

# 3

## COMPLAINTS AND REPORTS

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# 3

## COMPLAINTS AND REPORTS

### 3.1 Legal basis

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The Code of Virginia [§ 63.2-1503 B and C](#) mandates that local departments of social services (LDSS) maintain the capability to receive reports and complaints alleging abuse or neglect on a 24-hour, 7-days-a-week basis.

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

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The Virginia Administrative Code (VAC) [22 VAC 40-705-40 H](#) provides that a person may make a report or complaint by telephoning the toll-free Child Abuse and Neglect Hotline of the Virginia Department of Social Services (VDSS) or by contacting a LDSS.

The statewide toll-free CPS Hotline (**1-800-552-7096**) shall be available 24 hours a day, seven days a week. After receiving a complaint or report of child abuse or neglect, the CPS State Hotline worker will refer the complaint or report to the LDSS immediately or no later than the next working day.

### 3.3 Persons who may make a complaint or report

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The Code of Virginia [§§ 63.2-1509](#) and [63.2-1510](#) provide the authority for persons to report suspected abuse or neglect and allows any person who suspects that a child is abused or neglected to make a complaint or report. The Code of Virginia [§ 63.2-1509](#) further identifies certain persons who are mandated to report suspected abuse or neglect. The VAC [22 VAC 40-705-10](#) defines the terms “complaint” and “report.”

#### 3.3.1 Mandated reporters

The VAC defines mandated reporters and their reporting responsibilities in [22 VAC 40-705-10](#).

### 3.3.1.1 Who are mandated reporters?

The Code of Virginia [§ 63.2-1509 A](#) identifies those persons who are mandated reporters. These persons shall report suspected abuse or neglect that they suspect when in their professional or official capacity.

Mandated reporter training and other resources for mandated reporters are available from VDSS on the [VDSS public website](#).

Foster and adoptive parents and respite providers are considered mandated reporters due to their association with a public organization that is responsible for the care, custody and control of children as referenced in [§ 63.2-1509 A11](#).

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

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

### 3.3.1.3 Mandated reporter shall disclose all relevant information even if not the complainant

The Code of Virginia [§ 63.2-1509 A](#) specifies when a mandated reporter makes a report of suspected abuse or neglect; the reporter shall disclose all the information that is the basis of the report to the LDSS. This includes any records or reports documenting the basis of the allegation.

All mandated reporters, even if they are not the complainant, shall cooperate with the LDSS and shall make related information, records and reports about the child who is the subject of the report available to the LDSS for the purpose of validating a CPS referral and for completing a CPS response unless such disclosure violates the federal [Family Educational Rights and Privacy Act \(20 U.S.C. § 1232\(g\)\)](#).

Provision of such information, records, and reports by a health care provider shall not be prohibited by the Code of Virginia [§ 8.01-399](#).

Criminal investigative reports received from law-enforcement agencies shall not be further disseminated by the investigating agency nor shall they be subject to public disclosure.

Although obtaining parental consent to obtain information is always preferable, consent is not required for the release of information for the purpose of validating a referral or completing an investigation or family assessment.

#### **3.3.1.4 Failure by mandated reporter to report abuse or neglect**

According to the Code of Virginia [§ 63.2-1509 D](#), a person required to report who fails to do so as soon as possible, but **not longer than 24 hours** after having a reason to suspect a reportable offense of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$1000. If the LDSS becomes aware of an incident involving a mandated reporter who failed to report pursuant to the Code of Virginia [§ 63.2-1509 A and B](#), the LDSS must report the incident to the local Commonwealth's Attorney.

If a person knowingly and intentionally fails to report cases involving rape, sodomy, or object sexual penetration, they shall be guilty of a Class 1 misdemeanor.

If a person has actual knowledge that the same matter has already been reported they are not required to contact the LDSS or the state hotline.

#### **3.3.1.5 Physicians reporting venereal disease**

Physicians who diagnose venereal disease in a child 12 years of age or under shall make a CPS report to the LDSS. Physicians need not report cases of venereal disease when they reasonably believe that the infection was caused congenitally or by means other than sexual abuse. The Code of Virginia [§ 32.1-36 A](#) provides that practicing physicians and laboratory directors shall report patients' diseases as prescribed by the State Board of Medicine. See the Code of Virginia [§ 32.1-36 A and B](#).

#### **3.3.1.6 Mandated reporters may make report electronically**

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

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

Pursuant to [22 VAC 40-705-40 B](#), any individual suspecting that a child is abused or neglected may make a complaint to the VDSS or to an LDSS. The person can make the complaint to the LDSS in the county or city where the alleged *child who is a victim* resides or where the alleged abuse or neglect occurred. The person may also make the complaint by calling the CPS State Hotline (**1-800-552-7096**).

### 3.3.3 Complaints and reports may be made anonymously

Pursuant to [22 VAC 40-705-40 C](#), reports or complaints alleging abuse or neglect may be made anonymously and the LDSS cannot require the individual to reveal his identity as a condition of accepting the report. All reports shall be documented in the child welfare information system and evaluated for validity and a CPS response regardless of whether or not the caller is identified.

