**Date –** January 2025

**Manual** – Child and Family Services Manual, Chapter C, Child Protective Services (CPS)

**Transmittal #** - 310

The purpose of this transmittal is to provide new and revised guidance for *Chapter C, Child Protective Services (CPS)* of the Virginia Department of Social Services (VDSS) Child and Family Services Manual. Unless otherwise stated, the provisions included in this transmittal are effective upon release.

All content in each section of *Chapter C, Child Protective Services (CPS)* has been revised to include minor grammatical edits, changing words to person first language, and changing masculine and feminine pronouns and titles to neutral language. All changes are in italics.

| PRIOR LANGUAGE | NEW LANGUAGE |
|---|---|
| Alaskan Eskimo | Alaskan Native |
| CPS Ongoing | In-Home Services |
| CPS Regional Consultant | CPS Regional Practice Consultant |
| CPS Supervisor | Family Services Supervisor |
| CPS Worker | Family Services Specialist |
| Indian child | American Indian Child |
| Maternal | Parental |
| Substance Abuse | Substance Use |
| Victim Child | Child Who is a Victim |

To streamline this chapter of guidance, all full-text citations of the Code of Virginia and the Virginia Administrative Code have been removed from the manual and replaced with hyperlinks to the associated section of Code. Additional supplemental content and resources have been moved and some are now available on FUSION.

This transmittal and manual are available on FUSION at CPS Guidance and on the VDSS public website at CPS Guidance.

Significant changes to the manual are as follows:

| **Section (s) Changed** | **Significant Changes** | **Reason for Change** |
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| 1.4 CPS guidance development process | This subsection was revised to remove the State Child Fatality Review Team as a Citizen Review Panel. | This change was made because the State Child Fatality Review Team is no longer serving as a Citizen Review Panel. |
| 1.5.1.2, First three months training requirement | This subsection was revised to add MICRO5001: The Safety Process; an Overview, a Holistic Approach to Safety | This change was made to enhance practice related to the safety assessment process. |

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| | Planning to the first three months training requirements. | |
| 1.5.1.3 First twelve months training requirement | This subsection was revised to add the following online courses to the first twelve months training requirements:<br>• CWSE5020: Introduction to the Indian Child Welfare Act<br>• CWSE2090: Injury Identification in Child Welfare. | This change was made to enhance practice related to the Indian Child Welfare Act and injury identification. |
| 1.5.1.4 First 24 months training requirement | This subsection was revised to add CWS2041: Child Fatality Investigations to the first 24 months training requirements. | This change was made to enhance practice related to the investigation of child deaths. |
| 2.4.2.2, Inadequate supervision | This subsection was revised to clarify that inadequate supervision includes substance use by a caretaker that has a demonstrated impact on their ability to care for the child.<br><br>This subsection was also revised to clarify that reasonable childhood activities do not constitute inadequate supervision. | This change was made based on feedback from the LDSS that clarity was needed around a caretaker's substance use and that it must have a demonstrated impact on their ability to care for the child to be considered inadequate supervision.<br><br>This change was made based on legislation passed (SB1367) during the 2023 session of the Virginia General Assembly. |
| 3.9.1, Make the response track decision | This subsection was revised to clarify that if there is a third valid CPS report within 12 months involving the same alleged child who is a victim and/or alleged abuser or neglector, it must be assigned to the investigation track. | This change was made based on feedback from the LDSS to promote consistent practice amongst the LDSS. |
| 4.2.3.5 Contacts | This subsection was revised to provide guidance that if during a human trafficking assessment it is determined that an interview of the child by a children's advocacy center is needed and an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the LDSS may facilitate the | This change was made based on legislation passed (SB 12/HB 1128) during the 2024 session of the Virginia General Assembly. |

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| | interview with a children's advocacy center located in another jurisdiction. | |
| 4.4.4.6 When the alleged child who is a victim is not found | This subsection was revised to clarify when a child who is a victim is determined to be missing by the LDSS and provides guidance to the LDSS to submit a CPS Alert to the CPS State Hotline. | This change was made based on feedback from the LDSS and Regional Practice Consultants and to promote consistent practice amongst the LDSS. |
| 4.4.4.9 If missing child is at-risk of being or is a victim of sex trafficking | This subsection was created to provide guidance to the LDSS of the responsibilities of the LDSS when a missing child is at-risk of being or is a victim of sex trafficking.<br>The creation of this subsection renumbers subsequent subsection. | This change was made to comply with 71(a)(35)(B) of P.L. 117-348 (Federal Law). |
| 4.5.9.1 Parental child safety placements | This subsection was created to provide guidance to the LDSS on the use of parental child safety placements as a protective intervention. | This change was made based on legislation (SB 39/HB 27) passed during the 2024 session of the Virginia General Assembly. |
| 4.5.9.1.1 Assessment of alternate caregiver | This subsection was created to provide guidance to the LDSS on the assessment of proposed alternate caregivers. | This change was made based on legislation (SB 39/HB 27) passed during the 2024 session of the Virginia General Assembly. |
| 4.5.9.1.2 Parental child safety placement for seven calendar days or less | This subsection was created to provide guidance to the LDSS on the documentation of parental child safety placements for seven calendar days or less. | This change was made based on legislation (SB 39/HB 27) passed during the 2024 session of the Virginia General Assembly. |
| 4.5.9.1.3 Parental Child Safety Placement Program | This subsection was created to provide guidance to the LDSS on the Parental Child Safety Placement Program and includes information on:<br>• Documentation of parental child safety placement prior to entry into Parental Child Safety Placement Program.<br>• Parental child safety placement time frame<br>• Out-of-Home Staffing<br>• Family Partnership Meeting<br>• Parental Child Safety Placement Agreement<br>• In-Home Services Case | This change was made based on legislation (SB 39/HB 27) passed during the 2024 session of the Virginia General Assembly. |
| 4.5.15.1 Risk level | This subsection was revised to provide | This change was made based on |

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| guides decision to open a case | guidance that:<br>• Risk level must be used to inform the decision whether or not to open a case.<br>• Case opening must occur within five (5) work days of risk assessment completion and the primary in-home services or prevention worker must be assigned within five (5) work days of case opening. | feedback from the Regional Practice Consultants and to promote consistent practice amongst the LDSS. |
| 4.6.6 Face-to-face interview with the alleged child who is a victim | This subsection was revised to provide guidance that if a local multidisciplinary team has determined that an interview of the child by a children's advocacy center is needed and an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the LDSS may facilitate the interview with a children's advocacy center located in another jurisdiction. | This change was made based on legislation passed (HB 1768) during the 2023 session of the Virginia General Assembly and legislation passed (SB 12/HB 1128) during the 2024 session of the Virginia General Assembly. |
| 4.6.19.1 Parental child safety placements | This subsection was created to provide guidance to the LDSS on the use of parental child safety placements as a protective intervention. | This change was made based on legislation passed (SB 39/HB 27) during the 2024 session of the Virginia General Assembly. |
| 4.6.19.1.1 Assessment of alternate caregiver | This subsection was created to provide guidance to the LDSS on the assessment of proposed alternate caregivers. | This change was made based on legislation passed (SB 39/HB 27) during the 2024 session of the Virginia General Assembly. |
| 4.6.19.1.2 Parental child safety placement for seven calendar days or less | This subsection was created to provide guidance to the LDSS on the documentation of parental child safety placements for seven calendar days or less. | This change was made based on legislation passed (SB 39/HB 27) during the 2024 session of the Virginia General Assembly. |
| 4.6.19.1.3 Parental child safety placement program | This subsection was created to provide guidance to the LDSS on the Parental Child Safety Placement Program and includes information on:<br>• Documentation of parental child safety placement prior to entry into Parental Child Safety Placement Program.<br>• Parental child safety placement time frame<br>• Out-of-Home Staffing<br>• Family Partnership Meeting<br>• Parental Child Safety Placement | This change was made based on legislation passed (SB 39/HB 27) during the 2024 session of the Virginia General Assembly. |

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| | Agreement<br>• In-Home Services Case | |
| 4.6.25.1 Risk level guides decision to open a case | This subsection was revised to provide guidance that:<br>• Risk level must be used to inform the decision whether or not to open a case.<br>• Case opening must occur within five (5) work days of risk assessment completion and the primary in-home services or prevention worker must be assigned within five (5) work days of case opening. | This change was made based on feedback from the Regional Practice Consultants and to promote consistent practice amongst the LDSS. |
| 5.4.2 Identify the regulatory agency | This subsection was revised to provide updated links to regulatory agencies, including a new contact protocol the Department of Behavioral Health and Developmental Services. | This change was made to promote consistent practice amongst the LDSS. |
| 5.4.5 Notify CPS regional consultant | This subsection was revised to add guidance that the notification to the CPS Regional Practice Consultant must occur within 3 business days and that the CPS Regional Practice Consultant should review the OOF Checklist with the LDSS at the time of notification. Additionally, the LDSS must provide notification to the OOF Specialist. | This change was made to promote consistent practice amongst the LDSS. |
| 5.5.2 Joint investigation requirements for LDSS and regulatory authority | This subsection removed. | This change was made because it was a duplication of the Virginia Administrative Code. |
| 5.5.3 Joint investigation with law enforcement and facility | This subsection removed and all subsequent subsections were renumbered. | This change was made because it was a duplication of the Virginia Administrative Code. |
| 5.5.9 Out-of-family investigation documentation | This subsection was created to provide guidance to the LDSS on documentation requirements in OOF investigations. | This change was made to promote consistent practice amongst the LDSS. |
| 5.6 Assess safety | This subsection was revised to provide guidance to the LDSS on what constitutes a first meaningful contact in an OOF investigation. | This change was made to promote consistent practice amongst the LDSS. |
| 5.7.2 Disposition and consultation | This subsection was revised to provide guidance that the CPS Regional Practice | This change was made to promote consistent practice |

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| with CPS Regional Practice Consultant | Consultant must review the OOF Checklist with the LDSS at the time of the dispositional consult with the LDSS. | amongst the LDSS. |
| 5.9.4.1 Unfounded disposition | This subsection was revised to clarify that while verbal notification of an unfounded investigation is not required by regulation, it should occur. | This change was made to promote consistent practice amongst the LDSS. |
| 5.12 Services to abuser/neglector and family in an OOF investigation | This subsection was renamed and revised to provide guidance that LDSS may offer prevention services to the family in OOF investigations. | This change was made to promote consistent practice amongst the LDSS. |
| 6.3.3 Assessing risk in a child fatality | This subsection was revised to provide guidance that the LDSS must use the risk level to inform the decision whether or not to open a case for surviving siblings. | This change was made to promote consistent practice amongst the LDSS. |
| 6.3.6 Child death case reporting tool | This subsection was removed, and subsequent subsections renumbered. | This change was made because effective April 1, 2024 the child death case reporting tool was no longer required. |
| 6.4.2 Regional Child Fatality Review Teams | This subsection was revised to provide guidance to the LDSS on the new criteria for a child death to be reviewed by a Regional Child Fatality Review Team. | This change was made because the Regional Child Fatality Review Teams were restructured in January 2024. |
| 7.5.9.6 Appellant is a teacher licensed by the Board of Education or through an alternative pathway and employed by a local school board | This subsection was created to provide guidance on the circuit court appeal process for licensed teachers or teachers licensed through an alternate pathway and employed by a local school board. | This change was made based on legislation passed (HB1550) during the 2023 session of the Virginia General Assembly. |
| 9.2.7.3 State Child Fatality Review Team | This subsection was removed. | This change was made because State Child Fatality Review Team is no longer serving as a Citizen Review Panel. |
| 10.6.1.1 Investigation requirements | This subsection was revised to clarify that an additional allegation must be added to the child welfare information system when a SEI is removed from the home. | This change was made to promote consistent practice among the LDSS. |

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Commissioner

# 1

# INTRODUCTION TO CHILD PROTECTIVE SERVICES

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# 1

# 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 (CPS) 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 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, their 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 (VAC) 22 VAC 40-705-10 provides child protective services definitions.

### 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 under the State Plan for the Office of Newcomer Services, Attachment 2C or the U.S. Department of Health and Human Services website.

### 1.2.2 Children of Native American, *Alaskan Native* or Aleut heritage

Children of Native American, *Alaskan Native* or Aleut heritage are subject to the Indian Child Welfare Act (ICWA). In the event such a child is in imminent danger and does not live on a reservation where a tribe exercises exclusive jurisdiction, the Family Services Specialist who specialize in CPS has the authority to exercise emergency removal of the child. Additional guidance regarding the removal of an *American Indian* child can be found in Section 4, Assessments and Investigations, of this chapter. If a child is removed and placed into foster care, see Section 3 of the VDSS Child and Family Services Manual, Section E. Foster Care.

Although Virginia has no federally recognized *American Indian* reservations, members of federally recognized tribes do reside in Virginia. 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.

A child is covered by ICWA when the child meets the federal definition of an *American Indian* child. Specifically, the child is an unmarried person under 18 years of age and is either:

- A member of a federally recognized *American Indian* tribe.
- Eligible for membership in a federally recognized tribe and is the biological child of a member of a federally recognized *American Indian* tribe.

Under federal law, individual tribes have the right to determine eligibility and/or membership. However, in order for ICWA to apply, the child shall meet one of the criteria above.

If there is any reason to believe a child is an child and is at risk of entering foster care, the LDSS shall treat that child as an *American Indian* child, unless and until it is determined that the child is not a member or is not eligible for membership in an *American Indian* tribe. Once it has been determined the child is either a member or eligible for membership in a federally recognized tribe, the LDSS shall make active efforts to reunite the child with their family or tribal community (if already in foster care). Active efforts shall begin from the time the possibility arises that a child may be removed from their parent, legal guardian or *American Indian* custodian and placed outside of their custody.

Active efforts are more than reasonable efforts. Active efforts applies to providing remedial and rehabilitative services to the family prior to the removal of an child from their parent or *American Indian* custodian, and/or an intensive effort to reunify an child with their parent or *American Indian* custodian.

Examples of active efforts include, but are not limited to:

- Engaging the child, their parents, guardians and extended family members.
- Taking necessary steps to keep siblings together.

- Identifying appropriate services and helping parents overcome barriers.

- Identifying, notifying and inviting representatives of the child's tribe to participate in shared decision-making meetings.

- Involving and using available resources of the extended family, the child's *American Indian* tribe, *American Indian* social service agencies and individual care givers.

An *American Indian* child who is officially determined by the tribe to not be a member or eligible for membership in a federal tribe is not subject to the requirements of ICWA. In instances where ICWA does not apply, but the child is biologically an *American Indian* child, part of a Virginia tribe that is not federally recognized or considered *American Indian* by the *American Indian* community, the LDSS should consider tribal culture and connections in the provision of services to the child.

## 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 VAC. Familiarity with and accesses 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 VAC 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 two (2) most relevant regulations for CPS are:

- 22 VAC 40-705-10 et seq. Child Protective Services Regulations.
- 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, or the regulation provided, and no further guidance given. Anything written in italics indicates that it is new with this version of guidance.

Note: 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 internal VDSS website.

## 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 the Child Abuse and Neglect Committee of the Family and Children's Trust Fund (FACT) and the Court Appointed Special Advocate/Children's Justice Act (CASA/CJA) Advisory Board.

The state regional CPS consultants 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 consultants.

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 Family Services Specialist who specialize in CPS

22 VAC 40-705-180 A, 22 VAC 40-705-180 B, and 22 VAC 40-730-130 mandate uniform training requirements for Family Services Specialists and Family Services Supervisors who specialize in CPS. The uniform training requirements establish minimum standards for all Family Services Specialist and Family Services Supervisors who specialize in CPS in Virginia.

Having established core (fundamental and essential) competencies for both workers and supervisors, the resulting required training reflects both core competencies and critical training in guidance and law that is specific to the certain practice issues. The result is that all child welfare staff is trained in the same core competencies.

### *1.5.1* Training requirements for Family Services Specialists and Family Services Supervisors who specialize in CPS

All CPS staff hired after March 1, 2013, who are designated to respond to reports of child abuse and neglect; manage or supervise CPS, shall complete the following as soon as possible after their hire date, but no longer than within the time frames put forth below. Any course designated with a CWSE indicates an e-learning course and is available online in the Virginia Learning Center (VLC).

#### 1.5.1.1 First three weeks training requirements

The following **on-line courses** are required to be completed within the **first three weeks of employment** and are prerequisites for other CPS mandated courses:

- CWSE1002: Exploring Child Welfare (This course is available in the VLC.)
- CWSE1500: Navigating the Child Welfare Automated Information System: OASIS (This course is available in the VLC.)
- CWSE5692: Recognizing and Reporting Child Abuse and Neglect – Mandated Reporter Training (This course is available on the VDSS public website.)

#### 1.5.1.2 First three months training requirement

The following instructor led course is required to be completed within the first three months of employment:

- CWS2000.1: Child Protective Services New Worker Guidance Training with OASIS.
  - Prerequisites: CWSE1002, CWSE150O-CPS, CWSE5692.

The following virtual courses are required to be completed within the first three months of employment if CWS2000.1 is not available:

- CWS2000.1W: Child Protective Services New Worker Webinar.
  - Prerequisites: CWSE1002, CWSE150O-CPS, CWSE5692.
- CWS2000VLL: Capacity Building Learning Lab Protective.

The following online courses are required to be completed within the first three months of employment:

- CWSE1510: Structured Decision Making in Virginia (This course is available in the VLC).
- CWSE5011: Case Documentation (This course is available in the VLC).
- FSWEB1044: Practice Foundations Guidance and Engagement (This course is available in the VLC).
- *MICRO5001: The Safety Process: an Overview, a Holistic Approach to Safety Planning (This course is available on the VDSS internal website).*

#### 1.5.1.3 First 12 months training requirement

The following Instructor led courses are required to be completed no later than within the first 12 months of employment:

- CWS1021: The Effects of Abuse and Neglect on Child And Adolescent Development.
- CWS1041: Legal Principles in Child Welfare Practice.
  - Prerequisites: CWSE1041 and SCV: Child Dependency Case Processing in JDR District Courts.
- CWS1061: Family Centered Assessment.
  - Prerequisites: CWSE1001, CWSE5692, CWSE1500-CPS, CWS2000.1/CWS2001R.
- CWS1071: Family Centered Case Planning.
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R.
- CWS1305: The Helping Interview.
- CWS2011: Intake Assessment and Investigation.
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R.
- CWS2021: Sexual Abuse.
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R.
- CWS2031.1: Sexual Abuse Investigation.
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R, CWS2021.
- CWS4020: Engaging Families and Building Trust-Based Relationships.
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R, CWS2021.
- CWS4080W: Kinship Care in Virginia
  - Prerequisites: CWSE4060
- CWS5011: Case Documentation
  - Prerequisites: CWSE5011
- CWS5307: Assessing Safety, Risk and Protective Capacity.
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R.

The following online courses are required to be completed within the first 12 months of employment:

- CWSE4000: Identifying Sex Trafficking in Child Welfare.
- CWSE4060: Family Search and Engagement.
- CWSE6010: Working with Families of Substance Exposed Infants Modules 1 and 2.
- *CWSE5020: Introduction to the Indian Child Welfare Act.*
- *CWSE2090: Injury Identification in Child Welfare.*

#### 1.5.1.4 First 24 months training requirement

The following instructor led courses are required to be completed no later than within the first 24 months of employment:

- CWS1031: Separation and Loss Issues in Human Services Practice.
- DVS1001: Understanding Domestic Violence.
- DVS1031: Domestic Violence and Its Impact on Children.
  - Prerequisite: DVS1001.
- CWS2141: Out of Family Investigation (if conducting out of family investigations pursuant to 22 VAC 40-730-130.)
  - Prerequisites: CWSE1002, CWSE5692,CWSE1500-CPS, CWS2000.1/CWS2001R.
- CWS4015: Trauma-Informed Child Welfare Practice: Identification and Intervention.
  - Prerequisite: CWSE4015
- CWS5305: Advanced Interviewing: Motivating Families for Change.
- *CWS2041: Child Fatality Investigations (if conducting or supervising child death investigations).*
  - Prerequisites: CWS2000.1 and CWS2011.

The following online course is required to be completed within the first 24 months of employment:

- CWSE4015: Introduction to Trauma-Informed Child Welfare Practice.

#### *1.5.1.5* Additional training requirement for Family Services Supervisor who specializes in CPS

In addition to the courses listed below, all Family Services Supervisors who specialize in CPS hired after March 1, 2013 are required to attend the Family Services CORE Supervisor Training Series: SUP5701, SUP5702, SUP5703, SUP5704, and SUP5705. These courses are to be completed in the first two years of employment as a supervisor.

### 1.5.1.6 Training requirements for in-home services staff

See Section 1, Prevention Overview for training requirements for workers and supervisors who provide in-home services.

## 1.5.2 Annual training requirements

Per 22 VAC 40-705-180 C, Family Services Specialists and Family Services Supervisors who specialize in CPS are required to attend a minimum of 24 contact hours of continuing education/training annually. For those Family Services Specialists and Family Services Supervisors who specialize in CPS hired on or after March 1, 2013, the first year of this requirement should begin no later than 3 years from their hire date, after the completion of the initial training detailed above.

Continuing education/training activities to be credited toward the 24 hours should be pre-approved by the LDSS supervisor or person managing the CPS program. Continuing education/training activities may include, but are not limited to: on-line and classroom training offered by VDSS, organized learning activities from accredited university or college academic courses, continuing education programs, workshops, seminars and conferences.

Documentation of continuing education/training activities is the responsibility of the LDSS.

## 1.5.3 LDSS must ensure worker compliance

It is the responsibility of the LDSS to ensure that staff performing CPS duties within their agency has met the minimum standards. The Family Services Supervisor who specializes in CPS or the person managing the CPS program at the local level shall maintain training documentation in the worker's personnel record. The supervisor shall assure that the Family Services Specialist who specialize in CPS and who report to them complete the required training within the given timeframes.

A Training Job Aide is located on the DSS internal website and may be used by the LDSS to document and track all training requirements.

#### 1.5.3.1 Training and direct supervision of new worker for sexual abuse investigations

Effective July 1, 2014 § 63.2-1505 D of the Code of Virginia requires direct supervision of Family Services Specialist who specialize in CPS who conduct sexual abuse investigations unless they have completed CWS 2021: Sexual Abuse and CWS 2031.1: Sexual Abuse Investigations. Direct supervision requires a close review of all decisions made during the investigation by someone who has completed the required training. Only persons who have completed the required training may determine the final disposition of a sexual abuse investigation.

### 1.5.4 Training for staff not designated as Family Services Specialist who specialize in CPS

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, 2017:

- CWS 2020: On Call for Non-CPS Workers.
  - Prerequisite: CWSE2020: On Call for Non-CPS Workers.

## 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.

Pursuant to 22 VAC 40-705-150 E, 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 of the LDSS to foster the creation and coordination of multidisciplinary teams either personally or through their 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 avail- able to combat abuse and neglect.

### 1.6.1 Composition of multidisciplinary teams

22 VAC 40-705-10 provides the regulatory framework for the composition of multidisciplinary teams:

### 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 by 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 Section 9, Confidentiality, of this manual.

### 1.6.5 Multidisciplinary teams for sexual abuse

Section 15.2-1627.5 of the Code of Virginia requires the Commonwealth Attorney to establish a multidisciplinary child sexual abuse response team. These teams will conduct regular reviews of new and ongoing reports of felony sex offenses against a

child. At the request of any team member they can review other child abuse and neglect offenses. The law provides a list of team members to include the Commonwealth Attorney, law enforcement and CPS at the minimum. The team may include a Child Advocacy Center representative, where available.

These meetings are considered closed and therefore the discussions in these meetings are not public information pursuant to § 2.2.3711 of the Code of Virginia. The findings of the team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals pursuant to § 2.2.3705.7 of the Code of Virginia.

## 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 (FPM) 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.

A FPM 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 FPM 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 the development of a foster care plan for the foster care review and permanency planning hearings to discuss permanency options and for concurrent planning as well as consideration of 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 child welfare information system. For more guidance regarding family partnership meetings, please refer to the VDSS Child and Family Services manual, Family Engagement chapter on the 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 child welfare information system. When accessed via the child welfare information 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.

Additional information on the SDM tools can be located in CWSE1510: Structured Decision Making in Virginia. This on-line course is available in the VLC.

## 1.9 Domestic Violence

Domestic violence (DV) is an issue affecting many families receiving services through the LDSS. VDSS has added a new chapter to the VDSS Child and Family Services Manual, Chapter H. Domestic Violence. This chapter presents an overview of DV and the related statutory requirements impacting LDSS and local DV programs. Information specific to Prevention, CPS and Foster Care is provided. Much of the specific information is applicable across program areas. This chapter also connects to the existing chapters of entire VDSS Child and Family Services Manual to ensure that specific DV information is readily available when needed.

Local DV programs provide services which focus on the safety of DV victims and their children. LDSS focus primarily on child safety. Both entities are focused on safety. LDSS and local DV programs work together, participate in multi-disciplinary teams together, occasionally are housed in the same buildings and often work with the same families.

Current data regarding the co-occurrence between DV and child maltreatment compel child welfare systems to re-evaluate existing philosophies, policies, and practice approaches towards families experiencing both forms of violence.

## 1.10 Sex trafficking of children

Sex trafficking is defined in the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102) as the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person for the purpose of a commercial sex act. Research suggests that children currently or formerly in foster care are at a higher risk of being sex trafficked. Risk factors include but are not limited to:

- Limited or severed family connections.
- History of emotional trauma, physical or sexual abuse.
- Prior involvement with law enforcement.

The Preventing Sex Trafficking and Strengthening Families Act (P.L.113-183) requires states to identify, document and determine the appropriate services for children and youth who are victims or at risk of being sex trafficked. The information obtained in this process may assist in identifying characteristics, signs and vulnerabilities to respond to youth who have been sex trafficked and inform communities how to help combat future incidents.

The Justice for Victims of Trafficking Act of 2015 (H.R.181) amends CAPTA to include victims of sex trafficking in the definition of an abused or neglected child.

Additional information regarding sex trafficking can be found in the on-line course, CWSE4000: Identifying Sex Trafficking in Child Welfare. This course is available on the VDSS public website and in the VLC.

# 2

# DEFINITIONS OF ABUSE AND NEGLECT

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# 2

# DEFINITIONS OF ABUSE AND NEGLECT

## 2.1 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 (VAC). This section also contains footnotes of relevant court decisions impacting the definition of abuse and neglect for the CPS program.

The VAC 22 VAC 40-705-10 defines abuser or neglector.

The VAC establishes four (4) categories of abuse or neglect, including:

- Physical abuse.
- Physical neglect (includes medical neglect).
- Mental abuse or neglect.
- Sexual abuse.

CWSE2090: Injury Identification in Child Welfare is an e-learning course designed for all child welfare workers. This course is recommended for all *Family Services Specialist*s and supervisors as it will increase knowledge and ability to recognize signs of abuse and neglect. It is available in the VLC.

## 2.2 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 *Family Services Specialist* 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.

## 2.3 Physical abuse

### 2.3.1 Statutory and regulatory definition

The Code of Virginia § 63.2 -100 provides the statutory definition of physical abuse. 22 VAC 40-705-30 A provides the same definition of physical abuse.

### 2.3.1 Types of physical abuse

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

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[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).

#### *2.3.1.1* Asphyxiation and strangulation

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

Strangulation means obstruction of carotid or jugular veins that may or may not result in a loss of consciousness. Injuries may be internal and not immediately visible and may result in delayed medical complications.

#### 2.3.1.2 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.

#### 2.3.1.3 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.

### 2.3.1.4 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.

### 2.3.1.5 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.

### 2.3.1.6 Internal injuries

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

### 2.3.1.7 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.

Poisoning occurs when the caretaker intends to alter the child's normal physiological functions by giving the substance to the child. It does not include acts of omission where the caretaker allows access to substances that alter the child's normal physiological functions. Those situations should be evaluated based on the definition of physical neglect.

### 2.3.1.8 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.

### 2.3.1.9 Gunshot wounds

Wounds resulting from a gunshot.

### 2.3.1.10 Stabbing wounds

Wounds resulting from a stabbing.

### 2.3.1.11 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. Munchausen syndrome by proxy is also referred to as Factitious Disorder Imposed on Another.

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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).

### 2.3.1.12 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.

### 2.3.1.13 Abusive Head Trauma and battered child syndrome

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

- **Abusive Head Trauma** 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.

In response to debate and controversy within the legal system and the media, the American Academy of Pediatrics (AAP) has published an informative resource which states there is no legitimate medical debate among the majority of practicing physicians as to the existence or validity of AHT. Claims that shaking is not dangerous to infants or children are not factual and are not supported by AAP policy, despite being proffered by a few expert witnesses in the courtroom. This resource can be used to educate judges, prosecutors, child welfare specialists and other decision makers about this important issue.

- **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]

### 2.3.1.14 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 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 Family Services Specialist 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 on FUSION.

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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).

#### 2.3.1.15 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 *Family Services Specialist* may document the type as Other Abuse and specifically describe the type of physical abuse.

### 2.3.2 Substantial risk of death, disfigurement, or impairment of bodily functions

The *Family Services Specialist* 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.

## 2.4 Physical neglect

### 2.4.1 Statutory and regulatory definition

The Code of Virginia § 63.2-100 provides the statutory foundation for the definition of physical neglect. 22 VAC 40-705-30 B and 22 VAC 40-705-30 B1 provide the regulatory definition for physical neglect.

### 2.4.2 Types of physical neglect

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

#### 2.4.2.1 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.

Abandonment may include situations when a caretaker disregards their caretaker duties, obligations and responsibilities by failing to make reasonable efforts to locate the child when the child has run away and/or is missing. Reasonable efforts include but are not limited to contacting local law enforcement to make a report that the child has run away and/or is missing.

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 their infant under certain conditions, this action still meets the definition of abandonment for a CPS response. If a removal is conducted under these circumstances, the conditions for removal should be documented as “safe haven” in the child welfare information system.

### 2.4.2.2 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.

Inadequate supervision includes when a caretaker of the child allows, encourages or engages in sex trafficking of the child.

Inadequate supervision includes acts of omission by the caretaker that allow the child access to substances that alter the child’s normal physiological functions.

*Inadequate supervision includes substance use by the caretaker that has a demonstrated impact on their ability to care for the child.*

*Pursuant to § **63.2-100** of the Code of Virginia, inadequate supervision does not include a child whose parent or other person responsible for their care allows the child to engage in independent activities without adult supervision, provided that (a) such independent activities are appropriate based on the child's age, maturity,*

*and physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of the child. Such independent activities include traveling to or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of § **16.1-278.4**.*

#### 2.4.2.3 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.

#### 2.4.2.4 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.

#### 2.4.2.5 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.

#### 2.4.2.6 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.

#### 2.4.2.7 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.

### 2.4.2.8 Knowingly leaving a child with a person required to register as Tier III sexual 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 Tier III sexual offender pursuant to the Code of Virginia § 9.1-902.

Some of the offenses for which registration as a Tier III 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 Tier III 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 *Family Services Specialist* must determine if the person is required to register as a Tier III 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 Tier I, Tier II, or Tier III 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 Tier III 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 Tier III 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 child welfare information 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.

### 2.4.2.9 Failure to thrive

Per 22 VAC 40-705-30 B 2 a and 22 VAC 40-705-30 B 2 b, 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.

### 2.4.2.10 Labor trafficking

Labor trafficking means the recruitment, harboring, transportation, provision, or obtaining of a child 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.

### 2.4.2.11 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 *Family Services Specialist* may document the type as Other Physical neglect and specifically describe the type

of physical neglect.

### 2.4.3 Family poverty and lack of resources

Per 22 VAC 40-705-30 B, 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.

#### 2.4.3.1 Multiple occurrences or one-time incident

Per 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.

## 2.5 Medical neglect

### 2.5.1 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 is within the definition of physical neglect pursuant to 22 VAC 40-705-30 B3.

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.

### 2.5.2 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.

#### 2.5.2.1 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.

### 2.5.2.2 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.

### 2.5.2.3 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.

#### 2.5.2.4 Necessary mental care or treatment

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

#### 2.5.2.5 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 *Family Services Specialist* may document the type as Other Medical Neglect and specifically describe the type of medical neglect.

### 2.5.3 Factors to consider when determining if medical neglect definition 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.

#### 2.5.3.1 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.

#### 2.5.3.2 Parent refuses treatment for life-threatening condition

Pursuant to 22 VAC 40-705-10 and § 63.2-100 of the Code of Virginia, 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 child and the parents or other person legally responsible for the child.
- The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of their medical treatment.
- The child and the parents or other person legally responsible for the child have considered alternative treatment options.
- The child and the parents or other person legally responsible for the child believe in good faith that such decision is in the child's best interest.

### 2.5.4 Child under alternative treatment

Pursuant to 22 VAC 40-705-30 B-3b(1) and § 63.2-100 of the Code of Virginia, 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.

### 2.5.5 Medical neglect of infants with life-threatening conditions

The VAC 22 VAC 40-705-30 B3b(2) 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.

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

#### 2.5.5.1 Withholding of medically indicated treatment when treatment is futile

The VAC 22 VAC 40-705-30 B3b(2) clarifies that withholding medically indicated treatment does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication to an infant when the treating physician's or physicians' reasonable medical judgement:

- The infant is chronically and irreversibly comatose;
- The infant has a terminal condition and the provision of such treatment would (i) merely prolong dying; (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; (iii) otherwise be futile in terms of the survival of the infant; or (iv) be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

#### 2.5.5.2 Definitions of chronically and irreversibly comatose and terminal condition

The VAC 22 VAC 40-705-10 provides definitions of "chronically and irreversibly comatose" and "terminal condition."

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[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).

## 2.6 Mental abuse or mental neglect

### 2.6.1 Statutory and regulatory authority

Section 63.2-100 of the Code of Virginia defines an abused or neglected child. The Virginia Administrative Code 22 VAC 40-705-30 C defines mental abuse or neglect.

### 2.6.2 Caretaker's actions or omissions

Per 22VAC 40-705-30 C1, 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 (DV) when the DV may result in demonstrated dysfunction by the child or the threat of dysfunction in the child's mental functioning. Additional information on DV and child welfare can be located in Chapter H. of the Child and Family Services Manual.

### 2.6.3 Documentation required for mental abuse or mental neglect

Per 22VAC40-705-30 C2, when making a founded disposition of mental abuse or

mental neglect, the *Family Services Specialist* shall obtain 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. Documentation may include psychiatric evaluations or examinations, psychological evaluations or examinations, written summaries and letters. Documentation may be authored by psychiatrists, psychologists, Licensed Professional Counselors (L.P.C.), 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.

### 2.6.4 Organic failure to thrive

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.

### 2.6.5 Nonorganic failure to thrive

Per 22 VAC 40-705-30 C3, 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.

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

When making a disposition, the *Family Services Specialist* 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.

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[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).

[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).

## 2.7 Sexual abuse

### 2.7.1 Statutory definition

The Code of Virginia § 63.2-100 *defines an abused and neglected child* as any child less than 18 years of age whose parents or other person responsible for his care, or an intimate partner of such parent or person, commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.

Although there is a definition of criminal sexual abuse in § 18.2-67.10 6, the *Family Services Specialist* should consult with the local Commonwealth's Attorney or law enforcement with specific questions about what constitutes criminal sexual abuse.

### 2.7.2 Types of sexual abuse

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

#### 2.7.2.1 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.

#### 2.7.2.2 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 *Family Services Specialist* 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.

### 2.7.2.3 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, the child'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.

### 2.7.2.4 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.

### 2.7.2.5 Sex Trafficking

The caretaker of the child allowing, encouraging or engaging in sex trafficking of the child.

Pursuant to 22 VAC 40-705-10, severe forms of trafficking means sex trafficking in which a commercial sex act is induced by force, fraud or coercion or in which the person induced to perform such act is less than 18 years of age. According to federal law, any minor under 18 years of age engaging in commercial sex is a victim of sex trafficking, regardless of the presence of force, fraud or coercion.

### 2.7.3 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 VAC does not specify which party (the perpetrator or the alleged *child who is a victim*) 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 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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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 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 neighborhoodhad intent to arouse or sexually gratify.

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

# COMPLAINTS AND REPORTS

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# 3

# COMPLAINTS AND REPORTS

## 3.1 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.

## 3.2 24-Hour hotline and receiving complaints and reports

The Virginia Administrative Code (VAC) 22 VAC 40-705-40 H 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.

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.

## 3.3 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 VAC 22 VAC 40-705-10 defines the terms “complaint” and “report.”

### 3.3.1 Mandated reporters

The VAC defines mandated reporters and their reporting responsibilities in 22 VAC 40-705-10.

### 3.3.1.1 Who are mandated reporters?

The Code of Virginia § 63.2-1509 A 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 VDSS on the VDSS public website.

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 A11.

### 3.3.1.2 Certain mandated reporters may make a report to the person in charge or their designee

The VAC allows certain mandated reporters to make a report to the person in charge or a designee. If the report is made to another person, that person must report back to the original mandated reporter 1) when the report was made; 2) who received the report; and 3) relay any further information back to the original reporter, including any final notifications.

### 3.3.1.3 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.

#### 3.3.1.4 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.

#### 3.3.1.5 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.

#### 3.3.1.6 Mandated reporters may make report electronically

Mandated reporters may make a report of suspected child abuse or neglect electronically on the Mandated Reporter online portal, VaCPS.

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

Pursuant to 22 VAC 40-705-40 B, 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 *child who is a victim* 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**).

### 3.3.3 Complaints and reports may be made anonymously

Pursuant to 22 VAC 40-705-40 C, 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 child welfare information system and evaluated for validity and a CPS response regardless of whether or not the caller is identified.

### 3.3.4 Issues related to reporting

#### 3.3.4.1 Immunity from liability for persons making a report

Pursuant to 22 VAC 40-705-40 D, 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.

#### 3.3.4.2 Protecting the identity of the reporter or complainant

Pursuant to 22 VAC 40-705-40 E, when the complainant is known to the LDSS, the LDSS shall not disclose the complainant's name. However, the complainant shall also be informed that his anonymity cannot be assured if the case is brought into court or shared with local law enforcement.

## 3.4 Actions upon receipt of complaint or report

### 3.4.1 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 or an investigation, if valid.

### 3.4.2 Document receipt of complaint or report in child welfare information system

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

### 3.4.3 LDSS shall record all complaints and reports in writing

Pursuant to 22 VAC 40-705-50 A, all complaints or reports made to the VDSS or an LDSS shall be documented in the child welfare information system. A person may make the initial complaint or report alleging abuse or neglect orally, in writing, or online on the Mandated Reporter website. The LDSS must document the report or complaint in the child welfare information 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.

#### 3.4.3.1 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 or 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.

#### 3.4.3.2 New report in an in-home services case

When child abuse or neglect allegations are made in an open in-home services case, the report must be treated as a new CPS report and evaluated for validity,

track, and response priority. This includes situations where safety concerns necessitate the removal of a child. The LDSS may decide to have the In-Home Services worker respond to a valid report if that worker is qualified as a Family Services Specialist who has received the mandated training for CPS as outlined in Section 1, Introduction to CPS. The referral and results of a valid report shall be documented in the child welfare information system as a family assessment or an investigation.

If as a result of the new investigation or family assessment a new safety plan is implemented, it must be shared with all involved parties in the in-home services case. When a new Family Risk Assessment is completed, the service plan must be re-evaluated outside of the normal schedule if safety, risk, or family circumstances change. In addition, a Risk Reassessment must be completed before renewing or ending a service plan.

## 3.5 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 upon receipt of 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 child welfare information 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 child welfare information system. The CPS Intake Tool with definitions is located on the forms page on the DSS public website.

The CPS Intake Tool is covered in Module 1 of the e-learning course CWSE1510: Structured Decision Making in Virginia located in the VLC.

### 3.5.1 Definition of valid complaint or report

The Code of Virginia § 63.2-1508 defines a valid complaint.

### 3.5.2 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:

#### 3.5.2.1 Question 1: Is the alleged *child who is a victim* under eighteen years of age?

Pursuant to 22 VAC 40-705-50 B 1, the LDSS can only respond with a family assessment or an investigation to valid complaints or reports involving children less than 18 years of age at the time of the report or complaint. If the alleged victim is over 18 years of age, the LDSS should refer that person to the local attorney for the Commonwealth, Adult Protective Services, or other appropriate services provided in the locality.

##### 3.5.2.1.1 Emancipated minor

If the alleged *child who is a victim* is under 18 years of age 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.

##### 3.5.2.1.2 Alleged *child who is a victim* is married

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

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

Pursuant to 22 VAC 40-705-50 B 2, the second element of a valid complaint is the alleged abuser or neglector must be a caretaker. The VAC defines caretaker in 22 VAC 40-705-10.

A caretaker is an individual who is responsible or assumes responsibility for providing care and supervision for the child. There are three (3) general categories of caretakers:

- A parent or other person legally responsible for the child's care includes:
  - Birth parent.
  - Adoptive parent.
  - Stepparent.
  - Legal guardian.
  - Foster parent.
- 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 the child left in their care may include but is not limited to:
  - Relative.
  - Babysitter.
  - Paramour of the parent.
  - Cohabitants.

For all such individuals in this category, the LDSS must be able to document how the care and control of the child was expressly delegated or implied to the individual, as well as take into consideration the factors listed in 3.5.2.2.1. For example, a person who merely resides in the same home as the child but was never delegated any authority over the child and in fact did not exercise any control over the child is not a caretaker. (Moore v. Brown, 2014 Va. App. LEXIS 181.)

- Individuals responsible by virtue of their positions of conferred authority includes but is not limited to:
    - Teacher or other school personnel.
    - Institutional staff.
    - Child care personnel.
    - Scout troop leaders.

#### 3.5.2.2.1 Caretaker considerations

When determining whether a person is responsible for the care of a child, the LDSS should consider the amount of authority for the care, control and discipline of the child delegated to the person acting as a caretaker. The LDSS should gather sufficient evidence to demonstrate that the alleged abuser/neglector is a caretaker and document such evidence in the child welfare information system. The LDSS should 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 person in a caretaking role at the time of the alleged abusive or neglectful incident?
- 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?
- What were the expectations of the parent, alleged abuser/neglector and child?

#### 3.5.2.2.2 Caretakers less than 18 years of age

The LDSS should consider these additional issues when determining if a minor is a caretaker:

- Was it appropriate for the minor to have been put in a caretaking role?
- Was the alleged abuse or neglect by the minor indicative of their 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?

If it is determined that a minor may have abused or neglected a child but the minor should not have been placed in a caretaker role, the LDSS may determine the minor to be the *child who is a victim* of the caretaker who put them in that role. If it is determined that a minor may have sexually abused the child and the minor is not determined to be a caretaker, refer to section 3.5.5.2 for additional guidance on reporting non-caretaker sexual abuse.

Refer to Section 4, Family Assessment and Investigation and Section 7, Appeals for additional guidance regarding caretakers under 18 years of age.

#### 3.5.2.2.3 Caretakers in complaints or reports alleging the human trafficking of a child

Pursuant to § 63.2-1508 B of the Code of Virginia, the alleged *child who is a victim*'s parent, other caretaker, or any other person, even if they have not been identified, suspected to have abused or neglected the child may be considered a caretaker when evaluating the validity of a complaint or report involving the alleged human trafficking of the child.

#### 3.5.2.2.4 Caretakers in complaints or reports alleging the sexual abuse or sexual exploitation of a child.

Pursuant to § 63.2-1508 of the Code of Virginia, the alleged *child who is a victim*'s parent, other person responsible for their care, or an intimate partner of such parent or person may be considered a caretaker when evaluating the validity of a complaint or report involving the alleged sexual abuse or sexual exploitation of a child.

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

Pursuant to 22 VAC 40-705-50 B 4, the complaint or report must describe a type of abuse or neglect as defined in 22 VAC 40-705-30 or Section 2, Definitions of Abuse and Neglect of this guidance manual.

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

The Family Services Specialist 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?

#### 3.5.2.3.2 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 VAC do not require that the child sustain an actual injury.

#### 3.5.2.3.3 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.

#### 3.5.2.3.4 "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.

#### 3.5.2.3.5 Determine if medical neglect definition has been met

It is the parent's responsibility to determine and obtain appropriate medical, mental health 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 health 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 health 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 health 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 child and the parents or other person legally responsible for 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 child and the parents or other person legally responsible for the child have considered alternative treatment options.

- The child and the parents or other person legally responsible for the child believe in good faith that such decision is in the child's best interest.

The VAC 22 VAC 40-705-10 provides definitions of some of the terms in the Code of Virginia.

- **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 condition. 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.

#### 3.5.2.3.6 Child under alternative treatment

Pursuant to 22 VAC 40-705-30 B3b(1) and § 63.2-100 of Virginia, 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.[1] 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.[2]

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.

#### 3.5.2.3.7 Medical neglect of infants with life-threatening conditions

The Virginia Administrative Code 22 VAC 40-705-30 B3 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.

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

#### 3.5.2.3.8 Screening decision for substance-exposed infant (SEI) reports

A report of an SEI, which meets one of the three circumstances outlined in § 63.2-1509 of the Code of Virginia, is sufficient to initiate a CPS response.

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[1] 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.

[2] 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).

However, if a report of SEI is made by a healthcare provider and screened out, the LDSS should advise the caller to refer the mother and child to the local Community Services Board (CSB), Opioid Treatment Program, Medication Assisted Treatment provider, home visiting program and/or local public health department to ensure a Plan of Safe Care is developed for the mother and child. See Section 10: Substance-Exposed Infants for specific guidance relating to this special population.

#### 3.5.2.4 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 complaint or report of abuse or neglect.

The LDSS that first receives a report or complaint must determine if they have jurisdiction and which LDSS is the local department of jurisdiction.

The VAC 22 VAC 40-705-10 defines local department of jurisdiction.

If the LDSS that first receives a complaint or report of child abuse or neglect has jurisdiction, that local department becomes the local department of jurisdiction and shall assume responsibility to determine the validity of the complaint or report; and, if valid, shall ensure that a family assessment or investigation is conducted pursuant to § 63.2-1508 D of the Code of Virginia.

If the LDSS that first receives a complaint or report of child abuse or neglect does not have jurisdiction, that local department must determine the local department of jurisdiction and **immediately** do each of the following:

- Document and transfer the complaint or report in the child welfare information system.
- Make verbal contact with a Family Services Specialist or Supervisor at the local department of jurisdiction and advise them of the transfer.
- Advise the person making the complaint or report of the name and telephone number for the local department of jurisdiction.

Only a local department of jurisdiction may determine the validity of a complaint or report of child abuse or neglect; and, if valid, conduct an investigation or family assessment.

If the criteria for where the abuse or neglect occurred and where the child resides are different, the priority for the local department of jurisdiction should be given to the jurisdiction where the abuse or neglect occurred only if there is a joint investigation with law enforcement in that jurisdiction associated with the allegations. Otherwise, the local department of jurisdiction should be where the child resides to ensure the provision of services to the child and family.

Two local departments who cannot agree on jurisdiction must work to resolve the jurisdictional issue prior to contacting their Regional Practice Consultant. The resolution process must include a telephone discussion by the Family Services Supervisors at the respective local departments. If it cannot be resolved by the Family Services Supervisors, the next step must include a telephone discussion by the Directors or their designees at the respective local departments. If it cannot be resolved by the Directors or their designees, the local departments must contact their Regional Practice Consultant. The Regional Practice Consultant will then determine which local department must accept jurisdiction.

#### 3.5.2.4.1 Lack of jurisdiction not sufficient to invalidate complaint or report

The LDSS may not invalidate a complaint or report because they are not the local agency of jurisdiction. The LDSS must **immediately** document and transfer the complaint or report in the child welfare information system to the local agency of jurisdiction as instructed in Section 3.5.2.4.

