staff witnesses • Phone numbers of staff witnesses • Phone number and address for the alleged abuser		

	CPS RESPONSIBILITY	DATE	*CONTACT INFORMATION*
11.	Interview the victim child(ren). • The parent, guardian or agency holding custody should be notified in advance; when not practical shall notify as soon as possible. • CPS determines who can be present during this interview. • Audiotape interview.		
12.	Determine Immediate Safety (if unsafe and child needs to be removed then the parent, guardian or agency holding custody shall be notified to mutually develop a safety plan).		
13.	Interview Collateral Children. • Before interviewing collateral children, consent of the child's parent, guardian, or agency holding custody should be obtained.		
14.	Interview alleged abuser/neglector. • Offer audiotape and provide written notification.		
15.	Interview collateral staff witnesses.		
16.	Interview victim's parent, guardian or agency holding custody. • They should be informed early in the process about the report. The investigative process should be explained. Obtain information about their knowledge of the allegations and the facility. They should be kept involved in the planning and support of the victim child.		
17.	Keep the facility administrator apprised of the progress of the investigation. If working jointly with regulatory agency, CPS may decide who will perform these progress reports.		
18.	Although statutory authority for the disposition rests with the local agency, at the conclusion of the investigation the CPS worker shall contact the CPS Program Specialist to review the case prior to notifications being sent. This review should include supervisor if possible.		

	CPS RESPONSIBILITY	DATE	*CONTACT INFORMATION*
19.	Notifications of disposition made to all parties. The alleged abuser/neglector and facility administrator should be verbally notified promptly. The alleged abuse should be notified first or at least at same time the facility administrator is notified.		
20.	Written report of the findings shall be submitted to the facility administrator and the involved regulatory staff person or school superintendent. This report shall include identification of the alleged abuser and victim as well as a summary of the investigation with an explanation of how the information supports the disposition. A copy of this report shall be sent to the abuser/neglector along with the letter of notification and rights of appeal.		
21.	Written notification of findings sent to the parent, guardian or agency that has custody. A verbal follow up is also encouraged. Parents should be advised that the victim (s) names will be purged after 30 days unless they make a request to keep listed in OASIS.		
22.	Post-investigative treatment services may be provided as needed by local agency to the child, family or abuser. Post-investigative corrective action follow up with the facility is the responsibility of the regulator and facility administration.		
23.	**ALL contacts are documented in OASIS.**		

6

SERVICES

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SERVICES

20.1 Introduction

The Virginia Children's Service Practice Model *sets forth a vision for the services that are delivered by all child serving agencies across the Commonwealth. The practice model is central to decision making; present in all meetings; and in every interaction with a child or family. Guided by this model, the Virginia Department of Social Services (VDSS) is committed to continuously improving services for children and families by implementing evidence based practices, utilizing the most accurate and current data available, and improving safety and well-being of children and families. The Practice Model is founded on these principles:*

- *All children and communities deserve to be safe.*
- *Practice is family, child, and youth-driven.*
- *Children do best when raised by families.*
- *All children and youth need and deserve a permanent family.*
- *Partnering with others is important to support child and family success in a system that is family-focused, child-centered, and community-based.*
- *How we do our work is as important as the work we do.*

Services can be offered to families during the family assessment or investigation, but this part of the guidance manual primarily addresses services provided after a case is opened. The broad goals of CPS services are:

- Prevention of further abuse or neglect to the child.
- Assurance of the child's safety.

- Maintenance of the child in his family.

When the local department (LDSS) completes a CPS family assessment or investigation and the risk of future maltreatment is very high or high the identified and needed services to reduce the risk should be made available to the child and his family. Cases may be opened when risk is moderate.

The LDSS is responsible for the CPS service planning process. This planning should be based on the assessed risk. *It should be* family centered and strength based. The service plan should be jointly developed with the family, including both parents and caretakers whenever possible, and should be written in clear and understandable language. Family partnership meetings may be convened to assist in decision making about services.

The service plan must be based on the LDSS's assessment of the following:

- Identification and evaluation of significance and interaction of key risk elements.
- Family's view of the situation, and individual strengths.
- Collaboration with other community resources as needed to reduce risk of further abuse or neglect.

20.2 LDSS must make CPS services available to certain children and families

The appropriate services for a particular family must be tailored to the family's unique strengths; the type of abuse or neglect that has been identified; and the LDSS's assessment of the child's safety and risk of future maltreatment. The LDSS should provide CPS ongoing services to the family based on these principles:

- Social services should be delivered to the family as part of a total system, with cooperation and coordination occurring among administration, temporary assistance, and family services programs.
- Every effort should be made to maintain the family as a functioning unit and prevent its breakup, while keeping children safe.
- The worker/family relationship is a primary vehicle for change.
- Positive change is possible.
- The most effective way to address a family's needs is to recognize and support its strengths.

- CPS services are successful by virtue of how they are presented, understood, and used by the family to keep all children free from maltreatment.

- CPS services should empower families to function independent of the social services system while all members remain safe. The purpose of the direct services is to address identified individual and family needs while providing timely and continuing reassessment of child safety, risk of maltreatment, ability of the parents to provide a minimum standard of care, and progress toward achieving the outcomes or goals identified in the service plan.

20.2.1 Legal authority to provide CPS services

The Code of Virginia §§ 63.2-1505 and 63.2-1506 provide statutory authority to provide or arrange for services to families at the conclusion of a family assessment or investigation.

> (22 VAC 40-705-150 A). 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 to the extent funding is available pursuant to § 63.2-1505 or 63.2-1506 of the Code of Virginia.

When the LDSS completes a CPS family assessment or investigation and the risk of future maltreatment is very high or high the identified and needed services to reduce risk should be made available to the child and his family. Cases may be opened when risk is moderate. The identification and provision of services may also be provided to the family during the family assessment or investigation.

Services may also be provided to or arranged for the alleged abuser or neglector when the abuser or neglector is not a parent.

20.2.2 Services for completed family assessment or founded investigation with moderate, high, *or* very high risk

When moderate, high, or very high risk is assessed in a completed family assessment or investigation, the LDSS shall consult with the family to provide or arrange for necessary protective and rehabilitative services to be provided to the child and his family if appropriate. The LDSS shall provide CPS services either directly or by purchase, without regard to income for a child, parent, or guardian, and alleged abuser or neglector when the LDSS documents that other resources are not available to cover the cost of service. All service needs must be documented in the service plan and it must be documented that these services are to prevent further child abuse or neglect or to prevent placement of the child outside of the family.

20.2.2.1 Risk level determines need to convene family partnership meeting

While a family partnership meeting may be scheduled at any point, it should be scheduled when the worker assesses a child to be at very high or high risk of abuse and/or neglect and the child is at risk of out of home placement in those families who will be or are receiving services. This meeting is scheduled to develop the plan and services to prevent the out of home placement and identifies the circumstances under which a removal might be considered. The meeting should convene **within 30 days** of initiating services and prior to the development of the ongoing service plan. The family partnership meeting must be documented in the automated data system. For guidance on conducting the family partnership meeting, refer to the Family Engagement manual on the following websites:

DSS internal website

DSS public website

20.3 Provide mandated CPS ongoing services

In situations determined to be at risk of child maltreatment, the transfer of the case from investigation or family assessment status to ongoing services should occur without delay. When another worker will be assigned the case after the completion of the family assessment or investigation, the LDSS should ensure a quick and smooth transition of the case to immediately commence service planning and avoid a lapse in services and safety monitoring. This seamless transition helps ensure that the service plan will be completed **within 30 days** of opening the case. The ongoing worker should receive the entire record on the family. However, need for the entire record should not delay the transfer of enough information to begin essential services to prevent abuse/neglect.

20.3.1 Application for services: family assessment or founded investigation with *very high,* high or moderate risk assessment

When the completed founded investigation or family assessment has a very high, high, or moderate risk assessment and there are services identified that will reduce risk for abuse or neglect, there is no requirement for the family to sign a service application. *The Family Service Agreement that is completed in a family assessment may be used as a service application.* The CPS worker must document in the automated data system that the family has agreed to services or that services are court ordered. Open the service case in the family's name. CPS ongoing cases for abusers in founded out of family investigations with moderate or high risk are opened in the name of the abuser.

20.3.1.1 Purchased services

The LDSS must make available to the child and family the following purchasable services if identified in the service plan:

- Emergency Shelter for Children.
- Medical/Remedial Care.

20.3.1.2 Other services

Any other service that the LDSS identifies as appropriate may be purchased on behalf of the child and family, if it is included in the CPS service plan and is to prevent further abuse or neglect.

Examples of purchased services include but are not limited to:

- Emergency shelter for families.
- Emergency needs.
- Child care.
- Counseling and treatment services.

20.3.1.3 Child care services

The LDSS may purchase child care services if it is identified in the CPS ongoing services plan.

20.3.1.4 LDSS shall not purchase certain services

The Code of Virginia § 63.2-1503 does not permit the LDSS to purchase CPS investigation or family assessment services from private or other public non-social services departments.

An LDSS may contract with another LDSS to provide these services.

20.3.2 Develop ongoing service plan; conduct risk reassessment and service plan review

20.3.2.1 Service plan

The Virginia Administrative Code defines “Service Plan.”

> (22 VAC 40-705-10). “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.

The service plan must be developed **within 30 days** of opening the case. When preparing to develop the service plan, it is critical to review all available information from the investigation or family assessment, including information gained through engaging and partnering with the family. The Virginia Children's Services Practice Model promotes engaging the family to plan for services for children and families.

20.3.2.1.1 Documenting family participation in the service planning

To the fullest extent possible, the LDSS shall provide opportunities for the family to participate in the development of the service plan. In partnership with the family, the worker shall develop *objectives* that are measurable and build on client strengths whenever possible. The foundation for developing effective strategies is rooted in a thorough assessment of strengths and needs. The purpose of family supportive strategies is to identify actions that must occur in order to reach the desired goals. The family should be provided opportunities to make comments or indicate their agreement with the service plan. When risk is high or very high and there is a risk of out of home placement, convening a family partnership meeting is one way to ensure family participation in service planning. The family's participation in the formulation of the service plan must be documented in the automated data system.

20.3.2.2 Required elements of the CPS service plan

The elements of a CPS service plan include:

- The LDSS shall work, in partnership, with the family and other community resources to identify specific behaviors and environmental conditions that need to change in order to prevent abuse or neglect and to provide a safe environment for the child.
- When the service plan is completed, the LDSS must offer or arrange for services and resources appropriate to meet those needs identified in the service plan.
- The identified service needs shall be documented in the automated data system.
- The service plan must be developed **within 30 days** of opening the case and include:

- The specific needs identified with the family and the services to be provided to the family to address those specific needs, including the family's perception of those needs.
- Who will provide the services.
- The frequency of these services.
- A specific time to review the service plan.
- The goal or expected outcome of the service.

- The service plan must be reviewed with the family at least once every 90 days. Changes to the service plan must be based on the family progress toward attaining specific objectives and reduction of risk of future maltreatment. A family engagement meeting may be held when the service plan is reviewed.

20.3.2.3 Document CPS ongoing services

All services in an ongoing CPS case must be documented in the automated data system. Some information may be available only in hard copy. The LDSS must keep this information in a separate file and reference these materials in the automated data system. The case record should contain:

- *An opening case summary explaining the reason the case is being opened for on-going CPS services.*
- Initial safety and risk assessments from the family assessment or investigation.
- Behaviorally specific service plan.
- Reassessments of risk and the progress toward meeting the objectives of the plan, including supervisory staffing.
- Documentation of all pertinent contacts, including failed contacts.
- Information that addresses child well-being, such as physical health, mental health, and education.
- If services are not provided, documentation of reasons.
- A closure summary when case is closed or transferred.
- Supervisory approval of service plan, service plan review and changes, and case closure.

20.3.3 Service worker must have face-to-face contact with child and family

20.3.3.1 Frequency of required contacts

The frequency of contacts with the child and family should be determined from the needs identified in the service plan *and the assessed risk*, but the following are minimum requirements:

- Face-to-face contact between the CPS worker and the child and family **at least one time per month.**
- The CPS worker must visit in the family home at least one time every other month.
- All contacts must be documented in the automated data system.

If the LDSS provides purchased services to the child or family, the CPS worker must document in the automated data system the need for those services as well as that the purchased services were provided. All services should be related to reducing the risk of future abuse or neglect.

20.3.4 Conduct risk reassessment and review service plan

20.3.4.1 Service plan review schedule

The LDSS shall review each CPS service plan every 90 days or more often if the risk to the child changes.

20.3.4.2 Risk reassessment

Every service plan review shall include a risk reassessment with the family and determination of current level of risk to the child that is reviewed with the supervisor and documented in the automated data system.

20.3.4.3 Services completed

If the risk level is low or all services have been completed, the CPS ongoing case shall be closed. The decision to close the CPS ongoing case shall be approved by the supervisor and documented in the automated data system.

20.3.4.4 Services still needed

If the risk level continues to be moderate, high, or very high, the service plan must be updated to reflect current service needs and a determination made to continue services or close the case to services. The continuing service plan shall be reviewed by the supervisor and documented in the automated data system.

20.3.5 Prevent foster care placement: Reasonable Candidacy Program

As a part of the determination of risk of future abuse or neglect, the LDSS should evaluate whether or not a child is a reasonable candidate for foster care placement because the LDSS is seeking the child's removal from the home or is making reasonable efforts through services to prevent the child's removal.

If the LDSS believes the child is at risk of foster care placement if services are not provided to prevent foster care, the LDSS should determine if the child is eligible for the Reasonable Candidacy Program. If the child is eligible, the LDSS may claim Title IV-E reimbursement for administrative activities performed on behalf of these children regardless of whether the child is actually placed in foster care.

The specific eligibility requirements for reasonable candidacy can be found in Appendix A.

The manual includes the Reasonable Candidacy Documentation Form (032-02-0510-01-eng), a form to document eligibility for reasonable candidacy and for the LDSS's reimbursement for services. The form can also be found in Appendix B and on the DSS internal website.

In CPS services cases, the documentation for reasonable candidacy is a defined service plan that clearly states that absent effective preventative services, foster care will likely result. The CPS ongoing services plan is an acceptable case plan to document reasonable candidacy and must clearly demonstrate that the case is actively managed by the LDSS to maintain the child in the home and to prevent the child's foster care placement.

It is important to note that reasonable candidacy eligibility and documentation are related to the fiscal reimbursement for case management provided by the LDSS and does not replace the requirements to determine and document eligibility for ongoing CPS services.

20.3.6 When family refuses CPS services

> (22 VAC 40-705-150 B). Families may decline services offered as a result of family assessment or an investigation. If the family declines services, the case shall be closed unless there is an existing court order or the local department determines that sufficient cause exists due to threat of harm or actual harm to the child to redetermine the case as one that needs to be investigated or brought to the attention of the court. In no instance shall these actions be taken solely because the family declines services.

The LDSS has no authority to enforce the provision of services when a family, or other individual, refuses to accept those services. When services are refused, the LDSS must consider whether alternative action is necessary. The decision to seek

alternative action to compel the acceptance of services should be based on the risk of harm to the child or immediate safety factors.

When services are determined to be necessary to prevent abuse or neglect, but services are refused, both the offering and refusal must be fully documented in the automated data system.

20.3.6.1 When family refuses CPS services, LDSS may seek court assistance

If a parent, or any individual, refuses to accept services, the worker should consult with the county/city attorney to determine if court action is needed. The LDSS may petition the court to order the necessary services.

The worker may also petition the court to require, not only a child's parent(s), but also guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to cooperate in the provision of reasonable services or programs designed to protect the child's life, health, or normal development pursuant to Code of Virginia § 16.1-253.

20.3.6.2 Court should be last alternative in family assessments

> (22 VAC 40-705-150 C). At the completion of a family assessment, local departments of social services may petition the court for services deemed necessary.

20.3.6.3 Court refuses LDSS's request for assistance

If the court does not issue an order compelling the family to accept services and the *mother, father,* other guardian, legal custodian, other person standing in loco parentis or other family or household member of the child continue to refuse critical services, the LDSS should consult legal counsel to determine if any other alternatives are available in working with the court. If no other legal recourse is available, the worker should close the case to child protective services.

20.3.7 LDSS must use reasonable diligence to locate missing child or family in CPS service case

> (22 VAC 40-705-150 F). The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and/or a child protective services case has been opened pursuant to § 63.2-1503 F of the Code of Virginia. The local department shall document its attempts to locate the child and family.

20.3.7.1 What constitutes reasonable diligence

The LDSS shall document reasonable and prompt attempts to locate the child and family including but not limited to checking when applicable:

- Child welfare automated data system.
- Postal Service for last known address.
- Postal Service for forwarding address.
- Neighbors, landlords, known relatives.
- School records.
- Department of Motor Vehicles.
- Department's Division of Support Enforcement.
- Department of Corrections, Probation and Parole.
- Law Enforcement.
- Telephone and utility companies.
- Employer.
- Other appropriate contacts.

20.3.7.2 Document use of reasonable diligence in locating child and family

The LDSS shall document in the information system its attempts to locate the alleged victim child and the family.

20.3.7.3 LDSS must conduct periodic checks for missing child or family

If the victim child or family is not found, the LDSS must establish a timetable for making periodic checks. Periodic checks for the missing child must continue until the LDSS is satisfied with the resolution of the case. The LDSS shall document the timetable in the automated data system as well as the results of the periodic checks.

20.3.8 Abuse and neglect allegation in open CPS case

When child abuse or neglect allegations are made on an open CPS ongoing or prevention case, the report must be treated as a new CPS report and evaluated for validity and response as set out in CPS guidance for complaints and reports. The LDSS may decide whether to have the ongoing worker respond to a valid report if that worker is qualified as a CPS worker, having received the mandated training for CPS. The referral and results of a valid report must be documented in the automated data system as a family assessment or an investigation.

20.4 Close CPS ongoing case when service plan is completed and risk is low

The LDSS must close the CPS ongoing case when the service plan is completed and the risk level is low. The closure must be documented in the automated data system and approved by the worker's supervisor. The family must be informed that the case is closed both orally and in writing.

20.5 Transfer ongoing CPS service case

(22 VAC 40-705-150 G). 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 § 63.2-1503 G of the Code of Virginia.

20.5.1 Transfer open Child Protective Services case to another LDSS in Virginia

When a child moves, the case shall be transferred to the LDSS in the locality where the family will reside.

