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PART I: PURPOSE

A. POLICY

The responsibility for providing protective services to children is placed with the Department of Social Services by Chapter 15 of the Code of Virginia and the State Board of Social Services. The definition section of 22 VAC 40-705-10 defines the Department and the local department.

> **"Department" means the Department of Social Services.**
>
> **"Local department" means the city or county local agency of social services in the Commonwealth of Virginia responsible for conducting investigations of child abuse and/or neglect complaints or reports pursuant to § 63.2 -1503 of the Code of Virginia.**

The Virginia Administrative Code (22 VAC 40-705-10) provides a definition of Child Protective Services:

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

The Virginia Administrative Code (22 VAC 40-705-10) also provides a definition for a child protective services worker:

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

The general policy pertaining to the investigation of child abuse or neglect complaints can be found in the Virginia Administrative Code section 22 VAC 40-705-20:

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

> **It is the policy of the Commonwealth of Virginia to require complaints and/or reports of child abuse and neglect for the following purposes:**
> **1. Identifying abused and neglected children;**
> **2. Assuring protective services to such identified children;**

3. Preventing further abuse and neglect;
4. Preserving the family life of the parents and children, where possible, by enhancing parental capacity for adequate care.

Protective services is a specialized continuum of casework services to abused, neglected or exploited children. The focus of the services is identification, assessment and service provision in an effort to protect children, preserve families, whenever possible, and prevent further maltreatment. Child protective services is non-punitive in its approach and is directed toward enabling families to provide adequate care and nurture for their children.

In order to accomplish the complex task of helping families protect their children, the provision of child protective services must have as a foundation the following basic assumptions:

Child protective services is a process which 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;

The purpose of child protective services intervention is protecting children, helping families identify behaviors that harm or threaten to harm their children, and providing services directed toward changing those behaviors while enhancing their ability to protect their children;

Child protective services intervention needs to be therapeutic and each contact should support the family; and,

People can and do change, within the limitations of the individual, his or her environment, time and a worker's skills and perception.

Child protective services is unique in its emphasis on reaching out to children and their families. These families are often not voluntary recipients of services and thus protective services has been given certain authorities by the community to enable the provision of critical services. Protective services is available to all children and their families on a 24-hour a day immediate response basis.

Protective services also includes services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists. The services are of a preventive nature and for the purpose of keeping the family together, thereby precluding the need for removal of the child.
At the time a child is placed in foster care, the Code of Virginia requires a judicial determination as to whether reasonable efforts were made to prevent the need for

removal, and whether reasonable efforts are being (or will be) made to reunite the child with his or her family. It is the responsibility of the local department to ensure that in protective and family services cases reasonable efforts are made to maintain family integrity and to prevent the need for removal of the child.

All children and their families are eligible for these services regardless of their income.

All children who have Native American or Alaskan Eskimo heritage may also be subject to the Indian Child Welfare Act. In the event such a child is in imminent danger and does not live on a recognized reservation, the child protective services worker has the authority to exercise emergency removal of the child. Local departments must immediately contact the Child Protective Services Unit in the Division of Service Programs before taking any action to place one of these children. Local departments must also immediately contact the Bureau of Indian Affairs. For further discussion of this issue please see Appendix A.

B. AUTHORITY TO ESTABLISH CHILD PROTECTIVE SERVICES

The authority to establish child protective services can be found in § 63.2-1503(A) of the Virginia Code. That section states:

Va. Code § 63.2-1503.6. Each local department shall establish child-protective services under a departmental coordinator within such department or with one or more adjacent local departments which shall be staffed with qualified personnel pursuant to regulations promulgated by the State Board of Social Services.

Social Services is the public agency responsible for the receiving and responding *to* complaints and reports alleging abuse and neglect of children. This section of the Virginia Code also requires the local department to investigate out of family complaints of abuse or neglect with the assistance of the State Department of Social Services.

The General Assembly 2000 enacted legislation requiring a statewide implementation of a differential response system by July 2003. One of the major thrusts of differential response is to add an additional, more flexible, response to families, which is discussed at various points in this policy chapter, but most fully in Part IV, The Family Assessment. The other major thrust is to enhance collaboration with formal and informal resources in the community for the most effective service provision to families. Local child protective services agencies remain the primary responders and are responsible for making the first contact in valid reports of child abuse or neglect.

PART II: ABUSE & NEGLECT

A. DISPOSITIONS OF ABUSE OR NEGLECT

The statutory and regulatory authority establishing the foundation for the categories of abuse and neglect are found in Chapter 15 of the Virginia Code and 22 VAC 40-705-30 in the Administrative Code.

The Virginia Administrative Code (22 VAC 40-705-10) defines abuser or neglector as:

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

The regulatory definitions of abuse and neglect can be found in 22 VAC 40-705-30.

1.0 Founded Dispositions of Abuse or Neglect

If the investigation gathers sufficient evidence warranting a founded disposition of abuse or neglect, the local department must identify the category of abuse or neglect. There are six dispositional categories for a founded disposition of abuse or neglect. Those six categories for a founded disposition are physical abuse, physical neglect, failure to thrive, medical neglect, mental abuse, and sexual abuse. The policy manual divides several of the categories of abuse or neglect into types of abuse or neglect. For example, a founded disposition of physical neglect contains the type of "inadequate supervision." A founded disposition of physical abuse contains the type of "bone fracture."

1.1 Multiple Dispositions and Types of Abuse or Neglect

It is possible to render multiple dispositions and multiple categories of abuse or neglect. For example, an investigation may show sufficient evidence that a child was physically abused and mentally abused. In such a situation, a local department may render a founded disposition of physical abuse and a founded disposition of mental abuse. Each separate disposition of abuse or neglect must be supported by a preponderance of the evidence on its own accord. Also, 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 local department 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."

1.2 Multiple Abusers and Neglectors

It is possible that the evidence will establish multiple caretakers as the perpetrators of the abuse or neglect.

1.3 When Identity of the Abuser is Unknown

It is possible that an investigation reveals a preponderance of the 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 local department may enter the abuser's name as "unknown" into the automated data 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 local department may render a founded disposition of physical abuse with the identity of the abuser unknown.

1.4 Notifications: Founded Disposition When the Identity of the Abuser is Unknown

If the local department renders a founded disposition with the abuser unknown, the local department 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 complainant should be notified that necessary action was taken. The alleged abuser or neglector should be notified that a finding of abuse or neglect was not made against that person. Given that no party was identified as the perpetrator of the abuse or neglect, no party has the right to a local conference or state administrative hearing.

1.5 Founded Disposition: Abuser or Neglector is Deceased

In situations where the alleged abuser or neglector is deceased at the time of the report or dies during the course of the investigation, the local department 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 the

local department renders a founded disposition and the named abuser or neglector is deceased, the local department 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 automated data system. The automated data system must be informed that the local department rendered a founded disposition and the abuser or neglector is deceased. Given that the named abuser or neglector is deceased, no party has the right to a local conference or state administrative hearing.

2.0 Injury and Threat of Injury or Harm to a Child

There are six possible dispositional categories of abuse or neglect. The following are the six dispositional categories: physical abuse; physical neglect; medical neglect; mental abuse; failure to thrive; and, sexual abuse. Inherent within each dispositional category of abuse or neglect is establishment of an actual injury or the existence of a threat of an injury or harm to the child. Although there are six different dispositional categories of abuse or neglect, there are only two kinds of injuries possible; an injury may be a physical injury or a mental injury. An injury may be an actual injury or a threatened injury.[1] Establishing a mental or physical injury, or a threat of a mental or physical injury is required with all the types of founded dispositions. A preponderance of the evidence must establish an actual injury or a threat of an injury or a threat of harm to the child.

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

B. THE DEFINITION OF PHYSICAL ABUSE

1.0 Statutory Authority

Virginia Code § 63.2 -100 provides the statutory definition of physical abuse.

Va. Code § 63.2-100. [Abused or neglected child means any child less than eighteen years of age] whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a

[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).

physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions *, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248*;.

This definition has been expanded to clarify that children are considered at risk of abuse when the caretaker allows them to be present during the sale or manufacture of certain drugs. These drugs include, but are not limited to, heroine, cocaine and amphetamines. The Appendices to this chapter provide additional information about Schedule I and II controlled substances and felony violations as stipulated in 18.2-248.

CPS workers should involve law enforcement prior to initiating an investigation into a situation where drugs are allegedly being sold or manufactured. A joint investigation is highly recommended, primarily for the child and worker's safety, and secondly, in order to be sure that CPS does not interfere with possible criminal prosecution.

2.0 Regulatory Authority

The Virginia Administrative Code (22 VAC 40-705-30(A)) defines physical abuse as:

> **22 VAC 40-705-30(A). Physical abuse occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon a child a physical injury by other than accidental means or creates a substantial risk of death, disfigurement, or impairment of bodily functions.**

3.0 Types of Physical Abuse

When the evidence supports a founded disposition of physical abuse, the category of physical abuse should be identified. For example, if the evidence establishes that the child sustained a spiral fracture as a result of the caretaker's non-accidental actions, the local department must identify the type of the physical abuse as "bone fracture." Certain types of injuries require a medical diagnosis or evaluation, such as internal injuries or fractures. When appropriate, the local department should seek a medical diagnosis establishing the injury or harm.

The types for a founded disposition of physical abuse are:

3.1 Asphyxiation

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

3.2 Bone fracture

A fracture is a broken bone. The most common fractures are:

a. Chip fracture: a small piece of bone is flaked from the major part of the bone.

b. Simple fracture: the bone is broken, but there is no external wound.

c. 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.

d. Comminuted fracture: the bone is broken or splintered into pieces.

e. Spiral fracture: twisting causes the line of the fracture to encircle the bone in the form of a spiral.

3.3 Brain damage/skull fracture/subdural hematoma

a. Brain damage: injury to the large, soft mass of nerve tissue contained within the cranium/skull.

b. Skull fracture: a broken bone in the skull.

c. 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. These are usually the result of blows to the head or the shaking of a small child or infant.

3.4 Burns/scalding

a. Burns: tissue injury resulting from excessive exposure to thermal, chemical, electrical or radioactive agents.

b. Scalds: a burn to the skin or flesh caused by moist heat from vapors or steam.

Burns and scalds are 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.

The degree of a burn must be classified by a physician.

3.5 Cuts, bruises, welts, abrasions

a. Cut: an opening, incision or break in the skin.

b. Bruise: an injury that results in bleeding within the skin, where the skin is discolored but not broken.

c. Welt: an elevation on the skin produced by a lash or blow. The skin is not broken.

d. Abrasions: areas of the skin where patches of the surface have been scraped off.

3.6 Internal injuries

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

3.7 Poisoning

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

3.8 Sprains/dislocation

a. 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.

b. Dislocation: the displacement of a bone from its normal position in a joint.

3.9 Gunshot/stabbing wounds

Wounds resulting from gunshot or stabbing assaults.

3.10 Munchausen Syndrome by Proxy

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

3.11 Bizarre Discipline

Physical abuse may include the type of 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 physical or mental injury or the denial of basic physical necessities. The caretaker's actions must result in physical harm to the child or create the threat of physical harm to the child.

The term bizarre discipline is included under the definition of mental abuse. The distinction between physical abuse (bizarre discipline) and mental abuse (bizarre discipline) is the resulting harm or the threatened harm to a child. A disposition of physical abuse (bizarre discipline) denotes a physical injury and a disposition of mental abuse (bizarre discipline) denotes a mental injury.

3.12 Battered Child Syndrome

Battered child syndrome refers to a group of symptoms and behaviors exhibited by a child who has been repeatedly physically abused. Battered child syndrome means a diagnosis by a medical expert involving a child suffering certain types of continuing injuries that were not caused by

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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).

accidental means.[4] The battered child syndrome "exists when a child has sustained repeated and/or serious injuries by nonaccidental means."[5] Battered child syndrome must be diagnosed by a physician.

3.13 Shaken Baby Syndrome

Shaken baby syndrome is a medical diagnosis that must be made by a physician. Shaken baby syndrome means a 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.

Shaken baby syndrome is generally caused by nonaccidental trauma. As a result of the shaking, the infant 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.

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

3.14 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 due to strangers in and out of the home and the possibility of firearms or other weapons. Manufacturing drugs, especially in methamphetamine laboratories, can expose children to serious toxins. See Appendices for information about toxins and for a sample protocol to be used with local law enforcement and emergency personnel. Entering into these situations should be coordinated with local law enforcement. Due to the health risks, CPS should never be the first responder to a setting where the manufacture of drugs is suspected.

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[4] Black's Law Dictionary, 152 (6th ed. 1990).

[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).

4.0 Factors to Consider When Making a Disposition

The regulatory definition of physical abuse parallels the definition found in the Virginia Code. Essentially, the definition of physical abuse requires answering four questions. Each question must be answered by a preponderance of the evidence to make a founded disposition. First, what was the action or inaction of the caretaker? Second, did the child sustain an injury or is there evidence establishing that the child was threatened with sustaining an injury? Third, does the evidence establish a nexus, or causal relationship (i.e., a link or tie), between the action or inaction of the caretaker and the physical injury or threatened physical injury to the child? Fourth, was the injury, or threat of injury, caused by nonaccidental means?

4.1 Establish Caretaker's Action or Inaction

The local department needs to establish, by a preponderance of the evidence, the actions or inaction of the caretaker. The local department may show that the caretaker acted in a manner that caused harm to the child or created the threat of harm to the child. The local department may also show that the caretaker allowed the injury to occur or allowed the creation of the threat of an injury.

4.2 Establish Injury or Threat of an Injury

Inherent within the definition of physical abuse is that the child was physically harmed or threatened with physical harm. The Virginia Code and the Virginia Administrative Code do not require that the child sustained an actual injury. Establishing that the child was threatened with an injury is sufficient to satisfy this element of the definition of physical abuse.

4.3 Establish Nexus Between Caretaker's Actions or Inaction and the Injury or Threatened Injury to the Child

Evidence must establish a link between the actions or inaction of the caretaker and the injury to the child or the threat of injury to the child.

4.4 "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 his 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 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 not intentional.

4.5 Substantial Risk of Death, Disfigurement, or Impairment of Bodily Functions

A founded disposition of physical abuse can also be made when the local department establishes that the caretaker created a substantial risk of death, disfigurement or impairment of bodily functions.

4.6 Reasonable Exercise of Physical Discipline

If an investigation conducted by a local department of social services in response to any report of child abuse or neglect shows that the incident reported was the result of the reasonable exercise of parental discipline, which is not injurious to the child, the disposition will be unfounded. If the report was responded to with a family assessment, the assessment will proceed no further upon verification that the sole foundation for the report was reasonable parental discipline.

C. The Definition of Physical Neglect

1.0 Statutory Authority

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

Va. Code § 63.2-100. ["Abused or neglected child" means any child less than eighteen years of age] Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no 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 for that reason alone be considered to be an abused or neglected child.

Va. Code § 63.2 -100. ["Abused or neglected child" means any child less than eighteen years of age] *5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.*

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

Va. Code § 63.2-100. ["Abused or neglected child" means any child less than eighteen years of age] Whose parents or other person responsible for his care abandons such child.

See §§ 18.2.371, 18.2.371.1, 40.1-103, 8.01-226.5:2, and 63.2-910.1 of the Code of Virginia. These statutes provide immunity from liability to hospital and rescue squad staff who receive an abandoned infant and provide an affirmative defense *in the criminal statutes* to any parent who is prosecuted as a result of leaving an infant with these personnel. *Section 63.2-100 now provides these same immunities and an affirmative defense in the civil statutes. However, the child may still be found to be an abandoned child for purposes of termination of parental rights.*

Hospital and rescue squad staff are still expected to report these instances of child abandonment and the local departments of social services are required to respond to these reports of child abandonment.

2.0 Regulatory Authority

22 VAC 40-705-30(B) of the Virginia Administrative Code provides the regulatory definition for physical neglect:

22 VAC 40-705-30(B). Physical neglect occurs when there is the failure to provide food, clothing, shelter, or supervision for a child to the extent that the child's health or safety is endangered. This also includes abandonment and situations where the parent or caretaker's own incapacitating behavior or absence prevents or severely limits the performing of child caring tasks pursuant to § 63.2 –100 of the Code of Virginia.

22 VAC 40-705-30(B)(1). Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

Inherent within the definition of physical neglect is that the actions, inactions, omissions or failures of the caretaker endangered the health or safety of the child or threatened the health or safety of the child.

3.0 Types of Physical Neglect

When the evidence supports a founded disposition of physical neglect, the type of physical neglect should also be identified. For example, the evidence establishes that the caretaker left a toddler alone for several hours endangering the safety of the child; the local department must identify the type of physical neglect as inadequate supervision.

The types for a founded disposition of physical neglect include the following when the conditions have caused harm to the child, or threaten the child's health or safety:

3.1 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. *Even though the Code of Virginia allows an affirmative defense for a parent abandoning her infant under certain conditions, this abandonment is still considered to meet the definition of abandonment for the purpose of CPS intervention.*

***63.2-100 (5) Definitions**. If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended*

rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

3.2 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 alcoholism or drug abuse.

3.3 Inadequate clothing

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

3.4 Inadequate shelter

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

3.5 Inadequate personal hygiene

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

3.6 Inadequate food

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

3.7 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.

4.0 Factors to Consider When Making a Disposition

As defined by the Virginia Administrative Code (22 VAC 40-705-30(B)), physical neglect focuses upon the caretaker's failure to provide food, clothing, shelter or supervision for a child to the extent that the child's health or safety is endangered. The local department must establish that the caretaker neglected or refused to provide care necessary for the child's health or safety.

4.1 Establish Injury or Threat of an Injury

Inherent within the definition of physical neglect is that the child was physically harmed or threatened with physical harm. The child does not need to sustain an actual injury. Establishing that the child was threatened with an injury is sufficient to satisfy this element of the definition of physical neglect. The injury or threatened injury may be a physical injury or a mental injury. Evidence must establish a link between the actions or inaction of the caretaker and the injury to the child or the threat of injury to the child.

4.2 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.

4.3 Family Poverty and Lack of Resources

22 VAC 40-705-30(B). In situations where the neglect is the result of family poverty and there are no outside resources available to the family, the parent or caretaker shall not be determined to have neglected the child; however, the local department may provide appropriate services to the family.

The local department 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 local department 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.

4.4 Multiple Occurrences or One Time Incident

22 VAC 40-705-30(B)(1). Physical neglect may include multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

Pursuant to 22 VAC 40-705-30(B)(1), a disposition of physical neglect may be based upon multiple occurrences or a one-time critical or severe event that results in a threat to health or safety.

D. THE DEFINITION OF MEDICAL NEGLECT

1.0 Statutory Authority

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

Va. Code § 63.2-100. ["Abused or neglected child" means any child less than eighteen years of age] Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no 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 for that reason alone be considered to be an abused or neglected child.

2.0 Regulatory Authority

The definition of medical neglect can be found in the Virginia Administrative Code section 22 VAC 40-705-30 (C):

22 VAC 40-705-30(C). Medical neglect occurs when there is the failure by the caretaker to obtain and or follow through with a complete regimen of medical, mental or dental care for a condition which if untreated could result in illness or developmental delays pursuant to § 63.2-100 of the Code of Virginia. Medical neglect also includes withholding of medically indicated treatment.

Parents and caretakers have a legal duty to support and maintain their children, including the provision of necessary medical care. Medicines, medical treatment and

dental treatment are in a category similar to food, clothing and shelter as basic necessities from parent or caretaker to child. However, preventive health care, such as obtaining immunizations and well-baby check-ups, is a matter of parental choice. Failure to obtain preventive health care for children does not constitute medical neglect.

3.0 Examples 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 includes when the caretaker fails to provide or allow necessary emergency care in accordance with recommendations of a competent health care professional.

3.1 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.

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. Other examples include, but are not limited to, situations where the child sustains a fracture, a severe burn, laceration, mutilation, maiming, or the ingestion of a dangerous substance and the caretaker fails or refuses to obtain care or treatment.

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

3.3 Necessary Dental Care or Treatment

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

3.4 Necessary Mental Care or Treatment

Medical neglect includes a caretaker failure to provide or allow necessary mental treatment or care for a child.

4.0 Factors to Consider When Making a Disposition

The general rule concerning appropriate medical, mental and dental care for a child is that the parents or caretakers ultimately determine whether the care is provided and what the care should be. However, the doctrine of parens patriae creates a substantial interest for the Commonwealth in the child's health and welfare. In some situations, the Commonwealth may override the decisions of the parents to ensure the health and safety of the child. Determining at what point the Commonwealth may supercede the choice made by a parent in order to protect the child remains the difficult question. 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 local department's investigation is not upon making value judgments and attitudes about lifestyles. The focus 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 which 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.

4.1 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 local department 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.

4.2 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 local department 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 local department should assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.

In addition to harm, the local department 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 local department may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the local department may give lesser deference to the caretaker's authority.

4.3 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 local department should consider whether the caretaker's failure to provide necessary medical treatment was caused by ignorance or misunderstanding. The local department should consider whether the caretakers *obtained* accredited medical assistance and were aware of the seriousness of their child's affliction. The local department 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 local department should consider whether the caretakers sought an alternative treatment recommended by their physician and *have* not been totally rejected by all responsible medical authority.

4.4 Assess Financial Capabilities & Poverty

The local department 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.

5.0 Local Department May Need to Seek the Assistance of the Court

The local department may seek the assistance of the court to ensure that necessary medical, mental or dental treatment or care is provided to the child. If the parents or caretakers are not capable of caring for their child, even after warning and instruction, the local department may need to request a court order for the child's treatment or removal from the home. When parents or caretakers consistently refuse to sign a consent form in these circumstances, the local department may consider seeking court assistance for quick intervention. The local department should contact the appropriate hospital staff to determine what legal action the hospital is anticipating taking on behalf of the child, if any.

When treatment appears necessary and the Court is available to act on a petition the worker can:

a. Petition the Court for a Protective Order specifying that treatment be provided; or

b. Petition the Court for custody so that treatment can be provided.

When emergency treatment is necessary and the Court is unavailable, the worker should consider taking the child into custody pursuant to § 63.2 -1517 of the Virginia Code.

6.0 Child Under Alternative Treatment

Va. Code § 63.2-100. ["Abused or neglected child" means any child less than eighteen years of age] Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no 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 for that reason alone be considered to be an abused or neglected child.

> **22 VAC 40-705-30(C)(1). A child who, in good faith, is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination pursuant to §63.2-100 of the Code of Virginia, shall not for that reason alone be considered a neglected child.**

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

Should there be question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the local department should seek the court's assistance. The court should decide

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7 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.

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).

whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

7.0 Requirements for Investigating Medical Neglect of Infants with Life-Threatening Conditions

The Virginia Administrative Code provides additional definitions guiding the investigation of an infant who may have been medically neglected. 22 VAC 40-705-30(C) states that medical neglect includes withholding of medically indicated treatment. The definition section of 22 VAC 40-705-10 et seq. defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the local department must be aware of the ancillary definitions and policy requirements.

7.1 Definition of "Withholding of Medically Indicated Treatment"

The definition section of 22 VAC 40-705-10 et seq. defines withholding of medically indicated treatment as:

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

This definition applies to situations where parents do not attempt to get a diagnosis even when the child's symptoms are severe and observable. Failure to provide preventive measures such as immunizations and participation in the Early and Periodic Screening, Diagnosis, and Treatment program do not constitute medical neglect.

7.2 Withholding of Medically Indicated Treatment When Treatment is Futile

22 VAC 40-705-30(C)(2) addresses the issue of withholding medically indicated treatment when treatment for the infant is futile.

22 VAC 40-705-30(C)(2). For the purposes of this regulation, "withholding of medically indicated treatment" does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when in the treating physician's or physicians' reasonable medical judgment:
a. The infant is chronically and irreversibly comatose;

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

(1) Merely prolong dying;
(2) Not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
(3) Otherwise be futile in terms of the survival of the infant; or
(4) The infant has a terminal condition and the provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

7.3 Definitions of Chronically and Irreversibly Comatose & Terminal Condition

The definition section of 22 VAC 40-705-10 et seq. defines chronically and irreversibly comatose as:

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

The definition section of 22 VAC 40-705-10 et seq. defines terminal condition:

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

7.4 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 local department should initiate contact with the designated person in the hospital. The local department should arrange with the local hospital for naming a contact person or liaison. The local department may contact the CPS State Hotline because the hospital's contact name is available from the CPS State Hotline and the list is up-dated annually. Upon receipt of the complaint or report, the CPS worker should immediately:

a. Verify the child's presence at the hospital by contacting the hospital's liaison;

b. Verify the child's status.

7.4.1 Contact Physician or Hospital Staff

The local department 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.

7.4.2 Determine Who is Responsible for the Child

The CPS investigating worker 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:

a. When parents permanently voluntarily entrust the child to an agency;

b. When a third trimester abortion results in a live birth.[9]

7.4.3 Seeking Court Assistance

When treatment appears necessary and the Court is available to act on a petition the worker can:

a. Petition the Court for custody so that treatment can be provided;

b. 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 §63.2-1517 of the Virginia Code.

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[9] § 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. For the text of § 18.2-74 of the Code of Virginia, please see Appendix B.

E. THE DEFINITION OF MENTAL ABUSE

1.0 Statutory Authority

Va. Code § 63.2-100. "Abused or neglected child" means any child less than eighteen years of age: Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions.

2.0 Regulatory Authority

The definition of mental abuse can be found in the Virginia Administrative Code section 22 VAC 40-705-30(D):

> **22 VAC 40-705-30(D). Mental abuse or neglect occurs when a caretaker creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a mental injury by other than accidental means or creates a substantial risk of impairment of mental functions.**

3.0 Caretaker's Actions or Omissions

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

Mental abuse 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 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 physical or mental injury or the denial of basic physical necessities.

Mental abuse 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 results in demonstrated dysfunction by the child.

Mental abuse may also include incidents of domestic violence when the domestic violence results in demonstrated dysfunction by the child.

4.0 Professional Documentation

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

F. THE DEFINITION OF FAILURE TO THRIVE

1.0 Regulatory Authority

Failure to thrive is a type of Physical Neglect or Mental Neglect. The Virginia Administrative Code provides the regulatory definition in 22 VAC 40-705-30(B)(2):

> **22 VAC 40-705-30(B)(2)(a). Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.**
>
> **22 VAC 40-705-30(B)(2)(b). Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.**

The Virginia Administrative Code provides the regulatory definition in 22 VAC 40-705-30(D) for failure to thrive as a type of mental neglect:

> **22 VAC 40-705-30(D)(1). Failure to thrive occurs as a syndrome of infancy and early childhood which is characterized by growth failure, signs of severe malnutrition, and variable degrees of developmental retardation.**
>
> **22 VAC 40-705-30(D)(2). Failure to thrive can only be diagnosed by a physician and is caused by nonorganic factors.**

Failure to thrive describes several conditions in infants and children. Failure to thrive can be caused by a number of medical problems. In some children, failure to thrive can be caused by extreme neglect. Failure to thrive syndrome describes the malnourished and depressed condition of infants, implying not only growth deficits, but also disorders

of behavior and development. Failure to thrive is classified as organic failure to thrive or nonorganic failure to thrive. Only nonorganic failure to thrive is considered to be a type of physical neglect or mental neglect. For a further discussion about failure to thrive, see Appendix A.

2.0 Organic Failure to Thrive

Failure to thrive is used to designate growth failure both as a symptom and as a syndrome.[10] 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 type of physical neglect or mental neglect.

3.0 Nonorganic Failure to Thrive

Nonorganic failure to thrive is considered to be physical neglect or mental abuse. Nonorganic failure to thrive most commonly refers to growth failure in the infant or child who suffers from environmental neglect or stimulus deprivation.[11] 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 1 year of age, and in many children growth failure will become evident by 6 months of age. In nonorganic failure to thrive, lack of food may be due to impoverishment, poor understanding of feeding techniques, improperly prepared formula, or inadequate supply of breast milk. 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.[12] If left untreated, failure to thrive can lead to restricted growth and mental development. In extreme cases it can be fatal.

3.1 Establish Nexus with Caretaker's Action or Inaction and the Nonorganic Failure to Thrive

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[10] 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).

[11] Id.

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

For a founded disposition of Failure to Thrive to be rendered against a caretaker, there must be evidence establishing a link between the caretaker's actions or inactions and the fact that the child suffers from nonorganic failure to thrive.

When investigating an allegation of failure to thrive, the local department should consider whether the caretakers gained accredited medical assistance and were aware of the seriousness of their child's affliction. The local department should consider whether the parents or caretakers provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances.

4.0 Failure to Thrive Must Be Diagnosed by a Physician

To render a founded disposition of Failure to Thrive, the local department must have evidence that the diagnosis was made by a physician and the diagnosis was nonorganic failure to thrive.

G. THE DEFINITION OF SEXUAL ABUSE

1.0 Statutory Authority

Va. Code § 63.2-100. [Abused or Neglected child means any child less than eighteen years of age] Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.

VA Code 18.2-67.10(Criminal definitions…)

6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;

b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts*;*

c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or

~~c.~~ *d.* The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

2.0 Regulatory Authority

The definition of sexual abuse can be found in the Virginia Administrative Code section 22 VAC 40-705-30(E):

> **22 VAC 40-705-30(E). Sexual abuse occurs when there is any act of sexual exploitation or any sexual act upon a child in violation of the law which is committed or allowed to be committed by the child's parents or other persons responsible for the care of the child pursuant to § 63.2-100 of the Code of Virginia.**

For the statutes pertaining to sexual exploitation or any sexual act upon a child in violation of the law, please see Appendix D. For a brief discussion about physical evidence and child sexual abuse, please see Appendix A.

3.0 Types of Sexual Abuse

When the evidence supports a founded disposition of sexual abuse, the type of sexual abuse should also be identified. For example, a founded disposition of sexual abuse may designate the type as “Sexual Molestation.”

The types for a founded disposition of sexual abuse are:

3.1 Sexual exploitation

Sexual exploitation includes,

a. The caretaker of the child allowing, permitting or encouraging a child to engage in prostitution as defined by the Code of Virginia (see Appendix B);

b. The caretaker of the child allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming, or depicting of a child engaging in those acts as defined by the Code of Virginia.

3.2 Other sexual abuse

Other sexual abuse may include, but is not limited to:

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

b. 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;

c. 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.

3.3 Sexual molestation

Sexual molestation means an act committed with the intent to sexually molest, arouse, or gratify any person, including where:

a. The caretaker intentionally touches the child's intimate parts or clothing directly covering such intimate parts;

b. The caretaker forces the child to touch the caretaker's, or another person's intimate parts or clothing directly covering such intimate parts; or

c. 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.

d. The caretaker causes or assists a child under the age of 13 to touch the caretaker's, the child's own, or another person's intimate parts or material directly covering such intimate parts.

3.4 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.

4.0 Establishing Sexual Gratification or Arousal

to make a founded disposition of sexual abuse in some cases, the local department may be required to establish sexual gratification or arousal. It is not necessary to prove

actual sexual gratification, i.e., that one of the parties achieved sexual gratification. However, it may be necessary to establish that the act committed was for the purpose of sexual gratification. The Virginia Administrative Code does not specify which party (the perpetrator or the alleged victim child) needs to be the party intended to be sexually gratified.

In some cases there will be physical evidence of sexual gratification, i.e., the presence of sperm. Generally, proof of sexual gratification will be based upon circumstantial evidence. Sexual gratification or arousal may be inferred by the totality of the circumstances surrounding the alleged act.[13] Sexual gratification may be established by considering the act committed and the alleged abuser's explanation or rationale for the act.[14] The act itself may be probative of the caretaker's intent to arouse or sexually gratify.[15] 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.[16] When attempting to show that an act committed was for the purpose of sexual gratification, the local department must consider the evidence in its totality.

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13 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.

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

15 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.

16 Lascivious is defined as intending to excite lust; lewd; indecent; obscene; sexual impurity; tending to deprave the morals in respect to sexual relations. Black's Law Dictionary 882, (6th ed. 1990).

PART III: COMPLAINTS & REPORTS ALLEGING ABUSE OR NEGLECT

A. PERSONS WHO MAY MAKE A REPORT OR COMPLAINT

§§ 63.2-1509 and 63.2-1510 of the Virginia Code provide the authority for persons to report suspected abuse or neglect. § 63.2-1509 of the Virginia Code mandates certain persons to report suspected abuse or neglect. § 63.2-1509 of the Code of Virginia allows any person who suspects that a child is abused or neglected may make a complaint.

22 VAC 40-705-40 identifies those persons who are mandated to report suspected abuse and neglect and those persons who may report suspected abuse or neglect.

The definition section of the Virginia Administrative Code defines complaint as:

> **"Complaint" means any information or allegation of child abuse and/or neglect made orally or in writing pursuant to § 63.2-1508 of the Code of Virginia.**

The Virginia Administrative Code defines report as:

> **"Report" means either a complaint as defined in this section or an official document on which information is given concerning abuse and neglect and which is required to be made by persons designated herein and by local departments in those situations in which a complaint from the general public reveals suspected child abuse and/or neglect pursuant to subdivision 5 of the definition of abused or neglected child in § 63.2-100 of the Code of Virginia.**

1.0 Mandated Reporters

The definition section of the Virginia Administrative Code defines mandated reporter as:

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

22 VAC 40-705-40(A) defines the responsibilities of a mandated reporter:

> **Persons who are mandated to report are those individuals defined in § 63.2-1509 of the Code of Virginia.**
> **1. Mandated reporters shall report immediately any suspected abuse or neglect that they learn of in their professional capacity.**

2. Mandated reporters shall disclose all information which is the basis for the suspicion of child abuse or neglect and shall make available, upon request, to the local department any records and reports which document the basis for the complaint and/or report.
3. A mandated reporter's failure to report within 72 hours of the first suspicion of child abuse or neglect shall result in a fine.

1.1 Who Are Mandated Reporters

Virginia Code § 63.2-1509(A) defines who is a mandated reporter.

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

1. Any person licensed to practice medicine or any of the healing arts;
2. Any hospital resident or intern, and any person employed in the nursing profession;
3. Any person employed as a social worker;
4. Any probation officer;
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;
6. Any person providing full-time or part-time child care for pay on a regularly planned basis;
7. Any duly accredited Christian Science practitioner;
8. Any mental health professional;
9. Any law-enforcement officer;
10. Any mediator eligible to receive court referrals pursuant to §8.01-576.8;
11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;
12. Any person associated with or employed by any private organization responsible for the care, custody or control of children; and
13. Any person who is designated a court-appointed special advocate pursuant to Article 5 (9.1-151 et seq.) of Chapter 1 of Title 9.1.

The individuals listed previously must make a report of any suspected abuse or neglect that they learn of in their professional capacity.

1.2 Initial Oral Report Must be Documented in Writing by Local Department

Va. Code § 63.2-1509(A). The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services.

When a mandated reporter makes a report to a local department, the local department must ensure that the report is recorded in the information system, regardless of whether the report is determined to be valid or invalid.

1.3 Mandated Reporter May Make Report to that Person's Supervisor

Va. Code § 63.2-1509(A). If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

As provided in § 63.2-1509(A) of the Code of Virginia, certain specified mandated reporters may report allegations of abuse or neglect to that person's supervisor. The person's supervisor maintains the responsibility of immediately making the report to the Department or local department.

1.4 Reporter Must Disclose All Relevant Information

Va. Code § 63.2-1509(A). Any person required to make the report… shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department of social services, which is the agency of jurisdiction, any records or reports which document the basis for the report.

When a mandated reporter makes a report of suspected abuse or neglect, the reporter must disclose all the information that is the basis of the report to the local department. This includes any records or reports documenting the basis of the allegation.

1.5 Physicians Diagnosing Venereal Disease

Va. Code § 32.1-36 (B). Any physician who diagnoses a venereal disease in a child twelve years of age or under shall, in the addition to the requirements of subsection A hereof, report the matter, in accordance with the provisions of § 63.2-1509, unless the physician reasonably believes that the infection was acquired congenitally or by means other than sexual abuse.

Physicians who diagnose venereal disease in a child 12 years of age or under must make a CPS report to the local department. 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. Va. Code § 32.1-36 (A) provides that practicing physicians and laboratory directors shall report patients' diseases as prescribed by the State Board of Medicine. See: § 32.1-36 of the Code of Virginia.

1.6 Failure by Mandated Reporter to Report Abuse or Neglect

Va. Code § 63.2-1509(D). Any person required to file a report pursuant to this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than $500 for the first failure and for any subsequent failures not less than $100 nor more than $1,000.

If a person required to report fails to do so, that person can be charged with a misdemeanor. If found guilty, the fine is up to $500.00 for the first incident and between $100.00 and $1,000.00 for any subsequent incidents. If the local department becomes aware of an incident involving a mandated reporter who failed to report pursuant to §§ 63.2-1509(A) and 63.2-1509 (B) of the Virginia Code, the local department must report the incident to the local Commonwealth's Attorney.

2.0 Mandated Reporting of Drug-Exposed Infants

Va. Code § 63.2-1509 (B). For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome 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.

Va. Code § 63.2-1509(B) requires attending physicians to make a report of abuse or neglect when there is reason to suspect that a mother

exposed a newborn infant to controlled substances during the pregnancy.[17] §63.2-1509(B) specifically delineates four circumstances indicating a reason to suspect that a newborn infant was exposed to a controlled substance during pregnancy.

2.1 The Four Circumstances a Report Must be Made

Va. Code § 63.2-1509(B) defines the circumstances in which a physician must make a report to CPS. The four circumstances in which a physician must make a report to CPS are:

a. A blood or urine test conducted within forty-eight hours of the infant's birth indicates the presence of a controlled substance. A physician must not have prescribed the controlled substance for the mother. The findings of the blood or urine test must be made within seven days of the child's birth.

b. Within forty-eight hours of the infant's birth, the attending physician finds that the infant was born dependent on a controlled substance and demonstrated withdrawal symptoms. A physician must not have prescribed the controlled substance for the mother.

c. Within seven days of the infant's birth, the attending physician diagnoses the child as having an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance. A physician must not have prescribed the controlled substance for the mother or the child.

d. Within seven days of the child's birth, the attending physician makes the diagnosis that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol.

2.2 Physician Must Disclose Facts Supporting the Report

When a physician makes a report to CPS based upon one of the above circumstances, the physician must specifically include reference to the factor or factors leading to the concern that the infant was exposed to a controlled substance.

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17 The 1998 General Assembly passed legislation amending the mandated reporter section of the Virginia Code by adding §63.2-1509(A1).

2.3 Time Frames to Make a Report Concerning a Drug-Exposed Infant

Whenever a physician makes a finding pursuant to Virginia Code § 63.2-1509(B), then the physician must make a report to CPS immediately or at least within 72 hours of making the finding. Pursuant to § 63.2-1509(D) of the Virginia Code, a physician who fails to make a report pursuant to § 63.2-1509(B) would be subject to a fine.

2.4 Report Made Pursuant to § 63.2-1509(B) Requires a CPS Response to be Initiated

Virginia Code § 63.2-1509(A) requires a mandated reporter to make a report to CPS when a mandated reporter has reason to suspect that a child has been abused or neglected. Virginia Code § 63.2-1509(B) specifically defines reasons to suspect that a child has been abused or neglected. Facts indicating that the child was exposed to controlled substances prior to birth are sufficient, in and of themselves, to suspect that the child is abused or neglected. Therefore, any report made pursuant to § 63.2-1509(B) constitutes a valid report of abuse or neglect and requires a CPS *response* unless the mother sought treatment or counseling pursuant to § 63.2 -1505(B2). According to an opinion from the Office of the Attorney General in 1999, positive tests of the mother or infant may trigger the duty to report.

2.5 Exception to Initiating or Completing Investigation

Va. Code § 63.2 -1505(B)2. [If the local department responds to the report or complaint by conducting an investigation, the local department shall] complete a report and transmit it forthwith to the Department, except that no such report shall be transmitted in cases in which the cause to suspect abuse or neglect is one of the factors specified in subsection B of §63.2-1509 and the mother sought substance abuse counseling or treatment prior to the child's birth;

Any investigation of a complaint alleging abuse or neglect made pursuant to B of § 63.2-1509 of the Virginia Code, cannot be founded or "transmitted" to the Department if the mother of the infant sought substance abuse counseling or treatment prior to the infant's birth, and there are no additional allegations**.** It is incumbent upon the mother of the infant to present evidence that she sought or gained substance abuse counseling or treatment prior to the child's birth.

Even if the mother sought treatment, the local department should continue the investigation if there is an additional allegation, or upon first contact, evidence, other than the exposure to a controlled substance, that the

infant is abused or neglected or is experiencing a threat of harm. *A family assessment can proceed upon the fact that the report was valid and the need for services to remedy or prevent child maltreatment is appropriate.*

2.5.1 Definition of "Prior to the Child's Birth"

Va. Code § 63.2 -1505(B)2 requires that the mother sought substance treatment or counseling prior to the child's birth if there is to be an exception to conducting an investigation. "Prior to the child's birth" does not mean seeking treatment or counseling at any time during the mother's life. The substance abuse counseling or treatment must have occurred during the mother's pregnancy.

2.5.2 Definition of Seeking Treatment or Counseling

§ 63.2-1505(B)2 of the Virginia Code requires that a mother sought treatment or counseling prior to the child's birth in order to invalidate the complaint or report. The Virginia Code does not require that the mother actually gained substance abuse counseling or treatment. If the mother sought counseling or treatment but did not receive such services, then the local department must determine whether the mother made a good faith effort to receive substance abuse treatment before the child's birth. If the mother made a substantive effort to receive treatment or counseling prior to the child's birth, but did not receive such services, due to no fault of her own, then the local department should invalidate the complaint or report.

The local department may provide assistance to the mother in locating and receiving substance abuse counseling or treatment. Whether or not the mother sought treatment, if there is evidence that she is currently using controlled substances or alcohol to the extent that her parenting capacity is impaired, services should be offered.

2.5.3 Definition of Substance Abuse Treatment Services

"Substance abuse counseling or treatment services" are services provided to individuals for the prevention, diagnosis, treatment, and/or palliation of chemical dependency, which may include attendant medical and psychiatric complications of chemical dependency.

Substance abuse counseling or treatment should include, but is not limited to, education about the impact of alcohol and other drugs on the fetus and on the maternal relationship; and education about relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs.

2.5.4 Treatment or Counseling Services Must be Provided by a Professional

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

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

“Licensed substance abuse treatment practitioner" means a person who: (i) is trained in and engages in the practice of substance abuse treatment with individuals or groups of individuals suffering from the effects of substance abuse or dependence, and in the prevention of substance abuse or dependence; and (ii) is licensed to provide advanced substance abuse treatment and independent, direct and unsupervised treatment to such individuals or groups of individuals, and to plan, evaluate, supervise, and direct substance abuse treatment provided by others.