#### 3.5.2.4.2 Out-of-state 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, document the referral in the child welfare information system, and then invalidate the referral for lack of jurisdiction in the child welfare information system.

#### 3.5.2.4.3 Transfer jurisdiction of complaint or report to local department of jurisdiction

The LDSS transferring a complaint or report to the local department of jurisdiction must immediately:

- Document and transfer the complaint or report in the child welfare information system;

- Make verbal contact with a Family Services Specialist or Supervisor at the local department of jurisdiction and advise them of the transfer; **AND**

- Advise the person making the complaint of the name and telephone number for the local department of jurisdiction. VDSS maintains a Local Department of Social Services Directory with contact information for each local agency.

The LDSS transferring a complaint or report must do so **immediately** because the receiving local department of jurisdiction is responsible for ensuring the initial response is initiated within the determined response time. See Section 3.8 Screen valid complaints and reports for priority.

#### 3.5.2.4.4 Responsibilities of the local department of jurisdiction receiving the complaint

The local department of jurisdiction receiving a complaint or report shall assume responsibility for determining the validity of the complaint or report; and, if valid, ensure that a family assessment or investigation is conducted. The local department of jurisdiction must also ensure the initial response is initiated within the determined response priority.

#### 3.5.2.4.5 Assistance between local department of jurisdiction

Pursuant to 22 VAC 40-705-40 I 3, the local department of jurisdiction may ask another local department 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 *child who is a victim*, the alleged *child who is a victim*'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 *child who is a victim* 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 *child who is a victim*, 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 CPS 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 local department of jurisdiction requests another local department of jurisdiction to assist in completing a family assessment or an investigation or providing services, the requesting local department of jurisdiction shall contact the receiving local department of jurisdiction by telephone before transferring the record within the child welfare information system. The receiving local department of jurisdiction shall then arrange protective and rehabilitative services as needed or appropriate, and assist in a timely completion of the investigation or family assessment. All written notification and letters (i.e., disposition letters and notification of appeal rights) remain the responsibility of the original local department of jurisdiction conducting the family assessment or investigation. The local department of jurisdiction shall continue to retain case materials not entered into the child welfare information system and provide the receiving local department of jurisdiction with relevant portions of the case record necessary to provide services or to complete the investigation or family assessment.

- **Cooperative agreements between LDSS**. A local department of jurisdiction may request assistance from a local department that is not necessarily a local department of jurisdiction. A cooperative agreement may be developed between the two LDSS to address guidelines, parameters, and follow-up requirements.

#### 3.5.2.4.6 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 local department of jurisdiction may contact a neighboring locality and develop the appropriate guidelines for completion of the family assessment or investigation. The LDSS may develop a cooperative agreement to ensure that the report receives an appropriate response.

The local department of jurisdiction should request a neighboring locality to conduct any investigation in reports involving a foster child when the child is placed in a locally approved foster home.

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 Practice Consultant*.

#### 3.5.2.4.7 Family assessments or investigations involving employees of LDSS

Pursuant to 22 VAC 40-705-40 H4 and § 63.2-1509 of the Code of Virginia, 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.

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

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

A 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. A LDSS should report the suspected abuse or neglect to CPS 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.

### 3.5.3 Universal screening for domestic violence (DV)

All valid reports should be screened to determine the presence of DV. There are several evidence based tools that can be used to screen for DV depending on who is being interviewed. The "HITS" (Hurt, Insult, Threaten, Scream) screening tool may be used to screen for DV with collaterals such as family members, professionals, service providers, anonymous callers and mandated reporters. The Women's Experience with Battering Tool (WEB) is designed to be used with potential victims of DV. These screening tools and additional guidance regarding DV and universal screening can be found in a new section of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

### 3.5.4 Invalid report or complaint

Pursuant to 22 VAC 40-705-50 C, 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.

#### 3.5.4.1 Additional information for screening reports of abuse or 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. Section 5: Out of Family Investigations of this guidance manual has additional guidance for assessing the applicability of § 63.2-1511 for CPS out-of-family reports of school employees.

#### 3.5.4.2 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.

If a child death is alleged to have resulted from abuse or neglect by a deceased caregiver, the LDSS should proceed with a child death investigation.

#### 3.5.4.3 Prevention response for invalid report or complaint

If a report or complaint is determined to be invalid and the LDSS has determined that services need to be provided to prevent foster care, the LDSS should open a Prevention services case to provide services to the child and family. The Code of Virginia § 63.2-905 provides the legal authority to offer and provide foster care services, which includes services to a child who is in need of services to prevent or eliminate the need for foster care placement. A child in need of services may include a victim of sex trafficking or non-caretaker sexual abuse.

Refer to the VDSS Child and Family Services Manual, Chapter B. Prevention, Section 2, for further guidance regarding prevention services.

#### 3.5.4.4 Universal response to invalid complaints or reports of child human trafficking

All complaints or reports alleging a child is a victim of human trafficking require the LDSS complete a human trafficking assessment, unless during the course of the human trafficking assessment it is determined an investigation or family assessment is required by law or is necessary to protect the safety of the child. The human trafficking assessment response creates a universal response by the child welfare system to the human trafficking of children. The purpose of the human trafficking assessment is to assess both the safety and risk factors associated with the child victim and his family/caretaker(s) as well as the protective and rehabilitative service needs of the child victim and his family/caretaker(s). See Section 4.2 for further guidance regarding the human trafficking assessment.

### 3.5.5 Required notifications if report or complaint is invalid

#### 3.5.5.1 Notify complainant

If a report is determined to be invalid, the LDSS must inform the complainant of its lack of authority to take action. This notification must be documented in the child welfare information system.

##### 3.5.5.1.1 Invalid complaint involving child care or residential facility

If a report is not valid because it addresses general substandard conditions in a child care or residential facility, but the conditions do not constitute abuse or neglect, the LDSS shall identify the proper regulatory authority and refer the caller to that regulatory authority. The LDSS must also notify the proper regulatory authority of the report. 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.

##### 3.5.5.1.2 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.

This includes allegations involving sex trafficking of a child by someone not in a caretaker role.

#### 3.5.5.2 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 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.

#### 3.5.5.3 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.

## 3.6 Certain complaints shall be reported to the CA and others

### 3.6.1 Report certain cases of suspected child abuse or neglect

Pursuant to 22 VAC 40-705-50 D, the following complaints and reports shall be reported by the LDSS to the attorney for the Commonwealth and local law enforcement agency **immediately but within two (2) hours** of receipt of the report. The LDSS shall provide records and information, including reports related to any complaints of abuse or neglect involving the victim(s) or the alleged perpetrator, related to the investigation of the complaint. The LDSS must document the date and time of notification to the local attorney for the Commonwealth and the local law enforcement agency in the child welfare information system. This notification should be documented on the referral acceptance screen and in the referral as an Interview and Interaction (I and I).

### 3.6.1.1 Any 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 local attorney for the Commonwealth and the local law-enforcement agency.

See Section 6, Child Deaths, of this guidance manual for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

### 3.6.1.2 Any injury or threatened injury to a child involving a felony or Class I misdemeanor

Any 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 local 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.[3]

Felonies are classified, for the purposes of punishment and sentencing, into six (6) classes; misdemeanors are classified into four (4) classes.[4]

### 3.6.1.3 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 local attorney for the Commonwealth office and local law enforcement agency. This includes criminal acts of commercial sex trafficking as defined in the Code of Virginia §18.2-357.1.

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[3] § 18.2-8.of the Code of Virginia.

[4] § 18.2-9 of the Code of Virginia.

### 3.6.1.4 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 local attorney for the Commonwealth office and to local law enforcement agency.

### 3.6.1.5 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 local attorney for the Commonwealth office and local law enforcement agency.

### 3.6.1.6 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 local attorney for the Commonwealth office and local law enforcement agency.[5]

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

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

### 3.6.1.8 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

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[5] The Code of Virginia § 18.2-371 defines contributing to the delinquency of a minor as:

Any person 18 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 or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild, is 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.

offenses must be in accordance with guidance developed by the LDSS in conjunction with the community's law enforcement and judicial officials.

### 3.6.2 Notification to law enforcement form

Written notification by the LDSS to the local law enforcement agency shall be made within **two (2) business days** of receipt of the report by the LDSS and shall be documented on the Notification to Law Enforcement from Child Protective Services form located on FUSION. The form is also available on the public VDSS website under forms. The notification form shall be signed by the LDSS representative making the notification and the law enforcement agency representative receiving the notification. The form and signatures may be completed electronically or in writing.

The Notification to Law Enforcement form has been updated to include complaints and reports involving unrelated violent sexual offenders left alone with a child. See Section 3.6.3.

### 3.6.3 Report complaints involving Tier III sexual offenders

Pursuant to §63.2-1503 D, all complaints or reports involving a child being left alone in the same dwelling with a Tier III sexual offender who is not related to the child by blood or marriage must be reported to local attorney for the Commonwealth **immediately but not more than two (2) hours** of receipt of the complaint or report.

The LDSS shall provide records and information to the local attorney for the Commonwealth that would help determine whether a violation of post-release conditions, probation, parole, or court order has occurred due to the nonrelative sexual offender's contact with the child.

The LDSS must document the date and time of notification to the local attorney for the Commonwealth in the child welfare information system. This notification should be documented on the referral acceptance screen and in the referral as an Interview and Interaction (I and I). The LDSS may use the Notification to Law Enforcement form which has been updated to include complaints and reports involving violent sexual offenders. The form is located on the public VDSS website under forms.

### 3.6.4 Memoranda of understanding with law enforcement and Commonwealth's attorney

Pursuant to 22 VAC 40-705-50 E and § 63.2-1503 J of the Code of Virginia, the LDSS must develop, where practicable, 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.

Since many situations are required to be reported to local law enforcement and/or the attorney for the Commonwealth, 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.

### 3.6.5 Report military dependents to Family Advocacy Program

Pursuant to § 63.2-1503 N of the Code of Virginia, effective July 1, 2017, all reports involving a dependent child of an active duty military member or a member of his household shall be reported to the Military Family Advocacy Program. This includes invalid complaints or reports.

Once a report has been determined invalid and it involves a dependent child, the LDSS shall report the information to the Family Advocacy Program. This notification can be made either verbally or in writing and must be documented on the referral acceptance screen in the child welfare information system. This notification should include whether or not the military member is aware that the report has been made to CPS. If the report is valid, notification shall occur once the response is complete. See Section 4, Assessments and Investigations, for notifications in a family assessment and investigations.

For additional information about the Family Advocacy Program, contact information for a particular branch of the military or a specific installation, click here.

## *3.7* Report Child Fatalities and Near Fatalities

### 3.7.1 Report a child fatality

The VAC 22 VAC 40-705-50 F requires the LDSS to immediately contact the Regional Medical Examiner, attorney for the Commonwealth, local law enforcement, and the *CPS Regional Practice Consultant* when a report or complaint alleging abuse or neglect involves the death of a child.

The LDSS must document the notifications in the child welfare information system.

See Section 6, Child Deaths, of this guidance manual for additional requirements and guidance related to a report of a child death due to suspected abuse or neglect.

#### 3.7.1.1 Examples of a child fatality

The U.S. Department of Justice indicates the majority of child fatalities can be categorized as the result of either acute or chronic maltreatment.

Acute maltreatment means the child's death is directly related to injuries suffered as a result of a specific incident of abuse or act of negligence. Often times, in cases of acute maltreatment the child has not been previously abused or neglected. Some examples of an acute maltreatment child fatality include:

- A child accesses an unsecured, loaded handgun in the home and fatally shoots himself.
- A young child is playing outside with siblings near the family pool. The caregiver briefly goes inside and when they return the young child is found unresponsive in the pool.
- A child is fatally thrown from a vehicle in a motor vehicle crash. It is determined the child was not restrained at the time of the accident.

Chronic maltreatment means the child's death is directly related to harm caused by abuse or neglect occurring over a period of time. Some examples of a chronic maltreatment child fatality include:

- A child receives fatal physical injuries and is diagnosed with Battered Child Syndrome/Chronic Physical Abuse.
- A young child does not receive enough nutrition to sustain normal growth and development and is diagnosed with Nonorganic Failure to Thrive.
- A child with a life-threatening medical condition does not receive necessary medical care or have access to life-sustaining medications. See Section 2, Definitions of Abuse and Neglect, for information on additional factors to consider when evaluating for medical neglect.

### 3.7.2 Report "near fatality" of a child

The Child Abuse and Prevention Treatment Act (CAPTA) defines a "near fatality" as an act that, as certified by a physician, places the child in serious or critical condition. The VAC 22 VAC 40-705-10 provides definitions for “near fatality” and “life threatening condition.”

Inherent within the definition of a near fatality is the requirement that a physician certify that the child is in serious or critical condition at the time of the report. Certification by a physician can be either in writing or verbal. Hospital records which indicate the child's condition is serious or critical and life threatening are sufficient. The physician certification must be documented in the child welfare information system.

Some questions the LDSS can ask the physician to help determine if the child's condition is a near fatality include, but are not limited to:

- Are the child’s vital signs unstable?
- Is the child ill or unconscious?
- Is the outcome questionable or unfavorable?
- Does the child require hospitalization in an intensive care unit?
- Does the child require significant intervention in terms of airway management, ventilatory support and fluid, or medication resuscitation?

#### 3.7.2.1 Examples of a near fatality of a child

Some examples of a near fatality by type of abuse or neglect include:

- **Physical Abuse**: A child has been diagnosed with Abusive Head Trauma and has been admitted to the Intensive Care Unit of the hospital. The attending physician has indicated the child's prognosis is poor and the child is in critical condition.
- **Physical Neglect**: A child overdoses on the caretaker's psychotropic medication that had not been stored properly. The child is in a coma and the doctor reports the child may die.
- **Physical Neglect (FTT)**: A child is admitted to the pediatric intensive care unit due to significant weight loss and possible malnutrition. The doctor has

diagnosed the child as non-organic Failure to Thrive and states the child is seriously ill.

- **Medical Neglect**: A child with diabetes is admitted to the hospital due to medical complications directly related to the caretakers not following the prescribed medical treatment (giving the child their insulin). The hospital records indicate the child presented in a life threatening condition.

Child maltreatment deaths may involve a delay between the time the child is determined to be in critical or serious condition and the subsequent death of the child.

#### 3.7.2.2 Notification and documentation of near fatalities

The LDSS must inform the *CPS Regional Practice Consultant* as soon as possible of all situations which constitute a near fatality and document the notification in the child welfare information system.

The LDSS must document situations which constitute a near fatality of a child in the child welfare information system in conjunction with the type of abuse or neglect that is alleged to have caused the near fatality.

If during the course of the investigation the child dies, the child welfare information system must be changed to reflect the fatality. A child cannot be considered a near fatality and a fatality.

Additional guidance on disclosing near fatality information and findings can be located in Section 6, Child Deaths, of this guidance manual.

## 3.8 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.

Response time is defined in 22VAC40-705-10 as a reasonable time for the LDSS to initiate a valid report of child abuse or neglect.

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 child welfare information 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 child welfare information system.

Timeliness of the initial response is calculated from the date and time of the referral. There are three (3) 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 40 work hours** of the date and time of the referral

For example, if a valid report is received on Monday at 10:20 am, the timeliness of the initial response would be calculated as follows based on the three response levels:

Response 1 (R1): as soon as possible but no later than Tuesday at 10:20 am

Response 2 (R2): as soon as possible but no later than Wednesday at 10:20 am

Response 3 (R3): as soon as possible but no later than the following Monday at 10:20 am

All decisions to override the response level must be approved by the supervisor and documented in the child welfare information system. Copies of the CPS Intake Tool and definitions are located on the forms webpage on the DSS public website. Since determining urgency of response is critical for valid reports, the following guidance is provided in 22 VAC 40-705-50 G.

### 3.8.1 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?

- Has the abuse or neglect diminished or stopped, or is the child thought to be at risk of continued abuse or neglect?
- 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?
- Is the caretaker not available and no provision made for child's care?
- Is law enforcement requesting immediate response?
- Will perpetrator have access to child in next 48 hours?
- Are severe parental or caretaker *substance use*, developmental disabilities, or mental illness issues present AND no other appropriate caretaker is present?
- Does child's behavior put self at risk and caretaker does not respond appropriately?
- Is the child in an alternative safe environment?
- Has a substantial amount of time passed since the incident occurred?

### 3.8.2 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?
- 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 threat of harm to the child?
- Were severe or bizarre disciplinary measures used, or was abuse premeditated?
- Is medical care required; or are significant bruises, contusions, or burns evident?
- Is caretaker's behavior toward child extreme, severe, or bizarre?

### 3.8.3 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?
- Is the child able to express thoughts or responses regarding the allegation of abuse or neglect?
- Is the child currently alone with, or repeatedly left alone with, a non-related violent sex offender?
- Does information show observable and substantial impairment in child's ability to function in a developmentally appropriate manner?

### 3.8.4 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:

- Who is responsible for the abuse or neglect?
- What is being reported?

- 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 *child who is a victim* 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?
- Is the allegation exposure to drug-related activity and/or involves a meth lab?
- Is the family about to flee or have a history of fleeing?
- Is non-involved caretaker's response appropriate and protective of child?
- Is non-involved caretaker unaware of abuse or is the response to abuse unknown?
- Does perpetrator have access, or is child afraid to go home?

### 3.8.5 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 *child who is a victim*?
- Does the child's perception of his role impact his or her vulnerability for abuse or neglect?

- Does child appear seriously ill or injured and in need of immediate medical care?

- Is any child age eight (8) or under or limited by disability?

### 3.8.6 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 *child who is a victim*? What was the relationship between the alleged *child who is a victim* and the mandated reporter?

- 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?

### 3.8.7 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 completed contact with the alleged victim. The LDSS shall conduct a face-to-face interview with and observe the alleged *child who is a victim* **within the initial response priority level assigned**, as this contact is critical to assessing the safety of the child and is the required federal measure. Sometimes the LDSS's initial efforts to respond to the report will not be successful such as when no one is home; however, the LDSS must use reasonable diligence to locate the alleged victim within the determined response priority. For more guidance on reasonable diligence, refer to Section 4: Assessments and Investigations of this manual.

To ensure the face-to face contact with the alleged victim is completed within the required response priority, the supervisor must establish the date and time of the supervisory consultation at the time of referral assignment. The supervisory consultation must occur in advance of the expiration of the response priority to ensure

the contact is completed within the mandated time frame. The consultation must include a discussion of the Family Services Specialist's reasonable diligence documented in the child welfare information system and a solution to ensure a face-to-face contact is completed with the alleged victim within the response priority. The supervisory consultation must be documented in the child welfare information system.

All contacts, attempted or completed, in the family assessment and investigation must be entered into the child welfare information 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; however, only completed face-to-face contacts with the alleged victim satisfy the timeliness of initial response measure. The VAC 22 VAC 40-705-50 H and 22 VAC 40-705-80 A1 further addresses response time.

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

The LDSS may not respond to a complaint or report of child abuse or neglect to determine the validity of the referral. The validity determination must be made prior to the response of the LDSS. Once the LDSS responds to a complaint or report of child abuse or neglect, the LDSS is responsible for ensuring the completion of a family assessment or investigation.

### 3.8.8 Response time for child less than two years of age

Effective July 1, 2017, all valid reports that involve a child victim less than two years of age must receive an R1 response (**within 24 hours**).

## 3.9 Determine the appropriate 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.

After the decisions regarding validity and urgency, a decision must be made as to whether to conduct a family assessment or an investigation. Certain complaints or reports are required by the Code of Virginia to be investigated.

Effective July 1, 2017, all valid substance exposed infant (SEI) reports shall receive a family assessment unless an investigation is required by law or necessary to protect the safety of the child. See Section 10: Substance Exposed Infants for new requirements and guidance when responding to SEI reports.

Effective July 1, 2018, all valid complaints or reports involving a child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor which registration is required as *Tier III* sexual offender shall receive an investigation. The family assessment track is no longer permitted for these valid complaints or reports.

### 3.9.1 Make the response track decision

Family assessments are conducted when the concerns outlined in the report indicate inadequate parenting or life management rather than dangerous parenting practices and actions.

An investigation is conducted when the allegations in the report are required by statute or indicates there is serious abuse or neglect resulting in immediate or impending harm to the child.

Family assessment and investigation are defined in 22 VAC 40-705-10.

The immediate danger to the child and the severity of the alleged abuse or neglect are crucial factors to be considered. This guidance is not intended to be all inclusive and does not replace the LDSS judgment regarding alleged safety threats and risk factors.

The LDSS completes the differential response decision on the CPS Intake Tool in the child welfare information system. This checklist and the definitions assist with consideration of statutory mandates for the investigation track and other serious situations which may be appropriate for the investigation track. The CPS Intake Tool is located on the DSS public website.

Additional guidance regarding track decisions when DV is involved can be found in section 1.4.4.2 of the VDSS Child and Family Services Manual, Chapter H, Domestic Violence.

The following variables should be considered when determining the track. The LDSS should assign a report to the investigation track if one or more of the following variables are present:

- If there is a **third** valid CPS report within 12 months, *involving the same alleged child who is a victim and/or alleged abuser or neglector*, it must be investigated.

- Type and severity of alleged abuse. Serious injuries as defined in § 18.2-371.1 are required by the Code of Virginia to be investigated. Those injuries include but are not limited to disfigurement, bone fractures, severe burns or lacerations, mutilation, maiming, forced ingestion of dangerous substances, and life-threatening internal injuries. A serious injury also includes brain damage, subdural hemorrhage or hematoma, dislocations, sprains, scalds or any other physical injury that seriously impairs the health or well-being of the child and requires medical treatment (e.g., suffocating, shooting, significant bruises/welts, bite marks, choke marks).Non-organic failure to thrive of an infant.

- Use of excessive physical discipline or physical force. This includes using torture or excessive physical force, or acting in a way that bears little resemblance to reasonable discipline given the child's age and stage of development; or caretaker punished child beyond the duration of the child's endurance. (e.g., punching child in head or stomach, tying child up, locking child in a closet, slamming child against wall, or punishing child in a way that produces humiliation or degradation, punishing child for acts that are outside child's control).

- History of abuse or neglect. Consider previous maltreatment by a caretaker that was serious enough to have caused a severe injury. Take into consideration if parental rights have been terminated on any other children as a result of prior child maltreatment.

- Caretaker failed to benefit from previous professional help. Consider if the caretaker previously maltreated a child in their care and was referred for services, but did not participate in or did not benefit from those services.

- Child's age and ability to self-protect. The age of the child is a critical factor since any abuse or neglect to a child six (6) years of age and under has the potential to constitute a serious and immediate safety threat to the child's health and safety. Consider the presence of a disability that affects the child's ability to self-protect regardless of age.

- Threaten to cause harm or retaliate against the child. Consider if there is a threatening action that would result in serious harm or a household member

plans to retaliate against the child for CPS involvement. Consider whether or not the caretaker's behavior is violent or out of control.

- Living conditions. Child's physical living conditions are reported to be hazardous and immediately threatening, based on the child's age and developmental status. This includes reports indicating illegal drugs are being sold or manufactured in the home and unsecured weapons.

- Child's proximity to DV incident. Consider if the child was in immediate danger of serious physical harm by being in close proximity to an incident(s) of assaultive behavior/DV between adults in the household.

- If there is reason to believe that a child's safety will be jeopardized if parental cooperation cannot be obtained prior to interviewing the child.

If the allegations are not required by statute to be investigated or do not include any of the above variables, the report may be placed in the family assessment track.

The track decision should be made at intake, before responding, if at all possible.

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.

The LDSS may not respond to a complaint or report of child abuse or neglect to determine the validity of the referral. The validity determination must be made prior to the response of the LDSS. Once the LDSS responds to a complaint or report of child abuse or neglect, the LDSS is responsible for ensuring the completion of a family assessment or investigation.

## 3.9.2 CPS Report Placement Chart

| FAMILY ASSESSMENT RESPONSE | INVESTIGATION RESPONSE |
|---|---|
| **Mandated by Code of Virginia (§ 63.2-1506 C):**<br><br>- **Substance Exposed Infant** reports shall be handled as a Family Assessment. | **Mandated by Code of Virginia (§ 63.2-1506 C):**<br><br>- All sexual abuse allegations<br>- Any child fatality<br>- 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)];<br>- Child taken into agency custody due to abuse or neglect (§ 63.2-1517)<br>- Child taken into protective custody by physician or law enforcement, pursuant to § 63.2-1517<br>- All allegations regarding a caretaker in a designated out of family setting as defined in § 63.2-1506 C<br>- Child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor for which registration is required as a Tier III sexual offender pursuant to §9.1-902 |
| **Policy mandate:**<br><br>After a family has received two (2) valid CPS reports within 12 months, the **third** report must be investigated. | **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:<br><br>**Physical Abuse:**<br><br>Abusive treatment of a child that may or may not have caused a minor injury – no medical treatment required.<br><br>**Mental Abuse**:<br><br>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 DV. | Examples of when this response is **most appropriate**, but not mandated by law:<br><br>**Physical Abuse**:<br><br>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.<br><br>Reports of children present during the sale or manufacture of illegal substances; and highly recommend these be investigated jointly with law enforcement. |

| | |
|---|---|
| **Neglect:**<br><br>Lack of supervision where child is not in danger at time of report; minor injuries suggesting inattention to child safety. | **Mental Abuse**:<br><br>Child is experiencing serious distress or impairment; child's emotional needs allegedly are not being met or are severely threatened.<br><br>**Neglect:**<br><br>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.<br><br>**Non-Organic Failure to Thrive:**<br>Child is an infant and at imminent risk of severe harm.<br><br>**Child Abandonment** referrals.<br><br>**Third 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.

# 4

# ASSESSMENTS AND INVESTIGATIONS

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# 4

# ASSESSMENTS AND INVESTIGATIONS

## 4.1 Introduction

This section of guidance covers the specifics of the human trafficking assessment, family assessment and investigation tracks, and guidance common to all.

All complaints or reports of child human trafficking require the LDSS to complete a human trafficking assessment, unless during the course of the human trafficking assessment it is determined an investigation or family assessment is required by law or necessary to protect the safety of the child. The completion of a human trafficking assessment does not require the complaint or report meet the four validity criteria outlined in 22 VAC 40-705-50 B. The completion of an investigation or family assessment on a complaint or report alleging a child is a victim of human trafficking requires a valid complaint or report and each of the four validity criteria outlined in 22 VAC 40-705-50 B must be satisfied.

Every valid report of abuse or neglect shall receive either a family assessment or an investigation. The goals of both responses are to:

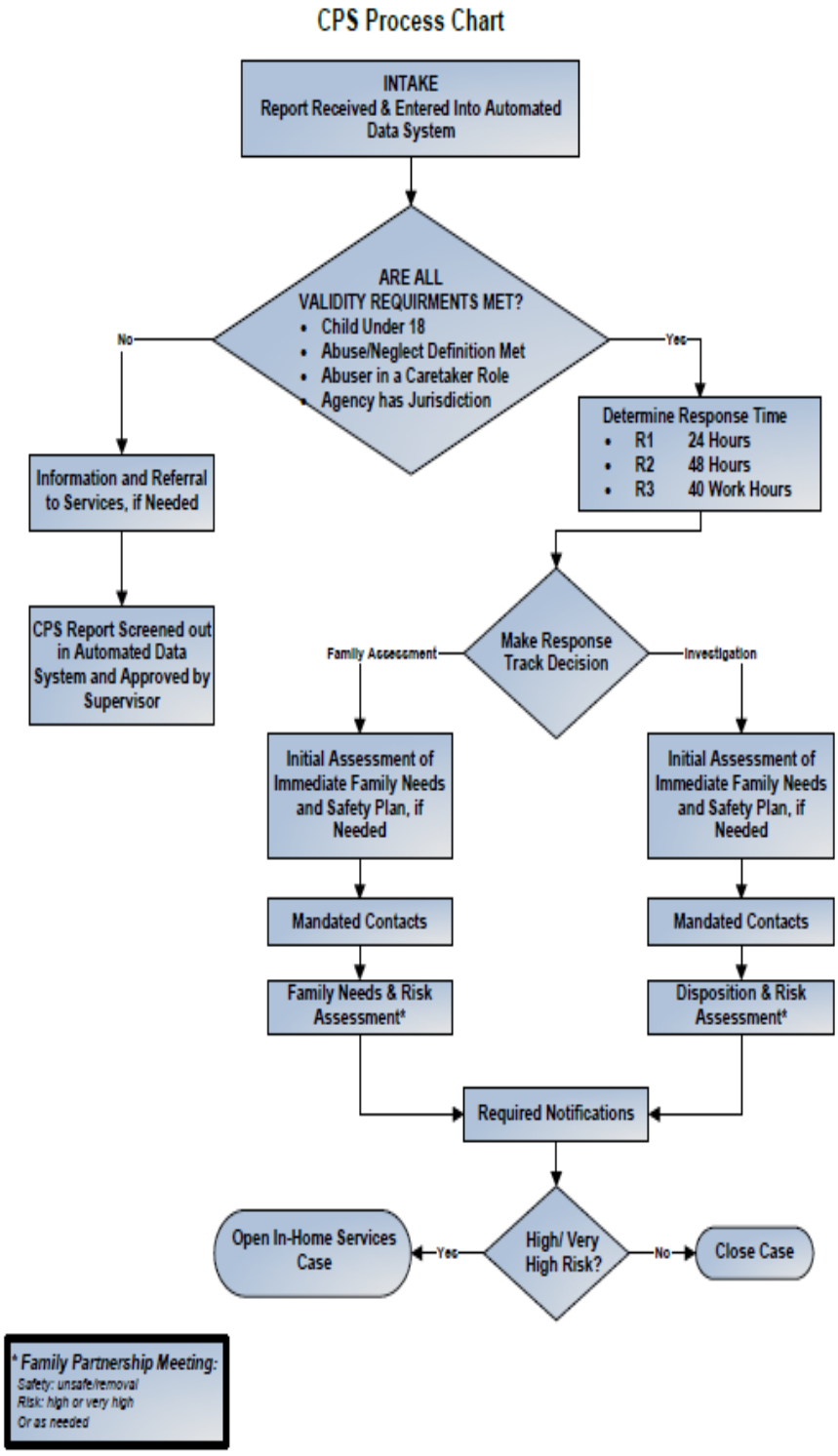
- Assess child safety.
- Strengthen and support families by focusing on their strengths, supports and motivation to change.
- Engage families in services that could enable them to better parent their children.
- Prevent child maltreatment.

### 4.1.1 Differential response

Differential response is a Child Protective Services (CPS) practice that allows for more than one method of responding to valid reports of child abuse and neglect.

The Virginia Administrative Code (VAC) 22 VAC 40-705-10 defines family assessment and investigation.

The following charts show the CPS process and requirements for a Family Assessment and an Investigation.


CPS Process Chart
INTAKE
Report Received & Entered Into Automated Data System
ARE ALL VALIDITY REQUIRMENTS MET?
Child Under 18
Abuse/Neglect Definition Met
Abuser in a Caretaker Role
Agency has Jurisdiction
No
Yes
Information and Referral to Services, if Needed
CPS Report Screened out in Automated Data System and Approved by Supervisor
Determine Response Time
R1 24 Hours
R2 48 Hours
R3 40 Work Hours
Make Response Track Decision
Family Assessment
Investigation
Initial Assessment of Immediate Family Needs and Safety Plan, if Needed
Initial Assessment of Immediate Family Needs and Safety Plan, if Needed
Mandated Contacts
Mandated Contacts
Family Needs & Risk Assessment*
Disposition & Risk Assessment*
Required Notifications
High/ Very High Risk?
Yes
No
Open In-Home Services Case
Close Case
* Family Partnership Meeting:
Safety: unsafe/removal
Risk: high or very high
Or as needed

## CPS REQUIREMENTS FOR FAMILY ASSESSMENT AND INVESTIGATION

| CPS REQUIREMENTS | FAMILY ASSESSMENT | INVESTIGATION |
|---|---|---|
| Conduct Safety Assessment* | YES | YES |
| Mandated contacts:<br>• Child & siblings<br>• Alleged Abuser<br>• Parent or Guardian<br>• Collaterals<br>• Non-custodial parent | YES | YES |
| Other Contacts, if relevant:<br>• Commonwealth Attorney – if criminal act is alleged or child fatality<br>• Medical Examiner – if child fatality<br>• Law Enforcement – if criminal act is alleged and joint response is needed, or child fatality<br>• CPS Regional Specialist – if child fatality or near fatality and certain out-of-family reports | YES | YES |
| Observe family environment and/or site where alleged abuse occurred. | YES | YES |
| Enter the home if allowed to do so by an adult residing in the home. | YES | YES |
| Notify: | YES | YES |

| | | |
|---|---|---|
| • Parent if child interviewed at school or other setting.<br>• Alleged abuser.<br>• Non-custodial parent when that parent is not the subject of a report.<br>• All parties of any extension of timeframe or suspended investigation.<br>• All parties when family assessment or investigation is completed. | | |
| Refer children under age three (3) to Infant and Toddler Connection Program | IF ASSESSED NEED | YES<br>in founded investigations |
| Complete Family Risk Assessment * | YES | YES |
| *Convene Family Partnership Meeting at appropriate Safety and Risk decision points<br>ssment | NO | YES |
| Provide Services if risk is moderate, high, or very high* and services are needed for prevention of abuse or neglect. | YES | YES |
| Document all CPS requirements in child welfare information system. | YES | YES |

### 4.1.2 Engaging families

Families can be better served, and children protected, by focusing more on establishing a partnership with them and less on the authoritarian approach. The Family Services Specialist cannot change families, but if they are approached through an assessment process that looks for strengths, support systems, motivation to change and supportive interventions, they will be more capable of providing safe care for their children.

Some key skills and strategies that can be used to engage families in a family assessment or an investigation include:

- Be respectful, genuine and non-judgmental
- Be transparent; clarify the role of the agency

- Actively listen to the family's story
- Inquire about and respect each family's culture
- Seek to develop a partnership with the family
- Support the family in identifying its own goals
- Provide concrete assistance to meet basic needs
- Recognize and build on family strengths
- Assist the family in building informal support networks

## 4.2 Human Trafficking Assessment

### 4.2.1 Track decision

Pursuant to § 63.2-1506.1 A of the Code of Virginia, all complaints or reports alleging a child is a victim of human trafficking require the LDSS to complete a human trafficking assessment, unless during the course of the human trafficking assessment it is determined an investigation or family assessment is required by law or is necessary to protect the safety of the child. The completion of a human trafficking assessment does not require the complaint or report meet the four validity criteria outlined in 22 VAC 40-705-50 B. The completion of an investigation or family assessment on a complaint or report alleging a child is a victim of human trafficking requires a valid complaint or report and each of the four validity criteria outlined in 22 VAC 40-705-50 B must be satisfied.

### 4.2.2 Human trafficking definitions

The following words and terms when used in this section shall have the following meaning, unless the context clearly indicates otherwise:

| Term | Definition |
|---|---|
| **Commercial Sex Act** | Commercial sex act means any sex act on account of which anything of value is given to or received by any person. (22 U.S.C. § 7102). |
| **Commercial Sexual Exploitation of Children** | Commercial sexual exploitation of children refers to a range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person. It includes all nationalities of persons under the age of 18 years |

| | |
|---|---|
| | who are commercially sexually exploited. (18 U.S.C. §§ 1591, 2251, and 2423(c).) |
| **Human Trafficking** | Human trafficking refers to both sex and labor trafficking. |
| **Severe Forms of Trafficking** | Severe forms of trafficking in persons means:<br>(A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or<br>(B) 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. |
| **Sex Trafficking** | Sex trafficking refers to "the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person for the purpose of commercial sex." While adults must be compelled to perform commercial sex by force, fraud, or coercion in order for it to be considered a severe form of trafficking in persons, this is not the case for children. By law, children under the age of 18 who are inducted to engage in a commercial sex act are considered victims of sex trafficking. In addition to a minor engaging in a sex act in exchange for money, examples of sex trafficking include a minor engaging in "survival" sex (i.e., the victim engages in sex in order to obtain basic needs such as food, shelter, or clothing, which are considered something of value) or participating in certain types of pornography. (22 U.S.C § 7102 and P.L. 114-22.) |
| **Trafficker** | Any person who is responsible for the human trafficking of a child under the age of 18. This term can be synonymous with the term "pimp." |

The following is taken from Child Welfare and Human Trafficking: A Guide for Child Welfare Agencies (Child Welfare Information Gateway, 2017).

The words "victim" and "survivor" are both used to refer to children under the age of 18 years who have experienced or are experiencing human trafficking. The use of the term "victim" has legal implications for foreign nationals in terms of their eligibility for services, legal standing, and rights, whereas the term "survivor" is frequently used to connote the strength and resilience of individuals who have been commercially sexually exploited. Although, the terms are frequently used interchangeably, this section will use the term "victim" while still acknowledging the strength and resiliency of those who have been trafficked.

### 4.2.3 Human trafficking assessment

The human trafficking assessment response to all complaints or reports alleging a child is a victim of human trafficking creates a uniform response by the child welfare system to the trafficking of children. The purpose of the human trafficking assessment is to assess both the safety and risk factors associated with the child victim and his family/caretaker(s) as well as the protective and rehabilitative service needs of the child victim and his family/caretaker(s).

> (§ 63.2-1506.1 B of the Code of Virginia). A human trafficking assessment requires 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.

The human trafficking assessment is short-term intervention designed to assess the safety and risk factors associated with the child victim and his family/caretaker(s). It should be child-centered and family-focused by providing protective and rehabilitative services to the child and family. The human trafficking assessment is not focused on the sex trafficker.

#### 4.2.3.1 Jurisdiction

If the city or county in Virginia where the alleged child victim of human trafficking resides and the city or county in Virginia where the alleged human trafficking is believed to have occurred or where it was discovered are different, the preferential local department of jurisdiction should be where the child and family/caretaker(s) reside to ensure the provision of services to the child and family. Cooperation from the local department of jurisdiction where the alleged human trafficking occurred or is discovered will be required in some cases to ensure the immediate safety of the alleged child victim. The Code of Virginia § 63.2-1506.1 requires that local departments of jurisdiction work jointly together to ensure the completion of the human trafficking assessment.

The preferential local department of jurisdiction will have the primary assignment and the local department of jurisdiction where the alleged human trafficking occurred or is discovered will have the secondary assignment. The preferential local department of jurisdiction will be responsible for requesting the assistance and secondary assignment from the local department of jurisdiction in which the alleged human trafficking occurred or is discovered, if an immediate response is needed to ensure the immediate safety of the alleged child victim.

When the child and family/caretaker(s) reside outside of Virginia, the local department of jurisdiction shall be the city or county in Virginia where the alleged human trafficking is believed to have occurred or the city or county in Virginia where the alleged human trafficking was discovered. That local department has primary responsibility for ensuring the completion of the human trafficking assessment but may request the assistance of the local department in the city or county where the child and family/caretaker(s) reside outside of Virginia. If the local department outside of Virginia refuses to assist, the local department of jurisdiction in Virginia is responsible for the completion of the human trafficking assessment.

#### 4.2.3.2 Entry of complaint

All complaints or reports of the alleged human trafficking of a child made to the VDSS or an LDSS shall be documented in the child welfare information system. The LDSS must document the complaint or report of the alleged human trafficking of a child in the child welfare information system immediately, regardless of the validity of the complaint. Timeliness of the initial response is calculated from the date and time the referral was received, not validated or assigned.

#### 4.2.3.3 Opening a case

The LDSS must open all human trafficking assessment cases in the child welfare information system and select Human Trafficking Assessment as the case type. The LDSS must document all contacts with the child, family/caretaker(s), and collaterals in the case in the child welfare information system.

#### 4.2.3.4 Timeliness of response

The LDSS must consider and analyze all the information collected at the time the complaint or report is made to determine the most appropriate response for the initiation of the human trafficking assessment to ensure the child's immediate safety. The timeliness of response guidelines for a human trafficking assessment will mirror the Response 1 (R1) and Response 3 (R3) priorities utilized by CPS on valid reports of child abuse or neglect.

- The LDSS must commence the human trafficking assessment **as soon as possible within 24 hours** (Response 1) of the date and time of the complaint or report when the safety of the child is in jeopardy or unknown at the time the report or complaint is made to VDSS or the LDSS. For example, when a child has been located by law enforcement and their parent/caretaker(s) is not present, an **immediate** response by the LDSS will be needed to ensure the child's immediate safety.

- When the safety of the child is not in jeopardy at the time the report or complaint is made to VDSS or the LDSS, the LDSS must commence the human trafficking assessment **as soon as possible within 40 working** hours (Response 3) of the date and time of the complaint or report. For example, when a child discloses an experience of human trafficking to their therapist and the trafficker no longer has access to the child and there are not immediate concerns about the child's safety, the human trafficking assessment should begin **as soon as possible within 40 working** hours.

The LDSS should document the timeliness of their response in the child welfare information system for each complaint or report involving the human trafficking of a child.

#### 4.2.3.5 Contacts

In order to complete a human trafficking assessment, the LDSS should gather information from the following individuals:

- Alleged *child who is a victim*.
- Parent(s) or Guardian(s) of the alleged *child who is a victim*.
- Pertinent collaterals.

*Pursuant to § 63.2-1506.1 of the Code of Virginia, if at any time during the course of a human trafficking assessment it is determined an interview of the child by a children's advocacy center is needed and an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the local department may facilitate the interview with a children's advocacy center located in another jurisdiction. The credentials for a qualifying children's advocacy center are established in § 63.2-100 of the Code of Virginia*

The information gathered from the contacts on a human trafficking assessment should allow the LDSS to determine:

- The immediate safety needs of the child.
- The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect.
- The risk of future harm to the child.

The LDSS should observe the family home environment to determine the child's safety and the overall needs of the child and family. Whenever possible, home visits should be scheduled in advance with the family.

The LDSS should document all contacts and observations in the child welfare information system. The LDSS should document any contacts or observations that were not made or completed. The LDSS should include an explanation as to why the contacts or observations were not made or completed.

### 4.2.3.6 Safety assessment

A safety assessment is conducted at the beginning of a human trafficking assessment. The purpose of the initial safety assessment and safety plan is to:

- Assess whether the child is currently in immediate danger of serious physical harm that may require an intervention.
- Determine what interventions should be maintained or initiated to provide appropriate protection for the child.

A safety and risk field guide can be located on FUSION.

#### 4.2.3.6.1 Immediate safety considerations in human trafficking

The safety assessment for child victims of human trafficking should focus on several key considerations:

- Were the parent or guardian involved in any way in the human trafficking of child, including whether they were aware, participated in, or facilitated the trafficking of the child?
- Had the child run away from home prior to being trafficked? Did the child run away due to physical, mental, or sexual abuse at home?
- Had the parent or guardian done everything they knew how to do in order to prevent the child from running away or ensure the child's safe return?
- Can the parent or guardian protect the child from the trafficker?
- Is it safe for the child to return home?

#### 4.2.3.6.2 Safety assessment tool

The Safety Assessment Tool provides structured questions concerning the danger of immediate harm or maltreatment to a child and is used to guide the development of a Safety Plan. This information guides the decision about whether the child may remain in the home with no intervention, may remain in the home with safety interventions in place, or must be removed from the home.

To ensure that the safety of the child is assessed timely in each human trafficking assessment, the LDSS must complete the process of the safety assessment at the first meaningful contact with the family and document the results on the Safety Assessment Tool in the child welfare information system **within 24 hours** of the first meaningful contact.

For accurate completion, it is critical to refer to the definitions provided on the Safety Assessment Tool, and decisions must be based on supporting narrative documented in the child welfare information system. The Safety Assessment Tool with definitions is located on the public DSS website.

#### 4.2.3.6.3 Safety decision

After safety and protective factors have been assessed using the Safety Assessment Tool, the worker must make a decision about the safety of the child in the home. One of the following safety decisions must be determined using the Safety Assessment Tool and documented in the child welfare information system and shared with the family.

- SAFE. The child is not 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. Approved removal and placement was the only possible intervention for the child. Without placement, the child will likely be in danger of immediate serious harm. A court order is required to document intervention.

If the safety decision is “unsafe” and a removal occurs, the track must be changed immediately from a human trafficking assessment to an investigation.

#### 4.2.3.6.4 Development of safety plan

When the child is determined to be “conditionally safe,” the worker must determine what services or actions need to occur by developing a safety plan in partnership with the family. A safety plan must be made to ensure the immediate protection of the child. The worker must determine what actions are necessary to assure the child's immediate safety. If the actions needed to assure the safety of the child cannot be put in place, alternative steps must be taken that can include court intervention.

Once available on the COMPASS Mobile Application, the safety plan must be completed in the child welfare information system and the worker’s efforts to develop the safety plan with the family must also be documented in the child welfare information system. The parent(s) or guardian(s) should sign the safety plan along with the worker to show agreement as to who will do what to prevent harm to the child in the immediate future. A copy of the safety plan must be left with the parent(s) or guardian(s). In the event of unforeseen technical difficulties, the *Family Services Specialist* must complete the safety plan template in the child welfare information system and provide an electronic or paper copy of the safety plan to the family **no later than 24 hours** after the first meaningful contact. The safety plan template is available in the child welfare information system and also on the public DSS website. Additional information on safety plan criteria and safety plan actions can be located in this section.

### 4.2.3.7 Risk assessment

A risk assessment must be completed in a human trafficking assessment. The worker must gather necessary information to accurately complete the risk assessment and determine the protective and rehabilitative needs of the child and family. The risk assessment does not predict recurrence but assesses whether a family is more or less likely to have an incident of abuse or neglect without intervention by the agency. The worker completes the risk assessment based on conditions that exist at the time the incident is reported and assessed as well as prior history of the family.

Risk is calculated in the Risk Assessment tool completed in the child welfare information system. The Risk Assessment tool with definitions is located on the public DSS website. For accurate completion, it is critical to refer to the definitions. Selections made on the Risk Assessment tool must be based on supporting case narrative in the child welfare information system.

Assessed risk will be:

- LOW. The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is needed.

- 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 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.

Overrides, either by policy or discretionary, may increase risk one level and requires supervisory approval. The initial risk level may never be decreased.

The risk level helps inform the decision whether or not to open a case as follows:

- Low Risk: Close

- Moderate Risk: Open to Prevention services or close

- High Risk: Open to *In-Home* services

- Very High Risk: Open to *In-Home* services

The worker and supervisor should assess the decision to open a Prevention services case and document the decision in the child welfare information system. For more guidance on service planning in a case, refer to Chapter B Prevention Services.

### 4.2.3.8 Referrals for services

Human trafficking is an extremely traumatic experience for the child and their family. To assist the child and family heal from the trauma they have experienced, the LDSS may need to arrange for necessary protective and rehabilitative services for the child and family. The LDSS may make referrals during the course of the human trafficking assessment to assist the child and family. Referrals for services should be made with the consent of the child or family.

Children and youth who have been victims of trafficking have many needs similar to those of children who enter the child welfare system because of substantiated abuse or neglect by their parents. The Child Welfare and Human Trafficking: A

Guide for Child Welfare Agencies (Child Welfare Information Gateway, 2017) suggests consideration of the following service needs when dealing with children and youth who have been victims of trafficking:

- **Physical health**: Victims often have experienced physical abuse or neglect, mental abuse and/or sexual abuse. Associated with this maltreatment may be physical injuries including untreated internal or external injuries; sexually transmitted diseases, including HIV; and malnutrition. They may be addicted to drugs and/or alcohol either as a result of being forced to use substances by their trafficker or as a coping mechanism. Their overall health may show the consequences of long periods of poor or no medical or dental care. Child welfare workers can help by ensuring that victims have access to medical screenings and treatment to address both immediate and long-term concerns.