20.5.1.1 LDSS to initiate transfer immediately

The LDSS shall contact the receiving agency immediately to notify the agency that the family is moving to that locality and will need CPS ongoing services.

At a minimum, the LDSS shall provide to the receiving LDSS the following information:

- Automated Data System Case Number.
- Summary of the sending agency's involvement with the family, including the services currently being provided to the child or family.

20.5.1.2 LDSS shall send entire record to receiving LDSS within thirty days

A copy of the entire child protective services record, including the fully documented automated record and any additional hard copy reports or files, shall be forwarded to the new locality **within 30 days**. The automated case record shall be forwarded electronically, and any other record information shall be mailed or faxed. The sending LDSS retains all originals of the hard copy record, including the required notifications.

20.5.1.3 Receiving LDSS shall provide services

> (22 VAC 40-705-150 H). The receiving local department shall arrange necessary protective and rehabilitative services pursuant to § 63.2-1503 G of the Code of Virginia.

20.5.2 Transfer open CPS service case to another state

If a family in an open CPS service case moves to another state and services are still needed to prevent abuse and neglect, contact the receiving state for information and instructions. State contacts are available on the APHSA website.

20.5.2.1 Transfer CPS case out of state; child in the custody of an LDSS

The LDSS shall contact the Interstate Compact for the Placement of Children (ICPC) unit at the VDSS for assistance to transfer to another state an ongoing CPS case with at least one child in the home and at least one child in the custody of an LDSS. (Dual CPS Foster Care Case Type)

20.6 Retention requirements for CPS ongoing case records

Closed CPS ongoing records are to be destroyed in accordance with laws governing public records in the Commonwealth. These rules allow for CPS ongoing case records to be destroyed or purged three (3) years from the date the case was closed if an audit has been performed. If no audit has been performed, the record may be destroyed five (5) years from the date the case was closed.

There are different purge requirements for screened out CPS reports, unfounded investigations, founded investigations and family assessments that are noted in other parts of this guidance manual.

20.7 Provide CPS prevention services

20.7.1 Legal authority

The Code of Virginia § 63.2-1501 provides the statutory definition of prevention.

> (22 VAC 40-705-150 D). 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, 63.2-1502, and 63.2-1503 J, of the Code of Virginia.

LDSS are authorized to provide CPS prevention services to families and children in CPS Investigations with Unfounded Dispositions with a moderate or high risk assessment; when no formal report has been; or a report has been made but did not meet the criteria for a CPS response. The LDSS may provide services to the family or child to prevent child abuse and neglect, if the parent voluntarily agrees to such services, and signs a service application.

20.7.2 Open CPS prevention services case

A signed service application form or its equivalent is required to open a case for families and children in unfounded investigations, screened out CPS reports, or when no formal CPS report has been made. Refer to Section I, Chapter B, Intake and Case Management, on the DSS internal website, for guidance on developing a service plan for CPS Prevention Cases.

20.7.3 No authority to compel family to accept services

The LDSS cannot compel families to accept CPS prevention services. The LDSS should engage a family in a service planning process that emphasizes family strengths, as well as its needs, and supports the family's efforts to provide a safe and nurturing environment for children. The LDSS can help the family identify community resources that will support the family and prevent abuse and neglect.

20.8 Appendix A: Reasonable Candidacy Manual

20.8.1 General

20.8.1.1 Statutory background

The Adoption Assistance and Child Welfare Act of 1980, P. L. 96-272, was enacted on June 17, 1980. Title IV of the Social Security Act (Act) was amended and a new Part E, federal payments for Foster Care and Adoption Assistance, was created.

Title IV-E provided for a phased repeal of Section 408 of the Act, which provided authority for federal matching in state foster care (FC) payments under the Title IV-A, Aid to Families with Dependent Children Foster Care program (AFDC-FC). States could continue to receive federal matching for AFDC-FC payments under Title IV-A of the Act until September 30, 1982, or the quarter in which the state implemented an approved State Plan under Title IV-E. The earliest implementation date for Title IV-E was October 1, 1980. Presently, in order to carry out the provisions of Title IV-E, appropriations made available for that program are to be used for making payments to those states which have approved state plans under Title IV-E (see Section 471; 42 U.S.C. 671; 45 CFR 1356.20).

45 CFR 1356.60 (c) allows federal financial participation (FFP) for administrative costs to be claimed for reasonable candidates for foster care regardless of whether the children are actually placed in foster care and receive Title IV-E foster care maintenance payments.

20.8.1.2 Purpose

As the designated Title IV-E agency, the Virginia Department of Social Services (VDSS) is responsible for supervising the Title IV-E Plan in Virginia and ensuring that costs claimed under Title IV-E are reasonable, necessary, and consistent with applicable Federal guidelines. Title IV-E reimbursement is allowed for administrative activities performed on behalf of children deemed to be a reasonable candidate for foster care regardless of whether these children are actually placed into foster care and become recipients of Title IV-E foster care maintenance payments. This manual outlines both federal and state regulations and policies which allow VDSS to claim Title IV-E administrative cost reimbursement on behalf of local departments of social services (LDSS) for reasonable candidates for foster care. For children who have been determined a reasonable candidate for foster care, VDSS, after applying the Title IV-E penetration rate, can claim 50 percent FFP for allowable administrative costs on behalf of the LDSS.

20.8.2 Reasonable Candidacy Program

20.8.2.1 Authority to make reasonable candidacy determinations

Only LDSS employees are authorized to make the determination of reasonable candidacy for foster care.

Contracted persons are not considered employees of the LDSS and may not make determinations with respect to reasonable candidacy. All other activities performed by contracted personnel associated with a documented reasonable candidate are permissible and should be captured during the Random Moment Sample (RMS) process.

20.8.2.2 Reasonable candidacy requirements

No exception or deviance to any applicable services' policy (Foster Care Prevention/Stabilization, Child Protective Services, and/or Comprehensive Service Act) should occur in the effort to determine a child as a reasonable candidate.

A child is a reasonable candidate when it is documented that he or she is at serious risk of removal from the home as evidenced by the LDSS service worker either pursuing his or her removal from the home, or making reasonable efforts to prevent such removal.

There is not a specified time limit for how long a child may be considered a reasonable candidate for foster care. The LDSS shall document its justification for maintaining a child as a reasonable candidate for foster care at least once every six (6) months (see Sections 6.8.3.2, 6.8.3.3, and 6.8.3.4).

20.8.2.3 Types of reasonable candidates

- **Pre-Placement**. The LDSS is seeking to remove the child from the home and place the child in foster care; or the LDSS is making reasonable efforts to prevent the removal from the home and placement of the child in foster care.

- **Post-Placement**. The LDSS is making reasonable efforts towards preventing the child's re-entry into foster care by providing aftercare services to the reunited family.

  If the LDSS determines that the finalized adoptive placement is in jeopardy and demonstrates that the adopted child is a candidate for foster care, the LDSS may claim allowable Title IV-E administrative costs under the foster care program for activities performed on behalf of the child as a reasonable candidate.

20.8.2.4 Exclusionary conditions of reasonable candidacy

Federal law and policy clearly outline the following exclusionary conditions for reasonable candidacy:

- Children over the age of 18.
- Children who are no longer at risk of removal from home.
- Children who are currently placed in a foster care setting or a facility outside the scope of foster care such as detention, forestry camps, and psychiatric hospitals.
- An unborn, prenatal case.
- Children with which the LDSS does not have a case plan, or the case plan does not meet the requirements indicated in Section 6.8.3.3.
- The LDSS service worker did not redetermine, at least every six (6) months, that the child remains at serious risk of removal from the home.
- Children who are on a trial home visit (THV).

A child may not be considered a candidate for foster care solely because the LDSS is involved with the child and his or her family. The LDSS' involvement with the child and family shall be for the specific purpose of either removing the child from the home or making reasonable efforts to prevent the child's removal from the home.

The child cannot simultaneously be considered in foster care and a reasonable candidate for foster care.

20.8.3 Establishing and maintaining reasonable candidacy

20.8.3.1 Establishing reasonable candidacy

The LDSS service worker shall evaluate reasonable candidacy on a case-by-case basis. In situations which include several children within a sibling group, evaluation and documentation in the services case record shall support a determination of reasonable candidacy for each child individually.

All necessary and appropriate documentation used in conjunction with the Documentation Form to establish reasonable candidacy should be maintained in the services case record.

Initial reasonable candidacy determination may not be made retroactively (see Section 6.8.3.4.2).

20.8.3.2 Maintaining reasonable candidacy

The LDSS service worker shall clearly document continued reasonable candidacy no later than six (6) months from the initial determination and continue to make redeterminations no less frequently than once every six months thereafter. This is done by updating the child's case plan or through updated court proceedings to show that the child remains a reasonable candidate for foster care.

Once the child is no longer at risk of foster care placement, the service worker shall cease classifying the child as a reasonable candidate for foster care (see Section 6.8.2.3). Although there are no formal documentation methods, case plans should be updated to reflect that the child is no longer a reasonable candidate.

All necessary and appropriate documentation used to maintain reasonable candidacy status should be maintained in the services case record.

20.8.3.3 Reasonable candidacy documentation methods

Although the case plan developed by the LDSS service worker can be used as acceptable documentation to support reasonable candidacy, if a court order, petition, or transcript regarding removal/preventing removal of the child is available, the judicial documentation shall be maintained in the services case record.

The acceptable methods of documentation indicating that a child is a reasonable candidate for foster care are:

- **Defined Case Plan**. A defined case plan which clearly indicates that, absent effective preventive services, foster care is the planned arrangement for the child.

  The decision to remove a child from his or her home is significant and should not be entered into lightly. Therefore, a case plan that indicates that foster care is the planned placement for the child absent effective preventive services is an indication that the child is at serious risk of removal from his or her home because the LDSS believes that a plan of action is needed to prevent that removal.

  Case plans shall be individualized for a specific child, developed jointly with the child (when appropriate), the parents or guardians, and include a description of the services to be offered and provided to prevent removal of the child from the home. The case plan and documentation should clearly show that the case is actively being managed to maintain the child at home and to prevent placement of the child in foster care.

Acceptable types of case plans include, but are not limited to:

- Foster Care – Services Plan.
- Child Protective Services – Ongoing Services Plan.
- Individual Family Services Plan (IFSP).

When the child exits foster care and is receiving aftercare services and meets the reasonable candidacy requirements, a case plan shall be developed that would indicate that foster care is the planned placement for the child absent effective aftercare services. For example, the service worker may develop a case plan that demonstrates its intent to remove the child from the home and return him or her to foster care if the aftercare services prove unsuccessful.

- **Court Proceedings**. Evidence of court proceedings in relation to the removal of child from the home.

  If the LDSS has initiated court proceedings to remove the child from his or her home, copies of the petition, court order, or transcript of court proceedings are sufficient to deem this child to be at serious risk of removal.

20.8.3.4 Reasonable Candidacy Documentation Form

20.8.3.4.1 Purpose and use

The Reasonable Candidacy Documentation Form (see Appendix B) shall be used to document the initial reasonable candidacy determination and every redetermination thereafter.

20.8.3.4.2 Effective date

The child is considered to be a documented reasonable candidate when all requirements are met and the documentation form is complete with signatures. The initial reasonable candidacy begin date is the day the service worker completes and signs the form and obtains the supervisor's signature.

20.8.3.4.3 Initial and redetermination dates

The initial reasonable candidacy determination date begins the six-month "clock" for when the first redetermination is due. Every redetermination thereafter is due within six (6) months of the service worker's signature date.

20.8.3.5 Records retention and destruction

Reasonable candidacy documentation is to be retained in accordance with The Library of Virginia's Records Retention and Disposition Schedule – General Schedule No. 15 for service case records.

- "Retain 3 years after last action."

Destruction of reasonable candidacy documentation should be conducted in accordance with The Library of Virginia's Records Retention and Disposition Schedule – General Schedule No. 15

- "Custodian of records shall ensure that information in confidential or privacy protected records is protected from unauthorized disclosure through the ultimate destruction of the information. Normally, destruction of confidential or privacy-protected records will be done by shredding or pulping."

20.8.4 Claiming administrative costs for reasonable candidates

20.8.4.1 Random Moment Sampling

The administrative costs for children determined to be reasonable candidates are claimed through the Random Moment Sampling (RMS) observation process. RMS observations are used to document the specific program activity the worker is engaged in at a randomly selected moment in time.

Administrative costs for activities performed by a service worker in association with reasonable candidates may be indicated during the RMS observation only when the LDSS has documented that the child is a reasonable candidate for foster care.

Examples of such activities are:

- Case management and supervision.
- Referral to services.
- Preparation for and participation in judicial determinations.
- Placement of the child.
- Development of the case plan.
- Case reviews.

Any LDSS worker performing activities in association with a documented reasonable candidate may indicate such during the RMS observation.

20.8.4.2 Completing the RMS Observation

20.8.4.2.1 RMS Observation Form and Certification Page

When the service worker is performing reasonable candidacy related activities and is selected to complete the RMS Observation Form and Certification Page; the service worker will indicate the corresponding program and activity codes on the Certification Page. Only one program code can be selected and subsequently only one accompanying activity code can be selected from the activities listed for the selected program code.

20.8.4.2.2 Program code

Other Child Welfare Services (Child Still in the Home) program code (360) is indicated on the RMS Observation Form by circling the program name and code on the selection list and recording the program code in Step 3 on the Certification Page.

20.8.4.2.3 Activity code

The Pre-placement Prevention activity code (420) is indicated on the on the RMS Observation Form by circling the activity name and code on the selection list and recording the activity code in Step 3 on the Certification Page.

The activity code 420 – Reasonable Candidacy can only be used in conjunction with program code 360 – Other Child Welfare Services (Child Still in the Home).

20.9 Appendix B: Reasonable Candidacy Documentation Form

INSTRUCTIONS & GUIDELINES
➓ Only LDSS employees are authorized to make the determination of reasonable candidacy for foster care. ➓ A copy of this form is to be maintained in the child's service record. ➓ The LDSS service workers shall comply with all applicable Foster Care Prevention/Stabilization, Child Protective Services, and/or Comprehensive Service Act requirements. ➓ A child is a reasonable candidate when he or she is documented as a serious risk of removal from the home as evidenced by the local agency service worker either pursuing his/her removal from the home, or making reasonable efforts to prevent such removal.

PART A – CLIENT INFORMATION	
LDSS:	
SERVICE WORKER'S NAME:	**WORKER IDENTIFICATION #:**
CHILD'S NAME:	**CASE #:**
DATE OF BIRTH: _____ – *(Check one of the following)* Under the age of 18 Age 18 or older – ***Not a Reasonable Candidate***	
WHERE IS THE CHILD LIVING? – *(Check one of the following)* In his/her home Outside of the home: foster care setting/detention/forestry camp/psychiatric hospital – ***Not a Reasonable Candidate***	

PART B – REASONABLE CANDIDACY DOCUMENTATION METHOD	
CIRCLE ONE: Initial Determination or Redetermination	
Check one of the appropriate methods to document a child's reasonable candidacy status: A case plan which clearly indicates: *(all of the requirements below shall be verified and all boxes shall be checked to properly document a child as a reasonable candidate)* that absent effective preventive services, foster care placement is the planned arrangement of the child; and that the plan was developed jointly with the child, and the parents or guardians when appropriate; and a description of the services offered and/or provided to prevent the removal of the child from the home; and the case is actively being managed to maintain the child in the home and/or prevent placement into foster care **Or,** Evidence of court proceedings in relation to the removal of the child from his/her home, in the form of a petition, a court order, or transcript of the court proceedings and a copy is maintained in the child's service record.	
SERVICE WORKER'S SIGNATURE:	**DATE:**
SUPERVISOR'S SIGNATURE: A redetermination is due within six months of this date.	**DATE:**

7

APPEALS

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APPEALS

27.1 Introduction

Any person who is the subject of a founded investigation of abuse and/or neglect may appeal that finding and any inaccurate information about the abuser that is contained in the CPS record. There is no difference in the appeal process of founded dispositions for "in family investigations" and "out of family investigations". There are three (3) levels of administrative appeals:

- Conference with the local department of social services (LDSS).
- Administrative hearing conducted by a state hearing officer.
- Judicial review by the circuit court.

This section explains the statutory and regulatory requirements for CPS appeals and provides guidance where needed to further explain these requirements.

The statutory authority for a person seeking review of an LDSS's finding of abuse or neglect can be found in § 63.2-1526 of the Code of Virginia. The regulatory authority for appeals of findings of abuse and neglect can be found in 22 VAC 40-705-190.

27.2 Definitions

The following definitions regarding CPS appeals are applicable to this chapter.

> (22 VAC 40-705-190 A). Appeal is the process by which the abuser and/or neglector may request amendment of the record when the investigation into the complaint has resulted in a founded disposition of child abuse and/or neglect.

(22 VAC 40-705-10). "Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 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.

When a person who is the subject of a founded investigation requests a local conference or a state administrative hearing that person is referred to as the appellant.

27.3 CPS appeal automatically stayed during criminal proceedings against abuser

(22 VAC 40-705-190 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 § 63.2-1526 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 § 63.2-1526 C of the Code of Virginia.

27.3.1 Criminal proceedings in juvenile or circuit court

When the LDSS learns that a criminal process has been initiated in either juvenile or circuit court, the LDSS must notify the appellant in writing that the CPS administrative appeal process is stayed and that his right to access his CPS record is suspended until the criminal process is completed in circuit court and the judge enters a final appealable order. Cases that are continued for a period of time or taken under advisement do not constitute a final appealable order.

CPS appeals should be stayed if a criminal charge originates in the juvenile and domestic relations court, because the appellant may appeal a conviction to the Circuit Court.

The LDSS shall notify the appellant in writing that the CPS administrative appeal may resume at the conclusion of the criminal proceeding. LDSS are encouraged to establish procedures with the court to advise the LDSS when the criminal process has been completed in order to initiate the CPS administrative appeal process on a timely basis.

The LDSS should seek guidance from its legal representative to determine if a final appealable order in the criminal proceeding has been entered and *to* clarify whether the criteria for a stay of appeal has been met before notifying the appellant.

27.3.2 Criminal proceedings in military court

The Code stays CPS administrative appeal proceedings until "the criminal prosecution in circuit court is completed." The stay provisions apply when there are criminal charges "against the appellant for the same conduct involving the same victim as investigated by the local department." (Virginia Code § 63.2-1526 C). The intent of the stay provisions is to protect the appellant from having to testify in the CPS case while the criminal matter is pending. It also is designed to protect the agency case record from inappropriate use by the appellant in the criminal proceeding. Given the intent of the statute, the stay provisions noted in Section 7.3.1 apply to the prosecution of a criminal charge in military courts.