2.6 Facts Establishing Substance Exposure Not Sufficient, Alone, for a Founded Disposition of Abuse or Neglect

An investigation initiated pursuant to § 63.2-1509(B) does not necessarily mean that a founded disposition of abuse or neglect should be rendered by a local department. § 63.2-1509(B) does not affect the statutory definition of an abused or neglected child. Facts establishing that the infant was exposed to controlled substances prior to birth is not sufficient to render a founded disposition of abuse or neglect. Therefore, pursuant to 22 VAC 40-705-10 et seq., the local department must establish by a preponderance of the evidence that the infant was injured or experienced a threat of an injury or a threat of harm according to the statutory and regulatory definitions of abuse and neglect. *A family assessment does not require a disposition but should assess the risk to the child and needs which must be met to protect the child from future harm.*

§ 63.2-1509(B) affirms the proposition that any associated child abuse or neglect is a secondary result of the substance abuse. In and of itself, the evidence that the infant was prenatally exposed to controlled substances is not sufficient for a founded disposition. A local department can only render a founded disposition of abuse or neglect when there is evidence that the infant was physically harmed or threatened with harm. For example, if the substance abuse interfered with the mother's behaviors so that she was unable or unwilling to meet the infant's basic needs, then a founded disposition for physical neglect may be warranted.

Due to the extraordinary vulnerability of substance exposed infants, collateral contacts to determine threat of harm are crucial. Hospitals are required to report women giving birth to substance exposed infants to the local Community Services Board (CSB) for discharge planning. The CSB, the child's health care provider, and any active substance abuse treatment provider constitute the minimal collateral contacts in these situations.

2.7 Local Department May Petition the Court for Assistance

When a report or complaint alleging abuse or neglect is made pursuant to Va. Code § 63.2-1509(B), then the local department may petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant. Virginia Code § 63.2-1505(B)1 and 1506(B)1 provide the authority for a local department to petition the court pursuant to § 16.1-241.3 when a complaint or report is made pursuant to § 63.2-1509(B). The juvenile and domestic relations district court may enter any order necessary to protect the health and welfare of the infant pending the final disposition of the CPS investigation. For example, such authority would allow the court to remove the infant from the custody of the mother pending completion of the investigation or compel the mother to seek treatment or other needed services. For a further discussion, see Judicial Proceedings, Part VI, of this policy manual.

The local department may also petition the court to seek mandatory drug testing if the parent appears to be currently using controlled substances to the degree that drug use may cause parental incapacity to care for the infant.

3.0 Other Persons May Make a Report of Alleged Child Abuse or Neglect

Va. Code § 63.2-1510. Any person who suspects that a child is an abused or neglected child may make a complaint concerning such child, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of

Social Services' toll-free child abuse and neglect hotline.

22 VAC 40-705-40(B). Persons who may report child abuse and/or neglect include any individual who suspects that a child is being abused and/or neglected pursuant to § 63.2-1510 of the Code of Virginia.

Any individual suspecting that a child is abused or neglected may make a complaint to the Department or a local department. The person can make the complaint to the local department in the county or city where the alleged victim child resides or where the alleged abuse or neglect occurred. The person may also make the complaint by calling the CPS State Hotline.

4.0 Complaints and Reports May be Made Anonymously

22 VAC 40-705-40(C). Complaints and reports of child abuse and/or neglect may be made anonymously. An anonymous complaint, standing alone, shall not meet the preponderance of evidence standard necessary to support a founded determination.

Reports or complaints alleging abuse or neglect may be made anonymously and the local department cannot require the individual to reveal his identity as a condition of accepting the report. All reports must be accepted and evaluated regardless of whether or not the caller is identified.

4.1 Anonymous Complaints, Alone, Cannot Support Founded Disposition

22 VAC 40-705-40(C) specifies that a founded disposition of abuse or neglect cannot be based solely upon the anonymous report or complaint. An allegation of abuse or neglect is not sufficient, in and of itself, to make a founded disposition. A thorough investigation must be completed to determine whether the abuse or neglect did in fact occur.

5.0 Immunity from Liability for Persons Making a Report

Va. Code § 63.2 -1512. Any person making a report pursuant to § 63.2-1509, a complaint pursuant to §63.2-1510, or who takes a child into custody pursuant to §63.2 -1517, or who participates in a judicial proceeding resulting therefrom 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.

22 VAC 40-705-40(D). Any person making a complaint and/or report of child abuse and/or neglect shall be immune from any civil or criminal

liability in connection therewith, unless the court decides that such person acted in bad faith or with malicious intent pursuant to § 63.2-1512 of the Code of Virginia.

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

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

b. Any person who participates in a judicial proceeding resulting from either making a report or taking a child into immediate custody.

6.0 Protecting the Identity of the Reporter or Complainant

22 VAC 40-705-40(E). When the identity of the reporter is known to the Department or local department, these agencies shall make every effort to protect the reporter's identity.

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

7.0 Recourse for Person Believing Unfounded Complaint or Report was Made Maliciously or in Bad Faith

Va. Code § 63.2-1514(D). Any person who is the subject of an unfounded report or complaint made pursuant to this chapter who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court in the jurisdiction in which the report or complaint was made for the release to such person of the records of the investigation or family assessment. Such petition shall specifically set forth the reasons such person believes that such report or complaint was made in bad faith or with malicious intent. Upon the filing of such petition, the court shall request and the department shall provide to the court its records of the investigation or family assessment for the court's in camera review. The petitioner shall be entitled to present evidence to support his petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith, or with malicious intent and that disclosure of the identity of the complainant would not be likely to endanger the life or safety of the complainant, it shall provide to the petitioner a copy of the records of the investigation or family assessment. The original records shall be subject to discovery in any subsequent civil action regarding the making of a complaint or report in bad faith or with malicious intent.

The Virginia Code provides a person who was the subject of an unfounded report or complaint with access to the local department's record, including the identity of the

complainant, should the court find sufficient reason to believe that the report or complaint was made in bad faith or with malicious intent.

The Virginia Administrative Code states that a person who suspects that he is a subject of a report or complaint that was bad in bad faith or with malicious intent may petition the court for access to the record.

> **22 VAC 40-705-40(F). If a person suspects that he is the subject of a report or complaint of child abuse and/or neglect made in bad faith or with malicious intent, that person may petition the court for access to the record including the identity of the reporter or complainant pursuant to § 63.2-1514 of the Code of Virginia.**

A person who was the subject of an unfounded complaint or report of abuse or neglect may petition the circuit court to request access to the local department's record and the name of the complainant.

7.1 Local Department Suspects Report or Complaint was Made in Bad Faith or with Malicious Intent

If a worker suspects that a report or complaint of abuse or neglect was made in bad faith or with malicious intent, the worker may inform the complainant that legal action may be brought against him. Although the worker cannot reveal the name of the complainant, the worker may advise the person against whom the report has been lodged that the person can seek the services of an attorney. Under order of the court, the worker may be required to reveal all information regarding the complaint. Also see, "Notifications in Unfounded Complaints" in this policy manual.

If the investigating social worker believes that the complaint or report alleging abuse or neglect was made in bad faith or maliciously, the worker should present any evidence supporting that belief to the local attorney for the Commonwealth.

7.2 Possible Criminal Conviction for Persons Who Knowingly Make False Reports; Penalties.

The Virginia Administrative Code parallels the Code of Virginia. The Department shall retain a list of convicted reporters.

7.3 Record to be Purged Upon Certification of Conviction

Va. Code § 63.2-1513(B). The child protective services records regarding the person who was alleged to have committed abuse or neglect which result from a report for

which a conviction is obtained under this section shall be purged immediately by any custodian of such records upon presentation to the custodian of a certified copy of such conviction. After purging the records, the custodian shall notify the person in writing that such records have been purged.

§ 63.2-1513(B) of the Virginia Code provides that any CPS record pertaining to an investigation resulting from a knowingly false complaint shall be purged immediately upon presentation of a certified copy of the conviction.

B. 24-HOUR HOTLINE & RECEIVING REPORTS AND COMPLAINTS

The Virginia Code mandates local departments to maintain the capability to receive reports and complaints alleging abuse or neglect on a twenty-four-hour, seven day a week basis.

Va. Code § 63.2 –1503(B). The local department shall ensure, through its own personnel or through cooperative arrangements with other local agencies, the capability of receiving reports or complaints and responding to them promptly on a twenty-four-hours-a-day, seven-days-per-week basis.

Va. Code § 63.2-1503(C). The local department shall widely publicize a telephone number for receiving complaints and reports.

22 VAC 40-705-40(H) provides that a person may make a report or complaint by telephoning the Department's toll-free child abuse and neglect hotline (800-552-7096) or contacting a local department of social services.

22 VAC 40-705-40(H). To make a complaint or report of child abuse and/or neglect, a person may telephone the department's toll-free child abuse and neglect hotline or contact a local department of jurisdiction pursuant to § 63.2-1510 of the Code of Virginia.

The statewide toll-free CPS State Hotline 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 local department no later than the next working day.

C. ACTIONS UPON RECEIPT OF COMPLAINT OR REPORT

1.0 Statutory Authority

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

Va. Code § 63.2-1503(I). Upon receipt of a report of child abuse or neglect, the local department shall determine the validity of such report and shall make a determination to conduct an investigation pursuant to 63.2-1505 or, if designated as a child protective services differential response agency by the Department according to 63.2-1504, a family assessment pursuant to 63.2-1506.

2.0 Document Receipt of Complaint or Report with Automated Data System

Va. Code § 63.2-1505(B)2. Complete a report and transmit it forthwith to the Department…

When a complaint or report alleging abuse or neglect is received, the local department must enter the report into the information system to obtain a Referral Number. If the subject child is already known to the system as revealed by a search of the child abuse and neglect information system, the worker must still enter the new referral.

3.0 The Local Department Must Record All Complaints & Reports in Writing

22 VAC 40-705-50(A). All complaints and reports of suspected child abuse and/or neglect shall be recorded in the child abuse and neglect information system. A record of all reports and complaints made to a local department or to the Department, regardless of whether the report or complaint was found to be a valid complaint of abuse and/or neglect, shall be retained for one year from the date of the complaint.

All complaints or reports made to the Department or a local department must be documented in the information system. A person may make the initial complaint or report alleging abuse or neglect orally or in writing. However, the local department must document the report or complaint in the information system within three working days, regardless of whether the complaint or report is determined to be valid or invalid.

3.1 New Allegations in an Existing Referral

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 folded into the initial investigation or family assessment*.

If the additional allegations address new types of abuse/neglect and 14 or more days have elapsed since the first report, the additional allegations should be taken as a new report.

3.2 Invalid Complaints Must Be Retained for One Year

Pursuant to 22 VAC 40-705-50(A), the local department must retain all invalid complaints or reports of abuse or neglect for one year from the date the report of complaint is received.

3.3 Determining What Constitutes an Invalid Complaint

Any calls to a local department or the Department's hotline must be retained for one year if the caller is reporting suspected child abuse or neglect or is expressing any concern for the welfare of a child. Calls that can clearly be categorized as referral calls, assistance calls or informational calls do not need to be retained for one year. Any calls clearly not related to the welfare of a child do not need to be maintained for one year as invalid reports of abuse or neglect. It does not matter whether the local department believes the allegation has merit or does not have merit, the issue is whether the caller believes that a child is being abused or neglected or the caller is concerned about the well-being of a child.

Therefore, the local department receiving the call must ascertain whether the caller is attempting to make an allegation that a child is being abused or neglected or making the call for some other reason that is related to the health or safety of a child. If the local department has any doubt or concern about whether the caller intended to make a report or complaint, then the local department must retain a record of that call as an invalid report or complaint, including at least the identifying information on all parties, the allegations, and the reason for invalidating the report.

D. DETERMINING VALIDITY OF REPORT OR COMPLAINT

When a local department receives a report or complaint of abuse or neglect, the local department must determine whether the complaint or report is valid. 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. A determination that the report is valid or not valid should be made within 14 days of receipt of the report. Within 14 days the referral must be accepted or screened out in the automated information system.

1.0 Definition of Valid Complaint or Report

The Virginia Administrative Code also defines a valid complaint.

> **22 VAC 40-705-50 (B). In all valid complaints or reports of child abuse and/or neglect the local department of social services shall determine whether to conduct an investigation or a family assessment. A valid complaint or report is one in which:**
> **1. The alleged victim child or children are under the age of 18 at the time of the complaint and/or report;**
> **2. The alleged abuser is the alleged victim child's parent or other caretaker;**
> **3. The local department receiving the complaint or report is a local department of jurisdiction; and**
> **4. The circumstances described allege suspected child abuse and/or neglect.**

Determining whether the report or complaint is valid precedes determining whether an investigation or family assessment is conducted.

2.0 Determining Whether the Report or Complaint Is Valid

There are four questions 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 listed below, 2.1 through 2.4.

2.1 Question 1: Is the Alleged Victim Child Under Eighteen Years of Age?

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

The local department can only respond with a family assessment or an investigation to valid complaints or reports involving children under the age

of eighteen at the time of the report or complaint. If the alleged victim is over the age of eighteen, the local department should refer that person to the local attorney for the Commonwealth, Adult Protective Services, or other appropriate services provided in the locality.

2.1.1 Emancipated Minor

One possible exception to responding to complaints when the child is under the age of eighteen concerns whether the minor has been legally emancipated. If the alleged victim child is under the age of eighteen and has been legally emancipated, then the local department has the discretion of not completing a family assessment *or* investigating the complaint.
The local department 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 Va. Code §§ 16.1-331 and 16.1-332.

Va. Code §§ 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 local department must confirm that the child has been legally emancipated before invalidating the complaint or report.

2.1.2 Alleged Victim Child is Married

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

Please note, a husband or wife of the alleged victim cannot be considered a caretaker.

2.2 Question 2: Is the Alleged Abuser or Neglector a Caretaker?

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

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

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) persons responsible by virtue of their positions of conferred authority; and (iv) adult persons residing in the home with the child.

As stated in the definition, there are four categories of caretaker. Each category is divided into subcategories to assist in clarifying who may be a caretaker. Those categories and subcategories include:

a. Parent or other person legally responsible for the child's care including:

   (1) Natural parent
   (2) Adoptive parent
   (3) Stepparent

b. Any other individual who has assumed caretaking responsibility by virtue of an agreement (whether formal or informal) with the legally responsible person including but not limited to:

   (1) Relatives (including siblings under 18)
   (2) Foster parents
   (3) Babysitter
   (4) Day care personnel

c. Individuals responsible by virtue of their position of authority or position, including but not limited to:

   (1) Teacher or other school personnel
   (2) Institutional staff
   (3) Scout troop leaders

d. When they are living in the home with the child, the following are assumed to be responsible for the child's care:

   (1) Grandparents,
   (2) Other relatives age 18 or over,

(3) Paramour of parent, or
(4) Sibling age 18 or over

Inherent within the definition of a caretaker is that the individual was responsible for providing care and supervision for the child or assumed responsibility for providing care and supervision for the child. When determining whether a person is responsible for the care of a child, the CPS worker should consider the amount of authority for the care, control and discipline of the child delegated to the person acting as a caretaker. For a further discussion about determining whether a person*, including a minor,* was acting as a caretaker for a child, please see Appendix A-*6*.

2.3 Question 3: Is Abuse or Neglect Alleged to Have Occurred?

22 VAC 40-705-50(B)(4). The circumstances described allege suspected child abuse and/or neglect.

The complaint or report must describe a type of abuse or neglect as defined in 22 VAC 40-705-30 above.

2.4 Question 4: Does the Local Department Have Jurisdiction to Conduct the Family Assessment or Investigation?

Jurisdiction determines which local department has primary responsibility for responding *to* a valid complaint or report of abuse or neglect. 22 VAC 40-705-50(B)(3) of the Virginia Administrative Code addresses the issue of jurisdiction:

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

The definition section of the Virginia Administrative Code (22 VAC 40-705-10) defines jurisdiction as:

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

The local department that first receives a report must ensure that the complaint or report is either determined valid and therefore conducts a family assessment or investigation <u>or</u> the agency receiving the report

determines which is the appropriate agency of jurisdiction and transfers the information to that agency immediately. In determining jurisdiction, the local department receiving the complaint or report alleging abuse or neglect is the local department in the county or city where:

a. The alleged victim child resides, or

b. The alleged abuse or neglect is believed to have occurred, or

c. If neither a nor b is known, where the alleged abuse/neglect was discovered.

An exception to a local department assuming jurisdiction for responding to the complaint is when the complaint of abuse or neglect involves an employee of the local department of social services in 22 VAC 40-705-40(H)(4).

2.4.1 Lack of Jurisdiction, in and of itself, Not Sufficient to Invalidate Complaint or Report

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

3.0 Invalid Report or Complaint

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

Each of the four criteria outlined in 22 VAC 40-705-50(B) must be satisfied in order to achieve a valid complaint of abuse or neglect requiring a family assessment *or* an investigation. If the complaint or report of abuse or neglect fails to meet any one of the criteria, then the complaint or report is not valid and a family assessment *or* an investigation by that local department should not be conducted.

3.1 Additional Information for Screening Reports of Abuse/Neglect Against Public School Personnel

See Part XII, Out of Family Investigations, Page 249. Virginia Code § 63.2-1511 states that "reasonable and necessary" force should be taken into account in determining validity of reports of abuse or neglect by school employees.

4.0 Notify Complainant if Report or Complaint is Invalid

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

5.0 Other Notifications When Report or Complaint is Invalid

If a report is determined to be invalid, the local department may be required to notify other parties as indicated below.

5.1 Invalid Complaint Involving Child Care Facility

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

5.2 Notifying 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 local department (or CPS State Hotline staff if receiving the call) is required to report the allegation to the local law enforcement agency. The worker should telephone the information to law enforcement in the jurisdiction where the abuse occurred in accordance with any local protocol or standard procedures for reporting sex offenses involving juvenile victims. If there is any reason to believe a child may be in danger, the report must be made immediately. In all other cases, the report must be made on the same day it is received. Additional procedures may be developed locally to ensure effective reporting and accountability.

5.3 Non-Caretaker Sexual Abuse: Information to be Provided to Law Enforcement

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 (including date and location); status of the current safety of the child; and identity of the caller (name, address, telephone).

5.4 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:

a. The local department is not the agency authorized to investigate the report.

b. The local department is required to report this information directly to law enforcement.

E. JURISDICTION TO CONDUCT FAMILY ASSESSMENT OR INVESTIGATION

1.0 Statutory Authority

§ 63.2-1503(A) of the Code of Virginia provides local departments with the jurisdictional authority to conduct investigations of reports or complaints alleging child abuse and neglect.

Va. Code § 63.2-1503(A). The local department shall be the public agency responsible for receiving and responding to complaints and reports…

2.0 General Rule of Jurisdiction

22 VAC 40-705-40(H) provides the regulatory framework for how local departments should address the issue of jurisdiction. Jurisdiction determines which local department has primary responsibility for the response to a valid complaint or report of abuse or neglect. The definition section of the Virginia Administrative Code defines jurisdiction as:

> **"Local department of jurisdiction" means the local department in the city or county in Virginia where the alleged victim child resides or in which the alleged abuse and/or neglect is believed to have occurred. If neither of these is known, then the local department of jurisdiction shall be the local department in the county or city where the abuse and/or neglect was discovered.**

The local department that first receives a report must either ensure that the complaint or report is valid and a family assessment or an investigation is initiated or transfer the information to another agency of jurisdiction for this purpose. When determining jurisdiction, the local department receiving the complaint or report alleging abuse or neglect is the local department in the county or city where:

a. The alleged victim child resides, or

b. The abuse or neglect is believed to have occurred, or

c. If neither a nor b is known, where the abuse or neglect was discovered.

The intent of law and regulation is that any and all valid reports will be addressed without placing an undue burden on the complainant to know where to file the complaint. If there is some question as to validity and jurisdiction, the agency that first receives the report should not determine validity before contacting the responsible agency.

An exception to a local department assuming jurisdiction of an investigation is when the complaint of abuse or neglect involves an employee of the local department of social services in 22 VAC 40-705-40(H)(4).

2.1 Out of State Jurisdiction

A local department may assume jurisdiction of an investigation where the alleged abuse or neglect occurred in another state, but the alleged victim child resides in Virginia. Jurisdiction to conduct an investigation of a complaint or report of abuse or neglect is not limited to abuse or neglect occurring in Virginia. If a child residing in Virginia is abused or neglected, the local department may intervene and conduct a family assessment *or* an investigation and provide any needed services. If the local department does assume jurisdiction where the alleged abuse or neglect occurred out of state, the local department may request the other state to assist with the family assessment or investigation.

2.2 Transferring Jurisdiction of Investigation Out of State

If appropriate, the local department may request the other state to assume jurisdiction of the investigation. If the other state agrees to assume jurisdiction of the investigation, the local department should provide all information relevant to the investigation to the other state. The following information should be provided when making a referral:

a. The name, date of birth, and sex of child;

b. Any other name by which the child may be known;

c. The names of parent and/or guardian;

d. Any other names by which the parent and/or guardian may be known;

e. The current address including any directions;

f. Last known address;

g. Statement of why the referral is being made;

h. Brief social history of the child and the family;

i. A brief description of the local department's involvement with the family.

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

3.0 The Local Department First Receiving the Complaint or Report Must Ensure Complaint or Report, if Valid, Receives a Response

22 VAC 40-705-40(H)(1). The local department of jurisdiction that first receives a complaint or report of child abuse and/or neglect shall assume responsibility to ensure that a family assessment or an investigation is conducted.

22 VAC 40-705-40(H)(1) specifically places responsibility on the initial local department receiving the complaint or report alleging abuse or neglect to ensure that a family assessment or investigation is conducted if the complaint or report is valid. This section does not necessarily mean that the local department first receiving the report or complaint will be the local department responsible for conducting the family assessment or investigation. The purpose of this section is to ensure that a valid report or complaint does not go uninvestigated because of a question of jurisdiction. If a local department receives a valid report or complaint of abuse, but is not the local department of

jurisdiction, that local department must ensure that the complaint or report is forwarded to the appropriate local department for response.

3.1 Transferring Jurisdiction of Investigation to Another Local Department

22 VAC 40-705-40(H)(1) requires the local department of jurisdiction first receiving a valid complaint to ensure that the complaint receives a family assessment or investigation. If the local department first receiving a valid complaint does not believe that it is the appropriate local department to respond, then that local department must forward the complaint to the local department that does have proper jurisdiction. The local department first receiving the complaint must forward all information related to the complaint. The local department first receiving the complaint must also ensure that the other local department is going to conduct a family assessment or an investigation.

The original local department is not required to ensure how the family assessment or investigation is conducted, i.e., who is interviewed, what disposition is rendered. The local department transferring the *report* to another local department must maintain a record documenting the transfer.

3.2 Responsibilities of Local Department Receiving the Complaint for Investigation

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

4.0 Assistance Between Local Departments of Jurisdiction

22 VAC 40-705-40(H)(2). A local department may ask another local department which is a local department of jurisdiction to assist in conducting

the family assessment or investigation. If assistance is requested, the local department shall comply.

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

4.1 When a Party Relocates Outside of the Investigating Local Department's Jurisdiction

The Virginia Code specifically addresses the circumstances when a party to a report or complaint of abuse or neglect relocates outside of the jurisdiction of the investigating local department.

Va. Code § 63.2-1503(H). When a child for whom a report of suspected abuse or neglect has been received and is under investigation or receiving family assessment and the child and/or the child's parents or other persons responsible for the child's care who are the subject of the report that is under investigation or family assessment have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which the child and/or such persons have relocated, whether inside or outside of the Commonwealth, and complete such investigation or family assessment by requesting such agency's assistance in completing the investigation or family assessment. The local department that completes the investigation or family assessment shall forward to the receiving agency relevant portions of the case record in order for the receiving agency to arrange protective and rehabilitative services as required by this section.

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

departments who have been designated to do so may conduct a family assessment.

4.2 Local Departments Shall Share Relevant Case Record Information

When one local department requests another local department to assist in completing a family assessment or an investigation or providing services, the requesting local department shall contact the receiving local department by telephone before transferring the record within the child abuse and neglect information system. The receiving local department shall then arrange protective and rehabilitative services as needed or appropriate, and assist in a timely completion of the investigation. All written notification and letters (i.e., disposition letters and notification of appeal rights) remain the responsibility of the original local department of jurisdiction conducting the family assessment *or* investigation. The local department of jurisdiction shall continue to maintain the original case record, providing the receiving department with relevant portions of the case record necessary to provide services or to complete the investigation.

4.3 Cooperative Agreements Between Local Departments

22 VAC 40-705-40(H)(3). A local department may ask another local department through a cooperative agreement to assist in conducting the family assessment or investigation.

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

5.0 Jurisdiction: 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 a local department. 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 local departments must develop a cooperative agreement to ensure that the report receives an appropriate response. When considering transferring a report or complaint of child abuse or neglect because of the appearance of a conflict of interest, the local department may seek guidance from the CPS regional coordinator.

5.1 Jurisdiction: Spouse of Employee or Member of Local Board

If the spouse of an employee or member of the local board of social services is suspected of abusing or neglecting a child, the local department may request a neighboring local department of social services assist in conducting the family assessment or investigation.

6.0 Jurisdiction: Investigations Involving Employees of Local Departments

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

Va. Code § 63.2-1509(A). If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation *or* family assessment… The judge may consult with the Department in selecting a local department to respond to the report or the complaint.

The Virginia Administrative Code states:

> **22 VAC 40-705-40(H)(4). If a local department employee is suspected of abusing and/or neglecting a child, the complaint or report of child abuse and/or neglect shall be made to the juvenile and domestic relations district court of the county or city where the alleged abuse and/or neglect was discovered. The judge may assign the report … pursuant to §§ 63.2-1509 and 63.2-1510 of the Code of Virginia.**

If an employee of any local department is suspected of abusing or neglecting a child, a report must be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. The judge may assign the report to a local department that is not the employer of the alleged abuser.

6.1 Jurisdiction: Assignment of Investigation by Court to Local Department

If a local department of social services is assigned a report by the Court, the family assessment or investigation should be conducted like any other.

F. CERTAIN REPORTS & COMPLAINTS ALLEGING ABUSE OR NEGLECT MUST BE REPORTED TO COMMONWEALTH'S ATTORNEY, ETC.

1.0 Reporting Criminal Acts Committed Against Children

Va. Code § 63.2-1503(D). The local department shall upon receipt of a complaint, report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) 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 §18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of §18.2-371, and provide the 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 local department shall not 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.

22 VAC 40-705-50(D). The local department shall report certain cases of suspected child abuse or neglect to the local attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.2-1503(D) of the Code of Virginia.

Certain cases of suspected abuse or neglect must be reported to the local Commonwealth's Attorney and local law-enforcement agency. Notification must occur in reports or complaints involving the delineated circumstances below.

1.1 The Death of a Child

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

1.2 An Injury or Threatened Injury to a Child Involving a Felony or Class I Misdemeanor

A report or complaint involving an injury (actual or threatened) that may have occurred as the result of a commission of a felony or a class 1 misdemeanor must be immediately reported to the attorney for the Commonwealth and the local law-enforcement agency. Criminal Offenses are either felonies or misdemeanors. Felony offenses are punishable with

death or confinement in a state correctional facility; all other offenses are misdemeanors.[18] Felonies are classified, for the purposes of punishment and sentencing, into six classes; misdemeanors are classified into four classes.[19]

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 Va. Code §18.2-374.1, must be reported to the Commonwealth's Attorney office and local law-enforcement.

1.4 Any Abduction of a Child

Any time a report or complaint alleges the abduction of a child, the local department must make a report to the Commonwealth's Attorney Office and to law-enforcement.

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 local department must notify the Commonwealth's Attorney office and law-enforcement.

1.6 Contributing to the Delinquency of a Minor

Contributing to the delinquency of a Minor in violation of Va. Code §18.2-371 must be reported to the Commonwealth's Attorney office and local law-enforcement.[20]

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18 Va. Code § 18.2-8.
19 Va. Code § 18.2-9.
20 Va. Code § 18.2-371 defines contributing to the delinquency of a minor as:
Any person eighteen years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in §16.1-228, or (ii) engages in consensual sexual intercourse with a child fifteen or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting §§18.2-18, 18.2-19, 18.2-61, 18.2-63, 18.2-66, and 18.2-347.

1.7 Information to be Provided to Commonwealth's Attorney and Law-Enforcement Agency

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

1.8 Other Criminal Acts Related to Child Abuse or Neglect

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

2.0 Reporting the Death of a Child

22 VAC 40-705-50(F). The local department shall report to the following when the death of a child is involved . . .

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

2.1 Reporting Death of Child to the Regional Medical Examiner

Va. Code § 63.2-1503(E). When abuse or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner and the local law-enforcement agency.

22 VAC 40-705-50(F)(1). When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the regional medical examiner pursuant to § 63.2-1503(E) of the Code of Virginia.

The local department must immediately notify the regional medical examiner when the local department receives a complaint or report of abuse or neglect involving the death of a child. Also, the local department should advise the medical examiner if the local department will be proceeding with an investigation.

2.2 Reporting Death of Child to Local Commonwealth's Attorney and Law-Enforcement

22 VAC 40-705-50(F)(2). When abuse and/or neglect is suspected in any case involving the death of a child, the local department shall report the case immediately to the attorney for the Commonwealth and the local law-enforcement agency pursuant to § 63.2-1503(D) of the Code of Virginia.

The local department must immediately notify the local office of the Commonwealth's Attorney and local law-enforcement when the local department receives a complaint or report of abuse or neglect involving the death of a child. Also, the local department should advise the Commonwealth's Attorney and local law-enforcement if the local department will be proceeding with an investigation.

2.3 Local Department Must Report Death of Child Immediately

22 VAC 40-705-50(F)(3). The local department shall contact the Department immediately upon receiving a complaint involving the death of a child and at the conclusion of the investigation.

The local department's CPS supervisor or supervisor's designee must contact the child protective services program Specialist immediately upon receiving a complaint involving the death of a child. The Specialist must gather the preliminary case information and complete the Preliminary Fatality Information Form. The Preliminary Fatality Information Form must be forwarded to the CPS Program Manager by the Specialist within 24 hours of receipt of the information pertaining to the death of the child. Upon receipt of the information pertaining to the death of a child, the CPS Program Manager must inform the Commissioner's Office. Data is also shared with the State Board of Social Services.

2.3.1 Preliminary Fatality Information Form

The Preliminary Fatality Information Form should include the following available information:

A. Logistical Information

1. Name of Local Department
2. Name of Investigating Worker
3. Name of CPS Supervisor
4. Date of Complaint
5. Complaint Number
6. Person Making the Complaint or Report

B. Demographic Information

1. Name of Deceased Child
2. Deceased Child's Date of Birth
3. Date of Child's Death
4. Sex of Child
5. Race of Child

C. Reporting Requirements

1. Date Reported to CPS Regional Specialist
2. Date Reported to Commonwealth's Attorney
3. Date Reported to Law Enforcement
4. Date Reported to Regional Medical Examiner
5. Date Reported to Program Manager

D. Circumstances Surrounding the Child's Death

1. A Detailed Description of the Child's Death (When, where, why, how, who, and any related problems, including type of abuse/neglect)
2. A History of the Family & Caretaker (Any substance abuse or domestic violence involved?)
3. Any Information Concerning the Family's Prior Involvement with the Local Department
4. Any Information Concerning the Alleged Perpetrator of the Child's Death (Relationship to victim or other family members)
5. 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.)

E. Local Department's Plan of Action

1. A Description of the Local Department's Investigation Plan
2. Description of the *SPECIALIST* Involvement and Assistance
3. Date Disposition is Due
4. Identification of any Additional Concerns or Comments

2.3.2 CPS Program Specialist to Provide Technical Assistance

The *SPECIALIST* will offer technical assistance to the local department. The *SPECIALIST* may offer or be asked by the locality to participate in a

staffing on the disposition and developing the service plan. The local department is also encouraged to utilize interdisciplinary teams to staff fatality cases to enhance the process for shared decision making.

a. The *SPECIALIST* will mail a copy of the fatality questionnaire to the local department to allow the local department to become familiar with the data needed.

b. The local department's CPS supervisor will contact the regional Specialist at the conclusion of the investigation. If the local department has not contacted the regional Specialist within the 45 days, the *SPECIALIST* will contact the local supervisor to determine the status of the case.

c. Upon notification of the disposition, or as soon as possible thereafter, the *SPECIALIST* completes the data collection instrument in conjunction with the local department.

d. The local department will send a copy of the entire services case record to the *SPECIALIST* for review or have arranged for the regional consultant to have reviewed the record at the local department within this time period.

e. Upon completion of the record review, the *SPECIALIST* will discuss any questions with the local supervisor and administrators as appropriate.

2.3.3 Retention of the Child Fatality Record

The record of a child fatality report, whether founded or unfounded, should be maintained until the State Child Fatality Review Team has had an opportunity to review it. Retention of the record beyond the usual retention date is based in law, as referenced in § 32.1-283.1(D). (Contact the SPECIALIST if there is any question about retention of a specific record.)

3.0 Memoranda of Understanding with Law Enforcement and Commonwealth's Attorney

Virginia Code 63.2-1503(J) and 22 VAC 40-705-50(E) state that

> **… local departments shall develop, where practical, memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the commonwealth's attorney.**

Since many situations are required to be reported to local law enforcement and/or the Commonwealth's Attorney, children and families will be better served if there is an understanding between these organizations and the local department of social services. 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.

G. SCREENING COMPLAINTS FOR PRIORITY

The local department shall consider all available information in determining the need for assessing a complaint as a high priority. *While the Code of Virginia requires an "immediate" response to all valid reports, local departments are encouraged to set local guidelines for a level 1, 2, or 3 response. Level 1 is highest urgency, Level 2 is moderate urgency, and Level 3 is lowest urgency. Best practice indicates that reports should be responded to as soon as possible, and no response should wait longer than five days from the date the report is accepted.*

The following information should be taken into account in setting local guidelines.
22 VAC 40-705-50(*G*) provides the regulatory framework for the screening of complaints and reports for priority:

> **Valid complaints or reports shall be screened for high priority based on the following:**
> **1. The immediate danger to the child;**
> **2. The severity of the type of abuse or neglect alleged;**
> **3. The age of the child;**
> **4. The circumstances surrounding the alleged abuse or neglect;**
> **5. The physical and mental condition of the child; and**
> **6. Reports made by mandated reporters.**

1.0 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:

a. Is the child in current distress, injured, or otherwise in an unsafe environment?

b. What plans do the caretakers have for the future or continued protection of the child?

c. Do the caretakers view the circumstances of the child as threatened?

d. Has the abuse or neglect diminished, stopped, ceased, or is the child thought to be at risk of continued abuse or neglect?

2.0 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:

a. Are there allegations or evidence of broken bones, fractures, cuts, broken skin, severe bruising or serious maltreatment?

b. What was the manner of infliction of the abuse or neglect?

c. Were instruments or other items, such as guns, knives or belts, used in the infliction of the abuse or neglect?

d. Is the neglect or abuse of a continuing or chronic nature? Is there evidence establishing a pattern of abusive or neglectful behavior?

e. Is the abuse or neglect of an immediate nature?

f. Can the caretaker be located? Is the caretaker not available?

g. Is it likely that the precipitating event or one similar will reoccur?

h. Is the potential danger more or less severe because of a pattern of abuse or neglect?

i. Are factors in the environment (both in and outside the home) observed to have an impact on the actual or potential abuse or neglect of the child?

3.0 The Age of the Child

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

a. Does the child's age, sex, developmental level, chronological age, or maturation level effect the child's vulnerability to abuse or neglect?

b. Is the child able to protect him or herself from future abuse or neglect?

c. Does the child know of emergency plans or contacts to ensure safety from future abuse?

d. Is the child able to express thoughts or responses regarding the circumstances surrounding the allegation of abuse or neglect?

4.0 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:

a. When did the abuse or neglect occur?

b. Where did the abuse or neglect occur?

c. Were other individuals aware or witness to the circumstances of the abuse or neglect?

c. Are siblings of the victim child aware or witness to the abuse or neglect?

d. Did the abuse or neglect occur during a punishment or instructional contact with the child?

e. What is the likelihood that the circumstances leading to the abuse or neglect will reoccur?

5.0 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:

a. Is the child thought to be of normal development and possess the ability to communicate during the investigation?

b. Are there known illnesses, developmental delays, or other impediments to normal growth and development of the victim child?

c. Are the child's responses and feelings known regarding the incident of abuse or neglect?

d. Are these responses and feelings consistent or inconsistent with what would be expected in the circumstances of abuse?

e. How does the child view his or her role in the abusive or neglectful situation?

f. Does the child's perception of his role impact his or her vulnerability for abuse or neglect?

6.0 Reports Made by Mandated Reporters

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

a. When was the mandated reporter made aware of the circumstances involving the alleged abuse or neglect?

b. In what capacity did the mandated reporter know the alleged victim child? What was the relationship between the alleged victim child and the mandated reporter?

c. Has the reporter made a similar report on like circumstances regarding this victim child prior to this complaint?

d. Has the mandated reporter discussed the circumstances with the child? With the parents? Other professionals?

e. Does the mandated reporter possess other relevant information such as knowledge about the living conditions or other environmental factors?

f. What actions or services are recommended by the mandated reporter?

H. DETERMINING THE IMMEDIATE RESPONSE

22 VAC 40-705-50H. The local department shall initiate an immediate response. The response shall be a family assessment or an investigation. Any valid report may be investigated, but in accordance with 63.2-1506(C) of the Code of Virginia, the following shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in a serious injury as defined in §18.2-371.1, (iv) child has been taken into the custody of the local department of social services, or (v) cases involving a caretaker at a state-licensed child day care center, religiously exempt child day center, regulated family day home, private or public school, or hospital or any institution.

1.0 Making the Track Decision

Both law and regulation require that an immediate response be made, and after the decisions regarding validity and urgency, a decision must be made as to whether to conduct a family assessment or an investigation, if the agency has been designated as a differential response agency by the Department. The answers to the questions provided in preceding sections G 1.0 and G 2.0 regarding screening the complaint are relevant to making a track assignment. The immediate danger to the child and the severity of the alleged abuse or neglect are crucial factors to be considered.

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

- history of abuse or neglect
- type of alleged abuse;
- child's age and ability to self-protect;
- presence of a disability that affects the child's ability to self-protect;
- whether or not the caretaker's behavior is violent or out of control;
- living conditions, e.g. hazardous, presence of firearms or drugs.

If crucial information is not obtainable from the complainant, the track decision 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. Certain reports are required to be investigated, but the agency may exercise discretion in all others.

CPS DIFFERENTIAL RESPONSE
REPORT PLACEMENT CHART

ASSESSMENT RESPONSE	INVESTIGATION RESPONSE
No situations are mandated to be Family Assessments. After a family has received three Family Assessments within a year, the next report shall be investigated.	**Mandated by Code of Virginia (63.2-1506(C)):** - All sexual abuse allegations - Any child fatality - Abuse or neglect resulting in serious injury as defined in 18.2-371.1 * - Child taken into agency custody due to abuse or neglect (63.2-1517) - Child taken into protective custody by physician or law enforcement, pursuant to 63.2-1517 - All allegations regarding a caretaker in a designated out of family setting as defined in 63.2-1506(C) - Medical neglect of disabled infant with life threatening condition (Baby Doe)
	Policy mandate: All allegations regarding a caretaker in an out of family setting of any kind, i.e. foster homes, are required to be investigated.
Examples of when this response may be most appropriate: **Physical Abuse:** Abusive treatment of a child that may or may not have caused a minor injury – no medical treatment required. **Mental Abuse**: Child is experiencing minor distress or impairment; child's emotional needs are sporadically met but there are behavioral indicators of negative impact. Child exposed to domestic violence. **Neglect:**	Examples of when this response may be most appropriate, but not mandated by law: **Physical Abuse**: Physical abuse that causes or threatens to cause serious injury (other than that defined in 18.2-371.1); or that may require medical evaluation, treatment or hospitalization. *Reports of children present during the sale or manufacture of illegal substances; and highly recommend these be investigated jointly with law enforcement*.

Lack of supervision where child is not in danger at time of report; minor injuries suggesting inattention to child safety. **Substance Exposed Infant** referrals.	**Mental Abuse**: Child is experiencing serious distress or impairment; child's emotional needs allegedly are not being met or are severely threatened. **Neglect:** Lack of supervision that causes or may cause serious injury or illness; injury or threat of injury due to use of weapons in the home. **Non-Organic Failure to Thrive:** Child is an infant and at imminent risk of severe harm. **Child Abandonment** referrals.

When making this key decision it is important to be aware:

- The Family Assessment track is designed to provide a basis for a child safety plan and family service plan to remedy or prevent child abuse or neglect.
- It is predicated on the ability of the agency to work with the family and community resources to develop strategies to ameliorate factors associated with abuse or neglect, if these factors are found to be present in the family.
- It is also based on the premise that the most serious or injurious allegations will be handled in the Investigative track.

** 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.*

2.0 Changing the Initial Track Decision

After the referral is accepted as a Family Assessment, it may be switched to an Investigation in very limited circumstances. It may not, according to Virginia Code, 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 guidelines for an Investigation, the Family Assessment must be halted and a new referral documented to initiate an Investigation.
Although the Code is very clear that 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 is pertinent to changing tracks or taking some other action, such as petitioning the court for a protective order to keep a child safe.

I. INITIATION OF THE INVESTIGATION

22 VAC 40-705-50(H)(1) defines the purpose of the investigation.

> **The purpose of an investigation is to collect the information necessary to determine or assess the following:**
> **a. Immediate safety needs of the child;**
> **b. Whether or not abuse or neglect has occurred;**
> **c. Who abused or neglected the child;**
> **d. To what extent the child is at risk of future harm, either immediate or longer term;**
> **e. What types of services can meet the needs of this child or family; and**
> **f. If services are indicated and the family appears to be unable or unwilling to participate in services, what alternate plans will provide for the child's safety.**

1.0 First Meaningful Contact Initiates Investigation

The initiation of the investigation is considered to be the first meaningful contact after the complaint is validated. A meaningful contact provides information pertinent and relevant to determining whether or not the abuse or neglect occurred. The first meaningful contact is usually a face-to-face visit, but the first meaningful contact may occur by telephone.

Version 2.7 of OASIS provides a means of designating the first meaningful contact in the automated record. The CPS worker should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact; response times will be calculated from this designation.

2.0 Notify Alleged Abuser or Neglector of the Investigation

In all investigations, the alleged abuser or neglector of the complaint shall be advised, in writing, of the general nature of the complaint and the identity of the victim child or children. This notification should be given during the initial contact or as soon as is deemed possible given the circumstances so as to avoid any confusion regarding the purpose of the contacts. At least one investigative interview with the alleged abuser must occur during or after the contact in which notification that he or she is the subject of the complaint is provided. For further discussion concerning the interview of the alleged abuser or neglector, see Part V (The Investigation) of this policy manual.

2.1 Information to Provide on First Contact

Before conducting a family assessment or investigation, the CPS worker shall explain the responsibilities and authorities of CPS so that the caretaker can be made aware of the possible benefits and consequences of completing the family

assessment or investigation. The explanation must be provided orally and in writing.

2.2 Provide Notification Brochure to Alleged Abuser or Neglector

A copy of the notification should be retained for the record. The informing brochure, Virginia Cares About Its Children #032-01-974, can be used to make this notification provided that the general nature of the complaint, the identity of the victim child or children, and the date given is noted on the brochure. If a copy of the notification is not retained in the record, provision of the notification (method and date) must be documented in the investigation narrative.

