

Child Protective Services

A Guide to Investigative Procedures in Out of Family Settings





The purpose of this brochure is to explain the Child Protective Services (CPS) reporting and response process if the child abuse or neglect is alleged to have occurred in an out of family setting. In addition to the laws, regulations and policies that govern the general conduct of the CPS program, there are additional requirements for CPS to conduct out of family investigations when the alleged abuse or neglect may have been committed by a staff person in certain out of family settings. These settings include those regulated by agencies such as state licensed and exempted child day care centers, licensed and registered family day homes, private and public schools, children's residential facilities, hospitals, or institutions. Out of family settings also include locally approved day care providers and foster/adoptive homes.

What Is Child Protective Services?

CPS operates under the Virginia Department of Social Services (VDSS) and has the responsibility under the *Code of Virginia* to respond to reports of suspected child abuse or neglect.

Local departments of social services are required to:

- ▶ Act in response to valid reports of suspected child maltreatment.
- ▶ Evaluate child safety.
- ▶ Support and strengthen families, whenever possible.
- ▶ Facilitate services to families to help ensure the safety of their children.
- ▶ Prevent future abuse or neglect.

What Is Child Abuse And Neglect?

Section 63.2-100 of the *Code of Virginia* defines an abused or neglected child as any child under 18 years of age whose parent, guardian, or other person responsible for the child's care:

- 1) Causes or threatens to cause a non-accidental physical or mental injury.
- 2) Causes or threatens to cause a non-accidental physical or mental injury during the manufacture or sale of certain drugs.
- 3) Neglects or refuses to provide adequate food, clothing, shelter, emotional nurturing, or health care.
- 4) Abandons the child.
- 5) Fails to provide adequate supervision in relation to the child's age and level of development.
- 6) Commits or allows to be committed any illegal sexual act upon a child including incest, rape, fondling, indecent exposure, prostitution, or allows a child to be used in any sexually explicit visual material.
- 7) Knowingly leaves a child alone in the same dwelling with a person who is not related to the child by blood or marriage and who is required to register as a violent sexual offender.

An abused or neglected child is also defined as a child who has been identified as a victim of sex trafficking.

Additionally, the law requires health care providers to contact CPS regarding newborns affected by substance abuse or experiencing withdrawal symptoms as a result of being exposed to drugs or alcohol during pregnancy.

Why Has A CPS Worker Contacted Me?

You have been contacted because CPS received a report of possible abuse or neglect of a child in your care.

Who Made The Report?

Anyone can make a report of suspected child abuse or neglect. The person making the report is not required to provide their name. Certain professionals who work with children are required by law to immediately report suspected child abuse and neglect. Because of confidentiality laws, the name of the reporter will not be released unless there is a court order or during court testimony.

What Happens During An Investigation?

During an investigation in an out of family setting, the CPS worker will:

- ▶ Notify the regulatory agency, local school administrator or local approval agency of the report and develop a joint investigation plan.
- ▶ Notify the facility administrator of the complaint and make arrangements to conduct interviews, observe the facility and review all pertinent records at the facility.
- ▶ Interview and observe the alleged victim child and notify child's parent of the CPS complaint.
- ▶ Interview the alleged abuser or neglector.
- ▶ Conduct initial safety assessment and develop a safety plan with the family or facility for the child or other children in the facility if needed.
- ▶ Interview other persons, including other non victim children if needed.
- ▶ Observe the location where the alleged abuse or neglect occurred.

The *Code of Virginia* requires a CPS investigation be completed in 45-60 days from the date of the report. If an investigation is being conducted with law enforcement, this time frame may be extended to 90 days.

Virginia law requires you to notify CPS prior to moving and provide your new address.

In certain sexual abuse investigations or child fatalities the time frame may be suspended pending receipt of necessary reports.

What Right Does CPS Have To Talk With A Child?

In order to provide an objective child safety assessment, Section 63.2-1518 of the *Code of Virginia* allows a CPS worker to speak with a child and their siblings without parental consent and outside the presence of the parent/caretaker. If the CPS worker talks with the child or siblings without the parent/caretaker's prior knowledge, the parent/caretaker will be notified about the interview as soon as possible. All CPS interviews conducted during an investigation with alleged victim children are required to be electronically recorded. There are some exceptions to this requirement when the CPS worker determines that:

- ▶ The child's safety may be endangered by electronic recording of the interview.
- ▶ Electronic recording is impractical due to the child's age and development level.
- ▶ The child refuses to participate.
- ▶ Additionally, in conjunction with the investigation team (which may include law enforcement) the team may determine that electronic recording is inappropriate.



What About Examining The Child?

The CPS worker will observe the child/children for injuries or signs of abuse or neglect. Under Section 63.2-1520 of the *Code of Virginia*, the CPS worker is permitted to take photographs and make the necessary arrangements to X-ray the child as part of a medical evaluation. This can be conducted without parental/caretaker consent. Photographs of the living conditions in which the child/children resides may be taken with the consent of the parent/caretaker, or under the direction of the local Commonwealth Attorney's Office.

What Are My Rights?

If you are the subject of a CPS report in an out of family setting, you have the following rights:

- ▶ To be notified in writing that you are the subject of a report.
- ▶ To meet with the CPS worker assigned to the case to discuss the report, ask questions, and obtain feedback.
- ▶ To have a person or persons you choose, including an attorney at your own expense, present during any interview with CPS staff.
- ▶ To electronically record the communications between you and the CPS worker, provided all parties are aware of the recording.
- ▶ To appeal the investigation findings if you are named as the person who abused or neglected a child.

What Happens After An Investigation?

Once the investigation is completed, the CPS worker will evaluate all information collected during the investigation and determine if the report is founded or unfounded. You will be notified orally and in writing of the disposition.