27.4 Local conference

27.4.1 Appellant must request local conference

> (22 VAC 40-705-190 B). 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 § 63.2-1526 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 that an appeal is pending.

When the LDSS receives a written request for a local conference, the LDSS must stamp the date of receipt on the appeal request.

If the alleged abuser or neglector fails to make a timely request for a local conference, then the alleged abuser or neglector forfeits his right to a local conference.

27.4.2 Document pending local appeal

> (22 VAC 40-705-190 B). The local department shall notify the child abuse and neglect information system that an appeal is pending.

27.4.3 Time frame to conduct local conference

> (22 VAC 40-705-190 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 § 63.2-1526 A of the Code of Virginia.

The LDSS must make a good faith effort to schedule and conduct a local conference. If the LDSS fails to conduct a local conference, the LDSS must document in the automated data system the reasons why the local conference was not conducted.

27.4.4 Appellant may request extension

> (22 VAC 40-705-190 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 § 63.2-1526 A of the Code of Virginia.

The extension period begins at the end of the original 45 days.

27.4.5 LDSS must provide information to appellant

> (22 VAC 40-705-190 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 § 63.2-1526 A of the Code of Virginia.

Upon written request from the appellant, the LDSS shall provide the appellant all information used in making its determination with the following exceptions:

- The complainant's name 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.

If information is withheld, the appellant shall be advised of the general nature of such information, the reason the information is being withheld, and the appellant's right to petition the juvenile and domestic relations court, or family court, to enforce any request for information which has been denied.

LDSS are advised to consult with local county or city attorneys for advice and guidance on the release of information to appellants.

27.4.5.1 Electronic recording of alleged victim interview

The appellant is entitled to a copy of the electronic recording of the alleged victim interview unless disclosure of the contents of the recording would endanger the health or safety of the child or any other person pursuant to § 63.2-1526 A of the Code of Virginia, or the information is protected by federal statute, the Code of Virginia or the Virginia Administrative Code.

The LDSS is not required to release confidential information contained on the recording if it is protected by law or regulation. However, the LDSS must abstract or summarize information from the recording or convert the audio or video tape recording into one form, such as a typed transcript, so that information needing to remain confidential may be redacted or edited out. The LDSS should make reasonable efforts to reach an agreement with the alleged abuser or neglector concerning the production of the electronic recording.

LDSS are encouraged to seek consultation from their legal representatives in this matter.

27.4.6 Conduct the local conference

VDSS developed a Local Conference Handbook for agency directors to provide additional guidance and best practice to conduct local conferences. It is available on the DSS internal website.

27.4.6.1 Who may preside over the local conference

> (22 VAC 40-705-190 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 § 63.2-1526 A of the Code of Virginia.

27.4.6.2 Appellant may seek assistance of counsel

> (22 VAC 40-705-190 G1). The appellant may be represented by counsel, pursuant to § 63.2-1526 A of the Code of Virginia.

27.4.6.3 Local conference participants

Participants in the local conference will include the appellant and, if the appellant chooses, a representative, and the worker and supervisor who made the founded disposition. The representative may be an attorney who may appear in lieu of the appellant.

Neither the alleged victim nor victim's parents if they are not the appellant are permitted to attend the local conference.

27.4.6.4 Appellant may present testimony at local conference

> (22 VAC 40-705-190 G2). The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof, pursuant to § 63.2-1526 A of the Code of Virginia.

Any additional information or documentation presented at the local conference must be added to the CPS record and documented in the automated data system.

27.4.6.5 Time frame to notify appellant of results of local conference

> (22 VAC 40-705-190 G3). 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…

27.4.6.6 Local director's authority to sustain, amend, or reverse findings

> (22 VAC 40-705-190 G3). 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…

As a result of the local conference, the local director or the local director's designee may amend the final disposition and case record.

The local director, or designee, has the authority to amend parts of the record by ordering that certain parts be stricken if those parts are proven to be inaccurate or irrelevant.

27.4.6.7 Notify appellant

> (22 VAC 40-705-190 G3). 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 of the results of the local conference.

The written decision shall be mailed to the appellant as specified in 22 VAC 40-705-190 and shall include:

- The action to be taken on the request for amendment.
- Explanation of any additional appeal rights available to the appellant.

27.4.6.8 Document results of local conference

> (22 VAC 40-705-190 G3). The local department shall notify the child abuse and neglect information system of the results of the local conference.

27.4.6.9 Notify all original recipients of initial disposition, if amended

The LDSS must notify in writing all persons who were originally informed of the original disposition, if the local conference results in an amended or reversed disposition. This includes the complainant as well as custodial and non-custodial parents of all victim children.

27.5 State administrative appeal

The State Appeals Hearings Officers developed a guide for local agencies that explains the state appeal hearing process in more detail. It is available on the DSS internal website.

27.5.1 Appellant must request state administrative hearing

> (22 VAC 40-705-190 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 § 63.2-1526 B of the Code of Virginia.

27.5.2 Exception to time frames

There is an exception to requesting an administrative hearing **within 30 days** of receipt of local conference results. The appellant may request in writing that the Commissioner grant an administrative hearing to review the request for amendment if:

- The LDSS refuses to amend their report (disposition); or
- The LDSS fails to act within 45 days after receiving the appellant's request, unless an extension has been requested by the appellant.

If the LDSS refuses to conduct a local conference within the 45-day time frame (unless there is an extension of that time frame), then the **30-day** time frame for the appellant to request a state administrative hearing begins running at the end of the 45-day time frame. The request to the Commissioner must be made in writing within 30 days thereafter.

27.5.3 Document pending state appeal

The State Hearing Officer notifies the automated data system that a state appeal is now pending.

27.5.4 Who may conduct state administrative appeals

> (22 VAC 40-705-190 H1). The Commissioner shall designate a member of his staff to conduct the proceeding, pursuant to § 63.2-1526 B of the Code of Virginia.

27.5.5 Time frame to schedule state administrative hearing

> (22 VAC 40-705-190 H2). 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.

27.5.6 State administrative appeal officers authorities

27.5.6.1 Subpoenas and depositions

> (22 VAC 40-705-190 H3). 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 § 63.2-1526 B of the Code of Virginia.

27.5.6.2 Review of subpoena or deposition decision by J&DR court or family court

(22 VAC 40-705-190 H4). 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 § 63.2-1526 B of the Code of Virginia.

27.5.6.3 Depositions

(22 VAC 40-705-190 H5). Upon providing reasonable notice to the other party and the hearing officer, a party may, at his own expense, depose a non-party 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 § 63.2-1526 B of the Code of Virginia.

27.5.7 Information to be provided to appellant and state hearing officer

(22 VAC 40-705-190 H6). 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 § 63.2-1526 B of the Code of Virginia.

27.5.8 Conduct state appeal hearing

27.5.8.1 Appellant may seek assistance of counsel

(22 VAC 40-705-190 H7). The appellant and the local department may be represented by counsel at the administrative hearing.

27.5.8.2 Oath and affirmation

(22 VAC 40-705-190 H8). The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to § 63.2-1526 B of the Code of Virginia.

27.5.8.3 Burden on LDSS to prove disposition

(22 VAC 40-705-190 H 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.

27.5.8.4 Submission of proof

(22 VAC 40-705-190 H10). The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

27.5.8.5 Submission of new evidence

(22 VAC 40-705-190 H11). 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.

27.5.8.6 Hearing officer not bound by strict rules of evidence

(22 VAC 40-705-190 H12). 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.

27.5.8.7 Allow record to remain open for additional evidence

(22 VAC 40-705-190 H13). 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.

27.5.9 State administrative appeal hearing decision

27.5.9.1 Notify appellant and LDSS of results of state administrative appeal hearing

(22 VAC 40-705-190 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…

27.5.9.2 State appeal officer may remand case to LDSS

(22 VAC 40-705-190 H14). 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 § 63.2-1526 B of the Code of Virginia.

27.5.9.3 Appellant has further right of review by circuit court

(22 VAC 40-705-190 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 § 63.2-1526 B of the Code of Virginia.

(22 VAC 40-705-190 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.

27.5.9.4 Document results of state administrative appeal

(22 VAC 40-705-190 I). …The hearing officer shall notify the child abuse and neglect information system of the hearing decision…

27.5.9.5 Notify all original recipients if disposition is amended or reversed by state appeal hearing officer

(22 VAC 40-705-190 I). …The local department shall notify all other prior recipients of the record of the findings of the hearing officer's decision.

The LDSS shall notify in writing all persons who were originally informed of the original disposition, if the state appeal hearing results in an amended or reversed disposition. This includes the complainant as well custodial and non-custodial parents of all victim children.

27.6 Appendix A: Local conference procedures

27.6.1 Introduction

The purpose of this guide is to provide recommended procedures and practices when an alleged abuser appeals the LDSS's founded disposition of a CPS investigation. This information is a companion to the Code of Virginia, CPS Regulations, and CPS Manual.

Virginia Code § 63.2-1526 establishes the right to an administrative appeal by any individual against whom a founded disposition of abuser and/or neglect has been made in a Child Protective Services (CPS) investigation.

Virginia Administrative Code (VAC), beginning at 22 VAC 40-705-10, includes regulations pertaining to CPS appeals and the responsibilities of the LDSS.

- Virginia Code § 63.2-100 defines an "abused or neglected child."
- Virginia Code § 63.2-1505 sets forth the investigative and reporting responsibilities of the LDSS.
- The CPS Manual contains guidance to clarify the Code of Virginia and the Virginia Administrative Code for the LDSS to respond to reports of abuse or neglect, including when an alleged abuser appeals an LDSS's founded disposition of a CPS investigation.

27.6.2 Levels of appeal

- **Local Informal Conference**. This is the first level of administrative appeal conducted by the LDSS director or his designee.
- **State**. This is a review of the local informal conference decision. The LDSS has an opportunity to present witnesses, testimony, and other evidence, as does the appellant.
- **Circuit Court**. This is an appellate review of the decision by the State. At this level of the appeal process, and hereafter, new evidence will not be presented. Instead, the Circuit Court Judge will listen to oral arguments by the Assistant Attorney General for the State, representing the LDSS's position, and the Appellant, or their counsel, if they have one.
- **Court of Appeals**. This is an appellate review of the decision of the Circuit Court that is conducted in the same format as the Circuit Court.

27.6.3 Purpose of local conference

The purpose of the local conference is to allow the abuser to meet informally with the LDSS director or designee to present testimony of witnesses, documents, arguments, submissions of proof or any additional relevant information he wants the LDSS to consider in his request to change the finding of the investigation. He may also submit additional information to be included in the CPS investigation record.

27.6.4 Local conference time frames

- Appellant must request appeal in writing **within 30 days** of receipt of the disposition letter.
- LDSS must complete the local conference process and notify appellant of decision within 45 days of receipt of the written request for appeal.
- Appellant may seek a state appeal if the LDSS does not meet the 45 day requirement and no extension was requested by the appellant.
- Appellant may request in writing an extension of up to 60 days from the end of the 45 days to complete the local conference.
- Local conference is automatically stayed if there is a pending criminal proceeding in juvenile, circuit or military court against the abuser for the same conduct and the same victim as the founded disposition. The stay lasts until the final order has been entered in circuit court.
    - The intent of the stay provisions is to protect the appellant from having to testify in the CPS case while the criminal matter is pending. It also is designed to protect the case record from inappropriate use by the appellant in the criminal proceeding. The stay is initiated upon the filing of the criminal charge. The court where the proceedings begin is irrelevant.
    - The Code stays proceedings until “the criminal prosecution in circuit court is completed.” The stay provisions apply when there are criminal charges “against the appellant for the same conduct involving the same victim as investigated by the LDSS.” Virginia Code § 63.2-1526 C. According to the Rules of the Supreme Court of Virginia, a case is not completed until the judge enters a final, appealable order. See Rule 1:1, Rules of Supreme Court of Virginia. Therefore, the stay of the administrative appeal continues until such time as the court enters a final order.

- The local conference is mandatory and the LDSS must make efforts to schedule and conduct a local conference, even if the appellant does not appear at the scheduled conference time. Failure to conduct a local conference may affect the outcome of a circuit court appeal.

27.6.5 Pre-conference preparation

- Send appellant and local agency CPS staff written acknowledgement of receipt of the request to appeal that may also include a date for the local conference.

- The local conference can be face-to-face or by phone if the appellant agrees.

- Contact LDSS legal counsel to review appeal process and to determine what role legal counsel will take in the local conference.

27.6.6 CPS case record

- Obtain and review CPS record. Because local conference decisions can be appealed to the State Appeal Unit, the LDSS director should be given a redacted copy of the CPS record.

- The LDSS CPS worker is strongly encouraged to consult with the department attorney to review the proposed redaction of the record prior to its release.

- The CPS Record may include the following:

    - All documentation, including OASIS data, audio or video recordings; medical reports, psychological evaluations, handwritten notes from the child, transcripts, etc., that is considered significant evidence.

    - If the department is represented by the LDSS attorney at the informal conference, he may formally submit the document(s). However, it is up to the CPS worker to determine what documents should be admitted.

    - **Do not include the complainant's name or other information.**

    - Any documents included in the CPS record for the local conference can be viewed by the appellant. This includes health or hospital reports that the LDSS may not have the authority to release as part of the local conference process. It is important that the LDSS attorney review all documents to be released to the appellant as part of the redacted record.

- Photographs should identify who took them and when they were taken. The quality of the photos in documenting injury can be considered by the LDSS director.

- The appellant or his representative should receive the same redacted CPS record the LDSS director has received.

- LDSS director should set a time to receive the CPS record that allows sufficient time to review prior to the local conference.

27.6.7 Conducting the local informal conference

The LDSS director or designee chairs the conference. The conference may generally follow this order:

27.6.7.1 Introduction and summary of the conference process

- This summary will discuss the purpose of the hearing, the use of witnesses, general structural matters such as who will present first, relaxation of the rules of evidence, burden of proof issues and any other matters which can be appropriately discussed at this stage. The conference may be recorded by either party.

- The parties will be advised that witnesses can be heard, but that a rule on the witnesses will be imposed during the hearing. As in a court setting, this simply requires that any witnesses intending to testify must wait outside of the hearing room until such time that they testify. They will be entitled to remain in the hearing room following their testimony at the discretion of the parties and the hearing officer.

27.6.7.2 Presentation of the LDSS's case and questions by appellant and/or LDSS director

The following are several guidelines for the LDSS director to consider during the case presentation:

- Worker can summarize the case, if possible. It is not necessary to read it. Whether reading or summarizing, however, the worker should be prepared to regularly reference what page of the dictation they are on, both for the benefit of the LDSS director and for the appellant.

- The oral summary should include all factors that contributed to the finding. The focus should primarily be on any elements required by policy in establishing a particularly form of abuse.

- At the conclusion of the oral summary, explain how the facts constitute the founded disposition. It is useful to refer to the finding/disposition page for this information.

- Define and describe not only the policy definition for the applicable form(s) of abuse, but also the level finding made for each abuse or neglect finding. Be prepared to explain the distinction of the different levels of abuse in a given case, as such distinctions are often useful in helping the appellants understand the finding in context.

- Understand that the parties will often have questions and concerns about the risk level; the hearing officer does not have jurisdiction over that part of the finding. This is LDSS discretion. The Code of Virginia and CPS Regulations are silent on whether local conference can amend level.

- Be aware that anything that appears in the dictation, no matter how long it is, is subject to discussion at the conference, since the Appellant has the right to amend the record, even if that particular information in the dictation is not relevant to the finding, since it is in the dictation, it is subject to amendment.

27.6.7.3 Presentation of the appellant's case and questions by the CPS worker and/or LDSS director

- At the hearing, when the Appellant makes a statement that the local director or CPS worker believe to be inaccurate, it is important to voice your objections and your reasons why you believe such statement is inaccurate. You will not be perceived as being argumentative, probably, as long as you allow the Appellant to complete their statement(s) before responding.

- The local conference is intended to be an exchange of information. If the local director does not hear during the local conference, the information that rebuts any new information provided by the Appellant, he will not be able to take that rebuttal information into consideration, nor will he be able to use it in any subsequent appeal summary to the state.

- The LDSS director will referee the questioning to a certain degree. The questioning process will have been explained to the parties in the opening summary. However, the appellant/appellant's attorney may not successfully abide by such instructions. Typically, the LDSS director will allow the attorney/appellant to ask initial questions and follow-up questions but will intercede if, in the LDSS director's opinion, the questions are overly repetitive and/or abusive.

- The LDSS director may stop the conference if participants become verbally abusive and fail to follow the LDSS director's directives with regard to their behavior.

- The department attorney, if present, can be helpful in making objections to appellant's questioning. Some objections may be sustained. The LDSS director will not potentially cross the line of impartiality by appearing to be interceding on the behalf of the worker.

- One of the purposes of a local conference as defined by statute is to allow the Appellant to provide additional information to the LDSS, in an informal environment, that might give reason why the finding should be amended or overturned. Some reasons for an Appellant to provide new or different information at the hearing include:

  - The appellant may be trying to avoid a founded disposition and possibly losing his current job, losing the opportunity to get certain types of jobs in the future. The appellant may fear the founded disposition will result in loss of custody of his children. The appellant may fear embarrassment of having a founded disposition.

  - The appellant may not want to talk until they have the opportunity to consult with an attorney. The appellant may not know that certain information he could have provided would be exculpatory at the time they were interviewed.

  - The appellant may be confused or upset by the CPS investigation and interviewing process, and not able to summon all of the pertinent information that may be useful in their defense.

  - The CPS worker did not have the opportunity due to time and staff constraints to ask certain questions or pursue other information during the investigation.

27.6.8 Other local conference issues

27.6.8.1 Witnesses and other participants

- The LDSS director will determine at the beginning of the conference how many witnesses will testify and to what they will testify. If numerous witnesses are providing similar character testimony or are testifying, as an example, that appellant is an exemplary day-care provider, the LDSS director will likely not have all such witnesses testify but will hear from two or three of them at the most. The rest of the appellant's witnesses' testimony in such an instance would be cumulative and can be proffered to avoid repetitive testimony.

- Children, and most specifically the alleged victim child, will not be permitted to testify for either side. The worker must be mindful, however, of the requirement that findings must be based on first source material and not on hearsay.

