



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	Virginia Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-705
<b>Regulation Title:</b>	Child Protective Services
<b>Action Title:</b>	Amendment
<b>Date:</b>	August 14, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The proposed amendments to the CPS regulations were primarily designed to incorporate the emergency regulations for implementation of a CPS differential response system, as enacted by the 2000 General Assembly. However, the entire regulation was open to review and comment. Due to the comments received, three substantive changes have been added since the proposed amendments were published. These changes are related to entry to the home for an investigation, the prepositional consultation, and provision of services. These are described under "Substance."

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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On August 14, 2002 the State Board of Social Services approved the regulations entitled Child Protective Services.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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The statutory authority for promulgating this regulation is found in Title 63.1 Welfare (Social Services) of the Code of Virginia. Chapter 12.1, § 63.1-248 et seq. of the Virginia Code places responsibility for providing protective services for children with the Department of Social Services. Chapter 1, § 63.1-25 places authority with the Board of Social Services to make rules and regulations consistent with the Virginia Code § 63.1-248.1 et seq. These regulation changes are necessitated by legislation enacted by the 2000 General Assembly session. Chapter 500, 2000 Acts of Assembly made changes to Title 63.1 of the Code of Virginia in § 63.1-248.1 et seq. and required that regulations be promulgated to take effect within 280 days of enactment. The emergency regulations are currently in effect but due to expire December 31, 2002.

These permanent regulations are intended to provide guidance to local departments of social services as they continue to implement statewide a child protective services differential response system and administer locally the overall CPS program.

The Office of the Attorney General has reviewed these regulations and has certified that the agency has the statutory authority to promulgate amended permanent regulations and that they comport with applicable state and federal laws.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The major purpose of these amended permanent regulations is to replace the emergency regulations by which the CPS program is currently being administered. Since the implementation of a differential response in Virginia required a thorough review of all the CPS regulations, several items were identified for updating due to changes in legislation. The review was also viewed as an opportunity to strengthen the regulations that were enacted in 1998.

This final regulatory action is needed to support the major change to the CPS program instituted by the General Assembly 2000: a more flexible approach to families experiencing child abuse or neglect allegations.

### Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

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Overall: Changes to language are made wherever needed to incorporate family assessment as a possible response to a valid CPS report.

This regulatory action is intended to promote the safety and well being of children within their families in Virginia. Until the enactment of this legislation all valid reports of child abuse or neglect had to be investigated and a finding made as to abuse or neglect by an alleged abuser. The legislation enacted in 2000 and these regulations allow for a response to valid reports of less serious abuse or neglect that is less adversarial and more likely to engage families in services, if needed, to protect their own children. These regulation changes include those required by the differential response legislation. They add a few other changes that are intended to enhance the implementation of a differential response or to reflect recent *Code* changes.

These permanent regulations are being developed to provide more details regarding determining the most appropriate response to a valid report and providing services to prevent child abuse or neglect. They will replace the emergency regulations and provide other needed changes.

The additional changes being proposed as a result of the comments received would eliminate the requirement to say to the alleged abuser he may refuse entry, eliminate the requirements for the predispositional consultation but reinforce the need to offer a meeting prior to disposition, and clarify that services can only be provided to the extent that resources are available to the local department of social services.

### Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters*

*of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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Since the primary changes to the regulations involve the continuing implementation of a differential response system, the advantages and disadvantages of those changes to the regulations are addressed here. The public is generally expected to benefit from a revised CPS system. A premise of the CPS reform is an increased investment in services and supports for these vulnerable children and families both by state systems and community-based organizations. Primary changes expected with implementation of a differential response system:

- Community Collaboration in family needs assessments and provision of services to CPS families – this can range from involving other community groups and organizations in determining service gaps, to encouraging them to serve on assessment teams, to forging new or stronger memoranda of understanding with key players, such as local health departments or Community Services Boards;
- A Differential Response (DR), rather than only an investigation methodology, for different types of child abuse/neglect reports;
- An emphasis shift from labeling families in need of prevention services to identifying and providing services to promote safe family relationships;
- An intervention shift from disposition focus to building on family strengths and family perception of needs to protect the child;
- Also, a shift to allowing/encouraging worker/family partnerships in most cases (the pilots responded with a family assessment to over two-thirds of their valid reports).

