



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: KARIN CLARK
Virginia Department of Social Services

FROM: Susan P. D. Whyte *SPDW*
Assistant Attorney General

DATE: July 9, 2020

SUBJECT: Final Stage Review of 22 VAC 40-705
Amend CPS Regulation to Implement 2017 and 2018 Legislation

The attached regulation amends the CPS regulation provisions and adds new requirements to comply with applicable law, including Chapters 176 and 428 of the 2017 Acts of Assembly (HB 1786 and SB 1086), Chapters 88 and 142 of the 2017 Acts of Assembly (HB 2279 and SB 1164), Chapter 604 of the 2017 Acts of Assembly (SB 868), and Chapter 5 and 209 of the 2018 Acts of Assembly (HB 389 and SB 183). I have reviewed this regulation to determine whether the State Board of Social Services ("State Board") has the statutory authority to promulgate the specified regulation and whether the specified regulation comports with applicable state law.

Pursuant to Virginia Code § 63.2-217, the State Board is required to promulgate regulations as may be necessary or desirable to carry out the purposes of Title 63.2 of the Virginia Code.

It is my view that this regulation is not exempt from, but subject to, the procedures of Article 2 of the APA.

It is my opinion that the State Board of Social Services has the authority to promulgate this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act, §§ 2.2-4006 *et seq.* of the Code of Virginia ("APA") and has not exceeded that authority.

I do not believe that any of the changes from the proposed regulation to the final regulation would constitute a change with "substantial impact", and, therefore, do not require additional public comment.

If you have any questions, please feel free to call me at (804) 786-3450.

DEPARTMENT OF SOCIAL SERVICES

Amend CPS Regulation to Implement 2017 and 2018 Legislation

22VAC40-705-10. Definitions.

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

"Abuser or neglector" means any person who is found to have committed the abuse or neglect of a child pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 of the Code of Virginia.

"Administrative appeal rights" means the child protective services appeals procedures for a local level informal conference and a state level hearing pursuant to § 63.2-1526 of the Code of Virginia, under which an individual who is found to have committed abuse or neglect may request that the local department's determination or records be amended.

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

"Appellant" means (i) anyone who has been found to be an abuser or neglector and appeals the founded disposition to the director of the local department of social services; or to an administrative hearing officer; or to circuit court and (ii) anyone who has been found to be an abuser or neglector and seeks judicial review of a decision by an administrative hearing officer.

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

"Caretaker" means any individual having the responsibility of providing care and supervision of a child and includes the following: (i) a parent or other person legally responsible for the child's care; (ii) an individual who by law, social custom, expressed or implied acquiescence, collective consensus, agreement, or any other legally recognizable basis has an obligation to look after a child left in his care; and (iii) persons responsible by virtue of their positions of conferred authority.

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

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

~~"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state approved public or private substance abuse program or facility.~~

"Child abuse and neglect information system" means the statewide computer system that collects and maintains information gathered by local departments regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the Central Registry of founded complaints not on administrative appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system required by federal law.

"Child protective services" means the identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children ~~under~~ younger than 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his the child's 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~~ an individual 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 or neglect.

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

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

"Complaint" means any information or allegation ~~of child abuse or neglect~~ that a child is an abused or neglected child as defined in § 63.2-100 of the Code of Virginia made orally or in writing ~~pursuant to § 63.2-100 of the Code of Virginia.~~

"Consultation" means the process by which the alleged abuser or neglecter may request an informal meeting to discuss the investigative findings with the local department prior to the local department rendering a founded disposition of abuse or neglect against that person pursuant to § 63.2-1526 A of the Code of Virginia.

"Controlled substance" means a drug, substance, or marijuana as defined in § 18.2-247 of the Code of Virginia including those terms as they are used or defined in the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia. The term does not include alcoholic beverages or tobacco as those terms are defined or used in Title 3.2 or Title 4.1 of the Code of Virginia.

"Department" means the Virginia Department of Social Services.

"Differential response system" means ~~that local departments of social services may~~ the system by which local departments may respond to valid reports or complaints of child abuse or neglect by conducting either a family assessment or an investigation.

"Disposition" means the determination of whether or not child abuse or neglect has occurred and [which] identifies the individual responsible for the abuse or neglect of the child.