- For purposes of the informal conference, information that the worker hears directly from the child and repeats at the local conference is deemed to be first source material, even though such testimony would be considered hearsay in court. Second- and third-hand hearsay would not have the same reliability, however, and while such information would be admissible in the hearing under the relaxed rules of evidence in effect during an administrative hearing, they would not be considered first source. Such information might be statements from the teacher about information that the child told to him or her, which were then relayed to the worker.

- See CPS Manual, Part 4, Family Assessment and Investigation for more information about first source evidence.

27.6.8.2 Non-offending parent and non custodial parent of the victim child

- If the appellant is an out of family caretaker, the parents of the victim child may not attend the local conference.

- The local director may use discretion in determining whether the non custodial parent of the victim child or the non offending parent of the victim child may attend the local conference.

27.6.8.3 Burden of proof

- The LDSS director or designee must make a decision based on whether the CPS worker met the standard to establish abuse and neglect. The specific burden established by state policy is a ***preponderance of the evidence***, which is the least onerous burden, the others being ***beyond a reasonable doubt*** (the criminal standard – probably between 90-99 percent) and ***clear and convincing evidence*** (probably in the range of 75 percent). A preponderance of the evidence is just enough evidence to tip the balance in one direction or the other, or 51 percent (the civil standard). Due to the fact that the burden is so low, it is particularly important that the worker be able to establish the reliability of all sources used in making the finding. Most important of all witnesses, of course, is the alleged victim child. The worker must find as many indices of the child's reliability as possible, as the ultimate disposition will often turn on the child's credibility.

27.6.8.4 Hold the case open for appellant to provide additional information

- If the 45-day time frame (or 60-day extension, if requested) to complete the appeal has not expired and the appellant makes a written request for an extension, the LDSS director may allow appellant to provide additional information after the hearing.

27.6.8.5 Can CPS worker investigate additional information provided at local conference?

- No. LDSS director must make decision based on CPS record and evidence presented at the local conference.

27.6.8.6 The appellant does not show up for the conference or refuses to agree to a date for the conference.

- The LDSS must conduct the local appeal conference as required by CPS regulations even if the appellant does not appear for the conference and has been duly informed of the conference date.

27.6.9 After the conference

- A **written decision** will be sent by certified mail, return receipt requested, to the appellant.

- The LDSS director will notify the **Central Registry, a subsection of OASIS (Online Automated Services Information System)** of the decision.

- If as a result of the final appeal the original disposition is amended, the parents of the involved child(ren) and all others including the complainant who received notification initially will be notified **by the LDSS**.

- An appellant who is dissatisfied with the decision of the LDSS director may appeal to the Commissioner of Social Services. The LDSS director's written decision must include instructions for the state appeal process.

27.6.10 Sample letters

Sample letters follow on the next pages.

ACKNOWLEDGEMENT OF APPEAL AND SET CONFERENCE DATE

DATE

APPELLANT NAME
APPELLANT ADDRESS

Dear APPELLANT NAME:

Your request to appeal the Child Protection Services founded disposition of sexual abuse, level 1, made on DATE was received by this agency on DATE. We must schedule, hear, and decide on your request of amendment within 45 days after receiving such request. Please inform the social worker prior to the local conference if an attorney will present you.

The scheduled local conference to hear your appeal has been set for DATE at TIME, at LOCATION/ADDRESS. Please sign in at the front desk and the social worker will escort you to the conference room.

Under the policy of the Virginia Department of Social Services, you must receive a written decision regarding your request on or before DATE (45 days from date appeal was received). If you do not receive a written decision on your request on or before DATE you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 801 East Main Street, Richmond, Virginia 23219.

If you would like to review your records prior to the local conference or have questions, please contact Name at telephone.

Sincerely,

Local Director

cc. CPS Social Worker
CPS Supervisor

ACKNOWLEGEMENT LETTER AND SET TELEPHONE CONFERENCE

DATE

APPELLANT NAME
APPELLANT ADDRESS

Dear APPELLANT NAME:

Your request to appeal the Child Protection Services founded disposition of sexual abuse, level 1, made on DATE was received by this agency on DATE. We must schedule, hear, and decide on your request of amendment within 45 days after receiving such request. Please inform the social worker prior to the local conference if an attorney will present you.

Under the policy of the Virginia Department of Social Services, you must receive a written decision regarding your request on or before DATE (45 days from date appeal was received). If you do not receive a written decision on your request on or before DATE you have 30 days to request an administrative hearing from the Commissioner of the Department of Social Services, 801 East Main Street, Richmond, Virginia 23219.

In response to your request, a telephone conference will be conducted on DATE at TIME. I will call you at your home telephone number (Telephone Number), unless you designate a different location before DATE.

If you have documents that you wish to submit during the conference, please have them delivered to the department at least three days before the conference date.

If you would like to review your records prior to the local conference or have questions, please contact Name at (Telephone Number).

Sincerely,

Local Director

cc. CPS Supervisor
CPS Worker

ACKNOWLEDGE APPEAL REQUEST FROM ATTORNEY

DATE

ATTORNEY FOR APPELLANT
ADDRESS

Dear ATTORNEY NAME:

Your request to amend the disposition of Founded, Level 2, Physical Neglect (Lack of Supervision) of VICTIM CHILD (REN) by APPELLANT NAME was received by this Department on DATE. A local conference will be scheduled in the near future to discuss your request for an amendment of the record.

Under the policy of the Department of Social Services, a local conference must be conducted and you must receive a written decision based on your request on or before DATE (45 DAYS FROM RECEIPT OF APPEAL REQUEST), unless you submit a written request for an extension of that period for a specific time not to exceed 60 days.

If you do not receive a written decision on the request on or before DATE (45 DAYS FROM RECEIPT OF APPEAL REQUEST), and no extension was requested, you have 30 days from that date to request an administrative hearing, in writing, from the Commissioner, Department of Social Services, 801 East Main Street, Richmond, Virginia 23219.

Your office will be contacted in the next few days to schedule a conference date and time or if you wish, you can contact me at (telephone number).

Sincerely,

Local Director

cc: CPS Supervisor
CPS Social Worker

CERTIFIED MAIL NO.: 7007 2680 0000 2816 6128

CRIMINAL CHARGES PENDING

DATE

Appellant Name
Appellant Address

Dear APPELLANT NAME:

Your request to amend the record was received on DATE. According to the Virginia Code, Sections 2.2-3802 and 63.2-1526, when a criminal charge is brought against an appellant, for the same conduct and involving the same victim, the CPS appeals process shall be suspended until the criminal prosecution is completed. The appellant's right to access his record under the Government Data Collection and Dissemination Practices Act is also suspended until the criminal process is completed. This law became effective April 7, 1993.

When the criminal proceedings are completed, you will have the right to resume the appeal process within the times frames provided by the Code and Policy. If you have any questions, please feel free to give me a call at (telephone number).

Sincerely,

Local Director

cc: Agency CPS Supervisor
Agency CPS Social Worker

Certified Mail: 7007 2680 0000 2816 6913

UPHOLD FOUNDED DISPOSITION

DATE

APPELLANT NAME
APPELLANT ADDRESS

Dear APPELLANT NAME:

After careful review of the record in this case and of the evidence presented at the hearing held on DATE, I have decided to uphold the agency's finding of Founded, Level 3, Physical Neglect of VICTIM CHILD(REN) by APPELLANT.

If you would like to appeal this decision further you should write to the Commissioner of Social Services and request a hearing. The request must be made within 30 days of receiving this letter. Please address your request to:

Commissioner
Virginia Department of Social Services
801 East Main Street
Richmond, Virginia 23219

If you have any questions, please feel free to contact me.

Sincerely,

Local Director

cc: CPS Social Worker
CPS Supervisor

CERTIFIED MAIL NO: 7007 1490 0001 3107 3681

AMEND FOUNDED DISPOSITION

DATE

APPELLANT NAME
APPELLANT ADDRESS

Dear APPELLANT NAME:

After careful review of the record in this case and after consideration of the evidence presented at the hearing held on HEARING DATE, I have decided to amend the agency's finding of Founded, Level 2, Physical Abuse of VICTIM NAME(S) by ABUSER NAME to Founded, Level 3, Physical Abuse of VICTIM NAME(S) by ABUSER NAME.

If you would like to appeal this decision further, you should write to the Commissioner of Social Services and request a hearing. The request must be made within thirty days of receiving this letter. Please address your request to:

Commissioner
Virginia Department of Social Services
801 East Main Street
Richmond, Virginia 23219-3301

If you have any questions, please feel free to contact me.

Sincerely,

Local Director

cc: CPS Social Worker
CPS Supervisor

Certified Mail: 7007 1490 0001 3106 7017

OVERTURN FOUNDED DISPOSITION

DATE

APPELLANT NAME
APPELLANT ADDRESS

Dear APPELLANT NAME:

After careful review of the record in this case and of the evidence presented at the hearing held on DATE, I have decided to Overturn the agency's finding of Founded, Level 3, Physical Neglect of VICTIM CHILD(REN) by APPELLANT.

The LDSS records will be destroyed one year from the date of the complaint unless there are other CPS reports that require a longer retention period.

You may request the department in writing to retain your CPS record for up to two years past the original purge date. You may also petition the court to obtain the identity of the complainant if you believe the complaint was made maliciously.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Hearing Officer

cc: CPS Social Worker
CPS Supervisor

Certified Mail: 7007 1490 0001 3107 3698

CPS LOCAL CONFERENCE SUMMARY - SUGGESTED OUTLINE

CASE NAME:
COMPLAINT DATE:
REFERRAL NUMBER:
CHILDREN (NAME&DOB)

1) INTRODUCTION

An informal Child Protective Service conference was held at Local Dept. of Social Services on (**date)**.

Present were:

Name Title

2) CASE SUMMARY

A disposition of **(type of abuse/neglect)** was made based upon the following evidence:

3) APPELLANT'S RESPONSE

The following new information was provided by the appellant:

Documentary evidence presented by the appellant included:

Appellant's arguments and objections to the disposition were:

4) WORKER'S RESPONSE

The worker's arguments and supports of the disposition were:

5) FINDING

Following the agency conference, a decision was made to **(upheld, amend, overturn disposition)** based on the following reasons:

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JUDICIAL PROCEEDINGS

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JUDICIAL PROCEEDINGS

35.1 Introduction

This section describes some of the judicial proceedings regarding child abuse or neglect. It is imperative that local departments (LDSS) seek legal counsel and advice when seeking court intervention in a CPS referral or ongoing case.

Text that is indented and denoted with a blue vertical line is verbatim from the Code of Virginia or the Virginia Administrative Code.

35.2 Emergency removal order

> (§ 16.1-251 A of the Code of Virginia). Emergency Removal Order.
>
> A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected.

The Virginia Administrative Code authorizes a CPS worker to petition the court to request an order to remove a child:

> (22 VAC 40-705-100 A). A child protective services worker may petition for removal pursuant to §§ 16.1-251 and 16.1-252 of the Code of Virginia.

The LDSS must work closely with the county or city attorney and the juvenile and domestic relations district court to develop protocols for these actions.

It is important and necessary for the LDSS to obtain legal counsel prior to petitioning for the removal of a child. The evidence supporting the decision to seek court intervention must be well documented in the case record. When an LDSS petitions a court for an

emergency removal order, the LDSS may be referred to as the petitioner during the proceedings.

35.2.1 Ex parte emergency removal order

> **(**§ 16.1-251 A of the Code of Virginia). [An Emergency Removal Order]… may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer . . .

Ex parte is defined as "done or made at the insistence and for the benefit of one party only, without notice or argument by, any person adversely interested."[33] Essentially, an ex parte hearing allows the court to conduct a hearing without the presence of one of the parties because the situation demands immediate action or irreparable harm will likely occur. An emergency removal order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer. If a court enters an emergency removal order, a preliminary removal hearing must occur **no later than five (5) business days** after the removal.

35.2.1.1 Petition for an emergency removal order must allege child is abused or neglected

In order to request an emergency removal order, the LDSS must file a petition requesting removal. The petition requesting removal of the child must allege that the child is abused or neglected.

35.2.2 Affidavit or sworn testimony must accompany petition

The worker will be required to submit an affidavit or to present sworn testimony to prove that the case meets the criteria set forth for removing a child from the home. Competent evidence by a physician that a child is abused or neglected is considered adequate to support this type of petition.

35.2.3 Affidavit or sworn statement in support of emergency removal order

35.2.3.1 The petition, affidavit, or sworn statement must specify the factual circumstances warranting removal

The petition or accompanying affidavit must contain a specific statement or account of the factual circumstances necessitating the removal of the child.

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33 Black's Law Dictionary 657 (9th ed. 2009).

35.2.3.2 Evidence must establish an immediate threat to life or health of the child

> (§ 16.1-251 A1 of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that] The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

The circumstances of the child are such that remaining with the parent, legal guardian, or caretaker presents an imminent danger to the child's life or health.

35.2.3.3 Petition, affidavit, or sworn testimony must show reasonable efforts to prevent removal

> (§ 16.1-251 A2 of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that] … reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition…

Removal of a child should only occur after consideration of alternatives to out-of-home placement. The court must be presented with an affidavit or sworn testimony establishing that reasonable efforts have been made to prevent removal of the child from his home.

35.2.3.4 Petition, affidavit, or sworn testimony must show no alternatives less drastic than removal

> (§ 16.1-251 A2 of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that]… there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition.

The safety of the child precludes provision of services to prevent placement because there are no alternatives less drastic than removal that could reasonably protect the child's life or health.

35.2.3.4.1 Alternatives less drastic than removal

> (§ 16.1-251 A2 of the Code of Virginia). [The petition, affidavit or sworn testimony must establish that]… the alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

35.2.3.5 No opportunity to provide preventive services

> (§ 16.1-251 A2 of the Code of Virginia). …when a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

Circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home.

35.2.3.6 Petition or affidavit must include the following facts

The petition shall include the following facts:

- The name of the person who took emergency custody, the person's professional capacity, and the telephone number where the person can be reached.
- The child's name and birth date.
- The names of parents or guardians.
- The present or last known address of parents or guardians.
- A detailed description of the child's condition.
- Any information known concerning the circumstances of the suspected abuse or neglect, including the petitioner's name and the nature of the complaint.
- A brief explanation of the reasons why preventive services were not successful or could not be delivered.
- The specific time and date emergency custody was taken.
- Documentation of the petitioning person's efforts to obtain a court order.

35.2.3.7 CPS worker shall consult with supervisor and must consult foster care worker

Whenever a worker considers removal of a child, supervisory consultation and concurrence is required. When petitioning the court for removal of the child is seen as the only alternative, the worker must involve the foster care worker in staffing the case. The focus of the staffing shall be to assess whether or not there are any alternatives to removal. Evaluation shall be made of the resources available to meet the needs of the family and the specific child who is to be placed.

35.2.4 Five-day hearing must occur following emergency removal order

> (§ 16.1-251 B of the Code of Virginia). Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with § 16.1-252 as soon as practicable, but in no event later than five business days after the removal of the child.

35.2.5 Suitable relatives shall be considered for placement

> (§ 16.1-251 C of the Code of Virginia). In the emergency removal order the court shall give consideration to temporary placement of the child with a suitable relative or other interested individual, including grandparents, under the supervision of the local department of social services, until such time as the hearing in accordance with § 16.1-252 is held.

35.2.6 When LDSS has legal custody of child

> (§ 16.1-251 D of the Code of Virginia). The local department of social services having legal custody of a child as defined in (§ 16.1-228 i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

This section of the Code of Virginia means the presumption that it is in the best interest of the child to remain with his parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the LDSS has been given legal custody of a child as defined in § 16.1-228, then the LDSS will not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live.

§ 16.1-228 of the Code of Virginia defines legal custody as meaning "(i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2."

35.3 Preliminary removal order

> (§ 16.1-252 A of the Code of Virginia). A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

This order may be requested when the LDSS can prove that the circumstances of the child are such that the child is subject to severe or irremediable injury to his life or health and that no less drastic alternatives to removing custody are available. This order differs from the emergency removal order in that a hearing must take place before a preliminary removal order can be issued.

35.3.1 Service worker shall consult with supervisor and foster care worker

Whenever a worker considers removing a child, supervisory consultation and concurrence is required. When petitioning the court for removal of the child is seen as the only alternative, the CPS worker or service worker shall involve the foster care worker in staffing the case. The focus of the staffing shall be to assess whether or not there are any additional alternatives to removal. Evaluation shall be made of the resources available to meet the needs of the family and the specific child who is to be placed.

35.3.2 Notice shall be given to all parties

> (§ 16.1-252 B of the Code of Virginia). Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

Notice shall be sent to the parents, guardian, legal custodian, or other person standing in loco parentis. In loco parentis means, “of, relating to, or acting as a

temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent."[34]

35.3.2.1 If notice cannot be provided

Diligent efforts must be made to provide all parties with notice of the hearing. However, if notice to any of the parties cannot be given despite diligent efforts to do so, the hearing shall be held. The parents, guardian, legal custodian, or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order.

35.3.2.2 Notice shall include specific information

The notice provided to the parties shall state:

- The time, date, and place for the hearing.
- A specific statement of the factual circumstances which allegedly necessitate removal of the child.
- Notice that child support will be considered if a determination is made that the child shall be removed from the home.

35.3.3 Parties may obtain counsel

> (§ 16.1-252 C of the Code of Virginia). All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

Prior to the preliminary removal hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian, or other adult shall be informed by a judge, clerk, or probation officer of his right to counsel and be given an opportunity to:

- Retain counsel; or
- If the court determines that the parent, guardian or other adult is indigent or qualified, the court may appoint counsel; or
- Waive the right to representation by an attorney.

[34] Black's Law Dictionary 858 (9th ed. 2009).

35.3.4 Preliminary removal hearing

The preliminary removal hearing will be conducted in the nature of a preliminary hearing rather than a final determination of custody.

35.3.5 For a preliminary removal order to be issued, burden is on the requesting party

The burden to prove that the court should issue the preliminary removal order is placed upon the petitioning party. If the LDSS is the party asking the court to issue the order, then the burden is on the LDSS to prove the need to issue the order. The CPS worker must file a petition requesting a preliminary removal order, which includes a specific statement of the factual circumstances necessitating the removal of the child.