- **Mental health and trauma**: It is hard to overstate the complex mental health needs of trafficking victims. The traumatic experiences of being trafficked have often come at the expense of the youth's childhood. Severe abuse experiences may cause alterations in brain development, as the child or youth learns to operate from a "survival" mode. In addition, victims may not have experienced a secure and trusting relationship with a parent or other caretaker, which makes it difficult to build other relationships. In extreme maltreatment cases, such as being trafficked, a victim may experience posttraumatic stress syndrome.

  Most children who have been trafficked have a need for long-term, intensive mental/behavioral health services that can help them move forward into a new, healthier life. Research has suggested the benefits of cognitive-behavioral therapy for children who have been trafficked.

- **Education**: Trafficked youth will likely require educational screening and may require remedial services. Child welfare workers can help by collecting records, exploring education options and facilitating enrollment.

- **Legal services**: There are a number of circumstances that might require a trafficked youth to hire/need legal help. Victims may need legal help if they have been charged with prostitution or other crimes. They may need legal help to get protection for themselves from the trafficker(s).

- **Other needs**: Trafficked victims will often need help with basic life skills (e.g. opening a bank account, keeping medical records) as well as training for a job and basic job skills. For many youth, having a mentor or someone who is willing and available to provide guidance over the long-term is

essential to ensure that the youth is able to pursue a life away from trafficking.

### 4.2.3.9 Notifications

#### 4.2.3.9.1 Attorney for the Commonwealth and local law enforcement

Section § 63.2-1503 D of the Code of Virginia requires the LDSS report **immediately but within two hours** of receipt to the attorney for the Commonwealth and local law enforcement all complaints or reports involving:

- 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. This includes criminal acts of commercial sex trafficking as defined in the Code of Virginia § 18.2-357.1.

- Any 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.

The LDSS shall provide records and information, including reports related to any complaints of abuse or neglect involving the victim(s) or the alleged perpetrator, related to the investigation of the complaint. The LDSS must document the date and time of notification to the local attorney for the Commonwealth and the local law enforcement agency in the child welfare information system.

### 4.2.3.10 Prevention services case

The LDSS may offer a Prevention Services case to the child and family after the completion of the human trafficking assessment. Information on the provision of Prevention Services is located in Section 2 of Chapter B Prevention of the Child and Family Services Manual.

### 4.2.3.11 Legal authorities

Due to the emergent nature of a child being identified as a victim of human trafficking, the worker may need to interview the child or their siblings without the consent of the child's or siblings' parents or guardians. The decision to exercise the authority granted in § 63.2-1506.1 should be based on imminent concerns for the safety of child. If the worker talks to the child or the child's siblings without the parent's or guardian's prior knowledge, the worker must notify the parents or guardians concerning the interview as soon as possible.

Pursuant to § 63.2-1506.1 of the Code of Virginia, during the course of a human trafficking assessment, the worker may need to take custody of the child until the child's parents or guardians can be located in order to ensure the safety of the child.

It is imperative that LDSS seek legal counsel and advice when considering taking a child into custody under this Code section. The LDSS should work closely with their city or county attorney to develop protocols for these actions.

Pursuant to § 63.2-1517 D of the Code of Virginia, if the worker is unable to safely return the child to the custody of his parent or guardian **within 72 hours**, the LDSS shall obtain an emergency removal order pursuant to § 16.1-251 of the Code of Virginia.

When the LDSS is unable to safely return the child to the custody of his parent or guardian within 72 hours and files a petition for an emergency removal order, an investigation shall be opened pursuant to § 63.2-1505. The LDSS must immediately notify the parent or guardian that the response has changed from a human trafficking assessment to an investigation. See Section 4.6 for further guidance on conducting an investigation.

See Section 8, Judicial Proceedings for further guidance on the judicial process for proceedings involving the abuse or neglect of a child.

## 4.3 Authorities of *Family Services Specialists*

The Code of Virginia grants Family Services Specialists the authority to conduct family assessments and investigations in response to a valid report of suspected child abuse or neglect. Generally, the power to enforce the worker's authority lies with the courts. For example, if an individual refuses to allow the worker to conduct the family assessment or refuses to talk to the worker, the worker may file a petition requesting that the court require the individual to cooperate. An individual's refusal to cooperate does not relieve the local department of social services (LDSS) of the responsibility to complete the family assessment or investigation because it has been initiated due to a valid report of abuse or neglect. These authorities are applicable only during the conducting of the family assessment or investigation.

### 4.3.1 Authority to interview children

Pursuant to 22 VAC 40-705-60, if the Family Services Specialist talks to the child without the mother, father or guardian's prior knowledge, the Family Services Specialist must notify the mother, father or guardian concerning the interview as soon as possible.

While the authority to talk to a child without parental knowledge or permission is an authority granted by Code of Virginia, the decision to exercise that authority should be grounded in concerns for child safety. For example, when conducting a family assessment, there should not be a need to interview the child without prior consent because the family assessment track is intended for reports that do not indicate **immediate** safety concerns. When conducting an investigation, the need to exercise this authority is to be expected because the investigation track is assigned when the allegations in the report are required by statute or indicate there is serious abuse or neglect resulting in immediate or impending harm to the child.

#### 4.3.1.1 Parent or guardian refuses to allow child to be interviewed

The worker may consult with local county/city attorney to determine whether to petition the court to request access to the child if denied access by the mother, father or guardian.

#### 4.3.1.2 Family Services Specialist may exclude school personnel from interview

If the Family Services Specialist interviews the child at school, the Family Services Specialist may exclude school personnel from the interview in order to protect the family's right to privacy.

### 4.3.2 Authority to take/arrange for x-rays/photographs of the alleged victim

> (22 VAC 40-705-60). When responding to valid complaints or reports local departments have the following authorities:
> 2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in § 63.2-1520 of the Code of Virginia.

Pursuant to 22 VAC 40-705-60, photographs may be taken as part of an investigation or family assessment to document the nature and extent of injuries to the child. These photographs cannot be used in lieu of a medical examination.

X-rays of a child may be taken without the consent of the mother, father or guardian as part of a medical evaluation related to a CPS family assessment or investigation. All photographs or x-rays taken in accordance with the Code of Virginia § 63.2-1520 may be introduced into evidence in any subsequent court hearing. The court can impose any restrictions concerning the confidentiality of the photographs or x-rays.

#### 4.3.2.1 LDSS may seek complete medical examination of the child

The Code of Virginia § 63.2-1524 grants authority to the court to order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected or of the child's mother, father, guardians, caretakers or

siblings. If the alleged *child who is a victim*'s mother, father, caretaker or other legal guardian refuses permission to have a complete medical examination of the child, the LDSS may consult with the county/city attorney to determine whether to seek a court ordered examination of the child.

#### 4.3.2.2 Photographs of the child's environment

The Family Services Specialist must obtain verbal or written consent from the mother, father or guardian of the child prior to taking any photographs of the child's environment. Without the consent of parents or guardians, any photographs should only be taken under the direction and supervision of the attorney for the Commonwealth, or the city/county attorney for the LDSS.

Photographs may be taken to clarify statements made by witnesses, to document the circumstances surrounding the alleged abuse or neglect, to depict the environment where the alleged abuse or neglect occurred, and for any other legitimate purpose.[1]

### 4.3.3 Authority to remove a child

The Code of Virginia § 63.2-1517 provides that a child may be taken into emergency custody when the circumstances present an imminent danger to the child's life or health to the extent that severe or irremediable injury would likely result before a hearing could be held and a court order was not immediately obtainable. The Code of Virginia § 63.2-1517 also allows a physician, a Family Services Specialist, or a law enforcement officer to assume custody of a child when the evidence of the abuse is perishable or subject to deterioration before a court hearing can be held.[2]

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[1] Campbell v. Commonwealth, 405 S.E.2d 1 (Va. Ct. App. 1991) ("A picture can speak a thousand words, and these do."); Diehl v. Commonwealth, 9 Va. App. 191, 385 S.E.2d 228, (1989); Kelly v. Commonwealth, 8 Va. App 359, 382 S.E.2d 270 (1989).

[2] Prior to the 1998 General Assembly, § 63.2-1517 of the Virginia Code specified certain circumstances that must exist for a child to be taken into custody by a physician, a child protective services worker or law-enforcement officer. The 1998 General Assembly amended § 63.2-1517 of the Virginia Code by incorporating language allowing a physician, a *Family Services Specialist* or a law-enforcement officer to assume custody of a child when the evidence of the abuse is perishable or subject to deterioration before a court hearing can be held.

#### 4.3.3.1 Persons who may take a child into custody

The following persons may take a child into emergency custody without prior approval of the child's mother, father or guardian:

- A physician;
- A Family Services Specialist; or
- A law enforcement officer when investigating a complaint of child abuse or neglect.

#### 4.3.3.2 Mandatory consultation with supervisor prior to removing child

Pursuant to 22 VAC 40-705-60 3a, the Family Services Specialist must consult with the supervisor prior to taking a child into emergency custody. This consultation must be documented in the child welfare information system.

#### 4.3.3.3 Immunity from liability

Pursuant to 22 VAC 40-705-60 3c, any person who takes a child into emergency custody, 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.

#### 4.3.3.4 Emergency removal requirements

These requirements apply to emergency removal of a child during a CPS family assessment or investigation. LDSS may consult with the county/city attorney to ensure these removals are conducted according to the Code of Virginia. See Section 8, Judicial Proceedings, for all legal requirements.

##### 4.3.3.4.1 Exigent circumstances exist

The Code of Virginia § 63.2-1517 requires that exigent circumstances exist for emergency removal of a child from the custody of his mother, father or guardian.

“Exigent circumstances” means a situation that demands immediate action. The following circumstances must exist to remove a child without prior approval of the mother, father or guardian:

- The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for his care, presents an imminent danger

to the child's life or health to the extent that severe or irremediable injury would be likely to result before a hearing can be held.

- A court order is not immediately obtainable.
- The court has set up procedures for placing children taken into immediate custody.

#### 4.3.3.5 Factual circumstances warranting removal

The petition or accompanying affidavit for an Emergency Removal Order (ERO) must contain a specific statement or account of the factual circumstances necessitating the removal of the child.

##### 4.3.3.5.1 Immediate threat to life or health of the child

Pursuant to § 16.1-251 A1 of the Code of Virginia, 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.

##### 4.3.3.5.2 Reasonable efforts to prevent removal

Pursuant to § 16.1-251 A2 of the Code of Virginia, 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.

##### 4.3.3.5.3 No alternatives less drastic than removal

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.

##### 4.3.3.5.4 Alternatives less drastic than removal

Pursuant to § 16.1-251 A1 of the Code of Virginia, alternatives less drastic than removal may include but are not limited to medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary child protective order pursuant to § 16.1-253.

##### 4.3.3.5.5 No opportunity to provide preventive services

Circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home.

### 4.3.3.6 Notifications and written reports if child is taken into emergency custody

If a child is taken into emergency custody pursuant to the Code of Virginia § 63.2-1517, the service worker, physician, or law enforcement officer shall:

- Notify the child's mother, father or guardians as soon as possible that the child is in custody.
- Make a written report to the LDSS.
- Notify the court as soon as possible but in no event **more than 72 hours** the child is in custody depending on the court's availability.
    - If the 72-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day on which the court is open.
- File the petition for an emergency removal order **within four (4) hours** of taking custody of the child, or state the reasons for not filing within four hours in the affidavit or sworn testimony.

### 4.3.3.7 Information to be obtained when child is taken into emergency custody by CPS

The LDSS must obtain as much of the following information as possible for purposes of filing a petition:

- The name of the person who assumed emergency custody, his or her professional capacity and the telephone number where he or she can be reached.
- The child's name and birth date.
- Names of mother, father or guardians.
- Present or last known address of mother, father or guardians.
- Description of the child's condition in as much detail as possible.
- Any information known concerning the circumstances of the suspected abuse or neglect, including the petitioner's name and the nature of the complaint.

- The specific time and date emergency custody was taken.
- Reason(s) why services to prevent the need for removal were not successful or could not be delivered.

#### 4.3.3.8 Placement requirements when CPS has assumed emergency custody of the child

The LDSS shall ensure that while in custody the child is placed in an appropriate approved setting which will assure the child's safety. The LDSS must consider relatives or fictive kin as a possible emergency agency-approved foster home for the child. If the child is to be placed in an agency-approved foster home, the Family Services Specialist should consult with the agency's foster care or resource family staff.

The following procedures shall be followed **prior to placing the child**:

##### 4.3.3.8.1 Supervisory consultation to determine placement

The child's safety is the primary consideration in deciding whether to place the child on an emergency basis with a relative, neighbor, or friend. The Family Services Specialist in consultation with a supervisor makes a decision to place the child in the home of a relative, neighbor, or friend that is not an agency approved provider. The decision is based on the child's best interest and the appropriate local agency procedures are followed to make the placement.

##### 4.3.3.8.2 Required background checks on individuals with whom an agency may place a child on an emergency basis

If the Family Services Specialist is considering a placement with a person that is not an agency approved provider, the Code of Virginia § 63.2-901.1 B requires CPS central registry checks and a written statement of affirmation disclosing any child abuse and neglect and criminal history in Virginia and any other state of residence in the past five years for each adult in the home. The Family Services Specialist, in consultation with a supervisor, shall evaluate and document in the child welfare information system the results of the CPS Central Registry searches on every adult household member with whom the agency is considering placing the child. The Sworn Statement or Affirmation form is available on the DSS public website.

It is the Family Services Specialist's responsibility to complete both the central registry search and state police criminal background check as soon as possible.

For further guidance on emergency placements refer to the VDSS Child and Family Services Manual, Chapter E, Foster Care, Section 4.

The worker and supervisor may also refer to the VDSS Child and Family Services Manual, Chapter D, Local Department Resource, Foster and Adoptive Family Home Approval Guidance .

The following procedures shall be followed **after placing the child:**

#### 4.3.3.8.3 Post-emergency placement procedures

The Code of Virginia § 63.2-901.1 establishes that additional searches or procedures are required if the child is to remain in the emergency non-agency approved placement for more than **three days**. Family Services Specialists should consult with agency foster care or resource family staff to ensure the requirements are met if the child is to remain in the emergency placement for longer than **three days**. The worker may refer to the VDSS Office of Background Investigations for additional information regarding criminal background checks.

#### 4.3.3.8.4 Convene family partnership meeting around emergency removal

The LDSS should schedule a family partnership meeting (FPM) when the worker assesses the child's safety to be in jeopardy or at risk of removal or out of home placement. However, safety concerns are paramount and necessary action to address safety issues shall not be delayed. The FPM should be scheduled **within 24 hours** after safety issues have been identified and the agency is considering removal, and occur before the five-day court hearing in cases after the emergency removal. Emergency removal prompts the need to convene a FPM. This meeting provides the opportunity for family and community participation in the decision-making process for the child. Engaging the relatives and natural support of the family will be crucial to a successful meeting. The purpose of the meeting is to facilitate planning to determine whether:

- The agency should file for custody and facilitate placement;
- The child can remain home safely with services, or the child return safely home with services; or
- There will be voluntary placement of the child by the mother and father with provision of services and a safety plan.

The Family Services Specialist should conduct the face to face interview with the alleged *child who is a victim* and the parent/caretaker prior to the FPM since the purpose of the meeting is not to interview caretakers, alleged victims, or other collaterals.

The worker and supervisor should discuss the convening and timing of a FPM at this critical decision point. All FPMs must be documented in the child welfare information system. For guidance on FPMs please refer to the VDSS Child and Family Services Manual, Chapter A, Family Engagement.

#### 4.3.3.8.5 Locating and notifying relatives or other potential caretakers

Due diligence should be made to locate all maternal and paternal grandparents and other adult relatives at the time of removal. All efforts to locate relatives shall be documented in the child welfare information system. The Family Services Specialist may contact relatives without the family's consent, written release or court order when it is determined that disclosure of information is in the child's best interests and the person has a legitimate interest. The Family Services Specialist has authority to contact parents, grandparents, or any other individuals that the LDSS considers a potential caretaker for the child being removed. For additional information, see the VDSS Child and Family Services Manual, Chapter C, Section 9, Confidentiality, on Release of Information to Legitimate Interests.

**Within 30 days** after removing a child from the custody of the parent/guardian(s), the LDSS shall provide written notice to all maternal and paternal grandparents and other adult relatives that the child is being removed or has been removed from the custody of the parent/guardian(s). When feasible, this should be done **within five days.**

Additionally, notification shall be given to all parents, including biological, adoptive and step-parents that have legal custody of any siblings to the child who has been removed. Siblings are defined as two or more children having one or more parents in common.

The purpose of this notice is to explain options the relative has to participate in the care and placement of the child in an effort to establish permanency for the child.

The LDSS may determine it is not in the child's best interest to notify relatives involved in family or DV or who are listed on the Virginia State Police Sex Offender Registry. Additional guidance regarding DV and its impact on children can be found in Appendix F of the VDSS Child and Family Services Manual, Chapter H, Domestic Violence.

A copy of the written communication shall be kept in the record, and a notation of the agency send date and relative response date, if any, must be recorded in the child welfare information system. For additional guidance on notification of relatives refer to Section 2.3 of the VDSS Child and Family Services Manual, Chapter E, Foster Care.

#### 4.3.3.8.6 Documentation in the child welfare information system

Information for every child who enters foster care shall be entered into the child welfare information system as soon as possible. The CPS investigation associated with the removal should be connected to the foster care case through the use of the case connect function in the child welfare information system. This will help to ensure the case is opened in the family name. Placement information shall be entered in the foster care case **within** five **working days of the removal**. For additional guidance on opening a foster care case refer to the VDSS Child and Family Services Manual, Chapter E, Foster Care, section 4.

### 4.3.3.9 Authority to obtain immediate medical or surgical treatment for child

The VAC 22 VAC 40-705-60 3e explains the authority granted in § 54.1-2969 of the Code of Virginia.

When an LDSS has assumed emergency custody of a child and that child is in need of immediate medical or surgical treatment, the LDSS must take the following actions as listed below:

- If a child is in need of immediate medical treatment and the parent is unwilling or unable to consent, the LDSS should first attempt to obtain a court order for treatment.
- If a court order is not immediately obtainable, authority to consent to surgical or medical treatment, tantamount with that of a parent, is confirmed upon the local director of the LDSS, or that person's designee.

#### 4.3.3.9.1 Local director may designate certain persons to provide consent

The local director may designate no more than two persons to act on his or her behalf in authorizing surgical or medical treatment. Those persons must be chosen from:

- Assistant director;
- Casework supervisor;

- Senior service worker; or
- Service worker.

#### 4.3.3.9.2 Parents or guardians of child shall be notified as soon as practicable

Any authorized person who consents to emergency surgical or medical treatment of a child shall make every reasonable effort to notify the child's mother, father or guardian as soon as practicable.

#### 4.3.3.9.3 Establish protocol with local hospitals for obtaining consent

Each LDSS should establish protocol with local hospitals for obtaining consent when surgical and medical treatment is necessary for a child under emergency custody. This agreement should include:

- A list of persons who may sign the consent form.
- A statement that the parents or guardians of the child refuse to give consent or are unavailable to give consent.
- A statement that a court order for such treatment is not immediately obtainable.
- A statement from the attending physician as to what treatment is necessary.

#### 4.3.3.9.4 Payment for surgical and medical treatment

The LDSS should attempt to obtain payment for surgical or medical treatment from the child's mother, father or the child's legal guardians if appropriate. If the parents or legal guardians are unable to pay for the treatment, the LDSS shall explore the possibility that the child may be eligible for Medicaid, Medicare, or other funding.

#### 4.3.3.9.5 LDSS cannot provide consent if child is not in custody

Pursuant to 22 VAC 40-705-60 3f, the LDSS cannot consent to medical or surgical treatment of the child when the child is not in the custody of the LDSS.

### 4.3.4 Emergency removal of *a child who is American Indian*

The emergency removal and emergency placement of a child into a foster home is allowed only as necessary to prevent imminent physical damage or harm to the child.

This applies to all children regardless of whether they live on a reservation or not. The only exception is if the child is removed from a reservation where the tribe exercises exclusive jurisdiction. See Section 1,Introduction to CPS, for more information.

Emergency removal of any *American Indian child* must be as short as possible. The LDSS must:

- Diligently investigate and document whether the removal is proper and continues to be necessary to prevent imminent physical damage or harm to the child;
- Promptly hold a hearing to hear evidence and evaluate whether the removal continues to be necessary whenever new information is received or assertions are made that the emergency situation has ended; and
- Immediately terminate the emergency removal once the court possesses sufficient evidence to determine that the emergency has ended.

If the LDSS conducts an emergency removal of a child whom the LDSS knows or has any reason to think is an *American Indian*, the LDSS must:

- Treat the child as an *American* Indian until it is determined that the child is not an *American* Indian;
- Conduct active efforts to prevent the breakup of the family as early as possible, including when possible, before the removal of the child;
- Immediately take and document all practical steps to confirm whether the child is an *American Indian child* and to verify the child's tribe;
- Immediately notify the child's parents or Indian custodians and the *American* Indian tribe of the removal of the child;
- Take all practical steps to notify the child's parents or custodians and the *American* Indian tribe about any hearings regarding the emergency removal of the child; and
- Maintain records that detail the steps taken to provide any required notifications.

#### 4.3.4.1 Affidavit

In addition to statements of the facts that necessitated the emergency removal, the affidavit that accompanies a petition for an emergency removal of an *American Indian child* must specifically include:

- Name, age, address for the child who is *American* Indian;
- Name and address of the child's parents and/or custodians;
- If unknown, a detailed explanation of what efforts have been made to locate the child's parents and/or Indian custodian, including notice to the appropriate Bureau of Indian Affairs Regional Director;
- If residence is on Indian reservation, the name of the reservation;
- Tribal affiliation of the child and parents and/or custodians;
- A statement of the specific active efforts that have been taken to assist the parents or custodians so the child may safely be returned to their custody.

#### 4.3.4.2 Temporary custody

Temporary emergency custody should not be continued for more than 30 days. Temporary emergency custody may be continued for more than 30 days only if:

- A hearing is held and results in a determination by the court, supported by clear and convincing evidence and testimony of at least one qualified expert witness, that the custody of the child by the parent or Indian custodian is likely to result in imminent physical damage or harm to the child; or
- Extraordinary circumstances exist.

#### 4.3.4.3 Expert witness

A qualified expert witness should have knowledge of the Indian tribe's culture and customs. The court or any party to the proceedings may request the assistance of the child's *American* Indian tribe or the Bureau of Indian Affairs agency serving the child's tribe in locating persons qualified to serve as expert witnesses.

#### 4.3.4.4 Additional resources

- Section 1: Introduction to CPS of this manual for additional information regarding The *American Indian child* Welfare Act (ICWA).
- Section 8: Judicial Proceedings of this manual for additional information on court proceedings for removal of a child who is *American* Indian.

- Additional resource: The Federal Register: Guidelines for State Courts and Agencies in *American Indian child* Custody Proceedings, a notice by the Indian Affairs Bureau on 2/25/2015.

### 4.3.5 Release child's location

Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, LDSS, upon request, must disclose to the child's parent or guardian the location of the child, provided that:

- The investigation or family assessment has not been completed;
- The parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect;
- The parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department any records or other information necessary to verify such custody;
- The local department is not aware of any court order, and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued, that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and
- Disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

## 4.4 Responsibilities of Family Services Specialists

### 4.4.1 Family Services Specialist may enter the home

#### 4.4.1.1 Entering the home

Pursuant to 22 VAC 40-705-90 A, when conducting a family assessment or an investigation, the Family Services Specialist should explain the purpose of the visit and enter the home when allowed to do so by an adult who resides in the home.

#### 4.4.1.2 Family Services Specialist may enter home without permission if there is probable cause to believe exigent circumstances exist

The Family Services Specialist cannot enter the home without permission unless there is probable cause to believe that the circumstances are such that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a police officer.

The assistance of a police officer does not, in and of itself, provide the authority for a Family Services Specialist to enter the home without permission. There must be probable cause to believe that "exigent circumstances" exist.

"Probable cause" means the reasonable belief in the existence of facts on which the complaint is based.[3] "Exigent circumstances" means situations that demand unusual or immediate action. They are emergency-like circumstances in which the Family Services Specialist must act immediately to protect the safety of a child or preserve the evidence in an investigation. [4]

#### 4.4.1.3 Family Services Specialist shall consult with supervisor and document decision to enter a home without permission

If the circumstances are such that the Family Services Specialist must enter the home without permission of an adult residing in the home, the Family Services Specialist shall record in the child welfare information system the reason for this action. The Family Services Specialist shall consult with a supervisor to make this decision.

#### 4.4.1.4 Adult residing in home refuses to allow Family Services Specialist to enter a home

If a person residing in the home refuses to allow the Family Services Specialist into the home and there are no exigent circumstances demanding that the Family Services Specialist act immediately, the Family Services Specialist must consider alternate plans such as seeking court assistance to gain access to the home. The Family Services Specialist may consult with county/city attorney to determine if court intervention is appropriate.

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[3] Black's Law Dictionary 1321 (9th ed. 2009).

[4] Black's Law Dictionary 277 (9th ed. 2009).

#### 4.4.1.4.1 Exception: Conducting joint investigation with law enforcement

If, during a joint investigation, a law-enforcement officer or the Commonwealth's Attorney Office objects to the Family Services Specialist informing the person of his right to refuse entry, the LDSS should consider that objection as an exception to 22 VAC 40-705-90 A.

The objection is only valid during a joint investigation with law enforcement when the investigation involves criminal charges. The objection must be premised upon not compromising the criminal investigation. The Family Services Specialist shall document the objection in the child welfare information system.

### 4.4.2 Transporting children

Pursuant to 22 VAC 40-705-90 C, the Family Services Specialist may transport a child without parental consent only when the LDSS has assumed custody of the child pursuant to § 63.2-1517 of the Code of Virginia, by an emergency removal court order pursuant to § 16.1-251 of the Code of Virginia, or by a preliminary removal order pursuant to § 16.1-252 of the Code of Virginia.

### 4.4.3 Request consent to *substance use* screening

Pursuant to 22 VAC 40-705-90 D, when a Family Services Specialist has a reason to believe that the caretaker in a valid report of child abuse or neglect is using substances and such behavior may be related to the family assessment or investigation, the Family Services Specialist may request that the caretaker consent to *substance use* screening or may petition the court to order such screening.

#### 4.4.3.1 LDSS must develop *substance use* guidelines

Pursuant to 22 VAC 40-705-90 D1 and 22 VAC 40-705-90 D2, the LDSS must develop guidelines for *substance use* screenings. The guidelines may include the Family Services Specialist administering urine screenings. The LDSS should seek the assistance of the office of the attorney for the Commonwealth, the local city/county attorney, or the court to develop these guidelines.

### 4.4.4 Reasonable diligence

The Code of Virginia § 63.2-1503 F mandates the LDSS to use reasonable diligence in locating the subjects of a report or complaint of abuse or neglect.

#### 4.4.4.1 Document use of reasonable diligence in locating child and family

Pursuant to 22 VAC 40-705-50 H3, the LDSS shall document in the child welfare information system all attempts to locate the alleged *child who is a victim* and the family.

#### 4.4.4.2 Use of reasonable diligence in locating alleged *child who is a victim*

The Code of Virginia § 63.2-1503 F requires the LDSS to use reasonable diligence to locate children for whom a report of suspected child abuse or neglect has been received and is receiving a family assessment or investigation.

#### 4.4.4.3 Reasonable diligence shall be used to locate subjects of the family assessment or investigation

Reasonable diligence shall also be used by the LDSS to locate persons who are the subject of a CPS family assessment or investigation, if the whereabouts of such persons are unknown to the LDSS.

#### 4.4.4.4 Subjects of the family assessment or investigation

The subjects of the family assessment or investigation include:

- Any child for whom a report of suspected abuse or neglect has been received and is under investigation.
- Persons named as the alleged abuser or neglector of a report that is under investigation.

#### 4.4.4.5 What constitutes reasonable diligence

The LDSS shall document reasonable and prompt attempts to locate the child and family including checking the following, when applicable:

- Child welfare information 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.
- Personal locator tool and/or SPIDeR searches.
- Internet searches including generic search engines such as Google, Yahoo, Bing, etc.
- Social networks such as Facebook, Instagram or Twitter.
- Other appropriate contacts.

The LDSS must document in the child welfare information system all attempts to locate the child and family and the results of the attempts.

#### 4.4.4.6 When the alleged *child who is a victim* is not found

*A child who is a victim is determined to be missing once the Reasonable Diligence Checklist has been completed or 40 work hours have expired from the date and time the referral was received, which ever occurs first. At the time the child who is a victim is determined to be missing, the LDSS must submit a CPS Alert to the CPS State Hotline and to any other states where it is believed the child who is a victim and family may be located.*

Pursuant to 22 VAC 40-705-50 H5, when the alleged *child who is a victim* cannot be located, despite the LDSS's efforts, the time frame for completing the investigation or family assessment will be suspended. The LDSS must document the suspension in the child welfare information system and the reasoning for the suspension.

- In a family assessment, the documentation will occur on the assessment summary screen and the assessment status will indicate Missing Suspend Assessment.
- In an investigation, the documentation will occur on the disposition screen and a disposition of Missing Child-Suspend Investigation will be selected.

While the family assessment or investigation is suspended, the local agency should not approve the assessment summary or disposition screens in the child welfare information system.

#### 4.4.4.7 LDSS must notify child welfare information system

When the alleged *child who is a victim* is not located, the LDSS must notify the child welfare information system that the family assessment or investigation is suspended and pending.

#### 4.4.4.8 LDSS must continue periodic checks for missing child

If the alleged *child who is a victim* is not found, the LDSS must establish a timetable for making periodic checks for the missing child. The LDSS shall document the timetable in the case record and the results of the periodic checks. The LDSS must document their reasonable diligence efforts to locate the missing child each month for at least 90 days until the LDSS is satisfied with the resolution of the case. At the conclusion of the 90 days, if the child is not found the LDSS must document in the child welfare information system the resolution of the referral.

- In a family assessment, the documentation will occur on the assessment summary screen and the assessment status will indicate Unable to Complete Assessment.

- In an investigation, the documentation will occur on the disposition screen and a disposition of Unable to Complete Investigation will be selected.

The local agency must then approve the assessment summary or disposition screens in the child welfare information system.

#### *4.4.4.9 If missing child is at-risk of being or is a victim of sex trafficking*

*Pursuant to 71(a)(35)(B) of P.L. 117-348, the LDSS, in conjunction with the child's legal guardian, must provide immediate verbal notification to the appropriate local law enforcement agency and National Center for Missing and Exploited Children (NCMEC) within 24 hours upon receiving information on any child that is missing. NCMEC only accepts reports from the legal guardian. The LDSS should follow up by sending subsequent written notification within 48 hours or as required by law enforcement protocol. The LDSS should ask law enforcement to enter information about the child into the FBI's National Crime Information Center (NCIC) database which includes information on missing persons. The LDSS should maintain regular communication with law enforcement and NCMEC to*

*provide a safe recovery of a missing or abducted child or youth, including sharing the information outlined below.*

*Once a report is filed with law enforcement, the LDSS shall contact the NCMEC at 1-800-843-5678. Information to be shared with law enforcement and the NCMEC (as appropriate) includes:*

- *Biographical information and recent photographs of missing or abducted child.*
- *A description of the child's physical features, such as height, weight, sex, ethnicity, race, hair color, and eye color.*
- *Names and addresses of friends, relatives, present and former foster parents and placement staff, and acquaintances.*
- *Suspected destinations.*
- *Prior disappearances and outcome.*

*Endangerment information that should be highlighted in communications with law enforcement officials may include, but not limited to:*

- *The child's pregnancy status.*
- *Prescription medications.*
- *Suicidal tendencies.*
- *Vulnerability to being sex trafficked.*
- *Other health or risk factors.*

### 4.4.4.10 If missing child is found

If a family assessment or an investigation was suspended and the missing child is subsequently located, the LDSS must resume the assessment or investigation of the original complaint or report and update the child welfare information system. Upon locating the missing child, a new 45 or 60 -day time frame will commence.

### 4.4.5 Screen all children for sex trafficking

Federal law, specifically Title 1 of the Preventing Sex Trafficking and Strengthening Families Act (HR 4980), requires child welfare agencies to identify, document and determine appropriate services for children and youth at risk of sex trafficking. While research indicates that youth in foster care are one of the most vulnerable populations, all children who experience abuse or neglect are at risk. All children must be screened to determine if they are a victim of sex trafficking and the results must be documented in the child welfare information system.

#### 4.4.5.1 Indicators of sex trafficking

Signs that a child is a victim of sex trafficking may include but are not limited to:

- History of emotional, sexual or other physical abuse;
- Signs of current physical abuse and/or sexually transmitted diseases;
- History of running away or current status as a runaway;
- Inexplicable appearance of expensive gifts, clothing, cell phones, tattoos or other costly items;
- Presence of an older boyfriend or girlfriend;
- Drug addiction;
- Withdrawal or lack of interest in previous activities; or
- Gang involvement.

#### 4.4.5.2 When sex trafficking is identified

If the LDSS identifies or receives information that a child has been a victim of sex trafficking, they shall notify local law enforcement **within 24 hours** of identifying or receiving such information and document such notification in the child welfare information system.

The LDSS may contact the National Human Trafficking Resource Center (NHTRC) at 1-888-3737-888 if they suspect sex trafficking of a minor. NHRTC operates a 24 hour hotline to help identify and coordinate with local organizations that protect and serve victims of trafficking.

#### 4.4.5.3 Safety considerations for sex trafficking victims

The following questions are helpful when assessing safety of sex trafficking victims and the answers should help inform the safety plan:

- Where is the sex trafficker right now?
- Is the child living under any current threats or fears?
- Is the child afraid someone will be looking for them?
- Is the child concerned for their own safety? If yes, what is the basis of this concern?
- Does anyone else know about their current situation?

Safety considerations may include developing a plan with the child victim to include:

- What would they do if they encounter the trafficker?
- What will they do if the trafficker calls or emails them?

#### 4.4.5.4 Additional information

Additional information regarding sex trafficking can be found in the on-line course, CWSE4000: Identifying Sex Trafficking in Child Welfare. This course is available on the VDSS public website.

### 4.4.6 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.

### 4.4.7 Obtain and consider child abuse and neglect central registry check

Sections 63.2-1505 and 63.2-1506 of the Code of Virginia require the LDSS obtain and consider the results of a search of the Central Registry of the alleged abuser or neglector in a family assessment or investigation when there is evidence of child abuse or neglect and the LDSS is evaluating the safety of the home and whether a removal is needed to protect the child.

### 4.4.8 Obtain and consider criminal history record check

Sections 63.2-1505 and 63.2-1506 of the Code of Virginia allow the LDSS to obtain and consider the results of a search of the Central Criminal Records Exchange of the alleged abuser or neglector in a family assessment or investigation when there is evidence of child abuse or neglect and the LDSS is evaluating the safety of the home and whether a removal is needed to protect the child.

### 4.4.9 Inquire if alleged abuser or neglector has resided in another state

Sections 63.2-1505 and 63.2-1506 of the Code of Virginia require the LDSS inquire whether the alleged abuser or neglector in a family assessment or investigation has resided in another state within the last five years, and if they have resided in another state, the LDSS shall request a search of the child abuse or neglect registry or equivalent registry maintained by the state(s). The LDSS must document the results of such inquiry in the child welfare information system.

### 4.4.10 Information about the Office of Children's Ombudsman

Section 2.2-445 of the Code of Virginia requires the LDSS provide information to biological parents, prospective adoptive parents and foster parents about the Office of the Children's Ombudsman.

## 4.5 Family assessment

The family assessment response is one of two approaches that can be used to respond to a valid CPS complaint. The Family Assessment track is an essential part of the transformation of services and supports the strengthening of families within Virginia.

The family assessment is a process of gathering and evaluating information and formulating conclusions regarding family functioning specific to child abuse/neglect, the presenting complaint allegations, and family needs related to child safety and risk of future abuse or neglect.

The VAC 22 VAC 40-705-10 defines family assessment. The family assessment is a child-centered, family-focused, participatory process that is done with the family. The family assessment builds on family strengths. It identifies parental capacities and resources within the family and the community. The process is designed to incorporate parent/caretaker perceptions of child safety, address the presenting complaint, and determine service needs related to potential maltreatment of the child. The family assessment can and should include the active involvement of all members of the family and significant others in the extended family or community, as appropriate.

### 4.5.1 Time frames to complete family assessment

Section 63.2-1506 of the Code of Virginia requires the LDSS to complete and document the family assessment within 60 calendar days of receipt of the complaint or report.

### 4.5.2 Notify family of family assessment

The VAC 22 VAC 40-705-90 B requires the Family Services Specialist to explain the CPS family assessment process to the mother, father or involved caretakers.

The Family Services Specialist must notify the family verbally and in writing that a report of suspected abuse or neglect has been received and that a family assessment will be conducted in response to the report. The written notification is the brochure "Child Protective Services: A Guide to Family Assessment". The Family Services Specialist must make the family aware of the possible benefits and consequences of having a family assessment conducted with their family. The Family Services Specialist shall document this notification in the child welfare information system.

This notification may occur when the Family Services Specialist contacts the family to arrange the initial home visit.

### 4.5.3 Home visits

Families who are treated with respect can contribute more concretely to the identification of the family and children needs. When families are a part of the process, they are more likely to participate in the assessment and cooperate with service recommendations.

Some advantages of using announced visits include:

- Demonstrates respect.
- Sends the message that we want them involved.
- Helps the family prepare for the visit and decide who they would want present.
- Gives them a voice in scheduling.
- Family feels heard and recognized as a partner.

Appropriate uses of unannounced visits include:

- Unannounced home visits should be made when there is a concern for safety and/ or the child is perceived to be in imminent danger.
- Unannounced visits are also appropriate when phone calls are not returned or an appearance of non-compliance with scheduled meetings.
- Unannounced visits are common in the investigation track due to presenting safety concerns and the need to gather evidence to make a dispositional assessment as to whether the abuse or neglect has occurred.
- Families can agree to unannounced visits as part of a safety plan.

One of the critical differences between an investigation and a family assessment is there is no finding of abuse or neglect in a family assessment. Family assessments are typically reports which do not involve serious safety factors. The family assessment centers on assessing the family strengths and needs in collaboration with the family and an effective assessment depends on the extent of family engagement in the process. Engagement begins with the first contact and should continue throughout the family assessment process.

The LDSS is ultimately responsible for the decision to conduct announced or unannounced home visits.

### 4.5.4 Notify non-custodial parent

Pursuant to § 63.2-1503 O of the Code of Virginia, the LDSS shall make reasonable efforts to notify the non-custodial parent when that parent is not the subject of the child abuse or neglect report. Not only does the non-custodial parent have a right to know about the report involving *their* child, that parent may be a resource to the child and should be invited to any FPM scheduled. However, if there is reason to believe that such notification would be detrimental to the child, the LDSS may take that concern into account. The response to the report should not be delayed if the non-custodial parent is unreasonably difficult to contact. The LDSS should document all reasonable efforts to locate and notify the non-custodial parent about the report. Conversely, the LDSS should document why reasonable efforts were not made to notify the non-custodial parent.

### 4.5.5 Document all contacts and observations

The Family Services Specialist shall document all contacts and observations required by regulation in a family assessment in the child welfare information system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts

should be documented in the child welfare information system and may be considered as the initial response.

A FPM does not fulfill the requirement for any mandated contact interview during a family assessment as the purpose is not to interview alleged victims, parents/caretakers, and collaterals. The Family Services Specialist should conduct the face to face interview with the alleged *child who is a victim*, siblings, and the parent/caretaker prior to any FPM.

### 4.5.6 Mandated contacts for family assessment

The Family Services Specialist must complete all contacts and document them in the child welfare information system as outlined in 22 VAC 40-705-80 A1-5. A face-to-face interview with any child must be documented as a "worker visit" in the child welfare information system.

#### 4.5.6.1 The family interview

The first contact with the family sets the tone for how the Family Services Specialist will engage with the family, how the family will learn about CPS expectations, and how the family will learn what CPS can provide.

When it is possible, practical, and places no family member in danger, a pre-arranged, announced or scheduled family interview should be conducted. This type of interview allows the Family Services Specialist to observe interaction among family members that may contribute to the family needs assessment. When a family interview is conducted, the Family Services Specialist must document each of the individual required contacts in the child welfare information system.

The family assessment approach is one of engaging and partnering with the family as a whole. Factors to consider when making a decision to do a family interview include whether or not the report mentions allegations of current or recent DV (in which case the Family Services Specialist may want to interview the DV victim and children first and separately from the DV perpetrator); whether the reporter states that the child expressed fear of parental response; and whether there is a past history of significant child maltreatment.

Additional guidance regarding interviewing the family, children, DV victims and DV perpetrators can be found in sections 1.5.1 through 1.5.4 of the VDSS Child and Family Services Manual, Chapter H, Domestic Violence.

Interviewing the family together can provide vital information about family dynamics and may trigger discussions that otherwise may not be held. Attention

should be paid to verbal and non-verbal cues from the child that might lead the Family Services Specialist to assess a need to interview the child in a different setting. This might be in another room on the same day or at school on another day. Each child should be interviewed in the way that will best provide safety and build rapport with the family for future services.

### 4.5.6.2 Interviewing the child

The Family Services Specialist shall conduct a face-to-face interview with the alleged *child who is a victim* and shall conduct this worker visit **within the response priority level assigned**. Timeliness of the face-to-face interview with the alleged *child who is a victim* is essential to assessing safety. A face-to-face interview with the alleged *child who is a victim* shall be completed:

| Response Priority | Response Time |
|---|---|
| Response 1 (R1) | **Within 24 hours** of the date and time of the referral |
| Response 2 (R2) | **Within 48 hours** of the date and time of the referral |
| Response 3 (R3) | **Within 40 work hours** of the date and time of the referral |

No child should be interviewed in such a manner that compromises their safety. It is expected that a child will be interviewed in private if necessary to ensure their safety. If the child is interviewed alone, it is important to explain to the caretakers prior to or immediately after why a separate interview with the child is important. The Family Services Specialist should try to gain the caretaker's permission.

During the interview, the Family Services Specialist should inform the child what will occur during the family assessment process. The Family Services Specialist should observe the child and document the child's recollection and perception of the allegations, bearing in mind that the main focus of the family assessment is not to determine if the abuse or neglect has occurred but rather assessing for the services that will ensure child safety, permanency and well-being. The Family Services Specialist should note the child's emotional and physical condition. If the report alleged the child had marks or injuries, the Family Services Specialist should observe them as part of the family assessment.

The Family Services Specialist should learn about the child's needs and capabilities for the purposes of risk assessment, strengths and needs assessment and service planning.

Electronic recording of children is not required in a family assessment. The use of electronic recording does not meet the purpose of the family assessment.

The Family Services Specialist shall document all interviews and attempted interviews in the child welfare information system. While it is important to document all attempted interviews to show reasonable diligence, it should be noted that attempted contacts do not satisfy the requirement to interview the alleged *child who is a victim* within the determined response priority.

#### 4.5.6.3 Interviewing siblings

The Family Services Specialist shall interview and observe minor siblings residing in the home of the alleged *child who is a victim* in order to determine whether they have experienced abuse or neglect and to more fully evaluate the family strengths and needs.

No child should be interviewed in such a manner that compromises their safety. It is expected that a sibling will be interviewed in private if necessary to ensure their safety. If the sibling is interviewed alone, it is important to explain to the caretakers prior to or immediately after why a separate interview with all of the children is important. The Family Services Specialist should try to gain the caretaker's permission.

#### 4.5.6.4 Non-verbal children

In reports that involve a non-verbal child, the Family Services Specialist shall document in detail in the child welfare information system the observations of the child interacting with his or her family members and environment. The Family Services Specialist should learn about the child's needs and capabilities from involved caretakers, or siblings for the purposes of safety assessment, strengths and needs assessment, safety and service planning and risk assessment.

#### 4.5.6.5 Other children in the home

The Family Services Specialist shall interview other children living in the home as collaterals. They may have information which would help assess safety, strengths and needs of the family. Such contact should be made with prior consent of the non-*child who is a victim*'s parent or guardian. If the situation warrants contact with the non-*child who is a victim* prior to such consent being obtained, the parent or guardian should be informed as soon as possible after the interview takes place.

### 4.5.6.6 Interviewing the mother, father or involved caretakers

The Family Services Specialist shall conduct a face-to-face interview with the mother, father or involved caretakers. Whenever possible and appropriate, these interviews should be scheduled in advance. When calling to schedule a home visit or at the home visit, they shall be informed of the allegations and the assessment process. The Family Services Specialist must notify the family in writing and orally that a report of suspected abuse or neglect has been received and that a family assessment will be conducted in response to the report. The written notification is the brochure “Child Protective Services: A Guide to Family Assessments”. The Family Services Specialist must document this notification in the child welfare information system.

This interview may be part of the family interview or done separately. The Family Services Specialist shall document their responses and knowledge about the allegations bearing in mind the emphasis of the family assessment is not determining whether the abuse or neglect occurred. Showing respect and partnering with the family are essential to engage the family.

The Family Services Specialist must advise the subject of a family assessment of his responsibility to notify the LDSS prior to changing his place of residence and provide the LDSS with his new address. The LDSS must document in the child welfare information system when the alleged abuser or neglector provides such notification to the LDSS.

The Family Services Specialist must advise the mother, father or other involved caretaker of their rights against self-incrimination if they have been criminally charged. If the Family Services Specialist does not advise them of their rights against self-incrimination, any of the statements made to the Family Services Specialist are not admissible in criminal proceedings; however, the Family Services Specialist may use their statements for assessing risk and service planning.

For the purposes of risk assessment and service planning, the Family Services Specialist should identify the caretakers' needs and capabilities. If they refuse to be interviewed, the Family Services Specialist must inform them that the family assessment must be completed to ensure child safety.

### 4.5.6.7 Observe family environment

The Family Services Specialist shall observe the family environment and determine the effect of the environment on the child’s safety and the overall family needs related to caring for the children. Whenever possible and appropriate, home visits should be scheduled in advance with the family.

#### 4.5.6.7.1 Safe sleep environment and practices

The Family Services Specialist should assess the sleep environment and sleep practices with all families who have infants and children less than two years of age at every home and site visit. The Family Services Specialist must share safe sleep information with all families who have infants and children less than two years of age. The Family Services Specialist must document their assessments of the sleep environment, sleep practices, and that safe sleep information was provided in the child welfare information system.

Research has shown that several factors place infants at a higher risk for Sudden Infant Death and other sleep-related causes of infant death. The following are some of the 18 recommendations from the American Academy of Pediatrics that can be discussed with caretakers:

- Infants should be placed to sleep on their backs.
- Infants should sleep on a firm sleep surface.
- Bed sharing with infants is not recommended.
- Soft objects and loose bedding should not be in the infant's sleep area.
- Avoid exposing infant to smoke, alcohol and illicit drugs.
- Breastfeeding of infants is recommended.
- Pacifiers are recommended.
- Avoid overheating the infant.

A Safe Sleep for Babies Tip Card is available from the Virginia Department of Health. Additional resources, including free brochures, are available at the Safe to Sleep Public Education Campaign.

### 4.5.6.8 Identifying relatives and family supports

During the course of the family assessment, the worker must gather information to identify maternal and paternal relatives and the kinship network providing support and resources to the family and child. Many families identify non-relatives as kin, such as godparents, friends, and others with whom they have a family-like relationship. The early identification of adult family members and supports is critical for initial assessments when identifying protective factors, strengths, and needs. When appropriate, these individuals may become resources in protective interventions, FPMs, and case planning during the CPS

process or any future case involvement. Resources and tools for relative search and family engagement are available on the DSS public website under Family Engagement Toolkit.