The only expected disadvantage to implementation of a differential response system may be an increased identification of family and individual service needs, as local agencies are better able to partner with families. There was some indication in the pilots of increased need identification, but the statewide impact will take a year or two to determine. In these difficult economic times, meeting any increased needs may prove frustrating for local communities.

One of the changes proposed due to comments is to state the limitations on local agencies to provide services to the extent that resources are available. Those recommending this change thought that the advantage would be a reduction in the liability of local agencies while the state tries to gather data to support or refute the need for additional funding of services.

The advantages of two other changes proposed as a result of comments received include a lessening of confusion for the CPS worker and family, as well as a reduction in paperwork if the predispositional consultation requirements are changed. Some may see elimination of the entry language or changes to the predispositional consultation as a reduction in due process rights, but these rights continue to be protected in other ways.

### Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

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Section 705-90: Eliminates the current language required for entry into the home during an investigation but reinforces that the rights, responsibilities and authorities of CPS be explained to the family during either a family assessment or investigation.

Section 705-150H: Adds a clause to clarify that service provision is subject to availability of funding.

Sections 705-120, 140 & 190: Eliminates some of the confusing timelines of the predispositional consultation currently required to be offered the alleged abuser prior to making a founded disposition.

## Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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Seventy-one (71) individuals or organizations commented concerning the proposed amendments to the CPS regulations. Three predominant issues emerged from the responses. Most of the responses were from local department workers, supervisors and directors. Additionally, two child advocacy organizations responded, as did the Virginia League of Social Services Executives and one county attorney's office.

### **22 VAC 40-705-90 Family assessment and investigative protocol**

Sixty-one (61) recommended that the current language for initial entry into the home for an investigation be changed. Comments called the current requirement unnecessarily adversarial, confusing, problematic or awkward. They recommended that the entry language for both a family assessment and investigation be the same.

Agency Response: The Department supports the recommendation that the entry language be the same for both responses to a valid report. Families will be informed of their rights and responsibilities in regard to cooperating with the investigation or family assessment, and this is expected to be more significant in protecting individual due process rights than the "may refuse entry" requirement.

### **22 VAC 40-705-190 Appeals**

Sixty-three (63) recommended eliminating the predispositional consultation. Comments included describing this step in the investigative process as confusing, time-consuming, and seemingly in conflict with the more clearly delineated appeal process.

Agency response: The Department recommends eliminating some of the confusing language of the predispositional consultation. Best practice dictates offering the alleged abuser every opportunity to provide information before a disposition is made, and the three step appeal process remains in effect for alleged abusers who disagree with the findings. The proposed language allows for a consultation but eliminates some of the timelines.

### **22 VAC 40-705-150 Services**

Thirty-seven (37) comments addressed the issue of no additional funding for localities to implement this major change in the way CPS responds to a valid report of abuse/neglect.

However, the recommendations for addressing the lack of funding differed. The suggestions were either to provide additional resources (12) to meet the additional service needs that are expected to be identified through a family assessment response or to add a clause (25) to the regulation stating that services will be provided to the extent resources are available.

Agency Response: The Department recommends adding the requested clause. During the first several years of implementation of the differential response system, data will be gathered to support or refute the expectation that DRS takes more worker time and generates more service needs. In the meantime, this clause would give recognition to the fact that local departments cannot provide services beyond their capacity.

Three (3) comments recommended taking away the right to appeal a founded disposition if an alleged abuser pleads guilty to criminal charges.

Agency Response: The CPS process is administrative and has always been viewed as separate from the criminal process. Therefore, the Department does not support this change.

Five (5) comments requested that unfounded investigations and all family assessments be retained for 3 years rather than the currently required 1 year.

Agency Response: While the Department understands the concerns about retaining information on patterns of abuse/neglect in order to keep children safe, this is not a change that can be made in the regulation unless or until the *Code*, Section 63.1-248.5:1B, is changed.

Two (2) comments asked that requirements to audiotape investigative interviews be eliminated.

Agency Response: The Department cannot support this recommendation without additional data.

One (1) comment stated that the current regulations are confusing regarding how a local department is to respond to a report of a substance-exposed infant.