### 3.3.4 Issues related to reporting

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

Pursuant to [22 VAC 40-705-40 D](#), the following persons are immune from any civil or criminal liability unless it is proven that such person acts with malicious intent:

- Any person making a report or complaint of child abuse or neglect.
- Any person who participates in a judicial proceeding resulting from either making a report or taking a child into immediate custody.

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

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

## 3.4 Actions upon receipt of complaint or report

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### 3.4.1 Statutory authorities and responsibilities

The Code of Virginia [§ 63.2-1503](#) requires an LDSS to determine the validity of all reports and to decide whether to conduct a family assessment or an investigation, if valid.

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

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

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

Pursuant to [22 VAC 40-705-50 A](#), all complaints or reports made to the VDSS or an LDSS shall be documented in the child welfare information system. A person may make the initial complaint or report alleging abuse or neglect orally, in writing, or online on the Mandated Reporter website. The LDSS must document the report or complaint in the child welfare information system within **three working days**, regardless of whether the complaint or report is determined to be valid or invalid. Timeliness of the initial response is calculated from the date and time the referral was received, not validated or assigned.

#### 3.4.3.1 New allegations in an existing family assessment or investigation

When a report has been accepted as valid and the investigation or family assessment response is initiated and subsequent allegations are made, the type of allegation and the time elapsed since the initial report will determine whether the new allegation is treated as a new report or assessed within the context of the existing response. If the allegations do not provide any new or different information, they may be added into the initial investigation or family assessment. If the additional allegations address new types of abuse or neglect and **five (5) or more days** have elapsed since the first report, the additional allegations should be taken as a new report and screened using the CPS Intake Tool.

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

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

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

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

### 3.5 Determine validity of complaint or report

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When an LDSS receives a report or complaint of abuse or neglect, the LDSS must determine whether the complaint or report is valid upon receipt of the complaint. Criteria are established for determining whether a complaint or report is valid. Each criterion must be satisfied before a complaint or report can be valid. Only valid reports or complaints of abuse or neglect shall receive a family assessment or an investigation. It is important to make the validity decision as soon as possible after the report has been received so that the urgency of the response can be accurately determined. Response time is calculated from the date and time the referral was received, not validated or assigned.

When determining validity, the LDSS must use the CPS Intake Tool for all reports of child abuse and neglect including new reports during open cases. The CPS Intake Tool must be completed in the child welfare information system as soon as possible, but **no later than three working days**, upon receipt of the report by the LDSS. It is critical that the intake worker using the CPS Intake Tool review the definitions available on the tool when making selections on the checklist. Selections made on the CPS Intake Tool must relate to supporting narrative in the child welfare information system. The CPS Intake Tool with definitions is located on the forms page on the [DSS public website](#).

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

#### 3.5.1 Definition of valid complaint or report

The Code of Virginia [§ 63.2-1508](#) defines a valid complaint.

### 3.5.2 Determine whether the complaint or report is valid

There are four criteria that must be addressed when determining whether the complaint or report is valid. Each question must be satisfied in order to have a valid report. The four elements are:

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

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

##### 3.5.2.1.1 Emancipated minor

If the alleged *child who is a victim* is under 18 years of age and has been legally emancipated, then the LDSS has the discretion of not completing a family assessment or investigating the complaint.

The LDSS may determine a report of abuse or neglect as invalid if a court has emancipated the alleged victim of the abuse or neglect pursuant to the Code of Virginia §§ [16.1-331](#) and [16.1-332](#).

The Code of Virginia §§ [16.1-331](#), [16.1-332](#), and [16.1-333](#) require petitioning the juvenile court and the court conducting a hearing before making a finding of emancipation. The LDSS must confirm that the child has been legally emancipated before invalidating the complaint or report.

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

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

A husband or wife of the alleged victim cannot be considered a caretaker.

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

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

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

- A parent or other person legally responsible for the child's care includes:
  - Birth parent.
  - Adoptive parent.
  - Stepparent.
  - Legal guardian.
  - Foster parent.
- An individual who by law, social custom, expressed or implied acquiescence, collective consensus, agreement or any other legally recognizable basis has an obligation to look after the child left in their care may include but is not limited to:
  - Relative.
  - Babysitter.
  - Paramour of the parent.
  - Cohabitants.

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

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

#### 3.5.2.2.1 Caretaker considerations

When determining whether a person is responsible for the care of a child, the LDSS should consider the amount of authority for the care, control and discipline of the child delegated to the person acting as a caretaker. The LDSS should gather sufficient evidence to demonstrate that the alleged abuser/neglector is a caretaker and document such evidence in the child welfare information system. The LDSS should consider these issues when determining whether a person is a caretaker.

- What is the person's relationship with the child?
- What is that person's role or function toward the child?
- Was the person in a caretaking role at the time of the alleged abusive or neglectful incident?
- Was the primary responsibility of the person toward the child one of supervision and providing care, or was the person providing a professional or expert service?
- How do the child and the child's usual caretaker view this relationship and role?
- How does the community view this relationship and role?
- Have the parents or other person specifically delegated formally or informally the caretaking role for this person?
- What were the expectations of the parent, alleged abuser/neglector and child?