### 4.5.6.9 Contacting collaterals

As part of the family assessment, the Family Services Specialist may need to contact collaterals to evaluate the circumstances of the alleged abuse or neglect and the needs of the family. The VAC 22 VAC 40-705-10 defines collateral and 22 VAC 40-705-80 A3 authorizes the Family Services Specialist to consult with collaterals.

The Family Services Specialist should ask the family for contact information for any collateral that may have pertinent information. The Family Services Specialist shall contact any collaterals perceived to have pertinent information. The Family Services Specialist may involve collaterals to help ensure the safety of the child. Contact with the child's other caretakers, such as babysitters or day care providers, is encouraged. The Family Services Specialist should try to gain the permission to speak with all collaterals. If the parent refuses to give permission, the Family Services Specialist should discuss their reason for refusal. If that discussion fails to gain permission, the Family Services Specialist should determine if the collateral contact is essential to a thorough assessment of safety and risk. If so, the Family Services Specialist may make collateral contacts without the family's consent in order to complete the family assessment, but consent and collaboration with the family is encouraged. The family assessment should be developed mutually with the family to the degree possible.

### 4.5.6.10 Interviewing the non-custodial parent

The Family Services Specialist should interview the non-custodial parent in a family assessment. The non-custodial parent has a right to know about the report involving their child and may be an additional resource to the child. If there is reason to believe that such an interview would be detrimental to the child, the LDSS may take that concern into account. They should be invited to any FPM scheduled. The LDSS should document all reasonable efforts to locate, notify and interview the non-custodial parent. Conversely, the LDSS should document why reasonable efforts were not made to locate, notify, or interview the non-custodial parent.

### 4.5.6.11 Other contacts may be required

The Family Services Specialist must contact the local office of the attorney for the Commonwealth and law enforcement to report suspected criminal activity.

### 4.5.7 First meaningful contact in family assessments

The first meaningful contact in the family assessment provides pertinent information relevant to the family assessment and the safety of the child. It is a face-to-face contact with the family and usually occurs after the completion of the face-to-face interview with the alleged victim. During this face-to-face contact with the family, the Family Services Specialist completes the Safety Assessment Tool in the child welfare information system and develops a safety plan with the family if the child is determined to be conditionally safe. The first meaningful contact must be documented as such in the child welfare information system and the Family Services Specialist must include "safety assessment" as one of the purposes of the contact. The Family Services Specialist should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact. Note: The completion of the initial interview with the alleged victim does not satisfy a first meaningful contact.

### 4.5.8 Safety in family assessments

#### 4.5.8.1 Initial safety assessment and safety plan in family assessments

Pursuant to 22 VAC 40-705-110 A, the Family Services Specialist must conduct an initial safety assessment of the child's circumstances and threat of danger or harm, and where appropriate must make a safety plan to provide for the protection of the child. An initial safety assessment is conducted at the beginning of a family assessment. The purpose of the initial safety assessment and safety plan is to:

- Assess whether any children are currently in immediate danger of serious physical harm that may require a protecting intervention.
- Determine what interventions should be maintained or initiated to provide appropriate protection.

Safety Assessments differ from Risk Assessments in that the purpose is to assess a child's present or immediate danger and the interventions currently needed to protect the child. In contrast, Risk Assessment evaluates the likelihood of future maltreatment.

A safety and risk field guide can be located on FUSION. This field guide may be used by the Family Services Specialist in the field to help guide interviews as it provides the safety factors, protective capacities and risk factors that should be identified in every assessment. This field guide must be used in conjunction with the definitions provided for the safety and risk assessment tools.

### 4.5.8.2 Immediate child safety and family needs

Safety assessment is both a process and a document. Safety information is gathered and assessed from the very first contact at intake and until the case is closed. Safety must be determined for each child and the safety conclusion based on the least safe child if there is more than one (1) child in the family. To ensure that the safety of the child is appropriately assessed in each family assessment, the LDSS must complete the process of an initial safety assessment at the first meaningful contact with the family and any time safety changes and document the results in the CPS Safety Assessment Tool in the child welfare information system **within 24 hours** of the first meaningful contact or any time safety changes. For accurate completion, it is critical to refer to the definitions provided on the Safety Assessment Tool, and decisions must be based on supporting narrative documented in the child welfare information system. The Safety Assessment Tool with definitions is located on the DSS public website.

The Safety Assessment Tool provides structured questions concerning the danger of immediate harm or maltreatment to a child and is used to guide the development of a Safety Plan. This information guides the decision about whether the child may remain in the home with no intervention, may remain in the home with safety interventions in place, or must be removed from the home. This is an appropriate time for the LDSS to consider convening a FPM if necessary to address ongoing safety planning.

For example, a three (3) year old child may be more vulnerable and more threatened with severe harm by an out-of-control parent than a 13 year old, but even the three (3) year old may be deemed safe if the parent has just been taken away by the police and a responsible adult is available – so there is no severe nor imminent threat of harm to the vulnerable child.

### 4.5.8.3 Assess immediate danger to the child

The initial 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.

### 4.5.8.4 Assess immediate needs of the family

After assessing the immediate safety needs of the child, the worker must evaluate the immediate needs of the family. Factors to consider include:

- If the child has been injured or harmed, whether the family has the capabilities or capacity to protect the child from further harm.
- Whether an emergency or crisis situation exists and the family's ability to cope.
- Whether any other family members are at risk of harm or danger.
- What are the family's capabilities to ensure the safety of the child or children in the near future?

### 4.5.8.5 Assess protective capacities

The Family Services Specialist should assess the family's protective capacities if any safety factors are identified. Protective capacity means being protective towards ones' children. Protective capacities are cognitive, behavioral, and emotional qualities which support vigilant protectiveness of children. Protective capacities are fundamental strengths which prepare and empower a person to protect. All adults living in the home should be assessed for protective capacities. Capacities must be strong enough to control or manage the specific threats of danger that have been identified. Protective capacities should be used when determining the protective intervention and development of a safety plan.

#### 4.5.8.5.1 Cognitive protective capacities

Cognitive protective capacity refers to knowledge, understanding, and perceptions contributing to protective vigilance. Cognitive capacities can be demonstrated when the caretaker:

- Plans and articulates a plan to protect the child.
- Is aligned with the child.
- Has adequate knowledge to fulfill care giving responsibilities and tasks.
- Is reality orientated; perceives reality accurately.
- Has accurate perception of the child.
- Understands their protective role.

- Is self-aware as a parent/caretaker

#### 4.5.8.5.2 Behavioral protective capacities

Behavioral protective capacity refers to actions, activities and performance that result in protective vigilance. Behavioral aspects show it is not enough to know what must be done or recognize what might be dangerous to a child but rather require the caretaker to take action. Behavioral capacities can be demonstrated when the caretaker:

- Has a history of protecting others.
- Takes action to correct problems or challenges.
- Demonstrates impulse control.
- Is physically able.
- Demonstrates adequate skill to fulfill care giving responsibilities.
- Possesses adequate energy.
- Sets aside their needs in favor of a child.
- Is adaptive and assertive.
- Uses resources necessary to meet the child's basic needs.

#### 4.5.8.5.3 Emotional protective capacities

Emotional protective capacity refers to feelings, attitudes and identification with the child and motivation resulting in protective vigilance. Emotional capacities can be demonstrated when the caretaker:

- Is able to meet their emotional needs.
- Is emotionally able to intervene to protect the child.
- Realizes the child cannot produce gratification and self-esteem for them as caretaker.
- Is tolerant as a parent/caretaker.
- Displays concern for the child and the child's experience and is intent on emotionally protecting the child.

- Has a strong bond with child and is clear that the number one priority is the well-being of the child.

- Expresses love, empathy and sensitivity toward the child; experiences empathy with the child's perspective and feelings.

### 4.5.9 Protective interventions and safety services

When a safety factor has been identified, the Family Services Specialist shall consider the resources available to the family and the community that might help to keep the child safe. Protective interventions should directly address identified threats to safety. The interventions should be implemented immediately as they address immediate threats to child safety.

Consider the following protective interventions which can allow children to remain in the caretaker's custody:

- Use of family resources, neighbors or other individuals in the community to develop and implement a safety plan.

- Use of community agencies or services.

- Involved caretaker leaves the home.

- Non-maltreating caretaker leaves the home with child(ren).

- Caretaker voluntarily places child outside of the home.

- Legal action, such as a preliminary protective order, is initiated.

Protective interventions may also be safety services provided during the family assessment.

Safety Services are formal or informal services provided to or arranged for the family with the explicit goal of ensuring the child's safety. These services must be immediately available and accessible and may be provided by professionals, family members, or other willing parties as long as each involved individual understands their role and responsibility. The safety services must be clearly documented (i.e. safety plan, service plan, court order, SDM plan, etc.) for the involved parties and in the case record. Examples of safety services may include: child care, cleaning supplies, safety equipment, transportation, etc.

As with all aspects of case planning, the family should be engaged in providing input and joint decision making throughout the process of identifying, implementing, and evaluating these interventions and safety services. Documentation of safety services

in the child welfare information system must clearly demonstrate how the actions taken provide the child with immediate protection from the safety issues and how each safety service contributes to addressing or eliminating the safety matters specific to the child. Safety services should be documented on the Safety Assessment Tool in the child welfare information system. Additional information about safety services can be found in the eLearning FSWEB1027: Safety Services: Swift & Savvy available in the VLC.

### *4.5.9.1 Parental child safety placements*

*When the LDSS has determined on the safety assessment that the child cannot remain safely in the home, the LDSS must assess if the appropriate protective intervention is allowing the parent(s) or caretaker(s)/guardian(s) to voluntarily place the child outside of the home. This protective intervention is called a Parental Child Safety Placement (PCSP). It must only be used when the caretaker willingly agrees to the voluntary placement of their child with an alternate caregiver in a PCSP and not in lieu of an emergency removal of the child.*

*This protective intervention is only appropriate to use in two circumstances:*

- *Parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within seven (7) calendar days** and the child can return safely to the home; or*
- *Parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within 90 days** and is willing to participate in the Parental Child Safety Placement Program.*

*If the parent(s) or caretaker(s)/guardian(s) cannot remedy the identified safety factor **within 90 days** and they are not willing to participate in the Parental Child Safety Placement Program, the LDSS must ensure the safety of the child and obtain a court order to protect the child from immediate serious harm.*

#### 4.5.9.1.1 Assessment of alternate caregiver

*Pursuant to § 63.2-1534 of the Code of Virginia, the LDSS must assess the proposed alternate caregiver and the PCSP. The LDSS should immediately begin the assessment process by facilitating conversations with the parent(s) or caregiver(s)/guardian(s) about the needs of the child, the family circumstances of the prospective relative/fictive kin caregiver(s), and the types of assistance they feel they need to maintain the child's safety. Family circumstances include the prospective relative/fictive kin caregiver(s)' overall*

*ability to meet the immediate and future needs of the child and to incorporate the child into their home.*

*The LDSS must assess the proposed alternate caregiver and determine whether the proposed caregiver (i) is 18 years of age or older; (ii) a non-parent relative or fictive kin; (iii) is willing and qualified to receive and care for the child; (iv) is willing to have a positive, continuous relationship with the child; (v) is willing and has the ability to protect the child from abuse and neglect; (vi) is willing to use age-appropriate behavior management techniques; (vii) agrees to not use corporal punishment; and (viii) is willing to support the relationship and contact between the child and parent, and willing to support the parent's efforts to remedy the safety issues. The Permanency Assessment Tool should be completed to engage the alternate caregiver and understand what is needed for the best outcome for the child and family. The Permanency Assessment Tool should be documented in the child welfare information system. The authority for these requirements is outlined in § 63.2-1534 of the Code of Virginia and 22VAC40-705-200.*

*Prior to the child's placement with the proposed alternate caregiver, the LDSS must conduct a criminal history inquiry, a child welfare inquiry, and complete a visit to the home. The criminal and child welfare inquiries must be conducted on all adults aged 18 years and older residing in the PCSP home. The LDSS must assess the results of the criminal and child welfare histories and home environment to determine the best outcome for the child. The results of the criminal and child welfare histories and home visit must be documented in the child welfare information system.*

*Pursuant to 22 VAC 40-705-200 D, if the criminal history inquiry results in the identification of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia or a negative child welfare history, including any validated child protective services referrals or founded child protective services dispositions, and the LDSS continues its consideration of the proposed alternate caregiver, the LDSS must:*

- *Conduct a further assessment, which must include a discussion with the proposed alternate caregiver about the circumstances surrounding each conviction and negative child welfare history, and the current status of disposition, sentencing, probation, or other condition.*

- *Conduct a supervisory review of the information gathered from the further assessment by the LDSS Director, or if not available, the Assistant Director, Program Manager, or Family Services Supervisor.*

- *Document the results of the supervisory review and consultation in the child welfare information system.*

*If, after conducting the inquiry, the LDSS determines that the PCSP is in the child's best interests, the LDSS must notify the VDSS Commissioner and the local board* ***within 72 hours*** *when the alternate caregiver has a barrier crime or founded child protective services disposition.*

*If, after conducting the inquiry, the LDSS determines that the PCSP is not in the child's best interests, the LDSS must notify the child's parent(s) or caretaker(s)/guardian(s)(s) or caregiver/guardian(s) and the proposed caregiver of the reasons for the LDSS' determination but may not disclose the results of any child welfare or criminal history unless the proposed caregiver consents to such disclosure. The results of the child welfare and criminal history inquiry must be documented in the child welfare information system. For more information on how to conduct the criminal and welfare history inquiries, please see FUSION.*

*Prior to the child's living arrangement with the proposed alternate caregiver, the LDSS must conduct a substance use assessment and inquiry. Pursuant to 22 VAC 40-705-200 D, the LDSS must document the outcome of the screening and assessment deemed necessary or any refusal to consent to screening. This information must be used to evaluate the appropriateness of the proposed caregiver for the child's placement and must be documented in the child welfare information system. For more information on substance use screening guidelines for LDSS, please see FUSION.*

#### *4.5.9.1.2 Parental child safety placement for seven calendar days or less*

*When the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor(s)* ***within seven (7) calendar days****, the LDSS must document the PCSP on the safety assessment tool and on the safety plan in the child welfare information system. If the parent(s) or caretaker(s)/guardian(s) cannot remedy the identified safety factor(s) within seven calendar days, the LDSS must evaluate the family for participation in the Parental Child Safety Placement Program.*

#### *4.5.9.1.3 Parental child safety placement program*

*The Parental Child Safety Placement Program is established to prevent unnecessary entry into foster care by promoting and supporting placements with relatives and fictive kin and requiring accountability for pre-court placements of children. The Parental Child Safety Placement Program codifies the protections and safeguards needed to promote family driven*

*decision-making, ensuring the preservation of parent(s) or caretaker(s)/guardian(s) rights, establishing consistent practice among LDSS, and enhancing the provision of In-Home services to children and families.*

*Pursuant to § 63.2-1532 of the Code of Virginia, the Parental Child Safety Placement Program is available when:*

- *A family assessment or investigation has been initiated in response to a valid complaint alleging the child has been abused or neglected; and*
- *The safety assessment conducted by the LDSS indicates that the child cannot remain safely in the home; and*
- *The child's parent(s) or caretaker(s)/guardian(s) voluntarily agrees to participate in the Parental Child Safety Placement Program.*

*The Parental Child Safety Placement Program is a short-term, pre-court intervention. Court ordered living arrangements are not eligible for participation in the Parental Child Safety Placement Program.*

*The Parental Child Safety Placement Program should be utilized when the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor(s) **within 90 days**. The Parental Child Safety Placement Program expedites the provision of safety services to ensure timely reunification.*

***Documentation of PCSP prior to entry into Parental Child Safety Placement Program***

*When the LDSS has determined the child to be conditionally safe on the safety assessment tool and the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within 90 days**, the LDSS must document the PCSP on the safety assessment tool and on the safety plan in the child welfare information system.*

***PCSP time frame***

*The **90-day time frame** for the PCSP begins on the day the child is determined to be conditionally safe and placed in a parental child safety placement. The time frame does not start over if there is a new alternate caregiver of the child during the same 90-day time frame.*

***Out-of-Home Staffing***

*Once the child is placed in the parental child safety placement, the LDSS should hold an out-of-home staffing* ***within one (1) business day****. The purpose of this meeting is to implement a trauma-informed approach for the family and worker when it has been determined that the child will need to be placed out of the home for longer than seven calendar days in a parental child safety placement. The out-of-home staffing is an internal meeting at the LDSS with Family Services Specialists, Family Services Supervisors, and other assisting staff to:*

- *Review the referral and the circumstances necessitating the need for the child to be placed outside of the home;*
- *Ensure the identification of the natural supports to attend the family partnership meeting;*
- *Develop a plan to prepare the family and natural supports for the family partnership meeting;*
- *Ensure the completion of alternate caregiver assessment(s); and*
- *Identify and assign responsibility for other relevant actions and tasks.*

*The out-of-home staffing should be documented in the child welfare information system.*

***Family Partnership Meeting***

*The LDSS should hold a family partnership meeting within seven (7) calendar days of the child being placed in a PCSP and prior to the creation of a Parental Child Safety Placement Agreement (PCSPA). The imminent risk of emergency removal prompts the need to convene the FPM. This meeting provides the opportunity for family and community participation in the decision-making process for the child. During the FPM, the LDSS must inform the family of all options for the care of the child. Engaging the relatives and natural support of the family will be crucial to a successful meeting. The Family Services Specialist should conduct the face-to-face interview with the alleged child who is a victim and the parent(s) or caretaker(s)/guardian(s)/caretaker prior to the family partnership meeting since the purpose of the meeting is not to interview caretakers, alleged children who are victims, or other collaterals. The purpose of the meeting is to facilitate planning to determine whether:*

- *The child can return to the home of the parent(s) or caretaker(s)/guardian(s) safely with services;*
- *The family will voluntarily participate in the Parental Child Safety Placement Program and enter into a PCSPA; or*
- *The agency should file for custody and facilitate placement because the safety concerns necessitating the PCSP will not be resolved within 90 days.*

*The Family Services Specialist and Family Services Supervisor should discuss the convening and timing of a FPM at this critical decision point. Prior to an FPM where the establishment of a PCSPA is discussed, preparation should include providing information to parent(s) or caretaker(s)/guardian(s), and relative/fictive kin caregiver(s) regarding caregiving options and the opportunity to seek legal counsel prior to entering into a PCSPA. All FPMs must be documented in the child welfare information system within five (5) business days. For guidance on a FPM please refer to the VDSS Child and Family Services Manual, Chapter A. Practice Foundations, Section 2, Family Engagement.*

*During the FPM, the LDSS should continue to fully inform the family of all options for the care of the child. The FPM should be used to inform the PCSPA and the PCSPA should not be established without an FPM having first occurred. The PCSPA is a voluntary agreement and should not be developed without active participation of the parent(s) or caregiver(s)/guardian(s). During the FPM, the Family Services Specialist and Family Services Supervisor should address the responsibilities of the child's parent(s) or caretaker(s)/guardian(s), relative/fictive kin caregiver(s), and the LDSS. This should include, but is not limited to:*

- *A plan for how the relative/fictive kin caregiver(s) will access services for the child.*
- *Plans for family time and visitation.*
- *Services that will be provided to parent(s) or caretaker(s)/guardian(s), and child(ren).*
- *Requirements and expectations for LDSS worker visits.*
- *The date on which the PCSPA will begin and end.*

*After the LDSS determines the child and the prospective relative/fictive caregivers(s) are eligible for the Parental Child Safety Placement Program, the LDSS must provide the prospective relative/fictive kin caregiver(s) with the voluntary PCSPA, available in the child welfare information system.*

***Parental Child Safety Placement Agreement***

*When establishing the PCSPA, the LDSS must ensure the following:*

- *The relative/fictive kin caregiver(s) is made aware of any financial assistance they will be eligible for upon signing of the PCSPA and while the agreement is in place.*
- *The LDSS will obtain signatures of all involved parties on the PCSPA* ***within four (4) calendar days*** *of the initial FPM.*
- *The parent(s) or caretaker(s)/guardian(s), relative/fictive kin caregiver(s), and other involved parties will be given a copy of the signed PCSPA.*
- *The LDSS will maintain a copy of the agreement into the electronic case record.*

*The initial PCSPA cannot exceed* ***90 days*** *from the start date of the PCSP, but the agreement can be extended. Such extension must be limited to* ***one (1) 90-day period****. If at any time a PCSP is facilitated with a new relative/fictive kin caregiver(s), a newly established PCSPA must abide by and resume the current 90-day timeline.*

***In-Home Services Case***

*The LDSS is required to open an In-Home services case for the entirety of the agreement and for any extension period. The Family Services Specialist who specializes in CPS should complete the risk assessment* ***within 30 days*** *of the In-Home services case opening. For information on the In-Home services case, please see VDSS Child and Family Services Manual, Chapter B, Prevention, Section 2, Prevention and In-Home Services to Families.*

### 4.5.10 DV and *substance use* as safety and/or risk assessment issues

Two family issues that can have a major impact on safety and risk are DV and drug and/or alcohol involvement by the child's caretakers.

LDSS are required to develop guidelines for evaluating substance or drug abuse. The CAGE-AID tool (CAGE is derived from the four questions of the tool: Cut down,

Annoyed, Guilty and Eye-opener. CAGE-AID is the CAGE instrument and is Adapted to Include Drugs) is one tool that provides questions that can be worked into the interviews with the primary caretakers, and a “yes” to any question may indicate a need for an AOD (alcohol or other drug) evaluation in order to complete the risk assessment.

There are several evidence based tools that can be used to screen for DV depending on who is being interviewed. The "HITS" (Hurt, Insult, Threaten, Scream) screening tool may be used to screen for DV with collaterals such as family members, professionals, service providers and mandated reporters. The Women's Experience with Battering Tool (WEB) is designed to be used with potential victims of DV. These screening tools and additional guidance regarding screening for DV can be found in section 1.4 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

Additional information about DV can be found on the DSS public website.

### 4.5.11 Safety decision

After safety and protective factors have been assessed using the Safety Assessment Tool, the Family Services Specialist must make a decision about the safety of the child(ren) in the home. The safety decision should be made on the basis of the needs of the least safe child in the home, if there is more than one (1) child. One of the following safety decisions must be determined using the Safety Assessment Tool and documented in the child welfare information system and shared with the family.

- **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**. Approved removal and placement was the only possible intervention for the child(ren). Without placement, the child(ren) will likely be in danger of immediate serious harm. A court order is required to document intervention.

If the safety decision is unsafe and a removal occurs, the track must be changed immediately from a family assessment to an investigation.

#### 4.5.11.1 Safety decision and family partnership meeting

The LDSS should schedule a FPM when the worker assesses the child's safety to be in jeopardy or at risk of removal or out of home placement. However, safety concerns are paramount and necessary action to address safety issues shall not be delayed. The FPM should be scheduled **within 24 hours** after safety issues have been identified and the agency is considering removal, and occur before the five-day court hearing in cases after the emergency removal. Emergency removal prompts the need to convene a FPM and changing the track from a family assessment to an investigation. This meeting provides the opportunity for family and community participation in the decision-making process for the child. Engaging the relatives and natural support of the family will be crucial to a successful meeting. The purpose of the meeting is to facilitate planning to determine whether:

- The agency should file for custody and facilitate placement;
- The child can remain home safely with services, or the child may return safely home with services; or
- There will be voluntary placement of the child by the mother and/or father with provision of services and a safety plan.

The Family Services Specialist should conduct the face-to-face interview with the alleged *child who is a victim* and the mother, father or caretaker prior to the FPM since the purpose of the meeting is not to interview caretakers, victims, or other collaterals.

The worker and supervisor should discuss the convening and timing of a FPM at this critical decision point. Additional guidance for holding a FPM when there is DV can be found in section 1.9 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

All FPMs must be documented in the child welfare information system. For guidance on FPMs please refer to the VDSS Child and Family Services Manual, Chapter A, Family Engagement. To avoid duplication, if there is an active CPS referral and an open case, the FPM should be documented in the case.

### 4.5.12 Develop a safety plan

When the child is determined to be conditionally safe or unsafe, the Family Services Specialist must determine what services or actions need to occur by developing a safety plan in partnership with the family.

The VAC 22 VAC 40-705-10 defines safety plan as an immediate course of action designed to protect a child from abuse or neglect.

A safety plan must be made to ensure the immediate protection of the child. When possible, the worker needs to develop the safety plan with the cooperation of the child's mother, father or guardian(s). The Family Services Specialist must determine what actions are necessary to assure the child's immediate safety. If the actions needed to assure the safety of the child cannot be put in place, alternative steps must be taken that can include court intervention.

Once available on the COMPASS Mobile Application, the safety plan must be completed in the child welfare information system and the worker's efforts to develop the safety plan with the family must also be documented in the child welfare information system. The parent(s) or guardian(s) should sign the safety plan along with the worker to show agreement as to who will do what to prevent harm to the child in the immediate future. A copy of the safety plan must be left with the parent(s) or guardian(s). In the event of unforeseen technical difficulties, the Family Services Specialist must complete the safety plan template in the child welfare information system and provide an electronic or paper copy of the safety plan to the family no later than 24 hours after the first meaningful contact. The safety plan template is available in the child welfare information system and also on the public DSS website.

Additional guidance on safety planning with both children and DV victims can be found in section 1.6.1 and 1.6.2 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

### 4.5.12.1 Safety plan criteria

Safety plans should meet the following criteria:

- The plan controls or manages immediate threats of danger.
- The safety plan must have an immediate effect in controlling threats. Strategies resulting in long term change, such as parenting education, do not belong in a safety plan.
- The Family Services Specialist must assess the parent(s), guardian, or custodian and make a professional judgment as to their willingness and capability to agree to and abide by the terms of the safety plan.
- People and services identified in the safety plan must be accessible and available when threats are present.

- The safety plan should employ the least restrictive strategies possible while assuring child safety.

### 4.5.12.2 Safety plan actions

The following are sample safety plan actions that may be included in a safety plan:

- Cooperate with the LDSS to include returning phone calls, advising of address changes and keeping any scheduled appointments;
- Refrain from the use of any illegal drugs or substances while caring for the child(ren);
- Provide age appropriate supervision consistent with child's development;
- Obtain an appropriate child care provider;
- Provide non-abusive and age appropriate discipline;
- Refrain from the use of physical discipline or corporal punishment;
- Refrain from engaging in physical altercations or acts of DV;
- Ensure no contact with specified individual;
- Maintain a home environment that is safe and free of health and safety hazards;
- Ensure safe sleep practices are followed for all children in the home;
- Sign necessary release of information forms with service providers;
- Provide protection from and further maltreatment by a specified individual;
- Ensure child(ren) receive all medical and/or therapeutic treatment as recommended.

These actions should remain in effect until a new safety plan is developed; a service plan is developed; or the family assessment or case is closed, whichever comes first.

#### 4.5.12.3 Safety plan signatures

Whenever possible, the caretaker(s) should sign the safety plan along with the worker, so that this document can be used as an agreement as to who will do what to prevent harm to the children in the immediate future. Other parties to the agreement, such as service providers, may also sign the form.

### 4.5.13 Reassessing safety

Safety assessment is both a process and a document. The process of assessing child safety is ongoing throughout the life of the CPS referral and ongoing case as information is gathered with each contact. The initial safety decision and safety plan are documented in the child welfare information system, and all subsequent changes in safety assessed in referrals or ongoing cases in the following circumstances should also be documented in a new Safety Assessment Tool in the child welfare information system **within 24 hours** of:

- A change in family circumstances such that one or more safety factors previously present are no longer present;
- A change in information known about the family in that one or more safety factors not present before are present now; or
- A change in ability of safety interventions to mitigate safety factors and require changes to the safety plan.

When safety is reassessed, the safety plan should be reviewed and revised accordingly. A FPM may be considered if safety concerns escPCSPte.

### 4.5.14 Changing the initial track

After the referral is accepted as a family assessment, it may be switched to an investigation in very limited circumstances; however, a referral may not be switched from an investigation to a family assessment. If the family assessment has not yet been completed and new information causes the situation to meet the statutory guidelines for an investigation, the family assessment must be closed and an investigation initiated. The LDSS may consider changing tracks if significant safety factors are present. A referral may not be switched from a family assessment to an investigation simply because of lack of cooperation on the part of the caretaker. The caretaker's action or inaction that causes the child to be deemed unsafe may result in an action such as petitioning the court for a protective order to increase child safety.

All the requirements of an investigation are in effect and a new 45-day period begins in order to complete the investigation process. Supervisory approval is required to

change tracks in the child welfare information system. The alleged abuser shall be notified immediately that the response of the agency has changed from a family assessment to an investigation.

Refer to Section 3, Complaints and Reports, of this guidance manual for guidance on track decision.

#### 4.5.14.1 Changing track if an emergency removal occurs

At any time before the completion of the family assessment, if circumstances require that emergency custody be taken of one (1) or more children in the family, the alleged abuser shall be notified immediately that the response of the agency has changed from a family assessment to an investigation. Supervisory approval is required to change tracks in the child welfare information system.

### 4.5.15 Determine risk level in family assessment

Pursuant to 22 VAC 40-705-110 B, a Family Risk Assessment must be completed in a family assessment.

The Family Services Specialist must gather information in order to complete the Family Risk Assessment which includes assessing the following risk factors:

- **Caretaker related**
  - History of childhood maltreatment.
  - History of mental health issues.
  - History of *substance use*.
  - History of criminal activity (adult or juvenile).
  - DV incidents in past year.
  - History of prior CPS; ongoing or foster care services.
- **Child related**
  - Developmental or physical disability.
  - Medically fragile or failure to thrive.
  - Substance exposed newborn.
  - Delinquency.

- Mental health or behavioral problem.
- Prior injury as result of abuse or neglect.

- **Caretaker and child relationship**
  - Blames child.
  - Justifies maltreatment.
  - Provides insufficient emotional or psychological support.
  - Uses excessive or inappropriate discipline.
  - Domineering.
  - Provides physical care inconsistent with child needs.

- **Other**
  - Housing is unsafe.
  - Family is homeless.

Based on the information gathered during the family assessment, the Family Services Specialist must determine the likelihood of any occurrence or recurrence of abuse or neglect by completing a Family Risk Assessment. The Family Risk Assessment does not predict recurrence but assesses whether a family is more or less likely to have an incident of abuse or neglect without intervention by the agency. The Family Risk Assessment is completed based on conditions that exist at the time the incident is reported and assessed as well as prior history of the family. Risk is calculated in the Family Risk Assessment tool completed in the child welfare information system. For accurate completion, **it is critical to refer to the definitions**. The Family Risk Assessment tool with definitions is located on the DSS public website. Selections made on the Family Risk Assessment tool must be based on supporting narrative in the child welfare information system.

Assessed risk will be:

- **Low**. The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is needed.
- **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 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.

Overrides, either by policy or discretionary, may increase risk one level and require supervisor approval. The initial CPS risk level may never be decreased.

#### 4.5.15.1 Risk level guides decision to open a case

When risk is clearly defined and objectively quantified, resources are targeted to higher-risk families because of the greater potential to reduce subsequent maltreatment. The risk level *must* inform the decision whether or not to open a case as follows:

| | |
|---|---|
| Low Risk: | Close |
| Moderate Risk: | Open to In-Home Services or close |
| High Risk: | Open to In-Home Services |
| Very High Risk: | Open to In-Home Services |

The worker and supervisor should assess the decision to open a case for services and document in the child welfare information system the decision not to open a case. For more guidance on service planning in a case, refer to Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual Section 2.

*Case opening must occur **within five (5) work days** of risk assessment completion and the primary in-home services or prevention worker must be assigned **within five (5) work days** of case opening.*

##### 4.5.15.1.1 Low/moderate risk cases open for prevention services

The LDSS may offer prevention services for families involved in a family assessment when risk is assessed as low or moderate. The following conditions should be met to open a case to prevention services:

- LDSS has received a current, valid CPS referral AND

- LDSS has conducted a family assessment or investigation AND

- The family has been assessed at low or moderate risk of future maltreatment but could benefit from voluntary services AND

- The family agrees to services.

See the Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual for further guidance.

#### 4.5.15.2 Risk level determines need to convene FPM

A FPM should be scheduled by the LDSS when the worker assesses a child to be at "very high" or "high" risk of abuse or neglect and the child is at risk for 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 FPM must be documented in the child welfare information system. For guidance on conducting the FPM, refer to the VDSS Child and Family Services Manual, Chapter A, Family Engagement. To avoid duplication, if there is an active CPS referral and an open case, the FPM should be documented in the case.

### 4.5.16 Assessment summary of strengths and needs

When completing a family assessment, the Family Services Specialist must address and document in the child welfare information system the strengths and needs as related to all of the children, mother, father or caretakers, home environment and family support systems. Each family assessment may have circumstances warranting more or less details and information.

The examples listed under each factor can be used as a guide for the Family Services Specialist to elicit relevant information and identify family needs, strengths, and supports. A comprehensive family assessment should address the family's strengths and needs in four areas, including but not limited to the areas listed below:

- **Children**. Age and developmental capacity; number of children; behavioral/emotional factors; medical/physical factors; ability to self-protect/vulnerability; perception of caretaker; roles in family system; prior history of abuse/neglect; sex/gender; alleged abuser's continued access; and support system.

- **Parent/caretaker**. Mental health factors; *substance use*/abuse factors; domestic violence; prior history of abuse/neglect as a child; involvement in the criminal justice system; medical/physical factors; perception of alleged *child who is a victim*(ren); perception of alleged victim's role in family; parenting style; overall ability to care for children (past and present); ability to protect children; sense of personal responsibility of alleged child maltreatment; engagement with CPS; willingness to care for and protect children; and support system.

- **Environment**. Access to necessary utilities (heat, water, electricity, etc.); maintenance of the inside and outside of the home environment; hazardous living conditions; cleanliness of inside of home environment; safety concerns in the environment; and positive factors present in the environment.

- **Support Systems**. Informal and formal supports; level of isolation or engagement in community; institutional supports (faith-based, educational, recreational, paid, etc.); access to needed supports; past and present utilization of supports; cultural appropriateness of supports, previous involvement with formal services; and barriers to utilization of supports.

- **Summary.** Determination if current allegation was substantiated; severity of maltreatment; frequency and chronicity of maltreatment; concerns about premeditation; caretaker impulsivity; family response to CPS intervention; risk assessment determination; services recommended; and family's response to services. **The summary** must **include the rationale for why the LDSS is not opening a case if the risk assessment is determined to be high or very high risk.**

  See Appendix I of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence for additional guidance regarding supporting children and youth exposed to DV.

### 4.5.17 Services needed

The assessment summary must include any identified service needs of the family to reduce or prevent child abuse or neglect.

There is a sample Family Service Agreement on the VDSS public website that can be used to document service needs with the family. The Family Services Agreement is the service application for voluntary services. As with the Safety Plan, development of an agreement for services should occur mutually with the family to the degree possible, and they should receive a copy of the agreement. The need for services should be documented in the child welfare information system.

#### 4.5.17.1 Family refuses services

Pursuant to § 63.2-1506 A4 of the Code of Virginia, families can decline services offered as a result of a family assessment. If the family refuses recommended services, the reason for the refusal must also be included in the written notification to the family and in the child welfare information system.

The Family Service Agreement form can be photocopied and used to record the agreed upon actions by all parties or to note that these services were recommended but not agreed to by the family.

### 4.5.18 Notifications in family assessments

The VAC 22 VAC 40-705-140 B5 outlines notifications to be provided in family assessment.

#### 4.5.18.1 Written and verbal notification to the family

The Family Services Specialist shall provide written and verbal notification to the family that summarizes the family needs assessment, recommendations for services, the length of time the family's name will remain in the CPS child welfare information system and the right to review information about themselves in the record. It should outline the conclusions of the assessment and any services to be obtained by the family and/or provided to the family. If continuing services are needed, it should be clear who will do what and by when, and what outcome is expected. A copy of the notification must be included in the case record. The worker must document in the child welfare information system the date the verbal notification took place or the reason the verbal notification did not occur.

##### 4.5.18.1.1 Inform involved caretaker(s) of legal recourse if complaint is malicious.

In all family assessments, the Family Services Specialist shall inform the person who is the subject(s) of the family assessment that they may petition the court to obtain the identity of the complainant if they feel the complaint was made in bad faith or maliciously. The Family Services Specialist may provide the involved caretaker(s) with a copy of the Code of Virginia § 63.2-1514 pertaining to reports or complaints made in bad faith or maliciously.

#### 4.5.18.2 Notification to the complainant

Pursuant to 22 VAC 40-705-140 D3, when a family assessment is completed, the Family Services Specialist must notify the complainant, when known, that the complaint was assessed and necessary action taken.

#### 4.5.18.3 Notification to military personnel (Family Advocacy Program)

The Code of Virginia § 63.2-1503 N establishes authority for the LDSS to share CPS information about completed family assessments with family advocacy representatives of the United States Armed Forces.

In all completed family assessments regardless of whether services are needed and the *child who is a victim* is a dependent of an active duty member of the United States Armed Forces or members of their household, the Family Services Specialist shall provide information regarding the family assessment and any recommended services based on risk to the appropriate Family Advocacy Program. These notifications allow for coordination between CPS and the Family

Advocacy Program and are intended to facilitate identification, treatment and service provision to the military family.

For additional information about the Family Advocacy Program, contact information for a particular branch of the military or a specific installation, click here.

#### 4.5.18.3.1 Written notification that Family Advocacy Program has been notified

Pursuant to 22 VAC 40-705-140 E2, the military member shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

### 4.5.19 Referral to early intervention programs for children under age three

The LDSS shall refer any child in a family assessment under the age of three (3) for early prevention services to the local Infant and Toddler Connection of Virginia who:

- Is identified as affected by illegal *substance use* or withdrawal symptoms resulting from prenatal drug exposure; or
- Has a physical or mental condition that has a high probability of resulting in developmental delay.

All localities are served by an Infant & Toddler Connection of Virginia program. This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).

LDSS are encouraged to meet with the local Infant and Toddler program to learn about any referral issues that should be explained to the parent. LDSS are also encouraged to develop procedures with the Infant & Toddler Connection of Virginia program to make referrals of certain children under age three (3). Recommended elements of these procedures should include:

- As soon as possible but no later than **seven (7) calendar days** of completing the investigation the LDSS should send a referral to the local Part C Early Intervention program using the local referral form.

The LDSS should:

- Send a referral as soon as possible when a child has been identified as exposed prenatally to an illegal substance or has withdrawal symptoms at birth.

- Send a referral as soon as possible when a child has been identified as having a physical or mental condition which has a high probability of resulting in a developmental delay.

- Send a copy of the referral to the family. The parent should also be informed verbally of the referral and have an opportunity to discuss the referral process.

- Request the family to sign a release form allowing the exchange of information between the Infant and Toddler Connection Program and the LDSS regarding the referral.

- Document the notification and referral in the state child welfare information system.

More information on the Infant & Toddler programs in Virginia can be found on the Infant & Toddler Connection of Virginia website and in the Memorandum of Agreement issued by the Commissioners of the Department of Social Services and Department of Behavioral Health and Developmental Services and other agencies involved with implementation of Part C of the Individuals with Disabilities Education Act (IDEA) dated May 2013 located on the VDSS internal website.

### 4.5.20 Supervisor approval required

All completed family assessments should be reviewed and approved in the child welfare information system by the Family Services Specialist's supervisor **within five (5) working days of the worker's request for approval**.

## 4.6 Investigations

Some of the steps involved in an investigation are similar or even the same as in a family assessment. There are statutory mandates for the investigation track. There are 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 considered at intake when making the track decision.

### 4.6.1 Defining an investigation

The VAC 22 VAC 40-705-10 defines an investigation.

### 4.6.2 Time frames to complete investigations

The Code of Virginia requires the LDSS to complete and document the investigation within 45 calendar days of receipt of the complaint or report. There are three (3) exceptions for not completing an investigation within 45 days. The LDSS must ensure the most appropriate exception for not completing an investigation is selected as the use of multiple exceptions is not permitted.

#### 4.6.2.1 Fifteen-day extension to complete investigation

Pursuant to 22 VAC 40-705-120 A, upon written justification by the LDSS, based on locally determined guidelines, the investigation can be extended for **15 calendar days**.

#### 4.6.2.2 Extension of joint investigations with law enforcement agency

The Code of Virginia, § 63.2-1505 B5 allows for investigations which are being conducted in cooperation with a local law enforcement agency to be extended an additional 45 days, not to exceed 90 days. This must be agreed upon by both the LDSS and the law enforcement agency. This extension applies only to investigations.

#### 4.6.2.3 Notification of extension

If an investigation is extended, the alleged abuser/neglector shall be notified. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the extension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

#### 4.6.2.4 Suspension of certain investigations

The Code of Virginia § 63.2-1505 B5 grants exceptions to completing certain investigations under specific conditions. In any child death investigation or sexual abuse investigations which require reports or records generated outside the local department in order to complete the investigation, the time needed to obtain these reports or records shall not be counted towards the 45 days. These records must be necessary to complete the investigation and not available due to circumstances beyond the control of the local department. When the LDSS receives the reports or records, the 45 day timeframe resumes where it had left off, it does not start over.

The decision to suspend making a disposition within 45 days in these cases should be approved by a supervisor and documented in the child welfare information system.

#### 4.6.2.5 Notification of suspension

The LDSS should notify the alleged abuser/neglector or involved caretakers and the alleged victim's parents or guardians when suspending an investigation. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the suspension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

#### 4.6.2.6 Contact while investigation is suspended

As long as the investigation remains open, the LDSS retains all authorities and responsibilities of an investigation. The LDSS should document monthly updates in the child welfare information system until such time that the necessary reports or records to complete the investigation have been received.

### 4.6.3 Notify family of investigation

The VAC 22 VAC 40-705-90 B requires the Family Services Specialist to explain the CPS investigation process to the alleged abuser or neglector.

The Family Services Specialist must notify the family in writing and orally that a report of suspected abuse or neglect has been received and that an investigation will be conducted in response to the report. The written notification is the brochure "Child Protective Services: A Guide to Investigative Procedures". The Family Services Specialist must document this notification in the child welfare information system.

#### 4.6.3.1 Notify non-custodial parent

Pursuant to § 63.2-1503 O of the Code of Virginia, the LDSS shall make reasonable efforts to notify the non-custodial parent when that parent is not the subject of the child abuse or neglect report. Not only does the non-custodial parent have a right to know about the report involving *their* child, that parent may be a resource to the child and should be invited to any FPM scheduled. However, if there is reason to believe that such notification would be detrimental to the child, the LDSS may take that concern into account. The response to the report should not be delayed if the non-custodial parent is unreasonably difficult to

contact. The LDSS should document all reasonable efforts to locate and notify the non-custodial parent about the report. Conversely, the LDSS should document why reasonable efforts were not made to notify the non-custodial parent.

#### 4.6.3.2 Notify Interstate Compact on the Placement of Children (ICPC)

If the alleged victim is in the custody of another state and has been placed in Virginia through ICPC, immediately notify the Virginia ICPC office and the state agency which has custody of the child. The Family Services Specialist shall document this notification in the child welfare information system.

### 4.6.4 Document all contacts and observations

Pursuant to 22 VAC 40-705-80 B, the Family Services Specialist shall document all contacts required by regulation in the child welfare information system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the child welfare information system.

A face-to-face interview with a child must be documented as a “worker visit” in the child welfare information system.

### 4.6.5 Mandated contacts in investigation

Mandated contacts to conduct an investigation are similar to the mandated contacts to conduct a family assessment. There are additional requirements related to electronic recording of interviews of the alleged victim and alleged abuser/neglector. The LDSS shall follow these additional requirements.

A FPM does not fulfill the requirement for any mandated contact interview during an investigation as the purpose is not to interview alleged victims, parents/caretakers, and collaterals. The Family Services Specialist should conduct the face to face interview with the alleged *child who is a victim*, siblings, and the parent/caretaker prior to any FPM.

### 4.6.6 Face-to-face interview with the alleged *child who is a victim*

Pursuant to 22VAC40-705-80 B, the Family Services Specialist shall conduct at least one (1) face-to-face interview (worker visit) with the alleged *child who is a victim* and shall conduct this face-to-face contact **within the determined response time**.

The Family Services Specialist shall observe the child and document the child's recollection and perception of the allegations. Information regarding the allegations

may be obtained during the Family Services Specialist's observation of victim interviews conducted by other members of the investigative team including, but not limited to, law-enforcement officers, forensic nurses, physicians or other community professionals trained as forensic interviewers. When possible, it is important to not only observe the interview but also have the ability to ask additional questions as needed. If the Family Services Specialist is not the primary interviewer, the Family Services Specialist is still responsible for interviewing the child to gather any additional information regarding the allegations and to ensure that the child understands the role of the Family Services Specialist and what will occur during the investigation. The Family Services Specialist must review all electronically recorded victim interviews to determine if additional interviews are necessary to comply with CPS guidance.

The Family Services Specialist must still conduct a face-to-face interview with the child if the Family Services Specialist is not the primary interviewer of the child regarding the allegations. This contact shall be **within the determined response time**.

When a Family Services Specialist who specializes in CPS needs to complete a face-to-face contact with a child prior to a forensic interview, because the forensic interview cannot be scheduled within the determined response priority, the Family Services Specialist who specializes in CPS must conduct a minimal facts interview. The focus of the minimal facts interview is the safety of the child and immediate needs; not details about the allegations. If an initial interview with the *child who is a victim* covers detailed information about the alleged abuse/neglect, the *Children's* Advocacy Center may be unable to schedule a forensic interview for that child/allegation. As a reminder, it does not align with *Children's* Advocacy Center best practices to re-interview the child about the same incident/allegations.

*Pursuant to § 63.2-1505 of the Code of Virginia, if a local multidisciplinary team has determined that an interview of the child by a children's advocacy center is needed and an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the local department may facilitate the interview with a children's advocacy center located in another jurisdiction. The credentials for a qualifying children's advocacy center are established in § 63.2-100 of the Code of Virginia.*

During the child interview, the Family Services Specialist should inform the child about the investigation and what will occur during the investigation. The Family Services Specialist should note the child's emotional and physical condition (including any injury). The Family Services Specialist should learn about the child's needs and capabilities for the purposes of safety and risk assessment and service planning.

The Family Services Specialist shall document all observations and interviews involving the *child who is a victim* in the child welfare information system. If the face-

to-face worker visit with the *child who is a victim* is not made within the determined response time, this shall be documented in the child welfare information system. While it is important to document all attempted interviews to show reasonable diligence, it should be noted that attempted contacts do not satisfy the requirement to interview the alleged *child who is a victim* within the determined response priority.

### 4.6.6.1 Alleged *child who is a victim* 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 recording 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.

#### 4.6.6.1.1 Exceptions to electronically recording interviews with the alleged *child who is a victim*

The VAC 22 VAC 40-705-80 B1 provides five (5) exceptions to electronic recording of an interview with an alleged *child who is a victim*. Before electronically recording an interview with a child, the Family Services Specialist must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the five (5) exceptions precluding electronically recording the interview apply. Adequately considering the circumstances may include assessing the complaint or report; speaking with the mother, father or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

The Family Services Specialist shall consult with the supervisor when the decision is made to not electronically record an interview with an alleged *child who is a victim*. The consultation and the specific reasons why electronic recording is not done in the specific investigation shall be documented in the child welfare information system.

- **Exception**: The child's safety may be endangered by electronic recording.