35.3.5.1 Burden of proof – preponderance of the evidence

Each criterion for establishing the need to issue a preliminary removal order must be satisfied by a preponderance of the evidence.[35]

35.3.5.2 Requesting party must prove imminent threat to life or health of child

> (§ 16.1-252 E1 of the Code of Virginia). In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove: 1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition;

35.3.5.3 Reasonable efforts must have been made to prevent removal

> (§ 16.1-252 E2 of the Code of Virginia). In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove: 2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition…

35 See: *Wright v. Arlington County Dept. of Social Services*, 9 Va. App. 411, 388 S.E.2d 477 (1990).

35.3.5.4 No alternatives less drastic than removal

> (§ 16.1-252 E2 of the Code of Virginia). … the alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

The alternatives less drastic than removal include providing medical, educational, psychiatric, psychological, homemaking, or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

35.3.5.5 No reasonable opportunity to provide services

Circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home. When there is no opportunity to provide preventive services before removing a child, the court has the authority to deem that reasonable efforts to prevent removal were made by the LDSS.

35.3.6 The preliminary removal hearing

In the hearing, petitioner must prove:

- The child would be subjected to imminent threat to his life or health if the child remained with the caretaker.
- Such circumstances would result in severe and irremediable injury to the child.
- The provision of services to prevent placement was not successful or services to prevent placement could not be given or delivered, and there are no alternatives less drastic than removal which could reasonably protect the child's life and health.

35.3.6.1 Parties may present witnesses and evidence

> (§ 16.1-252 D of the Code of Virginia). At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf …

35.3.6.2 Testimony of the child may be taken by closed-circuit television

> (§ 16.1-252 D of the Code of Virginia). …If the child was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

A child, 14 or under at the time of the alleged incident, may testify under certain conditions as determined by the court in any civil proceeding involving allegations of abuse and neglect of that child. By motion of a party, the child's testimony may be taken by closed-circuit television, if the court finds that the child cannot testify in open court in the presence of the alleged abuser or neglector for the following reasons:

- The child's persistent refusal to testify despite judicial request to do so;
- The child's substantial inability to communicate about the offense; or
- The substantial likelihood, based on expert opinion testimony, that the child will suffer severe emotional trauma as a result of testifying.

35.3.7 If court orders removal, court must determine who shall have custody of the child

> (§ 16.1-252 F1 of the Code of Virginia). Prior to the entry of an order pursuant to subsection F of this section transferring temporary custody of the child to a relative or other interested individual, including grandparents, the court shall consider whether the relative or other interested individual is one who (i) is willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; initiation and completion of the investigation as directed by the court and court review of the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

If the court determines that the child shall be removed pursuant to § 16.1-252 E, then the court must determine with whom the child shall be placed. The court must place the child in the care and custody of a suitable person. The court must give consideration to placing the child in the care and custody of a nearest kin, including grandparents or personal friend. If such placement is not available, then the court may place the child in the care and custody of a suitable agency.

35.3.7.1 If court orders removal, court may provide for reasonable visitation

> (§ 16.1-252 F2 of the Code of Virginia). [If the court determines that removal is proper, the court shall] Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, and between the child and his siblings, if such visitation would not endanger the child's life or health;

If the court finds that the child must be removed pursuant to § 16.1-252 E, the court shall determine whether reasonable visitation should be allowed between the child and his parents, guardian, legal custodian, or other person standing in loco parentis, and between the child and his siblings. The court may allow reasonable visitation only if such visitation would not endanger the child's life or health.

35.3.7.2 If court orders removal, court shall obtain child support

> (§ 16.1-252 F3 of the Code of Virginia). [If the court determines that removal is proper, the court shall] Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290.

If the court finds that the child must be removed pursuant to § 16.1-252 E, the court shall order that the parent or person legally obligated for the child pay child support.

The court is required by § 16.1-290 C to require that the parent or other person legally responsible for the child pay child support.

If a determination is made that the child must be removed from the home, then the LDSS must file a separate petition for child support as soon as practicable. To facilitate the requirement that the court order child support at the initial hearing, it is recommended that the worker request that the petition requesting removal of the child include a statement that if custody is transferred, the petitioner requests that the court address parental child support as defined in § 63.2-909.

(§ 16.1-290 of the Code of Virginia). C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and 63.2-1910.

(§ 63.2-909 of the Code of Virginia). Pursuant to § 16.1-290, responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local department of social services. The court order shall state the names of the responsible persons obligated to pay support, and either specify the amount of the support obligation pursuant to §§ 20-108.1 and 20-108.2 or indicate that the Division of Child Support Enforcement will establish the amount of the support obligation. In fixing the amount of support, the court or the Division of Child Support Enforcement shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan developed pursuant to § 16.1-281.

35.3.7.3 Court may impose additional requirements or conditions

(§ 16.1-252 F of the Code of Virginia). …In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing requirements and conditions as specified in that section which the court deems appropriate for protection of the welfare of the child.

35.3.8 Court shall make finding of abuse or neglect

(§ 16.1-252 G of the Code of Virginia). At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order…

35.3.8.1 A party may object to the court making a finding of abuse or neglect

(§ 16.1-252 G of the Code of Virginia). …However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary removal hearing...

35.3.8.2 Adjudicatory hearing

(§ 16.1-252 G of the Code of Virginia). …The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence.

At the adjudicatory hearing, the court shall make a finding of abuse or neglect. It is not necessary to determine the perpetrator of the abuse or neglect in order to make a finding of abuse or neglect.

35.3.8.3 Notification of adjudicatory hearing

> (§ 16.1-252 G of the Code of Virginia). …Parties who are present at the preliminary removal order hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered, although a party to the preliminary removal order hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort…

35.3.8.4 Any preliminary removal order or protection orders remain in effect pending adjudicatory hearing

> (§ 16.1-252 G of the Code of Virginia). …The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

If a party raises an objection at the preliminary removal hearing to the court making a finding of abuse or neglect, the court may still issue a preliminary removal order or a preliminary protective order. The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

35.3.8.5 Dispositional hearing

> (§ 16.1-252 H of the Code of Virginia). If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2…

Regardless of whether the court makes a finding of abuse or neglect at the preliminary removal hearing, the court shall schedule a dispositional hearing pursuant to § 16.1-278.2.

35.3.8.6 Scheduling the dispositional hearing

> (§ 16.1-252 H of the Code of Virginia). …The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing and shall be held within seventy-five days of the preliminary removal order hearing. If an

> adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

35.3.9 Person gaining legal custody of child

> (§ 16.1-252 I of the Code of Virginia). The local department of social services having legal custody of a child as defined in § 16.1-228 i shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

This section means the presumption that it is in the best interests of the child to remain with his parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the LDSS has been given legal custody of a child as defined in § 16.1-228, then the LDSS will not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live.[36] This means that when the LDSS has legal custody of a child, it can move the child from the home of a natural parent and can change the child's placement without having to comply with the preliminary removal statute.

35.3.10 Violation of order constitutes contempt of court

> (§ 16.1-252 J of the Code of Virginia). Violation of any order issued pursuant to this section shall constitute contempt of court.

35.4 Preliminary protective order

> (22 VAC 40-705-100 B). A child protective services worker may petition for a preliminary protective order pursuant § 16.1-253 of the Code of Virginia.

35.4.1 Purpose of preliminary protective order

> (§ 16.1-253 A of the Code of Virginia). Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if

[36] Virginia Code § 16.1-228 defines legal custody as meaning "(i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2."

> necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court...

This order may be requested when it is not necessary to assume custody of the child, but court intervention is necessary. The court may intervene to assure that a child's parent or person responsible for the child's care observe reasonable conditions of behavior in order to preserve the child's life, health and safety, and to maintain the child in his or her own home.

35.4.2 The court's authority

> (§ 16.1-253 A of the Code of Virginia). …The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time…

35.4.2.1 The court may order person to abstain from offensive conduct

> (§ 16.1-253 A1 of the Code of Virginia). To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

35.4.2.2 The court may order services

> (§ 16.1-253 A2 of the Code of Virginia). To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

35.4.2.3 The court may order home visits

> (§ 16.1-253 A3 of the Code of Virginia). To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

35.4.2.4 The court may order visitation with the child

> (§ 16.1-253 A4 of the Code of Virginia). To allow visitation with the child by persons entitled thereto, as determined by the court;

35.4.2.5 The court may order person to refrain from certain acts

(§ 16.1-253 A5 of the Code of Virginia). To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or …

35.4.2.6 The court may order person to have no contact with child or family

(§ 16.1-253 A6 of the Code of Virginia). To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

The court may limit contact between the alleged abusive person and the child and the family or household members of the child. The court can remove a person from the residence. In order to remove a person from the residence, the court must find that a preponderance of the evidence establishes that the person's probable conduct in the future constitutes a danger to the life or health of the child. The court must also find, by a preponderance of the evidence, that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

35.4.3 Requesting a preliminary protective order

(§ 16.1-253 B of the Code of Virginia). A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irremediable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

A preliminary protective order can be requested by making a motion during any matter before the court or by filing a petition. The court may issue the preliminary protective order ex parte.

35.4.3.1 Motion or petition must establish imminent threat

Any motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer. The testimony or petition must establish that the child would be subjected to an imminent threat to life or health to the extent that any delay would be likely to result in serious or irremediable injury to the child's life or health.

35.4.3.2 Ex parte preliminary protective order

A preliminary protective order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer. Ex parte is defined as "Done or made at the insistence and for the benefit of one party only, without notice or argument by, any person adversely interested."[37] Essentially, an ex parte hearing allows the court to conduct a hearing without the presence of one of the parties because the situation demands immediate action or irreparable harm will likely occur. If an ex parte order is issued without an affidavit being presented, the court must state the basis upon which the order was entered in the order. The preliminary protective order shall also include a summary of the allegations made and the court's findings.

35.4.3.3 Adversary hearing shall occur within five days of issuance of ex parte order

If a court enters a preliminary protective order ex parte, the court shall provide an adversary hearing within the shortest practicable time **not to exceed five (5) business days** after the issuance of the order.

35.4.4 Notice of hearing shall be given

> (§ 16.1-253 C of the Code of Virginia). Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

37 Black's Law Dictionary 858 (9th ed. 2009).

35.4.5 Right to counsel

> (§ 16.1-253 D of the Code of Virginia). All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

Prior to the preliminary protective order hearing by the court of any case involving a parent, guardian, or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian, or other adult shall be informed by a judge, clerk, or probation officer of his right to counsel and be given an opportunity to:

- Retain counsel; or
- If the court determines that the parent, guardian, or other adult is indigent or qualified, the court may appoint counsel; or
- Waive the right to representation by an attorney.

35.4.6 Right to present witnesses and cross-examination

> (§ 16.1-253 E of the Code of Virginia). At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

The LDSS may present evidence to establish the need for the protective order to be issued. That evidence may include witnesses, medical reports, or any other evidence relevant to the subject matter. The parties to the proceeding maintain the right to cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

35.4.7 If the preliminary protective order petition alleges abuse or neglect, then the court shall make finding of abuse or neglect

> (§ 16.1-253 F of the Code of Virginia). If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at

> the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.
>
> Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

If the petition requesting the issuance of a protective order alleges that the child was abused or neglected, then the court shall make a determination whether the child was abused or neglected. The court shall make that finding during the adversary hearing and based upon a preponderance of the evidence. Any finding of abuse shall be stated in the court order.

35.4.7.1 A party may object to the court making a finding of abuse or neglect

At the preliminary protective order hearing, any party (a person responsible for the care and custody of the child, the child's guardian ad litem or the LDSS) may object to the court making a finding of abuse or neglect.

35.4.7.2 If a party objects to the court making a finding of abuse or neglect

If one of the parties objects to the court making a finding of abuse or neglect, then the court shall schedule an adjudicatory hearing to determine whether the allegations of abuse or neglect have merit. The adjudicatory hearing shall be scheduled **within 30 days** of the date of the initial preliminary hearing.

35.4.7.3 Purpose of adjudicatory hearing

The adjudicatory hearing will be held to determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence.

35.4.7.4 Notice for adjudicatory hearing

The court must provide notice and schedule the adjudicatory hearing during the preliminary removal order hearing while all parties are present. Those parties who are not present for the preliminary removal hearing shall be summoned as provided in § 16.1-263. Pursuant to § 16.1-253 F, if proper notice has been provided or attempted and a party fails to appear for the adjudicatory hearing,

the court may conduct the hearing and make a finding of abuse or neglect without that party present.

35.4.7.5 Court order carries full force and effect

If the court issued a preliminary protective order, the preliminary protective order remains in effect pending the adjudicatory hearing. An objection to the court making a finding of abuse or neglect does not stay the preliminary protective order.

35.4.8 Dispositional hearing

> (§ 16.1-253 G of the Code of Virginia). If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. …The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

If there is no objection to the court making a finding of abuse or neglect, then the court should schedule a dispositional hearing to be conducted within 75 days of the date of the initial preliminary hearing.

35.4.8.1 Scheduling and notice for dispositional hearing

Scheduling of the hearing and notice to all parties will be made during the initial preliminary hearing. If an objection to a finding of abuse or neglect is made by a party to the proceeding, then the court shall schedule an adjudicatory hearing to be held **within 30 days** of the initial preliminary hearing.

35.4.9 Preliminary protective order cannot remove custody from parents or guardians

> (§ 16.1-253 H of the Code of Virginia). Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2, and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.

A preliminary protective order cannot be used to remove custody of a child from the child's parents, guardian, legal custodian, or other person standing in loco parentis.

35.4.10 Violation of preliminary protective order constitutes contempt of court

(§ 16.1-253 J of the Code of Virginia).Violation of any order issued pursuant to this section shall constitute contempt of court.

35.5 Petition for child support

(22 VAC 40-705-100 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.

At the initial hearing whenever custody of a child is removed (except in emergency removal order hearings) the court is required to order the parents to pay child support.

- To facilitate the requirement that the court order child support at the initial hearing, it is recommended that the worker include in the petition requesting custody of the child a statement that, if custody is transferred, the petitioner requests the court to address parental child support as defined in Code of Virginia § 63.2-909.

- The CPS worker is encouraged to discuss this aspect of the removal process with parents; the worker may wish to discuss the parents' financial status with them to help determine whether the court should be requested to exempt them from a support obligation.

35.6 Immunity from civil or criminal liability

(22 VAC 40-705-100 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 §§ 63.2-1509, 63.2-1510, and 63.2-1517 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 § 63.2-1512 of the Code of Virginia.

35.7 Appendix A: Preliminary protective orders in cases of family abuse

Code of Virginia sections §§ 16.1-253.1 (Preliminary protective orders in cases of family abuse), 16.1-253.4 (Emergency protective orders authorized in certain cases), and 16.1-279.1 (Protective orders in cases of family abuse) are incorporated into the policy manual for reference. The purpose of these protective orders is specifically to address domestic violence. The LDSS does not have standing to petition a court for the issuance of a protective order pursuant to §§ 16.1-253.1, 16.1-253.4, and 16.1-279.1.

35.7.1 Statutory authority

(§ 16.1-253.1 A of the Code of Virginia). Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property.

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons.

3. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.

5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.

7. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

35.7.2 Name of alleged abuser to be entered Into Virginia Criminal Information Network

(§ 16.1-253.1 B of the Code of Virginia). B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided

to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order. If the respondent fails to appear at this hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served forthwith on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

35.7.3 Preliminary order effective upon service

(**§** 16.1-253.1 C of the Code of Virginia). The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

35.7.4 Full hearing on the petition

(§ 16.1-253.1 D of the Code of Virginia). At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

35.8 Appendix B: Emergency protective orders (EPO) in cases of family abuse

35.8.1 Statutory authority

(§ 16.1-253.4 A of the Code of Virginia). Emergency protective orders authorized in certain cases; confidentiality.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

Any judge or magistrate may issue an emergency protective order to protect the health and safety of any person in accordance with § 16.1-253.4. The emergency protective order may be issued ex parte, either in writing or orally.

35.8.2 A police officer or the allegedly abused person may petition the court and must testify to the circumstances

(§ 16.1-253.4 B of the Code of Virginia). B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;

2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and

3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i) he shall presume that there is probable danger of further acts of

family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

35.8.3 Duration of emergency protective order

(§ 16.1-253.4 C of the Code of Virginia). C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

35.8.4 Law enforcement may request EPO orally, in person, or by electronic means

(§ 16.1-253.4 D of the Code of Virginia). D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

35.8.5 Name of alleged abuser to be entered Into Virginia Criminal Information Network

(§ 16.1-253.4 E of the Code of Virginia). E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by *subsection D of* § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due

> return made to the court. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

35.8.6 EPO not affected by fact family left premise to avoid danger

> (§ 16.1-253.4 F of the Code of Virginia). F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

35.8.7 Issuance of EPO not evidence of any wrongdoing

> (§ 16.1-253.4 G of the Code of Virginia). G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

This code section means that, although the court may have issued an emergency protective order against a person, the court order does not mean the person committed the alleged act. A full hearing on the matter must be conducted to determine whether the alleged act occurred.

35.8.8 Definition of law-enforcement officer

> (§ 16.1-253.4 H of the Code of Virginia). H. As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

35.8.9 Definition of copy includes fax

> (§ 16.1-253.4 J of the Code of Virginia). As used in this section, "copy" includes a facsimile copy.

35.9 Appendix C: Protective orders in cases of family abuse

35.9.1 Statutory authority

(§ 16.1-279.1 A of the Code of Virginia). Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;

3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;

4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;

5. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title to the vehicle;

6. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;

7. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate; and

8. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A of this section, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1.

35.9.2 Duration of protective order

(§ 16.1-279.1 B of the Code of Virginia). B. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. If the petitioner was a member of the respondent's family or household at the time the initial protective order was issued, the court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

35.9.3 Name of alleged abuser to be entered Into Virginia Criminal Information Network

(§ 16.1-279.1 C of the Code of Virginia). C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of

the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

35.9.4 Violation of court order constitutes contempt of court

(§ 16.1-279.1 D of the Code of Virginia). D. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

35.9.5 Court costs and attorney's fees

(§ 16.1-279.1 E of the Code of Virginia). E. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

35.9.6 Other state court orders given full faith and credit

(§ 16.1-279.1 F of the Code of Virginia). F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith

forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

35.9.7 Either party may request dissolution or modification of protective order

(§ 16.1-279.1 G of the Code of Virginia). G. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on the docket of the court.

35.9.8 Copy includes fax

(§ 16.1-279.1 H of the Code of Virginia). H. As used in this section, "copy" includes a facsimile copy.