2.3 Notification of Non-Custodial Parent

***63.2-1503(O)**. The local department shall notify the custodial parent and make reasonable efforts to notify the noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect of a child who is the subject of an investigation or is receiving family assessment, in those cases in which such custodial or noncustodial parent is not the subject of the investigation.*

Reasonable efforts must be made to notify the non-custodial parent 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 account. Also, the response to a valid report should not be delayed if the non-custodial parent is unreasonably difficult to reach.

J. INITIATION OF FAMILY ASSESSMENT

22 VAC 40-705-50(H)(2) defines the purpose of the family assessment.

The purpose of a family assessment is to engage the family in a process to collect the information necessary to determine or assess the following:
a. Immediate safety needs of the child;
b. To what extent the child is at risk of future harm, either immediate or longer term;
c. The types of services can meet the needs of this child or family; and
d. If services are indicated and the family appears to be unable or unwilling to participate in services, what plans will be developed in consultation with the family to provide for the child's safety. These arrangements may be made in consultation with the caretaker(s) of the child.

1.0 First Meaningful Contact Initiates Family Assessment

The initiation of the family assessment is considered to be the first meaningful contact after the complaint is validated. A meaningful contact provides information pertinent and relevant to determining child safety and immediate family service needs. The first meaningful contact is usually a face-to-face visit, but the first meaningful contact may occur by telephone.

Version 2.7 of OASIS provides a means of designating the first meaningful contact in the automated record. The CPS worker should confer with a supervisor if there is any doubt about which contact constitutes the first meaningful contact; response times will be calculated from this designation.

2.0 Notify Alleged Abuser or Neglector of the Family Assessment

In all family assessments, the alleged abuser or neglector of the complaint shall be advised, orally and in writing, of the general nature of the complaint and the identity of the victim child or children. This notification should be given during the initial contact or as soon as is deemed possible given the circumstances so as to avoid any confusion regarding the purpose of the contacts. At least one interview with the alleged abuser must occur during or after the contact in which notification that he or she is the subject of the complaint is provided. For further discussion concerning the notification of the alleged abuser or neglector, see Part IV (The Family Assessment) of this policy chapter.

2.1 Information to Provide on First Contact

Before conducting a family assessment or investigation, the CPS worker shall explain the responsibilities and authorities of CPS so that the caretaker can be made aware of the possible benefits and consequences of completing the family assessment or investigation. The explanation must be provided orally and in writing.

2.2 Provide Notification Brochure to Alleged Abuser or Neglector

A copy of the notification should be retained for the record. The informing brochure, CPS: Strong Families and Safe Children #032-01-034, can be used to make this notification provided that the general nature of the complaint, the identity of the alleged victim child or children, and the date given is noted on the brochure. If a copy of the notification is not retained in the record, provision of the notification must be documented in the information system on the contact screen.

2.3 Notification of Non-Custodial Parent

***63.2-1503(O)**. The local department shall notify the custodial parent and make reasonable efforts to notify the noncustodial parent as those terms are defined in § 63.2-1900 of a report of suspected abuse or neglect of a child who is the subject of an*

investigation or is receiving family assessment, in those cases in which such custodial or noncustodial parent is not the subject of the investigation.

Reasonable efforts must be made to notify the non-custodial parent 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 account. Also, the response to a valid report should not be delayed if the non-custodial parent is unreasonably difficult to reach.

K. REASONABLE DILIGENCE

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

Va. Code § 63.2-1503(F). The local department shall use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation, receiving family assessment, or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation or receiving family assessment, if the whereabouts of the child or such persons are unknown to the local department;

22 VAC 40-705-50(H)(3) requires local departments to use reasonable diligence in locating the alleged victim child and the subjects of the report and complaint.

> **The local department shall use reasonable diligence to locate any child for whom a report or complaint of suspected child abuse and/or neglect has been received and determined valid or persons who are the subject of a valid report if the whereabouts of such persons are unknown to the local department, pursuant to § 63.2-1503(F) of the Code of Virginia.**

1.0 Document Use of Reasonable Diligence in Locating Child and Family

> **22 VAC 40-50(H)(4). The local department shall document its attempts to locate the child and family.**

The local department must document in the information system its attempts to locate the alleged victim child and the family.

2.0 Use of Reasonable Diligence in Locating Alleged Victim Child

Va. Code § 63.2-1503(F) requires local departments to use reasonable diligence to locate children for whom a report of suspected child abuse and/or neglect has been

received and is receiving a family assessment *or* under investigation. Va. Code § 63.2-1503(H) also requires the local department to use reasonable diligence locating a child for whom a founded disposition of child abuse or neglect has been made and a CPS services case opened when the child's whereabouts are unknown.

3.0 Reasonable Diligence Must be Used to Locate Subjects of the Family Assessment or Investigation

Reasonable diligence must also be used by local departments to locate persons who are the subject of a child protective services (CPS) family assessment *or* investigation, if the whereabouts of such persons are unknown to the local department.

3.1 Subjects of the Investigation

The subjects of the family assessment *or* investigation include:

a. Any child for whom a report of suspected abuse or neglect has been received and is under investigation;

b. Persons named as the alleged abuser and/or neglector of a report that is under investigation.

4.0 What Constitutes Reasonable Diligence

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

a. Child Welfare Automated Data System
b. Postal Service for last known address
c. Postal Service for forwarding address
d. Neighbors, landlords, known relatives
e. School records
f. Department of Motor Vehicles
g. Department's Division of Support Enforcement
h. Department of Corrections, Probation and Parole
i. Law Enforcement
j. Telephone and utility companies
k. Employer
l. Other appropriate contacts

The local department must document in the information system the attempts to locate the child and family and the results of the attempts.

5.0 When the Alleged Victim Child is Not Found

22 VAC 40-705-50(H)(*5*). In the event the alleged victim child or children cannot be found, the time the child cannot be found shall not be computed as part of the 45-60 day time frame to complete the investigation, pursuant to subdivision 5 of § 63.2-1505(B5) of the Code of Virginia.

When the alleged victim child cannot be located, despite the local department's efforts, the 45-60 day time frame for completing the investigation or family assessment will be suspended. The local department must document the suspension in the case record and the reasoning for the suspension.

5.1 Local Department Must Notify Automated Data System

When the alleged victim child is not located, the local department must notify the automated data system that the family assessment or investigation is suspended and pending.

5.2 Local Department Must Continue Periodic Checks for Missing Child

If the alleged victim child is not found, the local department must establish a timetable for making checks periodically. The local department shall document the timetable in the case record and the results of the periodic checks. Periodic checks for the missing child must continue until the local department is satisfied with the resolution of the case. Upon resolution of the case, the local department must notify the automated data system and document in the record the resolution of the case.

5.3 If Missing Child is Found

If a family assessment *or* an investigation was suspended and the missing child is subsequently located, the local department must resume the *assessment or* investigation of the original complaint or report. Upon locating the missing child, a new 45-day time frame will commence.

PART IV: THE FAMILY ASSESSMENT

Every valid report of abuse or neglect must receive either a family assessment or an investigation. See Part III, pages 71-73, for guidance on how to make the determination of response type for each valid report. See Part V in its entirety for guidance on completing an Investigation.

The Virginia Administrative Code (22 VAC 40-705-10) defines a family assessment for purposes of child protective services in Virginia:

> **"Family assessment" means the collection of information necessary to determine:**
> **a. The immediate safety needs of the child;**
> **b. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;**
> **c. Risk of future harm to the child; and**
> **d. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services. These arrangements may be made in consultation with the caretaker(s) of the child.**

The Administrative Code also defines assessment:

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

22 VAC 40-705-110 provides the authority for local departments to conduct three types of assessments: the initial safety assessment, the dispositional assessment and the risk assessment. Only the initial safety assessment and the risk assessment are pertinent to the family assessment response. The process of conducting a family assessment will result in a product that will include all the elements cited above in the definition of family assessment.

A. AUTHORITIES

The Code of Virginia gives child protective service workers certain authorities to assist with conducting the family assessment. Each type of authority has limits and conditions. Generally, 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. It should be emphasized that an individual's refusal to cooperate does not relieve the local department of the responsibility to pursue completion of the family assessment, because it has been initiated due to a valid report of abuse or neglect.

The following are the authorities provided to the worker and the local department while conducting a family assessment. These authorities are applicable only during the family assessment period.

1.0 Authority to Interview the Child

Va. Code § 63.2-1518. Authority to talk to child or sibling. Any person required to make a report or conduct an investigation or family assessment, pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of and outside the presence of his parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

> **22 VAC 40-705-60 (1). [When responding to valid complaints or reports local departments have the following authority] To talk to any child suspected of being abused and/or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.2-1518 of the Code of Virginia.**

When conducting a family assessment, the worker may talk to any child suspected of being abused or neglected or to any siblings without consent of and outside the presence of the parent or guardian when the parent or guardian is the alleged abuser/neglector. If the CPS worker talks to the child without the parent's or guardian's prior knowledge, the CPS worker must notify the parent or guardian concerning the interview at the first opportunity. Full consideration should be given to the consequences of exercising this authority in family assessments. If safety of the child is not an issue, a first contact with the parent or guardian is usually preferable for a family assessment.

1.1 Parent or Guardian Refuses to Allow Child to be Interviewed

If the parent or guardian refuses to allow the worker to interview the child, the worker may petition the court to request access to the child. The local department may elect to petition the court pursuant to Virginia Code § 16.1-253 (Preliminary Protective Order).

1.2 CPS Worker May Exclude School Personnel From Interview

If the worker interviews the child at school, the worker may require that school personnel be excluded from the interview in order to protect the family's right to privacy.

2.0 Authority to Have X-Rays and Photographs Taken of the Alleged Victim Child

Va. Code § 63.2-1520. Photographs and X-rays of child; use as evidence. In any case of suspected child abuse, photographs and X-rays of said child may be taken without the consent of the parent or other person responsible for such child as a part of the medical evaluation. Photographs of said child may also be taken without the consent of the parent or other person responsible for such child as a part of the investigation or family assessment of the case by the local department or the juvenile and domestic relations district court; provided, however, that such photographs shall not be used in lieu of medical evaluation. Such photographs and X-rays may be introduced into evidence in any subsequent proceeding.

The court receiving such evidence may impose such restrictions as to the confidentiality of photographs of any minor as it deems appropriate.

> **22 40-705-60(2). [When responding to valid complaints or reports local departments have the following authority] 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.**

In cases of suspected child abuse, photographs and x-rays of a child may be taken without the consent of the parent or guardian as part of a medical evaluation, but in family assessments parental consent should be sought unless child safety is an issue. All photographs or x-rays taken in accordance with Va. Code § 63.2-1520 may be introduced into evidence in any subsequent court hearing. The court receiving the evidence can impose any restrictions concerning the confidentiality of the photographs or x-rays.

2.1 Court Ordered Examinations

Va. Code § 63.2-1524. The court may order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected and of the parents, guardians, caretakers or siblings of a child suspected of being neglected or abused.

> Va. Code § 63.2-1524 provides the court with the authority to order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected or of the child's parents, guardians, caretakers or siblings. Va. Code § 63.2-1524 goes beyond § 63.2-1520 by providing the court with the authority to order the alleged victim child's parents, guardians, caretakers or the child's siblings to undergo psychological, psychiatric and physical examinations.

2.2 Local Department May Seek Complete Medical Examination of the Child

22 VAC 40-705-60(3)(d). The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to §63.2-1520 of the Code of Virginia.

When seeking a complete medical examination of the child for purposes of a CPS family assessment, the local department should gain the consent of the alleged victim child's parent, caretaker or other legal guardian. If the alleged victim child's parent, caretaker or other legal guardian refuses permission to have a complete medical examination of the child, the local department must consider seeking the court's assistance. Pursuant to Va. Code § 63.2-1524, the court has the authority to order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected or of the child's parents, guardians, caretakers or siblings. Pictures and x-rays of the child may be obtained without the permission of a parent or others as part of the medical evaluation.

2.3 Photographs of the Child May be Taken Without Parental or Guardian Consent as Part of the Family Assessment

Photographs of the child may be taken without the consent of the child's parent or other person responsible as part of the family assessment by the child protective service worker. Photographs may be taken of a child who is the subject of a valid report to illustrate the nature and extent of the injuries sustained by the child. Photographs taken for this purpose cannot be used in lieu of a medical examination.

2.4 Photographs of the Child's Environment

The CPS worker may need to photograph the child's environment. Photographs may be taken to clarify statements made by witnesses, to clarify 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.[21] Prior to taking any photographs of the child's environment, such as conditions of the home, the worker must

[21] *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).

obtain verbal consent. If the parents or guardians do not provide consent, the photographs should only be taken under the direction and supervision of the Commonwealth's Attorney, or the city or county attorney for the local department.

3.0 Authority to Remove a Child

Under certain circumstances, the removal of a child from a parent's or guardian's custody may be necessary to protect the child's life or prevent imminent severe harm. The authority to take a child into custody is an imposing responsibility that must be practiced judiciously. If a decision is made to remove a child during the course of the family assessment, the assessment must be concluded and an investigation initiated.

22 VAC 40-705-60(3). [When responding to valid complaints or reports local departments have the following authorities:] To take a child into custody on an emergency removal for up to 72-96 hours under such circumstances as set forth in § 63.2-1517 of the Code of Virginia.

3.1 Statutory Authority

§ 63.2-1517 of the Virginia Code 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. § 63.2-1517 of the Virginia Code also allows a physician, a child protective services workers 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.[22]

Va. Code § 63.2-1517. Authority to take child into custody.
A. A physician or protective service worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to 72 hours without prior approval of parents or guardians provided:
1. 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

[22] 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 child protective services workers 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.

person responsible for the child's 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 or if evidence of abuse is perishable or subject to deterioration before a hearing can be held; and
2. A court order is not immediately obtainable; and
3. The court has set up procedures for placing such children; and
4. Following taking the child into custody, the parents or guardians are notified as soon as practicable. Every effort shall be made to provide such notice in person*;*
5. A report is made to the local department; and
6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with §16.1-252 within ~~seventy-two~~ *72* hours of the removal of the child, an emergency removal order shall not be necessary. Any person or agency petitioning for an emergency removal order after four hours have elapsed following taking custody of the child shall state the reasons therefor pursuant to §16.1-251.
B. If the 72 period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or other legal holiday or day on which the court is lawfully closed.

3.2 Persons Who May Take a Child Into Custody

The following persons may take a child into custody for up to 72 hours without prior approval of the child's parents or guardian:

a. A physician,

b. A child protective service worker, or

c. A law enforcement officer when he is investigating a complaint of child abuse or neglect.

3.3 The Circumstances When a Child May Be Removed

One of two delineated circumstances must exist for a CPS worker to assume custody of a child pursuant to Va. Code § 63.2-1517. The first set of circumstances involves the existence of imminent danger to the child's life or health to the extent that severe or irremediable injury would likely result if the child is not removed. The second set of circumstances involves the existence of evidence of abuse that is perishable or subject to deterioration before a hearing can be held.

3.3.1 Exigent Circumstances Exist

For a CPS worker to assume custody of a child pursuant to Virginia Code § 63.2-1517, exigent circumstances must exist. "Exigent circumstances" means a situation that demands immediate action. The following circumstances must exist to remove a child without prior approval of the parent or guardian:

a. 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; and

b. A court order is not immediately obtainable; and

c. The court has set up procedures for placing children taken into immediate custody.

3.3.2 Notifications and Written Reports if Child is Taken Into Emergency Custody by CPS

If a child is taken into emergency custody pursuant to Va. Code §63.2-1517, the social worker must:

a. Notify the child's parents or guardians as soon as possible that the child is in custody; and

b. Make a written report to the local department; and

c. Notify the court within the 72 hours the child is in custody.

d. File the petition for an emergency removal order within four hours of taking custody of the child, or state the reasons for not filing within four hours in the affidavit or sworn testimony.

3.3.3 Reassigning a Family Assessment to an Investigation as a Result of an Emergency Removal

22 VAC 40-705-60(3b). When circumstances warrant that a child be taken into emergency custody during a family assessment, the report shall be reassigned immediately to an investigation.

At any time before the completion of the family assessment, if circumstances require that emergency custody be taken of one or more children in the family, the alleged abuser must be notified immediately that the response of the agency has changed from a family assessment to an investigation. At that point all the requirements of an investigation are in effect and a new 45-day period begins in order to complete the investigation process. A new referral must be entered into the information system and the existing family assessment must be closed.

If a removal is required, information in The Investigation and in Judicial Proceedings parts of this Chapter may be relevant and should be reviewed.

B. RELATED RESPONSIBILITIES OF LOCAL DEPARTMENT

1.0 CPS Worker May Enter the Home

22 VAC 40-705-90(A). In conducting a family assessment the child protective services (CPS) worker may enter the home if permitted to enter by an adult person who resides in the home. Only in those instances where the CPS worker has probable cause to believe that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a law-enforcement officer, may a CPS worker enter the home without permission. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for the decision to enter the house without permission.

1.1 Entering the Home

The worker has the authority to enter the home if permitted to enter by an adult who resides in the home. The worker must inform the parent/caretaker of the reason for the home visit and explain the CPS family assessment process including the possible benefits and consequences of engaging in the process. The informing must be done orally and in writing.

The CPS worker must state his/her name and purpose for requesting entry into the home and verify that the adult allowing entry resides in the home. If a child answers the door and a parent or other caretaker is in the home, the CPS worker should talk to the parent or caretaker before entering even if the CPS worker received permission from the child to enter.

1.2 CPS Worker May Enter Home Without Permission If There is Probable Cause to Believe Exigent Circumstances Exist

The worker 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. However, the assistance of a police officer does not, in and of itself, provide the authority for a social worker to enter the home without permission. There must be probable cause to believe that "exigent circumstances" exist. "Probable cause" means the reasonable belief that the alleged facts exist; a mere suspicion or belief, unsupported by facts or circumstances, is not sufficient.[23] "Exigent circumstances" means situations that demand immediate action; where there are emergency-like circumstances in which the social worker must literally act "now or never."[24]

1.3 If Person Residing in Home Refuses to Permit CPS Worker Into the Home

If a person residing in the home refuses to allow the CPS worker into the home and there are no exigent circumstances demanding that the CPS worker act immediately, then the CPS worker may seek the assistance of the court in order to complete the family assessment. The CPS worker must consider alternative plans before filing a petition with the court. For a further discussion of alternatives to entering the home when permission is denied, see Appendix A-8.

2.0 Explaining the CPS Family Assessment Process

22 VAC 40-705-90(B). Before conducting a family assessment or investigation, the child protective services worker shall, in the first contact with the alleged abuser/neglector, explain the responsibilities and authorities of CPS so that the parent or other caretaker can be made aware of the possible benefits and consequences of completing the family assessment. The explanation must be provided orally and in writing.

The worker must inform the parent/caretaker of the reason for the home visit, explain the CPS family assessment process including the possible benefits and consequences of engaging in the process. The informing must be done orally and in writing. The informing brochure (CPS: Strong Families and Safe Children #032-01-034) should be

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[23] Black's Law Dictionary 1201 (6th ed. 1991).

[24] Black's Law Dictionary 574 (6th ed. 1991).

reviewed and left with the parent/caretaker. The purpose of the family assessment and the fact that no disposition is made are important points. The worker must also explain that should information gathered during the assessment process cause the agency to switch the response to an investigation, all parties will be informed of the change immediately.

3.0 Transporting Children

The same rules for transporting children apply as in an Investigation. (See Part V: The Investigation, page 117)

C. THE INITIAL ASSESSMENT & SAFETY PLAN

22 VAC 40-705-110(A). In both family assessments and investigations the child protective services worker shall conduct an initial assessment of the child's circumstances and threat of danger or harm, and where appropriate shall make a safety plan to provide for the protection of the child.

It is critical that the CPS worker conducting the family assessment immediately make an initial safety assessment of the circumstances surrounding the allegation of abuse or neglect and identify the immediate safety needs of the child and family.

1.0 Immediate Child Safety and Family Needs

CPS is responsible for assessing and working to assure safety of all children who are reported to have been abused or neglected. Thus, one of the first tasks of the CPS worker is to determine the degree to which the child or children are secure from harm or threat of serious harm now or in the immediate future. Safety must be determined for each child and the safety conclusion based on the least safe if there is more than one child in the family.

1.1 Assessment of Immediate Danger to the Child

The first specific assessment focuses on the child and the child's immediate needs. Factors to consider when assessing the immediate situation of the child include:

a. Whether the child has sustained a mental or physical injury warranting immediate attention or care;

b. Whether an emergency or crisis situation exists meriting immediate action to protect the child;

c. Whether the child is at risk of serious abuse or neglect in the near

future.

1.2 Assessment of Immediate Needs of the Family

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

a. If the child has been injured or harmed, whether the family has the capabilities or capacity to protect the child from further harm;

b. Whether an emergency or crisis situation exists and the family's ability to cope;

c. Whether any other family members are at risk of harm or danger;

d. What are the family's capabilities to ensure the safety of the child or children in the future.

2.0 Immediate Child Safety & Family Needs Assessment

To ensure that the safety of the child is appropriately assessed, the local department must complete an initial safety assessment upon first contact related to the report. Safety can be reassessed any time there is a change in the family situation, but it is only required to be documented as the initial safety assessment once in the Department's information system. Any new safety information and revised safety decision should be included in the automated Family Assessment record.

A checklist is provided in this chapter to assist with assessing safety. The purpose of the "Initial Safety Assessment" checklist is to ensure that any concerns related to the child's safety or health are adequately assessed by the local department and documented in the record. The "Initial Safety Assessment" is a checklist of safety factors, which, if present and not balanced by mitigating circumstances or protective factors, indicate the local department will need to take additional action to ensure the health and safety of the child. The form can be duplicated from Appendix E, downloaded from the intranet or ordered as carbonized form # 032-02-034.

<u>Elements of safety to be considered along with the safety factors listed on the checklist:</u>
THREAT, HARM, SEVERITY, VULNERABILITY, AND IMMINENCE.
These elements provide a context for the safety factors. For example, a 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 3 year old may be deemed safe if the parent has just been taken away by the police and a responsible adult is available.

Safety Factors that indicate a threat of harm are listed here as they are on the form in Appendix E. These factors are generally written in behavioral terms. These terms generally do not describe conditions. For example, if the initial contact finds the only caretaker in the home is passed out due to a drug overdose, the first factor under the A list applies. The safety issue or factor is that the parent cannot provide care for the child; the underlying cause is the drug abuse.

Safety Factors

Affecting Immediate Safety	Other Safety Factors
_ Caretaker cannot meet child's basic needs for food, clothing and/or safe shelter. _ One or both caretakers cannot control behavior and/or are violent. _ Child sexual abuse is suspected. _ One or both caretakers perceive child in predominately negative or unrealistic terms. _ Injury to child or threat of injury is severe. _ Caretaker(s) lacks knowledge, skill, or motivation to keep the child safe. _ Caretaker(s) refuses access to child or there is reason to believe they may flee. _ Living arrangements seriously endanger physical health of child. _ One or both caretakers failed to benefit from previous professional help related to safety issues _ Child is 0 to 6 years old. _ Child cannot protect self due to health or disability factors.	_ Child has exceptional medical or emotional needs that caretaker cannot/will not meet. _ Child shows serious physical symptoms of maltreatment. _ Caretaker(s) overtly rejects any intervention. _ Explanation of child's injury is unconvincing or inconsistent. _ Child is fearful of caretaker(s) or home situation. _ Caretaker(s) whereabouts are unknown. _ Paramour or other adult unrelated to child is serving as caretaker. _ Caretaker's alleged/observed substance use may affect his/her ability to protect or care for the child. _ Caretaker's alleged/observed mental illness may affect his/her ability to protect or care for the child. _ Caretaker may be perpetrator or victim of DV to extent that child is at risk of serious, imminent harm. _ Caretaker intended to hurt child and does not show remorse.

Next, the CPS worker will need to determine and document any protective factors that may serve to balance the safety concerns noted above. In a family, protective factors are strengths or capabilities that control or prevent threats of harm from arising or having impact on the child.

Protective factors are found within the capabilities of persons working collectively to assure the survival and safety of family members. In the example of the parent who has passed out, if another parent can be contacted, arrives quickly, and acts responsibly toward the child, this parent can protect and ensure the immediate safety of the child.

Protective Factors

PROTECTIVE FACTORS	PROTECTIVE FACTORS CONTINUED
• **That Enable Caretakers to Protect**: _ Caretaker can defer his/her own needs in order to meet the child's needs in timely, consistent, and effective manner. _ Caretaker intended to hurt child but shows remorse and expresses desire to prevent any future injury to child. _ Caretaker accepts and demonstrates the responsibility to nurture and provide for the well-being of the child – shows skills associated with meeting these needs. _ Caretaker has the physical ability to intervene and/or has intervened in past to keep child safe from others. _ Caretaker demonstrates control of negative impulses or personal behaviors. _ One caretaker can and will protect child from violent behavior or other caretaker. _ One or both caretakers demonstrate healthy emotional bonding with child. _ At least one caretaker perceives child in predominately positive or realistic terms. _ Caretaker is facilitating access by CPS to the child. _ Caretaker(s) is receptive to intervention. _ Caretaker can identify actions that are required to prevent harm to child. _ Caretaker has capacity to learn from an experience and apply it to a new situation.	• **That Decrease Child's Vulnerability**: _ Child is over 6 years old and has access to at least one person willing to provide protection. _ Explanation of child's injury is convincing and consistent. _ Injury to child is not severe or imminent. _ Observation of interactions of the child and the adult are appropriate. _ Living arrangements that endangered physical health of child have been ameliorated. _ Child with special needs is connected to appropriate services to meet those needs. • **That Enable Others to Protect:** _ Paramour or other adult unrelated to child and serving as caretaker expresses strong attachment to the child. _ Child sexual abuse is suspected but uninvolved caretaker is supportive and will protect child. _ Family can meet child's basic needs for food, clothing and/or safe shelter. _ Family member or friend has agreed to take an active part in protection of the child. • **Other Protective Factors:**

After safety and protective factors have been assessed, a conclusion must be made regarding the safety of the child(ren) in the home at this time. One of the following must be determined and documented.

Safety Decision:

A. SAFE: There are no children likely to be in immediate danger of moderate to serious harm at this time.

B. CONDITIONALLY SAFE: Safety interventions are in place and have resolved the unsafe situation for the present time. {Requires a Safety Plan}
C. UNSAFE: Without controlling intervention(s) a child is in immediate danger of serious harm. {Emergency Removal or Court action is required to insure safety of the child(ren). A court order or safety plan is required for documentation.}

2.1 Making a Safety Decision

The Safety Assessment must be documented on the form and in the information system and must include a conclusion as to the safety of the child(ren). The overall conclusion of Safe, Conditionally Safe, or Unsafe should be made on the basis of the needs of the least safe child in the home, if there is more than one.

The initial safety assessment is based on the first meaningful contact with the family and is intended to ensure the immediate safety of the child. If the child is considered to be Conditionally Safe, additional information must be documented, such as listing the Protective Factors that make it conditionally safe for the child to remain in the care of the responsible caretaker. This may involve a voluntary temporary placement of the child.

If a determination of Unsafe is made, the child must be protected through an emergency removal or some other Court action.

2.2 Safety and/or Risk Assessment Issues

Two family issues that can have a major impact on safety and risk are domestic violence and drug and/or alcohol involvement by the child's caretakers. The screening tools provided in Appendix B of this chapter are highly recommended. The CAGEAID tool provides questions that can be worked into the interviews with the primary caretakers, and a "yes" to any question indicates a need for an AOD (alcohol or other drug) evaluation in order to complete the risk assessment. The DV INITIAL ASSESSMENT could be given to the caretaker to complete or the questions may be asked by the CPS worker. Again, a "yes" answer warrants referral to a Domestic Violence service provider for a more complete assessment of need.

3.0 Develop Safety Plan

When the child is determined to be Conditionally Safe or Unsafe, the CPS worker must determine what services or actions need to occur by developing a safety plan. The definition section (22 VAC 40-705-10) of the Virginia Administrative Code defines safety plan:

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

A safety plan must be made to ensure protection of the child. When possible, the worker needs to develop the safety plan with the cooperation of the child's parent(s) or guardian(s). The CPS worker must determine what, if any, services are necessary to assure the child's immediate safety. If the arrangements or the services needed to assure the safety of the child cannot be put in place, alternative steps must be taken including seeking court intervention. The safety plan and the CPS worker's efforts to develop the safety plan must be documented in the record. The form that follows must be used unless a local form is developed that includes all these elements. The following plan (Form # 032-02-033) may be photocopied from Appendix E or ordered as a carbonized form from General Services. A copy shall be left with the caretaker of the child and/or the alleged abuser.

SAFETY PLAN

AGENCY:____(locality)_____ DATE:_(day completed)____
PARENT/CARETAKER:_(all applicable names)____CHILD(REN):_(all)_____

Child Safety Concerns:__(brief summary or can be N/A if issues identified do not relate to referral allegations)

Initial Assessment of Safety (Based on safety issues identified and any protective factors that address the safety concerns):
_____

Immediate Needs (identified by family and/or social worker): (these needs must be related to safety – more detailed assessment of family needs will follow) _____

Steps to be taken by Parent or Caretaker:__(Should state clearly what the caretaker will do to protect the child)_____

Social Worker plans/actions:__(Should state clearly what the worker will do to protect the child)_____

Worker Signature _____ Caretaker Signature_____

Others _____ Date_____

Whenever possible the caretaker(s) should sign 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.

The Safety Assessment form or Safety Plan may be used whenever circumstances change by completing a new form and putting the date of the reassessment on the form. There is no ability at this time to update the initial Safety Assessment in OASIS, but the new information and revised safety decision should be included in the Family Assessment record.

3.1 Immediate Safety of the Child Imperative

Paramount to the family assessment is ensuring the immediate safety of the child. It is imperative that, when the local department initiates the family assessment of a valid report or complaint, the CPS worker immediately assesses the safety of the child and implements a safety plan, if needed. The CPS worker must document what immediate action was taken to ensure the safety of the child. If immediate action was not warranted, then the CPS worker must briefly document in OASIS the reasons why immediate action was not needed.

4.0 Removal of the Child

The CPS worker must determine if the child can remain safely in the present living arrangements. Removing the child from the home should only be considered when it becomes apparent that no other alternatives exist to ensure the safety and health of the child. Removal of a child should only be used as a last alternative. If an emergency removal is needed as a result of the initial safety assessment or any time before the completion of the family assessment, the family assessment must be reassigned as an investigation. The family assessment must stop; a new referral must be entered into the information system and accepted as an investigation. (See **Section V** for policies and procedures applicable to completing an emergency removal and an investigation.)

D. COLLECTION OF INFORMATION IN A FAMILY ASSESSMENT

1.0 Collecting Information

22 VAC 40-705-70(B). When completing a family assessment, the local department shall gather all relevant information in collaboration with the family, to the degree possible, in order to determine the child and family services needs related to current safety or future risk of harm to the child.

When gathering information for the record, emphasis should be placed on involving the family in the process of the assessment. 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 keeping children safe.

The family assessment is a child centered, family focused, participatory process that is done with, not for, the family. The family assessment builds on family strengths. It identifies parental capacities and resources within the nuclear and extended 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.

2.0 Information to be Included in Family Assessment

In developing the family assessment record and completing the overall family assessment process, the CPS worker should consider and document the issues described below. This is not a comprehensive list; each family assessment may have circumstances warranting more or less details and information. There is an optional Family Needs Assessment form provided in Appendix B. It is Form # 032-02-035(1/02).

Conclusions of the assessment must be documented in the automated information system under the headings of CHILD, PARENT/CARETAKER, ENVIRONMENT, SUPPORT SYSTEMS, and SUMMARY. The Summary must include the rationale for the family risk decision.

The Family Needs Assessment form is intended to assist the worker in addressing the four assessment areas that must be documented in the information system. The examples listed under each factor can be used as a guide for the CPS worker to elicit relevant information and identify needs, strengths, and supports.

A comprehensive family assessment should address the family's strengths and needs related to four areas, including but not limited to the issues listed:

- Children: age and ability to self-protect; presence of any disability or developmental delay; temperament; responsiveness to caretaker(s); prior history of abuse/neglect.
- Parent/caretaker: physical, emotional, and intellectual status; prior history of abuse/neglect; potential for violence; substance abuse or dependency; neglectful acts or omissions, allegations of abuse/neglect.
- Environment: any hazardous living conditions.

- Support Systems: informal and formal available or needed; resource utilization.
- The Summary for the family assessment in the automated information system must include the family members' perceptions of the situation, needs and ability to meet those needs or accept services to meet them. It also includes an assessment of the likelihood of future abuse or neglect.

Numerous studies have shown that certain conditions are likely to have a long range negative effect on children's health and well-being, if not their immediate safety. If these conditions (AOD abuse, mental illness, domestic violence or chronic neglect) exist, the children, especially young children, are expected to be at high risk unless the family has other strengths or protective factors to bring to bear on the situation.

Documentation of the family assessment data collection must be entered into OASIS. Service needs identified must be addressed on the OASIS screen entitled Family Needs Assessment and on the hard copy Family Service Agreement or its equivalent.

3.0 Feedback to the Family

In addition to providing a framework for goal-oriented interventions, the family assessment also conveys needed information to the family concerning the reason for and expectations of any continued agency involvement. A copy of the Family Service Agreement and/or a letter must be provided to the family at the conclusion of the family assessment. 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.

Since the family has the right to refuse services, the reason for refusal, when that occurs, should be documented in a letter or on the Family Service Agreement and shared with the family.

The Family Service Agreement, located in Appendix E and on the CPS web site, can be photocopied and used to record the agreed upon actions by all parties. It can also be ordered as a carbonized form from General Services.

E. MANDATED CONTACTS

The Administrative Code (22 VAC 40-705-80(A)(1-3)) requires certain contacts and observations to occur, thereby supporting a thorough and objective family assessment.

> **During the course of the family assessment, the child protective services (CPS) worker shall make and record the following contacts and observations.**
> **1. The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings.**

2. The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.
3. The child protective services worker shall observe the family environment, contact pertinent collaterals, and review pertinent records in consultation with the family.

The CPS worker must document the contacts required by regulation. This section of the Administrative Code (22 VAC 40-705-80(A)) does not take into consideration that a mandated contact may not occur for various reasons. It is essential that the CPS worker document all contacts made during the family assessment in OASIS. It is equally important that the worker document reasons why any of the 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 noted.) The OASIS contact screen allows for documentation of several contacts at one time, such as a meeting with the whole family.

1.0 Interview With the Alleged Victim Child and Siblings

22 VAC 40-705-80(A)(1). The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child and siblings.

22 VAC 40-705-80(A)(1) contains two essential requirements. The first requirement is that the CPS worker interviews the alleged victim child in person. The second requirement is that all siblings of alleged victim children must be interviewed. For purposes of policy, each requirement is addressed separately.

1.1 Face-to-Face Interview with the Alleged Victim Child

The CPS worker must conduct a face-to-face interview with the alleged victim child. During the interview, the CPS worker should inform the child what will occur during the assessment process. The CPS worker should observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning.

1.2 Face-to-Face Interview of Siblings

The siblings of the alleged victim child shall be interviewed and/or observed in order to determine whether they have experienced abuse or neglect and to more fully evaluate the family strengths and needs.

1.3 Interviewing a Non-Verbal Child

In the case of an interview conducted with a non-verbal child, a child protective services worker shall document in detail for the case record observations of the child interacting with his/her family members and environment.

2.0 Interview with Alleged Abuser or Neglector

22 VAC 40-705-80(A)(2). The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians and/or any caretaker named in the report.

The CPS worker must conduct a face-to-face interview with the alleged abuser or neglector. The alleged abuser or neglector must be informed of the allegations and the assessment process. The CPS worker must document the alleged abuser's or neglector's responses and knowledge about the allegations. For the purposes of risk assessment and service planning, the CPS worker should identify the alleged abuser's or neglector's needs and capabilities. If the alleged abuser or neglector refuses to be interviewed, the CPS worker must inform the alleged abuser or neglector that the family assessment must continue at least to the point that a safety assessment of the child can be completed.

3.0 Visit the Site Where the Alleged Abuse or Neglect Occurred

22 VAC 40-705-80(A)(3). The child protective services worker shall observe the family environment…

The CPS worker must observe the environment where the alleged abuse or neglect occurred and/or where the child resides. The worker should take into account the effect of the environment on the child's safety and the overall family needs related to caring for the children.

4.0 Interview Collaterals

22 VAC 40-705-80(A)(3)[continued]. The child protective services worker shall… contact pertinent collaterals, and review pertinent records in consultation with the family.

The nature of a family assessment may make it necessary to interview or correspond with collateral contacts in order to evaluate the circumstances surrounding the alleged abuse or neglect and the needs of the family related to protecting the children. The Virginia Administrative Code (22 VAC 40-705-10) defines a collateral.

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

The CPS worker must contact any collaterals perceived to have pertinent information. The CPS worker 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 CPS worker may make collateral contacts without the family's consent in order to complete a child protective services 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.

5.0 Document Any Mandated Contacts Not Made

When a mandated contact or observation is not made, the worker must document why the specific contact or observation was not made. The reasons for the lack of contact should be documented in the final family assessment summary screen or in the contact screens in the automated online information system.

6.0 The Family Interview

When it is possible and practical and places no family member in danger, contacts in a family assessment may be made with the family members together. However, the individual requirements for each contact should be documented in the record on the contact screen in the information system.

F. FAMILY RISK ASSESSMENT

One of the purposes of the family assessment is to determine “to what extent the child is at risk of future harm . . .” (22 VAC 40-705-50(H)(2b)). At the conclusion of the family assessment the worker must determine, with the family if possible, the likelihood of any occurrence or reoccurrence of abuse or neglect. The decision on risk of future harm should be based on the assessment of individual, family, and other risk factors. Any service planning with and service provision to the family should be based on the needs identified in the overall Family Assessment.

The outcome of the Risk Assessment will influence the type and intensity of services to be provided. One of these outcomes must be documented in the automated record: High, Moderate, or No Reasonably Assessable Risk. A conclusion of High Risk indicates that the child is in jeopardy and protective intervention needed. A Moderate Risk conclusion means that there is threat of harm but a positive change is likely to occur with minimal intervention. If No Reasonably Assessable Risk is indicated, the

child is not considered to be at risk of harm, so no intervention is needed. The rationale for the risk decision shall be included in the Family Assessment Summary in OASIS.

When the supervisor approves the Family Assessment in OASIS, it means that the supervisor has reviewed the Assessment to determine that all requirements have been met and that the Risk Assessment conclusion is appropriate.

Services identified during or at the conclusion of the family assessment are voluntary unless the risk to the child(ren) is such that the agency assesses that an investigation must be initiated or court intervention is warranted. In these instances the family must be notified that a petition will be filed.

See Part VIII for further information and requirements regarding services to be provided as a result of the completion of the family assessment.

Following is deleted 11/04

~~G. REFERRAL FOR CHILDREN UNDER AGE THREE~~

~~If an investigation results in a disposition of founded on any child under age three or if a family assessment determines any child under the age of three to be in need of services to prevent risk of child abuse or neglect, that child shall be referred to the local Infant & Toddler Connection of Virginia (Part C Early Intervention System.) This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).~~

~~In Virginia, the eligible population to be served by Part C programs is: Infants and toddlers from birth to age three who are developmentally delayed, who have atypical development, or who have a diagnosed physical or mental condition that has a high probability of resulting in delay.~~

~~Procedures for making a referral to Infant-Toddler Services:~~

~~- Within five (5) working days of completing the family assessment or investigation the local department of social services will send a referral to the local Part C Early Intervention program using the local referral form.~~
~~- The local department will send a copy of the referral to the family with the notice of disposition or family needs assessment conclusions. The parent shall also be informed verbally of the referral and have an opportunity to discuss the referral process.~~

~~It is strongly recommended that local departments meet with the local Infant and Toddler program prior to the implementation of this policy to learn about any referral issues that should be explained to the parent. More information on the Infant & Toddler programs in Virginia can be found at www.infantva.org.~~

H. TIME FRAMES FOR COMPLETING FAMILY ASSESSMENT

Va. Code § 63.2-1506 (B)3: Complete the family assessment within forty-five days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of sixty days;

The Virginia Code requires that the local department complete and document the family assessment within 45 calendar days of receipt of the complaint or report. However, upon written justification by the local department, based on locally determined guidelines, case by case exceptions may be made to extend this period by 15 calendar days. The time frame for completing a family assessment cannot exceed a total of 60 days pursuant to § 63.2-1506(B)3 of the Code of Virginia.

1.0 Notifying Parties of Time Frames

Whenever any party is advised of the family assessment time frame, verbally or in any written material, it must be clearly stated that the completion is expected in 45 days, but that an extension to 60 days is permitted. If the local department extends the assessment period from 45 days to 60 days, then the parties, including the alleged abuser and/or the alleged victim child's parents or guardians, must be notified of the extension.

2.0 Extending the Time Frames for Completing the Family Assessment

> **22 VAC40-705-120(A). The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the family assessment or investigation pursuant to §63.2-1506(B)3 or subdivision 5 of § 63.2-1505 of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.**

Whenever a decision is made to extend an assessment period, the alleged abuser and the victim child's parents or guardians must be notified promptly of the new deadline. Notification can be made orally or in writing. The notification should also include a brief explanation concerning the need for the extension. If written notification is made, a copy of the notification must be included in the local department's record. If notification is made verbally, then the local department must document the notification in the automated record.

2.1 The Local Department Must Include the Justification for the Extension in the Case Narrative

The local department must include a written justification in the family assessment record for the additional time needed to complete the family assessment. The information system provides an extension screen for this documentation.

3.0 Retention of Family Assessments

The Virginia Code states that retention of family assessment records will be *for three years past the date of the report*. The regulation that addresses family assessments follows:

VAC 40-705-130(A)(*4*). *The record of the family assessment shall be purged three years after the date of the complaint or report if there are no subsequent complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in those three years.*

When a family assessment is completed on a report or complaint, it will usually be retained in the automated data system for *three years* from the date of the report, pursuant to 63.2-1514(B). Any hard copy records related to the family assessment must also be purged *three years* from the date of the report. The record must be purged if the subject of the report obtains a court order to do so through a civil action.

The family assessment record may be retained longer if there is a subsequent report within the *three years* that the record is normally retained. When individuals are named and merged in subsequent reports, the retention time may be extended.

PART V: THE INVESTIGATION

The local department may investigate any valid complaint or report of abuse or neglect. The Virginia Code (63.2-1505) and regulations (22 VAC 40-705-10 et seq.) define investigation as follows:

"Investigation" means the collection of information to determine:

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

The Virginia Administrative Code (22 VAC 40-730-10 et seq.) provides additional requirements for the investigation of a complaint or report alleging abuse or neglect involving an alleged abuser or neglector who is not part of the alleged victim child's family, but who is considered a caretaker. The policy manual refers to this type of investigation as an "Out of Family Investigation." An out of family investigation should be conducted in the same manner as any other investigation, unless otherwise specified by the Virginia Administrative Code and Part XII of this policy manual. For the additional requirements pertaining to an "Out of Family Investigation," see Part *XII.*

Throughout the investigation, the local department will be required to make assessments. The Virginia Administrative Code (22 VAC 40-705-10) defines assessment as:

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

22 VAC 40-705-110 provides the regulatory authority for conducting assessments. There are several types of assessment in CPS: the initial assessment; the family or dispositional assessment; and the risk assessment. Each assessment is distinctive and occurs at differing phases of the family assessment or investigation.