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

"Family Advocacy Program representative" means the professional individual 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 22VAC40-705-50 and 22VAC40-705-140.

"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 of the child.

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

"Founded" means that a review of the facts gathered as a result of an investigation shows by a preponderance of the evidence that child abuse 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.

"Human trafficking 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 the child's family that will deter abuse and neglect; and
3. Risk of future harm to the child.

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

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

"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 the child's condition and the alternative treatment being considered as well as the basis of efficacy for each, or lack thereof.

"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.

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

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-105 of the Code of Virginia.

~~"Licensed substance abuse treatment practitioner" means a person who (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of~~

~~individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.~~

"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.

"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 or neglect complaints or reports pursuant to § 63.2-1503 of the Code of Virginia.

"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse 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 or neglect was discovered.

"Mandated reporters" means those persons who are required to report suspicions of child abuse or neglect pursuant to § 63.2-1509 of the Code of Virginia.

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

"Multidisciplinary teams" means any organized group of individuals representing, but not limited to, medical, mental health, social work, education, legal, and law enforcement, which will assist local departments in the protection and prevention of child abuse and neglect established pursuant to § 63.2-1503 K of the Code of Virginia. Citizen representatives may also be included.

"Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. Serious or critical condition is a life-threatening condition or injury.

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

"Particular medical treatment" means a process or procedure that is recommended by conventional medical providers and accepted by the conventional medical community.

"Plan of safe care" means a guide developed by service providers with their clients to ensure mothers and other caretakers of a substance-exposed infant have the necessary resources to safely care for the infant. The plan should address the needs of the child, mother, and other caretakers, as appropriate.

"Preponderance of evidence" means just enough evidence to make it more likely than not that the asserted facts are true. It "Preponderance of evidence" is evidence which that is of greater weight or more convincing than the evidence offered in opposition.

"Purge" means to delete or destroy any reference data and materials specific to subject identification contained in records maintained by the department and the local department pursuant to §§ 63.2-1513 and 63.2-1514 of the Code of Virginia.

"Reasonable diligence" means the exercise of justifiable ~~and appropriate~~ persistent effort that is justifiable and appropriate under the circumstances.

"Report" means either (i) a complaint as defined in this section or (ii) an official document on which information is given concerning abuse or neglect. ~~Pursuant to § 63.2-1509 of the Code of Virginia, a report is required to be made by persons designated herein and by local departments in those situations in which a response to a complaint from the general public reveals suspected child abuse or neglect pursuant to the definition of abused or neglected child in § 63.2-100 of the Code of Virginia.~~

"Response time" means ~~a reasonable~~ the time for the local department to initiate an investigation or family assessment after receiving a valid report of suspected child abuse or

neglect based upon the facts and circumstances presented at the time the complaint or report is received.

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

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

"Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act as defined in § 18.2-357.1 of the Code of Virginia.

"State automated system" means the "child abuse and neglect information system" as previously defined.

"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.

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

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

"Valid report or complaint" means ~~the local department of social services has evaluated the information and allegations of the report or complaint and determined that~~ a report or complaint of suspected child abuse or neglect for which the local department shall must conduct an investigation or family assessment because the following elements are present:

1. The alleged victim child is younger than 18 years of age at the time of the complaint 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 or neglect.

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

~~22VAC40-705-20. General policy regarding complaints or reports of child abuse and neglect. (Repealed.)~~

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

- ~~1. Identifying abused and neglected children;~~
- ~~2. Assuring protective services to such identified children;~~
- ~~3. Preventing further abuse and neglect;~~
- ~~4. Preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate care.~~

22VAC40-705-40. Complaints and reports of suspected child abuse or neglect.

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 or official capacity unless the person has actual knowledge that the same matter has already been reported to the local department or the department's toll-free child abuse and neglect hotline.
2. Pursuant to § 63.2-1509 of the Code of Virginia, if information is received by a teacher, staff member, resident, intern, or nurse in the course of his professional services in a hospital, school, or other similar institution, such person may make reports of suspected abuse or neglect immediately to the person in charge of the institution or department, or his designee, who shall then 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, such person shall (i) 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; (ii) provide the name of the individual receiving the report; and (iii) 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.
3. Mandated reporters shall disclose all information that 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 that document the basis for the complaint or report.
4. Pursuant to § 63.2-1509 D of the Code of Virginia, a mandated reporter's failure to report as soon as possible, but no longer than 24 hours after having reason to suspect a reportable offense of child abuse or neglect, shall result in a fine.
5. In cases evidencing acts of rape, sodomy, or object sexual penetration as defined in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, a person

who knowingly and intentionally fails to make the report required pursuant to § 63.2-1509 of the Code of Virginia shall be guilty of a Class 1 misdemeanor.