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

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

- Was it appropriate for the minor to have been put in a caretaking role?
- Was the alleged abuse or neglect by the minor indicative of their own abuse? (i.e., sexual knowledge or behavior that is age inappropriate)
- What is the age difference between the alleged abuser and the victim; was this peer interaction?

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

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

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

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

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

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

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

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

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

The Family Services Specialist must consider the following questions to determine if the definition of physical abuse has been met.

- What was the action or inaction of the caretaker?
- Did the child sustain an injury or is there evidence establishing that the child was threatened with sustaining an injury?
- Does the evidence establish a nexus, or causal relationship between the action or inaction of the caretaker and the physical injury or threatened physical injury to the child?
- Was the injury, or threat of injury, caused by non-accidental means?

#### 3.5.2.3.2 Establish injury or threat of an injury

The report or complaint must allege a threat of injury or actual injury to the child to satisfy the definition of abuse or neglect. The Code of Virginia and the VAC do not require that the child sustain an actual injury.

#### 3.5.2.3.3 Establish nexus between caretaker's actions or inaction and the injury or threatened injury to the child

The complaint or report must allege a link between the actions or inaction of the caretaker, regardless of the caretaker's intent, and the injury to the child or the threat of injury to the child.

#### 3.5.2.3.4 "Other than accidental means"

The injury or threat of injury to the child must have occurred as a result of "other than accidental means." The caretaker's actions must be carefully considered when determining whether the injury or threat of injury sustained by the child was caused accidentally.

For example, the complaint alleged that the caretaker caused bruises and abrasions on the child's ankles and wrists. The caretaker asserted that he did not intend to cause the injuries to the child; he intended to restrain the five-year-old boy with a rope. However, the evidence shows that the caretaker tied the child's legs at the ankles and tied the wrists to a chair, and when the child jerked in several different directions for over 20 minutes to try to get loose, injuries occurred to these parts of the body. The caretaker did not accidentally tie the child and leave him for 20 minutes. Although the caretaker did not intend to cause the injuries to the child, the caretaker did intend to tie the child, and could reasonably expect this child would try to get loose. The caretaker's act of restraining this child with a rope was intended and could have caused more serious harm. The result of the caretaker's actions was not unforeseen or unexpected. Therefore, the injury was not accidental.

In the alternative, a black eye to the child's face while playing catch with the caretaker would be considered accidental. The fact that the ball bounced off the child's mitt and struck the child's eye was not intended. In the first example, the caretaker intended to discipline his child by restraining with a rope for 20 minutes. The intended act of restraining the child caused the injury to the child. In the second example, the caretaker did not intend for the ball to bounce off the child's mitt and hit the child's face. The action causing the black eye was accidental.

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

It is the parent's responsibility to determine and obtain appropriate medical, mental health and dental care for a child. What constitutes adequate medical treatment for a child cannot be determined in a vacuum free of external influences, but rather, each case must be decided on its own particular facts. The focus of the CPS response are whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

- **Treatment or care must be necessary.** The statutory definition of medical neglect requires that the parent neglects or refuses to provide necessary care for the child's health. Therefore, the LDSS must establish that the caretaker's failure to follow through with a complete regimen of medical, mental health or dental care for a child was

necessary for the child's health. The result of the caretaker's failure to provide necessary care could be illness or developmental delays. The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well-being but is not essential to life, the issue becomes more complicated in determining whether the medical care is necessary.

- **Assess degree of harm (real or threatened) to the child.** When assessing whether the medical, mental health or dental treatment is necessary for the child's health, the LDSS should consider the degree of harm the child suffered as a result of the lack of care. If the child has yet to suffer harm, then the LDSS should assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.
- In addition to harm, the LDSS should consider the type of medical, mental health or dental condition involved and whether the condition is stable or progressive. Whether the condition is stable or progressive may be an issue in determining the severity of the condition and the necessity of treatment. If the condition of the child is stable, then the LDSS may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the LDSS may give lesser deference to the caretaker's authority.
- **Parent refuses treatment for life-threatening condition.** Pursuant to the Code of Virginia [§ 63.2-100](#), a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care when all the following conditions are met:
  - The decision is made jointly by the child and the parents or other person legally responsible for the child.
  - The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment.
  - The child and the parents or other person legally responsible for the child have considered alternative treatment options.

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

The VAC [22 VAC 40-705-10](#) provides definitions of some of the terms in the Code of Virginia.

- **Assess caretaker's rationale.** The most singular underlying issue in determining whether a child is being deprived of adequate medical care, and therefore, a medically neglected child, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by ignorance or misunderstanding. The LDSS should consider whether the caretakers obtained accredited medical assistance and were aware of the seriousness of their child's condition. The LDSS should weigh the possibility of a cure if a certain mode of treatment is undertaken and whether the caretakers provided their child with a treatment. The LDSS should consider whether the caretakers sought an alternative treatment recommended by their physician and have not totally rejected all responsible medical authority.
- **Assess financial capabilities and poverty.** The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by financial reasons or poverty. Parents or caretakers should not be considered neglectful for the failure to provide necessary medical treatment unless they are financially able to do so or were offered financial or other reasonable means to do so. In such situations, a founded disposition may be warranted if, after appropriate counseling and referral, the parents still fail to provide the necessary medical care.