A. AUTHORITIES

To assist with conducting the investigation, child protective service workers are given certain authorities by law. Each type of authority has limits and conditions. Generally, power to enforce the worker's authority lies with the courts. For example, if an individual

refuses to allow the worker to conduct the investigation or refuses to talk to the worker, the worker may file a petition requesting that the court requires the individual to cooperate. However, it should be emphasized that an individual's refusal to cooperate does not relieve the local department of the responsibility to complete the investigation.

The following are the authorities provided to the worker and the local department while conducting an investigation. These authorities are applicable only during the investigative period.

1.0 Authority to Interview the Child

Va. Code § 63.2-1518. Authority to talk to child or sibling. Any person required to make a report or conduct an investigation or family assessment, pursuant to this chapter may talk to any child suspected of being abused or neglected or to any of his siblings without consent of and outside the presence of his parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.

> **22 VAC 40-705-60 (1). [When responding to valid complaints or reports local departments have the following authorities] To talk to any child suspected of being abused and/or neglected, or child's siblings, without the consent of and outside the presence of the parent or other caretaker, as set forth by § 63.2-1518 of the Code of Virginia.**

When conducting an investigation, the worker may talk to any child suspected of being abused or neglected or to any siblings without consent of and outside the presence of the parent or guardian. If the CPS worker talks to the child without the parent or guardian's prior knowledge, the CPS worker must notify the parent or guardian concerning the interview at the first opportunity.

1.1 Parent or Guardian Refuses to Allow Child to be Interviewed

If the parents or guardians refuse to allow the worker to interview the child, the worker may petition the court to request access to the child. The local department may elect to petition the court pursuant to Virginia Code § 16.1-253 (Preliminary Protective Order).

1.2 CPS Worker May Exclude School Personnel From Interview

If the worker interviews the child at school, the worker may require that school personnel be excluded from the interview in order to protect the family's right to privacy.

2.0 Authority to Have X-Rays and Photographs Taken of the Alleged Victim Child

Va. Code § 63.2-1520. Photographs and X-rays of child; use as evidence. In any case of suspected child abuse, photographs and X-rays of said child may be taken without the consent of the parent or other person responsible for such child as a part of the medical evaluation. Photographs of said child may also be taken without the consent of the parent or other person responsible for such child as a part of the investigation or family assessment of the case by the local department or the juvenile and domestic relations district court; provided, however, that such photographs shall not be used in lieu of medical evaluation. Such photographs and X-rays may be introduced into evidence in any subsequent proceeding.

The court receiving such evidence may impose such restrictions as to the confidentiality of photographs of any minor as it deems appropriate.

> **22 40-705-60(2). [When responding to valid complaints or reports local departments have the following authority] 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.**

In cases of suspected child abuse, photographs and x-rays of a child may be taken without the consent of the parent or guardian as part of a medical evaluation. All photographs or x-rays taken in accordance with Va. Code § 63.2-1520 may be introduced into evidence in any subsequent court hearing. The court receiving the evidence can impose any restrictions concerning the confidentiality of the photographs or x-rays.

2.1 Court Ordered Examinations

Va. Code § 63.2-1524. The court may order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected and of the parents, guardians, caretakers or siblings of a child suspected of being neglected or abused.

Va. Code § 63.2-1524 provides the court with the authority to order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected or of the child's parents, guardians, caretakers or siblings. Va. Code § 63.2-1524 goes beyond § 63.2-1520 by providing the court with the authority to order the alleged victim child's parents, guardians, caretakers or the child's siblings to undergo psychological, psychiatric and physical examinations.

2.2 Local Department May Seek Complete Medical Examination of the Child

22 VAC 40-705-60(3)(*d*). The local department shall have the authority to have a complete medical examination made of the child including a written medical report and, when appropriate, photographs and x-rays pursuant to §63.2-1520 of the Code of Virginia.

When seeking a complete medical examination of the child for purposes of a CPS investigation, the local department should gain the consent of the alleged victim child's parent, caretaker or other legal guardian. If the alleged victim child's parent, caretaker or other legal guardian refuses permission to have a complete medical examination, the local department must consider seeking the court's assistance. Pursuant to Va. Code §63.2-1524, the court has the authority to order psychological, psychiatric and physical examinations of the child alleged to be abused or neglected or of the child's parents, guardians, caretakers or siblings. Pictures and x-rays of the child may be obtained without the permission of a parent or others as part of the medical evaluation.

2.3 Photographs of the Child May be Taken Without Parental or Guardian Consent as Part of the Investigation

Photographs of the child may be taken without the consent of the child's parent or other person responsible as part of the investigation by the child protective service worker or staff of the local juvenile and domestic relations district court. Photographs may be taken as part of the investigation to illustrate the nature and extent of the injuries sustained by the child. Photographs taken for purposes of the investigation cannot be used in lieu of a medical examination.

2.4 Photographs of the Child's Environment

The CPS worker may need to photograph the child's environment as evidence for the record. Photographs may be taken to clarify statements made by witnesses, to clarify 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.[25] Prior to taking any photographs of the child's environment, such as conditions of the

[25] *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).

home, the worker must obtain verbal consent. If the parents or guardians do not provide consent, the photographs should only be taken under the direction and supervision of the Commonwealth's Attorney, or the city or county attorney for the local department.

3.0 Authority to Remove a Child

Under certain circumstances, the removal of a child from a parent's or guardian's custody may be necessary to protect the child's life or safety. The authority to take a child into custody is an imposing responsibility that must be practiced judiciously.

22 VAC 40-705-60(3). [When responding to valid complaints or reports local departments have the authority] To take a child into custody on an emergency removal for up to 72-96 hours under such circumstances as set forth in § 63.2-1517 of the Code of Virginia.

3.1 Statutory Authority

§ 63.2-1517 of the Virginia Code 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. § 63.2-1517 of the Virginia Code also allows a physician, a child protective services worker 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.[26]

Va. Code § 63.2-1517. Authority to take child into custody.

A. A physician or protective service worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to seventy-two hours without prior approval of parents or guardians provided:
1. 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 the child's care, presents an imminent danger to the child's life or health to the

[26] 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 child protective services workers 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.

extent that severe or irremediable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held; and
2. A court order is not immediately obtainable; and
3. The court has set up procedures for placing such children; and
4. Following taking the child into custody, the parents or guardians are notified as soon as practicable. Every effort shall be made to provide such notice in person;
5. A report is made to the local department; and
6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with §16.1-252 within 72 hours of the removal of the child, an emergency removal order shall not be necessary. Any person or agency petitioning for an emergency removal order after four hours have elapsed following taking custody of the child shall state the reasons therefor pursuant to §16.1-251.
B. If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or other legal holiday or day on which the court is lawfully closed.

3.2 Persons Who May Take a Child Into Custody

The following persons may take a child into custody for up to 72 hours without prior approval of the child's parents or guardian:

a. A physician,

b. A child protective service worker, or
c. A law enforcement officer when he is investigating a complaint of child abuse or neglect.

3.3 The Circumstances When a Child May be Removed

One of two delineated circumstances must exist for a CPS worker to assume custody of a child pursuant to Va. Code § 63.2-1517. The first set of circumstances involves the existence of imminent danger to the child's life or health to the extent that severe or irremediable injury would likely result if the child is not removed. The second set of circumstances involves the existence of evidence of abuse that is perishable or subject to deterioration before a hearing can be held.

3.3.1 Exigent Circumstances Exist

For a CPS worker to assume custody of a child pursuant to Virginia Code § 63.2-1517, exigent circumstances must exist. “Exigent

circumstances" means a situation that demands unusual or immediate action; where there are emergency-like circumstances in which the social worker must literally act now or never. The following circumstances must exist to remove a child without prior approval of the parent or guardian:

a. 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; and

b. A court order is not immediately obtainable; and

c. The court has set up procedures for placing children taken into immediate custody.

3.3.2 The Existence of Perishable Evidence or Evidence Subject to Deterioration

A child may be removed from the custody of his parent or other caretaker when there exists evidence of the abuse that is perishable or subject to deterioration before a court hearing can be held. The purpose of this part of § 63.2-1517 is the preservation of forensic evidence essential to a prosecution of child abuse or neglect. For example, this amendment could be very effective in establishing cases such as sexual abuse. Sperm remains motile for up to 72 hours. If a complaint alleges that a child was sexually assaulted, the local department may obtain custody of that child in an effort to preserve perishable evidence or evidence subject to deterioration. An immediate medical examination may show the presence of ejaculate.

The part of § 63.2-1517 concerning the preservation of evidence only speaks to evidence of abuse and not to evidence of neglect.

3.4 Notifications and Written Reports if Child is Taken Into Emergency Custody by CPS

If a child is taken into emergency custody pursuant to Virginia Code §63.2-1517, the parents must be notified without delay. The social worker must:

a. Notify the child's parents or guardians as soon as possible that the child is in custody; and

b. Make a written report to the local department; and

c. Notify the court within the 72 hours the child is in custody.

d. File the petition for an emergency removal order within four hours of taking custody of the child, or state the reasons for not filing within four hours in the affidavit or sworn testimony.

3.5 Information to be Obtained When Child is Removed

The local department must obtain the following information:

a. The name of the person who took emergency custody, his/her professional capacity and the telephone number where he/she can be reached;

b. The child's name and birth date;

c. Names of parents or guardians;

d. Present or last known address of parents or guardians;

e. Description of the child's condition in as much detail as possible;

f. Any information known concerning the circumstances of the suspected abuse or neglect, including the complainant's name and the nature of the complaint;

g. The specific time and date emergency custody was taken;

h. Documentation of the person's efforts to obtain a court order; and

i. Reason(s) why services to prevent the need for removal were not successful or could not be delivered.

j. If more than four hours have elapsed following taking custody of the child, the affidavit or sworn testimony for the petition shall state the reasons therefore, pursuant to § 16.1-251.

3.6 Additional Actions to be Taken When Child is Removed

a. The local department must assume responsibility for conducting an immediate investigation of the situation.

b. The local department must ensure that the child is placed in an appropriate setting which will assure the child's safety. A child may be placed in the home of a relative or family friend if the worker determines that such placement will be in the child's best interest. Agency Approved Provider Standards permit emergency approval of such placements for up to 30 days.

For procedures to approve an emergency placement refer to Volume VII, Section I, Chapter I of the Social Services Manual. The worker must document in the case record why such placement was not used if one was available.

3.6.1 Searches Required for Emergency Placement

Legislation enacted in 2002 provides guidance on securing information on all household members. See Broadcast1835.

In emergency situations where the criminal background check cannot be retrieved due to VCIN system-related problems or concurrent police emergencies, the local worker must get a signed statement from each adult present in the home that indicates whether or not any criminal record exists and, if so, the nature of the record. It is the local worker's responsibility to retrieve the VCIN criminal background check results as soon as possible, but no later than eight hours after placement.

Local workers must also search the Central Registry for child abuse and neglect information by calling the State Hotline and providing the password from the Matrix. The completed Child Protective Services Release of Information Form (032-02-151/1) must then be submitted through the pouch to the Central Registry at Virginia Department of Social Services as soon as possible.

3.7 Mandatory Consultation With Supervisor Prior to Removing Child

22 VAC 40-705-60(3)(a). A child protective services (CPS) worker planning to take a child into 72-96 hours emergency custody shall first consult with a supervisor. However, this requirement shall not delay action on the CPS worker's part if a supervisor cannot be contacted and the situation requires immediate action.

A local department worker planning to take a child into 72-96 hours emergency custody must first consult with a supervisor. However, this requirement must not delay action on the worker's part if a supervisor cannot be contacted and the situation requires immediate action. In such a case necessitating immediate action, a supervisor should be consulted as quickly as possible following the removal. Local departments are encouraged to develop local procedures for supervisory consultation and to ensure supervisor availability.

3.8 Local Department Must Obtain Court Order as Soon as Practicable

Va. Code § 63.2-1517(B). If the seventy-two-hour period for holding a child in custody and for obtaining a preliminary or emergency removal order expires on a Saturday, Sunday, or other legal holiday, the seventy-two hours shall be extended to the next day that is not a Saturday, Sunday, or other legal holiday or day on which the court is lawfully closed.

If the child is removed without a court order, the 72-hour period may be extended to the next working day if the 72-hour period expires on a Saturday, Sunday or other legal holiday. However, the period must not exceed a total of 96-hours. If child is removed without a court order, the local department must obtain an emergency removal order from the court, as soon as practicable, but not later than 72-96 hours after such removal.

3.9 Immunity From Liability

22 VAC 40-705-60(3)(c). Any person who takes a child into custody pursuant to § 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.

Physicians, child protective service workers and law enforcement officers are immune from any civil or criminal liability for taking a child into immediate custody unless they act with malicious intent.

4.0 Authority to Obtain Necessary Immediate Medical or Surgical Treatment for a Child

The statutory authority for 22 VAC 40-705-60(3)(d) is Va. Code § 54.1-2969.

Va. Code § 54.1-2969. Authority to consent to surgical and medical treatment of certain minors.
A. Whenever any minor who has been separated from the custody of his parent or

guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such surgical or medical treatment, as follows:
… 2. Upon local superintendents of public welfare or social services or their designees with respect to (i) minors who are committed to the care and custody of the local board by courts of competent jurisdiction, (ii) minors who are taken into custody pursuant to §63.2-1517, and (iii) minors who are entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately.
… I. Any judge, local superintendent of public welfare or social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.

The Virginia Administrative Code merely reflects the statutory language.

> **22 VAC 40-705-60(3)(e). When a child in 72-96 hour custody is in need of immediate medical or surgical treatment, the local director of social services or his designee(s) may consent to such treatment when the parent does not provide consent and a court order is not immediately obtainable.**

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

a. If a child is in need of immediate medical treatment and the parent is unwilling or unable to consent, the local department should first attempt to obtain a court order for treatment.

b. 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 local department, or that person's designee.

4.1 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:

(1) Assistant director;
(2) Casework supervisor;

(3) Senior social worker; or
(4) Social worker.

4.2 Parents or Guardians of Child Must be Notified as Soon as Practicable

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

4.3 Local Department Should Establish Protocol With Local Hospitals for Establishing Consent

Each local department 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. A list of persons who may sign the consent form;

b. A statement that the parents or guardians of the child refuse to give consent or are unavailable to give consent;

c. A statement that a court order for such treatment is not immediately obtainable;

d. A statement from the attending physician as to what treatment is necessary.

4.4 Payment for Surgical and Medical Treatment

Every attempt shall be made to obtain payment for surgical or medical treatment from the child's parents, or the child's legal guardians if appropriate. If the parents are unable to pay for the treatment, the local department shall explore the possibility that the child may be eligible for Medicaid, Medicare or Block Grant funds.

4.5 Local Department Cannot Provide Consent if Child is Not in Custody

22 VAC 40-705-60(3)(f). When a child is not in the local department's custody the local department cannot consent to medical or surgical treatment of the child.

If the child remains in the custody of his or her parents or guardians, the local department does not have the authority to consent to medical or surgical treatment of the child.

B. RELATED RESPONSIBILITIES OF LOCAL DEPARTMENT

1.0 CPS Worker May Enter the Home

22 VAC 40-705-90(A). In conducting a family assessment the child protective services (CPS) worker may enter the home if permitted to enter by an adult person who resides in the home. Only in those instances where the CPS worker has probable cause to believe that the life or health of the child would be seriously endangered within the time it would take to obtain a court order or the assistance of a law enforcement officer, may a CPS worker enter the home without permission. A child protective services worker shall document in detail in the record and discuss with supervisory personnel the basis for the decision to enter the house without permission.

The worker has the authority to enter the home if permitted to enter by an adult person who resides in the home.

1.1 Entering the Home

When conducting an investigation, the CPS worker should explain the purpose of the visit and enter the home when allowed to do so by an adult who resides in the home. The worker should verify that the person allowing entry resides in the home.

1.2 CPS Worker May Enter Home Without Permission if There is Probable Cause to Believe Exigent Circumstances Exist

The worker 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. However, the assistance of a police officer does not, in and of itself, provide the authority for a social worker to enter the home without permission. There must be probable cause to believe that "exigent circumstances" exist. "Probable cause" means the reasonable belief that the alleged facts exist; a mere suspicion or belief, unsupported by facts or circumstances, is not sufficient.[27] "Exigent circumstances" means situations that demand unusual or immediate action; where there are emergency-like

[27] Black's Law Dictionary 1201 (6th ed. 1991).

circumstances in which the social worker must literally act "now or never."[28]

1.3 CPS Worker Must Document and Discuss Entering a Home Without Permission

If the circumstances are such that the CPS worker must enter the home without permission of the person residing in the home, the CPS worker must record in the information system why such action was needed. The CPS worker also needs to consult with supervisory personnel.

1.4 If Person Residing in Home Refuses to Permit CPS Worker Into Home

If a person residing in the home refuses to allow the CPS worker into the home and there are no exigent circumstances demanding that the CPS worker act immediately, then the CPS worker should consider seeking the assistance of the court. If the circumstances dictate, the CPS worker must consider alternative plans such as seeking court assistance to gain access to the home. For a further discussion of alternatives to entering the home when permission is denied, see Appendix A-8.

1.5 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 CPS worker informing the person of his right to refuse entry, then the local department 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 CPS worker must document the objection in the case record.

2.0 Transporting Children

22 VAC 40-705-90(C). The child protective services worker may transport a child without parental consent only when the local department has assumed custody of that child by virtue of 72-96 hour removal authority 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.

[28] Black's Law Dictionary 574 (6th ed. 1991).

A CPS worker can transport a child if the parent or guardian of that child provides consent.

2.1 Parent or Guardian Does Not Provide Consent for Transporting Child

If a child is suspected of being abused or neglected and the parent refuses to transport the child for a medical examination, the local department has the following options:

A. Obtain a preliminary protective order pursuant to § 16.1-253 of the Code of Virginia;

b. Obtain an emergency removal order pursuant to § 16.1-251 of the Code of Virginia; or

c. Assume emergency custody pursuant to § 63.2-1517 of the Code of Virginia.

3.0 Substance Abuse by Alleged Abuser or Neglector

22 VAC 40-705-90(D). When a child protective services worker has reason to believe that the caretaker in a valid report of child abuse or neglect is abusing substances and such behavior may be related to the matter being investigated or assessed, the worker may request that person to consent to substance abuse screening or may petition the court to order such screening.

When the abuse of substances by a caretaker is suspected as a reason for the abuse or neglect of the child, the local department may request that person to seek substance abuse counseling or submit the results of substance abuse screening. If the caretaker refuses to accept services or to cooperate by submitting to substance abuse screening, then the local department may consider seeking court assistance by filing a petition for a preliminary protective order.

3.1 Local Departments Must Develop Substance Abuse Guidelines

22 VAC 40-705-90(D)(1). Local departments must develop guidelines for such screening.

22 VAC 40-705-90(D)(2). Guidelines may include child protective services worker administration of urine screening.

Each local department must develop internal guidelines concerning how to handle the issue of substance abuse when there is reason to believe that such behavior is related to the alleged abuse or neglect. The local

department should seek the assistance of the Commonwealth's Attorney Office, the local city or county attorney, or the court when developing internal guidelines for drug screening.

C. THE INITIAL ASSESSMENT & SAFETY PLAN

22 VAC 40-705-110(A). In both family assessments and investigations the child protective services worker shall conduct an initial assessment of the child's circumstances and threat of danger or harm, and where appropriate shall make a safety plan to provide for the protection of the child.

It is critical that the CPS worker conducting the investigation immediately makes an initial assessment of the circumstances surrounding the allegation of abuse or neglect and identify the immediate safety needs of the child and family. It is crucial that the CPS worker address the immediate safety of the child.

1.0 Immediate Child Safety and Family Needs

CPS is responsible for assessing and working to assure safety of all children who are reported to have been abused or neglected. Thus, one of the first tasks of the CPS worker is to determine the degree to which the child or children are secure from harm or threat of serious harm now or in the very near future. Safety factors must be determined for each child and the safety conclusion based on the least safe if there is more than one child in the family.

1.1 Assessment of Immediate Danger to the Child

The first specific assessment focuses upon the child and the child's immediate needs. Factors to consider when assessing the immediate situation of the child include:

a. Whether the child has sustained a mental or physical injury warranting immediate attention or care;

b. Whether an emergency or crisis situation exists meriting immediate action to protect the child;

c. Whether the child is at risk of serious abuse or neglect in the future.

1.2 Assessment of Immediate Needs of the Family

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

a. If the child has been injured or harmed, whether the family has the capabilities or capacity to protect the child from further harm;

b. Whether an emergency or crisis situation exists and the family's ability to cope;

c. Whether any other family members are at risk of harm or danger;

d. What are the family's capabilities to ensure the safety of the child or children in the future.

2.0 Immediate Child Safety & Family Needs Assessment

To ensure that safety of the child is appropriately assessed, the local department must complete an assessment upon first contact related to the report. Safety can be reassessed at any time, but it is only required to be documented once in the Department's information system.

A checklist is provided to assist with assessing safety. The Safety Assessment checklist, because of its family focus, is NOT required in designated out of family situations as defined in Part XII of this Chapter. The purpose of the "Initial Safety Assessment" checklist is to ensure that any concerns related to the child's safety or health are adequately assessed by the local department and documented in the record. The "Initial Safety Assessment" is a checklist of safety factors, which, if present and not balanced by mitigating circumstances or protective factors, indicate the local department will need to take additional action to ensure the health and safety of the child. The form can be duplicated from Appendix E or from the CPS web page.

<u>Elements of safety to be considered along with the safety factors listed on the checklist:</u> THREAT, HARM, SEVERITY, VULNERABILITY, AND IMMINENCE.

These elements provide a context for the safety factors. For example, a 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 3 year old may be deemed safe if the parent has just been taken away by the police.

Safety Factors that indicate a threat of harm are listed here as they are on the form in Appendix E. These factors are generally written in behavioral terms. For example, if the initial contact finds the only caretaker in the home is passed out due to a drug

overdose, the first factor under the A list applies. The safety issue is that the parent cannot provide care for the child; the underlying cause is the drug abuse.

Safety Factors

Affecting Immediate Safety	Other Safety Factors
_ Caretaker cannot meet child's basic needs for food, clothing and/or safe shelter. _ One or both caretakers cannot control behavior and/or are violent. _ Child sexual abuse is suspected. _ One or both caretakers perceive child in predominately negative or unrealistic terms. _ Injury to child or threat of injury is severe. _ Caretaker(s) lacks knowledge, skill, or motivation to keep the child safe. _ Caretaker(s) refuses access to child or there is reason to believe they may flee. _ Living arrangements seriously endanger physical health of child. _ One or both caretakers failed to benefit from previous professional help related to safety issues _ Child is 0 to 6 years old. _ Child cannot protect self due to health or disability factors.	_ Child has exceptional medical or emotional needs that caretaker cannot/will not meet. _ Child shows serious physical symptoms of maltreatment. _ Caretaker(s) overtly rejects any intervention. _ Explanation of child's injury is unconvincing or inconsistent. _ Child is fearful of caretaker(s) or home situation. _ Caretaker(s) whereabouts are unknown. _ Paramour or other adult unrelated to child is serving as caretaker. _ Caretaker's alleged/observed substance use may affect his/her ability to protect or care for the child. _ Caretaker's alleged/observed mental illness may affect his/her ability to protect or care for the child. _ Caretaker may be perpetrator or victim of DV to extent that child is at risk of serious, imminent harm. _ Caretaker intended to hurt child and does not show remorse.

Next, the CPS worker will need to determine and document any protective factors that may serve to balance the safety concerns noted above. In a family, protective factors are strengths or capabilities that control or prevent threats of harm from arising or having impact on the child. Protective factors are found within the capabilities of persons working collectively to assure the survival and safety of family members. In the example of the parent who has passed out, if another parent can be contacted, arrives quickly, and acts responsibly toward the child, this parent can protect and ensure the immediate safety of the child. See Appendix E for instructions on use of the form.

PROTECTIVE FACTORS	PROTECTIVE FACTORS CONTINUED
• **That Enable Caretakers to Protect**: _ Caretaker can defer his/her own needs in order to meet the child's needs in timely, consistent, and effective manner.	• **That Decrease Child's Vulnerability**: _ Child is over 6 years old and has access to at least one person willing to provide protection. _ Explanation of child's injury is convincing and consistent.

_ Caretaker intended to hurt child but shows remorse and expresses desire to prevent any future injury to child. _ Caretaker accepts and demonstrates the responsibility to nurture and provide for the well-being of the child – shows skills associated with meeting these needs. _ Caretaker has the physical ability to intervene and/or has intervened in past to keep child safe from others. _ Caretaker demonstrates control of negative impulses or personal behaviors. _ One caretaker can and will protect child from violent behavior or other caretaker. _ One or both caretakers demonstrate healthy emotional bonding with child. _ At least one caretaker perceives child in predominately positive or realistic terms. _ Caretaker is facilitating access by CPS to the child. _ Caretaker(s) is receptive to intervention. _ Caretaker can identify actions that are required to prevent harm to child. _ Caretaker has capacity to learn from an experience and apply it to a new situation.	_ Injury to child is not severe or imminent. _ Observation of interactions of the child and the adult are appropriate. _ Living arrangements that endangered physical health of child have been ameliorated. _ Child with special needs is connected to appropriate services to meet those needs. • **That Enable Others to Protect:** _ Paramour or other adult unrelated to child and serving as caretaker expresses strong attachment to the child. _ Child sexual abuse is suspected but uninvolved caretaker is supportive and will protect child. _ Family can meet child's basic needs for food, clothing and/or safe shelter. _ Family member or friend has agreed to take an active part in protection of the child. • **Other Protective Factors:**

After safety and protective factors have been assessed, a conclusion must be made regarding the safety of the children in the home. One of the following Safety Decisions must be determined and documented:

A. SAFE: There are no children likely to be in immediate danger of moderate to serious harm.
B. CONDITIONALLY SAFE: Safety interventions are in place and have resolved the unsafe situation for the present time. {Requires a Safety Plan}
C. UNSAFE: Without controlling intervention(s) a child is in immediate danger of serious harm. {Emergency Removal or Court action is required to insure safety of the child(ren)- court order may replace Safety Plan.}

2.1 Making a Safety Decision

The Safety Assessment must be documented in the information system and must include a conclusion as to the safety of the child(ren). The

overall conclusion of Safe, Conditionally Safe, or Unsafe should be made on the basis of the needs of the least safe child in the home if there is more than one.

The initial safety assessment is based on the first meaningful contact with the family and is intended to be applicable only for the here and now. If the child is considered to be Conditionally Safe, additional information must be documented, such as listing the Protective Factors that make it conditionally safe for the child to remain in the care of the responsible caretaker. This may involve a voluntary temporary placement of the child. If a determination of Unsafe is made, the child must be protected through an emergency removal or some other Court action.

2.2 Two Major Safety and/or Risk Assessment Issues

Two family issues that can have a major impact on safety and risk are domestic violence and drug and/or alcohol involvement by the child's caretakers. The screening tools provided in the Appendices of this chapter are highly recommended. The CAGEAID tool provides questions that can be worked into the interviews with the primary caretakers, and a "yes" to any question indicates a need for an AOD (alcohol or other drug) evaluation in order to complete the risk assessment. The DV INITIAL ASSESSMENT could be given to the caretaker to complete or the questions may be asked by the CPS worker. Again, a "yes" answer warrants referral to a Domestic Violence service provider for a more complete assessment of need.

3.0 Develop Safety Plan

When the child is determined to be Conditionally Safe or Unsafe, the CPS worker must determine what services or actions need to occur by developing a safety plan. The definition section (22 VAC 40-705-10) of the Virginia Administrative Code defines safety plan:

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

A safety plan must be made to ensure protection of the child. When possible, the worker needs to develop the safety plan with the cooperation of the child's parents or guardians. The CPS worker must determine what, if any, services are necessary to assure the child's immediate safety. If the arrangements or the services needed to assure the safety of the child cannot be put in place, alternative steps must be taken including seeking court intervention. The safety plan and the CPS worker's efforts to develop the safety plan must be documented in the record. The form that follows must be used unless a local form is developed that includes all these elements. The following

plan may be photocopied from Appendix E or downloaded from the Forms section of the CPS website. It also may be obtained as a self carbonized form from General Services. A copy shall be given to the caretaker of the child and/or the alleged abuser.

SAFETY PLAN

AGENCY:____(locality)_____ DATE:_(day completed)____
PARENT/CARETAKER:_(all applicable names)____CHILD(REN):_(all)_____

Child Safety Concerns:__(brief summary or can be N/A if issues identified do not relate to referral allegations)

Initial Assessment of Safety (Based on safety issues identified and any protective factors that address the safety concerns):
_____

Immediate Needs (identified by family and/or social worker): (these needs must be related to safety – more detailed assessment of family needs will follow) _____

Steps to be taken by Parent or Caretaker:__(Should state clearly what the caretaker will do to protect the child)_____

Social Worker plans/actions:__(Should state clearly what the worker will do to protect the child)_____

Worker Signature _____ Caretaker Signature_____

Others _____ Date_____

Whenever possible the caretaker(s) should sign 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 near future. Other parties to the agreement, such as service providers or extended family members, may also sign the form.

The Safety Assessment or Safety Plan may be used whenever circumstances change by completing a new form and putting the date of the reassessment on the form. There is no ability at this time to update the Safety Assessment in OASIS, but the new information and revised safety decision should be included in the Investigation.

3.1 Immediate Safety of the Child Imperative

Paramount to the investigation is ensuring the immediate safety of the child. It is imperative that, when the local department initiates the investigation of a valid report or complaint, the CPS worker immediately assesses the safety of the child and implements a safety plan, if needed. The CPS worker must document what immediate action was taken to ensure the safety of the child. If immediate action was not warranted, then the CPS worker must document the reasons why immediate action was not needed.

4.0 Removal of the Child

The CPS worker must determine if the child can safely remain in the present living arrangements. Removing the child from the home should only be considered when it becomes apparent that no other alternatives exist to ensure the safety and health of the child. Removal of a child should only be used as a last alternative.

5.0 Assessment is Ongoing

The initial assessment should not be viewed as a one-time determination, but viewed as an ongoing and continuing evaluation of the child and family's needs and capabilities throughout service provision.

D. COLLECTING EVIDENCE & INFORMATION GATHERING

1.0 Collecting Evidence

> **22 VAC 40-705-70(A*). When conducting an investigation the local department shall seek first-source information about the allegation of child abuse and/or neglect. When applicable, the local department shall include in the case record: police reports; depositions; photographs; physical, medical and psychological reports; and any tape recordings of interviews.**

When collecting evidence for the record, emphasis should be placed on that evidence which can be considered first source information. First source evidence increases credibility and reliability. The definition section of the Virginia Administrative Code (22 VAC 40-705-10) defines first source evidence as:

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

First source evidence includes the parties and witnesses to the alleged abuse or neglect. First source evidence also includes: witnesses; witness depositions; police

reports; photographs; medical, psychiatric and psychological reports; and any tape recordings of interviews.

2.0 Information to be Included in Case Record and Investigative Narrative

In developing the case record and the investigative narrative, the CPS worker should consider and document the issues below. This is not a comprehensive list, each investigation may have circumstances warranting more or less details and information.

2.1 Incident Related

a. Describe the abuse incident or neglect condition, 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 abuse occurred.

b. 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.

c. Describe the frequency of the abuse or neglect.

d. Describe the medical and psychological treatment given as the result of the abuse or neglect. Any written reports should be included in the case record and referred to in the case narrative.

2.2 Child Related

a. Include demographic information (date of birth, sex, grade in school, etc.)

b. If relevant, describe the child's developmental level.

c. Describe the child's response to the situation, including:

(1) Statements (emphasis on including direct quotes) about what happened;

(2) Statements and behaviors indicating or demonstrating the child’s feelings about the situation.

d. Describe the observable or verifiable characteristics and behaviors of the child impacting on the situation (both positive and negative). Include any results of testing and evaluations if available.

e. Describe any history of abuse or neglect involving the child. The history of any prior abuse or neglect can be provided by any source.

2.3 Caretaker Related

a. Describe the caretaker's (or caretakers') response to his role in the abusive incident or neglectful condition, including:

(1) In what way did the caretaker acknowledge responsibility?

(2) Will the caretaker cooperate with the local department's intervention?

(3) Does the caretaker acknowledge or deny any harm to the child?

(4) Is the caretaker taking action to protect the child? If so, describe what action the caretaker is taking.

b. 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 discussed in the narrative. If available, include in the record any results of testing or evaluation.

c. Describe any history of abuse or neglect by the caretaker, including:

(1) Any history that the caretaker has been abused or neglected?
(2) Any history that the caretaker has been abusive or neglectful in the past?

d. Describe how the caretaker demonstrates a desire or willingness to change or to seek help.

e. Describe and observe the interaction between the caretaker (even when the caretaker is not a family member, if possible) and the child.

f. Describe any changes that have taken place for the caretaker since the intervention.

2.4 Family Related

a. Describe the family composition.

b. Describe the observable or verifiable characteristics and behaviors of the family impacting on the situation.

2.5 Other Related

a. Describe any observable or verifiable characteristics and behaviors of others who have access to the child and the nature of those relationships impacting on the situation (positively or negatively).

b. Describe any factors in the home environment impacting on the situation (e.g. eviction, financial circumstances, domestic violence, support systems, etc.).

c. Describe any factors outside of the home environment impacting on the situations (e.g. school, day care, other service agency contact, etc.).

d. Describe any intervention of the judicial and legal system impacting on the situation.

e. Describe any obstacles and barriers to services that are needed to ensure the protection of the child or other children.

E. MANDATED CONTACTS

The Administrative Code (22 VAC 40-705-80(B)) requires certain contacts and observations to occur, thereby ensuring a thorough and fair investigation.

> **22 VAC 40-705-80(B). During the course of the investigation, the child protective services (CPS) worker shall make and record in writing in the state automated system the following contacts and observations. When any of these contacts or observations is not made, the CPS worker shall record in writing why the specific contact or observation was not made.**

The investigating CPS worker must document these contacts in the investigative narrative. This section of the Administrative Code (22 VAC 40-705-80(B)) does take into consideration that a mandated contact may not occur for various reasons.

Therefore, it is essential that the investigating CPS worker document all contacts made during the investigation. It is equally important that the investigating worker document reasons why any of the mandated contacts or observations were not made or completed.

1.0 Interview With the Alleged Victim Child

> **22 VAC 40-705-80(B)(1). The child protective services worker shall conduct a face-to-face interview with and observation of the alleged victim child. All interviews with alleged victim children must be audio tape recorded …**

22 VAC 40-705-80(B)(1) contains two essential investigation requirements. The first requirement is that the CPS worker interviews the alleged victim child in person. The second requirement is that all interviews with alleged victim children must be audio tape recorded during the investigation. For purposes of the policy manual, each requirement is addressed separately.

1.1 In-Person Interview with the Alleged Victim Child

The CPS worker must conduct a face to face interview with the alleged victim child. During the interview, the CPS worker should inform the child about the investigation and what will occur during the investigation. The CPS worker should observe the child and document the child's recollection and perception of the allegations. The CPS worker should note the child's emotional and physical condition (including any injury). The CPS worker should learn about the child's needs and capabilities for the purposes of risk assessment and service planning.

2.0 Audio Taping Interviews with the Alleged Victim Children

The Virginia Administrative Code requires all interviews by a CPS worker with the alleged victim child to be audio tape recorded. The Virginia Administrative Code states:

> **22 VAC 40-705-80(B*)(*1) continued. All interviews with alleged victim children must be audio tape-recorded except when the child protective services worker determines that:**
> **a. The child's safety may be endangered by audio taping;**
> **b. The age and/or developmental capacity of the child makes audio taping impractical;**
> **c. A child refuses to participate in the interview if audio taping occurs; or**
> **d. In the context of a team investigation with law enforcement personnel, the team or team leader determines that audio taping is not appropriate.**

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

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

2.1 Exceptions to Recording an Interview with an Alleged Victim Child

The Virginia Administrative Code provides four exceptions to audio recording an interview with an alleged victim child. Before audio taping an interview with a child, the CPS worker must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the four exceptions precluding audio taping the interview apply. Adequately considering the circumstances may include assessing the complaint or report; speaking with the parents or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

2.1.1 Exception: The Child's Safety May be Endangered by Audio Taping

If the child's safety is endangered or may be endangered by audio taping the interview, then the interview must not be audio taped. The CPS worker 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 audio taping the interview. The CPS worker may be able to assess any potential harm to the child by speaking with the child's parents, guardians or collateral witnesses. If the interview is not recorded because of this exception, the CPS worker must document the reasons in the automated case record. The CPS worker must discuss the reasons for not audio taping the interview with the worker's supervisor. If the interview is not audio taped, the CPS worker must carefully document the details of the interview in writing for the case record.

2.1.2 Exception: The Age or Developmental Capacity of the Child Makes Audio Taping Impractical

The CPS worker must assess the mental and physical capacities of the child. The age or development of the child may preclude audio taping the interview. If the age or development of the child precludes audio taping the interview, the CPS worker must document those reasons in writing for the automated case record.

2.1.3 Exception: The Child Refuses to Participate in the Interview if Audio Taping Occurs

The interview with the child should not be jeopardized because the child refuses to be audio taped. If the child refuses to be audio taped, the CPS worker should explore the child's reasons and discuss those reasons with the child. If the child still refuses to participate in an audio taped interview, then the CPS worker must not tape the interview. The CPS worker must document the reasons why the child refused to be audio taped. When an interview is not taped, the CPS worker must comprise a written detailed summary of the interview and incorporate that summary into the case record.

2.1.4 Exception: In the Context of a Team Investigation, the Team or Team Leader Determines that Audio Taping 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 audio tape the interview with the alleged victim child. A team investigation includes a joint investigation with the Commonwealth's Attorney office or law-enforcement. When an interview is not audio taped, the CPS worker must comprise a written detailed summary of the interview and incorporate that summary into the case record.

2.1.5 Parents or Caretakers Object to Audio Recording

There is no provision in the Virginia Administrative Code allowing an exception to audio taping when the parents or guardians object to the local department audio taping the interview of the alleged victim child. Nonetheless, the CPS worker should explore the foundation for the parents' objection. The objection to the audio taping may satisfy one of the enumerated exceptions to audio taping. If the objection is well founded, then the local department should not audio tape the interview and clearly document the reasons why in the record.

2.2 Interviewing a Non-Verbal Child

In the case of an interview conducted with a non-verbal child where none of the above exceptions apply, it is appropriate to audio tape record the questions being asked by the child protective services worker and to describe, either verbally or in writing, the child's responses. A child protective services worker shall document in detail for the case record and discuss with supervisory personnel the basis for a decision not to audio tape record an interview with the alleged victim child. When an interview is not audio taped, the CPS worker must comprise a written detailed summary of the interview and incorporate that summary into the case record.

2.3 Equipment Malfunction or Other Cause

22 VAC 40-705-80(*B)(1*) provides a CPS finding may be based on the written narrative should equipment failure or "other cause" occur. If an interview of an alleged victim child is not audio taped because of equipment malfunction or other cause, then the CPS worker must write a detailed narrative of the interview and include that narrative in the record. A dispositional finding may be based on the written narrative of the child protective services worker in cases where an audio recording is unavailable due to equipment failure or other cause. Equipment malfunction is self-explanatory. The Virginia Administrative Code does not define "other causes," providing the local department with some discretion and flexibility in those situations where discretion and flexibility is needed so that the CPS investigation is not compromised. For example, situations may occur where the alleged victim child spontaneously discloses details of the alleged abuse or neglect and the CPS worker does not have the recording equipment immediately available.

To illustrate, the CPS worker transports the child to a medical examination. In the car, the child discloses important information about the alleged abuse. The CPS worker was not able to record the child's statements. In such situation, the CPS worker should clearly delineate or summarize the child's statements in the record and the reasons why the child's statements were not recorded.

2.4 Each Interview With the Alleged Victim Child Must be Audio Taped

Each interview with the alleged victim child must be audio recorded unless one of the above mentioned exceptions to audio recording the interview applies.

2.5 Notifying the Child's Parents or Caretakers that Interview was Audio Taped

There are no provisions in the Virginia Code or the Virginia Administrative Code requiring local departments to notify the parents or guardians of an allegedly abused or neglected child that the child was interviewed by the local department and the interview was audio taped. However, as soon as practicable the local department should notify the parents or guardians of the alleged victim child about the interview and that the interview was audio taped. The local department should explain to the parents or guardians that the Virginia Code allows the CPS worker to interview the alleged victim child without the consent of the parents and the Virginia Administrative Code requires the interview to be audio taped.[29] There may be circumstances warranting that the local department not immediately notify the parents about the interview. For example, the parents may be the alleged abusers or neglectors and there is concern for the safety of the child. If the parents are not notified as soon as practicable, then the local department should document in the narrative the reasons why.

3.0 Interview with Alleged Abuser or Neglector

22 VAC 40-705-80(B*)(*2). The child protective services (CPS) worker shall conduct a face-to-face interview with the alleged abuser and/or neglector.

The CPS worker must conduct a face-to-face interview with the alleged abuser or neglector. The alleged abuser or neglector must be informed of the allegations and the investigative process. The CPS worker must document the alleged abuser's or neglector's responses and knowledge about the allegations. For the purposes of risk assessment and service planning, the CPS worker should identify the alleged abuser or neglector's needs and capabilities. If the alleged abuser or neglector refuses to be interviewed, the CPS worker must inform the alleged abuser or neglector that the investigation must continue and a disposition will be made.

3.1 Miranda Rights

Va. Code § 63.2-1503(M). Statements, or any evidence derived therefrom, made to local department child-protective services personnel, or to any person performing the duties of such personnel, by any person accused of the abuse, injury, neglect or death of a child after the arrest of such person, shall not be used in evidence in the case in chief against such person in the criminal proceeding on the question of guilt or

29 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 CPS worker with an alleged victim child be audio taped recorded.

innocence over the objection of the accused, unless the statement was made after such person was fully advised (i) of his right to remain silent, (ii) that anything he says may be used against him in a court of law, (iii) that he has a right to the presence of an attorney during any interviews, and (iv) that if he cannot afford an attorney, one will be appointed for him prior to any questioning.

Statements made by the alleged abuser or neglector to the investigating CPS worker 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 Virginia Code 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 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 local department using those statements in determining a founded or unfounded disposition.

3.2 Tape Recording of Interview with the Alleged Abuser or Neglector

22 VAC 40-705-80(B)(2a.). The CPS worker shall inform the alleged abuser and/or neglector of his right to tape record any communication pursuant to § 63.2-1516 of the Code of Virginia.

Va. Code § 63.2-1516. Any person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter may tape record any communications between him and child protective services personnel which take place during the course of such investigation or family assessment, provided all parties to the conversation are aware the conversation is to be recorded. The parties' knowledge of the recording shall be demonstrated by a declaration at the beginning of the recorded portion of the conversation that the recording is to be made. If a person who is suspected of abuse or neglect of a child and who is the subject of an investigation or family assessment pursuant to this chapter elects to make a tape recording as provided in this section, the child protective services personnel may also make such a recording.