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CONFIDENTIALITY

44.1 Introduction

It is the policy of the Commonwealth to promote ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the Commonwealth is being conducted. The purpose for promoting open disclosure of the activities of state government is to foster an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. To ensure the open disclosure of public documents, the Virginia Freedom of Information Act provides for the release of information that is not protected by Federal law, Code of Virginia or Virginia Administrative Code provisions for maintaining confidentiality.[38]

In performing its statutory duties, such as conducting an investigation of a report of alleged child abuse or maintaining the central registry, the Department (VDSS) and the local department (LDSS) will collect and maintain personal information about an individual. Having recognized that the extensive collection, maintenance, use and dissemination of personal information directly affect an individual's rights concerning privacy, the *Code of Virginia* authorizes the release of certain information under the Government Data Collection and Dissemination Practices Act.[39] The Virginia Freedom of Information Act (Code of Virginia § 2.2-3700 et seq.) provides a person access to records in the custody of public officials. The provisions of the Virginia Freedom of Information Act and the Government Data Collection and Dissemination Practices Act apply to the VDSS and to the LDSS.

[38] The Virginia Freedom of Information Act provides the statutory authority for the release of information between public agencies and the public. Please see Code of Virginia § 2.2-3700 B.

[39] Code of Virginia § 2.2-3800 B and C.

When the LDSS receives a request for information, the LDSS must determine whether the information requested is confidential and must be protected, or whether the information requested should be released under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act or Virginia Administrative Code provision. Given the sensitive nature of a child protective services investigation, the LDSS must ensure that the release of information does not violate any Federal law, Code of Virginia, or Virginia Administrative Code provisions.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to a request the release of information under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act, or any other Code of Virginia provision.

44.2 Mandatory release of information

The Code of Virginia and the Virginia Administrative Code mandate the release of information to specific parties under certain circumstances:

> (22 VAC 40-705-160 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.

44.2.1 Report Information to Commonwealth's Attorney and law enforcement

Code of Virginia § 63.2-1503 D requires the LDSS to report certain cases of abuse and neglect to the local Commonwealth's Attorney and to law enforcement.

> (22 VAC 40-705-160 A1). Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.

44.2.1.1 Complaints or reports that LDSS shall report to Commonwealth's Attorney and law enforcement

The LDSS shall contact the local attorney for the Commonwealth when a report or complaint is received alleging abuse or neglect involving:

- The death of a child;
- An injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected;
- Any sexual abuse, suspected sexual abuse or other sexual offense involving a child, including the use or display of the child in sexually explicit visual material, as defined in § 18.2-374.1;

- Any abduction of a child;
- Any felony or Class 1 misdemeanor drug offense involving a child; or
- Contributing to the delinquency of a minor in violation of § 18.2-371.

44.2.1.2 Information to be provided to Commonwealth's Attorney and law enforcement

The LDSS shall provide the local attorney for the Commonwealth and the local law enforcement agency with records of any complaints of abuse or neglect involving the victim or the alleged perpetrator.

The LDSS cannot allow reports of the death of the victim from other local agencies to substitute for direct reports to the attorney for the Commonwealth and the local law-enforcement agency.

The LDSS shall make available all information upon which the report is based and the records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

44.2.2 Report information to regional medical examiner's office

Code of Virginia § 63.2-1503 E requires the LDSS to report certain cases of abuse and neglect to the regional medical examiner's office. The Virginia Administrative Code restates that requirement.

> (22 VAC 40-705-160 A2). Report to the medical examiner's office pursuant to §§ 32.1-283.1 C and 63.2-1503 E,F of the Code of Virginia.

The LDSS should also advise the regional medical examiner's office if the report or complaint was accepted and if an investigation will be conducted.

44.2.3 Court mandated disclosure

> (22 VAC 40-705-160 A3). 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.

The LDSS cannot disregard a court order for the release of information. If the LDSS believes the disclosure is inappropriate, it may contest the request for information through legal counsel. If, after hearing the LDSS's arguments to maintain the confidentiality of the child protective services information, the court still orders the

information to be released, the LDSS shall comply. LDSS are encouraged to seek advice from the agency's legal counsel in these matters.

44.2.4 Release of certain information to the complainant

> (22 VAC 40-705-160 A4). When a family assessment or investigation is completed, the child protective services worker shall notify the complainant/reporter that either a complaint/report is unfounded or that necessary action is being taken.

Generally, the information released to the complainant pertains to whether the complaint or report was unfounded or the LDSS took necessary action. Disclosing information to a complainant is limited to the procedures for notification of the disposition required by the Virginia Administrative Code and this guidance manual, except as may otherwise apply under required or discretionary disclosure in this section.

44.2.5 Release of information to Military Family Advocacy Program

> (22 VAC 40-705-160 A10). 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.

The Virginia Administrative Code defines Family Advocacy Program representative:

> (22 VAC 40-705-10). "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.

The Virginia Administrative Code also provides the LDSS with the authority to release information, when appropriate to a representative of the Family Advocacy Program.

> (22 VAC 40-720-20 A). Information regarding child protective services reports, complaints, investigations and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local agency determines such release to be in the best interest of the child. Provision of information as addressed in this chapter shall apply to instances where the alleged abuser or neglector is a member (or the spouse of a member) of the United States Armed Forces. In these situations coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment and service provision to the military family.
>
> (22 VAC 40-720-20 B). In founded complaints in which the abuser or neglector is an active duty member of the United States Armed Forces, or the spouse of a member

residing in the member's household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglector shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made in writing within 30 days after administrative appeal rights of the abuser or neglector have been exhausted or forfeited.

The military member shall be advised that this information is being provided and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, additional related information shall also be provided to the Family Advocacy Program representative.

44.2.6 Release information to Department of Child Support Enforcement (DCSE)

(22 VAC 40-705-160 A11). Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to § 63.2-103 of the Code of Virginia.

44.2.7 Provide information to citizen review panels

The Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 USC § 5101 et seq.), requires case-specific information about child abuse and neglect reports and investigations be disclosed to citizen review panels, when requested. The Virginia Administrative Code addresses the CAPTA requirement.

(22 VAC 40-705-160 A7). Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR § 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

CAPTA §106(b)(2)(v)(iii) requires the establishment of not less than three (3) citizen review panels. Any release of information to citizen review panels shall be in accordance with the confidentiality provisions of this chapter. §§ 63.2-104 and 63.2-105 of the Code of Virginia provide the foundation for the disclosure of findings or information about a case of child abuse or neglect.

44.2.7.1 Children's Justice Act/Court Appointed Special Advocate Advisory Committee (CJA/CASA)

The major purpose of the advisory committee to the Court Appointed Special Advocate (CASA) Program is to advise the Criminal Justice Board on all matters relating to the CASA Program and the needs of clients served by the

program. The fifteen members are knowledgeable of court matters, child welfare, and juvenile justice issues and representatives of state and local interests.

44.2.7.2 Governor's Advisory Board on Child Abuse and Neglect

Code of Virginia § 63.2-1528 establishes the Advisory Board on Child Abuse and Neglect (Governor's Advisory Board). The Advisory Board meets at least quarterly and advises the VDSS, Board of Social Services, and the Governor on matters concerning programs for the treatment and prevention of abused and neglected children and their families.

44.2.7.3 State Child Fatality Review Team

Code of Virginia § 32.1-283.1 establishes the State Child Fatality Review Team to develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way (see Section 11 Child Deaths).

44.2.8 Release information to Court Appointed Special Advocate

> (22 VAC 40-705-160 A12). The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 of the Code of Virginia.

Code of Virginia § 9.1-151 establishes a Court Appointed Special Advocate Program administered by the Department of Criminal Justice Services. The program provides services to children who are subjects of judicial proceedings involving allegations that the child is abused, neglected, in need of services or in need of supervision. Code of Virginia § 9.1-156 provides that, upon presentation by a court appointed special advocate of the order of his appointment and upon specific court order, the LDSS shall permit the advocate to inspect and copy any records relating to the child involved in the court case.

44.2.9 Release information to guardian ad litem

> (22 VAC 40-705-160 A13). 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.

Code of Virginia § 16.1-266 provides that a guardian ad litem shall be appointed by a court before the commencement of any court proceeding involving a child who is alleged to be abused or neglected. One of the purposes of appointing a guardian ad litem is to obtain first-hand, a clear understanding of the situation and needs of the child. Upon presentation by a guardian ad litem of the court order of his appointment and upon specific court order, the LDSS shall permit the guardian ad litem to inspect and copy any records relating to the child involved in the court case.

44.3 Discretionary release of information

In some instances, disclosure of information in a CPS case record by the LDSS will be mandated. In other instances, disclosure of certain information will be prohibited or limited.

This section addresses the discretionary release of information from a child protective service case record by the LDSS. Code of Virginia §§ 63.2-104 and 63.2-105 provide the statutory framework for collecting and maintaining information gathered during a CPS investigation and related proceedings and for the release of such information and to whom it may be released.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

When an LDSS exercises its discretion to release confidential information to any person who meets one or more of the criteria set forth, the LDSS shall be presumed to have exercised its discretion in a reasonable and lawful manner as noted in Code of Virginia § 63.2-105.

44.3.1 Burden on LDSS to ensure the proper release of information

Any time the LDSS does release information contained in a CPS investigative record, the LDSS must ensure that the release of information is proper and consistent with Federal law, the Code of Virginia, and the Virginia Administrative Code. The Virginia Administrative Code emphasizes the need for the LDSS to ensure the confidentiality of the information gathered during a CPS investigation and the proper release of any confidential information.

> (22 VAC 40-705-160 D). Prior to disclosing information to any of the individuals or organizations, and to be consistent with § 63.2-104 of the Code of Virginia, pursuant to § 63.2-1500 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.

When a question arises concerning whether certain information contained in a CPS investigative record should be released, the LDSS should consult the local city or county attorney.

44.3.2 Identity of complainant and collaterals to remain confidential

> (22 VAC 40-705-160 C). The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered, in accordance with § 63.2-1526 of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).

Federal regulations specify that the identity of persons reporting suspected incidents of child abuse or neglect should be protected. However, circumstances may arise where the name of the complainant must be disclosed. This might include court proceedings where the information provided by the complainant is necessary for a full disclosure of the child's situation. Neither state law nor federal regulations provide for confidentiality of the identity of persons providing information on a child abuse and neglect case through collateral contact by the worker. Therefore, individuals making complaints or providing information through collateral contacts should be informed that the LDSS will maintain the information confidential to the greatest extent possible, but cannot guarantee its confidentiality.

Code of Virginia § 63.2-1514 provides that the subject of an unfounded investigation may petition the circuit court to obtain the identity of the complainant if the person believes the complaint was malicious or made in bad faith. The circuit court may order the release of this information.

44.4 Virginia Freedom of Information Act

Code of Virginia § 2.2-3700 (Virginia Freedom of Information Act) requires that official records held by public agencies are to be open to inspection. Any individual may exercise his or her Virginia Freedom of Information Act rights to see public information in the custody of any public agency. It provides procedures for requesting records and responding to those requests. It also provides exceptions to providing certain information to individuals who make requests pursuant to the Code of Virginia.

The provisions of Code of Virginia § 2.2-3700 et seq. apply to the VDSS and the LDSS. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. This is a summary of these provisions.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

44.4.1 LDSS shall make an initial response to the individual within five days

When a request for the release of information under the Virginia Freedom of Information Act is made, the LDSS shall make an initial response to the individual requesting the information **within five (5) working days** after the receipt of the request.

44.4.2 Requesting party shall specify what information is requested

The requesting party shall designate the requested records with reasonable specificity. The requesting party does not need to specify that the release is to be in accordance with the Virginia Freedom of Information Act to invoke the provisions of Code of Virginia § 2.2-3700 et seq. and the time limits for response by the LDSS.

44.4.3 Initial response by LDSS may vary

The LDSS shall respond to the request for the release of information in one of the following methods:

- The requested records shall be provided to the requesting citizen.
- If the LDSS determines that an exemption applies to all of the requested records, the LDSS may refuse to release such records. The LDSS shall provide to the requesting party a written explanation as to why the records are not available, making specific reference to the applicable Code of Virginia sections that make the requested records exempt.
- If the LDSS determines that an exemption applies to a portion of the requested records, the LDSS may redact that portion of the records that should remain confidential. The LDSS shall disclose the remainder of the requested records and provide to the requesting party a written explanation as to why certain portions of the record are not available to the requesting party, making specific reference to the applicable Code of Virginia sections making that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.
- If the LDSS determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the LDSS shall inform the requesting party. The LDSS shall have an additional **seven (7) working days** in which to provide one of the three preceding responses.

44.4.4 LDSS may petition the court for additional time to respond

The LDSS may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the LDSS within the time required by the Code of Virginia will prevent the LDSS from meeting its operational responsibilities. Before filing this petition, however, the LDSS shall make reasonable efforts to reach an agreement with the requesting party concerning the production of the records requested.

44.4.5 LDSS may charge for copying, search time, and computer time expended for providing the information

The LDSS may make reasonable charges for the copying, search time, and computer time expended in providing the requested information.

44.4.6 Requesting information that does not exist

The LDSS is not required to create or prepare a particular requested record if it does not already exist. The LDSS may, but is not required to, abstract or summarize information from official records or convert an official record available in one form into another form at the request of the citizen. The LDSS shall make reasonable efforts to reach an agreement with the requesting party concerning the production of the records requested.

44.4.7 LDSS shall take action upon request

Failure to make any response to a request for records constitutes a violation of Code of Virginia § 2.2-3700 et seq. and will be deemed a denial of the request.

44.4.8 Exceptions to release of information

Code of Virginia § 2.2-3700 et seq. provides exceptions from the provisions of the Virginia Freedom of Information Act, but may be disclosed by the LDSS at the LDSS's discretion, except where such disclosure is prohibited by law. For the exceptions to the Virginia Freedom of Information Act specific to social services, see Code of Virginia § 2.2-3705.5.

44.5 Government Data Collection and Dissemination Practices Act

(§ 2.2-3806 3 of the Code of Virginia). Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:

a. All personal information about that data subject except as provided in subdivision 1 of § 2.2-3705.1, subdivision 1 of § 2.2-3705.4, and subdivision 1 of § 2.2-3705.5.
b. The nature of the sources of the information.

c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

44.5.1 General provisions for collecting confidential data

The LDSS shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

- There shall be no personal information system whose existence is secret.
- Information shall not be collected unless the need for it has been clearly established in advance.
- Information shall be appropriate and relevant to the purpose for which it has been collected.
- Information cannot be obtained by fraudulent or unfair means.
- Information shall be accurate and current.

44.5.2 The rights of the data subjects

Upon request and proper identification of any data subject, or of his authorized agent, the LDSS shall grant such subject or agent the right to inspect, in a form comprehensible to such individual or agent:

- All personal information about that data subject except as provided in Code of Virginia §§ 2.2-3705.1, 2.2-3705.4, and 2.2-3705.5.
- The nature of the sources of the information.
- The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

44.5.3 Minimum conditions of disclosure

The LDSS shall comply with the following minimum conditions of disclosure:

- The LDSS shall make disclosures to data subjects required under this chapter, during normal business hours.
- The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the

documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

44.5.4 Requesting party may seek representative

The data subject seeking the release of personal information shall be permitted to be accompanied by a person or persons of his choosing, who shall furnish reasonable identification. The LDSS may require the data subject to furnish a written statement granting permission to the organization to discuss the individual's file in such person's presence.

44.5.5 Exception to the Government Data Collection and Dissemination Practices Act

The provisions of Code of Virginia § 2.2-3800 et seq. are not applicable to personal information systems maintained by LDSS regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution. For additional exceptions to disclosing personal information pursuant to the Government Data Collection and Dissemination Practices Act, see Code of Virginia § 2.2-3802.

44.6 Release information to the alleged abuser or neglector

44.6.1 Alleged abuser or neglector is entitled to information about himself

The alleged abuser or neglector maintains the right to access information about himself, including the right to examine a copy of the automated data systems form subject to the restrictions in this guidance manual. The Virginia Administrative Code states:

> (22 VAC 40-705-160 A5). Any individual, including an individual against whom allegations of child abuse and/or neglect were made, may exercise his Government Data Collection and Dissemination Practices Act 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 § 2.2-3704 of the Code of Virginia.

44.6.2 Alleged abuser or neglector may review medical and psychological information about himself

The alleged abuser or neglector maintains the right to see medical and psychological information about himself. However, if the treating doctor attached a statement to the medical or psychological information that the alleged abuser's or neglector's access to the information could be harmful to the alleged abuser's or neglector's physical or mental health or well being as specified in the Code of Virginia § 32.1-127.1:03 F , the LDSS may withhold access. Otherwise, medical and psychological information must be released on request.

44.6.3 No special provisions for the release of information to parent, guardian, or caretaker of the alleged victim child

The Government Data Collection and Dissemination Practices Act of Virginia does not specifically address a parent's or guardian's right to see the personal information in the record about the child.

If the parent or guardian, whether custodial or non-custodial, requests personal information about the child and the LDSS believes that the release of the information would be contrary to the child's best interest, then the LDSS may deny that request.

If the LDSS believes the release of information would be in the child's best interest, such information may be released with the exception of medical or psychological information to which the treating physician attached a statement that the client's access to the information could be harmful to the client's physical or mental health or well being. The parent should be referred to the source for access to this information.

The parent, caretaker, or guardian is entitled to access to any personal information about himself that is contained in the child protective services record pursuant to the Government Data Collection and Dissemination Practices Act.

44.6.4 Reasonable time to edit record for release

When the alleged abuser or neglector requests information, the Virginia Administrative Code provides the LDSS reasonable time to redact or edit the information needing to be protected. The Virginia Administrative Code provides:

> (22 VAC 40-705-160 A6). 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.

The LDSS must ensure that the alleged abuser or neglector is only provided access to that portion of the record concerning him with safeguards taken to assure the privacy rights of the other persons mentioned in the case record including protecting the name of the complainant.

44.6.5 LDSS must respond to request with reasonable promptness

When the alleged abuser or neglector makes a request, pursuant to the Government Data Collection and Dissemination Practices Act, to see his personal information in the case record, the LDSS must respond to this request with reasonable promptness. However, the Virginia Freedom of Information Act and the Government Data Collection and Dissemination Practices Act contain exceptions. Not all information can be released to the individual making the request.

44.6.6 Alleged abuser or neglector may designate representative

The right to access information may be exercised directly by the individual or by any representative of his choice designated by him in writing.