#### 3.5.2.3.6 Child under alternative treatment

Pursuant to [22 VAC 40-705-30 B3b\(1\)](#) and [§ 63.2-100](#) of Virginia, no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal

child abuse and neglect.<sup>1</sup> 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.<sup>2</sup>

Should there be question concerning whether a child is under the treatment in accordance with a tenet or practice of a recognized church or religious denomination, the LDSS should seek the court's assistance. The court should decide whether the parent or caretaker is adhering to religious beliefs as the basis for refusal of medical or dental treatment.

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

The Virginia Administrative Code [22 VAC 40-705-30 B3](#) states that medical neglect includes withholding of medically indicated treatment. The definition section of [22 VAC 40-705-10](#) et seq. defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the LDSS must be aware of the ancillary definitions and guidance requirements.

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

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

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

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<sup>1</sup> See [§ 18.2-371.1C](#) of the Code of Virginia. Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

<sup>2</sup> The United States Supreme Court held in 1944 that "parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they can reach the age of full and legal discretion when they can make that choice for themselves." *Prince v. Massachusetts*, 321 U.S. 158, 170 (1944).

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

#### **3.5.2.4 Question 4: Does the LDSS have jurisdiction to conduct the family assessment or investigation?**

The Code of Virginia [§ 63.2-1503 A](#) provides the LDSS with the jurisdictional authority to conduct investigations of reports or complaints alleging child abuse and neglect. Jurisdiction determines which LDSS has primary responsibility for responding to a complaint or report of abuse or neglect.

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

The VAC [22 VAC 40-705-10](#) defines local department of jurisdiction.

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

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

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

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

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

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

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

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

#### **3.5.2.4.2 Out-of-state jurisdiction**

If the complaint or report belongs out-of-state, then the LDSS must make a referral to the appropriate agency in the other state, document the referral in the child welfare information system, and then invalidate the referral for lack of jurisdiction in the child welfare information system.

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

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

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

- Make verbal contact with a Family Services Specialist or Supervisor at the local department of jurisdiction and advise them of the transfer; **AND**
- Advise the person making the complaint of the name and telephone number for the local department of jurisdiction. VDSS maintains a [Local Department of Social Services Directory](#) with contact information for each local agency.

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

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

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

#### 3.5.2.4.5 Assistance between local department of jurisdiction

Pursuant to [22 VAC 40-705-40 I 3](#), the local department of jurisdiction may ask another local department of jurisdiction to assist in conducting the CPS family assessment or investigation. Assistance shall be provided upon request. Assistance may include conducting courtesy interviews of the alleged *child who is a victim*, the alleged *child who is a victim's* parents or other caretakers, and the alleged abuser or neglecter. Assistance may also include arranging for appointments, scheduling meetings, counseling sessions, or any other professional contacts and services for the alleged *child who is a victim* and siblings, the child's parents or other caretakers, or alleged abuser or neglecter.

- When a party relocates outside of the investigating LDSS's jurisdiction. The Code of Virginia [§ 63.2-1503 H](#) specifically addresses the circumstances when a party to a report or complaint of abuse or neglect relocates outside of the jurisdiction of the investigating LDSS.

- When the alleged *child who is a victim*, and/or the child's parents or other caretakers who are the subject of the family assessment or investigation relocate out of the jurisdiction of the LDSS responsible for the family assessment or investigation, the LDSS of jurisdiction shall notify the CPS Unit of the LDSS where the parties relocated, whether inside or outside of Virginia. The LDSS of jurisdiction may seek assistance from the other LDSS in completing the investigation. The notified LDSS shall respond to the receiving LDSS's request for assistance in completing the family assessment or investigation. Any LDSS in Virginia so requested shall comply.
- LDSS shall share relevant case record information. When one local department of jurisdiction requests another local department of jurisdiction to assist in completing a family assessment or an investigation or providing services, the requesting local department of jurisdiction shall contact the receiving local department of jurisdiction by telephone before transferring the record within the child welfare information system. The receiving local department of jurisdiction shall then arrange protective and rehabilitative services as needed or appropriate, and assist in a timely completion of the investigation or family assessment. All written notification and letters (i.e., disposition letters and notification of appeal rights) remain the responsibility of the original local department of jurisdiction conducting the family assessment or investigation. The local department of jurisdiction shall continue to retain case materials not entered into the child welfare information system and provide the receiving local department of jurisdiction with relevant portions of the case record necessary to provide services or to complete the investigation or family assessment.
- **Cooperative agreements between LDSS.** A local department of jurisdiction may request assistance from a local department that is not necessarily a local department of jurisdiction. A cooperative agreement may be developed between the two LDSS to address guidelines, parameters, and follow-up requirements.