6. Pursuant to § 63.2-1509 B of the Code of Virginia, certain medical facts indicating that a newborn may have been exposed to a controlled substance prior to birth constitute a reason to suspect that a child is abused or neglected and must be reported. Such facts shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the ~~results of toxicology studies of the child indicate the presence of a controlled substance that was not prescribed for the mother by a physician~~ child was born affected by substance abuse or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) ~~a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance that was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms~~; (iii) a diagnosis made by a health care provider at any time within four years following a child's birth that the child has an illness, disease, or condition that, to a reasonable degree of medical certainty, is attributable to ~~in utero exposure to~~ maternal abuse of a controlled substance ~~that was not prescribed by a physician for the mother or the child during pregnancy~~; or (iv) (iii) a diagnosis made by a health care provider at any time within four years following a child's birth that the child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection such fact shall be included in the report along with the facts relied upon by the person making the report. Such reports shall not constitute a per se finding of child abuse or neglect. If a health care provider in a licensed hospital makes any medical finding or diagnosis set forth in clause (i), (ii), or (iii) of this [subdivision subsection], the hospital shall [~~be responsible for~~ require] the development of a written

discharge plan [under protocols established by the hospital] pursuant to § 32.1-127 B [6] of the Code of Virginia.

a. ~~Pursuant to § 63.2-1509 B of the Code of Virginia, whenever a health care provider makes a finding or diagnosis, then the health care provider or his designee must make a report to child protective services immediately~~ For purposes of this regulation, "affected by substance abuse" is a determination by a health care professional and may be determined by clinical indicators that include maternal and infant presentation at birth; substance use and medical histories; and include toxicology study results of the infant that are positive for illegal substances or indicate abuse of controlled substances.

b. ~~When a valid 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 child's circumstances and any threat to the child's health and safety. Pursuant to 22VAC40-705-110 A, the local department must conduct an initial safety assessment.~~

c. ~~When a valid 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~~ 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 child in accordance with § 16.1-241.3 of the Code of Virginia.

d. ~~Following the receipt of a report made pursuant to § 63.2-1509 B of the Code of Virginia, the local department may determine that no further action is required pursuant to § 63.2-1505 B of the Code of Virginia if the mother of the infant sought or received substance abuse counseling or treatment.~~

~~(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 that she sought or received substance abuse counseling or treatment during the pregnancy, then the local department shall conduct an investigation or family assessment.~~

~~(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 good faith effort to receive substance abuse treatment before the child's birth. If the mother made a good faith 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 may determine no further action is required.~~

~~(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 shall conduct an investigation or family assessment.~~

~~e. For purposes of this chapter, substance abuse counseling or treatment includes, education about the impact of alcohol, controlled substances and other drugs on the fetus and on the maternal relationship; education about relapse prevention to recognize personal and environmental cues that may trigger a return to the use of alcohol or other drugs.~~

~~f. The substance abuse counseling or treatment should attempt to serve the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant and achieving and maintaining a sober, and drug free lifestyle.~~

~~g. The substance abuse counseling or treatment services must be provided by a professional. Professional substance abuse treatment or counseling may be provided by a certified substance abuse counselor or a licensed substance abuse treatment practitioner.~~

d. Pursuant to § 63.2-1506 C of the Code of Virginia, when a valid report or complaint is based on one of the factors in § 63.2-1509 B, the local department shall conduct a family assessment, unless an investigation is required or necessary to protect the safety of the child.

(1) Pursuant to § 63.2-1506 of the Code of Virginia, the local department shall determine whether the mother of an infant who was exposed to a controlled substance sought substance abuse counseling or treatment prior to the child's birth. For purposes of this chapter, substance abuse counseling or treatment includes education about the impact of alcohol and drugs, legal or illegal, on the infant and on the maternal-child relationship, and education about relapse prevention.

