

# CHILD PROTECTIVE SERVICES POLICY

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West Virginia Department of Health and Human Resources  
Bureau for Social Services  
Office of Children and Adult Services  
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## **SECTION 1 - PHILOSOPHY AND FOUNDATION**

### **1.1 Introduction**

Child Protective Services is a specialized component of a broader public system of services to children and families. The abuse and neglect of children moved from being largely a private matter to one of public concern in the late 19<sup>th</sup> century. During the first half of the 20<sup>th</sup> century, the protection of children was initiated through the efforts of local, private, non-profit societies for the prevention of cruelty to children. There were more than 250 such societies in the 1920's acting as a catalyst to bring resources to families and protection through the Courts to the children involved in abuse and neglect. In West Virginia, Societies for the Prevention of Cruelty to Children were organized in Wheeling and Charleston in the late 1800's and eventually a chapter was established in each county. Gradually, public social services agencies began to take on more of this responsibility. During the 1960's and 1970's, major developments in child protection began to take place. Reporting laws were passed in every state, including West Virginia, which requires certain professionals to report child abuse or neglect to local child protection departments. The overall trend in public child protection has been in the direction of providing social services so that families can ultimately become able to protect and effectively parent their children. Yet, there are situations when family preservation is not possible, and the safety needs of the child require another alternative.

On November 19, 1997, the President signed into law the Adoption and Safe Families Act of 1997 (ASFA). This legislation passed by Congress with overwhelming bipartisan support represented an important landmark in child welfare law. It established unequivocally that the national goals for children in the child welfare system are safety, permanency and well-being. The law reaffirmed the need to forge linkages between the child welfare

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system and other systems of support for families, as well as between the child welfare system and the Courts, to ensure the safety and well-being of children and their families.

On June 25, 2003, the President signed into law the Keeping Children and Families Safe Act which reauthorized and modified the Child Abuse Prevention and Treatment Act (CAPTA). This legislation provided Federal funding to States in support of prevention, assessment, investigation, prosecution, and treatment activities and also provides grants to public agencies and nonprofit community-based organizations for the Prevention of Child Abuse and Neglect

On October 7, 2008, the President signed into law the Fostering Connections to Success and Increasing Adoptions Act. This legislation addresses some of the most important needs affecting foster children, including extending federal foster care payments up to 21 years old, providing federal support for relatives caring for foster children, increasing access to foster care and adoption services to Native American tribes, and improving the oversight of the health and education needs of children in foster care.

The Federal Bipartisan Budget Act of 2018 included the Family First Prevention Services Act (FFPSA) and was signed into law on February 9, 2018. FFPSA aimed to reform child welfare by creating new opportunities to better serve children and families. The focus of the law is to reduce the need for foster care as well as supporting better outcomes for children in foster care. It has enabled states to use federal funds to assist in preventing foster care placements through the provision of mental health and substance use prevention and treatment services, in-home parent skill-based programs, and Kinship Navigator services.

The Child Protection system of the 21<sup>st</sup> century is emerging as one in which there will be a greater emphasis on collaboration between CPS, Courts, Law Enforcement, Health and Mental Health and community services agencies as well as a greater emphasis on timely outcomes for children and their families.

This material is based upon a combination of requirements from various sources, including but not limited to: social work standards for practice; Council on Accreditation Standards, the statutes contained in Chapters 48 and 49 of the Code of West Virginia; the amended consent decree entered in the case of Gibson v. Ginsberg; the Rules of Procedure for Child Abuse and Neglect Proceedings; Rules of Practice and Procedure for Domestic Violence Proceedings and Rules of Practice and Procedure for Family Court, all issued by the Supreme Court.

All DHHR employees who have any responsibility for any part of Child Protective Services must be familiar with and have immediate access to the CPS Policy, Foster Care Policy, Adoption Policy, Chapters 48 and 49 of the Code of West Virginia and the (Court) Rules of Procedure for Child Abuse and Neglect Proceedings; Rules of Practice and Procedure for Domestic Violence Proceedings, and Rules of Practice and Procedure for Family Court.

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## **1.2 Philosophical Principles**

**Philosophical beliefs about child maltreatment and their effects on families are the single most important variable in the provision of quality CPS.** Thoughts about families, interactions with them, the decisions made independently and with families, and how the community is involved to assist them are determined in advance by what is believed.

The most basic and powerful influence of helping in CPS is expressed by consistently applying professional beliefs and values. The following philosophical principles represent the social work orientation to CPS. These principles are fundamental to the social work discipline and may not apply to other disciplines or agencies.

### ***Child Safety is Paramount***

The mission of CPS is to assure that children are protected. Our model is directed toward determining who CPS should serve based on the existence of threats to a child's safety, and insufficient caregiver protective capacities to protect against the threats.