#### 3.5.2.4.6 The appearance of a conflict of interest

Family assessments or investigations involving recognized figures, local or county officials, former employees, and other persons who are well known

within the community may raise the appearance of a conflict of interest for an LDSS.

In order to assure that the response to such cases is and appears to be impartial, the local department of jurisdiction may contact a neighboring locality and develop the appropriate guidelines for completion of the family assessment or investigation. The LDSS may develop a cooperative agreement to ensure that the report receives an appropriate response.

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

When considering transferring a report or complaint of child abuse or neglect because of the appearance of a conflict of interest, the LDSS may seek guidance from the *CPS Regional Practice Consultant*.

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

Pursuant to [22 VAC 40-705-40 H4](#) and [§ 63.2-1509](#) of the Code of Virginia, the juvenile and domestic relations district court the authority to determine jurisdiction of the investigation if the alleged abuser or neglector is an employee of the LDSS where the report or complaint was received. The purpose of this statute is to ensure a fair investigation and preserve impartiality.

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

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

A LDSS shall not assume jurisdiction of an investigation or family assessment if the alleged abuse or neglect occurred in another state and the alleged abuser does not reside in Virginia, even if the alleged victim resides in Virginia at the time of the report. A LDSS should report the suspected abuse or neglect to CPS in the state where the abuse or neglect occurred. If the other state requests assistance in conducting the investigation or family assessment, the LDSS should comply. If services are needed for the child or family, the LDSS may open the case for services.

- **Transfer jurisdiction of investigation to another state.** If appropriate, the LDSS may request the other state to assume jurisdiction of the investigation. If the other state agrees to assume jurisdiction of the investigation, the LDSS should provide all information relevant to the investigation to the other state. The following information should be provided when making a referral:
  - The name, date of birth, and sex of child.
  - Any other name by which the child may be known.
  - The names of parent and/or guardian.
  - Any other names by which the parent and/or guardian may be known.
  - The current address including any directions.
  - Last known address.
  - Statement of why the referral is being made.
  - Brief social history of the child and the family.
  - A brief description of the LDSS's involvement with the family.

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

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

### 3.5.4 Invalid report or complaint

Pursuant to [22 VAC 40-705-50 C](#), each of the four criteria outlined in [22 VAC 40-705-50 B](#) must be satisfied in order to achieve a valid complaint of abuse or neglect

requiring a family assessment or an investigation. If the complaint or report of abuse or neglect fails to meet any one of the criteria, then the complaint or report is not valid and the LDSS has no authority to conduct a CPS family assessment or an investigation.

#### **3.5.4.1 Additional information for screening reports of abuse or neglect regarding public school personnel**

The Code of Virginia [§ 63.2-1511](#) states that “reasonable and necessary” force should be taken into account in determining validity of reports of abuse or neglect by public school employees. Section 5: Out of Family Investigations of this guidance manual has additional guidance for assessing the applicability of [§ 63.2-1511](#) for CPS out-of-family reports of school employees.

#### **3.5.4.2 Screening consideration if alleged abuser is deceased**

If the alleged abuser or neglector is deceased at the time of the report or dies during the course of the investigation, the LDSS must evaluate whether the purpose of the investigation would be achieved. An investigation may be appropriate if there is a child victim in need of services or in order to prevent other abuse or neglect.

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

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

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

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

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

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

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

##### **3.5.5.1 Notify complainant**

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

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

If a report is not valid because it addresses general substandard conditions in a child care or residential facility, but the conditions do not constitute abuse or neglect, the LDSS shall identify the proper regulatory authority and refer the caller to that regulatory authority. The LDSS must also notify the proper regulatory authority of the report. If there is no regulatory authority and no valid complaint for CPS investigation, the caller shall be informed that there is no agency with the authority to intervene.

##### **3.5.5.1.2 Non-caretaker sexual abuse: information to be provided to reporter or complainant**

The intake worker should explain the following to the person making the report or complaint alleging the non-caretaker sexual abuse of a child:

- The LDSS is not the agency authorized to investigate the report.
- The LDSS is required to report this information directly to law enforcement.

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

### 3.5.5.2 Notify law enforcement of non-caretaker sexual abuse

If a report is not valid because it alleges child sexual abuse perpetrated by a person who is not in a caretaker role, the LDSS is required to report the allegation to the local law enforcement agency. The worker should telephone the information to law enforcement in the jurisdiction where the abuse occurred in accordance with any local protocol or standard procedures for reporting sex offenses involving juvenile victims. If there is any reason to believe a child may be in danger, the report must be made immediately. In all other cases, the report must be made on the **same day** it is received. Additional procedures may be developed locally to ensure effective reporting and accountability.

### 3.5.5.3 Information to provide to law enforcement in non-caretaker sexual abuse

The intake worker should attempt to obtain as much information about the alleged sexual abuse as possible and forward that information to the local law enforcement agency. The intake worker should attempt to obtain the following information:

- The identity of the child and the identity of the alleged perpetrator (name, birth date, sex, address, child's school).
- Brief description of the alleged abuse.