(2) The substance use counseling or treatment should attempt to serve the purposes of treating the substance use disorder, strengthening the maternal relationship with the infant and siblings, and achieving and maintaining a sober, drug-free lifestyle.

e. Pursuant to § 63.2-1506 of the Code of Virginia, the local department shall develop a plan of safe care.

~~h. f. Facts solely indicating that the infant may have been exposed to controlled substances prior to birth are not sufficient to render a founded disposition of abuse or neglect in an investigation.~~

~~i. The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment.~~

B. Persons who may report child abuse or neglect include any individual who suspects that a child is being abused or neglected pursuant to § 63.2-1510 of the Code of Virginia.

C. Complaints and reports of child abuse or neglect may be made anonymously.

D. Any person making a complaint or report of child abuse or neglect 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.

E. When the identity of the reporter is known to the department or local department, these agencies shall not disclose the reporter's identity unless court ordered or required under § 63.2-1503 D of the Code of Virginia. Upon request, the local department shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously.

F. If a person suspects that he is the subject of a report or complaint of child abuse or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to § 63.2-1514 of the Code of Virginia.

G. Any person age 14 years or older who makes or causes to be made a knowingly false complaint or report of child abuse or neglect and is convicted shall be guilty of a Class 1 misdemeanor for a first offense pursuant to § 63.2-1513 of the Code of Virginia.

1. A subsequent conviction results in a Class 6 felony.

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

3. The subject of the records may have the records purged upon presentation of a certified copy of such conviction.

4. The subject of the records shall be notified in writing that the records have been purged.

H. To make a complaint or report of child abuse 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.

I. A local department of jurisdiction must determine the validity of a complaint of child abuse or neglect and, if valid, conduct an investigation or family assessment.

1. The If the local department of jurisdiction that first receives a complaint or report of child abuse or neglect has jurisdiction, that local department becomes a local department of jurisdiction and shall assume responsibility to determine validity and, if the complaint or report is valid, to ensure that a family assessment or an investigation is conducted.

2. If the local department that first receives a complaint or report of child abuse or neglect does not have jurisdiction, that local department must immediately do the following:

a. Document and transfer the complaint or report in the child abuse and neglect information system;

b. Contact the local department of jurisdiction to advise of the transfer; and

c. Advise the person making the complaint of the name and telephone number for the local department of jurisdiction.

3. A local department of jurisdiction may ask another local department that is a local department of jurisdiction to assist in conducting the family assessment or investigation.

If assistance is requested, the local department shall comply.

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

4- 5. If a local department employee is suspected of abusing or neglecting a child, the complaint or report of child abuse or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse 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, or, if the judge believes that no local department in a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his the judge's court for evaluation pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia. The judge may consult with the department in selecting a local department to respond.

5- 6. In cases where an employee at a private or state-operated hospital, institution, or other facility or an employee of a school board is suspected of abusing or neglecting a child in such hospital, institution, or other facility or public school, the local department of jurisdiction shall request the department and the relevant private or state-operated hospital, institution, or other facility or school board to assist in conducting a joint investigation in accordance with regulations adopted in 22VAC40-730, in consultation with the Departments of Education, Health, Medical Assistance Services, Behavioral Health and Developmental Services, Juvenile Justice, and Corrections.

22VAC40-705-50. Actions to be taken upon receipt of a complaint or report.

A. All complaints and reports of suspected child abuse or neglect shall be recorded in the child abuse and neglect information system and either screened out or determined to be valid upon receipt by the local department of jurisdiction and if valid, acted on within the determined response time. A record of all ~~[invalid]~~ reports and complaints made to a local department or to the department ~~[that were not valid]~~, ~~regardless of whether the report or complaint was found to~~

~~be a valid complaint of abuse or neglect~~, shall be purged one year after the date of the report or complaint unless a subsequent report or complaint is made.

B. Pursuant to § 63.2-1506.1 A of the Code of Virginia, the local department shall conduct a human trafficking assessment when a report or complaint alleges that a child is a victim of sex trafficking or severe forms of trafficking, which is defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) as a commercial sex act that is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, unless at any time during the human trafficking assessment the local department determines that an investigation or family assessment is required pursuant to § 63.2-1505 or 63.2-1506 of the Code of Virginia.