The CPS worker must inform the alleged abuser or neglector of his right to tape record any interviews with the CPS worker.

3.2.1 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 Commonwealth's Attorney may object to the local department informing the alleged perpetrator of his right to audio record an interview. If a law-enforcement officer or a Commonwealth's Attorney objects, then the local department 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 exception applies when CPS and law-enforcement are conducting a joint investigation involving criminal allegations of abuse or neglect. If a law-enforcement officer is only escorting a CPS worker to an interview and not conducting a joint investigation, then this exception does not apply.

3.3 Local Department Must Provide Tape Recording Equipment

22 VAC 40-705-80(B)(2b.). The local department shall provide the necessary equipment in order to tape record the interview and retain a copy of the tape for the record.

The CPS worker must be prepared to provide the equipment should the alleged abuser or neglector elect to audio tape record the interview. If the interview is audio tape recorded, the local department must make two copies of the recording. The local department must provide one copy of the tape recording to the alleged abuser or neglector. The local department must retain a copy of the audio tape recording of the interview.

4.0 Interview With Child's Parents or Guardians

22 VAC 40-705-80(B)(3). The child protective services worker shall conduct a face-to-face interview with the alleged victim child's parents or guardians.

The CPS worker must conduct a face to face interview with child's parents or guardians to obtain information about the child and about the parents' or guardians' knowledge of the allegations. The CPS worker should inform the parents or guardians about the investigative process and provide sufficient information to involve them in planning and support for the child.

5.0 Visit the Alleged Victim Child's Home Environment

22 VAC 40-705-80(B)(4). The child protective services worker shall observe the environment where the alleged victim child lives.

The CPS worker must observe the environment where the child lives to gain information about the family's living arrangements, standard of living and family dynamics. At the worker's discretion, this requirement may be waived in investigations involving out of family settings when the child's home environment is not relevant to the investigation. If the CPS worker does not observe the environment where the child lives, then the CPS worker must document the reasons why the observation was not made.

6.0 Visit the Site Where the Alleged Abuse or Neglect Occurred

22 VAC 40-705-80(B)(5). The child protective services worker shall observe the site where the alleged incident took place.

The CPS worker must observe the environment where the alleged abuse or neglect occurred.

7.0 Interview Collateral Witnesses

22 VAC 40-705-80(B)(6). The child protective services worker shall conduct interviews with collaterals who have pertinent information relevant to the investigation and the safety of the child.

The nature of a child protective services investigation may make it necessary to interview or correspond with collateral contacts in order to evaluate the circumstances surrounding the alleged abuse or neglect. The Virginia Administrative Code (22 VAC 40-705-10) defines collateral witness as:

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

The CPS worker must interview any collateral witnesses with knowledge that may help confirm or rebut the allegations. The CPS worker may involve collateral witnesses 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 CPS worker may make collateral contacts without the family's consent in order to complete a child protective services investigation.

7.1 Collateral Interviews: Alleged Victim Child's Siblings

The CPS worker should interview the alleged victim child's siblings. If the CPS worker does not interview the victim child's siblings, then the CPS worker must document the reasons in the investigative narrative.

8.0 Document Any Mandated Contacts Not Made

When a mandated contact or observation is not made, the worker must document in the investigation narrative why the specific contact or observation was not made.

F. TIME FRAMES FOR COMPLETING INVESTIGATION

Va. Code § 63.2-1505(B)5. […the local department shall …] Determine within forty-five days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, such determination may be extended, not to exceed a total of sixty days. If through the exercise of reasonable diligence the department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the forty-five-day or sixty-day period and documentation of such reasonable diligence shall be placed in the record;

The Virginia Code requires that the local department completes the investigation and render a disposition within 45 calendar days of receipt of the complaint or report. Disposition means determining whether or not the alleged child abuse or neglect occurred. However, upon written justification by the local department, based on locally determined guidelines, case by case exceptions may be made to extend this period by 15 calendar days. The time frame for completing an investigation cannot exceed a total of 60 days pursuant to § 63.2-1505(B)5 of the Code of Virginia.

1.0 Notifying Parties of Time Frames

Whenever any party is advised of the investigative time frame, verbally or in any written material, it must be clearly stated that the disposition is expected in 45 days, but that an extension to 60 days is permitted. If the local department extends the investigative period from 45 days to 60 days, then the parties, including the alleged abuser and the alleged victim child's parents or guardians, must be notified of the extension.

2.0 Extending the Time Frames for Completing the Investigation

> **22 VAC 40-705-120(A). The local department shall promptly notify the alleged abuser and/or neglector and the alleged victim's parents or guardians of any extension of the deadline for the completion of the family assessment or investigation pursuant to § 63.2-1506(B)3 or subdivision 5 of § 63.2 -1505 of the Code of Virginia. The child protective services worker shall document the notifications and the reason for the need for additional time in the case record.**

Whenever a decision is made to extend an investigation period, the alleged abuser and the victim child's parents or guardians must be notified promptly of the new deadline. Notification can be made orally or in writing. The notification should also include a brief explanation concerning the need for the extension. If written notification is made, a copy of the notification must be included in the local department's record. If notification is made verbally, then the local department must document the notification in the case record.

2.1 The Local Department Must Include the Justification for the Extension in the Case Narrative

The local department must include a written justification in the investigative narrative for the additional time needed to complete the investigation.

G. DISPOSITIONAL ASSESSMENT

22 VAC 40-705-110(*C*). In investigations the child protective services worker shall make a dispositional assessment after collecting and synthesizing information about the alleged abuse or neglect.

After collecting evidence and before expiration of the time frames for completing the investigation, the investigating social worker must determine the disposition. The definition section of 22 VAC 40-705-10 provides the definition of disposition.

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

The CPS worker must determine a disposition for each complaint or report of abuse or neglect received by the local department. Va. Code § 63.2-1505(B5) requires that the CPS worker make a disposition of founded or unfounded.

1.0 A Founded Disposition

The definition of a founded disposition as defined in the definition section of the Virginia Administrative Code (22 VAC 40-705-10) is:

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

1.1 Preponderance of the Evidence

The definition section of the Virginia Administrative Code (22 VAC 40-705-10) defines a preponderance of the evidence as:

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

As the standard of proof in making a founded disposition of abuse or neglect, a preponderance of the evidence means that the evidence offered in support of the allegation is of greater weight than the evidence offered in opposition. The evidence gathered should be evaluated by its credibility, knowledge offered and information provided.

1.2 First Source Evidence

The regulations place emphasis on first source evidence when making the dispositional assessment. The Virginia Administrative Code (22 VAC 40-705-10) requires a founded disposition to be based primarily on first source evidence. In no instance can a founded disposition be based solely on indirect evidence or an anonymous complaint.

First source evidence is defined in 22 VAC 40-705-10 as:

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

Generally, there are two types of evidence, direct evidence and indirect evidence. Direct evidence (also referred to as first source evidence) may be the testimony of an eyewitness. Direct evidence means evidence that proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. 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.

1.3 Indirect Evidence

The definition of founded says that a founded disposition cannot be based solely on indirect evidence. The Virginia Administrative Code states:

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

Indirect evidence relies upon inferences and presumptions to prove an issue in question. Indirect evidence may mean proving a chain of circumstances pointing to the existence or non-existence of certain facts.[30] There is no clear distinction between the reliability and credibility of first source evidence and indirect evidence. It remains incumbent upon the local department 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.

1.4 A Founded Disposition Cannot be Based Solely on an 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. The worker must complete a thorough investigation and evaluate the evidence gathered before concluding whether the abuse or neglect did occur.

1.5 Alleged Abuser Shall Have an Opportunity for Consultation Prior to a Founded Disposition

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

D. When completing an investigation, prior to rendering a founded disposition concerning a complaint of child abuse and/or neglect, the local department shall provide an opportunity for the alleged abuser and/or neglector to have a local consultation with the local director or his designee to hear and refute the evidence supporting a founded disposition. Whenever a criminal charge is also filed against the alleged abuser for the same conduct involving the same victim child as investigated by the local department, sharing the evidence prior to the court hearing is prohibited.

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[30] Black's Law Dictionary 556 (6th ed. 1990).

If the alleged abuser/neglector requests to present additional evidence or refute evidence, the local department shall 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 alleged abuser may be informed at any time during the investigation that the facts are leading the worker toward making a founded disposition. The informing can be informal and oral, but the fact that the informing took place through a contact with the alleged abuser must be documented in OASIS.

1.6 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 a local department is making a disposition. Since the Virginia Supreme Court has repeatedly stated that polygraph examinations are scientifically unreliable, a local department cannot allow polygraph examinations to be entered in as evidence in support of a founded disposition.[31]

2.0 Founded Disposition & the Identity of the Abuser is Unknown

In most investigations concluding with a founded disposition, the evidence will establish the identity of the abuser or neglector. However, in some cases the evidence will establish that the child was abused or neglected, but the identity of the perpetrator is unknown or not supported by a preponderance of the evidence. In these situations, a local department may render the disposition of founded with the identity of the abuser unknown.

2.1 Circumstances in which Disposition May be Revisited

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

[31] 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.

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.

3.0 Unfounded Dispositions

The definition of an unfounded disposition as defined in 22 VAC 40-705-10 is:

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

Unfounded means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred. An unfounded disposition does not mean that the abuse or neglect did not occur; an unfounded disposition means that there was not sufficient evidence to warrant a disposition of founded.

3.1 Record of an Unfounded Investigation Must be Retained for One Year

Va. Code § 63.2-1514(C). Retention of records in unfounded cases.
C. At the time the local department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is either an unfounded investigation or a completed family assessment, it shall notify him that the record will be retained for one year and of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

If a report or complaint is investigated and determined to be unfounded, that report or complaint will be retained in the automated data system for one year from the date of the report or complaint pursuant to Va. Code §63.1-1514 and 22 VAC 40-705-130 (Reporting Findings). The information maintained by the local department may be used by the local department to provide information concerning prior investigations. The alleged abuser or neglect may access the information maintained in the record of the unfounded investigation. For further discussion of retaining and reporting of unfounded investigations, see Part VII of this policy manual concerning reporting unfounded dispositions.

3.2 Re-initiation of an Unfounded Complaint

When new or additional information is received after a complaint has been determined to be Unfounded, the new/additional information may be cause for a new complaint and investigation. If the new information adds nothing more to the original complaint, no new investigation should occur.

There is no basis in law or regulation for “reopening” a closed investigation.

4.0 Levels of Founded Dispositions

Founded dispositions 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. The following examples are provided as guidance, but they are not all inclusive of the situations that may have a founded disposition.

4.1 A Level 1 Finding

22 VAC 40-700-20(1) establishes a level 1 founded disposition:

Level 1. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.

Such injuries or conditions that resulted in or were likely to have resulted in serious harm include:

a. For physical abuse, the situation requires medical attention in order to be remediated; the injury may be to the head, face, genitals, or is internal and located near a vital organ; injuries located in more than one place; the injuries were caused by the use of an instrument such as a tool or weapon; and an inappropriate drug was administered or a drug was given in an inappropriate dosage;

b. 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 let alone for any period of time.

c. For mental abuse or neglect, the child has engaged in self-destructive behavior, or has required psychiatric hospitalization, or required treatment for severe dysfunction or for presenting a danger to self or others, or for problems related to the caretaker behavior;

d. For sexual abuse, the situation would be one where there was genital contact, or force or threat was used, or the abuse had taken place over a period of time and there were multiple incidents.

e. 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.

f. For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to b & c above.

4.2 A Level 2 Finding

22 VAC 40-700-20(2) establishes a level 2 founded disposition:

Level 2. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.

Such injuries or conditions that resulted in or were likely to have resulted in moderate harm include:

a. 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,

b. 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.

c. For mental abuse or neglect, the situation would be one where the child's emotional needs are rarely met; the child's behavior is problematic at home or school;

d. For sexual abuse, minimal or no physical touching but exposure to masturbation, exhibitionism, etc. Caretaker makes repeated sexually provocative comments to the child; child is exposed to pornographic materials.

e. For medical neglect, the situation is one in which a doctor has prescribed care to eliminate pain or remedy a condition but the caretaker has not followed through with appointments or recommendations; the child's condition is not acute or life threatening but could be detrimental to the child's mental or physical health.

f. For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to b & c above.

4.3 A Level 3 Finding

22 VAC 40-700-20(3) establishes a level 3 founded disposition:

Level 3. This level includes those injuries/conditions, real or threatened, that result in minimal harm to a child.

Such injuries or conditions that resulted in or were likely to have resulted in minimal harm include:

a. For physical abuse, the situation requires no medical attention to remediate the injury;

b. In physical neglect, child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; supervision marginal, poses threat of danger to child;

c. 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;

d. For sexual abuse, there was no or minimal physical touching or exposure to sexual acts such as exposure to 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.

e. 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.

f. For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment, so refer to b & c above.

5.0 Retention of Founded Complaints in the Central Registry

22 VAC 40-700-30 provides the regulatory authority for the length of time each level of a founded disposition will be retained in the automated data system.

> **Maintenance of identifying information. Identifying information in reports of child abuse and neglect shall be maintained in the central registry as follows:**
> **1. Eighteen years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 1.**
> **2. Seven years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 2.**
> **3. Three years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 3.**
> **If an individual is involved in more than one complaint, the information from all complaints will be maintained until the last deletion date has been reached.**

H. RISK ASSESSMENT

If the local department renders a founded disposition of abuse or neglect, then the local department must complete the third type of assessment, the risk assessment. This assessment is only completed when there is a founded disposition of abuse or neglect.

> **22 VAC 40-705-110(B). In all founded cases and in completed family assessments, the child protective services worker shall make a risk assessment to determine whether or not the child is in jeopardy of future abuse and/or neglect and whether or not intervention is necessary to protect the child.**

In all founded cases of abuse or neglect, the local department shall make a risk assessment. Risk of harm to the child may be visualized as a continuum ranging from no assessable risk through high risk. The evidence may show that the abusive or neglectful event was a one-time occurrence with no discernible risk in the future. In the alternative, the evidence may show the risk of the child being abused or neglected in

the future to be significant, then the risk assessment should be high. The child protective services worker must focus on assessing the degree to which the child's overall situation places that child in jeopardy of harm.

The evidence gathered during the investigation, an analysis of its reliability and importance, and an evaluation of how the various risk factors interrelate determine the level of risk to the child. The investigative data collected must be carefully considered in order to determine whether the child's family is willing and able to provide the child with a safe home. It is most critical that assessments regarding the degree to which the child is at risk continue to be made throughout the period of interaction with the family.

The questions listed below relate directly to the facts collected during the investigation. The risk assessment results from the synthesis of the answers to the questions. The assessment of risk must take into consideration each of the identified factors and any other special circumstances that might influence the foreseeable risk of harm.

1.0 Incident Related

When relating the incident, the essential consideration is the degree of harm to the child, including:

a. How severe is the injury?

b. Is the potential danger more or less severe because of the manner of infliction?

c. Is the potential danger more or less severe because of a pattern of abuse or neglect?

d. Is the precipitating event (or one very similar) likely to reoccur?

2.0 Child Related

The local department must evaluate the physical and mental vulnerability of the child. When evaluating the physical and mental vulnerability of the child, questions to consider include:

a. Does the child's age, sex, developmental level, etc. affect his or her vulnerability to abuse or neglect?

b. Is the child able to protect him or herself from future abuse or neglect?

c. Is the child's responses and feelings consistent or inconsistent with what would be expected considering the circumstances?

d. How does the child view his or her role in the abusive or neglectful situation? How does that impact on his or her vulnerability for abuse or neglect?

3.0 Caretaker Related

The local department must evaluate the caretaker's ability and willingness in preventing future abuse or neglect. Caretaker refers to both the abusing and non-abusing parent. When evaluating the caretaker's willingness or ability to prevent future abuse or neglect, questions to consider include:

a. Do the caretakers demonstrate the ability to stop the abuse or neglect?

b. Has the abuse or neglect stopped or diminished?

c. What plans do the caretakers have for the future or continued protection of the child?

e. How do the caretakers' views of the child impact on their ability to protect the child?

4.0 Family Related

The key considerations are the ability and willingness of the family to provide a safe home and protect the child. When evaluating the family's willingness or ability to prevent future abuse or neglect, questions to consider include:

a. How do the dynamics, communication, roles, and responsibilities of the family members increase or decrease the potential for abuse or neglect to the child?

b. In what way do the family's characteristics and behaviors impact on their ability to provide a safe home for the child?

c. How does the family's view of the child impact on their ability to provide a safe home and protect the child?

5.0 Other Related

a. How do the characteristics and behaviors of others who have access to the child impact on the potential for abuse or neglect of the child?

b. How do the factors in the environment (both in and outside the home) impact on the potential for abuse and neglect of the child?

c. How does the intervention of the judicial system impact on the potential for abuse or neglect of the child?

d. How do the obstacles or barriers to services that are needed impact on the potential for abuse or neglect of the child or other children?

e. Has child protective services intervention impacted on the potential for abuse or neglect of the child?

6.0 Categorizing the Risk

The risk assessment must be categorized into one of the following three levels:

6.1 High Risk

The worker's assessment of risk related factors indicates a likelihood that the child is in jeopardy of abuse or neglect, and that intervention is necessary in order to protect the child or other children.

6.2 Moderate Risk

The worker's assessment of risk related factors indicates that the child or other children are in possible jeopardy, but that a positive change in the situation is likely to occur with minimal intervention.

6.3 No Reasonably Assessable Risk

The worker's assessment of risk related factors indicates that the situation can and will be changed, that no additional intervention is necessary and that the child or other children are at no reasonably assessable risk of abuse or neglect.

Following strikethrough changes effective 11/04

I. REFERRAL FOR CHILDREN UNDER AGE THREE

If an investigation results in a disposition of founded on any child under age three ~~or if a family assessment determines any child under the age of three to be in need of services~~

~~to prevent risk of child abuse or neglect~~, that child shall be referred to the local Infant & Toddler Connection of Virginia (Part C Early Intervention System.) This referral is required by the Child Abuse Prevention and Treatment Act (CAPTA).

In Virginia, the eligible population to be served by Part C programs: Infants and toddlers from birth to age three who are developmentally delayed, who have atypical development, or who have a diagnosed physical or mental condition that has a high probability of resulting in delay.

Procedures for making a referral to Infant-Toddler Services:

- *Within five (5) working days of completing the ~~family assessment or~~ investigation the local department of social services will send a referral to the local Part C Early Intervention program using the local referral form.*
- *The local department will send a copy of the referral to the family with the notice of disposition ~~or family needs assessment conclusions~~. The parent shall also be informed verbally of the referral and have an opportunity to discuss the referral process.*

It is strongly recommended that local departments meet with the local Infant and Toddler program prior to the implementation of this policy to learn about any referral issues that should be explained to the parent. More information on the Infant & Toddler programs in Virginia can be found at www.infantva.org.

J. THE INVESTIGATIVE RECORD

During the course of the investigation, the CPS worker shall be collecting evidence, conducting interviews and making observations. The evidence gathered will be used to determine whether the disposition is founded or unfounded. Establishing a written record to support the worker's disposition is essential to completing the investigation. Furthermore, the evidence gathered during the investigation and documented in the record will provide a framework for the child's safety assessment and service planning. The record may include a hard copy file but must include documented facts entered into the automated information system.

1.0 All Investigations Must be Documented

All investigations, regardless of the disposition, must be documented. The definition section of the Virginia Administrative Code (22 VAC 40-705-10) defines documentation as:

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

Thorough and detailed documentation of the investigation is essential to determining and supporting the disposition. All investigation records must contain the information required and should be written such that the decisions made are clearly documented and supported by the evidence.

2.0 Case Record

The CPS worker must develop a case record documenting and containing the evidence collected during the investigation. The Virginia Administrative Code (22 VAC 40-705-10) defines case record as:

> **"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.**

3.0 The Investigation Documentation

When developing the case record, the CPS worker must create the "investigative narrative." The Virginia Administrative Code (22 VAC 40-705-10) defines the investigative narrative as:

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

The investigative narrative is a detailed written summary of all the evidence supporting the local department's disposition.

Since the Department instituted an automated record system for CPS in July 1999, the narrative consists of information pulled from varied screens in the information system. In order to obtain a hard copy of the automated record for court, appeals, or other reasons, the Referral Information Report and the Investigative Narrative Report can be printed. Information must be entered on required screens to generate these reports.

A hard copy file, in addition to the OASIS generated reports, for each investigation may be needed to include correspondence, reports from other sources (school, medical, etc.) and other documentation germane to the investigation. This information can be divided into appropriate subsections and labeled as such if the quantity of materials warrants such subdivision.

4.0 Supervisory Review

The investigation must be reviewed and approved in the information system by the investigating CPS worker and the investigating CPS worker's supervisor. Supervisory

signature is implied when the supervisory approval buttons are used in the automated information system. Supervisory approval of the findings should be documented in OASIS within five working days of the disposition.

5.0 Retaining Investigative Record

The automated data system will retain each client's name and identifying information in the Central Registry until that client's purge date. The purge date is automatically generated by the automated system. When the name of the abuser, neglector, or victim child is to be purged from the Central Registry, the local department will be notified via the Purge Roster. On the purge date listed on the Purge Roster, the local department shall redact the same client's name and identifying information from any hard copy investigative record. When the last client's name and identifying information is due to be redacted from any hard copy investigative record, the local department shall destroy the entire hard copy investigative record.

PART VI: JUDICIAL PROCEEDINGS

Many of the judicial proceedings outlined in this section of the policy manual require the court to make a finding of abuse or neglect. A court's finding of abuse or neglect is not binding authority on the local department's investigation of a complaint or a report alleging child abuse or neglect. There is no prohibition against the local department from considering the court's action, however, there is no mandate that the local department adheres to the court's finding of abuse or neglect.

A. EMERGENCY REMOVAL ORDER (§ 16.1-251 OF THE CODE OF VIRGINIA)

Va. Code §16.1-251(A). Emergency Removal Order.
A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected.

Va. Code § 16.1-251 provides the authority for removing a child and placing the child in shelter care. A local department may petition a court for an emergency removal order if the circumstances warrant such action. A court can issue an emergency removal order ex parte.

The Virginia Administrative Code authorizes a CPS worker to petition the court to request an order to remove a child:

> **22 VAC 40-705-100(A). A child protective services worker may petition for removal pursuant to §§ 16.1-251 and 16.1-252 of the Code of Virginia.**

Petitioning for the removal of a child must be carefully considered. The evidence supporting the decision to seek court intervention must be well documented in the case record. The local department has the discretion to seek court assistance should the circumstances warrant such action. The local department should work closely with the county or city attorney and the juvenile and domestic relations district court in developing protocol for such action. When a local department petitions a court for an emergency removal order, the local department may be referred to as the petitioner during the proceedings.

1.0 Ex Parte Emergency Removal Order

Va. Code. § 16.1-251(A). [An Emergency Removal Order]… may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer . . .

Ex parte is defined as "Hearings in which the court or tribunal hears only one side of the controversy."[32] 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.

1.1 Petition for an Emergency Removal Order Must Allege Child is Abused or Neglected

In order to request an emergency removal order, the local department must file a petition requesting removal. The petition requesting removal of the child must allege that the child is abused or neglected.

2.0 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.

3.0 Affidavit in Support of Petition

When an emergency removal order is requested, the petition should be accompanied by an "Affidavit in Support of Emergency Removal Order."

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.

3.2 Evidence Must Establish an Immediate Threat to Life or Health of the Child

Va. Code § 16.1-251(A)(1). [The petition, affidavit or sworn testimony must establish that] The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to

[32] Black's Law Dictionary 576 (6th ed. 1990).

or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

The petition requesting the removal of the child must establish an immediate threat to life or health of the child to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition. The circumstances of the child are such that remaining with the parent, legal guardian or caretaker presents an imminent danger to the child's life or health.

3.3 Petition, Affidavit or Sworn Testimony Must Show Reasonable Efforts to Prevent Removal

Va. Code § 16.1-251(A)(2). [The petition, affidavit or sworn testimony must establish that] … reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition…

The statutory framework of the Virginia Code consistently requires reasonable efforts to prevent removal of the child from the home. 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.

3.4 Petition, Affidavit or Sworn Testimony Must Show No Alternatives Less Drastic Than Removal

Va. Code § 16.1-251(A)(2). [The petition, affidavit or sworn testimony must establish that]… there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition.

The CPS worker must show that there are no alternatives less drastic than removal of the child from his home that could reasonably protect the child's life or health pending a final hearing on the petition. The safety of the child precludes provision of services to prevent placement because there are no alternatives less drastic than removal that could reasonably protect the child's life or health.

3.4.1 Alternatives Less Drastic Than Removal

Va. Code. § 16.1-251(A)(2) [The petition, affidavit or sworn testimony must establish that]… the alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to §16.1-253.

Alternatives less drastic than removal include providing medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to Va. Code §16.1-253.

3.5 No Opportunity to Provide Preventive Services

Va. Code. § 16.1-251(A)(2)… when a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

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

3.6 Petition or Affidavit Must Include the Following Facts

The petition shall include the following facts:

a. The name of the person who took emergency custody, the person's professional capacity and the telephone number where the person can be reached;

b. The child's name and birth date;

c. The names of parents or guardians;

d. The present or last known address of parents or guardians;

e. A detailed description of the child's condition;

f. Any information known concerning the circumstances of the suspected abuse or neglect, including the petitioner's name and the nature of the complaint;

g. A brief explanation of the reasons why preventive services were not successful or could not be delivered;

h. The specific time and date emergency custody was taken; and

i. Documentation of the petitioning person's efforts to obtain a court order.

3.7 CPS Worker Must Consult with Supervisor & 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.

4.0 Five Day Hearing Must Occur Following Emergency Removal Order

Va. Code § 16.1-251(B). Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with §16.1-252 as soon as practicable, but in no event later than five business days after the removal of the child.

After a Court issues an emergency removal order, a preliminary removal hearing must be held as soon as practicable, but in no event can the hearing be held later than five business days after the removal of the child.

5.0 Suitable Relatives Must be Considered for Placement

Va. Code § 16.1-251(C). In the emergency removal order the court shall give consideration to temporary placement of the child with a suitable relative or other interested individual, including grandparents, under the supervision of the local department of social services, until such time as the hearing in accordance with §16.1-252 is held.

This section of the Virginia Code mandates the court to consider temporary placement of the child with suitable relatives, including grandparents, until the preliminary removal hearing is held in accordance with Va. Code §16.1-252.

6.0 Person Having Legal Custody of Child

Va. Code § 16.1-251(D). The local department of social services having legal custody of a child as defined in §16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

This section of the Virginia Code means the presumption that it is in the best interests of the child to remain with his parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the local department has been given legal custody of a child as defined in Va. Code §16.1-228, then the local department will not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live.

§ 16.1-228 of the Virginia Code 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."

B. PRELIMINARY REMOVAL ORDER (§ 16.1-252 OF THE CODE OF VIRGINIA)

Va. Code § 16.1-252(A). A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

This order may be requested when the local department can prove that the circumstances of the child are such that the child is subject to severe or irremediable injury to his life or health and that no less drastic alternatives to removing custody are available. This order differs from the emergency removal order in that a hearing must take place before a preliminary removal order can be issued.

1.0 Social Worker Must Consult with Supervisor & 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 social 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.

2.0 Notice Must be Given to All Parties

Va. Code § 16.1-252(B). Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

This section of the Virginia Code requires the court to ensure that notice of the removal hearing is given at least twenty-four hours in advance of the hearing. Notice must be sent to the parents, guardian, legal custodian or other person standing in loco parentis. In loco parentis means, "in the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities."[33]

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.

2.2 Notice Must Include Specific Information

The notice provided to the parties must state:

a. The time, date and place for the hearing,

b. A specific statement of the factual circumstances which allegedly necessitate removal of the child, and

[33] Black's Law Dictionary 787 (6th ed. 1991).

c. Notice that child support will be considered if a determination is made that the child must be removed from the home.

3.0 Parties May Obtain Counsel

Va. Code § 16.1-252(C). All parties to the hearing shall be informed of their right to counsel pursuant to §16.1-266.

Pursuant to Va. Code § 16.1-266(C), prior to the preliminary removal hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to:

a. Retain counsel; or

b. If the court determines that the parent, guardian or other adult is indigent or qualified, the court may appoint counsel; or

c. Waive the right to representation by an attorney.

4.0 Preliminary Removal Hearing

The preliminary removal hearing will be conducted in the nature of a preliminary hearing rather than a final determination of custody.

5.0 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 requesting party or petitioning party. If the local department is the party asking the court to issue the order, then the burden is on the local department to prove the need to issue the order. The 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.

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.[34]

[34] See: *Wright v. Arlington County Dept. of Social Services*, Va. Ct. App. (February 6, 1990).

5.2 Requesting Party Must Prove Imminent Threat to Life or Health of Child

Va. Code § 16.1-252(E)(1). In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:
1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition;

The local department (or whom ever filed the petition) must establish by a preponderance of the evidence that the child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis.

5.3 Reasonable Efforts Must Have Been Made to Prevent Removal

Va. Code § 16.1-252(E)(2). In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:
2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition…

The local department (or whom ever filed the petition) must show that reasonable efforts were made to prevent removal of the child from his home. The local department must also show that there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition.

5.4 No Alternatives Less Drastic Than Removal

Va. Code § 16.1-252(E)(2) … the alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to §16.1-253.

The alternatives less drastic than removal include providing medical, educational, psychiatric, psychological, homemaking or other similar

services to the child or family or the issuance of a preliminary protective order pursuant to §16.1-253.

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 local department.

6.0 The Preliminary Removal Hearing

In the hearing, the local department (or whoever is the party filing the petition) must prove:

a. The child would be subjected to imminent danger to his life or health if the child remained with the caretaker;

b. Such circumstances would result in severe and irremediable injury to the child; and

c. 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.

6.1 Parties May Present Witnesses and Evidence

Va. Code § 16.1-252(D). At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf …

During the removal hearing, the parent, guardian, legal custodian or other caretaker of the child may cross-examine any witnesses and present evidence on his own behalf.

6.2 Testimony of the Child May be Taken by Closed-Circuit Television

Va. Code § 16.1-252(D)… If the child was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the

Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of §63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

The Virginia Code provides that a child, fourteen 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:

a. The child's persistent refusal to testify despite judicial request to do so;

b. The child's substantial inability to communicate about the offense; or

c. The substantial likelihood, based on expert opinion testimony, that the child will suffer severe emotional trauma as a result of testifying.

7.0 If Court Orders Removal, Court Must Determine Who Shall Have Custody of the Child

Va. Code § 16.1-252(F1). Prior to the entry of an order pursuant to subsection F of this section transferring temporary custody of the child to a relative or other interested individual, including grandparents, the court shall consider whether the relative or other interested individual is one who (i) is willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of §16.1-253; initiation and completion of the investigation as directed by the court and court review of the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

If the court determines that the child shall be removed pursuant to § 16.1-252(E) of the Virginia Code, 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.

7.1 If Court Orders Removal, Court May Provide for Reasonable Visitation

Va. Code § 16.1-252(F)(2). [If the court determines that removal is proper, the court shall] Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, if such visitation would not endanger the child's life or health;

If the court finds that the child must be removed pursuant to § 16.1-252(E) of the Virginia Code, then the court must determine whether reasonable visitation should be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis. The court may allow reasonable visitation only if such visitation would not endanger the child's life or health.

7.2 If Court Orders Removal, Court Must Obtain Child Support

Va. Code § 16.1-252(F)(3). [If the court determines that removal is proper, the court shall] Order that the parent or other legally obligated person pay child support pursuant to §16.1-290.

If the court finds that the child must be removed pursuant to Va. Code §16.1-252(E), then the court must order that the parent or person legally obligated for the child pay child support. The court is required by Va. Code § 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 local department 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 Va. Code § 63.2-909.

Va. Code § 16.1-290. Support of committed juvenile; support from estate of juvenile.
C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parent or other legally obligated person shall pay the Department of Social Services pursuant to §§20-108.1, 20-108.2, 63.2-909, and 63.2-1910.

Va. Code § 63.2-909. Child support for child placed in foster care by court.
Pursuant to §16.1-290, responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local department of social services. The court order shall state the names of the responsible persons obligated to pay support, and either specify the amount of the support obligation pursuant to §§20-108.1 and 20-108.2 or indicate that the Division of Child Support Enforcement will establish the amount of the support obligation. In fixing the amount of support, the court or the Division of Child Support Enforcement shall consider the extent to which the payment of support by the responsible person may affect the ability of such responsible person to implement a foster care plan developed pursuant to §16.1-281.

7.3 Court May Impose Additional Requirements or Conditions

Va. Code § 16.1-252(F)… In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing requirements and conditions as specified in that section which the court deems appropriate for protection of the welfare of the child.

In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing requirements and conditions as specified in that section which the court deems appropriate for protection of the welfare of the child.

8.0 Court Must Make Finding of Abuse or Neglect

Va. Code § 16.1-252(G). At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order…

Va. Code § 16.1-252(G) requires the court to *determine whether* abuse or neglect *occurred* at the preliminary removal hearing. At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.

8.1 A Party May Object to the Court Making a Finding of Abuse or Neglect

Va. Code § 16.1-252(G)… However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary removal hearing...

At the preliminary removal hearing, any party (a person responsible for the care and custody of the child, the child's guardian ad litem or the local department) may object to the court making a finding of abuse or neglect. If a person responsible for the care and custody of the child, the child's guardian ad litem or the local department objects to the court making a finding of abuse or neglect, then the court must schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary removal hearing.

8.2 Adjudicatory Hearing

Va. Code § 16.1-252(G)… The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence.

An adjudicatory hearing will be held to determine whether the allegations of abuse and neglect can be proven by a preponderance of the evidence. At the adjudicatory hearing, the court must 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 Notification of Adjudicatory Hearing

Va. Code § 16.1-252(G)… Parties who are present at the preliminary removal order hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in §16.1-263. The hearing shall be held and an order may be entered, although a party to the preliminary removal order hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort…

Va. Code § 16.1-252(G) requires the court to ensure that all parties receive proper notice of the 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. If proper notice has been provided or attempted and a party fails to appear for the adjudicatory hearing, then the court may conduct the hearing and make a finding of abuse or neglect without that party.

8.4 Any Preliminary Removal Order or Protection Orders Remain in Effect Pending Adjudicatory Hearing

Va. Code § 16.1-252(G)… The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

If a party raises an objection at the preliminary removal hearing to the court making a finding of abuse or neglect, the court may still issue a preliminary removal order or a preliminary protective order. The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

8.5 Dispositional Hearing

Va. Code § 16.1-252(H). If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to §16.1-278.2…

Regardless of whether the court makes a finding of abuse or neglect at the preliminary removal hearing, the court must schedule a dispositional hearing pursuant to Va. Code § 16.1-278.2.

8.6 Scheduling the Dispositional Hearing

Va. Code § 16.1-252(H)… The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing and shall be held within seventy-five days of the preliminary removal order hearing. If an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in §16.1-263.

The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing. The dispositional hearing must be held within seventy-five days of the preliminary removal order hearing. Va. Code § 16.1-252(H) requires the court to ensure that all parties are properly notified during the preliminary removal hearing about the disposition hearing. The court must provide notice and schedule the disposition 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 Va. Code § 16.1-252, 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.

9.0 Person Gaining Legal Custody of Child

Va. Code § 16.1-252(I). The local department of social services having legal custody of a child as defined in §16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

This section of the Virginia Code means the presumption that it is in the best interests of the child to remain with his parents or guardians no longer exists, unless the child was placed in the custody of a natural parent. For example, if the local department has been given legal custody of a child as defined in Va. Code § 16.1-228, then the local department will not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live.[35]

10.0 Violation of Order Constitutes Contempt of Court

Va. Code § 16.1-252(J). Violation of any order issued pursuant to this section shall constitute contempt of court.

Violation of an emergency removal order, preliminary removal order, adjudication order, or disposition order pursuant to this section will constitute contempt of court.

[35] Va. 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."

C. PRELIMINARY PROTECTIVE ORDER (§ 16.1-253 OF THE CODE OF VIRGINIA)

22 VAC 40-705-100(B). A child protective services worker may petition for a preliminary protective order pursuant § 16.1-253 of the Code of Virginia.

1.0 Purpose of Preliminary Protective Order

Va. Code § 16.1-253(A). Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court...

This order may be requested when it is not necessary to assume custody of the child, but court intervention is necessary. The court may intervene to assure that a child's parent or person responsible for the child's care observe reasonable conditions of behavior in order to preserve the child's life, health and safety, and to maintain the child in his or her own home. Va. Code § 16.1-253(A) provides the authority for any person, including a social worker from a local department, to petition the court to issue a preliminary protective order to protect a child's life, health, safety or normal development.

2.0 The Court's Authority

Va. Code § 16.1-253(A)… 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…

The worker may request that the court require the child's parents or other person responsible for the child's care to observe reasonable conditions of behavior for a specified length of time.

2.1 The Court May Order Person to Abstain From Offensive Conduct

Va. Code § 16.1-253(A)(1). To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

The court may order the alleged abuser or neglector to abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded.

2.2 The Court May Order Services

Va. Code § 16.1-253(A)(2). To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

The court may order a person to cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development.

2.3 The Court May Order Home Visits

Va. Code § 16.1-253(A)(3). To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

The court may order home visits to inspect the fitness of the home and to determine the physical or emotional health of the child.

2.4 The Court May Order Visitation with the Child

Va. Code § 16.1-253(A)(4). To allow visitation with the child by persons entitled thereto, as determined by the court;

The court may determine who is allowed visitation with the child.

2.5 The Court May Order Person to Refrain from Certain Acts

Va. Code § 16.1-253(A)(5). To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or …

The court may order persons to refrain from acts tending to endanger the child's life, health or normal development.

2.6 The Court May Order Person to Have No Contact with Child or Family

Va. Code § 16.1-253(A)(6). To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

The court may limit contact between the alleged abusive person and the child and the family or household members of the child. The court can remove a person from the residence. In order to remove a person from the residence, the court must find that a preponderance of the evidence establishes that the person's probable conduct in the future constitutes a danger to the life or health of the child. The court must also find, by a preponderance of the evidence, that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

3.0 Requesting a Preliminary Protective Order

Va. Code § 16.1-253(B). A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irremediable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

Any person, including the court by its own motion, may request the issuance of a preliminary protective order. A preliminary protective order can be requested by making a motion during any matter before the court or by filing a petition. The court may issue the preliminary protective order ex parte.

3.1 Motion or Petition Must Establish Imminent Threat

Any motion or petition must 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.

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

instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested."[36] 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 must also include a summary of the allegations made and the court's findings.

3.3 Adversary Hearing Must Occur Within 5 Days of Issuance of Ex Parte Order

If a court enters a preliminary protective order ex parte, the court must provide an adversary hearing within the shortest practicable time not to exceed five (5) business days after the issuance of the order.

4.0 Notice of Hearing Must be Given

Va. Code § 16.1-253(C). Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

Va. Code § 16.1-253(C) requires the court to ensure that all parties to the proceeding receive at least 24-hour notice of the adversarial hearing.

5.0 Right to Counsel

Va. Code § 16.1-253(D). All parties to the hearing shall be informed of their right to counsel pursuant to §16.1-266.

Prior to the preliminary protective order hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to:

[36] Black's Law Dictionary (7th ed. 1999).

a. Retain counsel; or

b. If the court determines that the parent, guardian or other adult is indigent or qualified, the court may appoint counsel; or

c. Waive the right to representation by an attorney.

6.0 Right to Present Witnesses and Cross-Examination

Va. Code § 16.1-253(E). At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

The local department 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.

7.0 If the Preliminary Protective Order Petition Alleges Abuse or Neglect, Then the Court Must Make Finding of Abuse or Neglect

Va. Code § 16.1-253(F). If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in §16.1-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.
Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

If the petition requesting the issuance of a protective order alleges that the child was abused or neglected, then the court must make a determination whether the child was abused or neglected. The court must make that finding during the adversary hearing and based upon a preponderance of the evidence. Any finding of abuse must be stated in the court order.

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 local department) may object to the court making a finding of abuse or neglect.

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 must schedule an adjudicatory hearing to determine whether the allegations of abuse or neglect have merit. The adjudicatory hearing must be scheduled within thirty days of the date of the initial preliminary hearing.

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.

7.4 Notice for Adjudicatory Hearing

Va. Code § 16.1-253(F) requires the court to ensure that all parties receive proper notice of the 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 Va. Code § 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.

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.

8.0 Dispositional Hearing

Va. Code § 16.1-253(G). If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to §16.1-278.2. …The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in §16.1-263.

If there is no objection to the court making a finding of abuse or neglect, then the court should schedule a dispositional hearing to be conducted within seventy-five days of the date of the initial preliminary hearing.

8.1 Scheduling & Notice for Dispositional Hearing

If the court makes a finding of abuse or neglect at the initial preliminary hearing and no objection is made by any of the parties, then the court shall schedule the dispositional hearing within seventy-five days of the date of the initial preliminary 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 thirty days of the initial preliminary hearing.

9.0 Preliminary Protective Order Cannot Remove Custody from Parents or Guardians

Va. Code § 16.1-253(H). Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2, and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.

A preliminary protective order cannot be used to remove custody of a child from the child's parents, guardian, legal custodian or other person standing in loco parentis.

10.0 Violation of Preliminary Protective Order Constitutes Contempt of Court

Va. Code § 16.1-253(J). Violation of any order issued pursuant to this section shall constitute contempt of court.

Any violation of any of the court's orders contained in the preliminary protective order is subject to contempt of court proceedings.

D. PRELIMINARY PROTECTIVE ORDERS IN CASES OF FAMILY ABUSE

Va. Code §§ 16.1-253.1 (Preliminary protective orders in cases of family abuse) 16.1-253.4 (Emergency protective orders authorized in certain cases) and 16.1-279.1 (Protective orders in cases of family abuse) are incorporated into the policy manual for reference. The purpose of these protective orders is specifically to address domestic violence. The local department does not have standing to petition a court for the issuance of a protective order pursuant to Va. Code §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1.

Va. Code § 16.1-253.1(A). Preliminary protective orders in cases of family abuse; confidentiality.
A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause.
A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:
1. Prohibiting acts of family abuse.
2. Prohibiting such other contacts between the parties as the court deems appropriate.
3. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.
4. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.
5. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.
6. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member, where appropriate.

1.0 Family Members May Petition the Court to Issue a Preliminary Protective Order to Protect Family Members

Any person who has been subjected to family abuse may petition the court to issue a preliminary protective order to protect that person and any other family members from further abuse or domestic violence. The abuse must have occurred within a reasonable time of the filing of the petition. The court may issue a preliminary protective order against the allegedly abusing person to protect the health and safety of the petitioner and any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. Good cause means the immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred.

2.0 The Court's Authority

The court may issue a preliminary protective order imposing any one or more of the following conditions on the allegedly abusing person:

a. Prohibiting acts of family abuse.

b. Prohibiting such other contacts between the parties as the court deems appropriate.

c. Prohibiting such other contacts with the allegedly abused family or household member as the court deems necessary to protect the safety of such persons.

d. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

e. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

f. When appropriate, requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member.