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

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

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

### 3.6.1.1 Any death of a child

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

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

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

Any report or complaint involving an injury (actual or threatened) that may have occurred as the result of a commission of a felony or a Class 1 misdemeanor shall be immediately reported to the local attorney for the Commonwealth and the local law-enforcement agency. Felony offenses are punishable with death or confinement in a state correctional facility; all other offenses are misdemeanors.<sup>3</sup>

Felonies are classified, for the purposes of punishment and sentencing, into six (6) classes; misdemeanors are classified into four (4) classes.<sup>4</sup>

### 3.6.1.3 Any sexual abuse, suspected sexual abuse or other sexual offense involving a child

Any sexual abuse, suspected sexual abuse, or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in the Code of Virginia [§ 18.2-374.1](#) et seq., shall be reported to the local attorney for the Commonwealth office and local law enforcement agency. This includes criminal acts of commercial sex trafficking as defined in the Code of Virginia [§18.2-357.1](#).

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<sup>3</sup> [§ 18.2-8](#) of the Code of Virginia.

<sup>4</sup> [§ 18.2-9](#) of the Code of Virginia.

#### 3.6.1.4 Any abduction of a child

Any time a report or complaint alleges the abduction of a child, the LDSS shall make a report to the local attorney for the Commonwealth office and to local law enforcement agency.

#### 3.6.1.5 Any felony or Class 1 misdemeanor drug offense involving a child

Any time a report or complaint alleges abuse or neglect of a child and the commission of a felony or a Class 1 misdemeanor drug offense, the LDSS shall notify the local attorney for the Commonwealth office and local law enforcement agency.

#### 3.6.1.6 Contributing to the delinquency of a minor

Contributing to the delinquency of a minor in violation of the Code of Virginia [§ 18.2-371](#) shall be reported to the local attorney for the Commonwealth office and local law enforcement agency.<sup>5</sup>

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

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

#### 3.6.1.8 Other criminal acts related to child abuse or neglect

Other felonies and misdemeanors, not specifically identified for reporting by the Code of Virginia, may be related to child abuse or neglect. The reporting of these

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<sup>5</sup> The Code of Virginia [§ 18.2-371](#) defines contributing to the delinquency of a minor as:

Any person 18 years of age or older, including the parent of any child, who (i) willfully contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in [§16.1-228](#), or (ii) engages in consensual sexual intercourse or anal intercourse with or performs cunnilingus, fellatio, or anilingus upon or by a child 15 or older not his spouse, child, or grandchild, is guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting [§§ 18.2-18, 18.2-19, 18.2-61, 18.2-63, and 18.2-347](#).

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

### 3.6.2 Notification to law enforcement form

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

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

### 3.6.3 Report complaints involving Tier III sexual offenders

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

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

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

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

Pursuant to [22 VAC 40-705-50 E](#) and [§ 63.2-1503 J](#) of the Code of Virginia, the LDSS must develop, where practicable, a memoranda of understanding for responding to reports of child abuse and neglect with local law enforcement and the local office of the Commonwealth's Attorney.

Since many situations are required to be reported to local law enforcement and/or the attorney for the Commonwealth, children and families will be better served if there is an understanding between these organizations and the LDSS. It is recommended that these agencies develop a written agreement regarding how varied situations will be handled, how communications should flow, etc. Provisions for roles and responsibilities of all parties, cross-training of staff, updating the agreement, and resolving problems are other examples of what the agreement should include in order for it to be an effective and continuous agreement among these agencies that are so vital to the protection of children.

### 3.6.5 Report military dependents to Family Advocacy Program

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

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

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

## 3.7 Report Child Fatalities and Near Fatalities

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### 3.7.1 Report a child fatality

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

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

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

### 3.7.1.1 Examples of a child fatality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 3.7.2.2 Notification and documentation of near fatalities

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

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

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

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

## 3.8 Screen valid complaints and reports for priority

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The LDSS must consider and analyze all the information collected at the time of the referral to determine the most appropriate response to initiate a family assessment or investigation based on the child's immediate safety or other factors.

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

The LDSS determines urgency of response time for valid reports by completing the response priority decision trees in the CPS Intake Tool documented in the child welfare information system. The response priority decision trees are designed to assist in

determining how quickly to initiate the response. Selections made on the response priority decision trees must relate to supporting narrative in the child welfare information system.

Timeliness of the initial response is calculated from the date and time of the referral. There are three (3) response levels:

- Response 1 (R1): as soon as possible **within 24 hours** of the date and time of the referral
- Response 2 (R2): as soon as possible **within 48 hours** of the date and time of the referral
- Response 3 (R3): as soon as possible **within 40 work hours** of the date and time of the referral

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

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

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

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

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

### 3.8.1 The immediate danger to the child

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

- Is the child in current distress, injured, or otherwise in an unsafe environment?
- What plans do the caretakers have for the future or continued protection of the child?