C. ~~In~~ For all valid complaints or reports of child abuse 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 is younger than 18 years of age at the time of the complaint or report;~~

~~2. The alleged abuser is the alleged victim child's parent or other caretaker;~~ Pursuant to § 63.2-1508 of the Code of Virginia, a valid report or complaint regarding a child who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in § 63.2-100 of the Code of Virginia; the federal Trafficking Victims Protection Act of 2000 (22 USC § 7102 et seq.); and the federal Justice for Victims of Trafficking Act of 2015 (42 USC § 5101 et seq.) may be established if the alleged abuser is the alleged victim

child's parent, other caretaker, or any other person suspected to have caused such abuse or neglect.

~~3. The local department receiving the complaint or report has jurisdiction; and~~

~~4. The circumstances described allege suspected child abuse or neglect as defined in § 63.2-100 of the Code of Virginia.~~

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

E. 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.

F. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall develop, where practical, a 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.

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

1. When abuse 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 and the local law-enforcement agency pursuant to § 63.2-1503 E of the Code of Virginia.

2. When abuse 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.

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.

4. The department shall immediately, upon receipt of information, report on all child fatalities to the state board in a manner consistent with department policy and procedures approved by the board. At a minimum, the report shall contain information regarding any prior statewide child protective services involvement of the family, alleged perpetrator abuser or neglector, or victim.

H. 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.

I. The local department shall respond within the determined response time. 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, those cases shall be investigated that involve (i) sexual abuse, (ii) a child fatality, (iii) abuse or neglect resulting in a serious injury as defined in § 18.2-371.1 of the Code of Virginia, (iv) a child having 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. Pursuant to § 63.2-1506 B 1 of the Code of Virginia, when a valid report or complaint regarding a substance-exposed infant is received, the local department shall

conduct a family assessment, unless an investigation is required in accordance with § 63.2-1506 C of the Code of Virginia.

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

- a. The immediate safety needs of the child;
- b. Whether or not abuse or neglect has occurred;
- c. Who abused or neglected the child;
- d. To what extent the child is at risk of future harm;
- e. What types of services can meet the needs of this child or family; and
- f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.

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

- a. The immediate safety needs of the child;
- b. The extent to which the child is at risk of future harm;
- c. The types of services that can meet the needs of ~~this~~ the child or family; and
- d. If services are indicated and the family appears to be unable or unwilling to participate in services, the plans that will be developed in consultation with the family to provide for the child's safety. These arrangements may be made in consultation with the caretaker of the child.

3. The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse or neglect has been received and determined valid and persons who are the subject of a valid report if the whereabouts of

such persons are unknown to the local department pursuant to § 63.2-1503 F of the Code of Virginia.

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

5. In the event the alleged victim child cannot be found after the local department has exercised reasonable diligence, the time the child cannot be found shall not be computed as part of the timeframe to complete the investigation, pursuant to ~~subdivision B-5 of~~ § 63.2-1505 B 5 of the Code of Virginia.

6. Pursuant to § 63.2-1503 N of the Code of Virginia, the local department shall ~~notify the Family Advocacy Program representative of the United States Armed Forces of any report involving a dependent child of an~~ [transmit information regarding reports, complaints, family assessments and investigations involving children of active duty [member] members of the United States Armed Forces or members of [his] their household to family advocacy representatives of the United States Armed Forces.

22VAC40-705-80. Family assessment and investigation contacts.

A. During the course of the family assessment, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observe the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.

3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.
4. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians or any caretaker named in the report.
5. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

B. During the course of the investigation, the child protective services worker shall document in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the child protective services worker shall document in writing why the specific contact or observation was not made.

1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child within the determined response time. When a victim child is younger than two years of age, this contact shall be within 24 hours of receiving the report. All interviews with alleged victim children must be electronically recorded except when the child protective services worker determines that:

- a. The child's safety may be endangered by electronically recording his statement;
- b. The age or developmental capacity of the child makes electronic recording impractical;
- c. The child refuses to participate in the interview if electronic recording occurs;
- d. In the context of a team investigation with law-enforcement personnel, the team or team leader determines that electronic recording is not appropriate; or

e. The victim provided new information as part of a family assessment and it would be detrimental to reinterview the victim and the child protective services worker provides a detailed narrative of the interview in the investigation record.