Agency Response: Department staff will re-examine the guidance provided in policy and training curricula to clarify actions to be taken upon receipt of this type report.

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

- Overall: Changes to language are made wherever needed to incorporate family assessment as a response to a valid CPS report.

- Section 10: Provides definitions for “differential response” and “family assessment.” (The definition of family assessment can easily be compared to investigation to see what is similar and different about these processes.) Also codifies definition of "valid" that has always been in CPS policy.



- Section 40H4: Reflects a change in *Code* that instructs the juvenile and domestic relations court judge to assign the report on any local department employee to another local department. It deletes the judge's former option to assign the report to the court services unit.
- Section 50A: Adds a time frame for screening complaints.
- Section 50B: Requires an additional decision at intake: which response to make to each report - an investigation or family assessment.
- Section 50E: Encourages memoranda of understanding between local social services agencies and law enforcement agencies, reflecting *Code* cite added in 2000.
- Section 50F4: Adds a requirement for the Department to report child fatalities to the State Board, as requested by the Board.
- Section 50H: Clarifies when an investigation is the required response to a valid report of child abuse or neglect.
- 50H2: Delineates the purpose of a family assessment.
- 60 - 3b: Requires reassignment of a family assessment to investigation if the agency takes emergency custody of the child.
- 70B: Emphasizes collaboration with the family in family assessments.
- 70C: Clarifies required documentation of all information gathered in a family assessment or an investigation, as requested by the Board.
- 80A: Outlines required contacts to be made by the local agency when completing family assessments.
- 90A: Outlines the conditions in which a CPS worker in both family assessments and investigations may enter a home if permitted by a person who resides in the home.
- 90B: Requires the CPS worker to explain orally and in writing the responsibilities and authorities of CPS in order to make the parent or caretaker aware of the benefits and consequences of completing the family assessment or investigation.
- 110: Clarifies the types of assessments required in both the family assessment response and the investigation response.
- 120B & C, 140B5 & D3: These sections address required notifications for the new family assessment response.
- 120D&E, 140B2&3, & 190B: Alters and simplifies the requirements for a local consultation as a step in the investigation process, especially if the facts appear to indicate a founded disposition.

- 140C3: Reflects a *Code* change that allows a child's name to be entered in the central registry in situations where the abuse occurred in a designated out of family setting and the parent or guardian was not the abuser only if the parent or guardian is consulted and agrees to the name entry. (Required by legislation enacted in 2000.)
- 150A: Emphasizes planning for services in consultation with the family whenever possible. Adds a clause limiting the extent to which services can be provided when resources are not available.
- 150B: Addresses the right of families to refuse services offered as the result of a completed family assessment.
- 150C: Notes that court intervention to mandate services may be requested to engage families in needed services to prevent abuse/neglect.
- 180C: Eliminates requirement local child protective services staff to receive training in order for the agency to become “designated” as a differential response agency, because this requirement has been met.

This regulatory action is intended to promote the safety and well being of children within their families in Virginia. Until the enactment of this legislation, all valid reports of child abuse or neglect had to be investigated and a finding made as to abuse or neglect by an alleged abuser. The new legislation and these regulations allow for a response to valid reports of less serious abuse or neglect that is less adversarial and more likely to engage families in services, if needed, to protect their own children. The current emergency regulations changed only what was required by legislation.

These permanent final regulations were developed to provide more details regarding safety assessments and determining the most appropriate response to a valid report. Other changes were required by *Code*. Comments received and noted in previous sections of this form have generated three additional changes as described.

### Family Impact Statement

*Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The implementation of these emergency regulations will allow for a less adversarial response to many families that experience allegations of child abuse or neglect. It was determined through evaluation of the pilots that families receiving family assessments, rather than investigations, felt more comfortable describing their needs related to keeping their children safe and more receptive to services to enable them to better care for their children. Thus, these regulations to support



differential response, as well as the regulation to allow parents to request their child's name be removed from the central registry under certain conditions, strengthen the authority and rights of parents to nurture and supervise their children. The regulations encourage and support self-sufficiency, self-pride, and assumption of responsibility for one's children. They are not expected to significantly impact marital commitment or family income.