- Has the abuse or neglect diminished or stopped, or is the child thought to be at risk of continued abuse or neglect?
- Is the living situation immediately dangerous?
- Is any child currently left unsupervised who is age 8 or under or too disabled to care for self?
- Is the caretaker not available and no provision made for child's care?
- Is law enforcement requesting immediate response?
- Will perpetrator have access to child in next 48 hours?
- Are severe parental or caretaker *substance use*, developmental disabilities, or mental illness issues present AND no other appropriate caretaker is present?
- Does child's behavior put self at risk and caretaker does not respond appropriately?
- Is the child in an alternative safe environment?
- Has a substantial amount of time passed since the incident occurred?

### 3.8.2 The severity of the type of abuse or neglect alleged

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

- Are there allegations or evidence of broken bones, fractures, cuts, broken skin, severe bruising, or serious maltreatment?
- Were instruments or other items, such as guns, knives, or belts, used in the infliction of the abuse or neglect?
- Is the neglect or abuse of a continuing or chronic nature? Is there evidence establishing a pattern of abusive or neglectful behavior?
- Is the threat of abuse or neglect imminent?
- Can the caretaker be located? Is the caretaker not available?

- Is it likely that the precipitating event or one similar will reoccur?
- Are factors in the environment (both in and outside the home) observed to have an impact on the actual or threat of harm to the child?
- Were severe or bizarre disciplinary measures used, or was abuse premeditated?
- Is medical care required; or are significant bruises, contusions, or burns evident?
- Is caretaker's behavior toward child extreme, severe, or bizarre?

### 3.8.3 The age or vulnerability of the child

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

- Does the child's age, sex, developmental level, chronological age, or maturation level effect the child's vulnerability to abuse or neglect?
- What is the child's capacity to protect him or herself from future abuse or neglect?
- Is the child able to express thoughts or responses regarding the allegation of abuse or neglect?
- Is the child currently alone with, or repeatedly left alone with, a non-related violent sex offender?
- Does information show observable and substantial impairment in child's ability to function in a developmentally appropriate manner?

### 3.8.4 The circumstances surrounding the alleged abuse or neglect

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

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

- When did the abuse or neglect occur?
- Where did the abuse or neglect occur?
- Were other individuals aware or witness to the circumstances of the abuse or neglect?
- Are siblings of the *child who is a victim* aware or witness to the abuse or neglect?
- Did the abuse or neglect occur during a punishment or instructional contact with the child?
- What is the likelihood that the circumstances leading to the abuse or neglect will reoccur?
- Is the allegation exposure to drug-related activity and/or involves a meth lab?
- Is the family about to flee or have a history of fleeing?
- Is non-involved caretaker's response appropriate and protective of child?
- Is non-involved caretaker unaware of abuse or is the response to abuse unknown?
- Does perpetrator have access, or is child afraid to go home?

### 3.8.5 The physical and mental condition of the child

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

- Is the child thought to be of normal development and possess the ability to communicate during the investigation?
- Are there known illnesses, developmental delays, or other impediments to normal growth and development of the *child who is a victim*?
- Does the child's perception of his role impact his or her vulnerability for abuse or neglect?

- Does child appear seriously ill or injured and in need of immediate medical care?
- Is any child age eight (8) or under or limited by disability?

### 3.8.6 Complaints made by mandated reporters

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

- When was the mandated reporter made aware of the circumstances involving the alleged abuse or neglect?
- In what capacity did the mandated reporter know the alleged *child who is a victim*? What was the relationship between the alleged *child who is a victim* and the mandated reporter?
- Has the mandated reporter discussed the circumstances with the child? With the parents? Other professionals?
- Does the mandated reporter possess other relevant information such as knowledge about the living conditions or other environmental factors?
- What actions or services are recommended by the mandated reporter?

### 3.8.7 Initiating a response to a valid report

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

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

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

All contacts, attempted or completed, in the family assessment and investigation must be entered into the child welfare information system to document the LDSS's response to the report and to document compliance with CPS program requirements. This includes documentation of all attempted contacts as well as case planning that affect the initiation of the family assessment or investigation; however, only completed face-to-face contacts with the alleged victim satisfy the timeliness of initial response measure. The VAC [22 VAC 40-705-50 H](#) and [22 VAC 40-705-80 A1](#) further addresses response time.

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

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

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

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

## 3.9 Determine the appropriate response: family assessment or investigation

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The Code of Virginia [§ 63.2-1503 I](#) authorizes the LDSS to determine validity of a complaint or report. For all valid complaints or reports, the LDSS shall determine whether to conduct a family assessment or an investigation.

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

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

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

### 3.9.1 Make the response track decision

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

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

Family assessment and investigation are defined in [22 VAC 40-705-10](#).