In the case of an interview conducted with a nonverbal child where none of the exceptions in this subdivision apply, it is appropriate to electronically record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for a decision not to electronically record an interview with the alleged victim child.

A child protective services finding may be based on the written narrative of the child protective services worker in cases where an electronic recording is unavailable due to equipment failure or the exceptions in this subdivision 1.

2. The child protective services worker shall conduct a face-to-face interview with and observe all minor siblings residing in the home.

3. The child protective services worker shall conduct a face-to-face interview with and observe all other children residing in the home with parental permission.

4. The child protective services worker shall conduct a face-to-face interview with the alleged abuser or neglecter.

a. The child protective services worker shall inform the alleged abuser or neglecter of his right to electronically record any communication pursuant to § 63.2-1516 of the Code of Virginia.

b. If requested by the alleged abuser or neglecter, the local department shall provide the necessary equipment in order to electronically record the interview and retain a copy of the electronic recording.

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

6. The child protective services worker shall observe the environment where the alleged victim child lives. This requirement may be waived in complaints or reports of child abuse and neglect that took place in state licensed and religiously exempted child day centers, regulated and unregulated family day homes, private and public schools, group residential facilities, hospitals, or institutions where the alleged abuser or neglector is an employee or volunteer at such facility.

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

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

C. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments may obtain and consider statewide criminal history record information from the Central Criminal Records Exchange and shall obtain and consider results of a search of the Central Registry on any individual who is the subject of a child abuse and neglect investigation or family assessment where there is evidence of child abuse or neglect and the local department is evaluating the safety of the home and whether removal is necessary to ensure the child's safety. The local department may also obtain a criminal record check and a Central Registry check on all adult household members residing in the home of the alleged abuser or neglector and where the child visits. Pursuant to § 19.2-389 of the Code of Virginia, local departments are authorized to receive criminal history information on the person who is the subject of the investigation as well as other adult members of the household for the purposes in § 63.2-1505 of the Code of Virginia. The results of the criminal record history search may be admitted into evidence if a child abuse or neglect petition is filed in connection with the child's removal. Local departments

are prohibited from dissemination of this information except as authorized by the Code of Virginia.

D. Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, local departments must determine whether the subject of an investigation or family assessment has resided in another state within the last five years, and, if he has resided in another state, shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state.

22VAC40-705-140. Notification of findings.

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

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

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

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

b. The local worker shall notify the individual against whom allegations of abuse or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

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

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

3. When the abuser or neglecter in a founded disposition is a full-time, part-time, permanent, or temporary employee of a school division, the local department shall notify the relevant school board of the founded complaint pursuant to § 63.2-1505 B 7 of the Code of Virginia.

4. The local department shall immediately notify the Superintendent of Public Instruction when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the local department knows the person holds a license issued by the Board of Education ~~and after all rights to any appeal provided by § 63.2-1526 of the Code of Virginia have been exhausted.~~ The local department shall immediately notify the Superintendent of Public Instruction if the founded complaint of child abuse or neglect is dismissed on administrative appeal.

5. No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment. The child protective services worker shall notify the individual against whom allegations of abuse or neglect were made of the

procedures set forth in § 63.2-1514 of the Code of Virginia regarding reports or complaints alleged to be made in bad faith or with malicious intent.

C. Subject child's parents or guardian.

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

2. When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser 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.

3. When the founded disposition of abuse or neglect does not name the parents or guardians of the child as the abuser or neglector and when the abuse or neglect occurred in a licensed or unlicensed child day center, a licensed, registered, or approved family day home, a private or public school, or a children's residential facility, the parent or guardian must be consulted and must give permission for the child's name to be entered into the Central Registry pursuant to § 63.2-1515 of the Code of Virginia.

D. Complainant.

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

2. When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

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

E. Family Advocacy Program of the United States Armed Forces.

1. Pursuant to § 63.2-1503 N of the Code of Virginia, ~~in~~[the local department shall transmit information regarding] all reports, complaints, [family assessments, and] investigations ~~with a founded disposition or and [family assessment assessments] that involve~~ involving a dependent child children of an active duty members of the United States Armed Forces or members of ~~[his~~[their] household, [including] information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglecter ~~[shall be provided]~~to ~~[the appropriate]~~Family Advocacy Program [representatives of the United States Armed Forces.] This notification shall be made in writing ~~within 30 days after the administrative appeal rights of the abuser or neglecter have been exhausted or forfeited~~ immediately.