44.6.7 Criminal investigation suspends access to records (Government Data Collection and Dissemination Practices Act)

Code of Virginia § 2.2-3802 establishes that during a criminal investigation, the alleged abuser's or neglector's right to access the records of a CPS investigation is suspended. The Virginia Administrative Code reflects the statutory intent:

> (22 VAC 40-705-160 A9). An individual's right to access to information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 2.2-3802 7 of the Code of Virginia.

The provisions for releasing information of a CPS investigation, pursuant to the Government Data Collection and Dissemination Practices Act, are suspended when there is a criminal investigation involving the same case.

44.6.8 Release information to alleged abuser or neglector when founded disposition is appealed

Prior to the LDSS rendering a disposition, the LDSS may only release confidential information to the alleged abuser or neglector pursuant to the Government Data Collection and Dissemination Practices Act and consistent with the Code of Virginia and Virginia Administrative Code.

The Code of Virginia provides for greater disclosure of the CPS record after the LDSS renders a disposition. Code of Virginia § 63.2-1526 specifies an alleged abuser's access to the CPS record. If the LDSS has information in its record that has been used in making the founded disposition, the alleged abuser has the right to access that information on appeal. The exceptions are as follows:

- The identity of the person making the complaint.
- Any information which may harm a child.
- The identity of collateral witnesses, when disclosure may endanger his life or safety.
- The identity of any other person, when disclosure may endanger his safety.
- Information prohibited from disclosure by state and federal law.

In general, if the victim's medical records were used in making the founded determination, then the alleged abuser is entitled to see that information.

It is up to the LDSS to use good judgment in deciding what should be released and what should be withheld. The LDSS must be able to adequately defend its decision when challenged. This issue underscores the need for LDSS to consult with legal counsel when records have been requested.

44.6.8.1 Appellant shall be informed of procedures for making information available and withholding information

The appellant has the right to be informed of the procedure by which information will be made available or withheld. If information is withheld, the appellant shall be advised of the general nature of such information, the reason the information is being withheld, and the appellant's right to petition the juvenile and domestic relations court, or family court, to enforce any request for information which has been denied.

44.6.8.2 Appellant's access to CPS record is stayed during criminal proceeding

Code of Virginia § 63.2-1526 C stays (i.e., suspends) the appellant's right to access the LDSS record during the administrative appeal process whenever a criminal charge involving the same appellant for the same conduct involving the same victim is proceeding.

44.7 Release information to legitimate interests

If an LDSS receives a request for information about a CPS case, and release of that information is not mandated or prohibited by Federal law, the Code of Virginia, or the Virginia Administrative Code, then release of that information is at the discretion of the LDSS. All records and statistical registries of the LDSS and of the local boards, including child protective service records, are confidential. Code of Virginia §§ 63.2-104 and 63.2-105 provide access to a person with a legitimate interest when access is in the best interest of the child.

In all instances of requests for release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

44.7.1 Authority to release information when disclosure is not mandated

The Virginia Administrative Code summarizes the authority to release information to persons when that release is not mandated.

> (22 VAC 40-705-160 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 § 63.2-104 A of the Code of Virginia.

Each request for or act of disclosure must be individually evaluated. Evaluating the request for information is a two-step process. The first consideration is whether disclosure of the requested information is in the best interest of the child. The second consideration is whether the party requesting the information has a legitimate interest.

44.7.2 Definition of legitimate interest

The definition section of the Virginia Administrative Code defines legitimate interest as:

> (22 VAC 40-705-10). "Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

44.7.3 Identify parties with legitimate interest

Individuals and organizations considered to have a legitimate interest include, but are not limited to:

- An agency having the legal or designated authority to treat or supervise a child who is the subject of a complaint.
- The administrator of an institution in cases involving abuse or neglect by an employee of the facility.
- Members of a multidisciplinary team, a family assessment, or a planning team.
- Police, other law-enforcement agency, or Commonwealth's attorney.
- A physician treating an allegedly abused or neglected child.
- A person legally authorized to place a child in protective custody.
- A parent, guardian, or other person who is responsible for the welfare of a child.
- The guardian ad litem for the child.
- Military Family Advocacy Program.

- A grand jury upon its determination that access to such records is necessary in the conduct of its official business.
- Any appropriate state or local agency responsible for child protective services.
- A legislator carrying out official functions.
- Any person engaged in a bona fide research project if the information is absolutely essential to the research purpose. The director of the Division of Family Services must give prior approval.
- A person who is responsible for investigating a report of known or suspected abuse or neglect.
- A state or local government child welfare or human service agency when they request information to determine the compliance of any person with a child protective services plan or order of any court.
- Personnel of the school or child day program (as defined in Code of Virginia § 63.2-100) attended by the child so that the LDSS can receive information from such personnel on an ongoing basis concerning the child's health and behavior and the activities of the child's custodian.
- A parent, grandparent, or any other person when they would be considered by the LDSS as a potential caretaker of the child in the event the department has to remove the child from his current custodian.
- Pursuant to Code of Virginia § 37.2-905.2, the Department of Corrections, the Commitment Review Committee, and the Office of the Attorney General may request information from the LDSS about an inmate who is subject to a civil commitment hearing as a sexually violent predator.

The identification of a party as having a legitimate interest must be consistent with Code of Virginia § 63.2-105 A.

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SUBSTANCE-EXPOSED INFANTS

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SUBSTANCE-EXPOSED INFANTS

54.1 Introduction

The Code of Virginia § 63.2-1509 B requires the local department (LDSS) to accept as valid a report that a newborn infant may have been exposed to controlled substances prior to birth. This part of the CPS guidance chapter explains how the Code of Virginia impacts:

- Mandated reporting of substance-exposed infants and the validity decision.
- CPS family assessments and investigations.
- Services to the families of substance-exposed infants.
- Possible court actions.

54.2 Mandated reporting of substance-exposed infants

> (22 VAC 40-705-40 A5). Pursuant to § 63.2-1509 B of the Code of Virginia, certain specified facts indicating that a newborn infant may have been exposed to controlled substances prior to birth or a positive drug toxicology of the mother indicating the presence of a controlled substance are sufficient to suspect that a child is abused or neglected. A diagnosis of fetal alcohol syndrome is also sufficient. Any report made pursuant to § 63.2-1509 B of the Code of Virginia constitutes a valid report of abuse or neglect and requires a child protective services investigation or family assessment, unless the mother sought treatment or counseling as required in this section and pursuant to § 63.2-1505 B of the Code of Virginia.

a. The attending physician may designate a hospital staff person to make the report to the local department on behalf of the attending physician. That hospital staff person may include a nurse or hospital social worker.

b. a. Pursuant to § 63.2-1509 of the Code of Virginia, whenever a physician makes a finding pursuant to § 63.2-1509A of the Code of Virginia, then the physician or his designee must make a report to child protective services immediately. Pursuant to § 63.2-1509D of the Code of Virginia, a physician who fails to make a report pursuant to § 63.2-1509A of the Code of Virginia is subject to a fine. *(This regulation is in process of being revised)*

54.2.1 *Health care providers* required to report substance-exposed newborn infants

The Code of Virginia requires *health care providers* to make a report of abuse or neglect when there is reason to suspect that a mother exposed a newborn infant to controlled substances during the pregnancy. The Code of Virginia specifically delineates four circumstances indicating a reason to suspect that a newborn infant was exposed to a controlled substance during pregnancy:

- *Toxicology studies* of the infant conducted *after an* infant's birth indicates the presence of a controlled substance. A physician must not have prescribed the controlled substance for the mother. The findings of the *toxicology studies* must be made within *six (6) weeks* of the child's birth *by a health care provider.*

- Within *six (6) weeks* of the infant's birth, *a health care provider* finds that the infant was born dependent on a controlled substance and demonstrated withdrawal symptoms. A physician must not have prescribed the controlled substance for the mother.

- *Any time after a child's* birth, *a health care provider* diagnoses the child as having an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance. A physician must not have prescribed the controlled substance for the mother or the child.

- *Any time after a* child's birth, *a health care provider* makes the diagnosis that the child has *a fetal alcohol spectrum disorder* attributable to in utero exposure to alcohol. *See* Appendix A *of this section for additional information regarding fetal alcohol spectrum disorder.*

54.2.2 *Health care provider* responsibilities

54.2.2.1 Report to CPS

> (22 VAC 40-705-40 A5). a. Pursuant to § 63.2-1509 of the Code of Virginia, whenever a physician makes a finding pursuant to § 63.2-1509A of the Code of Virginia, then the physician or his designee must make a report to child protective services immediately. Pursuant to § 63.2-1509D of the Code of Virginia, a physician who fails to make a report pursuant to § 63.2-1509A of the Code of Virginia is subject to a fine. *(This regulation is in process of being revised)*

Whenever a *health care provider* makes a finding of one of the four circumstances above, the *health care provider* shall make a report to CPS *as soon as possible, but no longer than **24*** **hours** *after having reason to suspect a reportable offense.*

54.2.2.2 Report to the Community Services Board

The Code of Virginia § 32.1-127 B6 requires that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum women and their infants. The discharge plan should be discussed with the patient and appropriate referrals made and documented. Hospitals are required to notify the Community Services Board of the jurisdiction in which the woman resides to appoint a discharge plan manager for any identified substance-abusing postpartum woman. The Community Services Board shall implement and manage the discharge plan.

54.3 CPS response to substance-exposed infant referrals

Facts indicating that the child was exposed to controlled substances prior to birth are sufficient, in and of themselves, to suspect that the child is abused or neglected. Therefore, any report made pursuant to the Code of Virginia § 63.2-1509 B constitutes a valid report of abuse or neglect and requires a CPS response.

54.3.1 Determine the track decision

Validated referrals involving substance-exposed infants may be placed in the Investigation or Family Assessment track. Because exposure to controlled substances prior to birth is not sufficient evidence for a founded disposition of abuse or neglect, a family assessment that assesses the risk and needs of the child and family may be a more appropriate response.

54.3.2 Initial assessment and contacts

(22 VAC 40-705-40 A 4 c). When a report or complaint alleging abuse or neglect is made pursuant to § 63.2-1509 B of the Code of Virginia, then the local department must immediately assess the infant's circumstances and any threat to the infant's health and safety. Pursuant to 22 VAC 40-705-110 A, the local department must conduct an initial assessment.

(22 VAC 40-705-40 A 4 d). When a report or complaint alleging abuse or neglect is made pursuant to § 63.2-1509 B of the Code of Virginia, then the local department must immediately determine whether to petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

The LDSS must complete an initial safety assessment of the substance-exposed newborn. This assessment may lead to consideration of court action.

54.3.3 Exception to initiating or completing the investigation or family assessment

(22 VAC 40-705-40 A 4 e). Within five days of receipt of a report made pursuant to § 63.2-1505 B of the Code of Virginia, the local department shall invalidate the complaint if the following two conditions are met: (i) the mother of the infant sought substance abuse counseling or treatment during her pregnancy prior to the infant's birth and (ii) there is no evidence of child abuse and/or neglect by the mother after the infant's birth.

(1) The local department must notify the mother immediately upon receipt of a complaint made pursuant to § 63.2-1509 B of the Code of Virginia. This notification must include a statement informing the mother that, if the mother fails to present evidence within five days of receipt of the complaint that she sought substance abuse counseling / treatment during the pregnancy, the report will be accepted as valid and an investigation or family assessment initiated.

(2) If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a substantive effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services due to no fault of her own, then the local department should invalidate the complaint or report.

(3) If the mother sought or received substance abuse counseling or treatment, but there is evidence, other than exposure to a controlled substance, that the child may be abused or neglected, then the local department may initiate the investigation or family assessment.

The Code of Virginia § 63.2-1505 B provides an exception to initiating and/or completing a family assessment or investigation in referrals involving substance-exposed infants when certain circumstances exist. It is incumbent upon the mother of the infant to present the evidence that she sought or gained substance abuse counseling or treatment prior to the child's birth.

54.3.3.1 Definitions to determine if exception applies

- "Prior to the child's birth" means the substance abuse counseling or treatment must have occurred during the mother's pregnancy.

- "Sought treatment or counseling" does not require that the mother actually gained substance abuse counseling or treatment. If the mother sought counseling or treatment but did not receive such services, then the LDSS must determine whether the mother made a good faith effort to receive substance abuse treatment before the child's birth.

- "Substance abuse counseling or treatment services" are professional services provided to individuals for the prevention, diagnosis, and/or treatment of chemical dependency. Substance abuse counseling or treatment should include education about the impact of alcohol and other drugs on the fetus and on the maternal relationship; and education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs. The substance abuse counseling or treatment services must be provided by a professional (e.g., a "certified substance abuse counselor" or a "licensed substance abuse treatment practitioner").

Even if the mother sought treatment, the LDSS could continue a family assessment upon the fact that the report was valid and the need to assess services to remedy or prevent child maltreatment are appropriate. An investigation or family assessment should continue if there is an additional allegation of abuse/neglect, or other evidence that the infant is experiencing a threat of harm.

54.3.4 Complete the family assessment or investigation

> (22 VAC 40-705-40 A4 e 3 i). Facts indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient, in and of themselves, to render a founded disposition of abuse or neglect. The local department must establish, by a preponderance of the evidence, that the infant was abused or neglected according to the statutory and regulatory definitions of abuse and neglect.

Family assessments or investigations involving substance-exposed infants shall be conducted in accordance with Section 4, Family Assessment and Investigation of this guidance manual.

Due to the vulnerability of substance-exposed infants, collateral involvement to determine risk and possible services is crucial, and may include contacts with the family, hospital, pediatrician, and substance abuse evaluation/treatment providers. When appropriate, the LDSS should coordinate services with the Community Services Board.

For investigations, facts establishing that the infant was exposed to controlled substances prior to birth are not sufficient to render a founded disposition of abuse or neglect. The LDSS must establish by a preponderance of the evidence that the infant was injured or experienced a threat of injury or harm according to the statutory and regulatory definitions of abuse and neglect to support a founded disposition.

54.4 Petition the court on behalf of a substance-exposed infant

When conducting a family assessment or investigation, the Code of Virginia § 16.1-241.3 also permits the LDSS to petition the juvenile and domestic relations district court solely because an infant has been exposed to controlled substances prior to his or her birth.

> (§ 16.1-241.3 of the Code of Virginia). Newborn children; substance abuse.
>
> Upon the filing of a petition alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of § 63.2-1509, the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to § 16.1-253 or an order authorized pursuant to subdivisions 1 through 4 of subsection A of § 16.1-278.2. The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.
>
> The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2, but shall be a final order subject to appeal.

54.4.1 LDSS may petition juvenile and domestic relations district court

The LDSS should consult with their attorneys when considering petitioning for protective and removal orders as described in Section 7, Judicial Proceedings of this guidance manual.

The LDSS may petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant.

54.4.1.1 Petition must allege substance-exposed infant

The LDSS must state in the petition presented to the court that a CPS investigation or family assessment has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in § 63.2-1509 B of the Code of Virginia.

54.4.2 The court's authority to issue orders

The court may enter any order authorized pursuant to § 16.1-226 et seq. which the court deems necessary to protect the health and welfare of the child. The court may issue such orders as an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to § 16.1-253 or an order authorized pursuant to § 16.1-278.2 A.

For example, such authority would allow the court to remove the child from the custody of the mother pending completion of the investigation or family assessment or compel the mother to seek treatment or other needed services. Code of Virginia § 16.1-241.3 enhances the court's ability to act quickly in a potentially crisis situation. In addition, the court will have the ability to use its authority to ensure that the mother of the child seeks treatment or counseling**.** For a further discussion on making a complaint pursuant to Code of Virginia § 63.2-1509 B, see Section 3: Complaints and Reports of this manual.

54.4.3 Any court order effective until investigation or family assessment is concluded

Any court order issued pursuant to § 16.1-241.3 is effective pending final disposition of the investigation or family assessment pursuant to § 63.2-1500 et seq. The order is effective for a limited duration not to exceed the period of time necessary to conclude the investigation or family assessment and any proceedings initiated pursuant to § 63.2-1500 et seq.

Any order issued pursuant to § 16.1-241.3 is considered a final order and subject to appeal. The fact that an order was entered pursuant to § 16.1-241.3 is not admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

54.5 CPS ongoing services to families with substance-exposed infants

If the LDSS determines that services are needed to prevent child abuse and neglect and the risk assessment is very high, high or moderate in a founded investigation or family assessment, a case may be opened for services. Refer to Section 6: Services of this guidance manual.

54.6 Appendix A: Fetal Alcohol Spectrum Disorder (FASD)

54.6.1 Definition of Fetal Alcohol Spectrum Disorder (FASD)

Experts now know that the effects of prenatal alcohol exposure extend beyond Fetal Alcohol Syndrome.

"Fetal alcohol spectrum disorders" (FASD) is an umbrella term describing the range of effects that can occur in an individual whose mother drank alcohol during pregnancy. These effects may include physical, mental, behavioral, and/or learning disabilities with possible lifelong implications. FASD is not a diagnostic term used by clinicians. It refers to conditions such as:

- *Fetal alcohol syndrome (FAS), including partial FAS*
- *Fetal alcohol effects (FAE)*
- *Alcohol-related neurodevelopmental disorder*
- *Alcohol-related birth defects*

54.6.2 Fetal Alcohol Syndrome (FAS)

FAS consists of a pattern of neurologic, behavioral, and cognitive deficits that can interfere with growth, learning, and socialization. FAS has four major components:

- *A characteristic pattern of facial abnormalities (small eye openings, indistinct or flat philtrum, thin upper lip)*
- *Growth deficiencies, such as low birth weight*
- *Brain damage, such as small skull at birth, structural defects, and neurologic signs, including impaired fine motor skills, poor eye-hand coordination, and tremors*
- *Maternal alcohol use during pregnancy*

Behavioral or cognitive problems may include mental retardation, learning disabilities, attention deficits, hyperactivity, poor impulse control, and social, language, and memory deficits.

Partial FAS describes persons with confirmed alcohol exposure, facial anomalies, and one other group of symptoms (growth retardation, central nervous system defects, or cognitive deficits).

54.6.3 Fetal alcohol effects (FAE)

Fetal alcohol effects (FAE) describes children with prenatal alcohol exposure who do not have all the symptoms of FAS. Many have growth deficiencies, behavior problems, cognitive deficits, and other symptoms. However, they do not have the facial features of FAS. Although the term FAE is still used, the Institute of Medicine has coined more specific terms. These include alcohol-related neurodevelopmental disorder and alcohol-related birth defects.