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

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

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

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

- If there is a **third** valid CPS report within 12 months, *involving the same alleged child who is a victim and/or alleged abuser or neglecter*, it must be investigated.
- Type and severity of alleged abuse. Serious injuries as defined in [§ 18.2-371.1](#) are required by the Code of Virginia to be investigated. Those injuries include but are not limited to disfigurement, bone fractures, severe burns or lacerations, mutilation, maiming, forced ingestion of dangerous substances, and life-threatening internal injuries. A serious injury also includes brain damage, subdural hemorrhage or hematoma, dislocations, sprains, scalds or any other physical injury that seriously impairs the health or well-being of the child and requires medical treatment (e.g., suffocating, shooting, significant bruises/welts, bite marks, choke marks). Non-organic failure to thrive of an infant.
- Use of excessive physical discipline or physical force. This includes using torture or excessive physical force, or acting in a way that bears little resemblance to reasonable discipline given the child's age and stage of development; or caretaker punished child beyond the duration of the child's endurance. (e.g., punching child in head or stomach, tying child up, locking child in a closet, slamming child against wall, or punishing child in a way that produces humiliation or degradation, punishing child for acts that are outside child's control).
- History of abuse or neglect. Consider previous maltreatment by a caretaker that was serious enough to have caused a severe injury. Take into consideration if parental rights have been terminated on any other children as a result of prior child maltreatment.
- Caretaker failed to benefit from previous professional help. Consider if the caretaker previously maltreated a child in their care and was referred for services, but did not participate in or did not benefit from those services.
- Child's age and ability to self-protect. The age of the child is a critical factor since any abuse or neglect to a child six (6) years of age and under has the potential to constitute a serious and immediate safety threat to the child's health and safety. Consider the presence of a disability that affects the child's ability to self-protect regardless of age.
- Threaten to cause harm or retaliate against the child. Consider if there is a threatening action that would result in serious harm or a household member

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

- Living conditions. Child's physical living conditions are reported to be hazardous and immediately threatening, based on the child's age and developmental status. This includes reports indicating illegal drugs are being sold or manufactured in the home and unsecured weapons.
- Child's proximity to DV incident. Consider if the child was in immediate danger of serious physical harm by being in close proximity to an incident(s) of assaultive behavior/DV between adults in the household.
- If there is reason to believe that a child's safety will be jeopardized if parental cooperation cannot be obtained prior to interviewing the child.

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

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

If sufficient information cannot be obtained from the complainant, the track assignment can be made at the point of the first meaningful contact with any parties named in the complaint. Additional local criteria for track assignment may be developed, but the criteria must be consistently applied within the locality. The chart that follows is intended to assist local CPS staff in evaluating child abuse and neglect reports for placement in a response track.

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

## 3.9.2 CPS Report Placement Chart

FAMILY ASSESSMENT RESPONSE	INVESTIGATION RESPONSE
<p><b>Mandated by Code of Virginia (§ 63.2-1506 C):</b></p> <ul style="list-style-type: none"> <li>- <b>Substance Exposed Infant</b> reports shall be handled as a Family Assessment.</li> </ul>	<p><b>Mandated by Code of Virginia (§ 63.2-1506 C):</b></p> <ul style="list-style-type: none"> <li>- All sexual abuse allegations</li> <li>- Any child fatality</li> <li>- Abuse or neglect resulting in serious injury as defined in § 18.2-371.1 * [also consider medical neglect of disabled infant with life threatening condition (Baby Doe)];</li> <li>- Child taken into agency custody due to abuse or neglect (§ 63.2-1517)</li> <li>- Child taken into protective custody by physician or law enforcement, pursuant to § 63.2-1517</li> <li>- All allegations regarding a caretaker in a designated out of family setting as defined in § 63.2-1506 C</li> <li>- Child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor for which registration is required as a Tier III sexual offender pursuant to §9.1-902</li> </ul>
<p><b>Policy mandate:</b></p> <p>After a family has received two (2) valid CPS reports within 12 months, the <b>third</b> report must be investigated.</p>	<p><b>Policy mandate:</b> All allegations regarding a caretaker in an out of family setting of any kind, i.e. foster homes, day care, residential facilities.</p>
<p>Examples of when this response may be most appropriate:</p> <p><b>Physical Abuse:</b></p> <p>Abusive treatment of a child that may or may not have caused a minor injury – no medical treatment required.</p> <p><b>Mental Abuse:</b></p> <p>Child is experiencing minor distress or impairment; child's emotional needs are sporadically met but there are behavioral indicators of negative impact. Child exposed to DV.</p>	<p>Examples of when this response is <b>most appropriate</b>, but not mandated by law:</p> <p><b>Physical Abuse:</b></p> <p>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.</p> <p>Reports of children present during the sale or manufacture of illegal substances; and highly recommend these be investigated jointly with law enforcement.</p>

<p><b><u>Neglect:</u></b></p> <p>Lack of supervision where child is not in danger at time of report; minor injuries suggesting inattention to child safety.</p>	<p><b><u>Mental Abuse:</u></b></p> <p>Child is experiencing serious distress or impairment; child's emotional needs allegedly are not being met or are severely threatened.</p> <p><b><u>Neglect:</u></b></p> <p>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.</p> <p><b><u>Non-Organic Failure to Thrive:</u></b></p> <p>Child is an infant and at imminent risk of severe harm.</p> <p><b><u>Child Abandonment</u></b> referrals.</p> <p><b>Third valid CPS report in 12 months</b></p>
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\* 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.