2. The military member shall be advised that this information regarding the founded disposition or family assessment involving his dependent child or member of his household is being provided to the Family Advocacy Program representative and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

3. In accordance with § 63.2-105 of the Code of Virginia, when an active duty member of the United States Armed Forces or a member of his household is involved in an

investigation, family assessment, or provision of services case, any information regarding child protective services reports, complaints, investigations, family assessments, and ~~follow-up~~ follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local department determines such release to be in the best interest of the child. 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.

4. When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, any other additional information not prohibited from being released by state or federal law or regulation shall also be provided to the Family Advocacy Program representative when the local department determines such release to be in the best interest of the child.

22VAC40-705-160. Releasing information.

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

1. Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.
2. Report to the regional medical examiner's office pursuant to § 63.2-1503 E of the Code of Virginia.
3. Any individual, including an individual against whom allegations of child abuse or neglect were made, may exercise his rights under the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia) to access

personal information related to himself that is contained in the case record including, with the individual's notarized consent, a search of the Central Registry.

4. 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.

5. Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR Part 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

6. 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.

7. An individual's right to access information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 63.2-1526 C of the Code of Virginia.

8. The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22VAC40-705-140.

9. 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.

10. The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 A of the Code of Virginia.

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

12. In any case properly before a court having jurisdiction, if the court orders the local department to disclose information from a child abuse or neglect case record, the local department must either comply with the order if permitted under federal and state law or appeal the order if such disclosure is contrary to federal and state law.

B. The local department may use discretion in disclosing or releasing child protective services case record information, investigative and ~~on-going~~ ongoing 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 § 63.2-105 of the Code of Virginia.

C. Prior to disclosing information to any individuals or organizations, and to be consistent with § 63.2-105 of the Code of Virginia, the local department must consider the factors described in subdivisions 1, 2, and 3 of this subsection as some of the factors necessary to determine whether a person has a legitimate interest and the disclosure of information is in the best interest of the child:

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.

~~D. In the following instances, the local department shall not release child protective services information:~~

- ~~1. The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered or as required under § 63.2-1503 D of the~~

~~Code of Virginia, in accordance with § 63.2-1526 of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).~~

~~2. In all complaints or reports that are being investigated jointly with law enforcement, no information shall be released by the local department prior to the conclusion of the criminal investigation unless authorized by the law enforcement officer or his supervisor or the attorney for the Commonwealth pursuant to § 63.2-1516.1 B of the Code of Virginia.~~

D. In cases of abuse or neglect in which the person who is the subject of the founded report or complaint has appealed the finding and has submitted a written request for the local department's records in accordance with § 63.2-1526 of the Code of Virginia, the local department shall not disclose or release to such person [any] [the following] information [or record that] (i) [pertains to the identity of persons reporting incidents of child abuse or neglect] [the name of the person reporting incidents of child abuse or neglect]; (ii) [any information that] may endanger the well-being [of the victim] [a] child if such information or records are disclosed or released; (iii) [information that] pertains to the identity of a collateral witness or any other person if such disclosure [or release] may endanger [the collateral witness's or other person's] life or safety; or (iv) information that is otherwise prohibited from being disclosed or released by state or federal law or regulation.

E. In all complaints or reports that are being investigated jointly with law enforcement, the local department shall release child protective services information in accordance with the following:

1. Pursuant to § 63.2-1516.1 B of the Code of Virginia, no information [or records] [in the possession of the local department from such joint investigation] shall be [disclosed or] released by the local department prior to the conclusion of the criminal investigation

unless except as authorized by the [investigating] law-enforcement officer, [or] the law-enforcement officer's supervisor or the [local] attorney for the Commonwealth.

2. Pursuant to § 63.2-1503 D of the Code of Virginia, the local department shall provide the attorney for the Commonwealth and the local law-enforcement agency with the information and records of the local department related to the investigation of the complaint, including records related to any complaints of abuse or neglect involving the victim or the alleged abuser or neglecter, and information or records pertaining to the identity of the person who reported the complaint of abuse or neglect.