3.0 Name of Alleged Abuser to be Entered Into Virginia Criminal Information Network

Va. Code 16.1-253.1(B). Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network system established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network system. A copy of a preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in § 16.1-264, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network system. The preliminary order shall specify a date for the full hearing. The hearing shall be held within fifteen days of the issuance of the preliminary order. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forward forthwith an attested copy of the preliminary protective order to the local police department or sheriff's office which shall, upon receipt, enter into the Virginia Criminal Information Network system any other information required by the State Police which was not previously entered. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the Virginia Criminal Information Network system as described above.

4.0 Preliminary Order Effective Upon Service

Va. Code § 16.1-253.1(C). The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in §16.1-253.2, a violation of the order shall constitute contempt of court.

5.0 Full Hearing on the Petition

Va. Code § 16.1-253.1(D). At a full hearing on the petition, the court may issue a protective order pursuant to §16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

E. EMERGENCY PROTECTIVE ORDERS (EPO) IN CASES OF FAMILY ABUSE

1.0 Statutory Authority

Va. Code §16.1-253.4(A). Emergency protective orders authorized in certain cases; confidentiality.
A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

Any judge or magistrate may issue an emergency protective order to protect the health and safety of any person in accordance with Va. Code § 16.1-253.4. The emergency protective order may be issued ex parte, either in writing or orally.

2.0 A Police Officer or the Allegedly Abused Person May Petition the Court and Must Testify to the Circumstances

Va. Code § 16.1-253.4(B). When a law enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate finds that (i) a warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order , except if the respondent is a minor an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:
1. Prohibiting acts of family abuse;
2. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and
3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

Please note, a law-enforcement officer or the person subjected to the family abuse may petition the court for the issuance of an emergency protective order in cases of domestic violence. The law-enforcement officer or the allegedly abused person must testify to the circumstances demanding the issuance of the emergency protective order under oath to the judge or magistrate.

2.1 Circumstances that Must Exist for EPO to be Issued

The judge or magistrate must find one of the following circumstances exist in order to issue the emergency protective order:

a. A warrant for a violation of § 18.2-57.2 has been issued and there is probable danger of further acts of family abuse against a family or household member by the respondent; or

b. Reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent.

2.2 Court's Authority

If the judge or magistrate finds one of the above circumstances exists, then the judge or magistrate may issue an ex parte emergency protective order imposing one or more of the following conditions on the respondent:

a. Prohibiting acts of family abuse;

b. Prohibiting such contacts by the respondent with family or household members of the respondent as the judge or magistrate deems necessary to protect the safety of such persons; and

c. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property.

3.0 Duration of Emergency Protective Order

Va. Code § 16.1-253.4(C). An emergency protective order issued pursuant to this section shall expire seventy-two hours after issuance. If the expiration of the seventy-two-hour period occurs at a time that the court is not in session, the emergency protective order shall be extended until 5 p.m. of the next business day that the juvenile and domestic relations district court is in session. The respondent may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court.

4.0 Law-Enforcement May Request EPO Orally, In Person, or by Electronic Means

Va. Code § 16.1-253.4(D). A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or § 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed seventy-two hours after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order…

5.0 Name of Alleged Abuser to be Entered Into Virginia Criminal Information Network

Va. Code § 16.1-253.4(E). Upon receipt of the order by a local law-enforcement agency for service, the agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network System established and maintained by the Department pursuant to Chapter 2 (§52-12 et seq.) of Title 52. A copy of an emergency protective order issued pursuant to this section shall be served upon the respondent as soon as possible, and upon service, the agency making service shall enter the date and time of service into the Virginia Criminal Information Network System. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by §19.2-81.3 C. The original copy shall be filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall be forwarded and entered in the system as described above. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

6.0 EPO Not Affected by Fact Family Left Premise to Avoid Danger

Va. Code § 16.1-253.4(F). The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

7.0 Issuance of EPO Not Evidence of Any Wrongdoing

Va. Code § 16.1-253.4(G). The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

This Code section means that, although the court may have issued an emergency protective order against a person, the court order does not mean the person committed the alleged act. A full hearing on the matter must be conducted to determine whether the alleged act occurred.

8.0 Definition of Law-Enforcement Officer

Va. Code § 16.1-253.4(H). As used in this section, a "law-enforcement officer" means any (i) full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth and (ii) member of an auxiliary police force established pursuant to subsection B of §15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

9.0 Definition of Copy Includes Fax

Va. Code § 16.1-253.4(J). As used in this section, "copy" includes a facsimile copy.

F. PROTECTIVE ORDERS IN CASES OF FAMILY ABUSE

1.0 Statutory Authority

Va. Code §16.1-279.1(A). Protective order in cases of family abuse.
A. In cases of family abuse, the court may issue a protective order to protect the health and safety of the petitioner and family or household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:
1. Prohibiting acts of family abuse;
2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;
4. Granting the petitioner temporary possession or use of a motor vehicle jointly owned by the parties to the exclusion of the respondent; however, no such grant of possession or use shall affect title to the vehicle;
5. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member;
6. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate; and

7. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

In cases of family abuse, the person petitioning the court for the issuance of the protective order must be a family or household member. Va. Code § 16.2-279.1(A) identifies the conditions the court may impose.

2.0 Duration of Protective Order

Va. Code § 16.1-279.1(B). The protective order may be issued for a specified period; however, unless otherwise authorized by law, a protective order may not be issued under this section for a period longer than two years. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The clerk upon receipt shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network System established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network System. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded and entered in the system as described above.

The court may specify the duration of the protective order, not to exceed two years. A copy of the protective order must be served on the respondent (the alleged abuser) and provided to the petitioner (the alleged victim) as soon as possible. § 16.1-279(B) also requires the court clerk to forward a copy of the order to the local police department or sheriff's office. The local police or sheriff's office will enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia criminal information network system. If the order is later dissolved or modified, then that information must be forwarded and entered in the system as described above. If the circumstances that warranted the local department petitioning the court for the order change and the local department is no longer involved with the family, the local department should notify the court.

3.0 Violation of Court Order Constitutes Contempt of Court

Va. Code § 16.1-279.1(C). Except as otherwise provided in §16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

4.0 Court Costs & Attorney's Fees

Va. Code § 16.1-279.1(D). The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

5.0 Other State Court Orders Given Full Faith & Credit

Va. Code § 16.1-279.1(E). Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court or family court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forward forthwith an attested copy of the order to the local police department or sheriff's office which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network System established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network System. Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

This section of the Code means that a court order analogous to Va. Code § 16.1-279.1 rendered in another state will be recognized and enforced in Virginia if it meets certain requirements. The court issuing the order must have had appropriate jurisdiction. The order must have been issued for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A. Proper notice and service must have been provided.

6.0 Either Party May Request Dissolution or Modification of Protective Order

Va. Code § 16.1-279.1(F). Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or

modify a protective order shall be given precedence on the docket of the court.

7.0 Copy Includes Fax

Va. Code § 16.1-279.1(G). As used in this section, "copy" includes a facsimile copy.

G. PETITIONING ON BEHALF OF A SUBSTANCE-EXPOSED INFANT

1.0 Statutory Authority

Virginia Code §16.1-241.3 provides the juvenile and domestic relations district with the jurisdictional authority to enter a court order on behalf of an infant who has been exposed to substances prior to the birth of the child.[37]

Va. Code §16.1-241.3. Newborn children; substance abuse.
Upon the filing of a petition, within twenty-one days of a child's birth, alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of §63.2-1509, the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 (§63.2-1500 et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to §16.1-253 or an order authorized pursuant to subdivisions 1 through 4 of subsection A of § 16.1-278.2. The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.
The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 (§63.2-1500 et seq.) of Title 63.2, but shall be a final order subject to appeal.

Va. Code §16.1-241.3 expands the jurisdiction of the juvenile and domestic relations district court. Amending the jurisdiction of the juvenile and domestic relations district court to allow the court to issue orders in cases involving investigations initiated pursuant to Va. Code § 63.2-1509(B) strengthens the Commonwealth's ability to ensure the protection of a newborn infant.

37 The 1998 General Assembly passed legislation amending the jurisdiction of the juvenile and domestic relations district court by creating Virginia Code §16.1-241.3.

2.0 Local Department May Petition Juvenile & Domestic Relations District Court

The local department may petition a juvenile and domestic relations district court for any necessary services or court orders needed to ensure the safety and health of the infant. If a local department wishes to seek the assistance of the juvenile and domestic relations district court pursuant to Va. Code §16.1-241.3 the local department must file the petition within twenty-one days of the child's birth. Please note that the Virginia Code requires that the petition must be filed within twenty-one days of the child's birth and not within twenty-one days of the date of receipt of the complaint or report.

2.1 Petition Must Allege Substance-Exposed Infant

The local department must state in the petition presented to the court that a CPS investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of § 63.2-1509 of the Virginia Code.

3.0 The Court's Authority to Issue Orders

The court may enter any order authorized pursuant to Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 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 subdivisions 1 through 4 of subsection A of § 16.1-278.2. For example, such authority would allow the court to remove the child from the custody of the mother pending completion of the investigation or compel the mother to seek treatment or other needed services. Va. Code § 16.1-241.3 enhances the court's ability to act quickly in a potentially crisis situation. In addition, the court will have the ability to use its authority to ensure that the mother of the child seeks treatment or counseling. For a further discussion on making a complaint pursuant to Va. Code § 63.2-1509(B), see Complaints & Reports, Part III.

4.0 Any Court Order Effective Until Investigation is Concluded

Any court order issued pursuant to § 16.1-243(1.d) is effective pending final disposition of the investigation pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.1 or other proceedings brought pursuant to this chapter. The order is effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.1. 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 § 16.1-241.3 is not admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

H. PETITIONING FOR CHILD SUPPORT

22 VAC 40-705-100(C). Whenever the local department assumes custody of a child under subsection A or B of this section, a child protective services worker shall petition the court for parental child support.

At the initial hearing whenever custody of a child is removed (except in emergency removal order hearings) the court is required to order the parents to pay child support.

a. 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.

b. The 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. (Specific procedures are detailed in the foster care policy chapter.)

I. IMMUNITY FROM CIVIL OR CRIMINAL LIABILITY

22 VAC 40-705-100(D). Any person who participates in a judicial proceeding resulting from making a child protective services report or complaint or from taking a child into custody pursuant to §§ 63.2-1509, 63.2-1510, and 63.2-1517 of the Code of Virginia, shall be immune from any civil or criminal liability in connection therewith unless it is proven that such person acted in bad faith or with malicious intent pursuant to § 63.2-1512 of the Code of Virginia.

Any person who participates in a judicial proceeding arising out of a child protective services complaint or report of abuse or neglect is protected from civil or criminal liability, unless the person acted in bad faith or with malicious intent.

PART VII: REPORTING FINDINGS

A. AUTOMATED DATA SYSTEMS

All case dispositions and risk assessments must be reported to the automated data system. The definition section of the Virginia Administrative Code defines CANIS as (22 VAC 40-705-10):

> **"Child Abuse and Neglect Information System" means the computer system which collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with non-identifying information; the Central Registry of founded complaints not on appeal; and a data base that can be accessed only by the Department and local departments that contains all nonpurged CPS reports.**

The State Department of Social Services maintains a central registry pursuant to §63.2-1526 of the Virginia Code. § 63.2-1515 of the Virginia Code provides the statutory framework for the purpose of the central registry.

Va. Code § 63.2-1515. The central registry shall contain such information as shall be prescribed by Board regulation… The information contained in the central registry shall not be open to inspection by the public...

The Virginia Administrative Code (22 VAC 40-705-10) defines the central registry:

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

B. REPORTING FINDINGS

When a local department concludes a family assessment *or* an investigation, the local department must report the findings of that investigation or conclusions of that family assessment to the automated data system. This information must be entered into the automated data system no later than five calendar days after the deadline *for* completing the family assessment or investigation. (45 or 60 days from date of report)

C. UNFOUNDED DISPOSITIONS

1.0 Reporting Unfounded Dispositions

22 VAC 40-705-130(A). 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.

2.0 Retaining Record of Unfounded Dispositions

Va. Code § 63.2-1514(C). At the time the local department notifies a person who is the subject of a complaint or report made pursuant to this chapter that such complaint or report is either an unfounded investigation or a completed family assessment, it shall notify him that the record will be retained for one year and of the availability of the procedures set out in this section regarding reports or complaints alleged to be made in bad faith or with malicious intent.

22 VAC 40-705-130(A)(1). The Department shall retain unfounded complaints and/or reports in the child abuse and neglect information system to provide local departments with information regarding prior investigations.

22 VAC 40-705-130(A)(2). This record shall be kept separate from the Central Registry and accessible only to the Department and to local departments.

3.0 Purge Unfounded Case After One Year

22 VAC 40-705-130(A)(3). The record of the unfounded case or family assessment shall be purged one year after the date of the complaint or report if there are no subsequent founded or unfounded complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in that one year.

4.0 Retain Record if Subsequent Complaints Arise

22 VAC 40-705-130(A)(*5*). If the individual against whom allegations of abuse and/or neglect were made or if the same child is involved in subsequent complaints and/or reports, the information from all complaints and/or reports shall be maintained until the last purge date has been reached.

5.0 Alleged Abuser or Neglector May Request that Record be Retained

22 VAC 40-705-130(A)(*6*). The individual against whom *unfounded* allegations of abuse and/or neglect were made may request in writing that the local department retain the record for an additional period of up to two years.

6.0 Record Shall be Purged Upon Court Order

22 VAC 40-705-130(A)(*7*). The individual against whom allegations of abuse and/or neglect were made may request in writing that both the local department and the department shall immediately purge the record after a court rules that the report was made in bad faith or with malicious intent pursuant to § 63.2-1514 of the Code of Virginia.

D. COMPLETED FAMILY ASSESSMENTS

22 VAC 40-705(A)4. The record of the family assessment shall be purged three years after the date of the complaint or report if there are no subsequent complaints and/or reports regarding the individual against whom allegations of abuse and/or neglect were made or regarding the same child in those three years.

The family assessment record is required to be retained for three years from the date of the report.

E. FOUNDED DISPOSITIONS

1.0 Reporting Founded Dispositions

22 VAC 40-705-130(B). The local department shall report all founded case dispositions to the child abuse and neglect information system for inclusion in the Central Registry pursuant to subdivision 5 of § 63.2-1515 of the Code of Virginia and 22 VAC 40-700-30. Identifying information about the abuser and/or neglector and the victim child or children reported include demographic information, type of abuse or neglect, and date of the complaint. The identifying information shall be retained based on the determined level of severity of the abuse or neglect pursuant to the regulation dealing with retention in the Central Registry, 22 VAC 40-700-30.

F. NOTIFYING PARTIES OF UNFOUNDED DISPOSITION

The investigating social worker must notify certain parties of the results of the investigation.

1.0 Notifications of Unfounded Dispositions

Va. Code § 63.2-1505(B.6). If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect.

1.1 Notifying Alleged Abuser or Neglector

22 VAC 40-705-140(B)(1). When the disposition is unfounded, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made of this finding. This notification shall be in writing with a copy to be maintained in the case record. The individual against whom allegations of abuse and/or neglect were made shall be informed that he may have access to the case record and that the case record shall be retained by the local department for one year unless requested in writing by such individual that the local department retain the record for up to an additional two years.

The alleged abuser or neglector must be informed that the complaint against him was determined to be unfounded. The notification must be done in writing; a copy must be filed in the record. The individual must be notified that the investigative record will be retained by the local department for one year from the date of the complaint. The individual must be notified of his right to request the local department to retain the record for up to two additional years. The individual must be notified of his right of access to the investigative record. When further explanation or discussion would be helpful, the worker should also make a verbal contact.

1.2 Retain Information Until Last Purge Date

22 VAC 40-705-140(B)(1)(a). If the individual against whom allegations of abuse and/or neglect were made or the subject child is involved in subsequent complaints, the information from all complaints shall be retained until the last purge date has been reached.

1.3 Notification of Person's Rights Pursuant to § 63.2-1514 of the Code of Virginia

22 VAC 40-705-140(B)(1)(b). The local worker shall notify the individual against whom allegations of abuse and/or neglect were made of the procedures set forth in § 63.2-1514 of the Code of Virginia.

In all unfounded complaints, the worker must 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. It may be of assistance to provide the alleged abuser or neglector with a copy of § 63.2-1514 of the Code of Virginia pertaining to reports or complaints made in bad faith or maliciously. The CPS worker may also refer the person to an attorney or to the court if they have further questions.

2.0 Unfounded Investigation Involving the Death of a Child

22 VAC 40-705-140(B)(1)(c). When an unfounded investigation involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse and/or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case pursuant to § 32.1-283.1(D) of the Code of Virginia.

3.0 Alleged Abuser May Request Retention of the Record

22 VAC 40-705 (A)6. The individual against whom unfounded allegations of abuse and/or neglect were made may request in writing that the local department retain the record for an additional period of up to two years.

G. NOTIFYING PARTIES OF A COMPLETED FAMILY ASSESSMENT

22 VAC 40-705-140(B)(5). No disposition of founded or unfounded shall be made in a family assessment. At the completion of the family assessment the subject of the report shall be notified orally and in writing of the results of the assessment.

1.0 Written Notification

The written notification to the alleged abuser or neglector of the completed family assessment must be in the form of a letter or a Family Service Agreement, and a copy must be included in the case record. The written statement must inform the caretaker of the right to review information about himself and/or herself in the record.

The Family Service Agreement or its equivalent shall be used to notify the subject of the report in situations where family service needs are identified. For a copy of the form see Appendix E or the CPS web site or order a carbonized version from General Services.

2.0 Verbal Notification

The verbal notification to the family members of the conclusions of the completed family assessment should serve to explain what needs were identified, what services are available to meet the needs, and how long information on the family assessment will be maintained in the automated data system. The worker must document in the information system the date the verbal informing took place. If it does not occur, the reason should be documented in the family assessment Summary screen.

H. NOTIFYING PARTIES OF A FOUNDED DISPOSITION

1.0 Persons to be Named in the Central Registry

In all founded cases, the person named as the abuser or neglector and the child named as the victim must be notified that their names will be contained in the central registry. Those persons must also be informed of the length of time their name will be retained in the central registry. Pursuant to 22 VAC 40-700-30, names will be retained in the central registry for:

a. Eighteen years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 1.

b. Seven years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 2.

c. Three years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 3.

d. If an individual is involved in multiple complaints, the information from all founded complaints will be maintained until the last deletion date has been reached.

2.0 Abuser or Neglector Must be Informed of Appeal Rights

In all cases where the disposition is founded, the abuser or neglector must be informed of his right to appeal. This must be done both verbally and in writing as soon as the disposition is reached.

2.1 Written Notification of Founded Disposition

The written notification to the abuser or neglector of the founded disposition(s) must be in the form of a letter and a copy must be included in the case record. The letter must include:
a. A clear statement that they are the abuser and/or neglector;
b. The type of abuse and/or neglect;
c. The disposition, level and retention time.
d. The name of the victim child or children; and
e. A statement informing the abuser of the right to appeal to the commissioner of the department and to have access to the case record.

2.2 Verbal Notification of Founded Disposition

The verbal notification to the abuser or neglector of the founded disposition(s) should serve to explain to the client what the disposition means and how long information about the complaint will be maintained in the automated data system central registry. The worker must document in the case record the date the verbal informing took place.

2.3 Appeals Brochure to be Given to Abuser or Neglector

A copy of the brochure, "Child Protective Services Appeals and Fair Hearings" (#032-01-006) is to be provided to all abusers or neglectors in founded complaints. The brochure can be given to the abuser or neglector or mailed to the abuser or neglector. The local department must document that a copy of the appeals brochure was provided to the abuser or neglector.

3.0 Notification of Founded Disposition Involving Foster Parent

22 VAC 40-705-140(B)(4). When the abuser and/or neglector in a founded complaint is a foster parent of the victim child, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

I. OTHER NOTIFICATIONS; UNFOUNDED OR FOUNDED DISPOSITIONS

1.0 Notification of Victim Child's Parents or Guardian (Unfounded Disposition)

22 VAC 40-705-140(C)(1). When the disposition is unfounded, the child protective services worker shall inform the parents or guardian of the subject child in writing, when they are not the individuals against whom

allegations of child abuse and/or neglect were made, that the complaint involving their child was determined to be unfounded, and the length of time the child's name and information about the case will be maintained. The child protective services worker shall file a copy in the case record.

The parents or guardians of the child, when they are not the alleged abusers or neglectors, must be informed that the complaint involving their child was determined to be unfounded. The parent or guardian must also be informed that the unfounded case record shall be retained by the local department for one year from the date of the complaint. This notification must be done in writing; a copy must be filed in the record. When further explanation or discussion would be helpful, the worker should also make a verbal contact.

2.0 Notification of Victim Child's Parents or Guardian (Founded Disposition)

22 VAC 40-705-140(C)(2). When the disposition is founded, the child protective services worker shall inform the parents or guardian of the child in writing, when they are not the abuser and/or neglector, that the complaint involving their child was determined to be founded and the length of time the child's name and information about the case will be retained in the Central Registry. The child protective services worker shall file a copy in the case record.

The parents or guardians of the child, when they are not the alleged abusers or neglectors, must be notified in writing that the complaint involving their child was determined to be founded. The parent or guardian must be informed of the length of time the child's name will remain in the central registry. When the child has been abused in a designated out of family setting, 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 letter to parents or guardians in the circumstances described in § 63.2-1515 cited above should state the following or something equivalent:
"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, *7 North 8th 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 or guardian provides such a letter, the dispositional level will determine the purge date for the identifying information on the child.

3.0 Notification to the Complainant (Unfounded Disposition)

22 VAC 40-705-140(D)(1). When an unfounded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The worker shall file a copy in the case record.

In unfounded dispositions, the complainant, when known, must be informed that the complaint was investigated and determined to be unfounded. This notification must be done in writing and a copy retained in the case record.

4.0 Notification to the Complainant (Founded Disposition)

22 VAC 40-705-140(D)(2). When a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

The complainant, when known, must be informed that the complaint was investigated and necessary action was taken. This notification must be done in writing if the address is known; a copy must be filed in the record. When further explanation or discussion would be helpful, the worker should also make a verbal contact. If the address is not known, the notification must be made verbally; the contact must be documented in the *record*.

5.0 Notification to the Complainant (Family Assessment)

22 VAC 40-705-140(D)(3). When a family assessment is completed, the child protective services worker shall notify the complainant, when known, that the complaint was assessed and necessary action taken.

The complainant, when known, should be notified when a family assessment has been completed. The notification should say that the complaint was assessed and necessary action taken. Whether done verbally or in writing, the notification must be documented in the record.

6.0 Notification of Military Personnel (Family Advocacy Program)

Va. Code § 63.2-1503(N). Notwithstanding any other provision of law, the local department, in accordance with Board regulations, shall transmit information regarding founded complaints or family assessments and may transmit other information regarding reports, complaints, family assessments and investigations involving active duty military personnel or members of their household to family advocacy representatives of the United States Armed Forces.

22 VAC 40-705-140(E). Family Advocacy Program. When a founded disposition is made, the child protective services worker shall notify the Family Advocacy Program representative in writing as set forth in 22 VAC 40-720-20.

In founded complaints or completed family assessments where a need for protective services is identified in which the abuser or neglector is an active duty member of the United States Armed Forces, or the spouse of a member residing in the member's household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglector shall be reported to the appropriate Family Advocacy Program representative at the time of the disposition. (See confidentiality section of this chapter for guidance on other information disclosure to Family Advocacy.)

6.1 Notification Must be Made Within 30 Days

The Family Advocacy Program representative must also be notified in writing within 30 days after all administrative appeal rights of the abuser or neglector have been exhausted or forfeited (i.e. after the appeal process has ended for the individual).

6.2 Written Notification Must be Made

The military member who was found to have committed abuse or neglect shall be advised that this information is being provided and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

J. ACCESS TO CENTRAL REGISTRY

1.0 Searching the Central Registry

22 VAC 40-705-170(A). The department will complete a search of the Central Registry upon request by a local department, upon receipt of a notarized signature of the individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

2.0 Search Name is Found in Central Registry

22 VAC 40-705-170(B). When the name being searched is found in the Central Registry, the department shall contact the local department responsible for the investigation to verify the information.

2.1 Local Department Must Verify that Information is Correct

The local department will verify that the information is correct. If the information is incorrect or there is a discrepancy, the local department must correct the information.

3.0 Local Department Must Verify that the Client was Notified of Appeal Rights

The local department must verify that the client was notified of his appeal rights. The local department will send verification to the Department that the client was notified of his right to appeal.

3.1 Central Office Will Confirm Verification with Authorizing Agent

Central office staff will notify the authorized agent that the name of the individual being searched has been located in the Central Registry. The local department and the individual being searched will receive a copy of the notification.

4.0 If Local Department Cannot Verify that Client was Notified of Appeal Rights

If the local department cannot produce documentation that the client was notified of his appeal rights, then the local department must review the case file. The local department must determine whether to maintain the original decision or amend the disposition. The local department may consult the CPS Regional Coordinator for assistance. The local department must review the case record and make a decision within five working days.

4.1 Notification Must be Sent if Name Remains in Central Registry

If the individual's name remains in the central registry, Central Office will return the form to the authorized agent indicating that the name is listed in the Central Registry. A copy of this form will be sent to the individual whose name was searched and to the local department responsible for the name being entered into the Central Registry.

4.2 Information to be Released Pursuant to Government Data Collection and Dissemination Practices Act

If the individual contacts the local department regarding his name entry into the Central Registry, the local department shall provide the individual with the requested information, which is available to them under the Government Data Collection and Dissemination Practices Act, and provide a copy of the appeal procedures to the individual.

4.3 Client Must be Informed of Appeal Rights

If the local department cannot verify that the client was informed of his appeal rights and the local department determines that the founded disposition shall be sustained, then the local department must inform the client of his right to appeal the founded disposition of abuse or neglect.

4.4 Client May Request Appeal

If the individual decides to contest the founded disposition or dispositions, then the local department must conduct a local conference or forward the appeal request to the state hearing officer. The state hearing officer will determine the validity of the request for a hearing.

4.5 Notification to Authorized Agent if Appeal Results in Amendment of Disposition

Should the appeal result in an amended disposition, the authorized agent will be notified of the new status of the individual's name entry by Central Registry staff.

PART VIII: SERVICES

§ 63.2-1505(A2) and 63.2-1506(A2) of the Code of Virginia provide the statutory authority for the provision of services by a local department to an abused or neglected child.

Va. Code § 63.2-1505 & 1506. Consult with the family *to* arrange for necessary protective and rehabilitative services to be provided to the child and his family.

A. SERVICES FOR CHILDREN AND FAMILIES WITH DISPOSITIONS OR COMPLETED FAMILY ASSESSMENTS

> **22 VAC 40-705-150(A). At the completion of a family assessment or investigation, the local department shall consult with the family to provide or arrange for necessary protective and rehabilitative services to be provided to the child and his family to the extent funding is available pursuant to § 63.2-1505 or 63.2-1506 of the Code of Virginia.**

When a *CPS* family assessment is completed or a ~~founded~~ disposition is made by the local department, a full range of services should be made available to the child and his family if services are determined to be needed *and the risk of future maltreatment is high or moderate. CPS must provide services to protect the child from immediate danger of serious harm, reduce risk and resolve identified problems that create risk. (Services can be offered during the family assessment or investigation, but this section of policy primarily addresses services provided after a case is opened.)*The broad goals of the services to be provided include the prevention of further abuse or neglect to the child; the assurance of the child's safety; and the maintenance of the child in his family.

In order to prevent future abuse or neglect, services may be offered, when appropriate, to the child and family. Services may be provided or arranged for the alleged abuser or neglector when such abuser or neglector is not a parent.

Continuity of services*:* In situations determined to be at risk of child maltreatment, the transfer of the case from investigation or family assessment status to ongoing services should occur without delay. The ongoing worker should receive the entire record on the family. However, need for the entire record should not delay the transfer of enough information to begin essential services to prevent abuse/neglect.

Documentation of needs identified during the family assessment or investigation: Any needed services must be documented in the record. *The record is on-line but may include copies of items that are hard copy, such as a court order*. If the child safety assessment or the risk assessment reveals the need for continued services to the child and his family, then the local agency must develop a plan to obtain these services. This

service plan for ongoing child protective services is separate from the CPS Family Assessment or Investigation Record in the child abuse and neglect information system.

The CPS service planning process used by the local department should be family centered and strength based. *The development of a service plan must be based on assessment of the following: identification and evaluation of significance and interaction of key risk elements, family's view of the situation, and individual strengths. The service plan should be jointly developed with the family, including both parents or caretakers whenever possible, and should be written in clear and understandable language.* To the extent possible, the local department should include the family in the identification of service needs and the development of a plan to obtain services that will protect children from further abuse and neglect. The local department is responsible for developing the service plan. *Development of* the service plan will require collaboration with other community resources.

The promotion of family and community involvement in the CPS process is essential to the success of a differential response system. This approach also requires community-based ownership of the problem of child abuse and neglect. Stakeholders and community partners must be educated and well informed about the changes to the CPS program in Virginia.

1.0 Service Plan

The Virginia Administrative Code (22 VAC 40-705-10) provides a definition of "Service Plan" as:

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

The local department must make reasonable efforts to maintain family integrity and to maintain the child in his or her own home whenever possible without jeopardizing the child's safety. The circumstances leading the local department to conclude that the child is at risk of abuse, neglect, or exploitation must be *fully* documented in the record. In *both the* family assessment *and investigation*, the planning will flow from the safety or risk assessment and family needs identified in order to prevent abuse or neglect of the child(ren). The risk assessment should guide the *long-range* plan.

The purpose of the service plan is to: Identify and provide services that are required to ensure the child's safety and well-being; and identify and provide services that are oriented toward long-term risk reduction and resolution of problems that create risk. An individual or family plan or both can be

accommodated in OASIS (On-Line Automated Services Information System). Professional judgment must guide which will be most appropriate for each case.

1.1 Elements of the Service Plan

Below are the elements constituting a CPS service plan.

a. The local department shall work, in partnership, with the family and other community resources to identify specific behaviors and environmental conditions that need to change to prevent further abuse or neglect and to provide a safe environment for the child.

b. When the local department completes the CPS service plan, the local department must offer or arrange for services and resources appropriate to meet those needs *identified in the service plan.*

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c. The identified service needs shall be documented in the CPS case record, w*hich is OASIS.*

d. The service plan must include:

1. The specific needs identified with the family and the services to be provided to the family to address those specific needs;
2. Who will provide the services;
3. The frequency of these services;
4. A specific time to review the service plan; and
5. The *goal or* expected outcome of the service.

e. The service plan *should be developed with the family within 30 days of opening the case, and it* must be reviewed with the family at least once every three months, and changes made based on the family's progress *toward attaining specific objectives and reduction of risk of future maltreatment*. *The plan should answer the question: who will do what, when, and why?* Service plan reviews must be documented in the case record *(OASIS)*. *The review should address the family's perception of service needs, family's response to the service plan, and any changes in need or risk.*

f. If the local department provides either direct or purchased services as a result of a *moderate to high risk assessment* ~~founded CPS disposition or a completed family assessment~~, there must be face-to-face contact with the child and the family a minimum of once *per month* and that contact documented in the case record. *At least every other month, the contact must take place in the family's*

home. The worker should document whether there is any change in behaviors, appearance or interaction of child and parent.

g. The case record *in OASIS* must document:

1. The family's perception of service needs;
2. T*he family's involvement in the planning;*
3. The family's response to the service plan; and
4. The ~~planned~~ review of the service plan, *the reassessment of risk factors* and any changes *to the plan* resulting from that review.

Each of these elements must be documented in the *automated* record. The Family Service Agreement form (in Appendix B) or its equivalent is required to be used with the family in family assessment cases. *If services are being provided for an unfounded investigation, a Service Application or Family Service Agreement must be signed and maintained in a hard copy record.*

1.2 Case Plan Addendum

All cases opened where the goal is to prevent out of home placement, must document this goal in the service plan. Complete the Case Plan Addendum (located in Appendix E) and place it in the case file for each child considered to be a "reasonable candidate" for foster care or other out-of-home placement. A properly completed Case Plan Addendum, fully supported by documentation in the case record, will comply with the federal documentation guidelines.

See Broadcast 1793 or Instructions following the form in Appendix B for complete instructions for completing this form.

2.0 When Services are Refused

22 VAC 40-705-150(B). Families may decline services offered as a result of family assessment. If the family declines services, the case shall be closed unless there is an existing court order or the local department determines that sufficient cause exists due to threat of harm or actual harm to the child to redetermine the case as one that needs to be investigated or brought to the attention of the court. In no instance shall these actions be taken solely because the family declines services.

The agency cannot compel a parent, family or other individuals with a *completed family assessment or* founded *or unfounded* CPS disposition to accept the services developed in the CPS service plan. The local department has no authority to enforce the provision of services when a family, or other individual, refuses to accept those services. When services are refused, the local department must consider whether alternative action is necessary. *The decision to seek alternative action to compel the acceptance of*

services should be based on the risk of harm to the child or immediate safety factors. This principle applies in the case of founded or unfounded investigations, as well as completed family assessments.

When services are determined to be necessary to prevent abuse or neglect, but services are refused, both the offering and refusal must be *fully* documented.

2.1 When Services are Refused, Local Department May Seek Court Assistance

If a parent, or any individual, refuses to accept services, the worker may petition the court and ask the court to order the necessary services. The worker may also petition the court and ask the court to require, not only a child's parent(s), but also guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development pursuant to §16.1-253 of the Code of Virginia.

2.2 Court Should be Last Alternative in Family Assessments

22 VAC 40-705-150C. At the completion of a family assessment, local departments of social services may petition the court for services deemed necessary including, but not limited to, the removal of the child or siblings from their home.

CPS workers are encouraged to make every effort to engage the family in needed services. Court ordered services should be a last resort *and document that the child(ren) are at risk of harm if services are not accepted.*

2.3 If Court Refuses Local Department's Request for Assistance

If the court does not issue such an order and the parent(s) or other guardian, legal custodian, other person standing in loco parentis or other family or household member of the child continue to refuse critical services, the local department should consult legal counsel to determine if any other alternatives are available in working with the court. If no other legal recourse is available, the worker should close the case to child protective services.

3.0 Opening a Case to Child Protective Services

If the local department provides direct or purchased services identified in the service plan as a result of a completed family assessment *or* a ~~founded~~ CPS disposition, then a case must be opened *in OASIS* for on-going Child Protective Services.

3.1 Application for Services: Completed Family Assessment or ~~Founded~~ Disposition

In all cases where a formal complaint has been received and determined to be founded *or* a family assessment has determined the need for services to prevent child abuse or neglect, no application form is required. However, it must be documented in the record that the family has agreed to services or services are court ordered. *A service application form or its equivalent is required for unfounded referrals.*

3.2 Supervisory Review

Supervisors should review all open CPS cases at a minimum of every three months to evaluate the family's response to services, changes in the level of risk, and whether services are meeting identified needs.

3.*3* Case Composition: Services for Family

When a local department provides services to a family and the victim is not in the custody of the local department of social services, the case is opened in the name of the family. The case record is not identified by the name of the victim child. *The family is the basic unit of service delivery.*

3.*4* Case Composition: Services for Out of Family Abuser or Neglector

When the abuser or neglector is not a member of the established family unit and services are needed for the abuser or neglector, then the case record is opened for that individual in his name.

4.0 Services For ~~Completed Family Assessment or Founded Disposition~~ *Moderate and High Risk* Child Protective Services Case

The local department may provide CPS services either directly or by purchase, without regard to income for a child, parent or guardian, and alleged abuser or neglector when the local department documents that other resources are not available to cover the cost of service. All service needs must be documented in the service plan and it must be documented that these services are to prevent further child abuse or neglect or to prevent placement of the child outside of the family.

4.1 Mandated Child Protective Services - Direct Services

The purpose of the direct services is to address identified individual and family needs while providing timely and continuing reassessment of child safety, risk of maltreatment, ability of the parents to provide a minimum standard of care, and progress toward achieving the outcomes or goals identified in the service plan. Principles of direct service provision:

(1) Social services should be delivered to the family as part of a total system, with cooperation and coordination occurring among administration, temporary assistance and family services programs.
(2) Every effort should be made to maintain the family as a functioning unit and prevent its breakup, while keeping children safe.
(3) The worker/family relationship is a primary vehicle for change.
(4) Positive change is possible.
(5) The most effective way to address a family's needs is to recognize and support its strengths.
(6) CPS services are successful by virtue of how they are presented, understood, and used by the family to keep all children free from maltreatment.
7) CPS services should empower families to function independently of the social services system while all members remain safe.

4.*2* Mandated Child Protective Services - Purchased

Local departments must make available to the child and family the following purchasable service activities:

a. Emergency Shelter for Children, and

b. Medical/Remedial Care.

4.*3* Other Services

Any other service that the local department identifies as appropriate may be purchased on behalf of the child and family, if it is included in the CPS service plan and is directed towards deterring further abuse or neglect.

Purchased services often identified for CPS families include: emergency shelter for families; emergency needs; *child* care; and counseling and treatment services.

Any appropriate service defined in the State's Social Service Block Grant (SSBG) Expenditure Plan and within the local board policy may be made available when that service is documented as needed in the CPS service plan.

Many service approaches are effective with a family where abuse or neglect has occurred. The appropriate services for a particular family must be tailored to the family's unique strengths; the type of abuse or neglect that has been identified; and the local department's assessment of the child's safety. Examples of service interventions include family-focused interventions, such as Nurturing Programs; multi-service interventions; family preservation services; group approaches, such as Parents Anonymous; and intensive, problem-focused casework or counseling.

4.*4* Child Care Services

Child care may be purchased to provide protection for the children if the service is identified in the CPS service plan. Child care services in child protective services cases can be funded through prevention funds, SSBG other services funds, local only funds or the Child Care Development Fund. Refer to the Social Services Manual, Volume VII, Section III, Chapter D, Child Care to determine limitations on the use of these funds.

5.0 Local Departments Shall Not Purchase Certain Services

Pursuant to § 63.2-1503 of the Code of Virginia, local departments shall not purchase from private or other public non-social services departments the following:

a. Investigation of complaints; and,

b. Monitoring safety of the child and monitoring service provision to the child and family.

Although local departments cannot purchase the above from private or other public non-social services departments, local departments may contract with one another to provide these services.

6.0 Documentation of the Provision of Ongoing Services

The record of an ongoing CPS case should contain the following:

1. Initial safety and risk assessments from the family assessment or investigation;
2. Behaviorally specific service plan;
3. Reassessments of risk and of the progress toward meeting the objectives of the plan;
4. Documentation of all pertinent contacts;
5. Information that addresses child well-being, such as physical health and/or mental health and/or education; and
6. A closure statement at closure.

B. PREVENTIVE CHILD PROTECTIVE SERVICES FOR CHILDREN AND FAMILIES

Preventive services are an essential component of child protective services. The statutorily defined purpose of child protective services includes preventing further abuse or neglect and preserving the family life by enhancing parental capacity for adequate child care.

1.0 Statutory Definition of Prevention

Va. Code §63.2-1501. Definitions.
"Prevention" means efforts that (i) promote health and competence in people and (ii) create, promote and strengthen environments that nurture people in their development.

2.0 Regulatory Authority for Providing Preventive Services

> **22 VAC 40-705-150(*D*). Protective services also includes preventive services to children about whom no formal complaint of abuse or neglect has been made, but for whom potential harm or threat of harm exists, to be consistent with §§ 16.1-251, 16.1-252, 16.1-279.1, 63.2-1502 and 63.2-1503(J), of the Code of Virginia.**

The Virginia Administrative Code provides local departments with the authority to provide preventive services to a family or a child when no formal complaint or report alleging abuse or neglect has been made. 22 VAC 40-705-150(*D*) allows local departments to take a proactive approach in preventing child abuse or neglect. If a local department identifies a family or a child as at risk of abuse or neglect, but no formal complaint or report has been made, the local department may provide services to that family or child to prevent child abuse and neglect, if the parent voluntarily agrees to such services, and signs a service application. Many prevention services are the same as those services for families where a family assessment is completed or a founded disposition has been made.

3.0 Preventive Child Protective Services for Children and Families with Unfounded Dispositions

If the disposition of a valid CPS report is unfounded, but the family needs services that can deter future abuse or neglect, the local department should engage the family in a service planning process, including any needed community resources. The process should be similar to that used with families where there is a completed family assessment *or* a founded disposition.

A service case may be opened in the family's name after the parent voluntarily agrees to such services and signs a service application. The application date is the date the family signs the service application. The case should be opened in the appropriate category to ensure the family receives the identified services. The identified services may be provided directly to the family by the local department or the services may be purchased for the family.

4.0 No Authority to Compel Acceptance of Services

The local department cannot compel families to participate in prevention services. The local department should engage a family in a service planning process that emphasizes family strengths, as well as its needs, and supports the family's efforts to provide a safe and nurturing environment for children. The local department can help the family identify community resources that will support the family and prevent abuse and neglect.

Preventive services are provided under the Family Services definition and should be reported as such.

C. SERVICES FOR SUBSTANCE-EXPOSED INFANTS

1.0 Mandated Reporting of Drug-Exposed Infants to CPS

Virginia Code § 63.2-1509(A1) requires a physician to make a report of abuse or neglect when there is evidence that a newborn infant was exposed to controlled substances during pregnancy. Virginia Code §§ 63.2-1505(B) & 1506(B) provide that a local department may petition the juvenile and domestic relations district court when an investigation is initiated as a result of a report made pursuant to § 63.2-1509(A1). Virginia Code § 16.1-241.3 provides the juvenile and domestic relations district court with the jurisdiction to issue any orders deemed necessary by the court to ensure the health and safety 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 subdivisions 1 through 4 of subsection A of § 16.1-278.2. For example, such authority would allow the court to remove the child from the custody of the mother pending completion of the investigation or compel the mother to seek treatment or other needed services. Va. Code § 16.1-241.3 enhances the court's ability to act quickly in a potentially crisis situation. In addition, the court will have the ability to use its authority to ensure that the mother of the child seeks treatment or counseling.

There is evidence establishing a corresponding relationship between prenatal substance abuse and child abuse or neglect. These statutory provisions could prove to be a catalyst for preventive services. By providing statutory authority to intervene on behalf of a newborn infant demonstrating evidence of substance abuse exposure, local

departments may take a proactive approach to protecting infants who are at significant risk of being abused or neglected.

For further discussion pertaining to making a report of a substance-exposed infant, see Complaints & Reports, Part III, of this policy manual. For further discussion pertaining to filing a petition pursuant to Virginia Code §§ 63.2-1505(B) & 1506(B) and 16.1-241.3, see Judicial Proceedings, Part *VI* of this policy manual.

2.0 Mandated Reporting of Substance Abusing Postpartum Women to Community Services Boards

Va. Code § 32.1-127(B)(6). [Such regulations] Shall also require that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance-abusing, postpartum women and their infants. The protocol shall require that the discharge plan be discussed with the patient and that appropriate referrals for the mother and the infant be made and documented. Appropriate referrals may include, but need not be limited to, treatment services, comprehensive early intervention services for infants and toddlers with disabilities and their families pursuant to Part H of the Individuals with Disabilities Education Act, 20 U.S.C. § 1471 et seq., and family-oriented prevention services. The discharge planning process shall involve, to the extent possible, the father of the infant and any members of the patient's extended family who may participate in the follow-up care for the mother and the infant. Immediately upon identification, pursuant to §54.1-2403.1, of any substance-abusing, postpartum woman, the hospital shall notify, subject to federal law restrictions, the community services board of the jurisdiction in which the woman resides to appoint a discharge plan manager. The community services board shall implement and manage the discharge plan;

Va. Code § 32.1-127(B)(6) requires hospitals to notify the community services board of the jurisdiction in which the woman resides to appoint a discharge plan manager for any identified substance-abusing postpartum woman. The community services board must implement and manage the discharge plan. Hospitals are already required, as a condition of licensure, to develop these discharge plans.

When the local department receives a report of a substance-exposed infant, the local department should contact the local community services board to determine whether the infant's mother was provided a discharge plan and a discharge plan case manager. If appropriate, the local department should coordinate services with the community services board.

D. MULTIDISCIPLINARY TEAMS

§ 63.2-1503(J) of the Virginia Code provides the statutory authority for developing multidisciplinary teams.

Va. Code § 63.2-1503(J). The local department shall foster, when practicable, the creation, maintenance and coordination of hospital and community-based multi-disciplinary teams which shall include where possible, but not be limited to, members of the medical, mental health, social work, nursing, education, legal and law-enforcement professions...

The Code of Virginia places responsibility on the local department to develop and coordinate multidisciplinary teams.

1.0 Purpose of Establishing Multidisciplinary Teams

§ 63.2-1503(J) of the Code of Virginia provides the purpose of establishing multidisciplinary teams.

Va. Code § 63.2-1503(J)… Such teams shall assist the local departments in identifying abused and neglected children; coordinating medical, social, and legal services for the children and their families; developing innovative programs for detection and prevention of child abuse; promoting community concern and action in the area of child abuse and neglect; and disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat child abuse and neglect…

22 VAC 40-705-150(*E*) provides the regulatory authority for a local department to support the development of multidisciplinary teams.

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

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

a. Identifying abused and neglected children;

b. Coordinating medical, social and legal services for the children and their families;

c. Helping to develop innovative programs for detection and prevention of child abuse and neglect;

d. Promoting community concern and action in the area of child abuse and neglect; and

e. Disseminating information to the general public with respect to the problem of child abuse and neglect and the facilities and prevention and treatment methods available to combat abuse and neglect.

2.0 Composition of Multidisciplinary Teams

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

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

2.1 Family Assessment and Planning Teams

Va. Code § 63.2-1503(J)… These teams may be the family assessment and planning teams established pursuant to § 2.2-5207…

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

2.2 Investigation Consultation MD Teams

§ 63.2-1503K supports the convening of multidisciplinary teams for the specific purpose of providing consultation and assistance in investigations. Multidisciplinary teams provide for better coordination between varied disciplines in complicated investigations and help avoid repeated interviews of a child.

3.0 Cooperation Between Local Department & Multidisciplinary Team

Va. Code § 63.2-1503(J)… Multi-disciplinary teams may develop agreements regarding the exchange of information among the parties for the purposes of the investigation and disposition of complaints of child abuse and neglect, delivery of services, and child protection…

Local departments must foster collaborative relationships with the community agencies participating on multidisciplinary teams. Local departments should include in all protocols regarding the operation of multidisciplinary teams a plan for exchanging information for the purposes of investigation and disposition of child abuse or neglect complaints and for services to children and families where child abuse or neglect has been documented, and the child requires services to prevent further abuse or neglect.

4.0 Exchange of Information

Va. Code § 63.2-1503(J)… Any information exchanged in accordance with the agreement shall not be considered to be a violation of the provisions of §63.2-102, 63.2-104 or §63.2-105.

Multidisciplinary teams involved in case consultation can have access to confidential case information. All members must abide by the laws pertaining to confidentiality and found in the Confidentiality section of this policy manual.

5.0 Local Department Must Coordinate Efforts with the Court

Va. Code § 63.2-1503(J)… The local department shall also coordinate its efforts in the provision of these services for abused and neglected children with the judge and staff of the court.

E. Reasonable Diligence in Locating Child Who Has Been Abused or Neglected

Virginia Code § 63.2-1503(F) mandates local departments to use reasonable diligence in locating a child who has been abused or neglected.

Va. Code § 63.2-1503(F). The local department shall use reasonable diligence to locate (i) any child for whom a report of suspected abuse or neglect has been received and is under investigation, receiving family assessment, or for whom a founded determination of abuse and neglect has been made and a child protective services case opened and (ii) persons who are the subject of a report that is under investigation or receiving family assessment, if the whereabouts of the child or such persons are unknown to the local department.

22 VAC 40-705-150(F) requires local departments to use reasonable diligence to locate a child for whom a founded disposition has been made and a child protective services case has been opened.

> **22 VAC 40-705-150(F). The local department must use reasonable diligence to locate any child for whom a founded disposition of abuse or neglect has been made and a child protective services case has been opened pursuant to § 63.2-1503(F)*(i)* of the Code of Virginia. The local department shall document its attempts to locate the child and family.**

1.0 Document Use of Reasonable Diligence in Locating Child and Family

The local department must document in the information system its attempts to locate the alleged victim child and the family.

2.0 What Constitutes Reasonable Diligence

The local department shall document reasonable and prompt attempts to locate the child and family including checking a minimum of the following, when applicable, and documenting results in the case record:

a. Child welfare automated data system
b. Postal Service for last known address
c. Postal Service for forwarding address
d. Neighbors, landlords, known relatives
e. School records
f. Department of Motor Vehicles
g. Department's Division of Support Enforcement
h. Department of Corrections, Probation and Parole
i. Law Enforcement
j. Telephone and utility companies
k. Employer
l. Other appropriate contacts

3.0 Local Department Must Continue Periodic Checks for Missing Child

If the victim child is not found, the local department must establish a timetable for making checks periodically. The local department shall document the timetable in the case record and the results of the periodic checks. Periodic checks for the missing child must continue until the local department is satisfied with the resolution of the case.

F. TRANSFER OF CHILD PROTECTIVE SERVICES CASES

22 VAC 40-705-150(*G*). When an abused or neglected child and persons who are the subject of an open child abuse services case have relocated out of the jurisdiction of the local department, the local department shall notify the child protective services agency in the jurisdiction to which such persons have relocated, whether inside or outside of the Commonwealth of Virginia, and forward to such agency relevant portions of the case records pursuant to § 63.2-1503 (G) of the Code of Virginia.

1.0 Transfer of Open Child Protective Services Case In-State

When a child moves, the case shall be transferred to the local department in the locality where the family will reside.

1.1 Transfer Should be Initiated by Telephone

Transfer shall be initiated immediately by telephone to notify the receiving agency of the family's move to that locality.

1.2 Written Summary to be Sent to Receiving Local Department

The telephone call initiating the transfer of a CPS case from one local department to another must be immediately followed with a concise written summary. That summary shall include:

a. OASIS referral number;
b. The victim child's client I.D. number;
c. The nature of the initial complaint if it is not documented in the information system;
d. The disposition of the investigation if it is not documented in the findings screen of the information system; and
e. What current services are being provided.

1.3 Entire Record to be Forwarded to Receiving Local Department

A copy of the entire child protective services record, including the fully documented automated record and any hard copy reports or files, shall be forwarded to the new locality within 30 days. The automated record shall be forwarded electronically, and any hard copy records shall be sent overland. The sending local department retains all originals of the hard copy record, including the required notifications.

2.0 Receiving Local Department Must Provide Services

22 VAC 40-705-150(H). The receiving local department shall arrange necessary protective and rehabilitative services pursuant to § 63.2-1503(G) of the Code of Virginia.

The receiving local department shall initiate the application process on behalf of the family and shall assume responsibility for service delivery.

2.1 Receiving Local Department Must Confirm Receipt of Record in Writing

The receiving local department shall respond in writing to the initiating local department to indicate receipt of all hard copy records. If the record has been transferred electronically with all the information contained in the information system, the sending locality can verify receipt by checking the information system.

3.0 Transfer of Open Child Protective Services Case Out of State

All referrals to other states shall follow the procedure as outlined for that state in the Public Welfare Directory of the American Public Welfare Association.

3.1 Information Needed When Transferring Case Out of State

The following information should be provided when making a referral:

a. The name, date of birth, and sex of child;
b. Any other name by which the child may be known;
c. The names of parents and/or guardians;
d. Any other names by which the parents and/or guardians may be known;
e. The current address including any directions;
f. Last known address;
g. Statement of why the referral is being made;
h. Brief social history of the child and the family;
i. A brief description of the local department's involvement with the family.

4.0 Transfer of Child Protective Services Case Out Of State; Child in the Custody of a Local Department

There may be instances when the local department transfers a child protective services case out of state and a child related to that case is in the custody of the local department. There are specific procedures to be followed in these instances. See

Social Services Manual, Volume VII, Section III, Chapter E, Interstate/Intercountry Placement of Children.

F. RETENTION OF ONGOING CASE INFORMATION

Regarding closed ongoing CPS cases, Volume VII, Section I, Chapter B, Intake and Case Management, page 22 says "closed records may be destroyed after 3 years if an audit has been performed, or after 5 years if no audit has been performed." However, retention of unfounded, founded and family assessment reports is addressed in other sections of this chapter.

Local departments may also consult § 42.1-82 that states the State Library Board will provide guidance on the management and destruction of public records.

G. *CHILD ABUSE/NEGLECT REPORT ON OPEN CASES*

When child abuse or neglect allegations are made on an open CPS ongoing or prevention case, the report should be treated as a new report, determined to be valid or invalid, and acted upon accordingly. The local department may decide whether to have the ongoing worker respond to a valid report if that worker is qualified as a CPS worker, having received the mandated training for CPS. The results of a valid report must be documented in the automated information system as a family assessment or an investigation.

PART IX: CONFIDENTIALITY

A. OVERVIEW OF CONFIDENTIALITY

It is the policy of the Commonwealth to promote ready access to records in the custody of public officials and free entry to meetings of public bodies wherein the business of the Commonwealth is being conducted. The purpose for promoting open disclosure of the activities of state government is to foster an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. To ensure the open disclosure of public documents, the Virginia Freedom of Information Act provides for the release of information that is not protected by Federal law, Virginia Code or Virginia Administrative Code provisions for maintaining confidentiality.[38]

In performing its statutory duties, such as conducting an investigation of a report of alleged child abuse or maintaining the central registry, the Department and local departments will collect and maintain personal information about an individual. Having recognized that the extensive collection, maintenance, use and dissemination of personal information directly affect an individual's rights concerning privacy, the Code of Virginia authorizes the release of certain information under the Government Data Collection and Dissemination Practices Act.[39] The Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) provides a person access to records in the custody of public officials. The provisions of the Virginia Freedom of Information Act and the Government Data Collection and Dissemination Practices Act apply to the Department and to the local department.

When the local department receives a request for information, the local department must determine whether the information requested is confidential and must be protected, or whether the information requested should be released under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act or Virginia Administrative Code provision. Given the sensitive nature of a child protective services investigation, the local department must ensure that the release of information does not violate any Federal law, Virginia Code or Virginia Administrative Code provisions. Should the local department have any question about the release of information under the Virginia Freedom of Information Act, the Government Data Collection and Dissemination Practices Act, or any other Code

[38] The Virginia Freedom of Information Act provides the statutory authority for the release of information between public agencies and the public. Please see: Va. Code § 2.2-3700B

[39] Va. Code § 2.2-3800 B, C

provision, the local department should seek the assistance of the city or county attorney.

1.0 Discretionary Release of Information

In some instances, disclosure of information in a CPS case record by the local department will be mandated. In other instances, disclosure of certain information will be prohibited or limited. In the remaining instances, disclosure of information from a child protective service case record will be at the local department's discretion. §§63.2-102, 63.2-104, and 63.2-105 of the Virginia Code provide the statutory framework for collecting and maintaining information gathered during a CPS investigation and related proceedings. §§ 63.2-102 and 63.2-104 of the Code of Virginia also provide the statutory framework for the release of such information and to whom it may be released.

Pursuant to Va. Code § 63.2-105 when a local department exercises its discretion to release confidential information to any person who meets one or more of the criteria set forth, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner. When there is question concerning whether certain information should be released, the local department should consult the city or county attorney for guidance.

2.0 Burden on Local Department to Ensure the Proper Release of Information

Any time the local department does release information contained in a CPS investigative record, the local department must ensure that the release of information is proper and consistent with Federal law, the Virginia Code and the Virginia Administrative Code. The Virginia Administrative Code emphasizes the need for the local department to ensure the confidentiality of the information gathered during a CPS investigation and the proper release of any confidential information.

> **22 VAC 40-705-160(D). Prior to disclosing information to any of the individuals or organizations, and to be consistent with § 63.2-104 of the Code of Virginia, pursuant to § 63.2-1500 of the Code of Virginia, the local department must be satisfied that:**
> **(1). The information will be used only for the purpose for which it is made available;**
> **(2). Such purpose shall be related to the goal of child protective or rehabilitative services; and**
> **(3). The confidential character of the information will be preserved to the greatest extent possible.**

When a question arises concerning whether certain information contained in a CPS investigative record should be released, the local department should consult the local city or county attorney.

3.0 Identity of Complainant & Collaterals to Remain Confidential

> **22 VAC 40-705-160(C). The local department shall not release the identity of persons reporting incidents of child abuse or neglect, unless court ordered, in accordance with § 63.2-1526 of the Code of Virginia, 42 USC § 5101 et seq., and federal regulations (45 CFR Part 1340).**

Federal regulations specify that the identity of persons reporting suspected incidents of child abuse or neglect should be protected. However, circumstances may arise where the name of the complainant must be disclosed. This might include court proceedings where the information provided by the complainant is necessary for a full disclosure of the child's situation. Neither state law nor federal regulations provide for confidentiality of the identity of persons providing information on a child abuse and neglect case through collateral contact by the worker. Therefore, individuals making complaints or providing information through collateral contacts should be informed that the local department will maintain the information confidential to the greatest extent possible, but cannot guarantee its confidentiality.

B. MANDATORY DISCLOSURE

The Virginia Code and the Virginia Administrative Code mandate the release of information to specific parties under certain circumstances:

> **22 VAC 40-705-160(A). In the following instances of mandatory disclosure the local department shall release child protective services information. The local department may do so without any written release.**

1.0 Reporting Information to Commonwealth's Attorney & Law Enforcement

§ 63.2-1503(D) of the Virginia Code requires the local department to report certain cases of abuse and neglect to the local Commonwealth's Attorney and to law enforcement.

Virginia Code §63.2-1503(D). The local department shall upon receipt of a complaint report immediately to the attorney for the Commonwealth and the local law-enforcement agency and make available to them the records of the local department when abuse or neglect is suspected in any case involving (i) death of a child; (ii) injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected; (iii) 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 § 18.2-374.1; (iv) any abduction of a child; (v) any felony or Class 1 misdemeanor drug offense involving a child; or (vi) contributing to the delinquency of a minor in violation of §18.2-371, and provide the attorneys 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 local department shall not 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 Virginia Administrative Code emphasizes the need for the local department to report certain cases to the local attorney for the Commonwealth:

22 VAC 40-705-160(A)(1). Report to attorney for the Commonwealth and law enforcement pursuant to § 63.2-1503 D of the Code of Virginia.

1.1 Types of Complaints or Reports Local Department Must Report

The local department must contact the local attorney for the Commonwealth when a report or complaint is received alleging abuse or neglect involving:

a. The death of a child;

b. An injury or threatened injury to the child in which a felony or Class 1 misdemeanor is also suspected;

c. 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 § 8.2-374.1;

d. Any abduction of a child;

e. Any felony or Class 1 misdemeanor drug offense involving a child; or

f. Contributing to the delinquency of a minor in violation of §18.2-371.

1.2 Information to be Provided to Commonwealth's Attorney & Law-Enforcement

The local department must 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 local department 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 local department must make available all information upon which the report is based and the records of any complaint of abuse or neglect involving the victim or the alleged perpetrator.

2.0 Reporting Information to Regional Medical Examiner's Office

The Virginia Code requires the local department to report certain cases of abuse and neglect to the regional medical examiner's office. § 63.2-1503(E) of the Virginia Code provides the framework for releasing information to the medical examiner.

Va. Code § 63.2-1503 (E). When abuse or neglect is suspected in any case involving the death of a child, report the case immediately to the regional medical examiner and the local law-enforcement agency.

The Virginia Administrative Code restates that requirement.

> **22 VAC 40-705-160(A)(2). Report to the medical examiner's office pursuant to §§ 32.1-283.1 C and 63.2-1503 E of the Code of Virginia.**

Anytime there is a death of a child and abuse or neglect of that child is suspected, the local department must notify the regional medical examiner's office. The local department should also notify the regional medical examiner's office whether the report or complaint was accepted and if an investigation will be conducted.

3.0 Court Mandated Disclosure

The local department must disclose information when directed by a court. The issue of mandated court disclosure is addressed in 22 VAC 40-705-160(A)(3).

> **22 VAC 40-705-160(A)(3). If a court mandates disclosure of information from a child abuse and neglect case record, the local department must**

> **comply with the request. The local department may challenge a court action for the disclosure of the case record or any contents thereof. Upon exhausting legal recourse, the local department shall comply with the court order.**

The local department cannot disregard a court order for the release of information. If the local department believes the disclosure is inappropriate, it may contest the request for information through legal counsel. If, after hearing the local department's arguments for maintaining the confidentiality of the child protective service information the court still orders the information to be released, the local department must comply.

4.0 Release of Certain Information to the Complainant

> **22 VAC 40-705-160(A)(4). When a family assessment or investigation is completed, the child protective services worker shall notify the complainant/reporter that either a complaint/report is unfounded or that necessary action is being taken.**

Generally, the information released to the complainant pertains to whether the complaint or report was unfounded or the local department took necessary action. Disclosing information to a complainant is limited to the procedures for notification of the disposition required by the Virginia Administrative Code and this policy manual, except as may otherwise apply under required or discretionary disclosure in this section.

5.0 Release of Information to Military Family Advocacy Program

> **22 VAC 40-705-160(A)(10). The local department shall disclose and release to the United States Armed Forces Family Advocacy Program child protective services information as required pursuant to 22 VAC 40-720-20.**

The definition section of the Virginia Administrative Code defines Family Advocacy Program representative as:

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

22 VAC 40-720-20 provides the local department with the authority to release information, when appropriate to a representative of the Family Advocacy Program.

22 VAC 40-720-20 (A). Information regarding child protective services reports, complaints, investigations and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces when the local agency determines such release to be in the best interest of the child. Provision of information as addressed in this chapter shall apply to instances where the alleged abuser or neglector is a member (or the spouse of a member) of the United States Armed Forces. In these situations coordination between child protective services and the Family Advocacy Program is intended to facilitate identification, treatment and service provision to the military family.

22 VAC 40-720-20(B). In founded complaints in which the abuser or neglector is an active duty member of the United States Armed Forces, or the spouse of a member residing in the member's household, information regarding the disposition, type of abuse or neglect, and the identity of the abuser or neglector shall be provided to the appropriate Family Advocacy Program representative. This notification shall be made in writing within 30 days after administrative appeal rights of the abuser or neglector have been exhausted or forfeited.

The military member shall be advised that this information is being provided and shall be given a copy of the written notification sent to the Family Advocacy Program representative.

When needed by the Family Advocacy Program representative to facilitate treatment and service provision to the military family, additional related information shall also be provided to the Family Advocacy Program representative.

6.0 Releasing Information to Department of Child Support Enforcement (DCSE)

22 VAC 40-705-160(A)(11). Child protective services shall, on request by the Division of Child Support Enforcement, supply information pursuant to §63.2-103 of the Code of Virginia.

7.0 Providing 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(A)(7) addresses the CAPTA requirement.

22 VAC 40-705-160(A)(7). Pursuant to the Child Abuse Prevention and Treatment Act, as amended (42 USC § 5101 et seq.), and federal regulations (45 CFR § 1340), the local department shall provide case-specific information about child abuse and neglect reports and investigations to citizen review panels when requested.

CAPTA §106(b)(2)(v)(iii) requires the establishment of not less than 3 citizen review panels. Any release of information to citizen review panels must be in accordance with the confidentiality provisions of this chapter. §§ 63.2-102 (Allowing Access to Records; Penalty) and 63.2-104 (Confidential Records) of the Code of Virginia provide the foundation for the disclosure of findings or information about a case of child abuse or neglect.

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.

7.2 Governor's Advisory Board

§ 63.2-1528 of the Code of Virginia establishes the Advisory Board on Child Abuse and Neglect (Governor's Advisory Board). The Advisory Board meets at least quarterly and advises the Department of Social Services, Board of Social Services and the Governor on matters concerning programs for the treatment and prevention of abused and neglected children and their families.

7.3 State Child Fatality Review Team

§ 32.1-283.1 of the Code of Virginia establishes the State Child Fatality Review Team to develop and implement procedures to ensure that child deaths occurring in Virginia are analyzed in a systematic way.

7.3.1 Guidelines for the Disclosure of Information Pertaining to a Child Fatality or Near Fatality

22 VAC 40-705-160(A)(8) requires the Department to develop guidelines allowing for the public disclosure in instances of a child fatality or a near fatality.

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

§ 32.1-283.1(C) of the Virginia Code allows the State Child Fatality Review Team access to the records in the custody of the local department pertaining to the investigation of a death of a child. The Team shall have access to all records and information concerning the death of a child pursuant to §§ 2.2-2617, 2.2-3704, 2.2-3711 and 2.2-3712 of the Code of Virginia. § 32.1-283.1(C) and (E) of the Code of Virginia provides that the State Child Fatality Review Team shall make public or disclose their findings in statistical or other form while protecting the identity of individuals. Pursuant to Va. Code § 32.1-283.1 (C), no child death review will be initiated by the State Child Fatality Review Team until conclusion of any law-enforcement investigation or criminal prosecution.

7.3.2 Releasing Information on Fatalities and Near Fatalities

The Child Abuse and Prevention Treatment Act (CAPTA), as amended (42 USC 5101 et seq.; 42 USC 5116 et seq.) mandates that states have provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality. Local departments of social services may release the following information, *according to regulations cited below,* providing that nothing disclosed would be likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person; or which may compromise the integrity of CPS investigation; or a civil or criminal investigation; or judicial proceeding:

1. The fact that a report has been made concerning the alleged victim child or other children living in the same household;
2. Whether an investigation has been initiated;
3. The result of the completed investigation;
4. Whether previous reports have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the local department in response to any report of child abuse or neglect;
5. The local department's activities in handling the case.

Virginia now has regulations that support the CAPTA requirements:

22VAC40-910-100. Confidential client information pertaining to social services programs. B. Releasing confidential social services information.

1. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services and their agents shall have access to all social services client records pursuant to §63.2-104 of the Code of Virginia.

b. Child Protective Services Client Records and Information Disclosure:

(1) Child protective services client records can be released to persons having a legitimate interest pursuant to §63.2-105 A of the Code of Virginia.

(2) The public has a legitimate interest to limited information about child abuse or neglect cases that resulted in a child fatality or near fatality. Pursuant to the Child Abuse and Prevention Treatment Act (CAPTA), as amended (P.L. 104-235 (42 USC §5106a)) states must have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that has resulted in a child fatality or near fatality. Accordingly, agencies may release the following information to the public, providing that nothing disclosed would be likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person; or that may compromise the integrity of a Child Protective Services investigation, or a civil or criminal investigation, or judicial proceeding:

(a) The fact that a report has been made concerning the alleged victim child or other children living in the same household;

(b) Whether an investigation has been initiated;

(c) The result of the completed investigation;

(d) Whether previous reports have been made concerning the alleged victim child or other children living in the same household and the dates thereof, a summary of those previous reports, and the dates and outcome of any investigations or actions taken by the agency in response to those previous reports of child abuse or neglect;

(e) The agency's activities in handling the case.

8.0 Releasing Information to Court Appointed Special Advocate

22 VAC 40-705-160(A)(12). The local department shall release child protective services information to a court appointed special advocate pursuant to § 9.1-156 of the Code of Virginia.

§ 9.1-151 of the Code of Virginia establishes a Court Appointed Special Advocate Program administered by the Department of Criminal Justice Services. The program provides services to children who are subjects of judicial proceedings involving allegations that the child is abused, neglected, in need of services or in need of supervision. § 9-173.12 of the Code of Virginia provides that, upon presentation by a court appointed special advocate of the order of his appointment and upon specific court order, the local department shall permit the advocate to inspect and copy any records relating to the child involved in the court case.

9.0 Releasing Information to Guardian Ad Litem

> **22 VAC 40-705-160(A)(13). The local department shall release child protective services information to a court appointed guardian ad litem pursuant to § 16.1-266(E) of the Code of Virginia.**

§ 16.1-266 of the Code of Virginia provides that a guardian ad litem shall be appointed by a court before the commencement of any court proceeding involving a child who is alleged to be abused or neglected. One of the purposes of appointing a guardian ad litem is to obtain first-hand, a clear understanding of the situation and needs of the child. Upon presentation by a guardian ad litem of the court order of his appointment and upon specific court order, the local department shall permit the guardian ad litem to inspect and copy any records relating to the child involved in the court case.

C. VIRGINIA FREEDOM OF INFORMATION ACT, VA. CODE § 2.2-3700

Any individual may exercise his or her Virginia Freedom of Information Act rights and request to see public information in the custody of any public agency. Va. Code §2.2 – 3700 (Virginia Freedom of Information Act) requires that official records held by public agencies are to be open to inspection. It provides procedures for requesting records and responding to those requests. It also provides exceptions to providing certain information when requested.

Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. The provisions of Virginia Code § 2.2-3700 et seq. apply to the Department and the local department. Below is a summary of these provisions.

1.0 The Local Department Must Respond to Request Within Five Days

When a request for the release of information under the Virginia Freedom of Information Act is made, the local department must make an initial response to the individual requesting the information within five working days after the receipt of the request.

2.0 The Requesting Party Must Specify What Information is Requested

The requesting party must designate the requested records with reasonable specificity. The requesting party does not need to specify that the release is to be in accordance with the Virginia Freedom of Information Act to invoke the provisions of Va. Code § 2.2-3700 et seq. and the time limits for response by the local department.

3.0 The Local Department Must Respond to Request Within Five Working Days

The local department must respond to the request for the release of information in one of the following methods:

a. The requested records shall be provided to the requesting citizen;

b. If the local department determines that an exemption applies to all of the requested records, the local department may refuse to release such records. The local department must provide to the requesting party a written explanation as to why the records are not available, making specific reference to the applicable Virginia Code sections that make the requested records exempt;

c. If the local department determines that an exemption applies to a portion of the requested records, the local department may redact that portion of the records that should remain confidential. The local department must 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 Virginia Code sections making that portion of the requested records exempt. Any reasonably segregatable portion of an official record must be provided to any person requesting the record after the deletion of the exempt portion.

d. If the local department 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 local department must inform the requesting party. The local department shall have an additional seven work days in which to provide one of the three preceding responses.

4.0 Local Department May Petition the Court for Additional Time to Respond

The local department 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 local department within the time required by the Virginia Code will prevent the local department from meeting its operational responsibilities. Before filing this petition, however, the local department must make reasonable efforts to reach an agreement with the requesting party concerning the production of the records requested.

5.0 The Local Department May Charge for Copying, Search Time, and Computer Time Expended for Providing the Information

The local department may make reasonable charges for the copying, search time, and computer time expended in providing the requested information.

6.0 Requesting Information That Does Not Exist

The local department is not required to create or prepare a particular requested record if it does not already exist. The local department 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 local department must make reasonable efforts to reach an agreement with the requesting party concerning the production of the records requested.

7.0 Local Department Must Take Action Upon Request

Failure to make any response to a request for records constitutes a violation of Va. Code § 2.2-3700 et seq. and will be deemed a denial of the request.

8.0 Exceptions to Disclosing Information

Va. Code § 2.2-3700 et seq. provides exceptions from the provisions of the Virginia Freedom of Information Act, but may be disclosed by the local department at the local department's discretion, except where such disclosure is prohibited by law. For the exceptions to the Virginia Freedom of Information Act, see Va. Code § 2.2-3705(A).

D. GOVERNMENT DATA COLLECTION AND DISSEMINATION PRACTICES ACT

Va. Code § 2.2-3806(3). Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:
(a) All personal information about that data subject except as provided in subdivisions A3, A4, and A5 of § 2.2-3705.
(b) The nature of the sources of the information.
(c) The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority,

except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

1.0 General Provisions for Collecting Confidential Data

The local department must adhere to the following principles of information practice to ensure safeguards for personal privacy:

a. There shall be no personal information system whose existence is secret;

b. Information must not be collected unless the need for it has been clearly established in advance;

c. Information must be appropriate and relevant to the purpose for which it has been collected;

d. Information cannot be obtained by fraudulent or unfair means;

e. Information must be accurate and current.

2.0 The Rights of the Data Subjects

Upon request and proper identification of any data subject, or of his authorized agent, the local department must grant such subject or agent the right to inspect, in a form comprehensible to such individual or agent:

a. All personal information about that data subject except as provided in Va. Code § 2.2-3704(B).

b. The nature of the sources of the information;

c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

3.0 Minimum Conditions of Disclosure

The local department must comply with the following minimum conditions of disclosure:

a. The local department must make disclosures to data subjects required under this chapter, during normal business hours;
b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable standard charges for document search and duplication.

4.0 Requesting Party May Seek Representative

The data subject seeking the release of personal information must be permitted to be accompanied by a person or persons of his choosing, who shall furnish reasonable identification. The local department 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.

5.0 Exception to the Government Data Collection and Dissemination Practices Act, § 2.2-3802(7) of the Virginia Code

The provisions of Va. Code § 2.2-3800 et seq. are not applicable to personal information systems maintained by local departments 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 Va. Code § 2.2-3802.

E. Releasing Information to the Alleged Abuser or Neglector

1.0 Information the Alleged Abuser or Neglector is Entitled

The alleged abuser or neglector maintains the right to access information about himself, including the right to examine a copy of the automated data systems form subject to the restrictions in this policy manual. The Virginia Administrative Code states:

> **22 VAC 40-705-160(A)(5). Any individual, including an individual against whom allegations of child abuse and/or neglect were made, may exercise his Government Data Collection and Dissemination Practices Act rights to access personal information related to himself which is contained in the case record, including, with the individual's notarized consent, a search of the Central Registry pursuant to § 2.2-3704 of the Code of Virginia.**

2.0 Alleged Abuser or Neglector May Review Medical and Psychological Information Pertaining to Himself

The alleged abuser or neglector maintains the right to see medical and psychological information about himself. However, if the treating doctor attached a statement to the medical or psychological information that the alleged abuser's or neglector's access to the information could be harmful to the alleged abuser's or neglector's physical or mental health or well being, then the local department may withhold access. Otherwise, medical and psychological information must be released on request.

3.0 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 local department believes that the release of the information would be contrary to the child's best interest, then the local department may deny that request. If the local department believes the release of information would be in the child's best interest, such information may be released with the exception of medical or psychological information to which the treating physician attached a statement that the client's access to the information could be harmful to the client's physical or mental health or well being. The parent should be referred to the source for access to this information.

The parent, caretaker or guardian is entitled to access to any personal information about himself that is contained in the child protective services record pursuant to the Government Data Collection and Dissemination Practices Act.

4.0 Reasonable Time to Edit Record for Release

When the alleged abuser or neglector requests information, the Virginia Administrative Code provides the local department reasonable time to redact or edit the information needing to be protected. 22 VAC 40-705-160(A)(6) provides that:

> **22 VAC 40-705-160(A)(6). When the material requested includes personal information about other individuals, the local department shall be afforded a reasonable time in which to redact those parts of the record relating to other individuals.**

The local department must ensure that the alleged abuser or neglector is only provided access to that portion of the record concerning him with safeguards taken to assure the privacy rights of the other persons mentioned in the case record including protecting the name of the complainant.

5.0 Local Department Must Respond to Request With Reasonable Promptness

When the alleged abuser or neglector makes a request, pursuant to the Government Data Collection and Dissemination Practices Act, to see his personal information in the case record, the local department must respond to this request with reasonable promptness. However, the Virginia Freedom of Information Act and the Government Data Collection and Dissemination Practices Act contain exceptions. Not all information can be released to the individual making the request.

6.0 Alleged Abuser or Neglector May Designate Representative

The right to access information may be exercised directly by the individual or by any representative of his choice designated by him in writing.

7.0 Criminal Investigation Suspends Access to Records (Government Data Collection and Dissemination Practices Act)

During a criminal investigation, the alleged abuser's or neglector's right to access the records of a CPS investigation is suspended. The statutory authority can be found in § 2.2-3802 of the Code of Virginia. The Virginia Administrative Code reflects the statutory intent of the Virginia Code:

> **22 VAC 40-705-160(A)(9). An individual's right to access to information under the Government Data Collection and Dissemination Practices Act is stayed during criminal prosecution pursuant to § 2.2-3802(7) of the Code of Virginia.**

The provisions for releasing information of a CPS investigation, pursuant to the Government Data Collection and Dissemination Practices Act, are suspended when there is a criminal investigation involving the same case.

8.0 Releasing Information to Alleged Abuser or Neglector When Founded Disposition is Appealed

Prior to the local department rendering a disposition, the local department 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 Virginia Code and Virginia Administrative Code. The Code of Virginia provides for greater disclosure of the CPS record after the local department renders a disposition. Va. Code § 63.2-1526 (Appeals of certain actions of local departments) allows the alleged abuser or neglector the opportunity to review the record providing the basis for the local department's disposition of abuse or neglect when an appeal of a disposition has been lodged. Upon written request, the local department must provide the

appellant all the information used in making its determination except disclosure of the complainant's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Any other information prohibited from being disclosed by state or federal law or regulation must not be released.

8.1 Appellant Must Be Informed of Procedures for Making Information Available & 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.

8.2 Appellant's Access to CPS Record is Stayed During Criminal Proceeding

§ 63.2-1526(C)(Appeals of certain actions of local departments) of the Code of Virginia, stays (i.e., suspends) the appellant's right to access the local department's record during the administrative appeal process whenever a criminal charge involving the same appellant for the same conduct involving the same victim is proceeding.

F. RELEASING INFORMATION TO LEGITIMATE INTERESTS

If a local department receives a request for information about a CPS case, and release of that information is not mandated or prohibited by Federal law, the Virginia Code or the Virginia Administrative Code, then release of that information is at the local department's discretion. §§ 63.2-102 (Allowing Access to Records; Penalty) and 63.2-105 (Confidential Records) of the Code of Virginia provide the foundation for the disclosure of findings or information about a case of child abuse or neglect. All records and statistical registries of the Virginia Department of Social Services and of the local boards, including child protective service records, are confidential. However, §§ 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.

1.0 Authority to Release Information When Disclosure is Not Mandated

22 VAC 40-705-160 (B) summarizes the authority to release information to persons when that release is not mandated. The Virginia Administrative Code states,

The local department may use discretion in disclosing or releasing child protective services case record information, investigative and on-going services to parties having a legitimate interest when the local department deems disclosure to be in the best interest of the child. The local department may disclose such information without a court order and without a written release pursuant to § 63.2-104(A) of the Code of Virginia.

Each request for or act of disclosure must be individually evaluated. Evaluating a request 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.

2.0 Definition of Legitimate Interest

The definition section of the Virginia Administrative Code (22 VAC 40-705-10) defines legitimate interest as:

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

3.0 Identifying Parties with Legitimate Interest

Individuals and organizations considered to have a legitimate interest include but are not limited to:

a. An agency having the legal or designated authority to treat or supervise a child who is the subject of a complaint;

b. The administrator of an institution in cases involving abuse or neglect by an employee of the facility;

c. Members of a multidisciplinary team, a family assessment, or a planning team;

d. Police, other law-enforcement agency or Commonwealth's attorney;

e. A physician treating an allegedly abused or neglected child;

f. A person legally authorized to place a child in protective custody;

g. A parent, guardian or other person who is responsible for the welfare of a child;

h. The guardian ad litem for the child;

i. A court;

j. Military Family Advocacy Program;

k. A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

l. Any appropriate state or local agency responsible for child protective services;

m. A legislator carrying out official functions;

n. 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 Service Programs must give prior approval;

o. A person who is responsible for investigating a report of known or suspected abuse or neglect;

p. A state or local government child welfare or human service agency when they request information to determine the compliance of any person with a child protective services plan or order of any court;

q. Personnel of the school or child day program (as defined in Code of Virginia § 63.2-100) attended by the child so that the local department 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;

r. A parent, grandparent, or any other person when they would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his current custodian.

The identification of a party as having a legitimate interest must be consistent with Virginia Code § 63.2-105(A).

PART X: TRAINING

A. UNIFORM TRAINING PLAN FOR CHILD PROTECTIVE SERVICES WORKERS

The Virginia Administrative Code (22 VAC 40-705-180) mandates uniform training requirements for CPS workers and supervisors.

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

The uniform training requirements include establishing minimum standards for all CPS workers in Virginia.

1.0 Minimum Training Requirements for CPS Workers to Conduct Investigations

22 VAC 40-705-180(B) requires CPS workers to complete skills and policy training within the first year of employment.

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

All child protective services staff who *provide responses to reports of child abuse/neglect*, or manage/supervise any CPS investigation *or family assessment*, shall complete the following as soon as possible after their hire date, but no longer than within their probationary period, or one year -- whichever is longer.

1.1 First Year Mandatory Training

The first year mandatory requirement courses include:

a. Complete an ITNA (Individualized Training Needs Assessment) with their supervisor;

b. Complete New Worker Child Protective Services Policy offered by the Virginia Department of Social Services (Should be obtained within the first three months of performing CPS functions and prior to VISSTA courses)

c. Complete the following Mandatory Courses offered by VISSTA:

(1) VISSTA Course *CWS 2011/Intake, Assessment and Investigation in Child Protective Services*
(2) VISSTA Course *CWS 2021/Sexual Abuse*
(3) VISSTA Course *CWS 2031/Sexual Abuse Investigations*

1.2 Additional Training Requirements

The following required VISSTA courses shall be completed by all CPS workers within one year after the first one-year period (within 2 years of the start of CPS employment with a local department) if a specific need is assessed by the worker and supervisor. Even when a specific need is not identified, the Virginia Department of Social Services encourages workers to complete the following required courses:

a. VISSTA Course *CWS1001/Exploring Child Welfare*
b. VISSTA Course *CWS 1011/Casework Process & Case Planning in Child Welfare*
c. VISSTA Course *CWS 1021/Effects of Abuse & Neglect on Child and Adolescent Development*
d. VISSTA Course *CWS 1031/Separation and Loss Issues in Human Service*
e. VISSTA Course *CWS 1051/Crisis Intervention*
f. VISSTA Course *DVS 1001/Understanding Domestic Violence*
g. VISSTA Course DVS 1031/Domestic Violence and its Impact on Children

2.0 Local Department Must Ensure Worker Compliance

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

2.1 Direct Supervision Required When New Worker is Conducting Investigation of Sexual Abuse Allegation

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

3.0 Minimum Training Requirements on Family Abuse for CPS Workers and Supervisors

The Code of Virginia now requires that CPS staff receive at least minimal training on family abuse and domestic violence. This requirement can be met by participation in VISSTA Course DVS 1001 or 1031.

4.0 Special Requirements to be Qualified to Perform Designated Out of Family Investigations

In addition to the above minimum standards, any staff who shall be considered qualified to perform designated out of family investigations in a state regulated setting (licensed or registered family day homes, day care centers, public and private schools, and child residential settings) shall have completed "State Policy Training on Out of Family Investigations" offered by the State Department of Social Services.

> ***22 VAC 40-730-130. Requirements.***
> ***A. In order to be determined qualified to conduct investigations in out of family settings, local CPS staff shall meet minimum education standards established by the department including:***
> ***1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and***
> ***2. Completion of out of family policy training.***

4.1 Out of Family Investigations Training

In addition, in those cases where the local department CPS worker and the supervisor identify a need, such staff must also complete VISSTA Course # *CWS2141/* Out of Family Investigations before performing these investigations.

4.2 Notification upon Completion of Training Requirements

As soon as a local CPS worker has completed these requirements, the local department of social services shall contact Central Office, Child Protective Services Program, to place the local worker's name on the State list of qualified out of family investigators.

PART XI: OUT OF FAMILY INVESTIGATIONS

The Virginia Administrative Code (22 VAC 40-730-10 et seq.) provides additional requirements for the investigation of a complaint or report alleging abuse or neglect involving an alleged abuser or neglector **who is not part of the alleged victim child's family**, but who is considered a caretaker. The policy manual refers to this type of investigation as an "Out of Family Investigation." An out of family investigation should be conducted in the same manner as any other investigation, unless otherwise specified by the Virginia Administrative Code and this Part XI of the policy manual. Most of this section of policy provides guidance for investigating designated out of family situations. However, it is important to identify out of family situations that are not designated, as well. For instance, the neighbor who baby-sits but is not regulated in any way and is determined to be a caretaker for CPS purposes should be accepted in OASIS as an out of family investigation.

A. DEFINITIONS

22 VAC 40-730-10 of the Virginia Code provides the additional requirements for an out of family investigation. 22 VAC 40-730-10 provides the following definitions to:

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

> **"Caretaker," for the purpose of this chapter, means any individual determined to have the responsibility of caring for a child.**
>
> **"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.**
>
> **"Complaint" means a valid report of suspected child abuse or neglect which must be investigated by the local department of social services.**
>
> **"Child day center" means a child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision, protection, and well-being of children during absence of a parent or guardian, as defined in §63.2-100 of the Code of Virginia. For the purpose of this chapter, the term shall be limited to include only state licensed child day centers and religiously exempted child day centers.**
>
> **"Department" means the Department of Social Services.**

"Disposition" means the determination of whether abuse or neglect occurred.

"Facility" means the generic term used to describe the setting in out of family abuse or neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, child day centers, state regulated family day homes, and residential facilities.

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

"Family day home," for the purpose of this chapter, means a child day program as defined in §63.2-100 of the Code of Virginia where the care is provided in the provider's home and is state regulated; locally approved or regulated homes are not included in this definition.

"Local agency" means the local department of social services responsible for conducting investigations of child abuse or neglect complaints as per §63.2-1503 of the Code of Virginia.

“Participate” means to take part in the activities of the joint investigation as per a plan for investigation developed by the CPS worker with the facility administrator and/or regulatory authority or both.

"Physical plant" means the physical structure/premises of the facility.

"Regulatory authority" means the department or state board that is responsible under the Code of Virginia for the licensure or certification of a facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians, that is subject to licensure or certification pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities, and respite care facilities.