If the child's safety is endangered or may be endangered by electronically recording the interview, then the interview must not be electronically recorded. The Family Services Specialist may need to conduct a brief assessment of the child to determine the risk of any harm that may occur to the child as a result of electronically recording the interview. The Family Services Specialist may be able to assess any potential harm to the child by speaking with the child's mother, father or guardians, or collateral witnesses.

If the interview is not electronically recorded, the Family Services Specialist shall carefully document the details of the interview in writing for the case record.

- **Exception**: The age or developmental capacity of the child makes electronic recording impractical.

The Family Services Specialist must assess the mental and physical capacities of the child. The age or development of the child may preclude electronically recording the interview. It may be appropriate to electronically record the questions being asked by the Family Services Specialist and to describe, either verbally or in writing, the child's responses.

- **Exception**: The child refuses to participate in the interview if electronic recording occurs.

The interview with the child should not be jeopardized because the child refuses to be electronically recorded. If the child refuses to be electronically recorded, the Family Services Specialist should explore the child's reasons and discuss those reasons with the child. If the child still refuses to participate in an electronically recorded interview, then the Family Services Specialist must not electronically record the interview. The Family Services Specialist shall document the reasons why the child refused to be electronically recorded.

- **Exception**: In the context of a team investigation, the team or team leader determines that electronic recording is not appropriate.

If a complaint or report of abuse or neglect is being investigated in conjunction with a multidisciplinary team, then the multidisciplinary team should make the decision to electronically record the interview with the alleged *child who is a victim* based on the specific child and referral. A team investigation includes a joint investigation with the Commonwealth's Attorney office or law enforcement.

- **Exception**: The victim provided new information as part of a family assessment.

If the victim provides new information during a family assessment resulting in an investigation and it would be detrimental to re-interview the victim, the Family Services Specialist shall provide a detailed narrative of the interview in the investigation record and document this exception to electronically recording the victim interview.

### 4.6.6.2 Each interview with the alleged *child who is a victim* must be electronically recorded

Each interview with the alleged *child who is a victim* must be electronically recorded unless one of the above mentioned exceptions to electronically recording the interview applies. When an interview is not electronically recorded for any reason, the Family Services Specialist shall complete a detailed summary of the interview, including the reasons for not recording the interview and the supervisory consultation for this decision and enter the information into the automated case record.

### 4.6.6.3 Notify the child's parents or caretakers that interview was electronically recorded

While there is no provision in the Code of Virginia or the VAC that requires an LDSS to inform the child's parents that the interview was electronically recorded, the LDSS should notify the mother, father or guardians of the alleged *child who is a victim* about the interview and that the interview was electronically recorded.

The LDSS should explain to the mother, father or guardians that the Code of Virginia allows the Family Services Specialist to interview the alleged *child who is a victim* without the consent of the parents and the VAC requires the interview to be electronically recorded.[5]

### 4.6.6.4 Parents or caretakers object to electronically recorded interview

There is no provision in the VAC allowing an exception to electronic recording when the mother, father or guardians object to the LDSS electronic recording the interview of the alleged *child who is a victim*. The Family Services Specialist should explore the foundation for the parents' objection. The objection to the electronic recording may satisfy one of the enumerated exceptions to electronic recording.

### 4.6.6.5 Equipment malfunction

22 VAC 40-705-80 B1 provides that a CPS finding may be based on the written narrative should equipment failure occur. If an interview of an alleged *child who is a victim* is not electronically recorded because of equipment malfunction, then

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[5] VA Code § 63.2-1518 provides any person required to make a report of abuse or neglect with the authority to talk to a child suspected of being abused or neglected outside the presence of the child's parents, guardian, other person standing in loco parentis or school personnel. 22 VAC 40-705-80 B requires that any interview by a *Family Services Specialist* with an alleged *child who is a victim* be electronically recorded.

the Family Services Specialist shall write a detailed narrative of the interview and include that narrative in the record.

### 4.6.7 Interview with child's mother, father or guardians

Pursuant to 22 VAC 40-705-80 B5, the Family Services Specialist shall conduct a face-to-face interview with the child's mother, father or guardians to obtain information about the child and about the parents' or guardians' knowledge of the allegations. The Family Services Specialist should inform the mother, father or guardians about the investigative process and provide sufficient information to involve them in planning and support for the child.

### 4.6.8 Face-to-face interview with alleged abuser or neglector

Pursuant to 22 VAC 40-705-80 B4, the Family Services Specialist shall conduct a face-to-face interview with the alleged abuser or neglector. The Family Services Specialist shall inform the alleged abuser or neglector of the allegations and the investigative process. The Family Services Specialist must document the alleged abuser or neglector responses about the allegations. If the alleged abuser or neglector refuses to be interviewed, the Family Services Specialist must inform the alleged abuser or neglector that the investigation must continue and a disposition will be made.

When the alleged abuser or neglector is under 18 years of age, the Family Services Specialist should provide oral and written notification to the parent or legal guardian of the alleged abuser or neglector. The parent or legal guardian of the alleged abuser or neglector must consent to the face-to-face interview and may be present for the interview. The parent or legal guardian of the alleged abuser or neglector may also obtain legal counsel on behalf of the alleged abuser or neglector.

The Family Services Specialist must advise the alleged abuser or neglector of his responsibility to notify the LDSS prior to changing his place of residence and provide the LDSS with his new address. The LDSS must document in the child welfare information system when the alleged abuser or neglector provides such notification to the LDSS.

#### 4.6.8.1 Inform alleged abuser or neglector of right to electronically record interview

Pursuant to 22 VAC 40-705-80 B4a, the Family Services Specialist must inform the alleged abuser or neglector of their right to electronically record any communication pursuant to § 63.2-1516 of the Code of Virginia.

#### 4.6.8.2 Law enforcement or Commonwealth's Attorney objects to informing the alleged abuser or neglector of his right to audio record the interview

A law enforcement officer or the attorney for the Commonwealth may object to the LDSS informing the alleged perpetrator of his right to electronically record an interview. If a law enforcement officer or an attorney for the Commonwealth objects, then the LDSS shall not advise the alleged perpetrator of that right. This objection applies when the attorney for the Commonwealth or the law enforcement officer believes that the instruction will compromise the investigation of any criminal charges.

This objection must be documented in the child welfare information system.

#### 4.6.8.3 LDSS shall provide recording equipment upon request

Pursuant to 22 VAC 40-705-80 B4b, the Family Services Specialist must be prepared to provide the equipment should the alleged abuser or neglector elect to electronically record the interview. The LDSS must provide a copy of the electronically recorded interview to the alleged abuser or neglector upon request.

#### 4.6.8.4 Use of statements as evidence

The Code of Virginia § 63.2-1503 M provides that statements made by the alleged abuser or neglector to the investigating Family Services Specialist after the alleged abuser or neglector has been arrested are not admissible in any criminal proceedings unless the alleged abuser or neglector was advised of his rights against self-incrimination. If a person suspected of abuse or neglect is arrested, that person must be advised of his rights against self-incrimination or any subsequent statements made by the person cannot be used during the criminal proceedings. This section of the Code of Virginia only pertains to the admissibility in criminal proceedings of statements made by the alleged abuser or neglector after that person has been arrested. This section of the Code of Virginia does not pertain to the use of any statements made by the alleged abuser or neglector in determining whether the complaint or report is founded or unfounded. While certain statements made by the alleged abuser or neglector may not be admissible in a court of law, there is no specific exclusion to the LDSS using those statements in determining a founded or unfounded disposition.

### 4.6.9 Face-to-face interview with siblings

Pursuant to 22VAC40-705-80 B2, the Family Services Specialist shall interview or observe minor siblings residing in the home of the alleged *child who is a victim* in order to determine whether they have experienced abuse or neglect and to more fully evaluate the family strengths and needs.

### 4.6.10 Other children in the home

Pursuant to 22VAC40-705-80 B3, the Family Services Specialist shall interview other children living in the home as collaterals. They may have information which would help assess safety, strengths and needs of the family. Such contact should be made with prior consent of the non-*child who is a victim*'s parent or guardian. If the situation warrants contact with the non-*child who is a victim* prior to such consent being obtained, the parent or guardian should be informed as soon as possible after the interview takes place.

### 4.6.11 Observe environment where child lives and visit site where alleged abuse or neglect occurred

Pursuant to 22 VAC 40-705-80 B6 and 22 VAC 40-705-80 B7 the Family Services Specialist must observe the environment where the child lives and the site where the alleged incident took place.

#### 4.6.11.1 Safe sleep environment and practices

The Family Services Specialist must assess the sleep environment and sleep practices with all families who have infants and children less than two years of age at every home and site visit. The Family Services Specialist must share safe sleep information with all families who have infants and children less than two years of age. The Family Services Specialist must document their assessments of the sleep environment, sleep practices, and that safe sleep information was provided in the child welfare information system.

Research has shown that several factors place infants at a higher risk for Sudden Infant Death and other sleep-related causes of infant death. The following are some of the 18 recommendations from the American Academy of Pediatrics that can be discussed with caretakers:

- Infants should be placed to sleep on their backs.
- Infants should sleep on a firm sleep surface.
- Bed sharing with infants is not recommended.
- Soft objects and loose bedding should not be in the infant's sleep area.
- Avoid exposing infant to smoke, alcohol and illicit drugs.
- Breastfeeding of infants is recommended.
- Pacifiers are recommended.

- Avoid overheating the infant.

A Safe Sleep for Babies Tip Card is available in English and Spanish from the Virginia Department of Health. Additional resources, including free brochures are available at the Safe to Sleep Public Education Campaign.

### 4.6.12 Identifying relatives and family supports

During the course of the investigation, the Family Services Specialist must gather information to identify maternal and paternal relatives and the kinship network providing support and resources to the family and child. Many families identify non-relatives as kin, such as godparents, friends, and others with whom they have a family-like relationship. The early identification of adult family members and supports is critical for initial assessments when identifying protective factors, strengths, and needs. When appropriate, these individuals may become resources in protective interventions, FPMs, and case planning during the CPS process or any future case involvement. Resources and tools for relative search and family engagement are available on the DSS public website under Family Engagement Toolkit.

### 4.6.13 Interview collaterals

Pursuant to 22 VAC 40-705-80 B8, the Family Services Specialist shall contact any collaterals perceived to have pertinent information. The Family Services Specialist may involve collaterals to help ensure the safety of the child. Contact with the child's other caretakers, such as babysitters or day care providers, is encouraged. The Family Services Specialist may make collateral contacts without the family's consent in order to complete an investigation, but consent and collaboration with the family is encouraged.

The Family Services Specialist shall interview non-*child who is a victim*ren 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.

### 4.6.14 Interview with non-custodial parent

The Family Services Specialist should interview the non-custodial parent. The non-custodial parent has a right to know about the report involving his/her child and may be a resource to the child. They may have important information that relates to the allegations. If there is reason to believe that such an interview would be detrimental to the child, the LDSS may take that concern into account. They should be invited to

any FPM scheduled. The LDSS should document all reasonable efforts to locate, notify and interview the non-custodial parent. Conversely, the LDSS should document why reasonable efforts were not made to locate, notify, or interview the non-custodial parent.

### 4.6.15 Other contacts may be required

The Family Services Specialist may be required to contact other professionals depending on the type of CPS report. They include:

- Notify the local Commonwealth Attorney if a criminal act is alleged.
- Notify the Regional Medical Examiner and the CPS Regional Consultant if there is a child fatality.
- Notify local law enforcement if there is an alleged criminal act and a joint response is needed.

### 4.6.16 First meaningful contact in an investigation

The first meaningful contact in the investigation provides pertinent information relevant to the investigation and the safety of the child. It is a face-to-face contact with the family and usually occurs after the completion of the face-to-face interview with the alleged victim. During this face-to-face contact with the family, the Family Services Specialist completes the Safety Assessment Tool in the child welfare information system and develops a safety plan with the family if the child is determined to be conditionally safe. The first meaningful contact must be documented as such in the child welfare information system and the Family Services Specialist must include “safety assessment” as one of the purposes of the contact. The Family Services Specialist should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact. Note: The completion of the initial interview with the alleged victim does not satisfy a first meaningful contact.

### 4.6.17 Investigation of medical neglect of disabled infants with life-threatening conditions

After receiving a complaint or report involving the withholding of medical treatment of an infant, the LDSS should initiate contact with the designated person in the hospital. The LDSS should arrange with the local hospital for naming a contact person or liaison. Upon receipt of the complaint or report, the Family Services Specialist should immediately:

- Verify the child's presence at the hospital by contacting the hospital’s liaison.
- Verify the child's status.

#### 4.6.17.1 Contact physician or hospital staff

The LDSS should arrange to meet with the attending physician or the Infant Care Review Panel and conduct a visit to the hospital to verify the child's situation.

#### 4.6.17.2 Determine who is responsible for the child

The Family Services Specialist should make a site visit and determine who is responsible for the child. This will usually be the child's parents, unless the parents have abdicated their authority. Situations when the parents are not responsible include, but are not limited to:

- When parents permanently voluntarily entrust the child to an agency.
- When a third trimester abortion results in a live birth.[6]

#### 4.6.17.3 Seeking court assistance

When treatment appears necessary and the court is available to act on a petition, the worker can:

- Petition the court for custody so that treatment can be provided.
- Petition the court for a Protective Order specifying that treatment be provided.

When emergency treatment is necessary and the court is unavailable, the worker should consider taking the child into custody pursuant to the Code of Virginia § 63.2-1517.

### 4.6.18 Safety in an investigation

#### 4.6.18.1 Initial safety assessment and safety plan in an investigation

Pursuant to 22 VAC 40-705-110 A, the Family Services Specialist must conduct an initial safety assessment. An initial safety assessment is conducted at the

[6] § 18.2-74 of the Code of Virginia provides that in any termination of human pregnancy aided or assisted by a licensed physician subsequent to the second trimester, measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability. The physician would be responsible for providing that the life sustaining measures were provided in these instances.

beginning of an investigation. The purpose of the initial safety assessment and safety plan is to:

- Assess whether any children are currently in immediate danger of serious physical harm that may require a protecting intervention.
- Determine what interventions should be maintained or initiated to provide appropriate protection.

Safety Assessments differ from Risk Assessments in that the purpose is to assess a child's present or immediate danger and the interventions currently needed to protect the child. In contrast, Risk Assessment evaluates the likelihood of future maltreatment.

A safety and risk field guide can be located on FUSION This guide may be used by the Family Services Specialist in the field to help guide interviews as it provides the safety factors, protective capacities and risk factors that should be identified in every assessment. This field guide must be used in conjunction with the definitions provided for the tools.

### 4.6.18.2 Immediate child safety and family needs

Safety assessment is both a process and a document. Safety information is gathered and assessed from the very first contact at intake and until the case is closed. Safety must be determined for each child and the safety conclusion based on the least safe child if there is more than one (1) child in the family. To ensure that the safety of the child is appropriately assessed in each investigation, the LDSS must complete the process of an initial safety assessment at the first meaningful contact with the family and any time safety changes and document the results in the CPS Safety Assessment Tool in the child welfare information system **within 24 hours** of the first meaningful contact or any time safety changes. For accurate completion, it is critical to refer to the definitions provided on the Safety Assessment Tool, and decisions must be based on supporting narrative documented in the child welfare information system. The Safety Assessment Tool with definitions is located on the DSS public website.

The Safety Assessment Tool provides structured questions concerning the danger of immediate harm or maltreatment to a child and is used to guide the development of a Safety Plan. This information guides the decision about whether the child may remain in the home with no intervention, may remain in the home with safety interventions in place, or must be removed from the home. This is an appropriate time for the LDSS to consider convening a FPM if necessary to address ongoing safety planning.

For example, a three (3) year old child may be more vulnerable and more threatened with severe harm by an out-of-control parent than a 13 year old, but even the three (3) year old may be deemed safe if the parent has just been taken away by the police and a responsible adult is available, so there is no severe nor imminent threat of harm to the vulnerable child.

#### 4.6.18.3 Assess immediate danger to the child

The initial 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.

#### 4.6.18.4 Assess immediate needs of the family

After assessing the immediate safety needs of the child, the worker must evaluate the immediate needs of the family. Factors to consider include:

- If the child has been injured or harmed, whether the family has the capabilities or capacity to protect the child from further harm.
- Whether an emergency or crisis situation exists and the family's ability to cope.
- Whether any other family members are at risk of harm or danger.
- What are the family's capabilities to ensure the safety of the child or children in the near future?

#### 4.6.18.5 Assess protective capacities

The Family Services Specialist should assess the family's protective capacities if any safety factors are identified. Protective capacity means being protective towards ones' children. Protective capacities are cognitive, behavioral, and emotional qualities which support vigilant protectiveness of children. Protective capacities are fundamental strengths which prepare and empower a person to protect. All adults living in the home should be assessed for protective capacities. Capacities must be strong enough to control or manage the specific threats of

danger that have been identified. Protective capacities should be used when determining the protective intervention and development of a safety plan.

#### 4.6.18.5.1 Cognitive protective capacities

Cognitive protective capacity refers to knowledge, understanding, and perceptions contributing to protective vigilance. Cognitive capacities can be demonstrated when the caretaker:

- Plans and articulates a plan to protect the child.
- Is aligned with the child.
- Has adequate knowledge to fulfill care giving responsibilities and tasks.
- Is reality orientated; perceives reality accurately.
- Has accurate perceptions of the child.
- Understands their protective role.
- Is self-aware as a parent/caretaker.

#### 4.6.18.5.2 Behavioral protective capacities

Behavioral protective capacity refers to actions, activities and performance that result in protective vigilance. Behavioral aspects show it is not enough to know what must be done or recognize what might be dangerous to a child but rather require the caretaker to take action. Behavioral capacities can be demonstrated when the caretaker:

- Has a history of protecting others.
- Takes action to correct problems or challenges.
- Demonstrates impulse control.
- Is physically able.
- Demonstrates adequate skill to fulfill care giving responsibilities.
- Possesses adequate energy.
- Sets aside their needs in favor of a child.

- Is adaptive and assertive.
- Uses resources necessary to meet the child's basic needs.

#### 4.6.18.5.3 Emotional protective capacities

Emotional protective capacity refers to feelings, attitudes and identification with the child and motivation resulting in protective vigilance. Emotional capacities can be demonstrated when the caretaker:

- Is able to meet their own emotional needs.
- Is emotionally able to intervene to protect the child.
- Realizes the child cannot produce gratification and self-esteem for them as caretaker.
- Is tolerant as a parent/caretaker.
- Displays concern for the child and the child's experience and is intent on emotionally protecting the child.
- Has a strong bond with child and is clear that the number one priority is the well-being of the child.
- Expresses love, empathy and sensitivity toward the child; experiences empathy with the child's perspective and feelings.

### 4.6.19 Protective interventions and safety services

When a safety factor has been identified, the Family Services Specialist shall consider the resources available to the family and the community that might help to keep the child safe. Protective interventions should directly address identified threats to safety. The interventions should be implemented immediately as they address immediate, serious threats to child safety.

Consider the following protective interventions which can allow children to remain in the caretaker's custody:

- Use of family resources, neighbors or other individuals in the community to develop and implement a safety plan
- Use of community agencies or services
- Involved caretaker leaves the home

- Non-maltreating caretaker leaves the home with child(ren)
- Caretaker voluntarily places child outside of the home
- Legal action, such as a preliminary protective order, is initiated

Protective interventions may also be safety services provided during the investigation.

Safety Services are formal or informal services provided to or arranged for the family with the explicit goal of ensuring the child's safety. These services must be immediately available and accessible and may be provided by professionals, family members, or other willing parties as long as each involved individual understands their role and responsibility. The safety services must be clearly documented (i.e. safety plan, service plan, court order, SDM plan, etc.) for the involved parties and in the case record. Examples of safety services may include: child care, cleaning supplies, safety equipment, transportation, etc.

As with all aspects of case planning, the family should be engaged in providing input and joint decision making throughout the process of identifying, implementing, and evaluating these interventions and safety services. Documentation of safety services in the child welfare information system must clearly demonstrate how the actions taken provide the child with immediate protection from the safety issues and how each safety service contributes to addressing or eliminating the safety matters specific to the child. Safety services should be documented on the Safety Assessment Tool in the child welfare information system. Additional information about safety services can be found in the eLearning FSWEB1027: Safety Services: Swift & Savvy available in the VLC.

### *4.6.19.1 Parental child safety placements*

*When the LDSS has determined on the safety assessment that the child cannot remain safely in the home, the LDSS must assess if the appropriate protective intervention is allowing the parent(s) or caretaker(s)/guardian(s) to voluntarily place the child outside of the home. This protective intervention is called a Parental Child Safety Placement (PCSP). It must only be used when the caretaker willingly agrees to the voluntary placement of their child with an alternate caregiver in a PCSP and not in lieu of an emergency removal of the child.*

*This protective intervention is only appropriate to use in two circumstances:*

- *Parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within seven (7) calendar days** and the child can return safely to the home; or*

- *Parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within 90 days** and is willing to participate in the Parental Child Safety Placement Program.*

*If the parent(s) or caretaker(s)/guardian(s) cannot remedy the identified safety factor **within 90 days** or they are not willing to participate in the Parental Child Safety Placement Program, the LDSS must ensure the safety of the child and obtain a court order to protect the child from immediate serious harm.*

#### 4.6.19.1.1 Assessment of alternate caregiver

*Pursuant to § 63.2-1534 of the Code of Virginia, the LDSS must assess the proposed alternate caregiver and the PCSP. The LDSS should immediately begin the assessment process by facilitating conversations with the parent(s) or caregiver(s)/guardian(s) about the needs of the child, the family circumstances of the prospective relative/fictive kin caregiver(s), and the types of assistance they feel they need to maintain the child's safety. Family circumstances include the prospective relative/fictive kin caregiver(s)' overall ability to meet the immediate and future needs of the child and to incorporate the child into their home.*

*The LDSS must assess the proposed alternate caregiver and determine whether the proposed caregiver (i) is 18 years of age or older; (ii) a non-parent relative or fictive kin; (iii) is willing and qualified to receive and care for the child; (iv) is willing to have a positive, continuous relationship with the child; (v) is willing and has the ability to protect the child from abuse and neglect; (vi) is willing to use age-appropriate behavior management techniques; (vii) agrees to not use corporal punishment; and (viii) is willing to support the relationship and contact between the child and parent, and willing to support the parent's efforts to remedy the safety issues. The Permanency Assessment Tool should be completed to engage the alternate caregiver and understand what is needed for the best outcome for the child and family. The Permanency Assessment Tool should be documented in the child welfare information system. The authority for these requirements is outlined in § 63.2-1534 of the Code of Virginia and 22VAC40-705-200.*

*Prior to the child's placement with the proposed alternate caregiver, the LDSS must conduct a criminal history inquiry, a child welfare inquiry, and complete a visit to the home. The criminal and child welfare inquiries must be conducted on all adults aged 18 years and older residing in the PCSP home. The LDSS must assess the results of the criminal and child welfare histories and home environment to determine the best outcome for the child. The*

*results of the criminal and child welfare histories and home visit must be documented in the child welfare information system.*

*Pursuant to 22 VAC 40-705-200 D, if the criminal history inquiry results in the identification of a barrier crime as defined in § 19.2-392.02 of the Code of Virginia or a negative child welfare history, including any validated child protective services referrals or founded child protective services dispositions, and the LDSS continues its consideration of the proposed alternate caregiver, the LDSS must:*

*Conduct a further assessment, which must include a discussion with the proposed alternate caregiver about the circumstances surrounding each conviction and negative child welfare history, and the current status of disposition, sentencing, probation, or other condition.*

*Conduct a supervisory review of the information gathered from the further assessment by the LDSS Director, or if not available, the Assistant Director, Program Manager, or Family Services Supervisor.*

*Document the results of the supervisory review and consultation in the child welfare information system.*

*If, after conducting the inquiry, the LDSS determines that the PCSP is in the child's best interests, the LDSS must notify the VDSS Commissioner and the local board within 72 hours when the alternate caregiver has a barrier crime or founded child protective services disposition.*

*If, after conducting the inquiry, the LDSS determines that the PCSP is not in the child's best interests, the LDSS must notify the child's parent(s) or caretaker(s)/guardian(s)(s) or caregiver/guardian(s) and the proposed caregiver of the reasons for the LDSS' determination but may not disclose the results of any child welfare or criminal history unless the proposed caregiver consents to such disclosure. The results of the child welfare and criminal history inquiry must be documented in the child welfare information system. For more information on how to conduct the criminal and welfare history inquiries, please see FUSION.*

*Prior to the child's living arrangement with the proposed alternate caregiver, the LDSS must conduct a substance use assessment and inquiry. Pursuant to 22 VAC 40-705-200 D, the LDSS must document the outcome of the screening and assessment deemed necessary or any refusal to consent to screening. This information must be used to evaluate the appropriateness of the proposed caregiver for the child's placement and must be documented in*

*the child welfare information system. For more information on substance use screening guidelines for LDSS, please see FUSION.*

#### *4.6.19.1.2 Parental child safety placement for seven calendar days or less*

*When the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor(s) **within seven (7) calendar days**, the LDSS must document the PCSP on the safety assessment tool and on the safety plan in the child welfare information system. If the parent(s) or caretaker(s)/guardian(s) cannot remedy the identified safety factor(s) within seven calendar days, the LDSS must evaluate the family for participation in the Parental Child Safety Placement Program.*

#### *4.6.19.1.3 Parental child safety placement program*

*The Parental Child Safety Placement Program is established to prevent unnecessary entry into foster care by promoting and supporting placements with relatives and fictive kin and requiring accountability for pre-court placements of children. The Parental Child Safety Placement Program codifies the protections and safeguards needed to promote family driven decision-making, ensuring the preservation of parent(s) or caretaker(s)/guardian(s) rights, establishing consistent practice among LDSS, and enhancing the provision of In-Home services to children and families.*

*Pursuant to § 63.2-1532 of the Code of Virginia, the Parental Child Safety Placement Program is available when:*

- *A family assessment or investigation has been initiated in response to a valid complaint alleging the child has been abused or neglected;*
- *The safety assessment conducted by the LDSS indicates that the child cannot remain safely in the home; and*
- *The child's parent(s) or caretaker(s)/guardian(s) voluntarily agrees to participate in the Parental Child Safety Placement Program.*

*The Parental Child Safety Placement Program is a short-term, pre-court intervention. Court ordered living arrangements are not eligible for participation in the Parental Child Safety Placement Program.*

*The Parental Child Safety Placement Program should be utilized when the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety*

*factor(s)* ***within 90 days****. The Parental Child Safety Placement Program expedites the provision of safety services to ensure timely reunification.*

***Documentation of PCSP prior to entry into Parental Child Safety Placement Program***

*When the LDSS has determined the child to be conditionally safe on the safety assessment tool and the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor* ***within 90 days****, the LDSS must document the PCSP on the safety assessment tool and on the safety plan in the child welfare information system.*

***PCSP timeframe***

*The* ***90-day timeframe*** *for the PCSP begins on the day the child is determined to be conditionally safe and placed in a parental child safety placement. The time frame does not start over if there is a new alternate caregiver of the child during the same 90-day timeframe.*

***Out-of-Home Staffing***

*Once the child is placed in the parental child safety placement, the LDSS should hold an out-of-home staffing* ***within one (1) business day****. The purpose of this meeting is to implement a trauma-informed approach for the family and worker when it has been determined that the child will need to be placed out of the home for longer than seven calendar days with an alternate caregiver. The out-of-home staffing is an internal meeting at the LDSS with Family Services Specialists, Family Services Supervisors, and other assisting staff to:*

- *Review the referral and the circumstances necessitating the need for the child to be placed outside of the home;*
- *Ensure the identification of the natural supports to attend the family partnership meeting;*
- *Develop a plan to prepare the family and natural supports for the family partnership meeting;*
- *Ensure the completion of alternate caregiver assessment(s); and*
- *Identify and assign responsibility for other relevant actions and tasks.*

*The out-of-home staffing should be documented in the child welfare information system.*

***Family Partnership Meeting***

*The LDSS should hold a family partnership meeting within* ***seven (7) calendar days*** *of the child being placed in a PCSP and prior to the creation of a Parental Child Safety Placement Agreement (PCSPA). The imminent risk of emergency removal prompts the need to convene the FPM. This meeting provides the opportunity for family and community participation in the decision-making process for the child. During the FPM, the LDSS must inform the family of all options for the care of the child. Engaging the relatives and natural support of the family will be crucial to a successful meeting. The Family Services Specialist should conduct the face-to-face interview with the alleged child who is a victim and the parent(s) or caretaker(s)/guardian(s)/caretaker prior to the family partnership meeting since the purpose of the meeting is not to interview caretakers, alleged children who are victims, or other collaterals. The purpose of the meeting is to facilitate planning to determine whether:*

- *The child can return to the home of the parent(s) or caretaker(s)/guardian(s) safely with services;*
- *The family will voluntarily participate in the Parental Child Safety Placement Program and enter into a PCSPA; or*
- *The agency should file for custody and facilitate placement because the safety concerns necessitating the PCSP will not be resolved within 90 days.*

*The Family Services Specialist and Family Services Supervisor should discuss the convening and timing of a FPM at this critical decision point. Prior to an FPM where the establishment of a PCSPA is discussed, preparation should include providing information to parent(s) or caretaker(s)/guardian(s), and relative/fictive kin caregiver(s) regarding caregiving options and the opportunity to seek legal counsel prior to entering into a PCSPA. All FPMs must be documented in the child welfare information system within five (5) business days. For guidance on FPM please refer to the VDSS Child and Family Services Manual, Chapter A. Practice Foundations, Section 2, Family Engagement.*

*During the FPM, the LDSS should continue to fully inform the family of all options for the care of the child. The FPM should be used to inform the PCSPA and the PCSPA should not be established without an FPM having*

*first occurred. The PCSPA is a voluntary agreement and should not be developed without active participation of the parent(s) or caregiver(s)/guardian(s). During the FPM, the Family Services Specialist and Family Services Supervisor should address the responsibilities of the child's parent(s) or caretaker(s)/guardian(s), relative/fictive kin caregiver(s), and the LDSS. This should include, but is not limited to:*

- *A plan for how the relative/fictive kin caregiver(s) will access services for the child.*
- *Plans for family time and visitation.*
- *Services that will be provided to parent(s) or caretaker(s)/guardian(s), and child(ren).*
- *Requirements and expectations for LDSS worker visits.*
- *The date on which the PCSPA will begin and end.*

*After the LDSS determines the child and the prospective relative/fictive caregivers(s) are eligible for the Parental Child Safety Placement Program, the LDSS must provide the prospective relative/fictive kin caregiver(s) with the voluntary PCSPA, available in the child welfare information system.*

***Parental Child Safety Placement Agreement***

*When establishing the PCSPA, the LDSS must ensure the following:*

- *The relative/fictive kin caregiver(s) is made aware of any financial assistance they will be eligible for upon signing of the PCSPA and while the agreement is in place.*
- *The LDSS will obtain signatures of all involved parties on the PCSPA* ***within four (4) calendar days*** *of the initial FPM.*
- *The parent(s) or caretaker(s)/guardian(s), relative/fictive kin caregiver(s), and other involved parties will be given a copy of the signed PCSPA.*
- *The LDSS will maintain a copy of the agreement into the electronic case record.*

*The initial PCSPA cannot exceed* ***90 days*** *from the start date of the PCSP, but the agreement can be extended. Such extension must be limited to* ***one***

***(1) 90-day period**. If at any time a PCSP is facilitated with a new relative/fictive kin caregiver(s), a newly established PCSPA must abide by and resume the current 90-day timeline.*

***In-Home Services Case***

*The LDSS is required to open an In-Home services case for the entirety of the agreement and for any extension period. The Family Services Specialist who specializes in CPS should complete the risk assessment **within 30 days** of the In-Home services case opening. For information on the In-Home services case, please see VDSS Child and Family Services Manual, Chapter B, Prevention, Section 2, Prevention and In-Home Services to Families.*

### 4.6.20 DV and *substance use* as safety and/or risk assessment issues

Two family issues that can have a major impact on safety and risk are DV and drug and/or alcohol involvement by the child's caretakers.

LDSS are required to develop guidelines for evaluating substance or drug abuse. The CAGE-AID tool (CAGE is derived from the four questions of the tool: Cut down, Annoyed, Guilty and Eye-opener. CAGE-AID is the CAGE instrument and is Adapted to Include Drugs) is one tool that provides questions that can be worked into the interviews with the primary caretakers, and a "yes" to any question may indicate a need for an AOD (alcohol or other drug) evaluation in order to complete the risk assessment.

There are several evidence based tools that can be used to screen for DV depending on who is being interviewed. The "HITS" (Hurt, Insult, Threaten, Scream) screening tool may be used to screen for DV with collaterals such as family members, professionals, service providers and mandated reporters. The Women's Experience with Battering Tool (WEB) is designed to be used with potential victims of DV. These screening tools and additional guidance regarding screening for DV can be found in section 1.4 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

Additional information about DV can be found on the DSS public website.

### 4.6.21 Safety decision

After safety and protective factors have been assessed using the Safety Assessment Tool, the Family Services Specialist must make a decision about the safety of the child(ren) in the home. The safety decision should be made on the basis of the needs of the least safe child in the home, if there is more than one (1) child. One of the

following safety decisions must be determined using the Safety Assessment Tool and documented in the child welfare information system and shared with the family.

- **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**. Approved removal and placement was the only possible intervention for the child(ren). Without placement, the child(ren) will likely be in danger of immediate serious harm. A court order is required to document intervention.

#### 4.6.21.1 Safety decision and family partnership meeting

The LDSS must schedule a FPM when the worker assesses the child's safety to be in jeopardy or at risk of removal or out of home placement. However, safety concerns are paramount and necessary action to address safety issues shall not be delayed. The FPM should be scheduled **within 24 hours** after safety issues have been identified and the agency is considering removal, and occur before the five-day court hearing in cases after the emergency removal. Emergency removal prompts the need to convene a FPM. This meeting provides the opportunity for family and community participation in the decision-making process for the child. Engaging the relatives and natural support of the family will be crucial to a successful meeting. The purpose of the meeting is to facilitate planning to determine whether:

- The agency should file for custody and facilitate placement;
- The child can remain home safely with services, or the child may return safely home with services; or
- There will be voluntary placement of the child by the mother and/or father with provision of services and a safety plan.

The Family Services Specialist should conduct the face-to-face interview with the alleged *child who is a victim* and the mother, father or caretaker prior to the FPM since the purpose of the meeting is not to interview caretakers, victims, or other collaterals.

The worker and supervisor should discuss the convening and timing of a family engagement meeting at this critical decision point. Additional guidance for

holding a FPM when there is DV can be found in section 1.9 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

All FPMs must be documented in the child welfare information system. For guidance on FPMs please refer to the VDSS Child and Family Services Manual, Chapter A, Family Engagement. *To avoid duplication, if there is an active CPS referral and an open case, the FPM should be documented in the case.*

### 4.6.22 Develop a safety plan

When the child is determined to be Conditionally Safe or Unsafe, the Family Services Specialist must determine what services or actions need to occur by developing a safety plan in partnership with the family. The VAC 22 VAC 40-705-10 defines safety plan as an immediate course of action designed to protect a child from abuse or neglect.

A safety plan must be made to ensure the immediate protection of the child. When possible, the Family Services Specialist needs to develop the safety plan with the cooperation of the child's mother, father or guardian(s). The Family Services Specialist must determine what actions are necessary to assure the child's immediate safety. If the actions needed to assure the safety of the child cannot be put in place, alternative steps must be taken that can include court intervention. Once available on the COMPASS Mobile Application, the safety plan must be completed in the child welfare information system and the worker's efforts to develop the safety plan with the family must also be documented in the child welfare information system. The parent(s) or guardian(s) should sign the safety plan along with the worker to show agreement as to who will do what to prevent harm to the child in the immediate future. A copy of the safety plan must be left with the parent(s) or guardian(s). In the event of unforeseen technical difficulties, the Family Services Specialist must complete the safety plan template in the child welfare information system and provide an electronic or paper copy of the safety plan to the family no later than 24 hours after the first meaningful contact. The safety plan template is available in the child welfare information system and also on the public DSS website.

Additional guidance for safety planning with both children and DV victims can be found in section 1.6.1 and 1.6.2 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

#### 4.6.22.1 Safety plan criteria

Safety plans should meet the following criteria:

- The plan only controls or manages immediate threats of danger.

- The safety plan must have an immediate effect in controlling threats. Strategies resulting in long term change do not belong in a safety plan.
- The Family Services Specialist must assess the parent(s), guardian, or custodian and make a professional judgment as to their willingness and capability to agree to and abide by the terms of the safety plan
- People and services identified in the safety plan must be accessible and available when threats are present.
- The safety plan should employ the least restrictive strategies possible while assuring child safety.

### 4.6.22.2 Safety plan actions

The following are sample safety plan actions that may be included in a safety plan:

- Cooperate with the LDSS to include returning phone calls, advising of address changes and keeping any scheduled appointments;
- Refrain from the use of any illegal drugs or substances while caring for the child(ren);
- Provide age appropriate supervision consistent with child's development;
- Obtain an appropriate child care provider;
- Provide non-abusive and age appropriate discipline;
- Refrain from the use of physical discipline or corporal punishment;
- Refrain from engaging in physical altercations or acts of DV;
- Ensure no contact with specified individual;
- Maintain a home environment that is safe and free of health and safety hazards;
- Ensure safe sleep practices are followed for all children in the home;
- Sign necessary release of information forms with service providers;
- Provide protection from and further maltreatment by a specified individual;

- Ensure child(ren) receive all medical and/or therapeutic treatment as recommended.

These actions should remain in effect until a new safety plan is developed; the investigation or case is closed, whichever comes first.

#### 4.6.22.3 Safety plan signatures

Whenever possible, the caretaker(s) should sign the safety plan along with the worker, so that this document can be used as an agreement as to who will do what to prevent harm to the children in the immediate future. Other parties to the agreement, such as service providers, may also sign the form.

### 4.6.23 Reassessing safety

Safety assessment is both a process and a document. The process of assessing child safety is ongoing throughout the life of the CPS referral and ongoing case as information is gathered with each contact. The initial safety decision and safety plan are documented in the child welfare information system, and any subsequent changes in safety assessed in referrals or ongoing cases in the following circumstances should be documented in a new Safety Assessment tool in the child welfare information system **within 24 hours** of:

- A change in family circumstances such that one or more safety factors previously present are no longer present;
- A change in information known about the family in that one or more safety factors not present before are present now; or
- A change in ability of safety interventions to mitigate safety factors and require changes to the safety plan.

When safety is reassessed, the safety plan should be reviewed and revised accordingly. A FPM may be considered if safety concerns escPCSPte.

### 4.6.24 Information gathered in the investigation

In developing the case record and the investigative narrative, the Family Services Specialist must address and document these issues in the child welfare information system. Each investigation may have circumstances warranting more or less details and information.

### 4.6.24.1 Incident information

- Gather and document information about the alleged abuse or neglect incident, including the manner of infliction. If applicable, include the precipitating event (what was going on just prior to the occurrence of the abuse or neglect). If applicable, include a description of the environment where the alleged abuse occurred.
- Describe the observable injury or condition of the child (or children) that suggests abuse or neglect has occurred or is likely to occur. Direct observation of the child is always necessary.
- Describe the frequency of the alleged abuse or neglect.
- Describe the medical and psychological treatment given as the result of the alleged abuse or neglect. Any written reports should be included in the case record and documented in the child welfare information system.

### 4.6.24.2 Child information

- 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.

### 4.6.24.3 Caretaker information

- Demographic information (date of birth, sex, grade in school, etc.).
- Caretaker’s developmental level.
- Caretaker’s description of the incident including but not limited to:

- Statements about what happened. Include direct quotes of the child if appropriate.
- Caretaker acknowledgement of responsibility.
- Caretaker's cooperation with the CPS Investigation.
- Is the caretaker taking action to protect the child? If so, describe what action the caretaker is taking.

- Describe the observable or verifiable characteristics and behaviors of the caretaker impacting on the situation (both positive and negative). If drugs or alcohol are having an impact on the situation, this information should be documented in the child welfare information system. If available, include in the record any results of testing or evaluation.
- Caretaker's history of prior abuse or neglect as either victim or abuser.
- Caretaker's demonstration of a desire or willingness to change or to seek help if appropriate.
- Describe observations of the interaction between the caretaker (even when the caretaker is not a family member, if possible) and the child.

### 4.6.24.4 Family information

- Describe the family composition.
- Describe observable or verifiable characteristics and behaviors of the family that may impact child safety or risk of abuse or neglect.

### 4.6.24.5 Other information

- Observable or verifiable characteristics and behaviors of others who have access to the child and the nature of those relationships that may impact child safety or risk of abuse or neglect.
- Factors in the home environment that may impact child safety or risk of abuse or neglect (e.g., eviction, financial circumstances, DV, support systems, etc.).
- Factors outside of the home environment that may impact child safety or risk of abuse or neglect (e.g., school, day care, other service agency contact, etc.).

- Court actions that may impact child safety or risk of abuse or neglect.
- Supports for or obstacles and barriers to services that are needed to ensure the protection of the child or other children.

### 4.6.25 Determine risk level in an investigation

Pursuant to 22 VAC 40-705-110 B, a Family Risk Assessment shall be completed in all investigations.

The Family Services Specialist must gather information in order to complete the Family Risk Assessment tool which includes assessing the following risk factors:

- **Caretaker related**
  - History of childhood maltreatment.
  - History of mental health issues.
  - History of *substance use*.
  - History of criminal activity (adult or juvenile).
  - DV incidents in past year.
  - History of prior CPS; ongoing or foster care services.
- **Child related**
  - Developmental or physical disability.
  - Medically fragile or failure to thrive.
  - Substance exposed newborn.
  - Delinquency.
  - Mental health or behavioral problem.
  - Prior injury as result of abuse or neglect.
- **Caretaker and child relationship**
  - Blames child.
  - Justifies maltreatment.
  - Provides insufficient emotional or psychological support.

- Uses excessive or inappropriate discipline.
- Domineering.
- Provides physical care inconsistent with child needs.

- **Other**
  - Housing is unsafe.
  - Family is homeless.

Based on the information gathered during the investigation, the Family Services Specialist must determine the likelihood of any occurrence or recurrence of abuse or neglect by completing a Family Risk Assessment. The Family Risk Assessment does not predict recurrence but assesses whether a family is more or less likely to have an incident of abuse or neglect without intervention by the agency. The Family Risk Assessment is completed based on conditions that exist at the time the incident is reported and investigated as well as prior history of the family. Risk is calculated in the Family Risk Assessment Tool completed in the child welfare information system. For accurate completion, it is critical to refer to the definitions. The Family Risk Assessment Tool with definitions is located under forms on the DSS public website. Selections made on the Family Risk Assessment Tool must be based on supporting narrative in the child welfare information system.

Assessed risk will be:

- **Low**. The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is needed.
- **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 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.

Overrides, either by policy or discretionary, may increase risk one level and require supervisor approval. The initial CPS risk level may never be decreased.

### 4.6.25.1 Risk level guides decision to open a case

When risk is clearly defined and objectively quantified, resources are targeted to higher-risk families because of the greater potential to reduce subsequent maltreatment. The risk level *must* inform the decision whether or not to open a case as follows:

| | |
|---|---|
| Low Risk: | Close |
| Moderate Risk: | Open to In-Home Services **or** close |
| High Risk: | Open to In-Home Services |
| Very High Risk: | Open to In-Home Services |

The Family Services Specialist and Family Services Supervisor should assess the decision to open a case for services and document in the child welfare information system the decision not to open a case. For more guidance on service planning in a case refer to Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual.

*Case opening must occur **within five (5) work days** of risk assessment completion and the primary in-home services or prevention worker must be assigned **within five (5) work days** of case opening.*

#### 4.6.25.1.1 Low/moderate risk cases open for prevention services

The LDSS may offer prevention services for families involved in an investigation when risk is assessed as low or moderate. The following conditions should be met to open a case to prevention services:

- LDSS has received a current, valid CPS referral AND
- LDSS has conducted a family assessment or investigation AND
- The family has been assessed at low or moderate risk of future maltreatment but could benefit from voluntary services AND
- The family agrees to services.

See Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual, for further guidance.

### 4.6.25.2 Risk level determines need to convene FPM

A FPM should be scheduled by the LDSS when the worker assesses a child to be at "very high" or "high" risk of abuse or neglect and the child is at risk for 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 FPM must be documented in the child welfare information system. For guidance on conducting the FPM, refer to the VDSS Child and Family Services Manual, Chapter A, Family Engagement. To avoid duplication, if there is an active CPS referral and an open case, the FPM should be documented in the case.

## 4.6.26 Assessment summary of strengths and needs

When completing an investigation, the Family Services Specialist must address and document in the child welfare information system the strengths and needs as related to all of the children, mother, father or caretakers, home environment and family support systems. Each investigation may have circumstances warranting more or less details and information.

The examples listed under each factor can be used as a guide for the Family Services Specialist to elicit relevant information and identify family needs, strengths, and supports. A comprehensive family needs assessment should address the family's strengths and needs in four areas, including but not limited to the areas listed below:

- **Children**. Age and developmental capacity; number of children; behavioral/emotional factors; medical/physical factors; ability to self-protect/vulnerability; perception of caretaker; roles in family system; prior history of abuse/neglect; sex/gender; alleged abuser's continued access; and support system.

- **Parent/caretaker**. Mental health factors; *substance use*/abuse factors; domestic violence; prior history of abuse/neglect as a child; involvement in the criminal justice system; medical/physical factors; perception of alleged *child who is a victim*(ren); perception of alleged victim's role in family; parenting style; overall ability to care for children (past and present); ability to protect children; sense of personal responsibility of alleged child maltreatment; engagement with CPS; willingness to care for and protect children; and support system.

- **Environment**. Access to necessary utilities (heat, water, electricity, etc.); maintenance of the inside and outside of the home environment; hazardous

living conditions; cleanliness of inside of home environment; safety concerns in the environment; and positive factors present in the environment.

- **Support Systems**. Informal and formal supports; level of isolation or engagement in community; institutional supports (faith-based, educational, recreational, paid, etc.); access to needed supports; past and present utilization of supports; cultural appropriateness of supports, previous involvement with formal services; and barriers to utilization of supports.

- **Summary.** Determination if current allegation was substantiated; severity of maltreatment; frequency and chronicity of maltreatment; concerns about premeditation; caretaker impulsivity; family response to CPS intervention; risk assessment determination; services recommended; and family's response to services. **The summary** must **include the rationale for why the LDSS is not opening a case if the risk assessment is determined to be high or very high risk.**

See Appendix I of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence for additional guidance regarding supporting children and youth exposed to DV.

The assessment summary must include any identified service needs of the family to reduce or prevent child abuse or neglect.

### 4.6.27 Dispositional assessment

Pursuant to 22 VAC 40-705-110 C, after collecting evidence and before expiration of the time frames for completing the investigation, the Family Services Specialist shall determine the disposition. The VAC 22 VAC 40-705-10 defines disposition as the determination of whether or not child abuse or neglect has occurred.

#### 4.6.27.1 Multiple dispositions and types of abuse or neglect

The Code of Virginia § 63.2-1505 B5 requires that the Family Services Specialist make a founded or unfounded disposition for each allegation in the investigation. For example, an investigation may show sufficient evidence that a child was physically abused and mentally abused. The Family Services Specialist must make a disposition for each category of abuse or neglect. Each separate disposition of abuse or neglect must be supported by a preponderance of the evidence on its own accord.

It is possible that a category of abuse or neglect may have multiple types. For example, the evidence establishes that the child sustained a spiral fracture and internal injuries as a result of the caretaker's actions. The LDSS may render a

founded disposition of physical abuse with the type of "bone fracture" and a founded disposition of physical abuse with the type of "internal injury."

### 4.6.27.2 "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.

### 4.6.27.3 Incapacitated caretaker

Physical neglect includes when the caretaker is incapacitated to the extent that the caretaker is prevented or severely limited in performing child caring tasks. Incapacitation may include physical incapacitation or mental incapacitation. Mental or physical incapacitation, in and of itself, is not sufficient for a founded disposition. Incapacitation may include mental illness when the mental illness impairs the caretaker's ability to provide for the child's basic needs to the extent that the child's safety or health is jeopardized. Incapacitation may occur as a result of the caretaker's use of controlled substances to the extent that the caretaker is unable to perform child caring duties.

### 4.6.27.4 Documentation required for mental abuse or mental neglect

Pursuant to- 22VAC40-705-30 C, when making a founded disposition of mental abuse or mental neglect, the Family Services Specialist must obtain 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.

Documentation may include psychiatric evaluations or examinations, psychological evaluations or examinations, written summaries and letters. 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.

Additional guidance regarding making dispositions in investigations that involve DV can be found in 1.10.2 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

### 4.6.28 Preponderance of the evidence

The VAC 22 VAC 40-705-10 defines a preponderance of the evidence.

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.

Proof of one (1) or more of the following factors, linking the abuse or neglect to the alleged abuser or neglector, may constitute preponderance of evidence:

- Medical and/or psychological information from a licensed medical professional or other treatment professional that indicates that child abuse/neglect occurred;
- An admission by the alleged abuser/neglector;
- The statement of a credible witness or witnesses regarding the abuse or neglect;
- The *child who is a victim*'s statement that the abuse or neglect occurred. In assessing the weight to be given to the child's statement, consider:
  - level of detail described;
  - emotional/cognitive developmental level of the child;
  - consistency of statements if more than one interview is conducted; or
  - corroboration of statement by other circumstances and/or witnesses.
- Circumstantial evidence, or indirect evidence, which links the alleged abuser or neglector to the abuse or neglect.
- In sexual abuse investigations also consider:
  - secrecy- child instructed, asked, and/or threatened to keep the abuse/neglect a secret;
  - coercion- child reports elements of coercion, persuasion, or threats by the alleged abuser to engage in the abuse/neglect.

### 4.6.28.1 First source, direct, and indirect evidence

First source evidence and indirect evidence are defined in the VAC 22 VAC 40-705-10.

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.[7] 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.

### 4.6.28.2 Credibility of evidence

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.

### 4.6.28.3 Polygraph examinations are not considered reliable evidence

Polygraph examinations are not admissible as evidence in CPS administrative hearings and cannot be considered as evidence when an LDSS is making a

[7] Black's Law Dictionary 636, (9th ed. 2009).

disposition. Since the Virginia Supreme Court has repeatedly ruled that polygraph examinations are scientifically unreliable, an LDSS cannot allow polygraph examinations to be entered in as evidence in support of a founded disposition.[8]

### 4.6.29 Factors to determine if medical neglect has occurred

It is the mother and father'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, but rather, each case 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.

#### 4.6.29.1 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

[8] In Robinson v. Commonwealth, 231 Va. 142, 341 S.E.2d 159 (1986), the Virginia Supreme Court stated, "[I]n a long line of cases, spanning almost thirty years, we have made clear that polygraph examinations are so thoroughly unreliable as to be of no proper evidentiary use whether they favor the accused, implicate the accused, or are agreed upon to by both parties." Virginia courts have not specifically addressed the use of polygraphs in administrative hearings. However, in light of the courts' strong opposition to using results of polygraph testing in evidence, we see no principled distinction between the use of a polygraph in court and use in an administrative hearing. In Dept. of Public Safety v. Scruggs, 79 Md. App. 312, 556 A.2d 736 (1989), the court acknowledged that administrative agencies are not bound by the strict rules of evidence, but stated that such evidence must be competent. The court found polygraph evidence so unreliable as to deem it "incompetent" evidence. The Supreme Court relied on Robinson in 2004 in Elliott v. Commonwealth, 267 Va. 396, 593 S.E.2d 270 (2004).

becomes more complicated in determining whether the medical care is necessary.

### 4.6.29.2 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.

### 4.6.29.3 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.

### 4.6.29.4 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 condition. 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 been totally rejected by all responsible medical authority.

### 4.6.29.5 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.

### 4.6.29.6 Failure to thrive must be diagnosed by a physician

The Family Services Specialist must document that the diagnosis of failure to thrive was made by a physician and the diagnosis was nonorganic failure to thrive.

### 4.6.29.7 Child under alternative treatment

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.[9] 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

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[9] See Va. Code § 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.

of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.[10]

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.

#### 4.6.29.8 Medical neglect of infants with life-threatening conditions

The VAC 22 VAC 40-705-30 B3b states that medical neglect includes withholding of medically indicated treatment. The VAC 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 in 22 VAC 40-705-10.

### 4.6.30 Unfounded disposition

Pursuant to22 VAC 40-705-10, the definition of an unfounded disposition 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.

#### 4.6.30.1 Notifications in unfounded investigations

- **Written notification to alleged abuser or neglector**. 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 child welfare information system. The notification shall include the length of time the CPS report will be retained in the child welfare information 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. When the alleged abuser or neglector

[10] 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).

is under 18 years of age, the LDSS should provide the parent or legal guardian of the alleged abuser or neglector with written notification that the complaint was determined to be unfounded.

- Although verbal notification of an unfounded investigation is not required by regulation, Family Services Specialists are encouraged to discuss the outcome of the investigation as well as any services the family may need or request.

- **Inform alleged abuser or neglector of legal recourse if complaint is malicious.**

Pursuant to 22 VAC 40-705-140 B1b, in all unfounded complaints, the Family Services Specialist shall inform the alleged abuser or neglector that he may petition the court to obtain the identity of the complainant if the alleged abuser believes the complaint was made in bad faith or maliciously.

The Family Services Specialist may provide the alleged abuser or neglector with a copy of the Code of Virginia § 63.2-1514 pertaining to reports or complaints made in bad faith or maliciously. Upon request, the LDSS shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously, as required by the Code of Virginia § 63.2-1514. The Family Services Specialist may also refer the person to seek legal advice or to the court if they have further questions.

- **Upon request, advise alleged abuser if complainant is anonymous**

Pursuant to 22 VAC 40-705-40 E, upon request, the LDSS must advise the person who was the subject of the complaint if the complaint or report was made anonymously.

- **Alleged abuser or neglector may request retention of the record**.

Pursuant to 22 VAC 40-705-130 A5, the alleged abuser or neglector in an unfounded disposition may request in writing the LDSS retain the record for an additional period of up to two years.

- **Record shall be purged upon court order.**

Pursuant to 22 VAC 40-705-130 A6, the individual against whom allegations of abuse or neglect were made may request in writing that both the local department and the department shall immediately purge the record upon presentation of a certified copy of a court order that there has been a civil

action that determined that the complaint or report was made in bad faith or with malicious intent pursuant to § 63.2-1514 of the Code of Virginia.

- **Notify alleged abuser or neglector in unfounded investigation involving the death of a child.**

Pursuant to 22 VAC 40-705-140 B1c, 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.

- **Notify *child who is a victim*'s non-custodial parent or guardian.**

Pursuant to 22 VAC 40-705-140 C1, reasonable efforts must be made to notify the non-custodial parent of the alleged *child who is a victim* when that parent is not the subject of a report of child abuse or neglect. Not only does the parent have a right to know, he or she may be a resource to the child. However, if there is reason to believe that contact would be detrimental to the child that should be taken into consideration. If notification does not occur for this or any reason, that reason should be documented in the child welfare information system. For siblings or other children residing in the home who are not identified as alleged victims, reasonable efforts to notify the non-custodial parent is at the discretion of the LDSS. Family Services Specialists should consider the risk of future maltreatment to these children and the potential protective benefits of notification when making this decision.

- **Notify complainant of unfounded disposition.**

Pursuant to 22 VAC 40-705-140 D1, when an unfounded disposition is made, the LDSS must notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The notification must be documented in the child welfare information system.

### 4.6.31 Cannot reopen a closed investigation

There is no basis in the Code of Virginia or the VAC for “reopening” a closed investigation. When new or additional information is received after a complaint has been determined to be Unfounded, the new/additional information may be sufficient to meet the validity criteria for a new CPS report. If the new information adds nothing more to the original complaint, the report should be screened out.

### 4.6.32 Founded disposition

The VAC 22 VAC 40-705-10 defines founded as a review of the facts shows by a preponderance of the evidence that child abuse or neglect occurred.

#### 4.6.32.1 Founded disposition cannot be based solely on anonymous complaint

A founded disposition cannot be based solely on an anonymous complaint. An allegation of abuse or neglect, in and of itself, cannot prove that the alleged act or omission did or did not occur. Because a person alleges that an act occurred does not mean that the act in fact did occur. The allegation must be proved or disproved by corroborating evidence.

#### 4.6.32.2 Alleged abuser may consult with LDSS prior to a founded disposition

The alleged abuser may be informed at any time during the investigation that the facts are leading the worker toward making a founded disposition.

Pursuant to 22 VAC 40-705-120 D, if the alleged abuser/neglector wants to present additional evidence or refute evidence, the LDSS may afford this opportunity and consider such additional information prior to rendering the disposition. The investigation may be extended from 45 days to 60 days for this process to be completed.

The request for a consultation prior to disposition does not apply if there are pending criminal charges involving the same *child who is a victim* unless information gathered during the joint investigation is authorized to be released.

### 4.6.33 Founded disposition and identity of abuser is unknown

It is possible that an investigation reveals a preponderance of evidence establishing that the child was physically abused or physically neglected, but fails to establish, by a preponderance of that evidence, the caretaker responsible for the abuse or neglect. If, after diligent efforts to identify the abuser, the identity of the abuser remains unknown, the LDSS may enter the abuser's name as "unknown" into the child welfare information system.

For example, the evidence establishes that the infant was shaken and sustained severe injuries. The only persons with the opportunity to have caused the injuries were the parents of the infant and the babysitter who provided care for the infant on the night the injuries occurred. However, the evidence is conflicting concerning who actually caused the injuries. In such a situation, the LDSS may render a founded disposition of physical abuse with the identity of the abuser unknown.

- **Abuser identified after disposition**. If new information is received subsequent to a disposition of Founded with Unknown Abuser, this information is to be treated as a new referral and requires a new investigation. If the original information is still pertinent and relevant and there is sufficient reason not to re-interview all the required contacts, such as potential trauma to the child, the information from original interviews may be incorporated into the new investigation. If this additional information allows for a founded disposition with a known abuser, it does not replace the original finding.

### 4.6.34 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.

#### 4.6.34.1 Level 1

Pursuant to 22 VAC 40-705-110 D1, level one includes those injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.

Examples of 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;
  - 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; or
- 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;
  - has required psychiatric hospitalization;
  - has required treatment for severe dysfunction;
  - presents a danger to self or others; or
  - problems related to the caretaker behavior.
- For sexual abuse:
  - the situation would be one where there was genital contact;
  - 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. (refer to physical or mental abuse or neglect)

#### 4.6.34.2 Level 2

Pursuant to 22 VAC 40-705-110 D2, level two includes those injuries or conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.

Examples of 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; or
  - 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 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 child's emotional needs are rarely met; or
  - the child's behavior is problematic at home or school.
- For sexual abuse:
  - minimal or no physical touching but could be exposure to masturbation, exhibitionism, etc.;
  - caretaker makes repeated sexually provocative comments to the child; or
  - child is exposed to pornographic materials.

- For medical neglect:
    - a doctor has prescribed care to eliminate pain or remedy a condition but the caretaker has not followed through with appointments or recommendations; or
    - 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. (refer to physical or mental abuse or neglect)

#### 4.6.34.3 Level 3

Pursuant to 22 VAC 40-705-110 D3, level three includes those injuries or conditions, real or threatened, that result in minimal harm to a child.

Examples of 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;
    - minimal exposure to the production or sale of methamphetamine or other drugs.
- For physical neglect:
    - child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; or
    - supervision marginal which poses a 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 physical or mental abuse or neglect)

### 4.6.35 Notifications in founded investigations

#### 4.6.35.1 Notify abuser or neglector in writing

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 or neglect.

- The disposition, level, and retention time, including statement about effect of multiple complaints on retention.

- The name of the *child who is a victim* 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 an employee 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.

When the alleged abuser or neglector is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglector with written notification of the founded disposition.

##### 4.6.35.1.1 Additional notification to alleged abuser in certain founded sexual abuse investigations

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 22VAC 40-705-130.

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 22VAC 40-705-130.

When the alleged abuser or neglector is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglector with written notification of the retention time.

### 4.6.35.2 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 child welfare information system that the abuser or neglector was given the appeal brochure and was informed verbally of his or her appeal rights.

When the alleged abuser or neglector is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglector with written notification of his right to appeal the founded disposition. See Section 7.4.1 regarding requests for appeals.

### 4.6.35.3 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 child welfare information system, the date the verbal notification took place. If the verbal notification did not occur, the Family Services Specialist should document the reasons in the child welfare information system.

When the alleged abuser or neglector is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglector with verbal notification of the founded disposition. The worker should document in the child welfare information system, the date the verbal notification took place. If the

verbal notification did not occur, the Family Services Specialist should document the reasons in the child welfare information system.

### 4.6.35.4 Foster parent is abuser or neglector of the *child who is a victim* in founded complaint

Pursuant to 22 VAC 40-705-140 B2, when the abuser or neglector in a founded disposition is a foster parent of the *child who is a victim*, 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.

### 4.6.35.5 Notify all parties if identity of abuser or neglector is unknown

If the LDSS renders a founded disposition with the abuser unknown, the LDSS must notify all parties, including the parents or guardian of the child, the alleged abuser or neglector, and the complainant. All parties must be informed that the investigation resulted in a finding that the child was abused or neglected, but the evidence did not establish the identity of the perpetrator.

The alleged abuser or neglector should be notified that a finding of abuse or neglect was not made against that person. Because the abuser or neglector is unknown, no party has the right to an administrative appeal of the founded disposition.

The complainant should be notified that necessary action was taken.

### 4.6.35.6 Notify all parties if abuser or neglector is deceased

If the LDSS renders a founded disposition and the named abuser or neglector is deceased, the LDSS must notify all parties, including the deceased abuser or neglector’s estate. The notification letter must state that the identity of the alleged abuser or neglector will be referred to as “deceased” in the child welfare information system. Because the abuser or neglector is deceased, no party has the right to an administrative appeal of the founded disposition.

The complainant should be notified that necessary actions were taken.

### 4.6.35.7 Notify *child who is a victim*'s non-custodial parent or guardian

Pursuant to 22 VAC 40-705-140 C2, reasonable efforts must be made to notify the non-custodial parent of the alleged *child who is a victim* when that parent is not the subject of a report of child abuse or neglect. Not only does the parent have a right to know, he or she may be a resource to the child. However, if there is reason to believe that contact would be detrimental to the child, which should also be taken into consideration. If notification does not occur for this or any

reason, that reason should be documented in the child welfare information system. For siblings or other children residing in the home that are not identified as alleged victims, reasonable efforts to notify the non-custodial parent is at the discretion of the LDSS. Family Services Specialists should consider the risk of future maltreatment to these children and the potential protective benefits of notification when making this decision.

For all sexual abuse investigations founded level 1 on or after July 1, 2010, the notification to the parent of the alleged *child who is a victim* shall include a statement 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.

### 4.6.35.8 Notify complainant

Pursuant to 22 VAC 40-705-140 D2, 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.

### 4.6.35.9 Notify Family Advocacy Program

The Code of Virginia § 63.2-1503 N establishes authority for the LDSS to share CPS information with family advocacy representatives of the United States Armed Forces.

Effective July 1, 2017: at the conclusion of **all** investigations (founded and unfounded dispositions), the LDSS shall notify the Family Advocacy Program representative and provide the final disposition, the type(s) of abuse or neglect, the identity of the abuser or neglector and any recommended services. These notifications allow for coordination between CPS and the Family Advocacy Program and are intended to facilitate identification, treatment and service provision to the military family. For additional information about the Family Advocacy Program, contact information for a particular branch of the military or a specific installation, click here.

- Written notification to Family Advocacy shall be made upon completion of an investigation resulting in an unfounded disposition.
- The Family Advocacy Program representative shall be notified in writing **within 30 days** after all administrative appeal rights of the abuser or neglector have been exhausted or forfeited for all investigations with a founded disposition.

- Written notification to abuser or neglector.

  The abuser or neglector shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program. These notifications shall be documented in the child welfare information system.

### 4.6.35.10 Referral to early intervention programs for children under age three in an investigation

The LDSS shall refer any child under the age of three for early prevention services to the local Infant and Toddler Connection of Virginia who:

- Is the subject of an investigation with a founded disposition;
- Is identified as affected by illegal *substance use* or withdrawal symptoms resulting from prenatal drug exposure; or
- Has a physical or mental condition that has a high probability of resulting in developmental delay, regardless of track or disposition.

All localities are served by an Infant & Toddler Connection of Virginia program. This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).

LDSS are encouraged to meet with the local Infant and Toddler program to learn about any referral issues that should be explained to the parent. LDSS are also encouraged to develop procedures with the Infant & Toddler Connection of Virginia program to make referrals of certain children under age three (3). Recommended elements of these procedures should include:

- As soon as possible but no later than **seven calendar days** of completing the investigation, the LDSS should send a referral to the local Part C Early Intervention program using the local referral form.

  The LDSS should:

- Send a referral as soon as possible when a child has been identified as exposed prenatally to an illegal substance or has withdrawal symptoms at birth.
- Send a referral as soon as possible when a child has been identified as having a physical or mental condition which has a high probability of resulting in a developmental delay.

- Send a copy of the referral to the family. The parent should also be informed verbally of the referral and have an opportunity to discuss the referral process.

- Request the family to sign a release form allowing the exchange of information between the Infant & Toddler Connection Program and the LDSS regarding the referral.

- Document the notification and referral in the state child welfare information system.

More information on the Infant & Toddler programs in Virginia can be found on the Infant & Toddler Connection of Virginia website and in the Memorandum of Agreement issued by the Commissioners of the Department of Social Services and Department of Behavioral Health and Developmental Services and other agencies involved with implementation of Part C of the Individuals with Disabilities Education Act (IDEA) dated May 2013 located on the VDSS internal website.

### 4.6.35.11 Notify parents of a minor who is an abuser

When a child under the age of eighteen is the abuser in a founded investigation, the LDSS shall inform the mother, father or legal guardian of the minor of the finding and the abuser's right to appeal the finding. The minor's parents/legal guardians have the authority to initiate an administrative appeal of the founded disposition on behalf of the minor.

### 4.6.35.12 Notify local school board when abuser is or was an employee

Pursuant to § 63.2-1505 B7 of the Code of Virginia, if the abuser is or was at the time of the investigation or the conduct that led to the report a full-time, part-time, permanent, or temporary employee in a school division located within the Commonwealth, the LDSS shall notify the local school board of the founded disposition at the same time the subject is notified of the founded disposition. This includes in home investigations when the employee is the subject of the founded investigation involving his own children. Any information exchanged for the purposes of this subsection shall not be considered a violation of §§ 63.2-102, 63.2-104 or 63.2-105 of the Code of Virginia.

The LDSS may send a copy of the disposition letter to the subject of the complaint to the local school board to meet this notification requirement.

This notification shall be documented in the child welfare information system.

#### 4.6.35.13 Notify Superintendent of Public Instruction, Department of Education

Pursuant to § 63.2-1503 P of the Code of Virginia, the LDSS shall immediately notify the Superintendent of Public Instruction, Department of Education (DOE) 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 LDSS knows the person holds a license issued by the Board of Education.

The LDSS shall immediately notify the Superintendent of Public Instruction, DOE if the founded complaint of child abuse or neglect is overturned on an administrative appeal.

The Board of Education issues licenses to instructional personnel including teachers and other professionals and administrators. Refer to Licensure Regulations for School Personnel in the VAC.

The Board of Education does not license teacher aides, janitorial staff, and administrative support staff.

This notification requirement applies to all individuals holding a license even if that person is not currently employed by a local school board.

### 4.6.36 Notification to Interstate Compact on the Placement of Children (ICPC)

When applicable, at the conclusion of the investigation, notify Interstate Compact Placement of Children (ICPC) of the results. The Family Services Specialist shall document this notification in the child welfare information system.

### 4.6.37 Supervisor approval required

All completed investigations should be reviewed and approved in the child welfare information system by the Family Services Specialist's supervisor **within five working days of the worker's request for approval**.

Prior to supervisory approval of an investigation with a founded disposition, the Family Services Specialist should ensure compliance with all Code of Virginia requirements, CPS regulations and guidance. A “Founded Investigations and Appeals” checklist is available on the internal VDSS website.

## 4.7 The case record

Pursuant to 22 VAC 40-705-10, documentation means information and materials, written or otherwise, concerning allegations, facts, and evidence. Thorough and detailed

documentation of the family assessment or investigation is essential to determine and support the decisions made by the Family Services Specialist and approved by the supervisor. All family assessment and investigation records must contain the information required by law, regulation, and guidance.

### 4.7.1 Case record

Pursuant to 22 VAC 40-705-10, case record means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

#### 4.7.1.1 Audio recordings

Audio recordings taken during the course of a family assessment or investigation are part of the case record, and must be stored at the case level, not the participant level, in the child welfare information system.

#### 4.7.1.2 Photographs

Photographs taken during the course of a family assessment or investigation are part of the case record, and must be stored at the case level, not the participant level, in the child welfare information system.

### 4.7.2 Family assessment or investigation documentation

Pursuant to 22 VAC 40-705-10, the family assessment or investigative narrative is a detailed written summary of all the evidence supporting the LDSS's investigation disposition or information supporting the family assessment.

Guidelines for documentation in a case where DV is present can be found in section 1.11 of the VDSS Child and Family Services Manual, Chapter H. Domestic Violence.

All documentation must be entered or updated in the child welfare information system within five business days.

A hard copy file, in addition to the child welfare information system generated reports, documents, forms, audio and digital image files, for each family assessment or investigation should include correspondence, reports from other sources (school, medical, etc.), and other documentation germane to the family assessment or investigation which may not be entered into the child welfare information system, such as a safety plan.

## 4.8 CPS child welfare information system

CPS reports including screened out reports, investigations, and family assessments, must be maintained in the child welfare information system. The child welfare information system includes OASIS, COMPASS Mobile Application, and COMPASS Portal.

## 4.9 Central Registry and record retention

The Code of Virginia § 63.2-1515 establishes authority for the Central Registry and governs disclosure of information from the central registry.

### 4.9.1 CPS database available to LDSS

Pursuant to 22 VAC 40-705-130, in addition to CPS reports contained in the Central Registry, the child welfare information system contains a database of all non-purged CPS reports that can only be accessed by the LDSS. This database contains all pending CPS investigations and family assessments as well as completed family assessments, unfounded investigations, and screened out reports.

### 4.9.2 Retain record if subsequent complaints arise

Pursuant to 22 VAC 40-705-130 D, in all family assessments or investigations, if the individual against whom allegations of abuse or neglect is involved in any subsequent complaint or report, the information from all complaints or reports shall be maintained until the last purge date has been reached.

### 4.9.3 Retention period for family assessment

Pursuant to 22 VAC 40-705-130 C, the record of the family assessment must be purged three years after the date of the complaint or report if there are no subsequent complaints regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in those three years.

### 4.9.4 Retention period for investigation with unfounded disposition

Pursuant to § 63.2-1514 of the Code of Virginia, the local department shall report all unfounded case dispositions to the child abuse and neglect information system when disposition is made.

#### 4.9.4.1 Purge unfounded disposition after three years

Pursuant to § 63.2-1514 B of the Code of Virginia, the record of unfounded investigations that involved reports of child abuse or neglect shall be purged three years after the date of the complaint or report if there are no subsequent

complaints or reports regarding the same child or the person who is the subject of the complaint or report within such three-year period.

### 4.9.5 Retention period for investigations with founded disposition

Pursuant to § 63.2-1515 of the Code of Virginia and 22 VAC 40-705-110, the LDSS must report all founded dispositions to the child welfare information system for inclusion in the Central Registry.

#### 4.9.5.1 25 years

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 40-705-130.

### 4.9.6 Retention period for reports involving a child death

The record of a child fatality report, whether screened out, founded, or unfounded, should be maintained until the State Child Fatality Review Team has had an opportunity to review it. The Code of Virginia § 32.1-283.1 D requires the LDSS to maintain these CPS records beyond the usual retention periods for CPS records. Contact the regional consultant if there is any question about retention of a specific record.

### 4.9.7 CPS statistical information

The child welfare information system provides non-identifying statistical information about the CPS program.

## 4.10 CPS Central Registry searches

It is the responsibility of the Department to maintain an child welfare information system for CPS and to respond to requests for searches of the Central Registry. Many organizations that work with children require a search of the Central Registry as a condition of employment. In addition, the Code of Virginia § 63.2-1515 requires the VDSS respond to requests to search the Central Registry for employment by the LDSS and local school boards.

### 4.10.1 Individual whose name is being searched must authorize the Central Registry search

Pursuant to 22 VAC 40-705-170 A, VDSS will complete a search of the Central Registry upon request by a local department, upon receipt of a notarized signature of the individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

The required form, "Request for Search of the Child Protective Services (CPS Central Registry", with instructions, is located on the VDSS webpage.

### 4.10.2 Name is found in Central Registry

Pursuant to 22 VAC 40-705-170 B, VDSS will contact the LDSS and ask if the name is a match to their records. If the name is a match, the LDSS will be asked to verify that the client was notified of their appeal rights.

#### 4.10.2.1 LDSS cannot verify that client was notified of appeal rights

If the LDSS cannot produce documentation that the client was notified of his appeal rights, the LDSS must review the case file. The LDSS must determine whether to retain or amend the founded disposition or to purge the complaint based on the documentation in the case record. The LDSS may consult the CPS Regional Specialist for assistance.

The LDSS must review the case record and notify the Central Registry Search Unit **within five working days**.

#### 4.10.2.2 Written notification to abuser or neglector of disposition and appeal rights

If the LDSS cannot verify that the client was informed of his appeal rights **and** the LDSS determines that the founded disposition shall be maintained, the LDSS must inform the client of his right to appeal the founded disposition of abuse or neglect.

### 4.10.3 Notification of Central Registry search results

The VDSS will return the completed search form to the authorized agent named on the search request. If the individual's name is in the Central Registry, VDSS will also send a copy of this form to the individual whose name was searched and to the LDSS responsible for the name being entered into the Central Registry.

#### 4.10.3.1 LDSS must release information to abuser or neglector upon request

If the individual contacts the LDSS regarding his name entry into the Central Registry, the LDSS shall provide the individual with the requested information and provide a copy of the appeal procedures to the individual.

#### 4.10.3.2 Abuser or neglector may request appeal

If the individual decides to appeal the founded disposition or dispositions, then the LDSS must respond to the request for a local conference.

# 5

# OUT-OF-FAMILY INVESTIGATIONS

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# 5

# OUT-OF-FAMILY INVESTIGATIONS

## 5.1 Introduction

If a CPS report involves the abuse or neglect of a child in an out-of-family setting, that investigation is deemed an "out-of-family" (OOF) investigation. There are many types of settings and situations that are considered OOF 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, locally approved foster homes, child placing agencies, group residential facilities, hospitals, or institutions. OOF 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 co-ops, and "sleepovers" at friends' 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 OOF settings. Complaints of abuse and neglect in OOF settings differ from complaints in the child's family setting because:

- The alleged abuser(s) in OOF settings may be caring for the alleged *child who is a 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 an OOF investigation.

## 5.2 Authorities

In addition to Virginia Administrative Code (VAC) 22 VAC 40-705 et. seq. that provides the regulatory authority for the general conduct of the CPS program, the VAC 22 VAC 40-730 et. seq. provides additional requirements for CPS to conduct OOF investigations in designated settings.

All CPS authorities, procedures, and requirements applicable to in home investigations found in Section 4, Assessment and Investigations, apply to the investigation of complaints in an OOF setting. This section sets forth the additional requirements to respond to CPS reports in these OOF settings.

### 5.2.1 Minimum standards for *Family Services Specialists* to conduct OOF investigations

Pursuant to 22 VAC 40-730-130, in order to conduct OOF investigations, Family Services Specialists must meet the educational standards, including the completion of an out-of-family training course approved by the Department.

## 5.3 Definitions

In addition to the definitions contained in 22VAC40-705-10, 22 VAC 40-730-10 defines terms, when used in conjunction out-of-family investigations.

### 5.3.1 Additional definitions used in OOF investigations

The following definitions are also commonly used in the guidance and procedures to conduct OOF investigations:

| Term | Definition |
|---|---|
| **Hospitals and Institutions** | 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** | 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 |

### 5.3.2 Child care definitions

The following definitions are from the Child Care and Licensing Divisions of VDSS. Additional information regarding child care and licensing can be found on the public website.

| Term | Definition |
|---|---|
| **Child Day Centers** | These are child day programs offered to<br><br>(i) two (2) or more children under the age of 13 years in a facility that is not the residence of the provider or any of the children in care, or<br><br>(ii) 13 or more children at any location. Additional information can be found on the Child Care VA website. |
| **Family Day Homes** | These are homes that provide the care for five (5) to 12 children (exclusive of the provider's own children) and required by the Code of Virginia to be licensed. Additional information can be found on the Child Care VA website. Note: Homes that provide care for four (4) or less children (exclusive of their own children) are not required to be licensed. |
| **Family Day System Homes** | The Code of Virginia requires licensure of any person who approves family day homes as a member of its system and who refers children to available day homes in that system. Additional information can be found on the Child Care VA website. The only licensed Family Day Home System is operated by Infant/Toddler Family Day Care. |
| **Religiously Exempt Day Care Center** | A child day center may be exempt from licensing requirements and regular inspections due to its mission as a religious facility. Additional information can be found on the Child Care VA website. |
| **Voluntarily Registered Family Day Homes** | These homes have fewer than five (5) children in care (exclusive of the provider's own children). Voluntary registration is a form of regulation offered to family day homes that are not required to be licensed. Additional information can be found on the Child Care VA website. |

## 5.4 Responsibilities to conduct OOF investigations

### 5.4.1 Determine validity of report or complaint in OOF settings

The criteria used to determine validity of an allegation in an OOF setting are the same as that in an allegation of an "in-home" setting. These criteria are discussed in Section 3, Complaints and Reports, of this guidance manual. Additional criteria for reports involving school personnel can be located in Section 5.10.

The Code of Virginia § 63.2-1506 C requires CPS reports in certain OOF settings to be investigated. These settings include programs that are subject to state regulatory oversight and where the relationship between the alleged *child who is a victim* and caretaker is more professional than familial. In addition, CPS reports in locally approved provider settings must be investigated.

### 5.4.2 Identify the regulatory agency

- The Virginia Department of Education (DOE*)* 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 DOE Regional Licensing Offices is available on the Child Care VA 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 DJJ Gang and Investigation Unit (804-588-3850) to report the child abuse/neglect allegations.

- 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.

- The Department of Behavioral Health and Developmental Services (DBHDS) operates or licenses group homes; treatment facilities for children with *substance use* issues, developmental disabilities, and brain injuries; psychiatric hospitals that provide day or residential services to children; training centers; and state mental hospitals. *When a complaint of child abuse or neglect needs to be reported to DBHDS, the LDSS must send the report to the Office of Human Rights via secure email to statewideaps_cpsreports@dbhds.virginia.gov or by fax to 833-734-1241.*
- The Department of Education (DOE) licenses private schools for students with disabilities. This includes both day schools and schools within residential facilities. Contact Information and a listing of licensed private day and residential schools are available on the DOE website under Directory of Private Day and Residential Schools for Students with Disabilities. If a complaint of child abuse or neglect occurs in the school program of a residential facility or a private school for students with disabilities, contact DOE at (804)-371-0525 or ask the private school for the DOE specialist for their school and contact that person directly.

### 5.4.3 Facilities with no regulatory authority

Pursuant to 22VAC40-730-50A, in an OOF investigation with no regulatory authority, the designated staff person participating in the investigation is not considered a co-investigator with the *Family Services Specialist*. The *Family Services Specialist* 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 *Family Services Specialist* may exclude the designee from interviews as necessary.

### 5.4.4 Develop joint investigative plan

Pursuant to 22VAC40-730-40.2, the *Family Services Specialist* and the appointed regulatory staff person shall confer on the preliminary investigation plan. The *Family Services Specialist* 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.

#### 5.4.4.1 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 *Family Services Specialist* should commence the investigation separately; however, efforts must be made to begin

coordination and information-sharing as quickly as possible.

### 5.4.5 Notify CPS Regional Practice Consultant

Pursuant to 22VAC40-730-60B, the *Family Services Specialist* must inform the *CPS Regional Practice Consultant* of all OOF investigations ***within three (3) business days*** *from the date the referral was received*. *In addition to providing notification to the CPS Regional Practice Consultant, the LDSS must now provide the same notification to the OOF Specialist at OOF@dss.virginia.gov .* This may be done by sending an e-mail to the regional consultant that includes the following information:

The *CPS Regional Practice Consultant should review the OOF Checklist with the LDSS at the time of notification.*

- Referral # and locality.
- *Assigned worker/supervisor*
- Type of abuse/neglect.
- Daycare/facility/school name.
- *Is this a public school? (Yes/No)*
- *Foster parent/child? (Yes/No)*
- Brief case summary.

### 5.4.6 Notify Interstate Compact on the Placement of Children (ICPC)

If the alleged *child who is a victim* is in the custody of another state and has been placed in Virginia through ICPC, immediately notify the Virginia ICPC office and the state agency which has custody of the child. The *Family Services Specialist* shall document this notification in the child welfare information system.

### 5.4.7 Time frames to complete investigations

The Code of Virginia requires the LDSS to complete and document the investigation within 45 calendar days of receipt of the complaint or report. There are three (3) exceptions for completing an investigation within 45 days.

#### 5.4.7.1 Fifteen-day extension to complete investigation

Pursuant to 22 VAC 40-705-120 A, upon written justification by the LDSS, based

on locally determined guidelines, the investigation can be extended for **15 calendar days**.

### 5.4.7.2 Extension of joint investigations with law enforcement agency

The Code of Virginia, § 63.2-1505 (5) allows for investigations which are being conducted in cooperation with a local law enforcement agency to be extended an additional 45 days, not to exceed 90 days. This must be agreed upon by both the LDSS and the law enforcement agency. This extension applies only to investigations.

### 5.4.7.3 Notification of extension

If an investigation is extended, the alleged abuser/neglector shall be notified. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the extension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

Sample letters for notification of an extension of an investigation are located in this guidance manual, Section 4, Assessments and Investigations.

### 5.4.7.4 Suspension of certain investigations

Pursuant to 22VAC40-705-120 B and § 63.2-1505 B5 of the Code of Virginia grants exceptions to completing certain investigations under specific conditions. In any child death investigation or sexual abuse investigations which require reports or records generated outside the local department in order to complete the investigation, the time needed to obtain these reports or records shall not be counted towards the 45 days. These records must be necessary to complete the investigation and not available due to circumstances beyond the control of the local department. When the LDSS receives the reports or records, the 45 day timeframe resumes where it had left off, it does not start over.

The decision to suspend making a disposition within 45 days in these cases should be approved by a supervisor and documented in the child welfare information system.

#### 5.4.7.5 Notification of suspension

The LDSS should notify the alleged abuser/neglector or involved caretakers and the alleged *child who is a victim*'s parents or guardians when suspending an investigation. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the suspension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

#### 5.4.7.6 Contact while investigation is suspended

As long as the investigation remains open, the LDSS retains all authorities and responsibilities of an investigation. The LDSS should document monthly updates in the child welfare information system until such time that the necessary reports or records to complete the investigation have been received.

## 5.5 Conduct OOF investigation

### 5.5.1 Joint interviews and information sharing

Pursuant to 22VAC40-730-40.2a, the LDSS shall share the complaint information with the regulatory authority who may appoint a staff person to participate in the investigation. The *Family Services Specialist* and regulatory staff person should discuss informational needs, the feasibility of joint interviews, and develop an investigative plan.

### 5.5.2 Notify facility administrator

Pursuant to 22VAC40-730-70A, 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, they shall nevertheless be informed of the progress of the investigation.

#### 5.5.2.1 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.

### 5.5.3 Interview alleged child who is a victim

Pursuant to 22VAC40-705-80 B1, the *Family Services Specialist* shall conduct at least one (1) face-to-face interview (worker visit) with the alleged *child who is a victim* and shall conduct this face-to-face interview **within the determined response time** as assessed in Section 3: Complaints and Reports of this manual. A face-to-face interview must be documented as a "worker visit" in the child welfare information system.

The *Family Services Specialist* shall observe the child and document the child's recollection and perception of the allegations. Information regarding the allegations may be obtained during the *Family Services Specialist*'s observation of *child who is a victim* interviews conducted by other members of the investigative team including, but not limited to, law-enforcement officers, forensic nurses, physicians or other community professionals trained as forensic interviewers. When possible, it is important to not only observe the interview but also have the ability to ask additional questions as needed. If the *Family Services Specialist* is not the primary interviewer, the *Family Services Specialist* is still responsible for interviewing the child to gather any additional information regarding the allegations and to ensure that the child understands the role of the *Family Services Specialist* and what will occur during the investigation. The *Family Services Specialist* must review all electronically recorded *child who is a victim* interviews to determine if additional interviews are necessary to comply with CPS guidance.

The *Family Services Specialist* must still conduct a face to face interview with the child if the *Family Services Specialist* is not the primary interviewer of the child regarding the allegations. This worker visit shall be **within the determined response time**.

During the child interview, the *Family Services Specialist* should inform the child about the investigation and what will occur during the investigation. The *Family Services Specialist* should note the child's emotional and physical condition (including any injury). The *Family Services Specialist* should learn about the child's needs and capabilities for the purposes of safety and risk assessment and service planning.

Pursuant to 22VAC40-705-80 B, the *Family Services Specialist* shall document all observations and interviews involving the *child who is a victim* in the child welfare

information system. If the face-to-face worker visit with the *child who is a victim* is not made within the determined response time, this shall be documented in the child welfare information system.

#### 5.5.3.1 Information gathered in the interview with alleged *child who is a victim*

Collect the following information during the alleged *child who is a 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 them.
- 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.

#### 5.5.3.2 Electronic recording

Pursuant to 22VAC40-705-80.B1, in 2005, the Virginia Supreme Court of Appeals issued a ruling to affirm the regulatory requirement that *child who is a 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 *child who is a 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.

##### 5.5.3.2.1 Exceptions to electronically recording interviews with the alleged *child who is a victim*

Pursuant to 22VAC40-705-80.B1, the VAC provides five (5) exceptions to electronic recording of an interview with an alleged *child who is a victim*. Before electronically recording an interview with a child, the *Family Services Specialist* must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the five (5) exceptions precluding audio recording the interview apply. Adequately considering the

circumstances may include assessing the complaint or report; speaking with the parent or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

The *Family Services Specialist* shall consult with the supervisor when the decision is made not to electronically record an interview with an alleged *child who is a victim*. The consultation and the specific reasons why electronic recording is not done in the specific investigation shall be documented in the child welfare information system.

- Exception: The child's safety may be endangered by electronic recording

If the child's safety is endangered or may be endangered by electronically recording the interview, then the interview must not be electronically recorded. The *Family Services Specialist* may need to conduct a brief assessment of the child to determine the risk of any harm that may occur to the child as a result of electronically recording the interview. The *Family Services Specialist* may be able to assess any potential harm to the child by speaking with the child's parents or guardians, or collateral witnesses. If the interview is not electronically recorded, the *Family Services Specialist* shall carefully document the details of the interview in writing for the case record.

- Exception: The age or developmental capacity of the child makes electronic recording impractical

The *Family Services Specialist* must assess the mental and physical capacities of the child. The age or development of the child may preclude electronically recording the interview. It may be appropriate to electronically record the questions being asked by the *Family Services Specialist* and to describe, either verbally or in writing, the child's responses.

- Exception: The child refuses to participate in the interview if electronic recording occurs

The interview with the child should not be jeopardized because the child refuses to be electronically recorded. If the child refuses to be electronically recorded, the *Family Services Specialist* should explore the child's reasons and discuss those reasons with the child. If the child still refuses to participate in an electronically recorded interview, then the *Family Services Specialist* must not electronically record the interview. The *Family Services Specialist* shall document the reasons why the child refused to be electronically

recorded.

- Exception: In the context of a team investigation, the team or team leader determines that electronic recording is not appropriate

If a complaint or report of abuse or neglect is being investigated in conjunction with a multidisciplinary team, then the multidisciplinary team should make the decision to electronically record the interview with the alleged *child who is a victim* based on the specific child and referral. A team investigation includes a joint investigation with the Commonwealth's Attorney office or law enforcement.

- Exception: The *child who is a victim* provided new information as part of a family assessment

If the *child who is a victim* provides new information during a family assessment resulting in an investigation and it would be detrimental to re-interview the *child who is a victim*, the *Family Services Specialist* shall provide a detailed narrative of the interview in the investigation record and document this exception to electronically recording the *child who is a victim* interview.

#### 5.5.3.3 Each interview with the alleged *child who is a victim* must be electronically recorded

Each interview with the alleged *child who is a victim* must be electronically recorded unless one (1) of the above mentioned exceptions to electronically recording the interview applies. When an interview is not electronically recorded for any reason, the *Family Services Specialist* shall complete a detailed summary of the interview, including the reasons for not recording the interview and the supervisory consultation for this decision and enter the information into the automated case record.

#### 5.5.3.4 Notify the child's parents or caretakers that interview was electronically recorded

While there is no provision in the Code of Virginia or the VAC that requires an LDSS to inform the child's parents that the interview was electronically recorded, the LDSS should notify the parent or guardians of the alleged *child who is a victim* about the interview and that the interview was electronically recorded.

The LDSS should explain to the parent or guardians that § 63.2-1518 of the Code

of Virginia allows the *Family Services Specialist* to interview the alleged *child who is a victim* without the consent of the parents and 22VAC40-705-80 of the VAC requires the interview to be electronically recorded.[1]

#### 5.5.3.5 Parents or caretakers object to electronically recorded interview

There is no provision in the VAC allowing an exception to electronic recording when the parent or guardians object to the LDSS electronic recording the interview of the alleged *child who is a victim*. The *Family Services Specialist* should explore the foundation for the parents' objection. The objection to the electronic recording may satisfy one of the enumerated exceptions to electronic recording.

#### 5.5.3.6 Equipment malfunction

22VAC40-705-80 B1 provides that a CPS finding may be based on the written narrative should equipment failure occur. If an interview of an alleged *child who is a victim* is not electronically recorded because of equipment malfunction, then the *Family Services Specialist* shall write a detailed narrative of the interview and include that narrative in the record.

### 5.5.4 *Family Services Specialist* determines who may be present during child interview

Pursuant to 22VAC40-730-80, when the *Family Services Specialist* is conducting an interview with the alleged *child who is a victim*, the *Family Services Specialist* 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 *Family Services Specialist*, regulatory staff, and/or facility administrator or designee when issues arise such as the discomfort of the interviewee or an apparent conflict of interest.

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[1] VA Code § 63.2-1518 provides any person required to make a report of abuse or neglect with the authority to talk to a child suspected of being abused or neglected outside the presence of the child's parents, guardian, other person standing in loco parentis or school personnel. 22 VAC 40-705-80 B requires that any interview by a *Family Services Specialist* with an alleged *child who is a victim* be electronically recorded.

### 5.5.5 Notify parents or guardian of the child

The parent, guardian or agency holding custody should be informed of their child's interview and *must be informed of* the investigative process ***within 40 work hours*** *of referral validation*; 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 parent, 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 parent, guardian, or agency holding custody should be kept informed of sufficient information to involve them in planning and support for the child.

#### 5.5.5.1 Interview alleged abuser or neglector

Pursuant to 22VAC40-730-90, the alleged abuser or neglector must be given written notice of the CPS report, "Child Protective Services: A Guide to Investigative Procedures in Out of Family Settings."

#### 5.5.5.2 Inform alleged abuser or neglector of right to electronically record interview

Pursuant to 22VAC40-705-80 B4a, the *Family Services Specialist* must inform the alleged abuser or neglector of their right to electronically record any communication with the LDSS.

#### 5.5.5.3 Law enforcement or Commonwealth's Attorney objects to informing the alleged abuser or neglector of their right to record the interview

A law enforcement officer or the Commonwealth's Attorney may object to the LDSS informing the alleged perpetrator of their right to electronically record an interview. If a law-enforcement officer or a Commonwealth's Attorney objects, then the LDSS shall not advise the alleged perpetrator of that right. This objection applies when the Commonwealth's Attorney or the law enforcement officer believes that the instruction will compromise the investigation of any criminal charges.

This objection must be documented in the child welfare information system.

#### 5.5.5.4 LDSS shall provide recording equipment upon request

Pursuant to 22VAC40-705-80 B4b, the *Family Services Specialist* must be prepared to provide the equipment should the alleged abuser or neglector elect to electronically record the interview. The LDSS must provide a copy of the electronically recorded interview to the alleged abuser or neglector upon request.

#### 5.5.5.5 Use of statements as evidence

The Code of Virginia § 63.2-1503 M provides that statements made by the alleged abuser or neglector to the investigating *Family Services Specialist* after the alleged abuser or neglector has been arrested are not admissible in any criminal proceedings unless the alleged abuser or neglector was advised of their rights against self-incrimination. If a person suspected of abuse or neglect is arrested, that person must be advised of their rights against self-incrimination or any subsequent statements made by the person cannot be used during the criminal proceedings. This section of the Code of Virginia only pertains to the admissibility in criminal proceedings of statements made by the alleged abuser or neglector after that person has been arrested. This section of the Code of Virginia does not pertain to the use of any statements made by the alleged abuser or neglector in determining whether the complaint or report is founded or unfounded. While certain statements made by the alleged abuser or neglector may not be admissible in a court of law, there is no specific exclusion to the LDSS using those statements in determining a founded or unfounded disposition.

### 5.5.6 Interview collateral children

Pursuant to 22 VAC 40-730-100, the Family Services Specialist must interview non-victim children as collaterals if it is determined they may have information which would be helpful to the investigation. Such contact should be made with prior consent of the nonvictim child's parent, guardian or agency holding custody. If the situation warrants contact with the nonvictim 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.

### 5.5.7 Observe environment where the alleged abuse or neglect occurred

Pursuant to 22VAC40-705-80 B7, the Family Services Specialist must observe the environment where the alleged abuse or neglect occurred.

### 5.5.8 Out-of-family investigation documentation

*Pursuant to 22 VAC 40-705-80 B, the Family Services Specialist must document all contacts required by regulation in the child welfare information system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the child welfare information system.*

*A face-to-face interview with a child must be documented as a "worker visit" in the child welfare information system.*

*Pursuant to 22 VAC 40-705-10, the investigative narrative is a detailed written summary of all the evidence supporting the LDSS's investigation disposition.*

*All documentation must be entered or updated in the child welfare information system within five business days.*

*A hard copy file, in addition to the child welfare information system generated reports, documents, forms, audio and digital image files, for each family assessment or investigation should include correspondence, reports from other sources (school, medical, etc.), and other documentation germane to the investigation which may not be entered into the child welfare information system, such as a safety plan.*

## 5.6 Assess safety

The VAC 22 VAC 40-730-30 provides regulatory authority to conduct the safety assessment in OOF investigations.

*The first meaningful contact in an out-of-family investigation provides pertinent information relevant to the OOF investigation and the safety of the child. It is a face-to-face contact with the family and usually occurs after the completion of the face-to-face interview with the alleged victim. During this face-to-face contact with the family, the Family Services Specialist completes the Safety Assessment Tool in the child welfare information system and develops a safety plan with the family if the child is determined to be conditionally safe. The first meaningful contact must be documented as such in the child welfare information system and the Family Services Specialist must include "safety assessment" as one of the purposes of the contact. The Family Services Specialist should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact. Note: The completion of the initial interview with the alleged victim does not satisfy a first meaningful contact.*

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.

### 5.6.1 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;

### 5.6.2 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;

### 5.6.3 Make safety decision

After safety and protective factors have been assessed, the *Family Services Specialist* 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 (1) child. One of the following safety decisions must be determined and documented in the child welfare information 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 is required to document intervention.

### 5.6.4 Emergency removal of child in OOF investigations

Pursuant to 22VAC40-730-40 and 22VAC40-730-40.1, if the *Family Services Specialist* is concerned for the child's immediate safety and the situation is such that the child should be immediately removed from the facility, the *parent*, guardian or agency holding custody and the facility administrator shall be notified immediately to mutually develop a safety plan providing for the child's safety. Written notification shall be provided to the parent, guardian or agency holding custody and the facility at the time of the removal.

## 5.7 Risk assessment and disposition

### 5.7.1 Risk assessment

Pursuant to 22VAC40-705-110 B, 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 child welfare information 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.

### 5.7.2 Disposition and consult with CPS Regional Practice Consultant

Pursuant to 22 VAC 40-705-10 and 22 VAC 40-705-110.C, the *Family Services Specialist* and supervisor must consult with *CPS Regional Practice 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 days. (60 or 90 days when an extension is documented to be necessary). The *CPS Regional Practice Consultant must review the OOF Checklist with the LDSS at the time of consultation.*

After collecting evidence and before expiration of the time frames for completing the investigation, the *Family Services Specialist* shall determine the disposition. The VAC provides the definition of disposition.

#### 5.7.2.1 Unfounded disposition

The definition of an unfounded disposition as defined in 22 VAC 40-705-10.

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.

#### 5.7.2.2 Founded disposition

The definition of a founded disposition is found in 22 VAC 40-705-10.

##### 5.7.2.2.1 Preponderance of the evidence

The definition of a preponderance of the evidence is found in 22 VAC 40-705-10. 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.

Proof of one or more of the following factors, linking the abuse or neglect to the alleged abuser or neglector, may constitute preponderance of evidence:

- Medical or psychological information from a licensed medical professional or other treatment professional that indicates that child abuse/neglect occurred.
- An admission by the alleged abuser/neglector.
- The statement of a credible witness or witnesses regarding the abuse or neglect.
- The *child who is a victim*'s statement that the abuse occurred. In assessing the weight to be given to the child's statement, consider:
  - level of detail described;
  - emotional/cognitive developmental level of the child;
  - consistency of statements if more than one interview is conducted;
  - corroboration of statement by other circumstances and/or witnesses;
  - secrecy- child instructed, asked, or threatened to keep the sexual abuse a secret; or
  - coercion- child reports elements of coercion, persuasion, or threats by the alleged abuser to engage in the sexual abuse.
- Circumstantial evidence, or indirect evidence, which links the alleged abuser or neglector to the abuse or neglect.

#### 5.7.2.2.2 First source, direct and indirect evidence

First source evidence and indirect evidence are defined in 22 VAC 40-705-10.

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.

#### 5.7.2.2.3 Credibility of evidence

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.

### 5.7.2.3 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.

#### 5.7.2.3.1 Level 1

Pursuant to 22 VAC 40-705-110 D1, examples of 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;
  - 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; or
  - 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;
  - has required psychiatric hospitalization;
  - has required treatment for severe dysfunction;
  - presents a danger to self or others; or
  - problems related to the caretaker behavior.
- For sexual abuse:

- the situation would be one where there was genital contact;
- 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. (refer to physical or mental abuse or neglect above)

#### 5.7.2.3.2 Level 2

Pursuant to 22 VAC 40-705-110 D2, examples of 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; or
  - 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; or
    - the child's behavior is problematic at home or school.
- For sexual abuse:
    - minimal or no physical touching but could be exposure to masturbation, exhibitionism, etc.;
    - caretaker makes repeated sexually provocative comments to the child; or
    - 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; or
    - 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. (refer to physical or mental abuse or neglect above)

#### 5.7.2.3.3 Level 3

Pursuant to 22 VAC 40-705-110 D3, examples of 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;
    - minimal exposure to the production or sale of methamphetamine or other drugs.
- For physical neglect:
    - child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; or

- supervision marginal which poses a 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;

  - exposure to sexual acts such as masturbation, exhibitionism, etc.; or

  - 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 physical or mental abuse or neglect above)

## 5.8 Concerns for other children in the care of the alleged abuser/neglector

In certain OOF investigations, the type or extent of abuse or neglect may increase the concern for other children in the care of the alleged abuser or neglector including children in the alleged abuser or neglector's household or other workplace or OOF 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 OOF settings, referral to the regulatory agency, and consultation with law enforcement.

## 5.9 Notifications for OOF investigations

Refer to Section 4, Assessments and Investigations, for notification requirements for all CPS investigations. There are additional notifications required in OOF investigations in

designated settings.

### 5.9.1 Release of information in joint investigations with law enforcement

Pursuant to § 63.2-1516.1 of the Code of Virginia, when conducting a joint investigation with law enforcement, no information in the possession of the LDSS from the joint investigation shall be released by the LDSS except as authorized by local law enforcement or the local attorney for the Commonwealth.

### 5.9.2 Consult with regional *practice* consultant

Pursuant to 22 VAC 40-730-60, the *Family Services Specialist* and supervisor shall consult with the regional *practice* 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 regulations and guidance. This may be done by sending an e-mail and including a brief case summary and justification for the final disposition.

### 5.9.3 Notification to Interstate Compact on the Placement of Children (ICPC)

When applicable, at the conclusion of all investigations, regardless of disposition, notify Interstate Compact for the Placement of Children (ICPC) of the results. The *Family Services Specialist* shall document this notification in the state child welfare information system.

### 5.9.4 Written notification to alleged abuser/neglector

See FUSION for sample letters of notification to the alleged abuser or neglector.

#### 5.9.4.1 Unfounded disposition

Pursuant to § 63.2-1514 B of the Code of Virginia, 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 child welfare information system. The notification shall include the length of time the CPS report will be retained in the child welfare information 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, *Family Services Specialists should* discuss the outcome of the investigation as well as any services the family may need or request.

### 5.9.4.2 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:

- Summary of the investigation and an explanation of how the information gathered supports the disposition.
- A clear statement that the individual is the abuser and/or neglector.
- The category of abuse or neglect.
- The disposition, level, and retention time, including statement about effect of multiple complaints on retention.
- The name of the *child who is a victim* or children.
- A statement informing the abuser of their right to appeal the finding and to have access to the case record.
- A statement informing the abuser that pursuant to § 63.2-1505 (7) 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.

The abuser or neglector must be informed of their 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 child welfare information system that the abuser or neglector was given the appeal brochure and was informed verbally of their appeal rights.

LDSS are encouraged to send the disposition letter by certified mail as further documentation of the notification to the abuser or neglector.

#### 5.9.4.2.1 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 40-705-130 B3.

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 40-705-130 B4.

#### 5.9.4.2.2 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 their right to appeal to finding and to have access to the case record. The worker must document in the child welfare information system, the date the verbal notification took place. If the verbal notification did not occur, the *Family Services Specialist* should document the reasons in the child welfare information system.

### 5.9.5 Notification to facility administrator and regulatory staff

Pursuant to 22 VAC 40-730-110, the *Family Services Specialist* 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, 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 *child who is a 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.

#### 5.9.5.1 Notification for school employees

In OOF investigations involving school employees, the LDSS shall provide additional notifications pursuant to §§ 63.2-1503 P and 63.2-1505 B(7) of the Code of Virginia. See Section 5.10.31.1 and Section 5.10.3.2 for specific information.

### 5.9.6 Notification to parent, guardian, or custodial agency of *child who is a victim*

Pursuant to 22 VAC 40-705-140 C2, the parent, 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 their 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 OOF 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 parent, 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 parent, 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.

### 5.9.7 Document all notifications in the automated data system

Each written notification shall be documented in the child welfare information system, identifying all recipients, and identifying where a copy of each written notification can be found.

### 5.9.8 All other inquiries referred to facility administrator

The *Family Services Specialist* must refer any inquiries about the findings to the facility administrator or their superior and, when applicable, to the regulatory authority.

### 5.9.9 Notify Family Advocacy Program

The Code of Virginia § 63.2-1503 N establishes the authority for the LDSS to share CPS information with family advocacy representatives of the United States Armed Forces.

Effective July 1, 2017: at the conclusion of all investigations (founded and unfounded dispositions), the LDSS shall notify the Family Advocacy Program representative and provide the final disposition, the type(s) of abuse or neglect, the identity of the abuser or neglector and any recommended services. These notifications allow for coordination between CPS and the Family Advocacy Program and are intended to facilitate identification, treatment and service provision to the military family. For additional information about the Family Advocacy Program, contact information for a particular branch of the military or a specific installation, click here.

- Written notification to Family Advocacy shall be made upon completion of an investigation resulting in an unfounded disposition.
- The Family Advocacy Program representative shall be notified in writing within 30 days after all administrative appeal rights of the abuser or neglector have been exhausted or forfeited for all investigations with a founded disposition.
- Written notification to abuser or neglector.

The abuser or neglector shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program. These notifications shall be documented in the child welfare information system.

### 5.9.10 Founded disposition on a foster parent

Pursuant to 22 VAC 40-705-140 B2, when the abuser or neglector is a foster parent of the child victim, the LDSS must place a copy of the founded disposition notification letter in the child's foster care record and in the foster home provider record.

## 5.10 Conduct investigations involving public school employees

Pursuant to § 63.2-1511, the Code of Virginia sets out special conditions when investigating complaints of abuse or neglect by public school employees in their official

or professional capacity.

### 5.10.1 Additional requirements

CPS allegations against public school employees have additional considerations which go beyond the normal procedures and requirements for CPS investigations.

#### 5.10.1.1 Establish additional validity requirement

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.

#### 5.10.1.2 "Gross negligence" or "willful misconduct" for founded disposition

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."[2]

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 they were conscious of their conduct, and conscious, from their knowledge of existing conditions, that injury would likely or probably result from conduct, and that with reckless indifference to consequences they consciously and intentionally did some wrongful act or omitted some known duty which produced the injurious result.[3]

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.

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.

Section 5.17.7 provides additional information to be included when making a finding on a school employee.

#### 5.10.1.3 Mandatory timeframe to make disposition

Effective July 1, 2015, § 63.2-1505 mandates the LDSS to make the final disposition of any report involving a public school employee within the established timeframes. The finding must be completed and approved in the child welfare information system and notification made to the alleged abuser or neglector according to the timeframes outlined in § 63.2-1505 B5.

### 5.10.2 Additional procedures for investigations involving public school employees

Pursuant to § 63.2-1516.1 of the Code of Virginia, in addition to the investigation procedures and requirements for other OOF investigations noted in this chapter and in Section 4, Assessments and Investigations, there are additional procedures applicable to reports involving public school employees.

### 5.10.3 Additional notifications

Pursuant to § 63.2-1516.1 of the Code of Virginia, the written notifications provided to the alleged abuser or neglector shall include:

- Summary of the investigation and explanation of how the information gathered supports the disposition;
- Their right to an appeal; and
- Their right to review information about themselves contained in the case record; except for the identity of the reporter, information provided by law enforcement, any information that may jeopardize the child's well-being, and identity of any witness if the release may jeopardize the witness' safety.

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[2] 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).

[3] Infant C. v. Boy Scouts of America, 239 Va. 572, 581, 391 S.E.2d 322, (1990).

### 5.10.3.1 Notify local school board when abuser is an employee

Pursuant to § 63.2-1505 of the Code of Virginia, if at the time of the investigation or the conduct that led to the report, the abuser is or was a full-time, part-time, permanent, or temporary employee in a school division located within the Commonwealth, the LDSS shall notify the local school board of the founded disposition at the same time the subject is notified of the founded disposition. This includes in home investigations when the employee is the subject of the founded investigation involving their own children. Any information exchanged for the purposes of this subsection shall not be considered a violation of §§ 63.2-102, 63.2-104 or 63.2-105.

The LDSS may send a copy of the disposition letter to the subject of the complaint to the local school board to meet this notification requirement.

This notification/referral shall be documented in the child welfare information system.

### 5.10.3.2 Notify Superintendent of Public Instruction, Department of Education

Pursuant to § 63.2-1503 P of the Code of Virginia, the LDSS shall immediately notify the Superintendent of Public Instruction, Department of Education (DOE) 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 LDSS knows the person holds a license issued by the Board of Education. Any information exchanged for the purpose of this subsection shall not be considered a violation of §§ 63.2-102, 63.2-104, or 63.2-105 of the Code of Virginia.

The LDSS shall immediately notify the Superintendent of Public Instruction, DOE if the founded complaint of child abuse or neglect is overturned on an administrative appeal.

The Board of Education issues licenses to instructional personnel including teachers and other professionals and administrators.

The Board of Education does not license teacher aides, janitorial staff, and administrative support staff.

This notification requirement applies to all individuals holding a license even if that person is not currently employed by a local school board.

## 5.11 Interagency agreements with local school division for CPS complaints that require coordination

Pursuant to § 63.2-1511 D, LDSS shall adopt a written interagency agreement for complaints of child abuse and neglect that require coordination between local departments and local school divisions to facilitate the investigation or family assessment. The LDSS shall no longer be required to report annually on the status of the interagency agreement to the Board of Social Services unless the interagency agreement is substantially modified. When substantial modifications are made to an interagency agreement, the LDSS must notify the CPS Program Manager.

A model agreement has been developed by the Virginia Department of Education and VDSS with participation of local school divisions and LDSS and can be found on the interagency website.

## 5.12 Services to abuser/neglector and family in an OOF investigation

Services can be provided to an abuser/neglector in a founded OOF investigation when the risk assessment is high or moderate for the *child who is a victim* or to other children to whom the abuser/neglector may have access.

Open the CPS *in-home services* case in the name of the abuser/neglector in the child welfare information system.

*The LDSS may offer prevention services for families involved in an investigation when risk is assessed as low or moderate. The following conditions should be met to open a case to prevention services:*

- *LDSS has received a current, valid CPS referral AND*
- *LDSS has conducted a family assessment or investigation AND*
- *The family has been assessed at low or moderate risk of future maltreatment but could benefit from voluntary services AND*
- *The family agrees to services.*

*See Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual, for further guidance.*

# 6
# CHILD DEATHS

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# 6

# CHILD DEATHS

## 6.1 Introduction

The investigation of child deaths is one of the most challenging and complex responsibilities of the child welfare system. The investigation of child deaths should be done through a multi-agency and multi-disciplinary process and conducted according to guidance and policy set forth in the VDSS Child and Family Services Manual Chapter C, Section 3: Complaints and Reports and Section 4: Assessments and Investigations. Additionally, if the fatality occurs in an Out-of-Family setting, the LDSS must complete the investigation in accordance with Section 5: Out-of-Family Investigations.

All child fatality cases investigated by CPS are reviewed at the regional level by the Child Fatality Review Team (CFRT). There is a CFRT for each region.

## 6.2 Report a child death

The Virginia Administrative Code (VAC) requires the LDSS to contact the District Office of the Chief Medical Examiner, Commonwealth's Attorney, and local law enforcement when a report or complaint alleging abuse or neglect involves the death of a child.

### 6.2.1 Report child death to District Office of the Chief Medical Examiner

Pursuant to 22 VAC 40-705-50 F1, the LDSS shall **immediately** notify the District Office of the Chief 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 and provide any preliminary information about the child and the caretakers to include any prior child welfare history. The Family Services Specialist shall document this notification in the child welfare information system.

The Family Services Specialist must request a written copy of the autopsy report **within 5 working days** of notification to the District Office of the Chief Medical Examiner and document the request in the child welfare information system.

### 6.2.2 Report child death to local Commonwealth's Attorney and law enforcement

Pursuant to 22 VAC 40-705-50 F2, the LDSS shall **immediately** notify the local Commonwealth's Attorney and local law enforcement when the LDSS receives a complaint or report of suspected 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 and provide any preliminary information about the child and the caretakers. The Family Services Specialist shall document this notification in the child welfare information system.

### 6.2.3 Report child death to CPS Practice Consultant

Pursuant to 22 VAC 40-705-50 F3, the LDSS's Family Services Supervisor or supervisor's designee shall contact the CPS Practice Consultant **immediately** upon receiving a complaint involving the death of a child. This includes the death or near-fatality of a child in foster care, even if the death or near-fatality occurs out-of-state or in another jurisdiction. The Family Services Specialist shall document this notification in the child welfare information system.

The CPS Practice Consultant shall ensure the completion of the Preliminary Child Fatality/Near-Fatality Information Form and forward it to the CPS Program Manager **within two working days** 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 two working days**. This information may also be shared with the State Board of Social Services.

### 6.2.4 Submit preliminary information concerning the child death

The LDSS shall provide the following preliminary information concerning the child death to the CPS Practice Consultant who will submit the information on the Child Fatality/Near-Fatality Information Form to the CPS Program Manager. The form can be found on the FUSION.

The Preliminary Child Fatality/Near-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.

#### 6.2.4.1 Logistical information

- Name of LDSS.
- Name of investigating worker.
- Name of Family Services Supervisor.
- Date of complaint.
- Referral number.
- Person making the complaint.
- CPS Practice Consultant.

#### 6.2.4.2 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.

#### 6.2.4.3 Reporting requirements

- Date reported to CPS Practice Consultant.
- Date reported to Commonwealth's Attorney.
- Date reported to law enforcement.

- Date reported to District Office of the Chief Medical Examiner.
- Date reported to CPS Program Manager.

#### 6.2.4.4 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).

#### 6.2.4.5 LDSS's plan of action

- Description of the LDSS's investigation plan.
- Description of the CPS Practice Consultant's planned involvement and assistance.
- Date disposition is due.
- Any additional concerns or comments.

## 6.3 Investigation of child death

CPS has an integral role in the investigation regarding the *child who is a victim* and family. Child death investigations have the best outcomes when there is timely notification and CPS and law enforcement conduct a joint investigation. It is recommended that the LDSS use a MOU to ensure this notification and collaboration with law enforcement.

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, Assessments and Investigations.

### 6.3.1 CPS Practice Consultant to provide technical assistance

The CPS Practice Consultant shall provide technical assistance to the LDSS throughout the investigation. The LDSS must consult with the CPS Practice Consultant prior to making the disposition and developing the service plan.

### 6.3.2 Assessing safety in a child fatality

CPS is responsible for determining the safety of any other children in the home. The safety assessment must be completed in all investigations involving the death of a child. Special safety considerations for the investigation of a child death includes:

- Was a drug screen completed with the caretaker at the time of death?
- Was the caretaker impaired at the time of death?
- Was the child in a designated safe sleep space?
- Was the sleep space firm and free from blankets, pillows and objects?
- Was there any prior child welfare involvement with the family?
- Were there unsecured medication or weapons in the home?
- Was the *child who is a victim* born substance-exposed?

The safety assessment should include both the inside and outside home environment.

If there are other children in the home, the safety assessment will be either conditionally safe (requires a safety plan) or unsafe (requires a court order) as death of child will be recorded in safety factor #1 on the safety assessment tool. “Caretaker caused serious physical harm to the child and/or made a plausible threat to cause physical harm in the current Investigation/Family Assessment.”

If there are other children in the home under the age of two, the Family Services Specialist should provide the caretaker with written information and verbal education on safe sleep practices. The Family Services Specialist should document that safe sleep information was provided to the caretaker in the child welfare information system.

### 6.3.3 Assessing risk in a child fatality

When assessing risk using the CPS Risk Assessment Tool, there is a policy override when the parent/caretaker action or inaction resulted in the death of a child due to

abuse or neglect (previous or current). Policy overrides reflect seriousness and/or child vulnerability concerns, and have been determined by VDSS to warrant a risk level of very high regardless of the risk level indicated by the assessment tool. It is recommended to open a case if the risk is high or very high; however, if there are no other children in the home it is not necessary to provide *in-home* services.

*When there are surviving siblings in the home, the LDSS must use risk level to inform the decision whether or not to open a case as follows:*

| | |
|---|---|
| *Low Risk:* | *Close* |
| *Moderate Risk:* | *Open to In-Home Services **or** close* |
| *High Risk:* | *Open to In-Home Services* |
| *Very High Risk:* | *Open to In-Home Services* |

*The Family Services Specialist and Family Services Supervisor should assess the decision to open a case for services and document in the child welfare information system the decision not to open a case. For more guidance on service planning in a case refer to Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual.*

### *6.3.4* Investigative protocol

Prior involvement with the child welfare system should be considered when determining the validity of the report as prior system involvement has been found to correlate with child deaths that are the result of abuse or neglect from a caretaker.

The validity determination of the CPS complaint regarding the fatality must be made prior to the response of the LDSS. The LDSS may not respond to the complaint/report of child abuse or neglect in order to determine the validity of the referral. Once the LDSS responds to a complaint or report of child abuse or neglect, the LDSS is responsible for ensuring the completion of an investigation.

Child death investigations have the best outcomes when there is timely notification and CPS and law enforcement conduct a joint investigation. The Investigating Infant and Child Death Cases protocol developed by the Department of Criminal Justice Services and the Child Death Case Reporting Tool can assist in the completion of a thorough investigation.

As part of a child death investigation, it is important to ask questions and obtain information to understand the circumstances surrounding the child's death. Some information can be obtained through the use of closed-ended questions but other information is best obtained through the use of open-ended inquiries that solicit narrative responses. The following is a list of suggested questions and inquiries that can be used to guide the investigation:

- General Information
    - Demographics of the *child who is a victim* and caretaker.

- Who called 911?
- Describe any first aid or emergency care given and who provided it.
- Who found the victim?
- When was the *child who is a victim* last seen alive?
- When was the last feeding or meal for the *child who is a victim*?
- What was the *child who is a victim*'s physical appearance at the time of death?
- What was the alleged abuser/neglector's and caretaker's demeanor at the time of death?
- Describe any prior child welfare involvement.
- What was the *child who is a victim*'s developmental level?
- What was the educational level of the *child who is a victim*?
- What is the educational level of the alleged abuser/neglector and caretaker(s)?
- What is the criminal history of the alleged abuser/neglector and caretaker(s)?

- Physical Health
  - Describe any disabilities of *child who is a victim*, alleged abuser/neglector, and caretaker(s).
  - Describe the *child who is a victim*'s health within the past 48 hours.
  - Describe the pregnancy and any complications.
  - Who provided prenatal care during the pregnancy?
  - What was the *child who is a victim*'s medical history?
  - Who was providing the *child who is a victim* with medical care?
  - When was the last time the *child who is a victim* received medical care?
  - Describe any medications being taken and/or prescribed and the name of the prescriber for the *child who is a victim*, alleged abuser/neglector, or caretaker(s).
  - Describe any medical diagnoses for the *child who is a victim*, alleged abuser/neglector, and caretaker(s).

- Mental Health
    - Describe any mental health diagnoses of the *child who is a victim*, alleged abuser/neglector, and caretaker(s).
    - Describe any mental health treatment received by the *child who is a victim*, alleged abuser/neglector, and caretaker(s).
    - Who is/was providing the mental health treatment services?
    - When did the *child who is a victim*, alleged abuser/neglector, or caretaker last receive mental health treatment services?
    - Describe any psychotropic medications being prescribed and the name of the prescriber for the *child who is a victim*, alleged abuser/neglector, or caretaker(s).
- Substance Use
    - Describe any substance use (illegal and legal) by the *child who is a victim*, alleged abuser/neglector, and caretaker(s).
    - When was the substance (illegal and legal) last used and by whom?
    - Are there any substances (illegal and legal) in the home?
- Home Observations
    - Describe the temperature in the home.
    - Describe the functionality of the utilities in the home.
    - Describe the presence of food or formula in the home.
    - Describe any hazards noted inside or outside of the home.
    - Describe any notable odors inside or outside of the home.
    - Are there pets in the home?
    - Describe any pets in the home and their access to the *child who is a victim* or siblings.
    - Describe the sleep space for all children and adults in the home.
    - What bedding is used for the sleep spaces in the home?
    - Are there unsecured weapons in the home?

- Where are the weapons and ammunition stored in the home?
- Where are medications stored in the home?

- Siblings
  - Describe the educational and child care arrangements for the siblings in the home.
  - Where were the siblings when the *child who is a victim* died?
  - When did the siblings last see the *child who is a victim* alive?
  - When did the sibling last see the *child who is a victim* eat or be fed?
  - Describe where the *child who is a victim* slept in the home.
  - What do the siblings know about the *child who is a victim*'s death?
  - Describe the reaction of the siblings to the *child who is a victim*'s death.
  - Describe the *child who is a victim*'s relationship with the alleged abuser/neglector or caretaker(s).
  - How did the alleged abuser/neglector or caretaker(s) discipline the *child who is a victim*?

### 6.3.5 Death of a child in foster care

If the child fatality involves a child in the custody of a LDSS, the LDSS Family Services Supervisor or Supervisor's designee must **immediately** notify the LDSS with legal custody of the child.

The LDSS Family Services Supervisor or Supervisor's designee must also **immediately** notify the CPS Practice Consultant and the Foster Care Practice Consultant. The Family Services Specialist must document these notifications in the child welfare information system. The LDSS should discuss potential conflicts of interest with their CPS Practice Consultant if the local department of jurisdiction is the custodian of the child in foster care or if the child is placed in a locally approved foster home approved by the local department of jurisdiction.

### 6.3.6 Suspensions of child death investigations

The Code of Virginia § 63.2-1505 B5 grants exceptions to completing certain investigations under specific conditions. In any child death investigation which requires reports or records generated outside the local department in order to complete the investigation, such as an autopsy, the time needed to obtain these reports or records shall not be counted towards the 45 day timeframe to complete the

investigation. These records must be necessary to complete the investigation and not available due to circumstances beyond the control of the local department. The LDSS must submit a written request to the medical examiner to obtain a written copy of the autopsy report and document the request in the child welfare information system. When the LDSS receives the reports or records, the 45 day timeframe resumes where it had left off, it does not start over.

The decision to suspend making a disposition within 45 days in these cases should be approved by a supervisor and documented in the child welfare information system.

If the LDSS has the evidence necessary to make the disposition they should not suspend the investigation.

As long as the investigation remains open, the LDSS retains all authorities and responsibilities of an investigation. The LDSS must document monthly updates in the child welfare information system until such time that the necessary reports or records to complete the investigation have been received.

The LDSS should notify the alleged abuser/neglector or involved caretakers and the alleged victim's parents or guardians when suspending an investigation. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the suspension. If written notification is made, a copy of the notification must be included in the LDSS's record and documented in the child welfare information system. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation and the monthly updates.

### 6.3.7 Notify CPS Practice Consultant of disposition

The LDSS should consult with the CPS Practice Consultant prior to making the final disposition. The LDSS must notify the CPS Practice Consultant with the final disposition, assessed risk and any pending criminal charges or investigations concerning the child death. The results of the autopsy must be documented in the child welfare information system.

## 6.4 Local, regional, and state child fatality reviews

The review of child deaths reported to Child Protective Services can best be achieved through a multi-agency, multi-disciplinary process that routinely and systematically examines circumstances surrounding the reported deaths of children.

### 6.4.1 Local and regional child death review teams

Section 32.1-283.2 of the Code of Virginia authorizes reviews of child deaths at the local, regional, and/or state level.

### 6.4.2 Regional Child Fatality Review Teams

*Child fatalities will be reviewed by the regional child fatality review team for each respective jurisdiction. The regional child fatality review team will examine the circumstances of each child death that meets the following criteria:*

- *Current open DSS referral/case at the time of the fatality;*
- *Valid or invalid CPS report within the last 12 months;*
- *Child died while in foster care (not from natural death and no complaint in foster home);*
- *Child died in foster care on a trial home placement; and*
- *Foster care case involving decedent or decedent's siblings was closed within the last 24 months*

#### 6.4.2.1 Purpose of child fatality review

The purpose of a fatality review is:

- Conduct comprehensive multidisciplinary reviews.
- Better understand how and why children die.
- Improve child death investigations.
- Improve the systematic response to children in need.
- Use the findings to take action to prevent other deaths.
- Improve the health and safety of children.

#### 6.4.2.2 Role and responsibilities of CPS

CPS is responsible for investigating the allegations of abuse or neglect and recommending services to children and families. CPS also serves as a liaison to other community resources. The Family Services Specialist or current Family Services Supervisor is responsible for providing vital information to the child review team to include:

- The case status.
- A summary of the investigation.
- Family and child history and socioeconomic factors such as employment, marital status, previous deaths, history of intimate partner violence, and history of substance abuse or mental illness.
- Prior CPS involvement.

The Family Services Specialist will be notified by phone or in writing by the *Protection Program* as to the date, time and location of the Regional Fatality Review meeting. The notification must include the child's initials, locality, date of birth, and date of death and referral number. In order to preserve confidentiality, e-mails should not include identifying information such as names. Prior to the meeting, the Family Services Specialist should complete all documentation in the child welfare information system and all supervisory approvals should be done.

#### 6.4.2.3 Presenting a case for the regional child fatality review meeting

The Family Services Specialist, Family Services Supervisor, or the person who will present the case at the review meeting, should be prepared to verbally present a summary which includes the investigative details of the case. The following is a list of suggested questions that can be used as a guide for the verbal presentation:

- How was the agency notified of the fatality?
- What were the circumstances of the death? How was the injury described and explained? What was the supervision of the child? Were other persons present and what did they report?
- What was the agency's initial response? Who responded and when? What was happening upon arrival? What were the responses of those present? Who was interviewed? What did they say? What was observed?
- Was the child or family known to DSS? If so, how?
- Were there any prior family assessments or investigations? What did they involve? What was the outcome and risk level? What were the outcomes of those interventions?
- What safety factors and protective capacities were identified? What risk factors were identified?
- What services have been provided to the family before and after the

fatality?

- Did CPS and law enforcement conduct a joint investigation of the child death?

The presenter must bring a copy of the case record, including any photographs.

Maintaining confidentiality is extremely important. The Family Services Specialist, Family Services Supervisor, or presenter will be asked to sign a confidentiality form at the review meeting. Section § 32.1-283.2 of the Code of Virginia pertains to confidentiality.

#### 6.4.2.1 Regional child fatality review prevention initiatives

The Regional Child Fatality Review Teams will be asked to report to the CPS Program Manager on an annual basis, describing significant findings and themes from the reviews as well as any recommendations or initiatives as a result of the team's discussion of that year's child death cases. These may include actions in the recommended, planning or implementation stage. These actions may be short or long term. These actions may be at the local, state, or national level. Some examples of actions may include conducting media campaigns, having public forums, revising policy, providing training, implementing new programs, or enacting new laws.

### 6.4.3 State Child Fatality Review Team

Section 32.1-283.1 of 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.

## 6.5 Release of child fatality or near fatality information

Pursuant to 22 VAC 40-705-160 A6, 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 VAC requires the VDSS to develop guidelines allowing for public disclosure in instances of a child death.

### 6.5.1 Guidelines for release of information in a child fatality or near fatality

22 VAC 40-910-100 B establishes the information that can be released in child abuse or neglect cases with a child death.

### *6.5.2* Investigation of child death by Children's Ombudsman

Pursuant to § 2.2-443 B of the Code of Virginia, the Children's Ombudsman may investigate all child fatality cases that occurred or are alleged to have occurred due to child abuse or child neglect in the following situations:

- A child died during an active child protective services investigation or open services case, or there was a valid or invalid child protective services complaint within 12 months immediately preceding the child's death.
- A child died while in foster care, unless the death is determined to have resulted from natural causes and there were no prior child protective services or licensing complaints concerning the foster home.
- A child was returned home from foster care and there is an active foster care case.
- A foster care case involving the deceased child or sibling was closed within 24 months immediately preceding the child's death.

In order to assist the Children's Ombudsman with their investigation of a child fatality, the LDSS must follow the guidance in Section 9, Confidentiality.

### 6.5.3 Exceptions for release of information in a child death

Pursuant to § 32.1-283.1 C of the Code of Virginia, information gathered at local, regional or state child fatality review is exempt from being released. These teams can publish information in statistical or other forms that do not identify the individual decedent.

## 6.6 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 Practice Consultant if there is any question about retention of a specific record. The LDSS must document that a child death occurred in the child welfare information system so the record is not purged prematurely.

# 7

# APPEALS

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# 7

# APPEALS

## 7.1 Introduction

Any person who is the subject of a founded investigation of abuse or neglect may appeal that finding and any inaccurate information about the abuser that is contained in the Child Protective Services (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 a local department of social services (LDSS) 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.

## 7.2 Definitions

Definitions regarding CPS appeals are found in 22 VAC 40-705-190 A and 22 VAC 40-705-10.

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.

## 7.3 CPS appeal automatically stayed during criminal proceedings against abuser

Pursuant to § 63.2-1526 C of the Code of Virginia, whenever an appeal of the local department's finding is made and a criminal charge or investigation is also filed or commenced against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in the trial court is completed, until the criminal investigation is closed, or, in the case of a criminal investigation that is not completed within 180 days of the appellant's request for an appeal of the local department's finding, for 180 days after the appellant's request for appeal.

### 7.3.1 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 their right to access their CPS record is suspended until the criminal process is completed in the trial 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 may also consider an agreement with the local Commonwealth Attorney or local law enforcement to notify the LDSS when the criminal proceedings have been completed.

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.

### 7.3.2 Criminal proceedings in military court

The Code of Virginia stays CPS administrative appeal proceedings until “the criminal prosecution in trial 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.” (Code of Virginia § 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.

### 7.3.3 Criminal investigations

The Code of Virginia stays CPS administrative appeal proceedings when a criminal investigation is filed or commenced against the appellant for the same conduct involving the same victim as investigated by the local department until the criminal investigation is closed or 180 days have passed since the appellant's request for an appeal.

## 7.4 Local conference

### 7.4.1 Appellant must request local conference

Pursuant to 22 VAC 40-705-190 B, 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 their right to a local conference.

When the alleged abuser or neglector is under 18 years of age, the parent or legal guardian of the alleged abuser or neglector may submit a written request for a local conference on behalf of the juvenile.

### 7.4.2 Document pending local appeal

Pursuant to pursuant to 22 VAC 40-705-190 B, the LDSS must document the pending appeal in the child welfare information system.

### 7.4.3 Time frame to conduct local conference

Pursuant to 22 VAC 40-705-190 D, 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 child welfare information system the reasons why the local conference was not conducted.

### 7.4.4 Appellant may request extension

Pursuant to 22 VAC 40-705-190 E, the extension period begins at the end of the original 45 days.

### 7.4.5 LDSS must provide information to appellant

Pursuant to 22 VAC 40-705-190 F , 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.

#### 7.4.5.1 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 (VAC).

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.

## 7.4.6 Conduct the local conference

VDSS developed a CPS State Appeals Handbook for agency directors to provide additional guidance and best practice to conduct local conferences. Please note this handbook was revised August 2017.

### 7.4.6.1 Who may preside over the local conference

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.

### 7.4.6.2 Appellant may seek assistance of counsel

The appellant may be represented by counsel, pursuant to § 63.2-1526 A of the Code of Virginia.

### 7.4.6.3 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.

### 7.4.6.4 Appellant may present testimony at local conference

Pursuant to 22 VAC 40-705-190 G2, any additional information or documentation presented at the local conference must be added to the CPS record and documented in the child welfare information system.

#### 7.4.6.5 Time frame to notify appellant of results of local conference

Pursuant to 22 VAC 40-705-190 G3, the director of the LDSS, 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 for the appellant unless the time frame has been extended as described in subsection E of this section.

#### 7.4.6.6 Local director's authority to sustain, amend, or reverse findings

Pursuant to 22 VAC 40-705-190 G3, 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.

#### 7.4.6.7 Notify appellant

Pursuant to 22 VAC 40-705-190 G3, 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.

#### 7.4.6.8 Document results of local conference

Pursuant to 22 VAC 40-705-190 G3, the LDSS shall notify the child welfare information system of the results of the local conference.

#### 7.4.6.9 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 *children who are victims*.

### 7.4.7 Local conference training

FSWEB 1012: Child Protective Services Appeal Training is available in the Virginia Learning Center. This recorded webinar conducted in June 2017 provides general information about the administrative appeals process, with a strong emphasis on the local conference.

## 7.5 State administrative appeal

The State Appeals Hearings Officers developed a guide for local agencies that explains the state appeal hearing process in more detail.

### 7.5.1 Appellant must request state administrative hearing

Pursuant to 22 VAC 40-705-190 H, when the alleged abuser or neglector is under 18 years of age, the parent or legal guardian of the alleged abuser or neglector may submit a written request for the state administrative appeal on behalf of the juvenile.

### 7.5.2 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.

### 7.5.3 Document pending state appeal

The State Hearing Officer notifies the child welfare information system that a state appeal is now pending.

### 7.5.4 Who may conduct state administrative appeals

Pursuant to 22 VAC 40-705-190 H1, the Commissioner must designate a member of his staff to conduct the proceeding pursuant to § 63.2-1526 B of the Code of Virginia.

### 7.5.5 Time frame to schedule state administrative hearing

Pursuant to 22 VAC 40-705-190 H2, the hearing officer must 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.

### 7.5.6 State administrative appeal officers' authorities

#### 7.5.6.1 Subpoenas and depositions

Pursuant to 22 VAC 40-705-190 H3, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing; however, the victim child and that child's siblings must not be subpoenaed, deposed or required to testify, pursuant to § 63.2-1526 B of the Code of Virginia.

#### 7.5.6.2 Review of subpoena or deposition decision by J&DR court or family court

Pursuant to 22 VAC 40-705-190 H4, the juvenile and domestic relations district court has the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena.

#### 7.5.6.3 Depositions

Pursuant to 22 VAC 40-705-190 H5, the appellant may, at their own expense, depose a non-party and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings cannot be deposed.

### 7.5.7 Information to be provided to appellant and state hearing officer

Pursuant to 22 VAC 40-705-190 H6, the LDSS must provide the hearing officer with a copy of the investigation case record prior to the administrative hearing. The appellant may also request, in writing, a copy of the investigation case record. The appellant must be informed of the procedure by which information will be made available or withheld from them.

### 7.5.8 Conduct state appeal hearing

#### 7.5.8.1 Appellant may seek assistance of counsel

Pursuant to 22 VAC 40-705-190 H7, the appellant and LDSS may be represented by counsel at the administrative hearing.

### 7.5.8.2 Oath and affirmation

Pursuant to 22 VAC 40-705-190 H8, the hearing officer must 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.

### 7.5.8.3 Burden on LDSS to prove disposition

Pursuant to 22 VAC 40-705-190 H 9, the LDSS has the burden to show that a preponderance of the evidence supports the founded disposition. The LDSS may present testimony of witnesses, documents, factual data, arguments or other submissions of proof.

### 7.5.8.4 Submission of proof

Pursuant to 22 VAC 40-705-190 H10, the appellant may present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

### 7.5.8.5 Submission of new evidence

Pursuant to 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.

### 7.5.8.6 Hearing officer not bound by strict rules of evidence

Pursuant to 22 VAC 40-705-190 H12, the hearing officer is not bound by the strict rules of evidence; however, the hearing officer must only consider that evidence, presented by either party, which is substantially credible or reliable.

### 7.5.8.7 Allow record to remain open for additional evidence

Pursuant to 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.

## 7.5.9 State administrative appeal hearing decision

### 7.5.9.1 Notify appellant and LDSS of results of state administrative appeal hearing

Pursuant to 22 VAC 40-705-190 I, within 60 days of the close of receiving evidence, the hearing officer must render a written decision. The hearing officer has the authority to sustain, amend, or reverse the LDSS' 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 must be mailed to the appellant's counsel, the LDSS, and the LDSS' counsel.

### 7.5.9.2 State appeal officer may remand case to LDSS

Pursuant to 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 LDSS for reconsideration of the findings. If the LDSS fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer must render a decision, pursuant to § 63.2-1526 B of the Code of Virginia.

### 7.5.9.3 Appellant has further right of review by circuit court

Pursuant to 22 VAC 40-705-190 J, the hearing officer must notify the appellant of their further right of review in the circuit court. The LDSS does not have a further right of review.

Pursuant to 22 VAC 40-705-190 K, if the hearing officer's decision is appealed to circuit court, the LDSS must prepare a transcript for that proceeding.

### 7.5.9.4 Document results of state administrative appeal

Pursuant to 22 VAC 40-705-190 I, the hearing officer must notify the child abuse and neglect information system of the hearing decision.

### 7.5.9.5 Notify all original recipients if disposition is amended or reversed by state appeal hearing officer

Pursuant to 22 VAC 40-705-190 I, the LDSS must 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 *children who are victims*.

### *7.5.9.6 Appellant is a teacher licensed by the Board of Education or through an alternative pathway and employed by a local school board*

*Pursuant to § 63.2-1526 of the Code of Virginia, if the appellant is a teacher licensed by the Board of Education or through an alternative pathway and employed by a local school board, the appellant may petition the circuit court for a trial de novo, by judge or jury. Such petition shall be filed within 30 days of the appellant's receipt of the hearing officer's decision in the circuit court in the jurisdiction where the applicable local department is located. The appellant is barred from filing any action for judicial review of the agency action or the hearing officer's decision under the Administrative Processes Act (§ 2.2-4025 et seq.).*

# 8

# JUDICIAL PROCEEDINGS

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# 8

# JUDICIAL PROCEEDINGS

## 8.1 Introduction

This section describes some of the judicial proceedings regarding child abuse or neglect. It is imperative that local departments of social services (LDSS) seek legal counsel and advice when seeking court intervention in a Child Protective Services (CPS) referral or CPS on-going case.

Text that is indented and denoted with a blue vertical line is verbatim from the Code of Virginia or the Virginia Administrative Code (VAC).

### 8.1.1 Venue

Pursuant to § 16.1-243 A (1d) of the Code of Virginia, in cases involving an allegedly abused or neglected child, the proceeding may be commenced in:

- The city or county where the child resides;
- The city or county where the child is present when the proceedings are commenced; or
- The city or county where the alleged abuse or neglect occurred.

### 8.1.2 Names and contact information of persons with a legitimate interest

Pursuant to §16.1-229.1 of the Code of Virginia, in any proceeding held in which a child is removed from their home, the court may order the parents or guardians of the child to provide the names and contact information for all persons with a legitimate interest to the LDSS.

### 8.1.3 Court consider person with a legitimate interest

The Code of Virginia (§§ 16.1-252, 16.1-277.01, 16.1-277.02, 16.1-278.2, 16.1-278.3, and 16.1-283) requires courts consider persons with a legitimate interest for custody of the child when evaluating removal, entrustment, relief of custody, and termination of parental rights petitions.

## 8.2 Emergency removal order

A CPS worker is authorized to petition the court to request an order to remove a child pursuant to 22 VAC 40-705-100 A.

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.

### 8.2.1 Ex parte emergency removal order

Pursuant to § 16.1-251 A of the Code of Virginia, 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."[1] 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.

[1] Black's Law Dictionary 657 (9th ed. 2009).

#### 8.2.1.1 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.

### 8.2.2 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.

### 8.2.3 Affidavit or sworn statement in support of emergency removal order

#### 8.2.3.1 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.

#### 8.2.3.2 Evidence must establish an immediate threat to life or health of the child

Pursuant to § 16.1-251 A1 of the Code of Virginia, 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.

#### 8.2.3.3 Petition, affidavit, or sworn testimony must show reasonable efforts to prevent removal

Pursuant to § 16.1-251 A2 of the Code of Virginia, 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 their home.

#### 8.2.3.4 Petition, affidavit, or sworn testimony must show no alternatives less drastic than removal

Pursuant to § 16.1-251 A2 of the Code of Virginia, 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.

#### 8.2.3.4.1 Alternatives less drastic than removal

Pursuant to § 16.1-251 A2 of the Code of Virginia, alternatives less drastic than removal may include but are not limited to medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order.

### 8.2.3.5 No opportunity to provide preventive services

Pursuant to § 16.1-251 A2 of the Code of Virginia, circumstances may occur when there is no reasonable opportunity to provide preventive services before removing a child from the home.

### 8.2.3.6 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 courtorder.

### 8.2.3.7 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.

### 8.2.4 Five-day hearing must occur following emergency removal order

Pursuant to § 16.1-251 B of the Code of Virginia, whenever a child is taken into immediate custody pursuant to an emergency removal order, a heading must be held no later than five business days after the removal of the child.

### 8.2.5 Suitable relatives shall be considered for placement

Pursuant to § 16.1-251 C of the Code of Virginia, the court must give consideration to the temporary placement of the child with a suitable relative or other interested individual, including grandparents, under the supervision of the LDSS, until the preliminary removal hearing.

### 8.2.6 When LDSS has legal custody of child

Pursuant to § 16.1-251 D of the Code of Virginia, this section of the Code of Virginia means the presumption that it is in the best interest of the child to remain with their 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 re-determine 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 re-determine 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."

## 8.3 Preliminary removal order

Pursuant to § 16.1-252 A of the Code of Virginia, 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 their 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.

### 8.3.1 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.

### 8.3.2 Notice shall be given to all parties

Pursuant to § 16.1-252 B of the Code of Virginia, 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."[2]

#### 8.3.2.1 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.

#### 8.3.2.2 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.

[2] Black's Law Dictionary 858 (9th ed. 2009).

### 8.3.3 Parties may obtain counsel

Pursuant to § 16.1-252 C of the Code of Virginia, 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 their 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.

### 8.3.4 Preliminary removal hearing

The preliminary removal hearing will be conducted in the nature of a preliminary hearing rather than a final determination of custody.

### 8.3.5 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.

#### 8.3.5.1 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.[3]

#### 8.3.5.2 Requesting party must prove imminent threat to life or health of child

Pursuant to § 16.1-252 E1 of the Code of Virginia, in order to obtain a preliminary removal order, the LDSS must prove the child would be subjected to an imminent threat to life or health to the extend that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of their current caregivers pending a final hearing.

### 8.3.5.3 Reasonable efforts must have been made to prevent removal

Pursuant to § 16.1-252 E2 of the Code of Virginia, 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.

### 8.3.5.4 No alternatives less drastic than removal

Pursuant to § 16.1-252 E2 of the Code of Virginia, alternatives less drastic than removal may include but are not limited to medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order.

### 8.3.5.5 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.

## 8.3.6 The preliminary removal hearing

In the hearing, petitioner must prove:

- The child would be subjected to imminent threat to their 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.

### 8.3.6.1 Parties may present witnesses and evidence

Pursuant to § 16.1-252 D of the Code of Virginia, at the removal hearing the child and their parent, guardian, legal custodian or other person standing in loco parentis have the right to cross-examine all adverse witnesses and evidence and to present guidance on their own behalf.

[3] See: *Wright v. Arlington County Dept. of Social Services*, 9 Va. App. 411, 388 S.E.2d 477 (1990).

### 8.3.6.2 Testimony of the child may be taken by closed-circuit television

Pursuant to § 16.1-252 D of the Code of Virginia, a child, 14 years of age 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.

Additional information regarding the use of closed- circuit testimony can be found on the Virginia Department of Criminal Justice (DCJS) website.

### 8.3.6.3 Out-of-court statements made by a child describing act of sexual nature

Pursuant to § 63.2-1522 A of the Code of Virginia, an out-of-court statement may be admitted into evidence if a child, 14 years of age or younger at the time of the hearing, testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

- The child's death.
- The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify.
- The child's total failure of memory.
- The child's physical or mental disability.
- The existence of a privilege involving the child.
- The child's inability to communicate about the offense because of fear or a similar reason.
- The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the

proceeding or by means of a videotaped deposition or closed-circuit television.

#### 8.3.6.4 Use of videotaped statement of alleged victim as evidence

Pursuant to § 63.2-1523 A of the Code of Virginia, an out-of-court statement may be admitted into evidence if a child, 14 years of age or younger at the time of the hearing, testifies at the proceeding, or testifies by means of a videotaped deposition or closed-circuit television, and at the time of such testimony is subject to cross examination concerning the out-of-court statement or the child is found by the court to be unavailable to testify on any of these grounds:

- The child's death.
- The child's absence from the jurisdiction, provided such absence is not for the purpose of preventing the availability of the child to testify.
- The child's total failure of memory.
- The child's physical or mental disability.
- The existence of a privilege involving the child.
- The child's inability to communicate about the offense because of fear or a similar reason.
- The substantial likelihood, based upon expert opinion testimony, that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television.

### 8.3.7 If court orders removal, court must determine who shall have custody of the child

Pursuant to § 16.1-252 F1 of the Code of Virginia, 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.

#### 8.3.7.1 If court orders removal, court may provide for reasonable visitation

Pursuant to § 16.1-252 F2 of the Code of Virginia, 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 their guardian, legal custodian, or other person standing in loco parentis, and between the child and their siblings. The court may allow reasonable visitation only if such visitation would not endanger the child's life or health.

#### 8.3.7.2 If court orders removal, court shall obtain child support

Pursuant to § 16.1-252 F3 of the Code of Virginia, 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.

#### 8.3.7.3 Court may impose additional requirements or conditions

Pursuant to § 16.1-252 F of the Code of Virginia, the court may enter a preliminary protective order § 16.1-253 imposing requirements and conditions the court deems appropriate for the protection of the child.

### 8.3.8 Court shall make finding of abuse or neglect

Pursuant to § 16.1-252 G of the Code of Virginia, at the conclusion of the preliminary order hearing, the court must determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. A finding of abuse or neglect must be stated in the court order.

#### 8.3.8.1 A party may object to the court making a finding of abuse or neglect

Pursuant to § 16.1-252 G of the Code of Virginia, if an objection to the finding is made at the preliminary removal hearing, the court must schedule an adjudicatory hearing to be held within 30 days of the initial preliminary removal hearing.

### 8.3.8.2 Adjudicatory hearing

Pursuant to § 16.1-252 G of the Code of Virginia, 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.

### 8.3.8.3 Notification of adjudicatory hearing

Pursuant to § 16.1-252 G of the Code of Virginia, parties who are present at the preliminary removal order hearing must be given notice of the date set for the adjudicatory hearing and parties who are not present must be summoned as provided in § 16.1-263.

### 8.3.8.4 Preliminary removal order or protection orders remain in effect pending adjudicatory hearing

Pursuant to § 16.1-252 G, 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.

### 8.3.8.5 Dispositional hearing

Pursuant to § 16.1-252 H of the Code of Virginia, 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.

### 8.3.8.6 Scheduling the dispositional hearing

Pursuant to § 16.1-252 H of the Code of Virginia, the dispositional hearing must be scheduled at the time of the preliminary removal order hearing and must be held within 60 days of the preliminary removal order hearing.

## 8.3.9 Person gaining legal custody of child

Pursuant to § 16.1-252 I of the Code of Virginia, this section means the presumption that it is in the best interest of the child to remain with their 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 re-determine where and with whom the child shall live.[4] 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.

4 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."

### 8.3.10 Violation of order constitutes contempt of court

The violation of any order issued pursuant to § 16.1-252 J of the Code of Virginia shall constitute contempt of court.

## 8.4 Preliminary protective order

### 8.4.1 Purpose of preliminary protective order

Pursuant to § 16.1-253 A, 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 their own home.

### 8.4.2 The court's authority

Pursuant to § 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.

#### 8.4.2.1 The court may order person to abstain from offensive conduct

Pursuant to § 16.1-253 A1 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 abstain from offensive conduct against the child, a family or household member of the child or any person whom custody of the child is awarded.

#### 8.4.2.2 The court may order services

Pursuant to § 16.1-253 A3 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 cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development.

#### 8.4.2.3 The court may order home visits

Pursuant to § 16.1-253 A3 of the Code of Virginia, the order may 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.

#### 8.4.2.4 The court may order visitation with the child

Pursuant to § 16.1-253 A4 of the Code of Virginia, the order may allow visitation with the child.

#### 8.4.2.5 The court may order person to refrain from certain acts

Pursuant to § 16.1-253 A5 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 refrain from acts of commission or omission which tend to endanger the child's life, health or normal development.

#### 8.4.2.6 The court may order person to have no contact with child or family

Pursuant to § 16.1-253 A6 of the Code of Virginia, 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.

### 8.4.3 Requesting a preliminary protective order

Pursuant to § 16.1-253 B, 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.

#### 8.4.3.1 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.

#### 8.4.3.2 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."[5] 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.

#### 8.4.3.3 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.

### 8.4.4 Notice of hearing shall be given

Pursuant to § 16.1-253 C of the Code of Virginia, notice of the hearing shall be given at least 24 hours in advance of the hearing.

### 8.4.5 Right to counsel

Pursuant to § 16.1-253 D, 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 their 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.

### 8.4.6 Right to present witnesses and cross-examination

Pursuant to § 16.1-253 E of the Code of Virginia, 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.

[5] Black's Law Dictionary 858 (9th ed. 2009).

### 8.4.7 If the preliminary protective order petition alleges abuse or neglect, then the court shall make finding of abuse or neglect

Pursuant to § 16.1-253 F of the Code of Virginia, 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.

#### 8.4.7.1 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.

#### 8.4.7.2 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.

#### 8.4.7.3 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.

#### 8.4.7.4 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.

#### 8.4.7.5 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.

### 8.4.8 Dispositional hearing

Pursuant to § 16.1-253 G of the Code of Virginia, 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 60 days of the date of the initial preliminary hearing.

#### 8.4.8.1 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.

### 8.4.9 Preliminary protective order cannot remove custody from parents or guardians

Pursuant to § 16.1-253 H of the Code of Virginia, 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.

### 8.4.10 Violation of preliminary protective order constitutes contempt of court

The violation of any order issued pursuant to § 16.1-253 J of the Code of Virginia shall constitute contempt of court.

## 8.5 Petition for child support

Pursuant to 22 VAC 40-705-100 C, 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.

## 8.6 Immunity from civil or criminal liability

Pursuant to 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.

# 9

# CONFIDENTIALITY

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# 9 CONFIDENTIALITY

## 9.1 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 (FOIA) provides for the release of information that is not protected by Federal law, Code of Virginia or Virginia Administrative Code (VAC) provisions for maintaining confidentiality.[1]

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 of social services (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.[2] The Virginia FOIA (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 FOIA and the Government Data Collection and Dissemination Practices Act apply to the VDSS and to the LDSS.

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 FOIA, the Government Data Collection and Dissemination Practices Act or VAC provision. Given the sensitive nature of a CPS investigation, the LDSS must ensure that the release of information does not violate any Federal law, Code of Virginia, or VAC provisions.

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[1] 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.

[2] Code of Virginia § 2.2-3800 B and C.

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.

## 9.2 Mandatory release of information

The Code of Virginia and 22 VAC 40-705-160 A mandate the release of information to specific parties under certain circumstances:

### 9.2.1 Report Information to Commonwealth's Attorney and law enforcement

Pursuant to 22 VAC 40-705-160 A1, 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.

#### 9.2.1.1 Complaints or reports that LDSS shall report to Commonwealth's Attorney and law enforcement

The LDSS shall contact the local attorney for the Commonwealth and law enforcement 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.

#### 9.2.1.2 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 including the name of the complainant and the records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

#### 9.2.1.3 Complaints or reports involving violent sexual offenders that LDSS shall report to Commonwealth's Attorney

Pursuant to § 63.2-1503 D, all complaints or reports involving a child being left alone in the same dwelling with a violent sexual offender who is not related to the child by blood or marriage must be reported to the local attorney for the Commonwealth immediately but not longer than two (2) hours of receipt of the complaint or report.

The LDSS shall provide records and information to the local attorney for the Commonwealth that would help determine whether a violation of post-release conditions, probation, parole, or court order has occurred due to the nonrelative sexual offender's contact with the child.

The LDSS must document the date and time of notification to the local attorney for the Commonwealth in the child welfare information system. This notification should be documented on the referral acceptance screen and in the referral as an Interview and Interaction (I and I). The LDSS may use the Notification to Law Enforcement form which has been updated to include complaints and reports involving violent sexual offenders. The form is located on the public VDSS website under forms.

### 9.2.2 Report information to regional medical examiner's office

Pursuant to 22 VAC 40-705-160 A2, 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 VAC restates that requirement.

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.

### 9.2.3 Court mandated disclosure

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 (CPS) 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.

### 9.2.4 Release of certain information to the complainant

Pursuant to 22 VAC 40-705-140 D, 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 VAC and this guidance manual, except as may otherwise apply under required or discretionary disclosure in this section.

### 9.2.5 Release of information to military Family Advocacy Program

Pursuant to § 63.2-1503 N, effective July 1, 2017, all reports involving a dependent child of an active duty military member or a member of their household shall be reported to the Military Family Advocacy Program. This includes invalid complaints or reports, founded and unfounded investigations and family assessments.

Family Advocacy Program representative is defined in 22 VAC 40-705-10 and 22 VAC 40-705-140 E also provides the LDSS with the authority to release information, when appropriate, to a representative of the Family Advocacy Program when it is in the best interest of the child.

### 9.2.6 Release information to Department of Child Support Enforcement

Pursuant to 22 VAC 40-705-160 A9, the CPS worker must, upon request by the Division of Child Support Enforcement, supply information pursuant to § 63.2-103 of the Code of Virginia.

### 9.2.7 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. 22 VAC 40-705-160 A5 addresses the CAPTA requirement.

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.

#### 9.2.7.1 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.

#### 9.2.7.2 The Child Abuse and Neglect Committee of the Family and Children's Trust Fund (FACT)

The Code of Virginia § 63.2-2100 establishes the Family and Children's Trust Fund (FACT) which was created as a public-private partnership to address family violence through improved prevention and treatment efforts and increased public awareness. FACT is overseen by a Board of Trustees who are appointed by the Governor and meets at least quarterly. FACT raises and distributes funds that support local community programs and statewide public awareness projects, and through its Child Abuse and Neglect Committee they advise 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.

### 9.2.8 Release information to Court Appointed Special Advocate

Pursuant to 22 VAC 40-705-160 A10, Code of Virginia § 9.1-151 establishes the CASA 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 their 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.

### 9.2.9 Release information to guardian ad litem

Pursuant to 22 VAC 40-705-160 A11, 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 their 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.

### *9.2.10* Release information to Office of Children's Ombudsman

The Office of the Children's Ombudsman was established in § 2.2-439 of the Code of Virginia to effect changes in policy, procedure, and legislation; educate the public; investigate and review actions of the Department, local departments, child-placing agencies, or child-caring institutions; and monitor and ensure compliance with relevant statutes, rules, and policies pertaining to child protective services and the placement, supervision, and treatment of, and improvement of delivery of care to, children in foster care and adoptive homes.

Pursuant to § 2.2-445 of the Code of Virginia, the Department or LDSS shall do the following:

- Upon the Ombudsman's request, grant the Ombudsman or the Ombudsman's designee access to all information, records, and documents in the possession of the Department or local department or child-placing agency that the Ombudsman considers relevant and necessary in an investigation.
- Assist the Ombudsman to obtain the necessary releases of those documents that are specifically restricted.
- Upon the Ombudsman's request, provide the Ombudsman with progress reports concerning the administrative processing of a complaint.
- Upon the Ombudsman's request, provide the Ombudsman the information requested under subdivision 1 or notification within 10 business days after the request that the Department or local department has determined that release of the information would violate federal or state law.

## 9.3 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 CPS 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.

### 9.3.1 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 VAC. 22 VAC 40-705-160 C 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.

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.

### 9.3.2 Identity of complainant and collaterals to remain confidential

Pursuant to 22 VAC 40-705-160 D and 22 VAC 40-705-160 B, federal and state regulations specify that the identity of persons reporting suspected incidents of child abuse or neglect should be protected. However, § 63.2-1503 D of the Code of Virginia provides that the LDSS 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 perpetrator, and information or records pertaining to the identity of the person who reported the complaint of abuse or neglect. Therefore, the identity of persons reporting suspected incidents of child abuse or neglect is not protected from disclosure in joint investigations involving the attorney for the Commonwealth and the local law enforcement agency.

The LDSS shall disclose the identity of persons reporting suspected incidents of child abuse or neglect to the attorney for the Commonwealth and the local law enforcement agency.

Other 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.

Section 63.2-1514 of the Code of Virginia 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.

## 9.4 Virginia Freedom of Information Act

The Code of Virginia § 2.2-3700 (Virginia FOIA) requires that official records held by public agencies are to be open to inspection. Any individual may exercise their Virginia FOIA 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 citizen of the Commonwealth during the regular office hours of the custodian of such records. This is a summary of these provisions. For additional information on FOIA, see the VDSS public website.

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.

### 9.4.1 LDSS shall make an initial response to the individual within five days

When a request for the release of information under the Virginia FOIA 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.

### 9.4.2 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 FOIA to invoke the provisions of Code of Virginia § 2.2-3700 et seq. and the time limits for response by the LDSS.

### 9.4.3 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 (3) preceding responses.

### 9.4.4 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.

### 9.4.5 LDSS may charge a fee

The LDSS may make reasonable charges for the copying, search time, and computer time expended in providing the requested information.

### 9.4.6 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.

### 9.4.7 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.

### 9.4.8 Exceptions to release of information

The Code of Virginia § 2.2-3700 et seq. provides exceptions from the provisions of the Virginia FOIA, 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 FOIA specific to social services, see Code of Virginia § 2.2-3705.5.

Pursuant to 22VAC40-705-160 D, in all complaints or reports that are being investigated jointly with law enforcement, no information shall be released by the LDSS unless authorized by the law enforcement officer, their supervisor or the local Commonwealth Attorney.

In all instances of exceptions to release of information, LDSS are strongly encouraged to seek legal advice and counsel prior to responding to the request.

## 9.5 Government Data Collection and Dissemination Practices

### 9.5.1 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.

### 9.5.2 The rights of the data subjects

Upon request and proper identification of any data subject, or of their 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.

### 9.5.3 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 they *appear* in person and furnishes proper identification, or (ii) by mail, if they *have* made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to their representative at reasonable standard charges for document search and duplication.

### 9.5.4 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 their 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.

### 9.5.5 Exception to 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.

## 9.6 Release information to the alleged abuser or neglector

### 9.6.1 Alleged abuser or neglector is entitled to information about themselves

Pursuant to 22 VAC 40-705-160 A3, the alleged abuser or neglector maintains the right to access information about himself, including the right to examine a copy of the child welfare information system form subject to the restrictions in this guidance manual. The VAC states:

### 9.6.2 Alleged abuser or neglector may review medical and psychological information about themselves

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.

### 9.6.3 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 CPS record pursuant to the Government Data Collection and Dissemination Practices Act.

### 9.6.4 Reasonable time to edit record for release

When the alleged abuser or neglector requests information, the VAC provides the LDSS reasonable time to redact or edit the information needing to be protected.

Pursuant to 22 VAC 40-705-160 A4, the LDSS must ensure that the alleged abuser or neglector is only provided access to that portion of the record concerning them with safeguards taken to assure the privacy rights of the other persons mentioned in the case record including protecting the name of the complainant.

### 9.6.5 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 their personal information in the case record, the LDSS must respond to this request with reasonable promptness. However, the Virginia FOIA and the Government Data Collection and Dissemination Practices Act contain exceptions. Not all information can be released to the individual making the request.

### 9.6.6 Alleged abuser or neglector may designate representative

The right to access information may be exercised directly by the individual or by any representative of their choice designated by them in writing.

### 9.6.7 Criminal investigation/prosecution suspends access to records

Code of Virginia § 2.2-3802 7 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 VAC reflects the statutory intent:

Pursuant to 22 VAC 40-705-160 A7, 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.

Pursuant to § 63.2-1516.1 B of the Code of Virginia, in all complaints or reports that are being investigated jointly with law enforcement, no information shall be released by the LDSS unless authorized by the law enforcement officer, their supervisor or the local Commonwealth Attorney.

### 9.6.8 Release of information 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 VAC.

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 their life or safety.
- The identity of any other person, when disclosure may endanger their 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.

### 9.6.8.1 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.

### 9.6.8.2 Appellant's access to CPS record is stayed during criminal proceeding or investigation

The 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. The Code of Virginia § 63.2-1526 C also stays (i.e., suspends) the appellant's right to access the LDSS record during the administrative appeal process whenever a criminal investigation is filed or commenced against the appellant for the same conduct involving the same victim as investigated by the local department until the criminal investigation is closed or 180 days have passed since the appellant's request for an appeal, whichever occurs first.

## 9.7 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 VAC, 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.

### 9.7.1 Authority to release information when disclosure is not mandated

The VAC summarizes the authority to release information to persons when that release is not mandated in 22 VAC 40-705-160 B.

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.

### 9.7.2 Definition of legitimate interest

The definition section of 22 VAC 40-705-10 defines legitimate interest.

### 9.7.3 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 CPS 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 their 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.

- Pursuant to Code of Virginia § 63.2-104, the staff of (i) a court services unit, (ii) the Department of Juvenile Justice, (iii) a local community services board, or (iv) the Department of Behavioral Health and Developmental Services who are providing treatment, services, or care for a child who is the subject of such records for a purpose relevant to the provision of the treatment, services, or care when the local agencies have entered into a formal agreement with the Department of Juvenile Justice to provide coordinated services to such children.

The identification of a party as having a legitimate interest must be consistent with Code of Virginia § 63.2-105 A.

## 9.8 Release child's location

Pursuant to §§ 63.2-1505 and 63.2-1506 of the Code of Virginia, LDSS, upon request, must disclose to the child's parent or guardian the location of the child, provided that:

- The investigation or family assessment has not been completed;
- The parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect;
- The parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department any records or other information necessary to verify such custody;
- The local department is not aware of any court order, and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued, that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and
- Disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

# 10

# SUBSTANCE-EXPOSED INFANTS

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# 10

# SUBSTANCE-EXPOSED INFANTS

## 10.1 Introduction

The Code of Virginia § 63.2-1509 B requires the local department of social services (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 (SEI) and the validity decision.
- CPS family assessments and investigations.
- Services to the families of SEI.
- Possible court actions.

In utero substance exposure can cause or contribute to premature birth, low birth weight, increased risk of infant mortality, neurobehavioral and developmental complications. Post-natal environmental factors associated with *parental* substance use such as poverty, neglect and unstable or stressful home environments present additional risks for these children.

Interventions to reduce adverse outcomes and promote healthy home environments are critical to the well-being of SEI and their families.

Additional information on SEI and *parental* substance use can be found by accessing:

- CWSE5501: *Substance use*. This on-line course has four (4) modules and is available in the Virginia Learning Center (VLC).

- National Center on *Substance use* and Child Welfare, including an online tutorial, "Understanding Substance Use Disorders, Treatment, and Family Recovery: A Guide for Child Welfare Professionals."

- Children and Family Futures. This agency provides a library of various recorded webinars conducted in 2015 regarding SEI and child welfare.

- *Substance use* and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation.

- Virginia Department of Behavioral Health and Developmental Services (DBHDS) provides resources for pregnant women and parents and their families.

- CWSE6010: Working with Families of Substance Exposed Infants. This on-line course has two (2) modules and is available in the Virginia Learning Center (VLC).

## 10.2 SEI Definitions

The following definitions pertain to substance use disorders and SEI referrals:

| Term | Definition |
|---|---|
| **Assessment-(Substance Use)** | Assessment refers to an in-depth look at an individual's past and current substance use and the impact of that use on the overall functioning of that individual. Assessment is a process for defining the nature of that problem, determining a diagnosis, and developing specific treatment recommendations for addressing the problem or diagnosis. |
| **Dual diagnosis** | Dual diagnosis refers to co-occurring Mental Health and Substance Use disorders (alcohol and/or drug dependence or abuse). |
| **Fetal Alcohol Spectrum Disorder (FASD)** | Fetal alcohol spectrum disorders (FASD) is an umbrella term describing the range of effects that can occur in an individual whose parent drank alcohol during pregnancy. These effects may include physical, mental, behavioral, or learning disabilities with possible lifelong implications. |
| **Medication-Assisted Treatment (MAT)** | Medication-Assisted Treatment, which includes some Opioid Treatment Programs (OTP), combines behavioral therapy and medications to treat substance use disorders. |

**Neonatal Abstinence Syndrome (NAS)**

Neonatal abstinence syndrome (NAS) is a group of problems that occur in a newborn as a result of sudden discontinuation of addictive opioids, licit or illicit, to which the newborn was exposed while in the parent's womb.

**Opioid Treatment Program (OTP)**

An Opioid Treatment Program (OTP) provides medication assisted treatment for the treatment of opioid addiction. OTPs may also provide comprehensive, individually tailored programs that can include:

- Medication therapy
- Psychosocial and medical treatment
- Support services that address factors affecting the client.

**Screening**

A screening is a brief preliminary interview with an individual intended to determine if that individual may be at risk to have problems in a certain area such as substance use. Screening does not identify substance use or dependency nor does it provide a substance use disorder diagnosis. It is a quick way to determine if someone needs to be referred for further assessment. Screening refers to the use of tools and procedures designed to determine the risk or probability that an individual has a given condition or disorder. Screening may be a combination of observation, open-ended questions, and/or the use of a standardized set

of questions.

| | |
|---|---|
| **Screening tools** | Screening tools have been developed to help identify individuals at risk for various disorders or problems such as substance use disorders or domestic violence. |
| ***Substance use* counseling or treatment services** | These are professional services provided to individuals for the prevention, diagnosis, or treatment of chemical dependency. *Substance use* counseling or treatment should include education about the impact of alcohol and other drugs on the fetus and on the *parental* 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 use* counseling or treatment services must be provided by a professional (e.g., a "certified *substance use* counselor" or a "licensed *substance use* treatment practitioner"). |

## 10.3 Background of SEI

### 10.3.1 Federal law

- The Child Abuse and Prevention Treatment Act (CAPTA) of 1974 was created to provide federal funding to support prevention, assessment, investigation, prosecution and treatment activities related to child abuse and neglect.
- The Keeping Children and Families Safe Act of 2003 created new conditions for states to receive grant allocations under CAPTA. The grant conditions were intended to provide needed services and support for infants, their mothers, and their families, and to ensure a comprehensive response to the effects of prenatal drug exposure.
- The CAPTA Reauthorization Act of 2010 made further changes related to prenatal exposure issues to include identification of infants affected by Fetal Alcohol Spectrum Disorder (FASD) and a requirement for the development of Plans of Safe Care for infants affected by FASD.

- The Comprehensive Addiction and Recovery Act (CARA) of 2016 went into effect July 22, 2016, including Title V, Section 503, "Infant Plan of Safe Care." The legislation (PL 114-198) made several changes to CAPTA and SEI:
    - Removed the term "illegal" in regards to *substance use*
    - Requires that Plans of Safe Care address the needs of both the infant and the affected family or caregiver
    - Specifies that data on affected infants and Plans of Safe Care be reported by states to the maximum extent practicable. Such data includes:
        - The number of infants identified as being affected by *substance use*, withdrawal symptoms resulting from prenatal drug exposure, or FASD.
        - The number of infants for whom a plan of safe care was developed.
        - The number of infants for whom referrals were made for appropriate services—including services for the affected family or caregiver.
- Requires that states develop and implement monitoring systems regarding the implementation of such plans to determine whether and in what manner local entities are providing, in accordance with state requirements, referrals to and delivery of appropriate services for the infant and affected family or caregiver.

### 10.3.2 Virginia law

Virginia laws have been implemented and revised in accordance with the changes made to CAPTA. In the 2017 Session of the General Assembly, a bill was passed amending §§ 63.2-1505, 63.2-1506, and 63.2-1509 relating to CPS investigations, family assessments, and Virginia's mandated child abuse and neglect reporting requirements to comply with CARA. The changes to the Code of Virginia became effective July 1, 2017.

Amendments made to the relevant sections of the Code of Virginia to comply with CARA include:

- Section 63.2-1505 of the Code of Virginia, Subsection B(2) was amended to (1) eliminate language referencing an obsolete procedure, and (2) move language addressing substance-exposed infants out of this section that

pertains to CPS investigations and into §§ 63.2-1506 and 63.2-1509 of the Code of Virginia pertaining to family assessments and mandated reporting, respectively.

- Section 63.2-1506 of the Code of Virginia was amended to add Subsection A(4), which requires LDSS to gather information as to "[w]hether the mother of a child who was exposed in utero to a controlled substance sought *substance use* counseling or treatment prior to the child's birth" when conducting family assessments.

- Section 63.2-1506 of the Code of Virginia was further amended to add the following to Subsection C: "If a report or complaint is based upon one of the factors specified in subsection B of § 63.2-1509, the local department shall (a) conduct a family assessment, unless an investigation is required pursuant to this subsection or other provision of law or is necessary to protect the safety of the child, and (b) develop a plan of safe care in accordance with federal law, regardless of whether the local department makes a finding of abuse or neglect."

- Section 63.2-1509 of the Code of Virginia, Subsection B, was amended to read: a "'reason to suspect that child is abused or neglected shall include (i) a finding made by a health care provider within six weeks of the birth of a child that the child was born affected by *substance use* or experiencing withdrawal symptoms resulting from in utero drug exposure; (ii) a diagnosis made by a health care provider 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 *parental* abuse of a controlled substance during pregnancy; or (iii) a diagnosis made by a health care provider 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."

## 10.4 Mandated reporting of SEI

The Code of Virginia and the Virginia Administrative Code (VAC) provide for the mandated reporting of SEI. Effective July 1, 2017, § 63.2-1509 B of the Code of Virginia was significantly revised and supersedes the VAC, 22VAC40-705-40 A5.

### 10.4.1 Health care providers required to report SEI

The Code of Virginia specifically delineates three (3) circumstances which constitute a reason to suspect that a newborn infant is abused or neglected due to the special medical needs of infants affected by substance exposure and therefore requires a report to CPS by health care providers. Such reports shall not constitute a per se finding of child abuse or neglect.

As a result of federal legislation, i.e., CARA (2016), SEI now includes both legal and illegal controlled substance exposure.

#### 10.4.1.1 First circumstance

Pursuant to § 63.2-1509 B of the Code of Virginia, the first circumstance is a finding is made by a health care provider within six (6) weeks of birth that the child is born affected by *substance use* or is experiencing withdrawal symptoms resulting from in utero drug exposure.

##### 10.4.1.1.1 Affected by substance use

Affected by *substance use* may be evidenced by impaired growth, pre-term labor or subtle neurodevelopmental signs that are more difficult to define in the newborn and infancy stages. An alcohol or other drug affected infant is one in which there is detectable physical, developmental, cognitive or emotional delay or actual harm that is associated with *parental* substance use.

A positive toxicology for substances in the infant may or may not indicate that the child was born affected by *substance use*. If it is known that the drug was prescribed to the parent and is being used appropriately, the referral could be screened out. Conversely, if the parent has a positive toxicology at the time of the infant's birth or has had a medical or behavioral health assessment that is indicative of an active substance use disorder and they are demonstrating behaviors that may impact their capacity to provide proper care for the infant, or if there is a history of prior referrals involving *substance use*, the referral should be screened in.

In instances when a health care provider reports a positive toxicology result for a newborn child to a LDSS, but there is no other evidence or finding by the health care provider that the child was born affected by substance use or

is experiencing withdrawal symptoms, the LDSS should make further inquiry into the circumstances of the report to determine whether the report should be screened in in accordance with §§ 63.2-1509(B) and § 63.2-1503(I) of the Code of Virginia. Further inquiry should include asking the health care provider for all related information, records, and reports that form the basis of their suspicion that the infant is an abused or neglected child in accordance with § 63.2-1509(B).

The LDSS may not have a blanket policy which reflects that a positive toxicology report, standing alone, is or is not a valid referral. The LDSS must exercise its professional discretion and judgment in light of the information gathered from the health care provider to determine whether such report is valid.

The LDSS must gather enough information from the health care provider making the report to indicate that a finding has been made that the newborn child was born affected by *substance use* as described in Section 10.4.1.1. Once the LDSS has determined that the health care provider has made such a finding, the report should be screened in as a family assessment (or investigation when required) and a Plan of Safe Care developed. The LDSS must document that the report was based on § 63.2-1509 (B) of the Code of Virginia along with the facts relied upon by the health care provider who made the report.

#### 10.4.1.1.2 Withdrawal symptoms resulting from in utero drug exposure

This first circumstance also includes when a child has withdrawal symptoms due to dependency to a drug while in utero. This includes dependency on controlled substances prescribed for the parent by a physician or an opioid treatment program (OTP).

In utero exposure to certain drugs can cause neonatal withdrawal after birth when the drug is abruptly stopped because the infant, like the parent, has developed physical dependence on the drug. Clinically relevant neonatal withdrawal most commonly results from in utero opioid exposure but has also been described in infants exposed to benzodiazepines, barbiturates, and alcohol. Neonatal Abstinence Syndrome (NAS) is a group of problems that occur in a newborn as a result of sudden discontinuation of addictive opioids, licit or illicit, to which the newborn was exposed while in the parent's womb. Because NAS is treatable, treatment providers typically recommend medication-assisted treatment (MAT) over abstinence for pregnant, opioid-addicted people.

#### 10.4.1.2 Second circumstance

Pursuant to § 63.2-1509 B of the Code of Virginia, the second circumstance is within four (4) years of a child's birth, a health care provider can diagnose 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.

#### 10.4.1.3 Third circumstance

Pursuant to § 63.2-1509 B of the Code of Virginia, the third circumstance is within four (4) years following a child's birth, a health care provider can make the diagnosis that the child has a fetal alcohol spectrum disorder (FASD) attributable to in utero exposure to alcohol.

### 10.4.2 Health care provider responsibilities

#### 10.4.2.1 Report to CPS

Pursuant to 22 VAC 40-705-40 A6, whenever a health care provider makes a finding or diagnosis of one (1) of the three (3) 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 situation.

When reporting SEI, health care providers are required to release, upon request, medical records that document the basis of the report. Disclosure of child abuse or neglect information is also permitted by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and federal Confidentiality of Alcohol and Drug Abuse Patient Information Regulations. (CFR 42 Part 2)

#### 10.4.2.2 Report to the Community Services Board

The Code of Virginia §§ 32.1-127 B6 and 63.2-1509 B require that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum parents and their infants. The discharge plan should be discussed with the patient and appropriate referrals made and documented. The discharge planning process shall involve, to the extent possible, the parent of the infant and any members of the parent's extended family who may participate in the follow-up care for the parent and the infant. Hospitals are required to notify the Community Services Board (CSB) of the jurisdiction in which the woman resides to appoint a discharge plan manager for any identified substance-abusing postpartum woman. The CSB shall implement and manage the discharge plan.

#### 10.4.2.2.1 Hospital discharge plan

Post-partum parents with substance use disorders and their newborns may have multiple health care, treatment, safety and environmental needs. Their hospital discharge plans should include, but are not limited to:

- A referral of the parent to the local CSB for a substance use assessment and implementation of the discharge plan.
- Information and medical directives regarding potential postpartum complications and, as appropriate, indicators of substance use withdrawal and post-partum depression.
- A follow-up appointment for pediatric care for the infant within two-four weeks.
- A referral to early intervention Part C services for a developmental assessment and early intervention services for the infant.
- A follow-up appointment for the parent for postpartum gynecological care and family planning.

The CPS worker should obtain a copy of the hospital discharge plan and document the details in the child welfare information system.

## 10.5 Plans of Safe Care

Section 106(b)(2)(B)(iii) of the Child Abuse Prevention and Treatment Act (CAPTA) requires “the development of a plan of safe care for the infant born and identified as being affected by *substance use* or withdrawal symptoms or Fetal Alcohol Spectrum Disorder”. The Plan of Safe Care should address the needs of the child as well as those of the parent, as appropriate, and assure that appropriate services are provided to ensure the infant’s safety.

### 10.5.1 Who creates a Plan of Safe Care?

A Plan of Safe Care should begin when the parent is pregnant and be initiated by their health care providers. Once the LDSS becomes involved in a SEI referral, the LDSS becomes a part of this Plan of Safe Care. The LDSS is one of many agencies that can provide a Plan of Safe Care for the SEI and the parent.

The following chart identifies three general populations of pregnant and post-partum parents and who would typically create or take the lead in monitoring a Plan of Safe Care.

| Populations of pregnant and post-partum parents | Potential lead agency/provider for the Plan of Safe Care | |
|---|---|---|
| | **Voluntary Participation During Prenatal Period** | **Identified at Birth and Infant is Determined to be Affected** |
| 1. Using legal or illegal drugs, on an opioid medication for chronic pain or on a medication that can result in dependency/withdrawal and **does not have a substance use disorder.** | Prenatal care provider in concert with pain specialist or other physician | *Parental* and Child Health service providers (e.g. home visiting provider, Healthy Families); LDSS or community prevention services provider |
| 2. Receiving medication assisted treatment for an opioid use disorder (e.g. Methadone)or is **actively engaged in treatment for a substance use disorder.** | Prenatal care provider in concert with OTP or other therapeutic substance use disorder treatment provider/CSB. | OTP or other therapeutic substance use disorder treatment provider/CSB. |
| 3. Misusing prescription drugs, or is using legal or illegal drugs, **meets criteria for a substance use disorder, not actively engaged in a treatment program.** | Prenatal care provider or high-risk pregnancy clinic in concert with substance use disorder treatment agency/CSB | Child Welfare |

### 10.5.2 What is included in a Plan of Safe Care?

A Plan of Safe Care should incorporate the parent's (and potentially the other primary caregivers) need for treatment for substance use and mental disorders, appropriate care for the infant who may be experiencing neurodevelopmental or physical effects or withdrawal symptoms from prenatal substance exposure and services and supports that strengthen the parents' capacity to nurture and care for the infant and to ensure the infant's continued safety and well-being. The plan should also ensure a process for continued monitoring of the family and accountability of responsible agencies such as substance use disorder treatment, home visiting, and public health and health care providers for the infant and parent.

## 10.6 CPS response to SEI referrals

A report with facts indicating the presence of one of the three (3) circumstances outlined in the Code of Virginia § 63.2-1509 B prior to birth are sufficient, in and of themselves, to suspect that the child is abused or neglected and therefore constitutes a valid report requiring a CPS response. Although, the validity of such reports does not constitute a per se finding of child abuse or neglect.

Substance use, either during pregnancy or after the birth of an infant, does not in or of itself constitute a preponderance of evidence needed to substantiate abuse or neglect. Although caretakers may be able to care for the child, the use or abuse of drugs by caretakers increases the concern for the child's immediate safety and for future risk of harm to the child. When identified, a careful evaluation needs to be made of the impact that the substance use has on the caretaker's capacity to care for the child and the ability to ensure the child's safety and well-being. Such an evaluation will determine whether the child is at substantial risk of harm.

### 10.6.1 Track decision

Once a report has been made and determined to be valid, the LDSS must determine the response time and track. Effective July 1, 2017, § 63.2-1506 of the Code of Virginia requires all valid referrals involving SEI to be placed in the family assessment track unless an investigation is required by law or is necessary to protect the safety of the child. Because exposure to controlled substances prior to birth is not sufficient evidence for a founded disposition of abuse or neglect in an investigation, a family assessment that assesses safety, risk and service needs of the child and family and does not determine if abuse or neglect has occurred, is usually a more appropriate response.

#### 10.6.1.1 Investigation requirements

According to § 63.2-1506 C of the Code of Virginia, an investigation is required in the following circumstances:

- 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);

- A child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor for which registration is required as a *Tier III* sexual offender pursuant to § 9.1-902;
- Child taken into agency custody due to abuse or neglect pursuant to § 63.2-1517 ;
- Child taken into protective custody by physician or law enforcement, pursuant to § 63.2-1517; or
- All allegations regarding a caretaker in an out of family setting as defined in § 63.2-1506 C.

A valid SEI allegation must be responded to through a family assessment. However, if the child is removed, the track must be changed to an investigation *and the additional allegation must be added to the child welfare information system*. Further, the LDSS must document "substance-exposed infant" as at least one of the reasons for removal.

#### 10.6.1.2 Purpose of CPS intervention

The purpose of CPS intervention in response to reports of SEI is to assess both safety and risk factors associated with the newborn child and their family/caretaker(s). This should occur after a health care provider has identified the child as being affected by the abuse of legal or illegal substances by the child's parent. The importance of a CPS response, whether by a family assessment or an investigation, is to mitigate the safety factors and the risk of harm associated with *parental substance use* when caretakers have the responsibility to actively care for this extraordinarily vulnerable population of children.

### 10.6.2 Initial safety assessment

Pursuant to 22 VAC 40-705-40 A 6 b, the LDSS must complete an initial safety assessment of the SEI and family. Most reports involving a SEI will require a safety plan due to the infants' vulnerability. A safety plan is not the same as a Plan of Safe Care discussed in Section 10.4, but is considered one critical component of the Plan of Safe Care. A safety plan addresses immediate safety concerns and needs, while the Plan of Safe Care addresses both short and long term needs.

When assessing safety factors, it is critical to review the definitions for each safety

factor. There are several safety factors that involve substance use and a SEI. The following safety factors will likely pertain to a SEI referral:

- Safety factor 3. There is evidence that the parent used alcohol or other drugs during pregnancy, AND current circumstances suggest the infant's safety is of immediate concern.

- Safety factor 5. Caretaker does not provide supervision necessary to protect child from potentially serious harm. Caretaker's substance or alcohol use is having a serious impact on ability to provide adequate supervision to the child.

#### 10.6.2.1 Substance use screening

An essential part of the initial safety assessment is to complete a brief substance use screening to determine if a *substance use* assessment is needed and if so, what services would best meet the needs of the parent. A substance use screening should include questions concerning:

- Frequency and amount of alcohol consumption prior to and during pregnancy;

- Frequency and amounts of over-the-counter prescriptions and legal/illegal substances prior to and during pregnancy;

- Effects of substance use on life areas such as relationships, employment, legal, etc.;

- Other parent or partner substance use;

- Previous referrals for *substance use* evaluation or treatment; and

- Previous substance use treatment or efforts to seek treatment.

Additional information regarding screening of pregnant and postpartum parents can be found on the DBHDS website.

Initial contacts in SEI cases should include not only the parent and any other parent but also the family's support system. Collateral contacts can confirm or refute information provided by the parent.

### 10.6.3 Information to gather when responding to SEI referrals

In addition to conditions in the infant, conditions or behaviors in the parent that may

indicate that risk of harm should be assessed. These include, but are not limited to:

- special medical and/or physical complications in the infant;
- close medical monitoring and/or special equipment or medications needed by the infant;
- no prenatal care or inconsistent prenatal care;
- previous delivery of a SEI;
- prior CPS history;
- prior removal of other children by the courts or voluntary placement with relatives;
- no preparations for the care of the infant;
- intellectual limitations that may impair the parent's ability to nurture or physically care for the child;
- psychiatric illness;
- home environment that presents safety or health hazards;
- evidence of financial instability that affects the parent's ability to nurture or physically care for the infant;
- limited or no family support;
- young age of parent(s), coupled with immaturity;
- parenting skills demonstrated in the health care setting that suggest a lack of responsiveness to the SEI's needs (i.e., little or no response to infant's crying, poor eye contact, resistance to or difficulties in providing care); and
- domestic violence.

If the SEI allegation is invalid, the LDSS should evaluate all of the information received in order to assess the report for physical neglect associated with a threat to the infant's health or safety due to *substance use* by their parent(s) and/or other caretaker(s).

### 10.6.4 No exception to completing the investigation or family assessment

Note that under prior Virginia law, before July, 2017, if the LDSS received a report

involving a SEI, but determined that the parent sought and engaged in *substance use* counseling or treatment during pregnancy, the LDSS was not compelled to validate the report. This exception was removed with the changes made to changes to §§ 63.2-1505, 1506, and 1509 of the Code of Virginia in the 2017 General Assembly.

Effective July 1, 2017, once a report of a SEI has been validated, the LDSS shall determine whether the parent sought *substance use* counseling or treatment prior to the child's birth. This information must be documented in the child welfare information system.

### 10.6.5 Complete the family assessment or investigation

Pursuant to 22 VAC 40-705-40 A 6 h, family assessments or investigations involving a SEI shall be conducted in accordance with Section 4, Assessments and Investigations of this guidance manual.

#### 10.6.5.1 Collateral contacts in SEI referrals

Due to the vulnerability of the SEI, collateral involvement to determine risk and possible services is crucial, and may include contacts with the immediate and/or extended family, birthing hospital, pediatrician, and substance use disorder evaluation and treatment providers. When appropriate, the LDSS should coordinate services with the CSB.

Contact with the health care provider(s) should include gathering information:

- to identify how the infant was affected by in utero substance exposure, which may include results of laboratory tests or toxicology studies done on the infant;
- to identify any needed medical treatment for the child or parent;
- to assess the parent's attitude and behavior with the infant;
- to determine the expected discharge dates of the parent and infant; and
- to determine whether there are other children in the home at risk.

Contact with the substance use disorder treatment provider or OTP can provide information on the parent's:

- Plan of Safe Care that was developed while they *were* pregnant;
- attempts to access treatment;

- compliance with recommendations;
- toxicology results, if applicable;
- assessment results, if applicable; and
- medication assisted treatment dosage and compliance.

#### 10.6.5.2 Dispositions in SEI investigations

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 another type of abuse or neglect to support a founded disposition.

#### 10.6.5.3 Assessing risk in SEI referrals

The Family Risk Assessment tool is used to assess future likelihood of child maltreatment in all referrals, including a SEI.

When assessing risk, it is critical to review the definitions for each factor. There are several risk factor definitions that specifically address the SEI and their caretakers. The following risk factors will likely pertain to a SEI referral:

- N1: Current complaint is for physical or medical neglect. (Score 2 if the current allegation is for a substance-exposed infant.)
- N9: Primary caretaker has/had a drug or alcohol problem. (Score 2 if the child was diagnosed with fetal alcohol syndrome or exposure or child had a positive toxicology screen at birth and the primary caretaker was the birthing parent.)
- N11: Characteristics of children in household. (Score 1 if a child has a positive toxicology report for alcohol or another drug at birth.)

Assessed risk will be:

- **Low**. The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is needed.
- **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 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.

Overrides, either by policy or discretionary, may increase risk one level and require supervisor approval. The initial CPS risk level may never be decreased.

#### 10.6.5.4 Risk level guides decision to open a case

Important reminder: when risk is clearly defined and objectively quantified, resources are targeted to higher-risk families because of the greater potential to reduce subsequent maltreatment. The risk level helps inform the decision whether or not to open a case as follows:

| | |
|---|---|
| Low Risk: | Close |
| Moderate Risk: | Open or Close |
| **High Risk:** | **Open** |
| **Very High Risk:** | **Open** |

The CPS worker and CPS supervisor should assess the decision to open a case for services and document in the child welfare information system when the decision is to not open a case.

### 10.6.6 Referral to early intervention programs for children

Regardless if a CPS *in-home* case is opened for services, the LDSS shall refer any child under the age of three (3) for early prevention services to the local Infant and Toddler Connection of Virginia who:

- Is identified as affected by illegal *substance use* or withdrawal symptoms resulting from prenatal drug exposure;

- Is the subject of an investigation with a founded disposition; or

- Has a physical or mental condition that has a high probability of resulting in developmental delay, regardless of track or disposition.

All localities are served by an Infant & Toddler Connection of Virginia program. This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).

LDSS are encouraged to meet with the local Infant and Toddler program to learn about any referral issues that should be explained to the parent. LDSS are also encouraged to develop procedures with the Infant & Toddler Connection of Virginia program to make referrals of certain children under age three (3). Recommended elements of these procedures should include:

- As soon as possible but no later than **seven (7) calendar days** of completing the investigation or family assessment the LDSS should send a referral to the local Part C Early Intervention program using the local referral form.

The LDSS should:

- Send a referral as soon as possible when a child has been identified as exposed prenatally to an illegal substance or has withdrawal symptoms at birth.
- Send a copy of the referral to the family. The parent should also be informed verbally of the referral and have an opportunity to discuss the referral process.
- Request the family to sign a release form allowing the exchange of information between the Infant-Toddler Connection Program and the LDSS regarding the referral.
- Document the notification and referral in the state child welfare information system.

More information on the Infant & Toddler programs in Virginia can be found on the Infant & Toddler Connection of Virginia website and on the VDSS internal website in the Memorandum of Agreement dated May 2013 issued by the Commissioners of the Department of Social Services and Department of Behavioral Health and Developmental Services and other agencies involved with implementation of Part C of the Individuals with Disabilities Education Act (IDEA).

## 10.7 *In-Home Services* to families with SEI

Services for parents with substance use disorders and their families may be different than services for other populations. A thorough assessment done by a certified *substance use* counselor will typically be the first step in providing services for SEI referrals. Assessment refers to an in-depth look at an individual's past and current substance use and the impact of that use on the overall functioning of that individual. Assessment is a process for defining the nature of that problem, determining a diagnosis, and developing specific treatment recommendations for addressing the problem or diagnosis.

### 10.7.1 *Substance use* services considerations

Special consideration should be given to the following:

- Is outpatient treatment needed and available?
- Is in-patient treatment required and available?
- Is detoxification required?
- Does the individual need a program for dual diagnosed patients?
- Does the individual need assistance in negotiating leave with an employer?
- Does the individual require a program that specializes in a particular addiction?
- Are family members willing to participate in treatment or education?
- Is peer support available through Alcoholics Anonymous (AA), Narcotics Anonymous (NA) or a psychotherapy group?
- Does the treatment facility address the special needs of parents and their children?

### 10.7.2 Other services

In addition to *substance use* services, other services may include but are not limited to:

- Child care.
- Relapse prevention.
- Parenting education.
- Job skills training/employment.
- Mental health assistance.
- Safe housing.
- Support systems.

Home visiting services match parents and caregivers with trained paraprofessionals who can provide information and support during pregnancy and throughout the child's earliest years. Home visiting programs support healthy prenatal behaviors and parenting attitudes, engage infants in meaningful learning activities build positive parent-child relationships and promote family self-sufficiency. Project Link is one home visiting program offered in Virginia and is specifically for pregnant and parenting substance-using parents. For additional information about Project Link and other home visiting programs, such as Healthy Families, go to the Early Impact Virginia website.

## 10.8 Petition the court on behalf of a SEI

When conducting a SEI investigation, § 16.1-241.3 of the Code of Virginia permits the LDSS to petition the Juvenile and Domestic Relations District Court solely because an infant was exposed to a legal or illegal substance in utero.

### 10.8.1 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 8, Judicial Proceedings, of this guidance manual.

The LDSS may petition a juvenile and domestic relation district court for any necessary services or court orders needed to ensure the safety and health of the infant.

#### 10.8.1.1 Petition must allege SEI

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.

### 10.8.2 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 parent pending completion of the investigation or family assessment or compel

the parent to seek treatment or other needed services. Code of Virginia § 16.1-241.3 enhances the court's ability to act quickly in a potential crisis situation. In addition, the court will have the ability to use its authority to ensure that the parent of the child seeks treatment or counseling.

### 10.8.3 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.