An **unfounded disposition** means that information gathered during the investigation did not support a founded disposition. Records of unfounded investigations are kept by local departments of social services and the VDSS child abuse and neglect information system for one year from the date of the complaint. This information is confidential and used only by local departments of social services. An unfounded disposition may be kept for more than one year if additional CPS reports are received during this period or if the alleged abuser/neglector requests that the information be retained for an additional two years.

If you believe the report was made maliciously or in bad faith, Section 63.2-1514 of the *Code of Virginia* allows you to petition the Circuit Court for access to the CPS record, including the identity of the reporter.

A **founded disposition** means the information gathered during the investigation has revealed a preponderance of evidence to support that abuse or neglect occurred. Section 63.2-1514 of the *Code of Virginia* requires that records of founded dispositions be kept by local departments of social services and the Child Abuse and Neglect Central Registry. These records are kept 3 to 18 years, depending upon the severity of the abuse or neglect. Information contained in the Child Abuse and Neglect Central Registry is confidential. With the exception of local departments of social services, the information can only be released with your signed, notarized authorization or by court order.

What Happens When A Report Involves A Public School Employee?

Sections 63.2-1511 and 63.2-1516.1 of the *Code of Virginia* specify additional requirements for a report involving **public school employees**.

In addition to the four validity criteria for all CPS complaints or reports, pursuant to *Code of Virginia* § 63.2-1511.B, the CPS worker must consider whether the school employee used reasonable and necessary force to maintain order and control. The use of reasonable and necessary force does not constitute a valid CPS report. However, the use of corporal punishment is prohibited.

Pursuant to Section 63.2-1511 of the *Code of Virginia* when the investigation is completed, if CPS determines that the alleged abuser's actions were within the scope of his employment and were taken in good faith in the course of supervision, care or discipline of students, the standard for determining a disposition of founded must constitute either "gross neglect" or "willful misconduct."

If CPS determines the actions were not within the scope of his employment, the standard for determining a disposition as founded is a "preponderance of evidence."

Who is Notified about the Outcome of the CPS Investigation?

The CPS worker must notify you about the outcome of the CPS investigation. In addition, the CPS worker will submit a written report of findings to the facility administrator and regulatory agency, if any, that includes a summary of the investigation and how the information supports the disposition.

The CPS worker will notify the parent, guardian or custodial agency of the victim child of the outcome of the investigation.

Special Notifications Regarding Public School Personnel.

Section 63.2-1505.7 of the *Code of Virginia*, requires the CPS worker to notify the local school board when the subject of the founded investigation was or is a full-time, part-time, permanent or temporary teacher at the time of the investigation.

Section 63.2-1503.P of the *Code of Virginia*, requires the local department to notify Superintendent of Public Instruction, Department of Education when an individual holding a license issued by the Board of Education is the subject of a founded investigation and all rights to any appeal have been exhausted.

What Happens to My Job if the Disposition of the Investigation is Founded?

The facility administrator has the authority to make personnel decisions or take disciplinary action if the disposition of the investigation is founded. The administrator of the facility where you work will receive a written report of the investigation that includes whether the investigation is founded or unfounded. Please consult your facility administrator regarding the specific regulations, policies and procedures that govern a founded disposition. Any personnel decisions related to the CPS investigation are entirely the responsibility of the facility administrator. CPS has no authority to make personnel decisions or take disciplinary action if the disposition of the investigation is founded.

May I See The Investigation Report?

After the investigation is completed, you may request to see a copy of your personal information in the CPS report from the local department of social services. Your request will be granted unless there is an ongoing criminal investigation or criminal proceeding; or the personal information in your file could endanger the well-being of the child or other persons.

Will Criminal Charges Be Filed?

CPS is required by Section 63.2-1503 of the *Code of Virginia* to report certain types of suspected child abuse or neglect to law enforcement and the Commonwealth's Attorney. These include:

- ▶ Death of a child.
- ▶ Sexual abuse.
- ▶ Serious injury.
- ▶ A drug offense involving a child.
- ▶ Abduction.
- ▶ Acts contributing to the delinquency of a minor.

The decision to file criminal charges or prosecute is made by local law enforcement and/or the local Commonwealth's Attorney.

The CPS investigation is an administrative proceeding and is separate from any criminal proceeding.

How Do I Appeal A CPS Finding?

If you disagree with the findings of the investigation and want your record purged, you must submit a written request to the director of the local department of social services within 30 calendar days after you receive the written notice of CPS findings. A local conference will be held by the Director or their designee. If you are dissatisfied with the outcome of the local conference, or if the local department of social services fails to send you a written decision within 45 days of your written request to appeal the findings, you may request an administrative review before a State Appeals Hearing Officer by writing to the Commissioner at the Virginia Department of Social Services. If you are not satisfied with the Hearing Officer's decision, you have the right to petition the circuit court for a judicial record review. The CPS worker will provide you with a written explanation of the appeals process.

All administrative rights of appeal and access to records are stayed until the criminal investigation is completed, or 180 days have passed since received written notice from CPS, or the criminal prosecution in trial court is complete.

This is to notify you that the local department of social services has received a report that you may have abused or neglected a child(ren) named below and is required to conduct a Child Protective Services investigation and make a determination whether the complaint is founded or unfounded.

Date: _____

To: _____

A report of suspected child abuse or neglect has been received about:

(Child or Children)

The allegations being investigated are:

Please call:

(CPS Worker)

(Agency Name & Telephone)

to discuss the report, answer your questions about the CPS investigation process and notify immediately of any changes in address.

Child Abuse Hotline

1-800-552-7096

(Language Line available)



**VIRGINIA DEPARTMENT OF
SOCIAL SERVICES**

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