54.6.4 Alcohol- related neurodevelopmental disorder (ARND)

Alcohol-related neurodevelopmental disorder (ARND) refers to various neurologic abnormalities, such as problems with communication skills, memory, learning ability, visual and spatial skills, intelligence, and motor skills. Children with ARND have central nervous system deficits but not all the physical features of FAS. Their problems may include sleep disturbances, attention deficits, poor visual focus, increased activity, delayed speech, and learning disabilities.

54.6.5 Alcohol- related birth defects (ARBD)

Alcohol-related birth defects (ARBD) describe defects in the skeletal and major organ systems. Virtually every defect has been described in some patient with FAS. They may include abnormalities of the heart, eyes, ears, kidneys, and skeleton, such as holes in the heart, underdeveloped kidneys, and fused bones.

54.6.6 Cause of FASD

The only cause of FASD is alcohol use during pregnancy. When a pregnant woman drinks, the alcohol crosses the placenta into the fetal blood system. Thus, alcohol reaches the fetus, its developing tissues, and organs. This is how brain damage occurs, which can lead to mental retardation, social and emotional problems, learning disabilities, and other challenges. No alcohol consumption is safe during pregnancy. In addition, the type of alcohol (beer, wine, hard liquor, wine cooler, etc.) does not appear to make a difference.

54.6.7 Prevalence of FASD

FASD occurs in about 10 per 1,000 live births or about 40,000 babies per year. FAS, the most recognized condition in the spectrum, are estimated to occur in 0.5 to 2 per 1,000 live births. It now outranks Down syndrome and autism in prevalence.

54.6.8 Assessment of FASD

It is extremely difficult to diagnose a fetal alcohol spectrum disorder. A team of professionals is needed, including a physician, psychologist, speech pathologist, and physical or occupational therapist. Diagnostic tests may include physical exams, intelligence tests, and occupational and physical therapy, psychological, speech,

and neurologic evaluations. Diagnosis is easier if the birth mother confirms alcohol use during pregnancy. However, FAS can be diagnosed without confirming maternal alcohol use, if all the symptoms are present.

54.6.9 Impact of FASD

Children with FASD often grow up with social and emotional problems. They may have mental illness or substance abuse problems, struggle in school, and become involved with the corrections system. Costs of FAS alone are estimated at between 1 and 5 million dollars per child, not including incarceration. This estimate does not include cost to society, such as lost productivity, burden on families, and poor quality of life.

More information regarding Fetal Alcohol Spectrum Disorder may be accessed at:

Fetal Alcohol Spectrum Disorder Center for Excellence .

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CHILD DEATHS

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CHILD DEATHS

65.1 Introduction

The review of child deaths reported to CPS can best be achieved through a multi-agency, multi-disciplinary process that routinely and systematically examines circumstances surrounding reported deaths of children ages 0 to 18. The purpose of the review is to enable the Virginia Department of Social Services (VDSS), the local departments of social services (LDSS), and local community agencies to identify important issues related to child protection and to take appropriate action to improve our collective efforts to prevent child fatalities. The review process at all levels emphasizes that DSS is not alone in its responsibility to protect children, and reports should address issues of interagency collaboration, communication, and decision-making.

When a CPS report involves a child death, the LDSS must meet ALL investigation requirements according to the CPS Guidance Manual. Refer to Section 3 Complaints and Reports and Section 4 Family Assessment and Investigation.

65.2 Report a child death

The Virginia Administrative Code requires the LDSS to contact the Medical Examiner, Commonwealth's Attorney, and local law enforcement when a report or complaint alleging abuse or neglect involves the death of a child.

65.2.1 Report child death to regional Medical Examiner

> (22 VAC 40-705-50 F1). 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 § 63.2-1503 E of the Code of Virginia.

The LDSS shall immediately notify the regional Medical Examiner when the LDSS receives a complaint or report of abuse or neglect involving the death of a child. The LDSS should advise the Medical Examiner if the LDSS will be proceeding with an investigation.

65.2.2 Report child death to local Commonwealth's Attorney and law enforcement

> (22 VAC 40-705-50 F2). 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 § 63.2-1503 D of the Code of Virginia.

The LDSS shall immediately notify the local Commonwealth's Attorney and local law enforcement when the LDSS receives a complaint or report of abuse or neglect involving the death of a child. The LDSS should advise the Commonwealth's Attorney and local law enforcement if the LDSS will be proceeding with an investigation.

65.3 Submit preliminary child death information to CPS Regional Specialist

> (22 VAC 40-705-50 F3). 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.

The LDSS's CPS supervisor or supervisor's designee shall contact the child protective services Regional Specialist immediately upon receiving a complaint involving the death of a child.

The CPS Regional Specialist shall complete Part I: Child Fatality Information Form and forward it to the CPS Program Manager **within 24 hours** of receipt of the information pertaining to the death of the child.

The CPS Program Manager shall inform the Commissioner's Office of the child death **within 24 hours**. This information is also shared with the State Board of Social Services.

65.3.1 Submit preliminary information concerning the child death

The LDSS shall provide the following preliminary information concerning the child death to the CPS Regional Specialist who will submit the information on the Child Fatality Information Form to the CPS Program Manager.

Part I of the Child Fatality Information Form provides initial or preliminary information about the child death and shall be completed with as much of the following information as possible.

65.3.1.1 Logistical information

- Name of LDSS.
- Name of investigating worker.
- Name of CPS supervisor.
- Date of complaint.
- Referral number.
- Person making the complaint.
- Regional Specialist.

65.3.1.2 Demographic information

- Name of deceased child.
- Deceased child's date of birth.
- Date of child's death.
- Sex of child.
- Race of child.
- Type of alleged abuse/neglect.
- Name of alleged abuser/neglector.
- Relationship of alleged abuser/neglector to child.

65.3.1.3 Reporting requirements

- Date reported to CPS Regional Specialist.
- Date reported to Commonwealth's Attorney.
- Date reported to law enforcement.
- Date reported to Regional Medical Examiner.

- Date reported to CPS Program Manager.

65.3.1.4 Circumstances surrounding the child's death

- Detailed description of the child's death (when, where, why, how, who, and any related problems, including type of abuse/neglect).
- Information concerning the family's prior involvement with the LDSS (include a summary of prior reports and referral numbers).
- Information concerning the alleged perpetrator of the child's death (relationship to victim or other family members).
- Identification (including names and ages) of any siblings of the deceased child – (requires conducting a safety assessment of any siblings of the deceased child and development of a Safety Plan, if safety decision is Conditionally Safe or Unsafe).

65.3.1.5 LDSS's plan of action

- Description of the LDSS's investigation plan.
- Description of the Regional Specialist's planned involvement and assistance.
- Date disposition is due.
- Any additional concerns or comments.

65.4 CPS Regional Specialist to monitor investigation and provide technical assistance to LDSS

The CPS Regional Specialist shall provide technical assistance to the LDSS throughout the investigation. The LDSS shall consult with the CPS Regional Specialist prior to making the disposition and developing the service plan.

The LDSS is encouraged to utilize interdisciplinary teams to staff fatality cases to enhance the process for shared decision making.

The CPS Regional Specialist shall provide regular status reports to the CPS program manager on all investigations involving a child death.

65.4.1 Final child death report and review

Within ten (10) working days of the disposition or as soon as possible thereafter, the CPS Regional Specialist shall complete the Child Fatality Information Form in conjunction with the LDSS and submit Part I and Part II of the Child Fatality Information Form concerning the child death to the CPS Program Manager. The review may be conducted by a local or regional child fatality review team and must address all elements of the Child Fatality Information Form. A copy of the form is in Appendix A.

65.4.1.1 Child Fatality Information Form

Part I: Complete or update preliminary information submitted at the beginning of the investigation

Part II: Complete the following information at the conclusion of the investigation.

- Disposition of the investigation.
- Risk assessment for other children in the home.
- Summary of criminal charges (if any).
- Child characteristics (include any physical or mental disabilities).
- History of the family and caretaker (include marital status, physical or mental disabilities, drug/substance abuse, or domestic violence involvement).
- Economic or environmental factors (indicate if the family is receiving public assistance, serving in the military, and if relevant, risk factors present in the home or neighborhood).
- Service Plan, including assessment of interventions with the family.
- Assessment of local and/or systemic issues that may have impacted the child's death.
- Recommendations to improve community response, enhance services, and prevent child deaths.

65.5 Local, regional, and state child fatality reviews

The Code of Virginia authorizes reviews of child deaths at the local, regional, and/or state level. Localities are encouraged to utilize local or regional teams to examine the circumstances of a death and answer questions about why the death occurred and whether it might have been prevented.

65.5.1 Local and regional child death review teams

(§ 32.1-283.2 of the Code of Virginia). Local and regional child fatality review teams established; membership; authority; confidentiality; immunity.

A. Upon the initiative of any local or regional law-enforcement agency, fire department, department of social services, emergency medical services agency, Commonwealth's attorney's office, or community services board, local or regional child fatality teams may be established for the purpose of conducting contemporaneous reviews of local child deaths in order to develop interventions and strategies for prevention specific to the locality or region. Each team shall establish rules and procedures to govern the review process. Agencies may share information but shall be bound by confidentiality and execute a sworn statement to honor the confidentiality of the information they share. Violations shall be punishable as a Class 3 misdemeanor. The State Child Fatality Review Team shall provide technical assistance and direction as provided for in subsection A of § 32.1-283.1.

B. Local and regional teams may be composed of the following persons from the localities represented on a particular board or their designees: a local or regional medical examiner, a local social services official in charge of child protective services, a director of the relevant local or district health department, a chief law-enforcement officer, a local fire marshal, the attorney for the Commonwealth, an executive director of the local community services board or other local mental health agency, and such additional persons, not to exceed five, as may be appointed to serve by the chairperson of the local or regional team. The chairperson shall be elected from among the designated membership. The additional members appointed by the chairperson may include, but are not restricted to, representatives of local human services agencies; local public education agencies; local pediatricians, psychiatrists and psychologists; and local child advocacy organizations.

C. Each team shall establish local rules and procedures to govern the review process prior to conducting the first child fatality review. The review of a death shall be delayed until any criminal investigations connected with the death are completed or the Commonwealth consents to the commencement of such review prior to the completion of the criminal investigation.

D. All information and records obtained or created regarding the review of a fatality shall be confidential and shall be excluded from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to subdivision 9 of § 2.2-3705.5. All such information and records shall be used by the team only in the exercise of its proper purpose and function and shall not be disclosed. Such information or records shall not be subject to subpoena, subpoena duces tecum, or discovery or be admissible in any criminal or civil proceeding. If available from other sources, however, such information and records shall not be immune from subpoena, subpoena duces tecum, discovery or introduction into evidence when obtained through such other sources solely because the information and records were presented to the team during a fatality review. No person who participated in the reviews nor any member of the team shall be required to make any statement as to what transpired during the review or what information was collected during the review. Upon the conclusion of the fatality review, all information and records concerning the victim and the family shall be returned to the originating agency or destroyed. However, the findings of the team may be disclosed or published in statistical or other form which shall not identify individuals. The portions of meetings in which individual cases are discussed by the team shall be closed pursuant to subdivision A 21 of § 2.2-3711. All team members, persons attending closed team meetings, and persons presenting information and records on specific fatalities to the team during closed meetings shall execute a sworn statement to honor the confidentiality of the information, records, discussions, and opinions disclosed during any closed meeting to review a specific death. Violations of this subsection shall be punishable as a Class 3 misdemeanor.

E. Members of teams, as well as their agents and employees, shall be immune from civil liability for any act or omission made in connection with participation in a child fatality review team review, unless such act or omission was the result of gross negligence or willful misconduct. Any organization, institution, or person furnishing information, data, testimony, reports or records to review teams as part of such review, shall be immune from civil liability for any act or omission in furnishing such information, unless such act or omission was the result of gross negligence or willful misconduct.

65.5.2 State Child Fatality Review Team

The Code of Virginia established a statewide team to analyze child deaths in a systematic way. This includes child deaths due to abuse or neglect as well as child deaths due to other causes.

(§ 32.1-283.1 of the Code of Virginia). State Child Fatality Review Team established; membership; access to and maintenance of records; confidentiality; etc.

A. There is hereby created the State Child Fatality Review Team, hereinafter referred to as the "Team," which shall develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way. The Team shall review (i) violent

and unnatural child deaths, (ii) sudden child deaths occurring within the first 18 months of life, and (iii) those fatalities for which the cause or manner of death was not determined with reasonable medical certainty. No child death review shall be initiated by the Team until conclusion of any law-enforcement investigation or criminal prosecution. The Team shall (i) develop and revise as necessary operating procedures for the review of child deaths, including identification of cases to be reviewed and procedures for coordination among the agencies and professionals involved, (ii) improve the identification, data collection, and record keeping of the causes of child death, (iii) recommend components for prevention and education programs, (iv) recommend training to improve the investigation of child deaths, and (v) provide technical assistance, upon request, to any local child fatality teams that may be established. The operating procedures for the review of child deaths shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision 17 of subsection B of § 2.2-4002.

65.6 Release of child death information

There are specific requirements related to the release of information in child deaths. The general discussion of laws and regulations regarding confidentiality and disclosure of information are discussed in Section 9: Confidentiality of this manual. The Virginia Administrative Code requires the VDSS to develop guidelines allowing for public disclosure in instances of a child death.

(22 VAC 40-705-160 A8). 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.

65.6.1 Guidelines for release of information in a child death

The Virginia Administrative Code establishes the information that can be released in child abuse or neglect cases with a child death.

(22 VAC 40-910-100 B). Releasing confidential social services information.

3. b. Child Protective Services Client Records and Information Disclosure:

(1) Child protective services client records can be released to persons having a legitimate interest pursuant to § 63.2-105 A of the Code of Virginia.

(2) The public has a legitimate interest to limited information about child abuse or neglect cases that resulted in a child fatality or near fatality. Pursuant to the Child Abuse and Prevention Treatment Act (CAPTA), as amended (P.L. 108-36(42 USC §5106a)) states must have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that has resulted in a child fatality or near fatality.

> Accordingly, agencies must release the following information to the public, providing that nothing disclosed would be likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person; or that may compromise the integrity of a Child Protective Services investigation, or a civil or criminal investigation, or judicial proceeding:
>
> (a) The fact that a report has been made concerning the alleged victim child or other children living in the same household;
>
> (b) Whether an investigation has been initiated;
>
> (c) The result of the completed investigation;
>
> (d) Whether previous reports have been made concerning the alleged victim child or other children living in the same household and the dates thereof, a summary of those previous reports, and the dates and outcome of any investigations or actions taken by the agency in response to those previous reports of child abuse or neglect;
>
> (e) The agency's activities in handling the case.

65.7 Retention of CPS report involving a child death

The Code of Virginia § 32.1-283.1 D requires the records of all reports involving a child death to be retained until the State Child Fatality Review Team has had an opportunity to review them. The reports to be retained include screened out reports and founded and unfounded investigations. The LDSS may contact the CPS Regional Specialist if there is any question about retention of a specific record.

65.8 Appendix A: Child Fatality Information Form

Part I

Part I of the Child Fatality Information Form provides initial or preliminary information and shall be completed with as much of the following information as possible:

Referral #: Date of Complaint:

LDSS:	
Investigating Worker:	Phone:
CPS Supervisor:	Phone:
Person Making Complaint:	

Section A: Referral Information

Name of Deceased Child:			
Deceased Child's Date of Birth:		Date of Child's Death:	
Sex of Child: ☐ Male ☐ Female		Race: ☐ White ☐ Black ☐ Asian ☐ Multi-Racial ☐ Unknown	
Type of Alleged Abuse or Neglect: ☐ Physical Neglect ☐ Medical Neglect ☐ Physical Abuse ☐ Sexual Abuse ☐ Mental Abuse/Neglect			
Name of Alleged Abuser/Neglector:			
Relationship of Alleged Abuser / Neglector to Child:	☐ Mother ☐ Father ☐ Parents ☐ Grandmother	☐ Grandfather ☐ Grandparents ☐ Uncle ☐ Aunt ☐ Child Care Worker (reg)	☐ Siblings ☐ Stepparent ☐ Father's Paramour ☐ Mother's Paramour ☐ Child Care Worker (unreg)
Other:			
Relationship of 2nd Abuser to Child (if applicable):			

Section B: Reporting Requirements

CPS Regional Specialist:	Date Reported:
CPS Program Manager:	Date Reported:
Law Enforcement:	Date Reported:
Commonwealth's Attorney:	Date Reported:
Regional Medical Examiner:	Date Reported:

Section C: Circumstances Surrounding the Child's Death

Detailed Description of the Child's Death (When, where, why, how, who, and any related problems. (Please attach another page if necessary.)

Family's Prior Involvement with the LDSS:

Program
CPS Case/Referral: Summary of Involvement:
Benefits Case/Referral: Summary of Involvement:
FC/Adoption Case/Referral: Summary of Involvement:
Other:

Siblings of the Deceased Child – (Requires conducting a safety assessment of any siblings of the deceased child and development of a safety plan, if safety decision is conditionally safe or unsafe):

Sibling Name	DOB	Race	Sex	Initial Safety Decision, please choose from: "safe", "conditionally safe", or "unsafe"

Safety Plan Summary:

LDSS Action Plan (describe Investigation Plan; Regional Specialist's planned involvement and assistance; and any additional comments and concerns. (Please attach another page if necessary.)

Disposition Due Date:

Part II

Part II is completed at the conclusion of the investigation and updates Part I information if needed.

1. Disposition of the Investigation:

Finding:
Victim:
Abuser:
Abuse/Neglect Category:
Abuse/Neglect Type:

2. Risk Assessment for Other Children in the Home:

3. Summary of Criminal Charges (if any):

4. History/Characteristics of the child, family, and caretaker: (if checked, provide explanation)

☐ Substance or Drug Abuse ☐ Military Involvement

☐ Mental Health Issues ☐ Domestic Violence

☐ Mental Retardation Issues ☐ Other _____

5. Economic or Environmental Factors: If checked, provide explanation

☐ TANF ☐ Food Stamps ☐ Medicaid ☐ SSI

☐ Social Security ☐ Other_____

6. Service Plan Summary

7. Assessment of Interventions with the Family:

8. Assessment of Local and/or Systemic Issues that may have Impacted the Child's Death:

9. Recommendations to Improve Community Response, Enhance Services, and Prevent Child Deaths: