

## 4

## ASSESSMENTS AND INVESTIGATIONS

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# 4

## ASSESSMENTS AND INVESTIGATIONS

### 4.1 Introduction

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

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

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

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

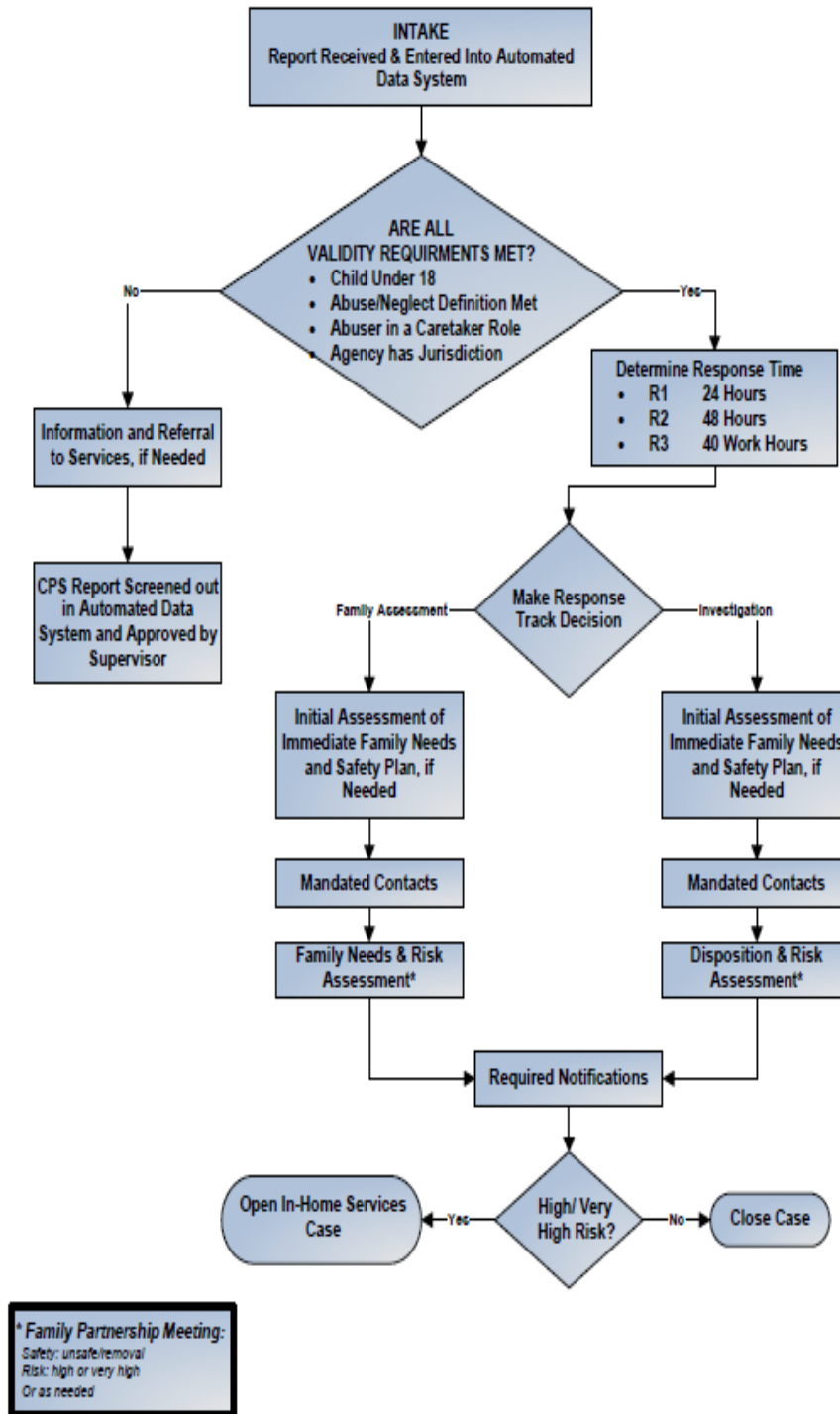
#### 4.1.1 Differential response

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

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

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

CPS Process Chart



**CPS REQUIREMENTS FOR FAMILY ASSESSMENT AND INVESTIGATION**

<b>CPS REQUIREMENTS</b>	<b>FAMILY ASSESSMENT</b>	<b>INVESTIGATION</b>
Conduct Safety Assessment*	YES	YES
<u>Mandated contacts:</u> <ul style="list-style-type: none"> <li>• Child &amp; siblings</li> <li>• Alleged Abuser</li> <li>• Parent or Guardian</li> <li>• Collaterals</li> <li>• Non-custodial parent</li> </ul>	YES	YES
<u>Other Contacts, if relevant:</u> <ul style="list-style-type: none"> <li>• Commonwealth Attorney – if criminal act is alleged or child fatality</li> <li>• Medical Examiner – if child fatality</li> <li>• Law Enforcement – if criminal act is alleged and joint response is needed, or child fatality</li> <li>• CPS Regional Specialist – if child fatality or near fatality and certain out-of-family reports</li> </ul>	YES	YES
Observe family environment and/or site where alleged abuse occurred.	YES	YES
Enter the home if allowed to do so by an adult residing in the home.	YES	YES
Notify:	YES	YES

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<ul style="list-style-type: none"> <li>• Parent if child interviewed at school or other setting.</li> <li>• Alleged abuser.</li> <li>• Non-custodial parent when that parent is not the subject of a report.</li> <li>• All parties of any extension of timeframe or suspended investigation.</li> <li>• All parties when family assessment or investigation is completed.</li> </ul>		
Refer children under age three (3) to Infant and Toddler Connection Program	IF ASSESSED NEED	YES  in founded investigations
Complete Family Risk Assessment *	YES	YES
*Convene Family Partnership Meeting at appropriate Safety and Risk decision points	NO	YES
Provide Services if risk is moderate, high, or very high* and services are needed for prevention of abuse or neglect.	YES	YES
Document all CPS requirements in child welfare information system.	YES	YES

#### 4.1.2 Engaging families

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

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

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

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

## 4.2 Human Trafficking Assessment

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### 4.2.1 Track decision

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

### 4.2.2 Human trafficking definitions

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

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

	who are commercially sexually exploited. (18 U.S.C. §§ 1591, 2251, and 2423(c).)
<b>Human Trafficking</b>	Human trafficking refers to both sex and labor trafficking.
<b>Severe Forms of Trafficking</b>	Severe forms of trafficking in persons means: <ul style="list-style-type: none"> <li>(A) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or</li> <li>(B) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.</li> </ul>
<b>Sex Trafficking</b>	Sex trafficking refers to “the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person for the purpose of commercial sex.” While adults must be compelled to perform commercial sex by force, fraud, or coercion in order for it to be considered a severe form of trafficking in persons, this is not the case for children. By law, children under the age of 18 who are inducted to engage in a commercial sex act are considered victims of sex trafficking. In addition to a minor engaging in a sex act in exchange for money, examples of sex trafficking include a minor engaging in “survival” sex (i.e., the victim engages in sex in order to obtain basic needs such as food, shelter, or clothing, which are considered something of value) or participating in certain types of pornography. (22 U.S.C § 7102 and P.L. 114-22.)
<b>Trafficker</b>	Any person who is responsible for the human trafficking of a child under the age of 18. This term can be synonymous with the term “pimp.”

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

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

### 4.2.3 Human trafficking assessment

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

(§ [63.2-1506.1 B](#) of the Code of Virginia). A human trafficking assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and the child's family that will deter abuse and neglect; and
3. Risk of future harm to the child.

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

#### 4.2.3.1 Jurisdiction

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

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

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

#### 4.2.3.2 Entry of complaint

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

#### 4.2.3.3 Opening a case

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

#### 4.2.3.4 Timeliness of response

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

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

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

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

#### 4.2.3.5 Contacts

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

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

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

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

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

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

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

#### **4.2.3.6 Safety assessment**

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

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

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

##### **4.2.3.6.1 Immediate safety considerations in human trafficking**

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

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

#### 4.2.3.6.2 Safety assessment tool

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

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

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

#### 4.2.3.6.3 Safety decision

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

- **SAFE.** The child is not likely to be in immediate danger of serious harm at this time. No safety plan is required.
- **CONDITIONALLY SAFE.** Protective safety interventions have been taken and have resolved the unsafe situation for the present time. A safety plan is required to document the interventions.
- **UNSAFE.** Approved removal and placement was the only possible intervention for the child. Without placement, the child will likely be in danger of immediate serious harm. A court order is required to document intervention.

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

#### 4.2.3.6.4 Development of safety plan

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

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

#### 4.2.3.7 Risk assessment

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

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

Assessed risk will be:

- LOW. The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is needed.
- MODERATE. The assessment of risk related factors indicates that there is a moderate likelihood of future abuse or neglect and minimal intervention may be needed.
- HIGH. The assessment of risk related factors indicates there is a high likelihood of future abuse or neglect without intervention.
- VERY HIGH. The assessment of risk-related factors indicates there is a very high likelihood of future abuse or neglect without intervention.

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

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

- Low Risk: Close
- Moderate Risk: Open to Prevention services or close
- High Risk: Open to *In-Home* services
- Very High Risk: Open to *In-Home* services

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

#### 4.2.3.8 Referrals for services

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

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

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

- **Physical health:** Victims often have experienced physical abuse or neglect, mental abuse and/or sexual abuse. Associated with this maltreatment may be physical injuries including untreated internal or external injuries; sexually transmitted diseases, including HIV; and malnutrition. They may be addicted to drugs and/or alcohol either as a result of being forced to use substances by their trafficker or as a coping mechanism. Their overall health may show the consequences of long periods of poor or no medical or dental care. Child welfare workers can help by ensuring that victims have access to medical screenings and treatment to address both immediate and long-term concerns.
- **Mental health and trauma:** It is hard to overstate the complex mental health needs of trafficking victims. The traumatic experiences of being trafficked have often come at the expense of the youth's childhood. Severe abuse experiences may cause alterations in brain development, as the child or youth learns to operate from a "survival" mode. In addition, victims may not have experienced a secure and trusting relationship with a parent or other caretaker, which makes it difficult to build other relationships. In extreme maltreatment cases, such as being trafficked, a victim may experience posttraumatic stress syndrome.

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

- **Education:** Trafficked youth will likely require educational screening and may require remedial services. Child welfare workers can help by collecting records, exploring education options and facilitating enrollment.
- **Legal services:** There are a number of circumstances that might require a trafficked youth to hire/need legal help. Victims may need legal help if they have been charged with prostitution or other crimes. They may need legal help to get protection for themselves from the trafficker(s).
- **Other needs:** Trafficked victims will often need help with basic life skills (e.g. opening a bank account, keeping medical records) as well as training for a job and basic job skills. For many youth, having a mentor or someone who is willing and available to provide guidance over the long-term is

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

#### 4.2.3.9 Notifications

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

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

- Any sexual abuse, suspected sexual abuse, or other sexual offense involving a child, including but not limited to the use or display of the child in sexually explicit visual material, as defined in the Code of Virginia [§ 18.2-374.1](#) et seq. This includes criminal acts of commercial sex trafficking as defined in the Code of Virginia [§ 18.2-357.1](#).
- Any report or complaint involving an injury (actual or threatened) that may have occurred as the result of a commission of a felony or a Class 1 misdemeanor.

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

##### 4.2.3.10 Prevention services case

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

##### 4.2.3.11 Legal authorities

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

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

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

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

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

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

### **4.3 Authorities of Family Services Specialists**

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

#### **4.3.1 Authority to interview children**

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

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

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

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

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

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

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

([22 VAC 40-705-60](#)). When responding to valid complaints or reports local departments have the following authorities:

2. To take or arrange for photographs and x-rays of a child who is the subject of a complaint without the consent of and outside the presence of the parent or other caretaker, as set forth in [§ 63.2-1520](#) of the Code of Virginia.

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

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

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

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

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

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

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

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

#### 4.3.3 Authority to remove a child

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

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

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

**Child and Family Services Manual      C. Child Protective Services****4.3.3.1 Persons who may take a child into custody**

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

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

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

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

**4.3.3.3 Immunity from liability**

Pursuant to [22 VAC 40-705-60 3c](#), any person who takes a child into emergency custody, shall be immune from any civil or criminal liability in connection therewith, unless it is proven that such person acted in bad faith or with malicious intent.

**4.3.3.4 Emergency removal requirements**

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

**4.3.3.4.1 Exigent circumstances exist**

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

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

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

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

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

#### **4.3.3.5 Factual circumstances warranting removal**

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

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

Pursuant to [§ 16.1-251 A1](#) of the Code of Virginia, the circumstances of the child are such that remaining with the parent, legal guardian, or caretaker presents an imminent danger to the child's life or health.

##### **4.3.3.5.2 Reasonable efforts to prevent removal**

Pursuant to [§ 16.1-251 A2](#) of the Code of Virginia, removal of a child should only occur after consideration of alternatives to out-of-home placement. The court must be presented with an affidavit or sworn testimony establishing that reasonable efforts have been made to prevent removal of the child from his home.

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

The safety of the child precludes provision of services to prevent placement because there are no alternatives less drastic than removal that could reasonably protect the child's life or health.

##### **4.3.3.5.4 Alternatives less drastic than removal**

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

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

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

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

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

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

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

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

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

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

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

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

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

##### **4.3.3.8.1 Supervisory consultation to determine placement**

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

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

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

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

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

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

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

#### 4.3.3.8.3 Post-emergency placement procedures

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Assistant director;
- Casework supervisor;

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- Senior service worker; or
- Service worker.

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

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

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

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

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

**4.3.3.9.4 Payment for surgical and medical treatment**

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

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

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

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

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

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

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

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

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

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

#### 4.3.4.1 Affidavit

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

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

#### 4.3.4.2 Temporary custody

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

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

#### 4.3.4.3 Expert witness

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

#### 4.3.4.4 Additional resources

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

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

**4.3.5 Release child's location**

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

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

**4.4 Responsibilities of Family Services Specialists**

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**4.4.1 Family Services Specialist may enter the home****4.4.1.1 Entering the home**

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

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

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

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

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

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

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

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

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

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<sup>3</sup> Black’s Law Dictionary 1321 (9<sup>th</sup> ed. 2009).

<sup>4</sup> Black’s Law Dictionary 277 (9<sup>th</sup> ed. 2009).

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

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

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

#### 4.4.2 Transporting children

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

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

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

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

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

#### 4.4.4 Reasonable diligence

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

**Child and Family Services Manual      C. Child Protective Services****4.4.4.1 Document use of reasonable diligence in locating child and family**

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

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

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

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

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

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

The subjects of the family assessment or investigation include:

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

**4.4.4.5 What constitutes reasonable diligence**

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

- Child welfare information system.
- Postal Service for last known address.
- Postal Service for forwarding address.
- Neighbors, landlords, known relatives.
- School records.
- Department of Motor Vehicles.

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- Department's Division of Support Enforcement.
- Department of Corrections, Probation and Parole.
- Law Enforcement.
- Telephone and utility companies.
- Employer.
- [Personal locator tool](#) and/or SPIDeR searches.
- Internet searches including generic search engines such as Google, Yahoo, Bing, etc.
- Social networks such as Facebook, Instagram or Twitter.
- Other appropriate contacts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **4.4.4.10 If missing child is found**

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

#### 4.4.5 Screen all children for sex trafficking

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

##### 4.4.5.1 Indicators of sex trafficking

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

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

##### 4.4.5.2 When sex trafficking is identified

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

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

#### 4.4.5.3 Safety considerations for sex trafficking victims

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

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

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

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

#### 4.4.5.4 Additional information

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

#### 4.4.6 LDSS shall not purchase certain services

The Code of Virginia [§ 63.2-1503](#) does not permit the LDSS to purchase CPS investigation or family assessment services from private or other public non-social services departments.

An LDSS may contract with another LDSS to provide these services.

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

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

#### 4.4.8 Obtain and consider criminal history record check

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

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

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

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

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

### 4.5 Family assessment

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

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

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

#### 4.5.1 Time frames to complete family assessment

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

#### 4.5.2 Notify family of family assessment

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

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

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

#### 4.5.3 Home visits

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

Some advantages of using announced visits include:

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

Appropriate uses of unannounced visits include:

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

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

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

**4.5.4 Notify non-custodial parent**

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

**4.5.5 Document all contacts and observations**

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

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

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

#### 4.5.6 Mandated contacts for family assessment

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

##### 4.5.6.1 The family interview

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

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

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

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

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

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

#### 4.5.6.2 Interviewing the child

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

Response Priority	Response Time
Response 1 (R1)	<b>Within 24 hours</b> of the date and time of the referral
Response 2 (R2)	<b>Within 48 hours</b> of the date and time of the referral
Response 3 (R3)	<b>Within 40 work hours</b> of the date and time of the referral

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

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

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

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

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

#### 4.5.6.3 Interviewing siblings

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

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

#### 4.5.6.4 Non-verbal children

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

#### 4.5.6.5 Other children in the home

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

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

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

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

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

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

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

#### 4.5.6.7 Observe family environment

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

#### 4.5.6.7.1 Safe sleep environment and practices

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

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

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

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

#### 4.5.6.8 Identifying relatives and family supports

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

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

#### **4.5.6.9 Contacting collaterals**

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

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

#### **4.5.6.10 Interviewing the non-custodial parent**

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

#### **4.5.6.11 Other contacts may be required**

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

#### 4.5.7 First meaningful contact in family assessments

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

#### 4.5.8 Safety in family assessments

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

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

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

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

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

#### 4.5.8.2 Immediate child safety and family needs

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

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

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

#### 4.5.8.3 Assess immediate danger to the child

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

- Whether the child has sustained a mental or physical injury warranting immediate attention or care.
- Whether an emergency or crisis situation exists meriting immediate action to protect the child.
- Whether the child is at risk of serious abuse or neglect in the near future.

**Child and Family Services Manual C. Child Protective Services****4.5.8.4 Assess immediate needs of the family**

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

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

**4.5.8.5 Assess protective capacities**

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

**4.5.8.5.1 Cognitive protective capacities**

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

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

- Is self-aware as a parent/caretaker

#### 4.5.8.5.2 Behavioral protective capacities

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

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

#### 4.5.8.5.3 Emotional protective capacities

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

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

- Has a strong bond with child and is clear that the number one priority is the well-being of the child.
- Expresses love, empathy and sensitivity toward the child; experiences empathy with the child's perspective and feelings.

#### 4.5.9 Protective interventions and safety services

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

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

- Use of family resources, neighbors or other individuals in the community to develop and implement a safety plan.
- Use of community agencies or services.
- Involved caretaker leaves the home.
- Non-maltreating caretaker leaves the home with child(ren).
- Caretaker voluntarily places child outside of the home.
- Legal action, such as a preliminary protective order, is initiated.

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

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

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

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

#### 4.5.9.1 Parental child safety placements

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

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

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

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

##### 4.5.9.1.1 Assessment of alternate caregiver

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

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

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

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

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

- Conduct a further assessment, which must include a discussion with the proposed alternate caregiver about the circumstances surrounding each conviction and negative child welfare history, and the current status of disposition, sentencing, probation, or other condition.*
- Conduct a supervisory review of the information gathered from the further assessment by the LDSS Director, or if not available, the Assistant Director, Program Manager, or Family Services Supervisor.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### ***PCSP time frame***

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

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

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

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

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

### ***Family Partnership Meeting***

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

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

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

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

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

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

### **Parental Child Safety Placement Agreement**

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

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

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

### **In-Home Services Case**

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

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

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

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

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

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

Additional information about DV can be found on the [DSS public website](#).

#### 4.5.11 Safety decision

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

- **SAFE.** There are no children likely to be in immediate danger of serious harm at this time. No safety plan is required.
- **CONDITIONALLY SAFE.** Protective safety interventions have been taken and have resolved the unsafe situation for the present time. A safety plan is required to document the interventions.
- **UNSAFE.** Approved removal and placement was the only possible intervention for the child(ren). Without placement, the child(ren) will likely be in danger of immediate serious harm. A court order is required to document intervention.

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

#### 4.5.11.1 Safety decision and family partnership meeting

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

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

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

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

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

#### 4.5.12 Develop a safety plan

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

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

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

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

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

#### 4.5.12.1 Safety plan criteria

Safety plans should meet the following criteria:

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

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

#### 4.5.12.2 Safety plan actions

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

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

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

#### 4.5.12.3 Safety plan signatures

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

#### 4.5.13 Reassessing safety

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

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

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

#### 4.5.14 Changing the initial track

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

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

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

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

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

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

#### **4.5.15 Determine risk level in family assessment**

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

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

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

- Mental health or behavioral problem.
- Prior injury as result of abuse or neglect.
- **Caretaker and child relationship**
  - Blames child.
  - Justifies maltreatment.
  - Provides insufficient emotional or psychological support.
  - Uses excessive or inappropriate discipline.
  - Domineering.
  - Provides physical care inconsistent with child needs.
- **Other**
  - Housing is unsafe.
  - Family is homeless.

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

Assessed risk will be:

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

- **High.** The assessment of risk related factors indicates there is a high likelihood of future abuse or neglect without intervention.
- **Very High.** The assessment of risk-related factors indicates there is a very high likelihood of future abuse or neglect without intervention.

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

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

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

Low Risk:	Close
Moderate Risk:	Open to In-Home Services <u>or</u> close
High Risk:	Open to In-Home Services
Very High Risk:	Open to In-Home Services

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

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

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

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

- LDSS has received a current, valid CPS referral AND
- LDSS has conducted a family assessment or investigation AND
- The family has been assessed at low or moderate risk of future maltreatment but could benefit from voluntary services AND
- The family agrees to services.

See the [Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual](#) for further guidance.

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

A FPM should be scheduled by the LDSS when the worker assesses a child to be at “very high” or “high” risk of abuse or neglect and the child is at risk for out-of-home placement in those families who will be or are receiving services. This meeting is scheduled to develop the plan and services to prevent the out-of-home placement and identifies the circumstances under which a removal might be considered. The meeting should convene **within 30 days** of initiating services and prior to the development of the ongoing service plan. The FPM must be documented in the child welfare information system. For guidance on conducting the FPM, refer to the [VDSS Child and Family Services Manual, Chapter A, Family Engagement](#). To avoid duplication, if there is an active CPS referral and an open case, the FPM should be documented in the case.

#### 4.5.16 Assessment summary of strengths and needs

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

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

- **Children.** Age and developmental capacity; number of children; behavioral/emotional factors; medical/physical factors; ability to self-protect/vulnerability; perception of caretaker; roles in family system; prior history of abuse/neglect; sex/gender; alleged abuser’s continued access; and support system.
- **Parent/caretaker.** Mental health factors; *substance use*/abuse factors; domestic violence; prior history of abuse/neglect as a child; involvement in the criminal justice system; medical/physical factors; perception of alleged *child who is a victim*(ren); perception of alleged victim’s role in family; parenting style; overall ability to care for children (past and present); ability to protect children; sense of personal responsibility of alleged child maltreatment; engagement with CPS; willingness to care for and protect children; and support system.

- **Environment.** Access to necessary utilities (heat, water, electricity, etc.); maintenance of the inside and outside of the home environment; hazardous living conditions; cleanliness of inside of home environment; safety concerns in the environment; and positive factors present in the environment.
- **Support Systems.** Informal and formal supports; level of isolation or engagement in community; institutional supports (faith-based, educational, recreational, paid, etc.); access to needed supports; past and present utilization of supports; cultural appropriateness of supports, previous involvement with formal services; and barriers to utilization of supports.
- **Summary.** Determination if current allegation was substantiated; severity of maltreatment; frequency and chronicity of maltreatment; concerns about premeditation; caretaker impulsivity; family response to CPS intervention; risk assessment determination; services recommended; and family's response to services. **The summary must include the rationale for why the LDSS is not opening a case if the risk assessment is determined to be high or very high risk.**

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

#### 4.5.17 Services needed

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

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

##### 4.5.17.1 Family refuses services

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

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

#### 4.5.18 Notifications in family assessments

The VAC [22 VAC 40-705-140 B5](#) outlines notifications to be provided in family assessment.

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

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

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

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

##### 4.5.18.2 Notification to the complainant

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

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

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

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

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

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

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

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

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

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

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

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

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

- As soon as possible but no later than **seven (7) calendar days** of completing the investigation the LDSS should send a referral to the local Part C Early Intervention program using the local referral form.

The LDSS should:

- Send a referral as soon as possible when a child has been identified as exposed prenatally to an illegal substance or has withdrawal symptoms at birth.

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- Send a referral as soon as possible when a child has been identified as having a physical or mental condition which has a high probability of resulting in a developmental delay.
- Send a copy of the referral to the family. The parent should also be informed verbally of the referral and have an opportunity to discuss the referral process.
- Request the family to sign a release form allowing the exchange of information between the Infant and Toddler Connection Program and the LDSS regarding the referral.
- Document the notification and referral in the state child welfare information system.

More information on the Infant & Toddler programs in Virginia can be found on the [Infant & Toddler Connection of Virginia website](#) and in the Memorandum of Agreement issued by the Commissioners of the Department of Social Services and Department of Behavioral Health and Developmental Services and other agencies involved with implementation of Part C of the Individuals with Disabilities Education Act (IDEA) dated May 2013 located on the [VDSS internal website](#).

**4.5.20 Supervisor approval required**

All completed family assessments should be reviewed and approved in the child welfare information system by the Family Services Specialist's supervisor **within five (5) working days of the worker's request for approval**.

**4.6 Investigations**

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Some of the steps involved in an investigation are similar or even the same as in a family assessment. There are statutory mandates for the investigation track. There are other serious situations which may be appropriate for the investigation track. The immediate danger to the child and the severity of the alleged abuse or neglect are crucial factors considered at intake when making the track decision.

**4.6.1 Defining an investigation**

The VAC [22 VAC 40-705-10](#) defines an investigation.

#### 4.6.2 Time frames to complete investigations

The Code of Virginia requires the LDSS to complete and document the investigation within 45 calendar days of receipt of the complaint or report. There are three (3) exceptions for not completing an investigation within 45 days. The LDSS must ensure the most appropriate exception for not completing an investigation is selected as the use of multiple exceptions is not permitted.

##### 4.6.2.1 Fifteen-day extension to complete investigation

Pursuant to [22 VAC 40-705-120 A](#), upon written justification by the LDSS, based on locally determined guidelines, the investigation can be extended for **15 calendar days**.

##### 4.6.2.2 Extension of joint investigations with law enforcement agency

The Code of Virginia, [§ 63.2-1505 B5](#) allows for investigations which are being conducted in cooperation with a local law enforcement agency to be extended an additional 45 days, not to exceed 90 days. This must be agreed upon by both the LDSS and the law enforcement agency. This extension applies only to investigations.

##### 4.6.2.3 Notification of extension

If an investigation is extended, the alleged abuser/neglector shall be notified. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the extension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

##### 4.6.2.4 Suspension of certain investigations

The Code of Virginia [§ 63.2-1505 B5](#) grants exceptions to completing certain investigations under specific conditions. In any child death investigation or sexual abuse investigations which require reports or records generated outside the local department in order to complete the investigation, the time needed to obtain these reports or records shall not be counted towards the 45 days. These records must be necessary to complete the investigation and not available due to circumstances beyond the control of the local department. When the LDSS receives the reports or records, the 45 day timeframe resumes where it had left off, it does not start over.

The decision to suspend making a disposition within 45 days in these cases should be approved by a supervisor and documented in the child welfare information system.

#### 4.6.2.5 Notification of suspension

The LDSS should notify the alleged abuser/neglector or involved caretakers and the alleged victim's parents or guardians when suspending an investigation. The notification to the alleged abuser/neglector or involved caretakers should include a brief explanation of the reason for the suspension. If written notification is made, a copy of the notification must be included in the LDSS's record. If notification is made verbally, then the LDSS must document the notification in the child welfare information system. The LDSS must document the justification in the child welfare information system for the additional time needed to complete the investigation.

#### 4.6.2.6 Contact while investigation is suspended

As long as the investigation remains open, the LDSS retains all authorities and responsibilities of an investigation. The LDSS should document monthly updates in the child welfare information system until such time that the necessary reports or records to complete the investigation have been received.

#### 4.6.3 Notify family of investigation

The VAC [22 VAC 40-705-90 B](#) requires the Family Services Specialist to explain the CPS investigation process to the alleged abuser or neglector.

The Family Services Specialist must notify the family in writing and orally that a report of suspected abuse or neglect has been received and that an investigation will be conducted in response to the report. The written notification is the brochure "[Child Protective Services: A Guide to Investigative Procedures](#)". The Family Services Specialist must document this notification in the child welfare information system.

##### 4.6.3.1 Notify non-custodial parent

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

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contact. The LDSS should document all reasonable efforts to locate and notify the non-custodial parent about the report. Conversely, the LDSS should document why reasonable efforts were not made to notify the non-custodial parent.

**4.6.3.2 Notify Interstate Compact on the Placement of Children (ICPC)**

If the alleged victim is in the custody of another state and has been placed in Virginia through ICPC, immediately notify the Virginia [ICPC office](#) and the state agency which has custody of the child. The Family Services Specialist shall document this notification in the child welfare information system.

**4.6.4 Document all contacts and observations**

Pursuant to [22 VAC 40-705-80 B](#), the Family Services Specialist shall document all contacts required by regulation in the child welfare information system. It is equally important that the worker document reasons why any mandated contacts or observations were not made or completed. For example, if three phone messages were left or two home visits made with no one answering the door, those attempts should be documented in the child welfare information system.

A face-to-face interview with a child must be documented as a “worker visit” in the child welfare information system.

**4.6.5 Mandated contacts in investigation**

Mandated contacts to conduct an investigation are similar to the mandated contacts to conduct a family assessment. There are additional requirements related to electronic recording of interviews of the alleged victim and alleged abuser/neglector. The LDSS shall follow these additional requirements.

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

**4.6.6 Face-to-face interview with the alleged *child who is a victim***

Pursuant to [22VAC40-705-80 B](#), the Family Services Specialist shall conduct at least one (1) face-to-face interview (worker visit) with the alleged *child who is a victim* and shall conduct this face-to-face contact **within the determined response time**.

The Family Services Specialist shall observe the child and document the child's recollection and perception of the allegations. Information regarding the allegations

may be obtained during the Family Services Specialist's observation of victim interviews conducted by other members of the investigative team including, but not limited to, law-enforcement officers, forensic nurses, physicians or other community professionals trained as forensic interviewers. When possible, it is important to not only observe the interview but also have the ability to ask additional questions as needed. If the Family Services Specialist is not the primary interviewer, the Family Services Specialist is still responsible for interviewing the child to gather any additional information regarding the allegations and to ensure that the child understands the role of the Family Services Specialist and what will occur during the investigation. The Family Services Specialist must review all electronically recorded victim interviews to determine if additional interviews are necessary to comply with CPS guidance.

The Family Services Specialist must still conduct a face-to-face interview with the child if the Family Services Specialist is not the primary interviewer of the child regarding the allegations. This contact shall be **within the determined response time**.

When a Family Services Specialist who specializes in CPS needs to complete a face-to-face contact with a child prior to a forensic interview, because the forensic interview cannot be scheduled within the determined response priority, the Family Services Specialist who specializes in CPS must conduct a minimal facts interview. The focus of the minimal facts interview is the safety of the child and immediate needs; not details about the allegations. If an initial interview with the *child who is a victim* covers detailed information about the alleged abuse/neglect, the *Children's Advocacy Center* may be unable to schedule a forensic interview for that child/allegation. As a reminder, it does not align with *Children's Advocacy Center* best practices to re-interview the child about the same incident/allegations.

*Pursuant to § [63.2-1505](#) of the Code of Virginia, if a local multidisciplinary team has determined that an interview of the child by a children's advocacy center is needed and an interview with a children's advocacy center within the jurisdiction cannot be completed within 14 days, the local department may facilitate the interview with a children's advocacy center located in another jurisdiction. The credentials for a qualifying children's advocacy center are established in § [63.2-100](#) of the Code of Virginia.*

During the child interview, the Family Services Specialist should inform the child about the investigation and what will occur during the investigation. The Family Services Specialist should note the child's emotional and physical condition (including any injury). The Family Services Specialist should learn about the child's needs and capabilities for the purposes of safety and risk assessment and service planning.

The Family Services Specialist shall document all observations and interviews involving the *child who is a victim* in the child welfare information system. If the face-

to-face worker visit with the *child who is a victim* is not made within the determined response time, this shall be documented in the child welfare information system. While it is important to document all attempted interviews to show reasonable diligence, it should be noted that attempted contacts do not satisfy the requirement to interview the alleged *child who is a victim* within the determined response priority.

#### 4.6.6.1 Alleged *child who is a victim* must be electronically recorded

In 2005, the Virginia Supreme Court of Appeals issued a ruling to affirm the regulatory requirement that victim interviews in an investigation must be electronically recorded according to [22 VAC 40-705-80](#) or clearly document the specific and detailed reasons for not recording victim interviews as well as the documentation that the decision was made in consultation with a supervisor. A copy of this decision, known as the [West Decision](#), is available on the website of the Virginia Court of Appeals case #2144042.

##### 4.6.6.1.1 Exceptions to electronically recording interviews with the alleged *child who is a victim*

The VAC [22 VAC 40-705-80 B1](#) provides five (5) exceptions to electronic recording of an interview with an alleged *child who is a victim*. Before electronically recording an interview with a child, the Family Services Specialist must assess the circumstances surrounding the allegations of abuse or neglect and determine whether any of the five (5) exceptions precluding electronically recording the interview apply. Adequately considering the circumstances may include assessing the complaint or report; speaking with the mother, father or guardians of the child; speaking with collateral witnesses; and conducting an assessment of the child.

The Family Services Specialist shall consult with the supervisor when the decision is made to not electronically record an interview with an alleged *child who is a victim*. The consultation and the specific reasons why electronic recording is not done in the specific investigation shall be documented in the child welfare information system.

- **Exception:** The child's safety may be endangered by electronic recording.

If the child's safety is endangered or may be endangered by electronically recording the interview, then the interview must not be electronically recorded. The Family Services Specialist may need to conduct a brief assessment of the child to determine the risk of any harm that may occur to the child as a result of electronically recording the interview. The Family Services Specialist may be able to assess any potential harm to the child by speaking with the child's mother, father or guardians, or collateral witnesses.

If the interview is not electronically recorded, the Family Services Specialist shall carefully document the details of the interview in writing for the case record.

- **Exception:** The age or developmental capacity of the child makes electronic recording impractical.

The Family Services Specialist must assess the mental and physical capacities of the child. The age or development of the child may preclude electronically recording the interview. It may be appropriate to electronically record the questions being asked by the Family Services Specialist and to describe, either verbally or in writing, the child's responses.

- **Exception:** The child refuses to participate in the interview if electronic recording occurs.

The interview with the child should not be jeopardized because the child refuses to be electronically recorded. If the child refuses to be electronically recorded, the Family Services Specialist should explore the child's reasons and discuss those reasons with the child. If the child still refuses to participate in an electronically recorded interview, then the Family Services Specialist must not electronically record the interview. The Family Services Specialist shall document the reasons why the child refused to be electronically recorded.

- **Exception:** In the context of a team investigation, the team or team leader determines that electronic recording is not appropriate.

If a complaint or report of abuse or neglect is being investigated in conjunction with a multidisciplinary team, then the multidisciplinary team should make the decision to electronically record the interview with the alleged *child who is a victim* based on the specific child and referral. A team investigation includes a joint investigation with the Commonwealth's Attorney office or law enforcement.

- **Exception:** The victim provided new information as part of a family assessment.

If the victim provides new information during a family assessment resulting in an investigation and it would be detrimental to re-interview the victim, the Family Services Specialist shall provide a detailed narrative of the interview in the investigation record and document this exception to electronically recording the victim interview.

#### 4.6.6.2 Each interview with the alleged *child who is a victim* must be electronically recorded

Each interview with the alleged *child who is a victim* must be electronically recorded unless one of the above mentioned exceptions to electronically recording the interview applies. When an interview is not electronically recorded for any reason, the Family Services Specialist shall complete a detailed summary of the interview, including the reasons for not recording the interview and the supervisory consultation for this decision and enter the information into the automated case record.

#### 4.6.6.3 Notify the child's parents or caretakers that interview was electronically recorded

While there is no provision in the Code of Virginia or the VAC that requires an LDSS to inform the child's parents that the interview was electronically recorded, the LDSS should notify the mother, father or guardians of the alleged *child who is a victim* about the interview and that the interview was electronically recorded.

The LDSS should explain to the mother, father or guardians that the Code of Virginia allows the Family Services Specialist to interview the alleged *child who is a victim* without the consent of the parents and the VAC requires the interview to be electronically recorded.<sup>5</sup>

#### 4.6.6.4 Parents or caretakers object to electronically recorded interview

There is no provision in the VAC allowing an exception to electronic recording when the mother, father or guardians object to the LDSS electronic recording the interview of the alleged *child who is a victim*. The Family Services Specialist should explore the foundation for the parents' objection. The objection to the electronic recording may satisfy one of the enumerated exceptions to electronic recording.

#### 4.6.6.5 Equipment malfunction

[22 VAC 40-705-80 B1](#) provides that a CPS finding may be based on the written narrative should equipment failure occur. If an interview of an alleged *child who is a victim* is not electronically recorded because of equipment malfunction, then

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<sup>5</sup> VA Code [§ 63.2-1518](#) provides any person required to make a report of abuse or neglect with the authority to talk to a child suspected of being abused or neglected outside the presence of the child's parents, guardian, other person standing in loco parentis or school personnel. [22 VAC 40-705-80 B](#) requires that any interview by a *Family Services Specialist* with an alleged *child who is a victim* be electronically recorded.

the Family Services Specialist shall write a detailed narrative of the interview and include that narrative in the record.

#### **4.6.7 Interview with child's mother, father or guardians**

Pursuant to [22 VAC 40-705-80 B5](#), the Family Services Specialist shall conduct a face-to-face interview with the child's mother, father or guardians to obtain information about the child and about the parents' or guardians' knowledge of the allegations. The Family Services Specialist should inform the mother, father or guardians about the investigative process and provide sufficient information to involve them in planning and support for the child.

#### **4.6.8 Face-to-face interview with alleged abuser or neglector**

Pursuant to [22 VAC 40-705-80 B4](#), the Family Services Specialist shall conduct a face-to-face interview with the alleged abuser or neglector. The Family Services Specialist shall inform the alleged abuser or neglector of the allegations and the investigative process. The Family Services Specialist must document the alleged abuser or neglector responses about the allegations. If the alleged abuser or neglector refuses to be interviewed, the Family Services Specialist must inform the alleged abuser or neglector that the investigation must continue and a disposition will be made.

When the alleged abuser or neglector is under 18 years of age, the Family Services Specialist should provide oral and written notification to the parent or legal guardian of the alleged abuser or neglector. The parent or legal guardian of the alleged abuser or neglector must consent to the face-to-face interview and may be present for the interview. The parent or legal guardian of the alleged abuser or neglector may also obtain legal counsel on behalf of the alleged abuser or neglector.

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

##### **4.6.8.1 Inform alleged abuser or neglector of right to electronically record interview**

Pursuant to [22 VAC 40-705-80 B4a](#), the Family Services Specialist must inform the alleged abuser or neglector of their right to electronically record any communication pursuant to [§ 63.2-1516](#) of the Code of Virginia.

#### **4.6.8.2 Law enforcement or Commonwealth's Attorney objects to informing the alleged abuser or neglecter of his right to audio record the interview**

A law enforcement officer or the attorney for the Commonwealth may object to the LDSS informing the alleged perpetrator of his right to electronically record an interview. If a law enforcement officer or an attorney for the Commonwealth objects, then the LDSS shall not advise the alleged perpetrator of that right. This objection applies when the attorney for the Commonwealth or the law enforcement officer believes that the instruction will compromise the investigation of any criminal charges.

This objection must be documented in the child welfare information system.

#### **4.6.8.3 LDSS shall provide recording equipment upon request**

Pursuant to [22 VAC 40-705-80 B4b](#), the Family Services Specialist must be prepared to provide the equipment should the alleged abuser or neglecter elect to electronically record the interview. The LDSS must provide a copy of the electronically recorded interview to the alleged abuser or neglecter upon request.

#### **4.6.8.4 Use of statements as evidence**

The Code of Virginia [§ 63.2-1503 M](#) provides that statements made by the alleged abuser or neglecter to the investigating Family Services Specialist after the alleged abuser or neglecter has been arrested are not admissible in any criminal proceedings unless the alleged abuser or neglecter was advised of his rights against self-incrimination. If a person suspected of abuse or neglect is arrested, that person must be advised of his rights against self-incrimination or any subsequent statements made by the person cannot be used during the criminal proceedings. This section of the Code of Virginia only pertains to the admissibility in criminal proceedings of statements made by the alleged abuser or neglecter after that person has been arrested. This section of the Code of Virginia does not pertain to the use of any statements made by the alleged abuser or neglecter in determining whether the complaint or report is founded or unfounded. While certain statements made by the alleged abuser or neglecter may not be admissible in a court of law, there is no specific exclusion to the LDSS using those statements in determining a founded or unfounded disposition.

#### **4.6.9 Face-to-face interview with siblings**

Pursuant to [22VAC40-705-80 B2](#), the Family Services Specialist shall interview or observe minor siblings residing in the home of the alleged *child who is a victim* in order to determine whether they have experienced abuse or neglect and to more fully evaluate the family strengths and needs.

#### 4.6.10 Other children in the home

Pursuant to [22VAC40-705-80 B3](#), the Family Services Specialist shall interview other children living in the home as collaterals. They may have information which would help assess safety, strengths and needs of the family. Such contact should be made with prior consent of the non-child who is a victim's parent or guardian. If the situation warrants contact with the non-child who is a victim prior to such consent being obtained, the parent or guardian should be informed as soon as possible after the interview takes place.

#### 4.6.11 Observe environment where child lives and visit site where alleged abuse or neglect occurred

Pursuant to [22 VAC 40-705-80 B6](#) and [22 VAC 40-705-80 B7](#) the Family Services Specialist must observe the environment where the child lives and the site where the alleged incident took place.

##### 4.6.11.1 Safe sleep environment and practices

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

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

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

- Avoid overheating the infant.

A [Safe Sleep for Babies Tip Card](#) is available in English and Spanish from the Virginia Department of Health. Additional resources, including free brochures are available at the [Safe to Sleep Public Education Campaign](#).

#### 4.6.12 Identifying relatives and family supports

During the course of the investigation, the Family Services Specialist must gather information to identify maternal and paternal relatives and the kinship network providing support and resources to the family and child. Many families identify non-relatives as kin, such as godparents, friends, and others with whom they have a family-like relationship. The early identification of adult family members and supports is critical for initial assessments when identifying protective factors, strengths, and needs. When appropriate, these individuals may become resources in protective interventions, FPMs, and case planning during the CPS process or any future case involvement. Resources and tools for relative search and family engagement are available on the [DSS public website](#) under Family Engagement Toolkit.

#### 4.6.13 Interview collaterals

Pursuant to [22 VAC 40-705-80 B8](#), the Family Services Specialist shall contact any collaterals perceived to have pertinent information. The Family Services Specialist may involve collaterals to help ensure the safety of the child. Contact with the child's other caretakers, such as babysitters or day care providers, is encouraged. The Family Services Specialist may make collateral contacts without the family's consent in order to complete an investigation, but consent and collaboration with the family is encouraged.

The Family Services Specialist shall interview *non-child who is a victim*ren as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's parent, guardian or agency holding custody. If the situation warrants contact with the child prior to such consent being obtained, the parent, guardian, or agency holding custody should be informed as soon as possible after the interview takes place.

#### 4.6.14 Interview with non-custodial parent

The Family Services Specialist should interview the non-custodial parent. The non-custodial parent has a right to know about the report involving his/her child and may be a resource to the child. They may have important information that relates to the allegations. If there is reason to believe that such an interview would be detrimental to the child, the LDSS may take that concern into account. They should be invited to

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any FPM scheduled. The LDSS should document all reasonable efforts to locate, notify and interview the non-custodial parent. Conversely, the LDSS should document why reasonable efforts were not made to locate, notify, or interview the non-custodial parent.

**4.6.15 Other contacts may be required**

The Family Services Specialist may be required to contact other professionals depending on the type of CPS report. They include:

- Notify the local Commonwealth Attorney if a criminal act is alleged.
- Notify the Regional Medical Examiner and the CPS Regional Consultant if there is a child fatality.
- Notify local law enforcement if there is an alleged criminal act and a joint response is needed.

**4.6.16 First meaningful contact in an investigation**

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

**4.6.17 Investigation of medical neglect of disabled infants with life-threatening conditions**

After receiving a complaint or report involving the withholding of medical treatment of an infant, the LDSS should initiate contact with the designated person in the hospital. The LDSS should arrange with the local hospital for naming a contact person or liaison. Upon receipt of the complaint or report, the Family Services Specialist should immediately:

- Verify the child's presence at the hospital by contacting the hospital's liaison.
- Verify the child's status.

#### 4.6.17.1 Contact physician or hospital staff

The LDSS should arrange to meet with the attending physician or the Infant Care Review Panel and conduct a visit to the hospital to verify the child's situation.

#### 4.6.17.2 Determine who is responsible for the child

The Family Services Specialist should make a site visit and determine who is responsible for the child. This will usually be the child's parents, unless the parents have abdicated their authority. Situations when the parents are not responsible include, but are not limited to:

- When parents permanently voluntarily entrust the child to an agency.
- When a third trimester abortion results in a live birth.<sup>6</sup>

#### 4.6.17.3 Seeking court assistance

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

- Petition the court for custody so that treatment can be provided.
- Petition the court for a Protective Order specifying that treatment be provided.

When emergency treatment is necessary and the court is unavailable, the worker should consider taking the child into custody pursuant to the Code of Virginia [§ 63.2-1517](#).

### 4.6.18 Safety in an investigation

#### 4.6.18.1 Initial safety assessment and safety plan in an investigation

Pursuant to [22 VAC 40-705-110 A](#), the Family Services Specialist must conduct an initial safety assessment. An initial safety assessment is conducted at the

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<sup>6</sup> [§ 18.2-74](#) of the Code of Virginia provides that in any termination of human pregnancy aided or assisted by a licensed physician subsequent to the second trimester, measures for life support for the product of such abortion or miscarriage must be available and utilized if there is any clearly visible evidence of viability. The physician would be responsible for providing that the life sustaining measures were provided in these instances.

beginning of an investigation. The purpose of the initial safety assessment and safety plan is to:

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

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

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

#### 4.6.18.2 Immediate child safety and family needs

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

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

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

#### **4.6.18.3 Assess immediate danger to the child**

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

- Whether the child has sustained a mental or physical injury warranting immediate attention or care.
- Whether an emergency or crisis situation exists meriting immediate action to protect the child.
- Whether the child is at risk of serious abuse or neglect in the near future.

#### **4.6.18.4 Assess immediate needs of the family**

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

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

#### **4.6.18.5 Assess protective capacities**

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

danger that have been identified. Protective capacities should be used when determining the protective intervention and development of a safety plan.

#### 4.6.18.5.1 Cognitive protective capacities

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

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

#### 4.6.18.5.2 Behavioral protective capacities

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

- Has a history of protecting others.
- Takes action to correct problems or challenges.
- Demonstrates impulse control.
- Is physically able.
- Demonstrates adequate skill to fulfill care giving responsibilities.
- Possesses adequate energy.
- Sets aside their needs in favor of a child.

- Is adaptive and assertive.
- Uses resources necessary to meet the child's basic needs.

#### 4.6.18.5.3 Emotional protective capacities

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

- Is able to meet their own emotional needs.
- Is emotionally able to intervene to protect the child.
- Realizes the child cannot produce gratification and self-esteem for them as caretaker.
- Is tolerant as a parent/caretaker.
- Displays concern for the child and the child's experience and is intent on emotionally protecting the child.
- Has a strong bond with child and is clear that the number one priority is the well-being of the child.
- Expresses love, empathy and sensitivity toward the child; experiences empathy with the child's perspective and feelings.

#### 4.6.19 Protective interventions and safety services

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

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

- Use of family resources, neighbors or other individuals in the community to develop and implement a safety plan
- Use of community agencies or services
- Involved caretaker leaves the home

- Non-maltreating caretaker leaves the home with child(ren)
- Caretaker voluntarily places child outside of the home
- Legal action, such as a preliminary protective order, is initiated

Protective interventions may also be safety services provided during the investigation.

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

As with all aspects of case planning, the family should be engaged in providing input and joint decision making throughout the process of identifying, implementing, and evaluating these interventions and safety services. Documentation of safety services in the child welfare information system must clearly demonstrate how the actions taken provide the child with immediate protection from the safety issues and how each safety service contributes to addressing or eliminating the safety matters specific to the child. Safety services should be documented on the Safety Assessment Tool in the child welfare information system. Additional information about safety services can be found in the eLearning FSWEB1027: Safety Services: Swift & Savvy available in the [VLC](#).

#### **4.6.19.1 Parental child safety placements**

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

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

- *Parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within seven (7) calendar days** and the child can return safely to the home; or*

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- *Parent(s) or caretaker(s)/guardian(s) can remedy the identified safety factor **within 90 days** and is willing to participate in the Parental Child Safety Placement Program.*

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

**4.6.19.1.1 Assessment of alternate caregiver**

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

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

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

*results of the criminal and child welfare histories and home visit must be documented in the child welfare information system.*

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

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

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

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

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

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

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

*the child welfare information system. For more information on substance use screening guidelines for LDSS, please see FUSION.*

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

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

#### **4.6.19.1.3 Parental child safety placement program**

*The Parental Child Safety Placement Program is established to prevent unnecessary entry into foster care by promoting and supporting placements with relatives and fictive kin and requiring accountability for pre-court placements of children. The Parental Child Safety Placement Program codifies the protections and safeguards needed to promote family driven decision-making, ensuring the preservation of parent(s) or caretaker(s)/guardian(s) rights, establishing consistent practice among LDSS, and enhancing the provision of In-Home services to children and families.*

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

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

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

*The Parental Child Safety Placement Program should be utilized when the parent(s) or caretaker(s)/guardian(s) can remedy the identified safety*

factor(s) **within 90 days**. The Parental Child Safety Placement Program expedites the provision of safety services to ensure timely reunification.

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

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

### **PCSP timeframe**

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

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

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

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

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

### **Family Partnership Meeting**

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

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

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

*During the FPM, the LDSS should continue to fully inform the family of all options for the care of the child. The FPM should be used to inform the PCSPA and the PCSPA should not be established without an FPM having*

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

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

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

### **Parental Child Safety Placement Agreement**

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

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

*The initial PCSPA cannot exceed **90 days** from the start date of the PCSP, but the agreement can be extended. Such extension must be limited to **one***

*(1) 90-day period. If at any time a PCSP is facilitated with a new relative/fictive kin caregiver(s), a newly established PCSPA must abide by and resume the current 90-day timeline.*

### ***In-Home Services Case***

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

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

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

LDSS are required to develop guidelines for evaluating substance or drug abuse. The CAGE-AID tool (CAGE is derived from the four questions of the tool: Cut down, Annoyed, Guilty and Eye-opener. CAGE-AID is the CAGE instrument and is Adapted to Include Drugs) is one tool that provides questions that can be worked into the interviews with the primary caretakers, and a "yes" to any question may indicate a need for an AOD (alcohol or other drug) evaluation in order to complete the risk assessment.

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

Additional information about DV can be found on the [DSS public website](#).

#### **4.6.21 Safety decision**

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

following safety decisions must be determined using the Safety Assessment Tool and documented in the child welfare information system and shared with the family.

- **SAFE.** There are no children likely to be in immediate danger of serious harm at this time. No safety plan is required.
- **CONDITIONALLY SAFE.** Protective safety interventions have been taken and have resolved the unsafe situation for the present time. A safety plan is required to document the interventions.
- **UNSAFE.** Approved removal and placement was the only possible intervention for the child(ren). Without placement, the child(ren) will likely be in danger of immediate serious harm. A court order is required to document intervention.

#### 4.6.21.1 Safety decision and family partnership meeting

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

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

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

The worker and supervisor should discuss the convening and timing of a family engagement meeting at this critical decision point. Additional guidance for

holding a FPM when there is DV can be found in section 1.9 of the [VDSS Child and Family Services Manual, Chapter H. Domestic Violence](#).

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

#### 4.6.22 Develop a safety plan

When the child is determined to be Conditionally Safe or Unsafe, the Family Services Specialist must determine what services or actions need to occur by developing a safety plan in partnership with the family. The VAC [22 VAC 40-705-10](#) defines safety plan as an immediate course of action designed to protect a child from abuse or neglect.

A safety plan must be made to ensure the immediate protection of the child. When possible, the Family Services Specialist needs to develop the safety plan with the cooperation of the child's mother, father or guardian(s). The Family Services Specialist must determine what actions are necessary to assure the child's immediate safety. If the actions needed to assure the safety of the child cannot be put in place, alternative steps must be taken that can include court intervention. Once available on the COMPASS Mobile Application, the safety plan must be completed in the child welfare information system and the worker's efforts to develop the safety plan with the family must also be documented in the child welfare information system. The parent(s) or guardian(s) should sign the safety plan along with the worker to show agreement as to who will do what to prevent harm to the child in the immediate future. A copy of the safety plan must be left with the parent(s) or guardian(s). In the event of unforeseen technical difficulties, the Family Services Specialist must complete the safety plan template in the child welfare information system and provide an electronic or paper copy of the safety plan to the family no later than 24 hours after the first meaningful contact. The safety plan template is available in the child welfare information system and also on the [public DSS website](#).

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

##### 4.6.22.1 Safety plan criteria

Safety plans should meet the following criteria:

- The plan only controls or manages immediate threats of danger.

- The safety plan must have an immediate effect in controlling threats. Strategies resulting in long term change do not belong in a safety plan.
- The Family Services Specialist must assess the parent(s), guardian, or custodian and make a professional judgment as to their willingness and capability to agree to and abide by the terms of the safety plan
- People and services identified in the safety plan must be accessible and available when threats are present.
- The safety plan should employ the least restrictive strategies possible while assuring child safety.

#### 4.6.22.2 Safety plan actions

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

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

- Ensure child(ren) receive all medical and/or therapeutic treatment as recommended.

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

#### 4.6.22.3 Safety plan signatures

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

#### 4.6.23 Reassessing safety

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

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

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

#### 4.6.24 Information gathered in the investigation

In developing the case record and the investigative narrative, the Family Services Specialist must address and document these issues in the child welfare information system. Each investigation may have circumstances warranting more or less details and information.

**4.6.24.1 Incident information**

- Gather and document information about the alleged abuse or neglect incident, including the manner of infliction. If applicable, include the precipitating event (what was going on just prior to the occurrence of the abuse or neglect). If applicable, include a description of the environment where the alleged abuse occurred.
- Describe the observable injury or condition of the child (or children) that suggests abuse or neglect has occurred or is likely to occur. Direct observation of the child is always necessary.
- Describe the frequency of the alleged abuse or neglect.
- Describe the medical and psychological treatment given as the result of the alleged abuse or neglect. Any written reports should be included in the case record and documented in the child welfare information system.

**4.6.24.2 Child information**

- Demographic information (date of birth, sex, grade in school, etc.).
- Child's developmental level.
- Child's description of the incident including but not limited to:
  - Child's statements about what happened. Include direct quotes of the child if appropriate.
  - Child's statements about the impact of the incident on him.
- Results of any tests or evaluation of the child's injury, behavior, or other characteristics.
- Prior history of abuse or neglect involving the child. The history of any prior abuse or neglect can be provided by any source.

**4.6.24.3 Caretaker information**

- Demographic information (date of birth, sex, grade in school, etc.).
- Caretaker's developmental level.
- Caretaker's description of the incident including but not limited to:

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- Statements about what happened. Include direct quotes of the child if appropriate.
  - Caretaker acknowledgement of responsibility.
  - Caretaker's cooperation with the CPS Investigation.
  - Is the caretaker taking action to protect the child? If so, describe what action the caretaker is taking.
- Describe the observable or verifiable characteristics and behaviors of the caretaker impacting on the situation (both positive and negative). If drugs or alcohol are having an impact on the situation, this information should be documented in the child welfare information system. If available, include in the record any results of testing or evaluation.
  - Caretaker's history of prior abuse or neglect as either victim or abuser.
  - Caretaker's demonstration of a desire or willingness to change or to seek help if appropriate.
  - Describe observations of the interaction between the caretaker (even when the caretaker is not a family member, if possible) and the child.

**4.6.24.4 Family information**

- Describe the family composition.
- Describe observable or verifiable characteristics and behaviors of the family that may impact child safety or risk of abuse or neglect.

**4.6.24.5 Other information**

- Observable or verifiable characteristics and behaviors of others who have access to the child and the nature of those relationships that may impact child safety or risk of abuse or neglect.
- Factors in the home environment that may impact child safety or risk of abuse or neglect (e.g., eviction, financial circumstances, DV, support systems, etc.).
- Factors outside of the home environment that may impact child safety or risk of abuse or neglect (e.g., school, day care, other service agency contact, etc.).

- Court actions that may impact child safety or risk of abuse or neglect.
- Supports for or obstacles and barriers to services that are needed to ensure the protection of the child or other children.

#### 4.6.25 Determine risk level in an investigation

Pursuant to [22 VAC 40-705-110 B](#), a Family Risk Assessment shall be completed in all investigations.

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

- **Caretaker related**
  - History of childhood maltreatment.
  - History of mental health issues.
  - History of *substance use*.
  - History of criminal activity (adult or juvenile).
  - DV incidents in past year.
  - History of prior CPS; ongoing or foster care services.
- **Child related**
  - Developmental or physical disability.
  - Medically fragile or failure to thrive.
  - Substance exposed newborn.
  - Delinquency.
  - Mental health or behavioral problem.
  - Prior injury as result of abuse or neglect.
- **Caretaker and child relationship**
  - Blames child.
  - Justifies maltreatment.
  - Provides insufficient emotional or psychological support.

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- Uses excessive or inappropriate discipline.
- Domineering.
- Provides physical care inconsistent with child needs.
- **Other**
  - Housing is unsafe.
  - Family is homeless.

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

Assessed risk will be:

- **Low.** The assessment of risk related factors indicates that there is a low likelihood of future abuse or neglect and no further intervention is needed.
- **Moderate.** The assessment of risk related factors indicates that there is a moderate likelihood of future abuse or neglect and minimal intervention may be needed.
- **High.** The assessment of risk related factors indicates there is a high likelihood of future abuse or neglect without intervention.
- **Very High.** The assessment of risk-related factors indicates there is a very high likelihood of future abuse or neglect without intervention.

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

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

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

Low Risk:	Close
Moderate Risk:	Open to In-Home Services <b>or</b> close
High Risk:	Open to In-Home Services
Very High Risk:	Open to In-Home Services

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

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

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

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

- LDSS has received a current, valid CPS referral AND
- LDSS has conducted a family assessment or investigation AND
- The family has been assessed at low or moderate risk of future maltreatment but could benefit from voluntary services AND
- The family agrees to services.

See [Section 2, Chapter B. Prevention, VDSS Child and Family Services Manual](#), for further guidance.

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

A FPM should be scheduled by the LDSS when the worker assesses a child to be at “very high” or “high” risk of abuse or neglect and the child is at risk for out-of-home placement in those families who will be or are receiving services. This meeting is scheduled to develop the plan and services to prevent the out-of-home placement and identifies the circumstances under which a removal might be considered. The meeting should convene **within 30 days** of initiating services and prior to the development of the ongoing service plan. The FPM must be documented in the child welfare information system. For guidance on conducting the FPM, refer to the [VDSS Child and Family Services Manual, Chapter A, Family Engagement](#). To avoid duplication, if there is an active CPS referral and an open case, the FPM should be documented in the case.

#### 4.6.26 Assessment summary of strengths and needs

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

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

- **Children.** Age and developmental capacity; number of children; behavioral/emotional factors; medical/physical factors; ability to self-protect/vulnerability; perception of caretaker; roles in family system; prior history of abuse/neglect; sex/gender; alleged abuser's continued access; and support system.
- **Parent/caretaker.** Mental health factors; *substance use*/abuse factors; domestic violence; prior history of abuse/neglect as a child; involvement in the criminal justice system; medical/physical factors; perception of alleged *child who is a victim*(ren); perception of alleged victim's role in family; parenting style; overall ability to care for children (past and present); ability to protect children; sense of personal responsibility of alleged child maltreatment; engagement with CPS; willingness to care for and protect children; and support system.
- **Environment.** Access to necessary utilities (heat, water, electricity, etc.); maintenance of the inside and outside of the home environment; hazardous

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living conditions; cleanliness of inside of home environment; safety concerns in the environment; and positive factors present in the environment.

- **Support Systems.** Informal and formal supports; level of isolation or engagement in community; institutional supports (faith-based, educational, recreational, paid, etc.); access to needed supports; past and present utilization of supports; cultural appropriateness of supports, previous involvement with formal services; and barriers to utilization of supports.
- **Summary.** Determination if current allegation was substantiated; severity of maltreatment; frequency and chronicity of maltreatment; concerns about premeditation; caretaker impulsivity; family response to CPS intervention; risk assessment determination; services recommended; and family's response to services. **The summary must include the rationale for why the LDSS is not opening a case if the risk assessment is determined to be high or very high risk.**

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

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

**4.6.27 Dispositional assessment**

Pursuant to [22 VAC 40-705-110 C](#), after collecting evidence and before expiration of the time frames for completing the investigation, the Family Services Specialist shall determine the disposition. The VAC [22 VAC 40-705-10](#) defines disposition as the determination of whether or not child abuse or neglect has occurred.

**4.6.27.1 Multiple dispositions and types of abuse or neglect**

The Code of Virginia [§ 63.2-1505 B5](#) requires that the Family Services Specialist make a founded or unfounded disposition for each allegation in the investigation. For example, an investigation may show sufficient evidence that a child was physically abused and mentally abused. The Family Services Specialist must make a disposition for each category of abuse or neglect. Each separate disposition of abuse or neglect must be supported by a preponderance of the evidence on its own accord.

It is possible that a category of abuse or neglect may have multiple types. For example, the evidence establishes that the child sustained a spiral fracture and internal injuries as a result of the caretaker's actions. The LDSS may render a

founded disposition of physical abuse with the type of “bone fracture” and a founded disposition of physical abuse with the type of “internal injury.”

#### **4.6.27.2 “Other than accidental means”**

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

#### **4.6.27.3 Incapacitated caretaker**

Physical neglect includes when the caretaker is incapacitated to the extent that the caretaker is prevented or severely limited in performing child caring tasks. Incapacitation may include physical incapacitation or mental incapacitation. Mental or physical incapacitation, in and of itself, is not sufficient for a founded disposition. Incapacitation may include mental illness when the mental illness impairs the caretaker’s ability to provide for the child’s basic needs to the extent that the child’s safety or health is jeopardized. Incapacitation may occur as a result of the caretaker’s use of controlled substances to the extent that the caretaker is unable to perform child caring duties.

#### **4.6.27.4 Documentation required for mental abuse or mental neglect**

Pursuant to- [22VAC40-705-30 C](#), when making a founded disposition of mental abuse or mental neglect, the Family Services Specialist must obtain documentation supporting a nexus between the actions or inactions of the caretaker and the mental dysfunction demonstrated by the child or the threat of mental dysfunction in the child.

Documentation may include psychiatric evaluations or examinations, psychological evaluations or examinations, written summaries and letters. Documentation may be authored by psychiatrists, psychologists, Licensed Professional Counselors (L.P.C.) and Licensed Clinical Social Workers (L.C.S.W.), or any person acting in a professional capacity and providing therapy or services to a child or family in relationship to the alleged mental abuse. An employee of the LDSS may not serve as both the CPS investigator and the professional who documents mental abuse or mental neglect.

Additional guidance regarding making dispositions in investigations that involve DV can be found in 1.10.2 of the [VDSS Child and Family Services Manual, Chapter H. Domestic Violence](#).

#### 4.6.28 Preponderance of the evidence

The VAC [22 VAC 40-705-10](#) defines a preponderance of the evidence.

As the standard of proof in making a founded disposition of abuse or neglect, a preponderance of the evidence means that the evidence offered in support of the allegation is of greater weight than the evidence offered in opposition. The evidence gathered should be evaluated by its credibility, knowledge offered and information provided.

Proof of one (1) or more of the following factors, linking the abuse or neglect to the alleged abuser or neglecter, may constitute preponderance of evidence:

- Medical and/or psychological information from a licensed medical professional or other treatment professional that indicates that child abuse/neglect occurred;
- An admission by the alleged abuser/neglector;
- The statement of a credible witness or witnesses regarding the abuse or neglect;
- The *child who is a victim's* statement that the abuse or neglect occurred. In assessing the weight to be given to the child's statement, consider:
  - level of detail described;
  - emotional/cognitive developmental level of the child;
  - consistency of statements if more than one interview is conducted; or
  - corroboration of statement by other circumstances and/or witnesses.
- Circumstantial evidence, or indirect evidence, which links the alleged abuser or neglecter to the abuse or neglect.
- In sexual abuse investigations also consider:
  - secrecy- child instructed, asked, and/or threatened to keep the abuse/neglect a secret;
  - coercion- child reports elements of coercion, persuasion, or threats by the alleged abuser to engage in the abuse/neglect.

#### 4.6.28.1 First source, direct, and indirect evidence

First source evidence and indirect evidence are defined in the VAC [22 VAC 40-705-10](#).

In no instance can a founded disposition be based solely on indirect evidence or an anonymous complaint.

- **First source or direct evidence.** First source or direct evidence means evidence that proves a fact, without an inference or presumption, and which in itself, if true, conclusively establishes that fact. First source evidence includes the parties and witnesses to the alleged abuse or neglect. First source evidence also includes: witness depositions; police reports; photographs; medical, psychiatric and psychological reports; and any electronic recordings of interviews.
- **Direct evidence** may include witnesses or documents. For example, first source evidence would include a witness who actually saw the alleged act or heard the words spoken. First source evidence would also include the examining physician's report establishing that the child sustained a spiral fracture.
- **Indirect evidence.** Indirect evidence, also known as circumstantial evidence, is evidence based on inference and not on personal knowledge or observation.<sup>7</sup> Indirect evidence relies upon inferences and presumptions to prove an issue in question and may require proving a chain of circumstances pointing to the existence or non-existence of certain facts.

#### 4.6.28.2 Credibility of evidence

There is no clear distinction between the reliability and credibility of first source evidence and indirect evidence. It remains incumbent upon the LDSS to weigh the credibility of all the evidence when determining a disposition. Indirect evidence may be used in support of a founded disposition; however, indirect evidence cannot be the sole basis for the disposition.

#### 4.6.28.3 Polygraph examinations are not considered reliable evidence

Polygraph examinations are not admissible as evidence in CPS administrative hearings and cannot be considered as evidence when an LDSS is making a

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<sup>7</sup> Black's Law Dictionary 636, (9<sup>th</sup> ed. 2009).

disposition. Since the Virginia Supreme Court has repeatedly ruled that polygraph examinations are scientifically unreliable, an LDSS cannot allow polygraph examinations to be entered in as evidence in support of a founded disposition.<sup>8</sup>

#### **4.6.29 Factors to determine if medical neglect has occurred**

It is the mother and father's responsibility to determine and obtain appropriate medical, mental and dental care for a child. What constitutes adequate medical treatment for a child cannot be determined in a vacuum, but rather, each case must be decided on its own particular facts.

The focus of the CPS response is whether the caretaker failed to provide medical treatment and whether the child was harmed or placed at risk of harm as a result of the failure. Cultural and religious child-rearing practices and beliefs that differ from general community standards should not be considered a basis for medical neglect, unless the practices present a specific danger to the physical or emotional safety of the child.

##### **4.6.29.1 Treatment or care must be necessary**

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

The challenging issue is determining when medical care is necessary for the child's health. Obviously, life-saving medical treatment is necessary and falls within the definition. However, when parents or caretakers refuse medical care that is important to their child's well-being but is not essential to life, the issue

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<sup>8</sup> In *Robinson v. Commonwealth*, 231 Va. 142, 341 S.E.2d 159 (1986), the Virginia Supreme Court stated, "[I]n a long line of cases, spanning almost thirty years, we have made clear that polygraph examinations are so thoroughly unreliable as to be of no proper evidentiary use whether they favor the accused, implicate the accused, or are agreed upon to by both parties." Virginia courts have not specifically addressed the use of polygraphs in administrative hearings. However, in light of the courts' strong opposition to using results of polygraph testing in evidence, we see no principled distinction between the use of a polygraph in court and use in an administrative hearing. In *Dept. of Public Safety v. Scruggs*, 79 Md. App. 312, 556 A.2d 736 (1989), the court acknowledged that administrative agencies are not bound by the strict rules of evidence, but stated that such evidence must be competent. The court found polygraph evidence so unreliable as to deem it "incompetent" evidence. The Supreme Court relied on *Robinson* in 2004 in *Elliott v. Commonwealth*, 267 Va. 396, 593 S.E.2d 270 (2004).

becomes more complicated in determining whether the medical care is necessary.

#### **4.6.29.2 Assess degree of harm (real or threatened) to the child**

When assessing whether the medical, mental, or dental treatment is necessary for the child's health, the LDSS should consider the degree of harm the child suffered as a result of the lack of care. If the child has yet to suffer harm, then the LDSS should assess the likelihood that the child will suffer harm. The greater the harm, the more necessary the treatment.

In addition to harm, the LDSS should consider the type of medical, mental, or dental condition involved and whether the condition is stable or progressive. Whether the condition is stable or progressive may be an issue in determining the severity of the condition and the necessity of treatment. If the condition of the child is stable, then the LDSS may consider deferring to the caretaker's authority. If the condition is progressive and left untreated, then the LDSS may give lesser deference to the caretaker's authority.

#### **4.6.29.3 Parent refuses treatment for life-threatening condition**

Pursuant to the Code of Virginia [§ 63.2-100](#), a parent's decision to refuse a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care when all the following conditions are met:

- The decision is made jointly by the parents or other person legally responsible for the child and the child.
- The child has reached 14 years of age and sufficiently mature to have an informed opinion on the subject of his medical treatment.
- The parents or other person legally responsible for the child and the child have considered alternative treatment options.
- The parents or other person legally responsible for the child and the child believe in good faith that such decision is in the child's best interest.

#### **4.6.29.4 Assess caretaker's rationale**

The most singular underlying issue in determining whether a child is being deprived of adequate medical care, and therefore, a medically neglected child, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. The LDSS should consider whether the caretaker's failure to provide necessary medical treatment

was caused by ignorance or misunderstanding. The LDSS should consider whether the caretakers obtained accredited medical assistance and were aware of the seriousness of their child's condition. The LDSS should weigh the possibility of a cure if a certain mode of treatment is undertaken and whether the caretakers provided their child with a treatment. The LDSS should consider whether the caretakers sought an alternative treatment recommended by their physician and have not been totally rejected by all responsible medical authority.

#### **4.6.29.5 Assess financial capabilities and poverty**

The LDSS should consider whether the caretaker's failure to provide necessary medical treatment was caused by financial reasons or poverty. Parents or caretakers should not be considered neglectful for the failure to provide necessary medical treatment unless they are financially able to do so or were offered financial or other reasonable means to do so. In such situations, a founded disposition may be warranted if, after appropriate counseling and referral, the parents still fail to provide the necessary medical care.

#### **4.6.29.6 Failure to thrive must be diagnosed by a physician**

The Family Services Specialist must document that the diagnosis of failure to thrive was made by a physician and the diagnosis was nonorganic failure to thrive.

#### **4.6.29.7 Child under alternative treatment**

The Code of Virginia provides that no child shall be considered an abused or neglected child only for the reason that the child is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination. The religious exemption to a founded disposition of child abuse or neglect mirrors the statute providing a religious defense to criminal child abuse and neglect.<sup>9</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

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<sup>9</sup> See Va. Code § [18.2-371.1 C](#). Any parent, guardian or other person having care, custody, or control of a minor child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall not, for that reason alone, be considered in violation of this section.

of religion. The religious exemption statute is not to provide a shield for a person to abuse or neglect a child.<sup>10</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.

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

The VAC [22 VAC 40-705-30 B3b](#) states that medical neglect includes withholding of medically indicated treatment. The VAC defines withholding of medically indicated treatment as specific to infants. When conducting an investigation involving an infant deprived of necessary medical treatment or care, the LDSS must be aware of the ancillary definitions and guidance requirements in [22 VAC 40-705-10](#).

#### 4.6.30 Unfounded disposition

Pursuant to [22 VAC 40-705-10](#), the definition of an unfounded disposition means that a review of the facts does not show by a preponderance of the evidence that child abuse or neglect occurred.

However, an unfounded disposition may not mean that abuse or neglect did not occur, but rather that the evidence obtained during the investigation did not reach the preponderance level.

#### 4.6.30.1 Notifications in unfounded investigations

- **Written notification to alleged abuser or neglector.** The alleged abuser or neglector shall be notified in writing that the complaint was determined to be unfounded. A copy of the notification shall be filed in the record and documented in the child welfare information system. The notification shall include the length of time the CPS report will be retained in the child welfare information system; the individual's right to request the record be retained for an additional period; and the right to access information about himself in the investigative record. When the alleged abuser or neglector

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<sup>10</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).

is under 18 years of age, the LDSS should provide the parent or legal guardian of the alleged abuser or neglector with written notification that the complaint was determined to be unfounded.

- Although verbal notification of an unfounded investigation is not required by regulation, Family Services Specialists are encouraged to discuss the outcome of the investigation as well as any services the family may need or request.
- **Inform alleged abuser or neglector of legal recourse if complaint is malicious.**

Pursuant to [22 VAC 40-705-140 B1b](#), in all unfounded complaints, the Family Services Specialist shall inform the alleged abuser or neglector that he may petition the court to obtain the identity of the complainant if the alleged abuser believes the complaint was made in bad faith or maliciously.

The Family Services Specialist may provide the alleged abuser or neglector with a copy of the Code of Virginia [§ 63.2-1514](#) pertaining to reports or complaints made in bad faith or maliciously. Upon request, the LDSS shall advise the person who was the subject of an unfounded investigation if the complaint or report was made anonymously, as required by the Code of Virginia [§ 63.2-1514](#). The Family Services Specialist may also refer the person to seek legal advice or to the court if they have further questions.

- **Upon request, advise alleged abuser if complainant is anonymous**

Pursuant to [22 VAC 40-705-40 E](#), upon request, the LDSS must advise the person who was the subject of the complaint if the complaint or report was made anonymously.

- **Alleged abuser or neglector may request retention of the record.**

Pursuant to [22 VAC 40-705-130 A5](#), the alleged abuser or neglector in an unfounded disposition may request in writing the LDSS retain the record for an additional period of up to two years.

- **Record shall be purged upon court order.**

Pursuant to [22 VAC 40-705-130 A6](#), the individual against whom allegations of abuse or neglect were made may request in writing that both the local department and the department shall immediately purge the record upon presentation of a certified copy of a court order that there has been a civil

action that determined that the complaint or report was made in bad faith or with malicious intent pursuant to [§ 63.2-1514](#) of the Code of Virginia.

- **Notify alleged abuser or neglector in unfounded investigation involving the death of a child.**

Pursuant to [22 VAC 40-705-140 B1c](#), in accordance with [§ 32.1-283.1 D](#) of the Code of Virginia, when an unfounded disposition is made in an investigation that involves a child death, the child protective services worker shall inform the individual against whom allegations of abuse or neglect were made that the case record will be retained for the longer of 12 months or until the State Child Fatality Review Team has completed its review of the case.

- **Notify *child who is a victim's* non-custodial parent or guardian.**

Pursuant to [22 VAC 40-705-140 C1](#), reasonable efforts must be made to notify the non-custodial parent of the alleged *child who is a victim* when that parent is not the subject of a report of child abuse or neglect. Not only does the parent have a right to know, he or she may be a resource to the child. However, if there is reason to believe that contact would be detrimental to the child that should be taken into consideration. If notification does not occur for this or any reason, that reason should be documented in the child welfare information system. For siblings or other children residing in the home who are not identified as alleged victims, reasonable efforts to notify the non-custodial parent is at the discretion of the LDSS. Family Services Specialists should consider the risk of future maltreatment to these children and the potential protective benefits of notification when making this decision.

- **Notify complainant of unfounded disposition.**

Pursuant to [22 VAC 40-705-140 D1](#), when an unfounded disposition is made, the LDSS must notify the complainant, when known, in writing that the complaint was investigated and determined to be unfounded. The notification must be documented in the child welfare information system.

#### **4.6.31 Cannot reopen a closed investigation**

There is no basis in the Code of Virginia or the VAC for “reopening” a closed investigation. When new or additional information is received after a complaint has been determined to be Unfounded, the new/additional information may be sufficient to meet the validity criteria for a new CPS report. If the new information adds nothing more to the original complaint, the report should be screened out.

#### 4.6.32 Founded disposition

The VAC [22 VAC 40-705-10](#) defines founded as a review of the facts shows by a preponderance of the evidence that child abuse or neglect occurred.

##### 4.6.32.1 Founded disposition cannot be based solely on anonymous complaint

A founded disposition cannot be based solely on an anonymous complaint. An allegation of abuse or neglect, in and of itself, cannot prove that the alleged act or omission did or did not occur. Because a person alleges that an act occurred does not mean that the act in fact did occur. The allegation must be proved or disproved by corroborating evidence.

##### 4.6.32.2 Alleged abuser may consult with LDSS prior to a founded disposition

The alleged abuser may be informed at any time during the investigation that the facts are leading the worker toward making a founded disposition.

Pursuant to [22 VAC 40-705-120 D](#), if the alleged abuser/neglector wants to present additional evidence or refute evidence, the LDSS may afford this opportunity and consider such additional information prior to rendering the disposition. The investigation may be extended from 45 days to 60 days for this process to be completed.

The request for a consultation prior to disposition does not apply if there are pending criminal charges involving the same *child who is a victim* unless information gathered during the joint investigation is authorized to be released.

#### 4.6.33 Founded disposition and identity of abuser is unknown

It is possible that an investigation reveals a preponderance of evidence establishing that the child was physically abused or physically neglected, but fails to establish, by a preponderance of that evidence, the caretaker responsible for the abuse or neglect. If, after diligent efforts to identify the abuser, the identity of the abuser remains unknown, the LDSS may enter the abuser's name as "unknown" into the child welfare information system.

For example, the evidence establishes that the infant was shaken and sustained severe injuries. The only persons with the opportunity to have caused the injuries were the parents of the infant and the babysitter who provided care for the infant on the night the injuries occurred. However, the evidence is conflicting concerning who actually caused the injuries. In such a situation, the LDSS may render a founded disposition of physical abuse with the identity of the abuser unknown.

- **Abuser identified after disposition.** If new information is received subsequent to a disposition of Founded with Unknown Abuser, this information is to be treated as a new referral and requires a new investigation. If the original information is still pertinent and relevant and there is sufficient reason not to re-interview all the required contacts, such as potential trauma to the child, the information from original interviews may be incorporated into the new investigation. If this additional information allows for a founded disposition with a known abuser, it does not replace the original finding.

#### 4.6.34 Determine level of founded disposition

A founded disposition must be categorized into one of three levels. Categorization is dependent on the nature of the act and the seriousness of the harm or threatened harm to the child as a result of maltreatment. In all founded cases, there may be circumstances influencing the severity of the abusive or neglectful incident. The circumstances may increase or decrease the severity of harm or threatened harm.

The level for a founded disposition must be supported by a preponderance of the evidence. The evidence supporting the level must be documented in the record. The facts supporting the level will relate to the type and pattern of abuse/neglect, the vulnerability of the child, the effect or potential effect of the abuse/neglect, and the action or inaction of the caretaker.

##### 4.6.34.1 Level 1

Pursuant to [22 VAC 40-705-110 D1](#), level one includes those injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.

Examples of injuries or conditions that resulted in or were likely to have resulted in serious harm include but are not limited to:

- For physical abuse:
  - the situation requires medical attention in order to be remediated;
  - the injury may be to the head, face, genitals, or is internal and located near a vital organ;
  - injuries located in more than one place;
  - injuries were caused by the use of an instrument such as a tool or weapon;

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- an inappropriate drug was administered or a drug was given in an inappropriate dosage; or
- child exposed to the production or sale of methamphetamine or other drug and is not able to self-protect.
- For neglect situations:
  - the condition would be one where the child's minimal needs are rarely met for food, clothing, shelter, supervision, or medical care;
  - the child is frequently unsupervised or unprotected;
  - the child is left by the caretaker with no plan for the child's care or no information about the caretaker's whereabouts or time for return; or
  - a young child is left alone for any period of time.
- For mental abuse or neglect:
  - the child has engaged in self-destructive behavior;
  - has required psychiatric hospitalization;
  - has required treatment for severe dysfunction;
  - presents a danger to self or others; or
  - problems related to the caretaker behavior.
- For sexual abuse:
  - the situation would be one where there was genital contact;
  - force or threat was used; or
  - the abuse had taken place over a period of time and there were multiple incidents.
- For medical neglect:
  - caretaker failed to provide medical care in a life threatening situation; or
  - a situation that could reasonably be expected to result in a chronic debilitating condition.

- For non-organic failure to thrive: the syndrome is considered to be a form of physical or emotional maltreatment. (refer to physical or mental abuse or neglect)

#### 4.6.34.2 Level 2

Pursuant to [22 VAC 40-705-110 D2](#), level two includes those injuries or conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.

Examples of injuries or conditions that resulted in or were likely to have resulted in moderate harm include but are not limited to:

- For physical abuse:
  - the injury necessitates some form of minor medical attention;
  - injury on torso, arms, or hidden place (such as arm pits);
  - use of tool that is associated with discipline such as a switch or paddle; or
  - exposure to the production or sale of methamphetamine or other drugs and the child may not be able to self-protect.
- For neglect situations:
  - the child's minimal needs are sporadically met for food, clothing, shelter, supervision, or medical care; or
  - a pattern or one-time incident related to lack of supervision caused or could have caused moderate harm.
- For mental abuse or neglect:
  - the child's emotional needs are rarely met; or
  - the child's behavior is problematic at home or school.
- For sexual abuse:
  - minimal or no physical touching but could be exposure to masturbation, exhibitionism, etc.;
  - caretaker makes repeated sexually provocative comments to the child; or
  - child is exposed to pornographic materials.

- For medical neglect:
  - a doctor has prescribed care to eliminate pain or remedy a condition but the caretaker has not followed through with appointments or recommendations; or
  - the child's condition is not acute or life threatening but could be detrimental to the child's mental or physical health.
- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment. (refer to physical or mental abuse or neglect)

#### 4.6.34.3 Level 3

Pursuant to [22 VAC 40-705-110 D3](#), level three includes those injuries or conditions, real or threatened, that result in minimal harm to a child.

Examples of injuries or conditions that resulted in or were likely to have resulted in minimal harm include but are not limited to:

- For physical abuse:
  - the situation requires no medical attention for injury;
  - minimal exposure to the production or sale of methamphetamine or other drugs.
- For physical neglect:
  - child's minimal needs inconsistently met for food, clothing, shelter, supervision, or medical care; or
  - supervision marginal which poses a threat of danger to child.
- For mental abuse or neglect the situation would be one where the child's emotional needs are met sporadically with evidence of some negative impact on the child's behavior.
- For sexual abuse:
  - there was no or minimal physical touching or exposure to sexual acts such as masturbation, exhibitionism, etc.;
  - caretaker's actions or behavior, such as making sexually suggestive comments to the child, causes or creates a threat of minimal harm to the child.

- For medical neglect, the situation may be one in which the child's life is not in danger, the child is not experiencing discomfort at this time, but the medical authority reports medical treatment is needed to avoid illness or developmental delay.
- For non-organic failure to thrive, the syndrome is considered to be a form of physical or emotional maltreatment. (refer to physical or mental abuse or neglect)

#### 4.6.35 Notifications in founded investigations

##### 4.6.35.1 Notify abuser or neglector in writing

The written notification to the abuser or neglector of the founded disposition(s) must be in a letter and a copy must be included in the case record. The letter must include:

- A clear statement that the individual is the abuser and/or neglector.
- The category of abuse or neglect.
- The disposition, level, and retention time, including statement about effect of multiple complaints on retention.
- The name of the *child who is a victim* or children.
- A statement informing the abuser of his or her right to appeal the finding and to have access to the case record.
- A statement informing the abuser that pursuant to [§ 63.2-1505](#) of the Code of Virginia, if the abuser is an employee in a public school division in Virginia, the local school board shall be notified of the founded disposition.

LDSS are encouraged to send the disposition letter by certified mail as further documentation of the notification to the abuser or neglector.

When the alleged abuser or neglector is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglector with written notification of the founded disposition.

##### 4.6.35.1.1 Additional notification to alleged abuser in certain founded sexual abuse investigations

All investigation records founded on or after July 1, 2010 for sexual abuse investigations level 1 shall be maintained by the LDSS 25 years from the date

of the complaint. This retention timeframe will not be reflected in the Central Registry past the purge dates set out in [22VAC 40-705-130](#).

For all sexual abuse investigations founded level 1 on or after July 1, 2010, the written notification shall include a statement informing the alleged abuser that the investigation record shall be maintained by the LDSS for 25 years past the date of the complaint pursuant to [§ 63.2-1514 A](#) of the Code of Virginia; however, this retention time will not be reflected in the Central Registry past the purge date of 18 years as set out in [22VAC 40-705-130](#).

When the alleged abuser or neglecter is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglecter with written notification of the retention time.

#### **4.6.35.2 Inform abuser or neglecter of appeal rights**

The abuser or neglecter must be informed of his right to appeal the founded disposition. This must be done verbally and in writing as soon as the disposition is reached. In addition, the abuser or neglecter must be given a brochure, "[Child Protective Services Appeals and Fair Hearings](#)" that outlines the administrative appeal process. The LDSS must document in the child welfare information system that the abuser or neglecter was given the appeal brochure and was informed verbally of his or her appeal rights.

When the alleged abuser or neglecter is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglecter with written notification of his right to appeal the founded disposition. See Section 7.4.1 regarding requests for appeals.

#### **4.6.35.3 Notify abuser or neglecter verbally**

The verbal notification to the abuser or neglecter of the founded disposition(s) should include the disposition, level, and retention time, including effect of multiple complaints on retention and inform the abuser of his or her right to appeal to finding and to have access to the case record. The worker must document in the child welfare information system, the date the verbal notification took place. If the verbal notification did not occur, the Family Services Specialist should document the reasons in the child welfare information system.

When the alleged abuser or neglecter is under 18 years of age, the LDSS must provide the parent or legal guardian of the alleged abuser or neglecter with verbal notification of the founded disposition. The worker should document in the child welfare information system, the date the verbal notification took place. If the

verbal notification did not occur, the Family Services Specialist should document the reasons in the child welfare information system.

#### **4.6.35.4 Foster parent is abuser or neglector of the *child who is a victim* in founded complaint**

Pursuant to [22 VAC 40-705-140 B2](#), when the abuser or neglector in a founded disposition is a foster parent of the *child who is a victim*, the local department shall place a copy of this notification letter in the child's foster care record and in the foster home provider record.

#### **4.6.35.5 Notify all parties if identity of abuser or neglector is unknown**

If the LDSS renders a founded disposition with the abuser unknown, the LDSS must notify all parties, including the parents or guardian of the child, the alleged abuser or neglector, and the complainant. All parties must be informed that the investigation resulted in a finding that the child was abused or neglected, but the evidence did not establish the identity of the perpetrator.

The alleged abuser or neglector should be notified that a finding of abuse or neglect was not made against that person. Because the abuser or neglector is unknown, no party has the right to an administrative appeal of the founded disposition.

The complainant should be notified that necessary action was taken.

#### **4.6.35.6 Notify all parties if abuser or neglector is deceased**

If the LDSS renders a founded disposition and the named abuser or neglector is deceased, the LDSS must notify all parties, including the deceased abuser or neglector's estate. The notification letter must state that the identity of the alleged abuser or neglector will be referred to as "deceased" in the child welfare information system. Because the abuser or neglector is deceased, no party has the right to an administrative appeal of the founded disposition.

The complainant should be notified that necessary actions were taken.

#### **4.6.35.7 Notify *child who is a victim's* non-custodial parent or guardian**

Pursuant to [22 VAC 40-705-140 C2](#), reasonable efforts must be made to notify the non-custodial parent of the alleged *child who is a victim* when that parent is not the subject of a report of child abuse or neglect. Not only does the parent have a right to know, he or she may be a resource to the child. However, if there is reason to believe that contact would be detrimental to the child, which should also be taken into consideration. If notification does not occur for this or any

reason, that reason should be documented in the child welfare information system. For siblings or other children residing in the home that are not identified as alleged victims, reasonable efforts to notify the non-custodial parent is at the discretion of the LDSS. Family Services Specialists should consider the risk of future maltreatment to these children and the potential protective benefits of notification when making this decision.

For all sexual abuse investigations founded level 1 on or after July 1, 2010, the notification to the parent of the alleged *child who is a victim* shall include a statement that the investigation record shall be maintained by the LDSS for 25 years past the date of the complaint pursuant to [§ 63.2-1514 A](#) of the Code of Virginia; however, this retention time will not be reflected in the Central Registry past the purge date of 18 years as set out in [22 VAC 40-700-30](#).

#### 4.6.35.8 Notify complainant

Pursuant to [22 VAC 40-705-140 D2](#), when a founded disposition is made, the child protective services worker shall notify the complainant, when known, in writing that the complaint was investigated and necessary action was taken. The local worker shall file a copy in the case record.

#### 4.6.35.9 Notify Family Advocacy Program

The Code of Virginia [§ 63.2-1503](#) N establishes authority for the LDSS to share CPS information with family advocacy representatives of the United States Armed Forces.

Effective July 1, 2017: at the conclusion of **all** investigations (founded and unfounded dispositions), the LDSS shall notify the Family Advocacy Program representative and provide the final disposition, the type(s) of abuse or neglect, the identity of the abuser or neglecter and any recommended services. These notifications allow for coordination between CPS and the Family Advocacy Program and are intended to facilitate identification, treatment and service provision to the military family. For additional information about the Family Advocacy Program, contact information for a particular branch of the military or a specific installation, click [here](#).

- Written notification to Family Advocacy shall be made upon completion of an investigation resulting in an unfounded disposition.
- The Family Advocacy Program representative shall be notified in writing **within 30 days** after all administrative appeal rights of the abuser or neglecter have been exhausted or forfeited for all investigations with a founded disposition.

- Written notification to abuser or neglector.

The abuser or neglector shall be advised that this information is being provided to the Family Advocacy Program and shall be given a copy of the written notification sent to the Family Advocacy Program. These notifications shall be documented in the child welfare information system.

#### 4.6.35.10 Referral to early intervention programs for children under age three in an investigation

The LDSS shall refer any child under the age of three for early prevention services to the local Infant and Toddler Connection of Virginia who:

- Is the subject of an investigation with a founded disposition;
- Is identified as affected by illegal *substance use* or withdrawal symptoms resulting from prenatal drug exposure; or
- Has a physical or mental condition that has a high probability of resulting in developmental delay, regardless of track or disposition.

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

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

- As soon as possible but no later than **seven calendar days** of completing the investigation, the LDSS should send a referral to the local Part C Early Intervention program using the local referral form.

The LDSS should:

- Send a referral as soon as possible when a child has been identified as exposed prenatally to an illegal substance or has withdrawal symptoms at birth.
- Send a referral as soon as possible when a child has been identified as having a physical or mental condition which has a high probability of resulting in a developmental delay.

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- Send a copy of the referral to the family. The parent should also be informed verbally of the referral and have an opportunity to discuss the referral process.
- Request the family to sign a release form allowing the exchange of information between the Infant & Toddler Connection Program and the LDSS regarding the referral.
- Document the notification and referral in the state child welfare information system.

More information on the Infant & Toddler programs in Virginia can be found on the [Infant & Toddler Connection of Virginia website](#) and in the Memorandum of Agreement issued by the Commissioners of the Department of Social Services and Department of Behavioral Health and Developmental Services and other agencies involved with implementation of Part C of the Individuals with Disabilities Education Act (IDEA) dated May 2013 located on the [VDSS internal website](#).

**4.6.35.11 Notify parents of a minor who is an abuser**

When a child under the age of eighteen is the abuser in a founded investigation, the LDSS shall inform the mother, father or legal guardian of the minor of the finding and the abuser's right to appeal the finding. The minor's parents/legal guardians have the authority to initiate an administrative appeal of the founded disposition on behalf of the minor.

**4.6.35.12 Notify local school board when abuser is or was an employee**

Pursuant to [§ 63.2-1505 B7](#) of the Code of Virginia, if the abuser is or was at the time of the investigation or the conduct that led to the report a full-time, part-time, permanent, or temporary employee in a school division located within the Commonwealth, the LDSS shall notify the local school board of the founded disposition at the same time the subject is notified of the founded disposition. This includes in home investigations when the employee is the subject of the founded investigation involving his own children. Any information exchanged for the purposes of this subsection shall not be considered a violation of [§§ 63.2-102, 63.2-104](#) or [63.2-105](#) of the Code of Virginia.

The LDSS may send a copy of the disposition letter to the subject of the complaint to the local school board to meet this notification requirement.

This notification shall be documented in the child welfare information system.

#### 4.6.35.13 Notify Superintendent of Public Instruction, Department of Education

Pursuant to [§ 63.2-1503 P](#) of the Code of Virginia, the LDSS shall immediately notify the [Superintendent of Public Instruction](#), Department of Education (DOE) when an individual holding a license issued by the Board of Education is the subject of a founded complaint of child abuse or neglect and shall transmit identifying information regarding such individual if the LDSS knows the person holds a license issued by the Board of Education.

The LDSS shall immediately notify the Superintendent of Public Instruction, DOE if the founded complaint of child abuse or neglect is overturned on an administrative appeal.

The Board of Education issues licenses to instructional personnel including teachers and other professionals and administrators. Refer to [Licensure Regulations for School Personnel](#) in the VAC.

The Board of Education does not license teacher aides, janitorial staff, and administrative support staff.

This notification requirement applies to all individuals holding a license even if that person is not currently employed by a local school board.

#### 4.6.36 Notification to Interstate Compact on the Placement of Children (ICPC)

When applicable, at the conclusion of the investigation, notify [Interstate Compact Placement of Children](#) (ICPC) of the results. The Family Services Specialist shall document this notification in the child welfare information system.

#### 4.6.37 Supervisor approval required

All completed investigations should be reviewed and approved in the child welfare information system by the Family Services Specialist's supervisor **within five working days of the worker's request for approval**.

Prior to supervisory approval of an investigation with a founded disposition, the Family Services Specialist should ensure compliance with all Code of Virginia requirements, CPS regulations and guidance. A "Founded Investigations and Appeals" checklist is available on the [internal VDSS website](#).

### 4.7 The case record

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Pursuant to [22 VAC 40-705-10](#), documentation means information and materials, written or otherwise, concerning allegations, facts, and evidence. Thorough and detailed

documentation of the family assessment or investigation is essential to determine and support the decisions made by the Family Services Specialist and approved by the supervisor. All family assessment and investigation records must contain the information required by law, regulation, and guidance.

#### **4.7.1 Case record**

Pursuant to [22 VAC 40-705-10](#), case record means a collection of information maintained by a local department, including written material, letters, documents, tapes, photographs, film or other materials regardless of physical form about a specific child protective services investigation, family or individual.

##### **4.7.1.1 Audio recordings**

Audio recordings taken during the course of a family assessment or investigation are part of the case record, and must be stored at the case level, not the participant level, in the child welfare information system.

##### **4.7.1.2 Photographs**

Photographs taken during the course of a family assessment or investigation are part of the case record, and must be stored at the case level, not the participant level, in the child welfare information system.

#### **4.7.2 Family assessment or investigation documentation**

Pursuant to [22 VAC 40-705-10](#), the family assessment or investigative narrative is a detailed written summary of all the evidence supporting the LDSS's investigation disposition or information supporting the family assessment.

Guidelines for documentation in a case where DV is present can be found in section 1.11 of the [VDSS Child and Family Services Manual, Chapter H. Domestic Violence](#).

All documentation must be entered or updated in the child welfare information system within five business days.

A hard copy file, in addition to the child welfare information system generated reports, documents, forms, audio and digital image files, for each family assessment or investigation should include correspondence, reports from other sources (school, medical, etc.), and other documentation germane to the family assessment or investigation which may not be entered into the child welfare information system, such as a safety plan.

## 4.8 CPS child welfare information system

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CPS reports including screened out reports, investigations, and family assessments, must be maintained in the child welfare information system. The child welfare information system includes OASIS, COMPASS Mobile Application, and COMPASS Portal.

## 4.9 Central Registry and record retention

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The Code of Virginia [§ 63.2-1515](#) establishes authority for the Central Registry and governs disclosure of information from the central registry.

### 4.9.1 CPS database available to LDSS

Pursuant to [22 VAC 40-705-130](#), in addition to CPS reports contained in the Central Registry, the child welfare information system contains a database of all non-purged CPS reports that can only be accessed by the LDSS. This database contains all pending CPS investigations and family assessments as well as completed family assessments, unfounded investigations, and screened out reports.

### 4.9.2 Retain record if subsequent complaints arise

Pursuant to [22 VAC 40-705-130 D](#), in all family assessments or investigations, if the individual against whom allegations of abuse or neglect is involved in any subsequent complaint or report, the information from all complaints or reports shall be maintained until the last purge date has been reached.

### 4.9.3 Retention period for family assessment

Pursuant to [22 VAC 40-705-130 C](#), the record of the family assessment must be purged three years after the date of the complaint or report if there are no subsequent complaints regarding the individual against whom allegations of abuse or neglect were made or regarding the same child in those three years.

### 4.9.4 Retention period for investigation with unfounded disposition

Pursuant to § 63.2-1514 of the Code of Virginia, the local department shall report all unfounded case dispositions to the child abuse and neglect information system when disposition is made.

#### 4.9.4.1 Purge unfounded disposition after three years

Pursuant to [§ 63.2-1514 B](#) of the Code of Virginia, the record of unfounded investigations that involved reports of child abuse or neglect shall be purged three years after the date of the complaint or report if there are no subsequent

complaints or reports regarding the same child or the person who is the subject of the complaint or report within such three-year period.

#### 4.9.5 Retention period for investigations with founded disposition

Pursuant to [§ 63.2-1515](#) of the Code of Virginia and [22 VAC 40-705-110](#), the LDSS must report all founded dispositions to the child welfare information system for inclusion in the Central Registry.

##### 4.9.5.1 25 years

The Code of Virginia [§ 63.2-1514 A](#) requires that all records related to founded cases of child sexual abuse involving injuries or conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child shall be maintained by the LDSS for a period of 25 years from the date of the complaint. All investigation records founded on or after July 1, 2010 for sexual abuse investigations level 1 shall be maintained by the LDSS 25 years from the date of the complaint. This retention timeframe will not be reflected in the Central Registry past the purge dates set out in [22 VAC 40-705-130](#).

#### 4.9.6 Retention period for reports involving a child death

The record of a child fatality report, whether screened out, founded, or unfounded, should be maintained until the State Child Fatality Review Team has had an opportunity to review it. The Code of Virginia [§ 32.1-283.1 D](#) requires the LDSS to maintain these CPS records beyond the usual retention periods for CPS records. Contact the regional consultant if there is any question about retention of a specific record.

#### 4.9.7 CPS statistical information

The child welfare information system provides non-identifying statistical information about the CPS program.

### 4.10 CPS Central Registry searches

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It is the responsibility of the Department to maintain an child welfare information system for CPS and to respond to requests for searches of the Central Registry. Many organizations that work with children require a search of the Central Registry as a condition of employment. In addition, the Code of Virginia [§ 63.2-1515](#) requires the VDSS respond to requests to search the Central Registry for employment by the LDSS and local school boards.

#### 4.10.1 Individual whose name is being searched must authorize the Central Registry search

Pursuant to [22 VAC 40-705-170 A](#), VDSS will complete a search of the Central Registry upon request by a local department, upon receipt of a notarized signature of the individual whose name is being searched authorizing release of such information or a court order specifying a search of the Central Registry.

The required form, "Request for Search of the Child Protective Services (CPS Central Registry)", with instructions, is located on the [VDSS webpage](#).

#### 4.10.2 Name is found in Central Registry

Pursuant to [22 VAC 40-705-170 B](#), VDSS will contact the LDSS and ask if the name is a match to their records. If the name is a match, the LDSS will be asked to verify that the client was notified of their appeal rights.

##### 4.10.2.1 LDSS cannot verify that client was notified of appeal rights

If the LDSS cannot produce documentation that the client was notified of his appeal rights, the LDSS must review the case file. The LDSS must determine whether to retain or amend the founded disposition or to purge the complaint based on the documentation in the case record. The LDSS may consult the CPS Regional Specialist for assistance.

The LDSS must review the case record and notify the Central Registry Search Unit **within five working days**.

##### 4.10.2.2 Written notification to abuser or neglecter of disposition and appeal rights

If the LDSS cannot verify that the client was informed of his appeal rights **and** the LDSS determines that the founded disposition shall be maintained, the LDSS must inform the client of his right to appeal the founded disposition of abuse or neglect.

#### 4.10.3 Notification of Central Registry search results

The VDSS will return the completed search form to the authorized agent named on the search request. If the individual's name is in the Central Registry, VDSS will also send a copy of this form to the individual whose name was searched and to the LDSS responsible for the name being entered into the Central Registry.

**4.10.3.1 LDSS must release information to abuser or neglector upon request**

If the individual contacts the LDSS regarding his name entry into the Central Registry, the LDSS shall provide the individual with the requested information and provide a copy of the appeal procedures to the individual.

**4.10.3.2 Abuser or neglector may request appeal**

If the individual decides to appeal the founded disposition or dispositions, then the LDSS must respond to the request for a local conference.