B. OUT OF FAMILY INVESTIGATIONS

1.0 General CPS Policies for Out of Family Investigations

The general policy for an out of home investigation is provided by 22 VAC 40-730-20:

> **Complaints of child abuse or neglect involving caretakers in out of family settings are for the purpose of this *(regulation)* chapter complaints in state licensed and religiously exempted child day centers, regulated family day homes, private and public schools, group residential facilities, hospitals or institutions.**
> **These complaints shall be investigated by qualified staff employed by local departments of social services or welfare.**
>
> **Staff shall be determined to be qualified based on criteria identified by the department. All staff involved in investigating a complaint must be qualified.**
>
> **This regulation is limited in scope to the topics contained herein. All issues regarding investigations, findings and appeals are found in Child Protective Services, 22 VAC 40-705, and as such are cross referenced and incorporated into and apply to out of family cases to the extent that they are not consistent with this regulation.**
>
> **In addition to the authorities and the responsibilities specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is set out in 22 VAC 40-730-30 through 22 VAC 40-730-130.**

When a complaint alleges that a child has been abused or neglected in an out of family setting, special procedures may apply.

2.0 Investigation Procedures for Public School Employees

C. Each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

§ 63.2-1516.1. Investigation procedures when school employee is subject of the complaint or report; release of information in joint investigations.

A. Except as provided in subsection B of this section, in cases where a child is alleged to have been abused or neglected by a teacher, principal or other person employed by

a local school board or employed in a school operated by the Commonwealth, in the course of such employment in a nonresidential setting, the local department conducting the investigation shall comply with the following provisions in conducting its 4. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.

6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:

a. The identity of the person making the report.

b. Information provided by any law-enforcement official.

c. Information that may endanger the well-being of the child.

d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

B. In all cases in which an alleged act of child abuse or neglect is also being criminally investigated by a law-enforcement agency, and the local department is conducting a joint investigation with a law-enforcement officer in regard to such an alleged act, no information in the possession of the local department from such joint investigation shall be released by the local department except as authorized by the investigating law-enforcement officer or his supervisor or the local attorney for the Commonwealth.

C. Failure to comply with investigation procedures does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.

2.1 LOCAL PROTOCOLS FOR SCHOOL INVESTIGATIONS

Virginia Code requires that each local department of social services and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports against school personnel. The interagency agreement shall be based on recommended procedures for conducting investigations developed by the Departments of Education and Social Services.

Recommended procedures can be found in Appendix A of this policy chapter.

2.2 Legally Required Procedures for Investigations of School Staff

1. The local department shall conduct a face-to-face interview with the person who is the subject of the complaint or report.

2. At the onset of the initial interview with the alleged abuser or neglector, the local department shall notify him in writing of the general nature of the complaint and the identity of the alleged child victim regarding the purpose of the contacts.

3. The written notification shall include the information that the alleged abuser or neglector has the right to have an attorney or other representative of his choice present during his interviews. However, the failure by a representative of the Department of Social Services to so advise the subject of the complaint shall not cause an otherwise voluntary statement to be inadmissible in a criminal proceeding.

4. Written notification of the findings shall be submitted to the alleged abuser or neglector. The notification shall include a summary of the investigation and an explanation of how the information gathered supports the disposition.

5. The written notification of the findings shall inform the alleged abuser or neglector of his right to appeal.

6. The written notification of the findings shall inform the alleged abuser or neglector of his right to review information about himself in the record with the following exceptions:

a. The identity of the person making the report.

b. Information provided by any law-enforcement official.

c. Information that may endanger the well-being of the child.

d. The identity of a witness or any other person if such release may endanger the life or safety of such witness or person.

Failure to comply with investigation procedures listed in one through six above does not preclude a finding of abuse or neglect if such a finding is warranted by the facts.

C. NON DESIGNATED OUT OF FAMILY INVESTIGATIONS

If the out of family setting is not covered under Designated Out of Family, but the setting is one in which an outside agent approves the setting and places children there (including but not limited to child placing agencies and locally approved foster homes, family day homes and in-home providers) the following procedures apply in addition to all policy requirements, authorities and responsibilities set out in this chapter for all child protective services investigations.

1.0 Contact Approval Agent

Once the identity of the approval agent is known, the worker shall inform the approval agent of the nature of the complaint, and shall continue to apprise the agent of the progress of the investigation as needed, providing sufficient information for the agent to make interim placement decisions and ensure the safety of the children in the setting. The worker shall inform the lead caretaker in the setting that this notification has been made and that the outcome will be shared with the approval agent. These notifications shall be documented in the case narrative.

1.1 Identifying Approval Agent

For a foster home approved by a child placing agency, the approval agent is the child placing agency; for a locally approved foster home, family day home, or in-home provider, the approval agent is the local department of social services which approved the setting or provider.

2.0 Approval Agent May Assist Local Department

The approval agent, or a designated staff member, may assist the CPS worker with facilitating the investigation. The approval agent, or designated staff member, would not be acting as a co-investigator. The CPS worker may request that the approval agent or staff assist with gaining information, accessing parties, or avoiding duplication of interviews. The approval agent may also be a resource to provide services or assistance needed to ensure the safety of any remaining children.

3.0 Notifying Approval Agent of Investigation Findings

At the conclusion of the investigation, the local department must notify the approval agent verbally or in writing of the disposition and significant findings. Enough information should be shared so that the agent can make decisions about current and future placements and can know what services they should be providing to the caretaker.

D. INVESTIGATIONS IN DESIGNATED OUT OF FAMILY SETTINGS

1.0 Designated Out of Family Settings

Complaints or reports of abuse or neglect in a designated out of family setting involve additional requirements concerning the investigation. Designated out of family settings include:

a. State licensed and religiously exempted child day centers;
b. State regulated family day homes;

c. Private and public schools;
d. Residential facilities;
e. Hospitals and institutions.

Any complaints or reports of abuse involving a caretaker in a designated out of family setting shall be investigated according to the requirements in this section. The policy for investigations in designated out of family settings is to be followed in addition to all policy requirements, authorities and responsibilities set out in this chapter for all child protective services investigations.

1.1 Additional Qualifications for Out of Family Investigations

All staff conducting out of family investigations must be qualified according to department requirements for skills and policy training.

1.2 Additional Information for Screening Reports of Abuse/Neglect Against Public School Personnel

This legal definition of what is considered “reasonable and necessary force” should be taken into account in determining validity of reports of abuse or neglect by school employees. It may also be relevant to the dispositional assessment.

2.0 Initial Safety Assessment

Upon receiving a complaint or report involving a caretaker in an out of family setting, the local department should conduct an initial assessment, as described in this policy chapter, Part V, The Investigation, Section C, The Initial Assessment and Safety Plan. The only exception is that the Safety Assessment Checklist and Safety Plan forms used for in-home investigations are not required for designated out of family settings. The initial safety assessment is documented in the on-line automated information system. § 22 VAC 40-730-30 provides the regulatory authority for the initial assessment:

> **Initial Assessment. If the complaint information received is such that the local agency is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the child protective services/CPS worker, the situation is such that the child or children should be immediately removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a plan which addresses the child's or children's immediate safety needs.**

If the complaint information received is such that the local department is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety.

2.1 If Removal of Child is Necessary, Develop Plan

If in the judgment of the CPS worker the situation is such that the child should be immediately removed from the facility, a parent, guardian or agency holding custody shall be notified immediately to mutually develop a plan providing for the child's immediate safety.

2.2 If Emergency Removal is Necessary, Notifications

If it is necessary for the CPS worker to remove the child from the facility under the 72-hour emergency removal authority, the facility administrator and a parent, guardian or agency holding custody shall be informed immediately; written notification shall be provided to the facility at the time of the removal.

2.3 Document All Actions Taken to Ensure Child's Safety

Actions taken to assess and ensure the child's immediate safety should be documented in the automated information system. See Part V, The Investigation, Section C, The Initial Assessment and Safety Plan.

3.0 Involvement of Regulatory Agencies

The Virginia Administrative Code states:

> **22 VAC 40-730-40. Involvement of regulatory agencies. The authority of the local agency to investigate complaints of alleged child abuse or neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these facilities to investigate alleged violations of standards.**

4.0 Local Department Must Contact Regulatory Authority

> **22 VAC 40-730-40(1). For complaints in state regulated facilities and religiously exempted child day centers, the local agency shall contact the regulatory authority and share the complaint information. The regulatory authority will appoint a staff person to participate in the investigation to determine if there are regulatory concerns.**

For complaints in regulated facilities, the local department must contact the lead regulatory authority as quickly as possible after receipt of the complaint and before commencing the investigation.

4.1 Identifying Regulatory Authority

The local department needs to identify the regulatory authority immediately.

a. For facilities licensed or certified by the (state) Department of Social Services (such as child day centers, licensed and voluntarily registered family day homes, and certain child care institutions and group homes), and including religiously exempted child day centers, contact the appropriate licensing unit's supervisor.

b. For facilities certified by the Department of Juvenile Justice (DJJ) (such as detention centers, pre- and post-dispositional group homes, and treatment programs), contact the administrator of the DJJ regional office; for the learning centers, contact the chief of operations for learning centers in the DJJ Central Office.

c. For facilities operated or licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) (such as group homes, drug treatment facilities, psychiatric hospitals providing day or residential services to children, training centers and state mental hospitals), contact the DMHMRSAS Office of Licensure.

d. For facilities licensed by the Department of Education (DOE) (such as schools for the visually and hearing impaired or educationally handicapped), contact the DOE Division of Compliance Coordination.

e. For children's residential facilities regulated by multiple agencies, the Office of the Coordinator, Interdepartmental Regulation of Children's Residential Facilities, is available to assist in identifying the lead licensure or certification authority who must be contacted.

5.0 Develop Investigative Plan

22 VAC 40-730-40(2). The CPS worker assigned to investigate and the appointed regulatory staff person will discuss their preliminary joint investigation plan.

The CPS worker assigned to investigate and the appointed regulatory staff person shall confer on their preliminary investigation plan. The CPS worker and the regulatory staff person shall plan how each will be kept apprised 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.

5.1 If Regulatory Staff is Unavailable

If a designated regulatory staff person is not available to participate in the investigation process in a timely manner, the CPS worker should commence his part of the investigation separately; however, efforts must be made to begin coordination and information-sharing as quickly as possible.

5.2 Joint Interviews & Information Sharing

22 VAC 40-730-40(2)(a). The CPS worker and the regulatory staff person shall review their respective needs for information and plan the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

The local department must share the complaint information with the regulatory authority who will appoint a staff person to participate in the investigation to determine if there are regulatory concerns. This contact must include a review of their respective needs for information and development of a plan for the investigation based on when these needs coincide and can be met with joint interviews or with information sharing.

5.3 Joint Investigation Must Meet Requirements for Local Department & Regulatory Authority

22 VAC 40-730-40(2)(b). The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.

The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the alleged victim child, other children at the facility, and the facility's staff.

5.4 All Contacts with Regulatory Authority Must be Documented

Each contact with the regulatory authority shall be documented in the case narrative.

6.0 Facilities with No Regulatory Authority

The Virginia Administrative Code states:

> **22 VAC 40-730-50(A). In a facility for which there is not a state regulatory authority, such as in schools, the CPS worker shall ask the facility administrator or school superintendent to designate a person to participate in the joint investigative process.**

The designated staff person is not considered a co-investigator with the CPS worker. The function of the designated staff person is intended to minimize duplication of investigation efforts by CPS and the facility. The CPS worker should review the investigative process and confidentiality requirements with the facility designee.

6.1 Joint Investigation with Law-Enforcement & Facility

22 VAC 40-730-50(B). When CPS and law enforcement will be conducting a joint investigation, the CPS worker shall attempt to facilitate a coordinated approach among CPS, law enforcement and the regulatory authority or facility designee.

In an investigation which will also be conducted by CPS jointly with law-enforcement, the CPS worker shall take the lead in attempting to facilitate a coordinated approach among CPS, law-enforcement and the regulatory authority or facility designee in agencies or schools without a regulatory authority to avoid unnecessary duplication and minimize impact on children, families and staff.

6.2 Document all Contacts with Other Parties

Each contact with other parties participating in the investigation shall be documented in the case narrative.

7.0 Contact with CPS Regional Specialist

The Virginia Administrative Code states:

> **22 VAC 40-730-60(A). The local agency shall contact the department's regional CPS coordinator as soon as is practical after the receipt of the complaint. The regional coordinator will review the procedures to be used in**

investigating the complaint and provide any case planning assistance the local worker may need.

The local department supervisor or CPS worker shall contact the regional CPS Specialist (or designee) as soon as is practical after receipt of the complaint and share the complaint information. The regional Specialist will review the procedures required in investigating the out of family complaint and provide any case planning assistance the local staff may need.

7.1 Specialist Shall Monitor Investigation

22 VAC 40-730-60(B). The regional consultant shall be responsible for monitoring the investigative process and shall be kept informed of developments which substantially change the original case plan.

The *CPS Specialist* must be responsible for monitoring the investigative process and shall be kept informed of developments that substantially change the original case plan.

7.2 CPS Specialist Must Review Investigation Before Disposition is Rendered

22 VAC 40-730-60(C). At the conclusion of the investigation the local agency shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and policy requirements for determining whether or not abuse or neglect occurred. However, the statutory authority for the disposition rests with the local agency. This review *shall* not interfere with the requirement to complete the investigation in the legislatively mandated time frame.

At the conclusion of the investigation the CPS worker must contact the regional CPS Specialist to review the case before notifying anyone of the disposition.

a. The purpose of the review is to provide consultation and technical assistance.

b. When possible, this review should include the worker's supervisor.

c. These parties shall review the facts gathered and the requirements for disposition to assure compliance with policy.

d. This requirement does not override the fact that statutory authority for the disposition rests with the local department, nor should it interfere with the requirement to complete the investigation in the legislatively mandated time frame.

7.3 Document All Contacts with CPS Specialist

Each contact with the CPS Specialist regarding the case must be documented in the case narrative.

8.0 Contact with the Facility Administrator

The Virginia Administrative Code requires the CPS worker to contact the facility administrator:

> **22 VAC 40-730-70(A). The CPS worker shall initiate contact with the facility administrator at the onset of the investigation.**

The facility administrator is the on-site individual responsible for the day-to-day operation of the facility. The CPS worker must initiate contact with the facility administrator or his designee at the onset of the investigation.

8.1 Initial Contact May be Made by Telephone

This contact may be made by telephone prior to the initial on-site visit or, when circumstances warrant, during the initial on-site visit.

8.2 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.

9.0 Sharing Information with Facility Administrator

> **22 VAC 40-730-70(B). The CPS worker shall inform the facility administrator or his designee of the details of the complaint. When the administrator or designee chooses to participate in the joint investigation, he will be invited to participate in the plan for investigation, including decisions about who is to be present in the interviews. If the administrator or designee is the alleged abuser or neglector, this contact should be initiated with the individual's superior, which may be the board of directors, etc. If there is no**

superior, the CPS worker may use discretion in sharing information with the administrator.

The worker shall inform the administrator or designee of the allegations in the complaint and the preliminary plans for the investigation. If there is no apparent conflict of interest in doing so, in facilities without a regulatory authority (schools), the administrator or designee should be invited to assist with the planning of the investigation.

9.1 Arrange Necessary Interviews, Observations & Access to Information

22 VAC 40-730-70 requires the CPS worker to make arrangements necessary for the completion of the investigation.

Arrangements are to be made for:
1. Necessary interviews;
2. Observations including the physical plant; and
3. Access to information, including review of pertinent policies and procedures.

Arrangements should be made with the administrator or designee for access to all information needed at the facility, including interviews with staff or children, observation of the physical plant, and review of pertinent policies, procedures and records.

In a facility without a regulatory authority, such as in a school, the administrator or designee shall have been invited by the CPS worker to participate in the planning of the investigation; and if there is no conflict of interest may have been involved in the interview process. If the administrator or designee chooses not to be involved in the planning process, he shall nevertheless be apprised of the progress of the investigation, as described in previous paragraph.

9.2 CPS Worker Must Update Facility Administrator of Investigation

22 VAC 40-730-70(D). The CPS worker shall keep the facility administrator apprised of the progress of the investigation. In a joint investigation with a regulatory staff person, either party may fulfill this requirement.

The CPS worker shall keep the facility administrator (or his designee or superior as appropriate) apprised of the progress of the investigation through the ongoing planning and implementation of the investigation. How the information is to be shared should be part of the initial plan. In a joint investigation with a regulatory authority, the CPS worker and the

regulatory staff person may decide which party will fulfill this requirement. The selected party must be kept fully aware of both parties' progress and apprise the administrator of both.

In a facility without a regulatory authority, such as in a school, the administrator or designee shall have been invited by the CPS worker to participate in the planning of the investigation; and if there is no conflict of interest may have been involved in the interview process. If the administrator or designee chooses not to be involved in the planning process, he shall nevertheless be apprised of the progress of the investigation, as described in the previous paragraph.

9.3 Document all Contacts with Facility Administrator

Each contact with the facility administrator, his superior, and other staff shall be documented in the automated information system.

10.0 Contact with the Alleged Victim Child and Parent/Guardian

The Virginia Administrative Code requires contacting the alleged victim child:

> **22 VAC 40-730-80 Contact with the alleged victim child. The CPS worker shall interview the alleged victim child and shall determine along with a regulatory staff person or facility administrator or designee who may be present in the interview. Where there is an apparent conflict of interest, the CPS agency shall use discretion regarding who is to be included in the interview.**

The child's parent, guardian or agency holding custody shall be informed early in the process about the complaint involving their child.

a. The investigative process should be explained to the child's parents, guardian or agency holding custody. The child's parents, guardian or agency holding custody should be interviewed to obtain information about the child and about their knowledge of the allegations and the facility.

b. The child's parents, guardian or agency holding custody should be kept apprised of sufficient information to involve them in planning and support for the child.

10.1 Notify Parent or Guardian of Interview with Child

The parents, guardian or agency holding custody should be informed of their child's interview in advance; when this is not practical, they shall be informed as quickly as possible after the interview.

11.0 CPS Worker Determines Who May Be Present During Interview with Child

When the CPS worker is conducting an interview with the alleged victim child, the CPS worker shall determine who may be present during the interview, taking into consideration both the comfort of the child and other parties' need to have first-hand information. The CPS agency has the final authority over who may be present if there is no consensus between CPS worker, regulatory staff and/or facility administrator or designee when issues arise such as the discomfort of the interviewee or an apparent conflict of interest.

12.0 Document Contacts With Child, Family, Guardian or Agency

Each contact with the alleged victim child and his family, guardian or agency holding custody shall be documented in the case narrative.

13.0 Contact with the Alleged Abuser or Neglector

The Virginia Administrative Code requires contacting the alleged abuser or neglector:

> **22 VAC 40-730-90 Contact with the alleged abuser or neglector.**
> **A. The CPS worker shall interview the alleged abuser or neglector according to a plan developed with the regulatory staff person, facility administrator, or designee. Where there is an apparent conflict of interest, the CPS agency shall use discretion regarding who is to be *included* in the interview. At the onset of the initial interview with the alleged abuser or neglector, the CPS worker shall notify him in writing of the general nature of the complaint and the identity of the alleged victim child to avoid any confusion regarding the purpose of the contacts.**
> **B. The alleged abuser or neglector has the right to involve a representative of his choice to be present during his interviews.**

The CPS worker shall notify the alleged abuser or neglector in writing of the general nature of the complaint and the identity of the alleged victim child at the onset of the initial interview with him in order to avoid any confusion regarding the purpose of the contact.

13.1 Alleged Abuser or Neglector May Seek Assistance

The alleged abuser or neglector has the right to involve the facility administrator or a representative of his choice, or both, in his interviews. He should also be informed about who will be present in the interview, if anyone other than the CPS worker is planning to be present.

13.2 Document Contacts with Alleged Abuser or Neglector in Writing

Each contact with the alleged abuser or neglector and his representative shall be documented in the case narrative.

14.0 Contact with Collateral Children and Parents or Guardians

The Virginia Administrative Code requires contacting collateral children:

> **22 VAC 40-730-100 Contact with collateral children. The CPS worker shall interview nonvictim children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's parent, guardian or agency holding custody. If the situation warrants contact with the child prior to such consent being obtained, the parent, guardian or agency holding custody should be informed as soon as possible after the interview takes place.**

The CPS worker's regulatory staff person and/or facility administrator or designee may interview children not alleged to be victims and their parents or guardians as collaterals if it is determined that they may have relevant information. Minimal information about the nature of the complaint may be shared with the parent or guardian to facilitate the interview.

a. Before interviewing a collateral child, consent of the child's parent, guardian, or agency holding custody should be obtained, except as provided below.

b. If urgent circumstances warrant contact with the child prior to consent being obtained (such as when a delay could adversely impact protection of the victim or other children), the worker may proceed with the interview if the facility is willing to allow access to the child. The CPS worker shall notify the parent, guardian or agency holding custody as soon as possible that such an interview has taken place.

14.1 Document Contacts with Collateral Children in Writing

Each contact with collateral children and their families, guardians or agency holding custody shall be documented in the case record.

E. THE INVESTIGATIVE FINDINGS

The Virginia Administrative Code requires reporting the findings of the investigation to the facility administrator:

> **22 VAC 40-730-110 Report the findings. Written notification of the findings shall be submitted to the facility administrator and the regulatory staff person involved in the investigation, if applicable, at the same time the alleged Abuser or neglector is notified.**
>
> **If the facility administrator is the abuser or neglector, written notification of the findings shall be submitted to his superior if applicable.**

1.0 Notify Alleged Abuser or Neglector & Facility Administrator

When the disposition is finalized, the alleged abuser or neglector and the facility administrator should be notified promptly. If practicable, the alleged abuser or neglector should be informed first, or at the same time as the facility administrator.

1.1 Verbal Informing & Written Report of Findings (Founded or Unfounded)

A verbal informing of the disposition and a written report of the findings shall be submitted to the facility administrator and, if applicable, to the involved regulatory staff person and the Superintendent in a public school, as soon as practicable after the disposition is made.

a. This report of the findings shall include:

   (1) identification of the alleged abuser or neglector and victim, the type of abuse or neglect, and the disposition; and

   (2) a summary of the investigation and an explanation of how the information gathered supports the disposition.

b. A copy of this report shall be sent to the alleged abuser or neglector with his disposition and appeal notification letter.

c. If the facility administrator was the alleged abuser or neglector, this report shall be submitted to the superior who was initially informed of the investigation, if applicable.

d. If the facility is a public school, a copy of the report shall also be sent to the local school superintendent.

2.0 Written Notification to Parent, Guardian or Custodial Agency

Written notification of the findings shall be made to the parent, guardian or the agency holding custody of the alleged victim child; a verbal follow-up is also encouraged. The worker may use discretion in determining the extent of investigative findings to be shared; however, sufficient detail must be provided for the child's custodian to know what happened to his child, to make plans for the child and to provide needed support and services.

3.0 Document All Notifications in the Automated Information System

Each written notification shall be documented in the automated information system, identifying all recipients, and identifying where a copy of each written notification can be found.

4.0 All Other Inquiries Referred to Facility Administrator

Inquiries from others about the findings should be directed to the facility administrator or his superior and, when applicable, to the regulatory authority.

5.0 Follow-up

Post-investigative treatment services may be provided as needed by the local department to the child, family, and abuser and/or neglector.

a. Post-investigative follow-up with the facility to ensure corrective action is generally the responsibility of the regulatory authority and the facility administration (or in public schools, the local school board).

b. If it appears that children continue to be at risk of harm in the facility, the local department shall consult with the CPS regional coordinator or local department legal counsel regarding what other actions should be pursued.

F. PURGING

When the local department is notified that a case is to be purged from the Central Registry, the local department shall purge its hard copy record and notify all others with whom written reports on the investigation were shared that the local department has been directed to purge its records.

G. COMPLIANCE MONITORING

The Virginia Administrative Code requires monitoring of cases:

> **22 VAC 40-730-120 Monitoring of cases for compliance. A sample of cases will be reviewed by department staff to ensure compliance with policies and procedures.**

In addition to the involvement of the regional CPS coordinator in each investigation, a random sample of out of family investigation case records will be reviewed by state staff to ensure compliance with policies and procedures.

H. TRAINING

The Virginia Administrative Code mandates training:

> **22 VAC 40-730-130. Requirements.**
> **A. In order to be determined qualified to conduct investigations in out of family settings, local CPS staff shall meet minimum education standards established by the department including:**
> **1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills; and**
> **2. Completion of out of family policy training.**
> **B. The department and each local agency shall maintain a roster of personnel determined qualified to conduct these out of family investigations.**

PART XII: APPEALS

The statutory authority for a person seeking review of a local department's finding of abuse or neglect can be found in Va. Code § 63.2-1506. The regulatory section pertaining to appeals of findings of abuse and neglect can be found in 22 VAC 40-705-190. The definition section of 22 VAC 40-705-10 defines administrative appeal rights as:

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

That same section also provides a definition of appellant:

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

When a person found to have committed abuse or neglect requests a local conference or a state administrative hearing that person is referred to as the appellant.

Appeal procedures of founded dispositions of “in family investigations” and “out of family investigations” do not differ.

Va. Code § 63.2-1526 (A). A person who is suspected of or is found to have committed abuse or neglect may, within thirty days of being notified of that determination, request the local department rendering such determination to amend the determination and the local department's related records…

Va. Code § 63.2-1526 (B). …The Board shall adopt regulations necessary for the conduct of such hearings…

The section of the Virginia Administrative Code pertaining to appeals is 22 VAC 40-705-190(A):

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

A. THE LOCAL CONFERENCE

The first level of the appeal process is the local conference. Va. Code § 63.2-1526(A) provides the authority for the local department to conduct the local conference.

Va. Code § 63.2-1526(A)… The local department shall hold an informal conference or consultation where such person, who may be represented by counsel, shall be entitled to informally present testimony of witnesses, documents, factual data, arguments or other submissions of proof to the local department…

1.0 Time Frames for Requesting Local Conference

The alleged abuser or neglector must request a local conference within specified time frames. Failure to meet a specified time frame may result in the alleged abuser or neglector forfeiting his right to further appeal.

1.1 Requesting the Local Conference

22 VAC 40-705-190(B). If the alleged abuser and/or neglector is found to have committed abuse or neglect, that alleged abuser and/or neglector may, within 30 days of being notified of that determination, submit a written request for an amendment of the determination and the local department's related records, pursuant to § 63.2-1526(A) of the Code of Virginia. The local department shall conduct an informal conference in an effort to examine the local department's disposition and reasons for it and consider additional information about the investigation and disposition presented by the alleged abuser and/or neglector. The local department shall notify the child abuse and neglect information system that an appeal is pending.

The alleged abuser or neglector must make a request for a local conference within 30 days of receiving notification of the founded disposition or dispositions of abuse and/or neglect. If the alleged abuser or neglector fails to make a timely request for a local conference, then the alleged abuser or neglector forfeits his right to a local conference. When the local department receives a timely request for a local conference, the local department must notify the automated data system that an appeal is pending.

1.2 Request for a Local Conference Must be Made in Writing

A request to amend the record must be made in writing to the local director within 30 days of receipt of the local department decision by the alleged abuser. The local department must stamp the date of receipt on

the request. The local department must also notify the automated data system an appeal is pending.

2.0 Appeal Automatically Stayed

Va. Code § 63.2-1526 (C). Whenever an appeal of the local department's finding is made and a criminal charge is also filed 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 circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.

22 VAC 40-705-190(C). Whenever an appeal is requested and a criminal charge is also filed against the appellant for the same conduct involving the same victim child as investigated by the local department, the appeal process shall be stayed until the criminal prosecution in circuit court is completed pursuant to § 63.2-1526(C) of the Code of Virginia. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation pursuant to § 63.2-1526(C) of the Code of Virginia.

There are three conditions that must be met before the appeal process, at the local level or the state level, is automatically suspended:

a. A criminal proceeding must be against the alleged abuser or neglector whom the local department made the founded disposition against;

b. The criminal proceeding must involve the same victim child or children whom the local department named as the victim child or children in the founded disposition;

c. The alleged criminal conduct must be the same conduct upon which the local department made the founded disposition of abuse or neglect.

If all three conditions are met, the appeal process is stayed until completion of the criminal process. The Code of Virginia places responsibility on the local department to notify the alleged abuser or neglector when the criminal proceeding has been completed and the appeal process may resume.

3.0 Failure to Meet Forty-Five Day Time Frame to Conduct the Hearing

Va. Code § 63.2-1526(A)… If the local department refuses the request for amendment or fails to act within forty-five days after receiving such request, the person may, within thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it appears, by a preponderance of the evidence, that the determination or record contains information which is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject of the determination or record and therefore shall be amended…

> **22 VAC 40-705-190(D). The local department shall conduct an informal, local conference and render a decision on the appellant's request to amend the record within 45 days of receiving the request. If the local department either refuses the appellant's request for amendment of the record as a result of the local conference, or if the local department fails to act within 45 days of receiving such request, the appellant may, within 30 days thereafter and in writing, request the commissioner for an administrative hearing, pursuant to § 63.2-1526(A) of the Code of Virginia.**

The local director, or a designee of the local director, shall arrange a convenient time for an informal conference with the appellant. The local conference must be conducted and the decision issued within 45 days of the appellant's appeal request (unless extended as noted below).

3.1 The Local Department Must Conduct a Local Conference

The local department must make a good faith effort to schedule and conduct a local conference. If the local department fails to conduct a local conference, the local department must document the reasons why the local conference did not occur in writing for the record. Failure to conduct a local conference may affect the outcome of a circuit court appeal.

4.0 Appellant May Request Extension

Va. Code § 63.2-1526(A)… A person who is the subject of a report who requests an amendment to the record, as provided above, has the right to obtain an extension for an additional specified period of up to sixty days by requesting in writing that the forty-five days in which the local department must act be extended. The extension period, which

may be up to sixty days, shall begin at the end of the forty-five days in which the local department must act. When there is an extension period, the thirty-day period to request an administrative hearing shall begin on the termination of the extension period.

22 VAC 40-705-190(E). The appellant may request, in writing, an extension of the 45-day requirement for a specified period of time, not to exceed an additional 60 days. When there is an extension period, the 30-day time frame to request an administrative hearing from the Commissioner of the Department of Social Services shall begin on the termination of the extension period pursuant to § 63.2-1526(A) of the Code of Virginia.

The appellant may request an extension of the 45 day local conference time frame for a specified period, not to exceed an additional 60 days. The appellant must request this extension in writing. The extension period begins at the end of the original 45 days; the local conference must be held and the local department decision issued within the extended time frame. If an extension is requested, the 30 day period for the appellant to request an administrative hearing begins at the end of the extension period.

5.0 Disclosing Information, Local Conference

Va. Code § 63.2-1526(A)… Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of a collateral witness or any other person shall not be released if disclosure may endanger his life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released…

Va. Code § 63.2-1526(B)… The Board shall adopt regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right: (I) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld.

22 VAC 40-705-190(F). Upon written request, the local department shall provide the appellant all information used in making its determination. Disclosure of the reporter's name or information which may endanger the well-being of a child shall not be released. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety. Information prohibited from being disclosed by state or federal law or regulation shall not be released. In case of any information withheld, the

appellant shall be advised of the general nature of the information and the reasons, of privacy or otherwise, that it is being withheld, pursuant to § 63.2-1526(A) of the Code of Virginia.

Prior to the local conference, the appellant shall have the opportunity to review the record pursuant to Code of Virginia § 63.2-1526. Upon written request the local department shall provide the appellant all information used in making its determination with the following exceptions:

a. Disclosure of the complainant's name or information which may endanger the well-being of a child shall not be released.

b. The identity of collateral witnesses or any other person shall not be released if disclosure may endanger their life or safety.

c. Information prohibited from being disclosed by state or federal law or regulation shall not be released.

5.1 Audio Tape Recording of Interview of Alleged Victim Child

Releasing the contents of an audio tape recorded interview with the alleged victim child must be conducted in the same manner as releasing any other confidential information for the purposes of the local conference or the state administrative hearing. The appellant is entitled to a copy of the audio tape recording unless disclosure of the contents of the audio tape recording would endanger the health or safety of the child or any other person pursuant to Va. Code § 63.2-1526(A), or the information is protected by federal statute, the Virginia Code or the Virginia Administrative Code. The local department is not required to release confidential information contained on the audio tape recording if it is protected by law or regulation. However, the local department must abstract or summarize information from the audio tape recording or convert the audio tape recording into one form, such as a typed transcript, so that information needing to remain confidential may be redacted or edited out. The local department should make reasonable efforts to reach an agreement with the alleged abuser or neglector concerning the production of the audio tape recording. If question arises concerning redacting or editing information from the audio tape recorded interview of the alleged victim child, the local department should seek guidance from the regional CPS Specialist or from audio tape guidelines developed by the Department.

5.2 Appellant Must be Informed of Procedures Concerning the Withholding of 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.

6.0 Who May Preside Over the Local Conference

Va. Code § 63.2-1526(A)… With the exception of the local director, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the informal conference…

22 VAC 40-705-190(G). The director of the local department, or a designee of the director, shall preside over the local conference. With the exception of the director of the local department, no person whose regular duties include substantial involvement with child abuse and neglect cases shall preside over the local conference, pursuant to § 63.2-1526 (A) of the Code of Virginia.

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.

7.0 Appellant May Seek Assistance of Counsel

22 VAC 40-705-190(G)(1). The appellant may be represented by counsel, pursuant to § 63.2-1526 (A) of the Code of Virginia.

Participants in the local conference will include the appellant and, if the appellant chooses, a legal representative, and the worker who made the disposition on the case.

Legal counsel may appear in lieu of the appellant. This has occurred on occasion, and should be permitted. There is nothing that precludes legal counsel from appearing on behalf of the appellant or the appellant refusing to testify.

8.0 Submission of Proof

22 VAC 40-705-190(G)(2). The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof, pursuant to § 63.2-1526 (A) of the Code of Virginia.

During the informal conference, the appellant is entitled to present testimony of witnesses, and to submit any additional documentation or arguments deemed relevant to the disposition. Such documentation needs to be included as part of the record.

9.0 Time Frame for Results of Local Conference

22 VAC 40-705-190(G)(3). The director of the local department, or a designee of the director, shall notify the appellant, in writing, of the results of the local conference within 45 days of receipt of the written request from the appellant unless the time frame has been extended as described in subsection E of this section. The director of the local department, or the designee of the director, shall have the authority to sustain, amend, or reverse the local department's findings. Notification of the results of the local conference shall be mailed, certified with return receipt, to the appellant. The local department shall notify the child abuse and neglect information system of the results of the local conference.

9.1 Local Director's Authority to Amend

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.

9.2 Written Decision of Results

The director or the director's designee shall issue a written decision by certified mail, return receipt requested, as a result of the informal conference within 45 days of receipt of the written request from the appellant unless the time frame has been extended as described above. The written decision shall prescribe:

a. What action will be taken on the request for amendment, and

b. What further appeal rights exist.

9.3 Notify Automated Data System of Results

The automated data system must also be notified of the results of the local conference.

9.4 Notify All Original Recipients of Notifications

If as a result of the local conference, the original disposition is amended, the parents of the involved child(ren) and all others who received notification initially must be notified.

B. STATE ADMINISTRATIVE APPEAL

1.0 Time Frames to Request State Administrative Hearing

22 VAC 40-705-190(H). If the appellant is unsatisfied with the results of the local conference, the appellant may, within 30 days of receiving notice of the results of the local conference, submit a written request to the commissioner for an administrative hearing pursuant to § 63.2-1526(B) of the Code of Virginia.

If the disposition against the appellant is sustained at the local conference level, the appellant may request an administrative hearing at the state level. The appellant must make that request in writing and within 30 days of receiving notification of the results of the local conference.

1.1 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:

a. The local department refuses to amend their report (disposition), or

b. The local department fails to act within 45 days after receiving the appellant's request, unless an extension has been requested by the appellant.

If the local department 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.

2.0 Who May Conduct State Administrative Hearing

Va. Code § 63.2-1526(B). The Commissioner shall designate and authorize one or

more members of his staff to conduct such hearings. The decision of any staff member so designated and authorized shall have the same force and effect as if the Commissioner had made the decision…

22 VAC 40-705-190(H)(1). The Commissioner shall designate a member of his staff to conduct the proceeding, pursuant to § 63.2-1526 (B) of the Code of Virginia.

The Commissioner will appoint a hearing officer to conduct an administrative hearing to review the request for amendment of the disposition and case record.

3.0 Time Frame to Schedule State Administrative Hearing

22 VAC 40-705-190(H)(2). A hearing officer shall schedule a hearing date within 45 days of the receipt of the appeal request unless there are delays due to subpoena requests, depositions or scheduling problems.

The hearing officer must set a convenient time within 45 days of the appellant's request for the parties involved to conduct the hearing. The hearing officer may reschedule the hearing upon good cause. The appellant may waive time deadlines.

4.0 Subpoenas & Depositions

Va. Code § 63.2-1526(B)… The hearing officer shall have the authority to issue subpoenas for the production of documents and the appearance of witnesses…

Va. Code § 63.2-1526(B)… Upon good cause shown, after a party's written motion, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing, except that alleged child victims of the person and their siblings shall not be subpoenaed, deposed or required to testify. The person who is the subject of the report may be represented by counsel at the hearing…

22 VAC 40-705-190(H)(3). After a party's written motion and showing good cause, the hearing officer may issue subpoenas for the production of documents or to compel the attendance of witnesses at the hearing. The victim child and that child's siblings shall not be subpoenaed, deposed or required to testify, pursuant to § 63.2-1526 (B) of the Code of Virginia.

4.1 Review of Subpoena or Deposition Decision by J&DR Court or Family Court

Va. Code § 63.2-1526(B)… Upon petition, the juvenile and domestic relations court or family court, as the case may be, shall have the power to enforce any subpoena that is

not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review…

22 VAC 40-705-190(H)(4). Upon petition, the court shall have the power to enforce any subpoena that is not complied with or to review any refusal to issue a subpoena. Such decisions may not be further appealed except as part of a final decision that is subject to judicial review pursuant to § 63.2-1526 (B) of the Code of Virginia.

4.2 Depositions

Va. Code § 63.2-1526(B)… The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing…

Va. Code § 63.2-1526(B)... Upon giving reasonable notice, either party at his own expense may depose a nonparty and submit such deposition at the hearing pursuant to State Board regulation…

22 VAC 40-705-190(H)(5). Upon providing reasonable notice to the other party and the hearing officer, a party may, at his own expense, depose a non-party and submit that deposition at, or prior to, the hearing. The victim child and the child's siblings shall not be deposed. The hearing officer is authorized to determine the number of depositions that will be allowed pursuant to § 63.2-1526 (B) of the Code of Virginia.

5.0 Disclosing Information to Appellant at State Hearing Level

Va. Code § 63.2-1526(B)... The Board shall promulgate regulations necessary for the conduct of such hearings. Such regulations shall include provisions stating that the person who is the subject of the report has the right: (i) to submit oral or written testimony or documents in support of himself and (ii) to be informed of the procedure by which information will be made available or withheld from him. In case of any information withheld, such person shall be advised of the general nature of such information and the reasons, for reasons of privacy or otherwise, that it is being withheld…

22 VAC 40-705-190(H)(6). The local department shall provide the hearing officer a copy of the investigation record prior to the administrative hearing. By making a written request to the local department, the appellant may obtain a copy of the investigation record. The appellant shall be informed of the procedure by which information will be made available or withheld from him.

In any case of information withheld, the appellant shall be advised of the general nature of the information and the reasons that it is being withheld pursuant to § 63.2-1526 (B) of the Code of Virginia.

6.0 Appellant May Seek Assistance of Counsel

22 VAC 40-705-190(H)(7). The appellant and the local department may be represented by counsel at the administrative hearing.

7.0 Oath & Affirmation

Va. Code § 63.2-1526(B)… The hearing officer is authorized to determine the number of depositions that will be allowed and to administer oaths or affirmations to all parties and witnesses who plan to testify at the hearing…

22 VAC 40-705-190(H)(8). The hearing officer shall administer an oath or affirmation to all parties and witnesses planning to testify at the hearing pursuant to § 63.2-1526 (B) of the Code of Virginia.

8.0 Burden on Local Department to Prove Disposition

22 VAC 40-705-190(H)(9). The local department shall have the burden to show that the preponderance of the evidence supports the founded disposition. The local department shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

9.0 Submissions of Proof

22 VAC 40-705-190(H)(10). The appellant shall be entitled to present the testimony of witnesses, documents, factual data, arguments or other submissions of proof.

10.0 Submission of New Evidence

22 VAC 40-705-190(H)(11). The hearing officer may allow either party to submit new or additional evidence at the administrative hearing if it is relevant to the matter being appealed.

11.0 Hearing Officer Not Bound by the Strict Rules of Evidence

22 VAC 40-705-190(H)(12). The hearing officer shall not be bound by the strict rules of evidence. However, the hearing officer shall only consider that

evidence, presented by either party, which is substantially credible or reliable.

12.0 Allowing Record to Remain Open for Additional Evidence

22 VAC 40-705-190(H)(13). The hearing officer may allow the record to remain open for a specified period of time, not to exceed 14 days, to allow either party to submit additional evidence unavailable for the administrative hearing.

13.0 Remand

Va. Code § 63.2-1526(B)... If, after hearing the facts of the case, the hearing officer determines that the person who is the subject of the report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination…

22 VAC 40-705-190(H)(14). In the event that new or additional evidence is presented at the administrative hearing, the hearing officer may remand the case to the local department for reconsideration of the findings. If the local department fails to act within 14 days or fails to amend the findings to the satisfaction of the appellant, then the hearing officer shall render a decision, pursuant to § 63.2-1526 (B) of the Code of Virginia.

14.0 State Administrative Hearing Decision

Va. Code § 63.2-1526(B)... Such hearing officers are empowered to order the amendment of such determination or records as is required to make them accurate and consistent with the requirements of this chapter or the regulations adopted hereunder…

22 VAC 40-705-190(I). Within 60 days of the close of receiving evidence, the hearing officer shall render a written decision. The hearing officer shall have the authority to sustain, amend, or reverse the local department's findings. The written decision of the hearing officer shall state the findings of fact, conclusions based on regulation and policy, and the final disposition. The decision will be sent to the appellant by certified mail, return receipt requested. Copies of the decision shall be mailed to the appellant's counsel,

the local department and the local department's counsel. The hearing officer shall notify the child abuse and neglect information system of the hearing decision. The local department shall notify all other prior recipients of the record of the findings of the hearing officer's decision.

15.0 Further Right of Review

Va. Code § 63.2-1526(B)... If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 5 (§2.2-4025 et seq.) of the Administrative Process Act.

22 VAC 40-705-190(J). The hearing officer shall notify the appellant of the appellant's further right of review in circuit court in the event that the appellant is not satisfied with the written decision of the hearing officer. Appeals are governed by Part 2A of the rules of the Supreme Court of Virginia. The local department shall have no further right of review pursuant to § 63.2-1526 (B) of the Code of Virginia.

16.0 Appeal of Hearing Officer's Decision to Circuit Court

22 VAC 40-705-190(K). In the event that the hearing officer's decision is appealed to circuit court, the department shall prepare a transcript for that proceeding. That transcript or narrative of the evidence shall be provided to the circuit court along with the complete hearing record. If a court reporter was hired by the appellant, the court reporter shall prepare the transcript and provide the court with a transcript.

17.0 Notify All Original Recipients of Notifications

If as a result of the final appeal the original disposition is amended, the parents of the involved child(ren) and all others who received notification initially must be notified.