### ***Permanency is an Integral Part of Safety***

Permanency refers to the restoration or establishment of stable living environments for children. It exists in tandem with child safety and well-being as the primary outcomes that it is designed to achieve. When CPS identifies children who are not safe, the issue of the child's permanency is automatically considered. The issue of permanency continues until the caregiver demonstrates all necessary protective factors to ensure child safety, or a permanent out-of-home living arrangement is established for the child.

### ***Rights of Children and Caregivers***

Children and caregivers possess human and civil rights, and these interventions are respectful of those rights. Children have rights to be safe and secure, to be with their families, to be associated with their culture, and to experience the least trauma or interference in their lives as possible. Caregivers have rights related to privacy and due process. These rights include being informed and involved, receiving prompt responses, having their confidentiality respected, and experiencing the least amount of interference with their families.

### ***Respect for Families***

Respect for families is essential for effective intervention. It is a value that is demonstrated by staff communication, behavior, and interaction with children and caregivers throughout the process.

### ***Child Centered and Family Focused Practice***

Child centered, and family focused practice promotes interventions and skills that emphasize the family unit as the best source for solutions, engagement, involvement in decision making, and the family network as a supportive resource.

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### ***Least Intrusive Intervention***

CPS is a non-voluntary government intervention that represents interference in a family's life under the best circumstances. CPS intervention should only be at the level required to 1) determine if children reported to DHHR are safe, and 2) protect children from impending safety threats while attempting to restore the protective factors of their caregivers.

## **1.3 Mission of the Bureau for Social Services**

West Virginia's Department of Health and Human Resources (DHHR), Bureau for Social Services (BSS) is dedicated to providing and assuring accessible quality services for individuals and families to achieve their maximum potential and improve their quality of life. The Office of Children and Adult Services (CAS) is committed to collaborate in providing a social service delivery system that assures safety and promotes the health, stability and well-being of vulnerable adults, children, and families.

## **1.4 Roles**

The Child Welfare Worker has the following roles:

- **Problem Identifier** - Child welfare worker gathers, studies, and analyzes information about the child and the family. The worker also offers help to families in which safety threats are identified, secures the safety of the child, justifies the need for CPS intervention and evaluates diminished protective factors.
- **Case Manager**- In this capacity the child welfare worker assesses family problems and dynamics which contribute to safety threats and plans and devises strategies to eliminate impending safety threats and to strengthen caregiver protective factors. The worker orchestrates all planning, reporting, and follow-up activity related to the case and facilitates the use of agency and community systems to assist the child and family. The worker also reviews client progress, maintains accurate documentation and records, and advocates for the client by supporting, creating, and promoting the helping process.
- **Treatment Provider**- Child welfare worker works directly with families in helping them to stop the maltreatment and to learn new ways of relating to and being responsible for their children. The child welfare worker also serves as a role model, encourages client motivation, and facilitates problem solving and decision making on the part of families.

The CPS supervisor has the following roles:

- **Administrator** - The supervisor makes decisions on specific case activities, case assignments and on relevant personnel matters. The supervisor also regulates the practice of social workers with child protection cases and ensures the quality of practice. The supervisor ensures case activities and decisions are congruent with policy, state and federal statutes, and Court rules. The supervisor serves as a link between workers and community resources and with administrative staff.

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- **Educator** - The supervisor plans and carries out activities related to the professional development of employees.
- **Coach** - The supervisor motivates and reinforces employees in the performance of their duties.

## 1.5 Legal Basis

CPS stems from both a social concern for the care of children and from a legal concern for the rights of children. Child abuse and neglect are legally recognized and legally defined terms. The DHHR is legally required to provide CPS. The legal basis of CPS is contained in [Chapter 49](#) of the Code of West Virginia. The Rules of Procedure for Child Abuse and Neglect Proceedings issued by the Supreme Court of Appeals of West Virginia and opinions entered by the Court in various cases also provide further interpretation and clarification of the statutes. Excerpts from Chapter 49 regarding the specific role and duties of CPS are included here; however, reference should be made to the entire Chapter and to the Rules and opinions of the Court. Other parts of the West Virginia Code relevant to Child Protective Services are [Chapter 27](#), [Chapter 48](#) and [Chapter 61](#), which contain the statutes for mentally ill persons, Domestic Relations and Crimes and Punishment. The statutes may be found on the internet at <http://www.wvlegislature.gov/>. The Rules of Procedure for Child Abuse and Neglect Proceedings and Court Opinions may be found on the internet at <http://www.courtswv.gov/>.

[W. Va. Code §49-1-105 Purpose](#) (Provides the framework for the Child Protection system in WV.)

- (a) It is the purpose of this chapter to provide a system of coordinated child welfare and juvenile justice services for the children of this state. The state has a duty to assure that proper and appropriate care is given and maintained.
- (b) The child welfare and juvenile justice system shall:
  - (1) Assure each child care, safety and guidance;
  - (2) Serve the mental and physical welfare of the child;
  - (3) Preserve and strengthen the child family ties;
  - (4) Recognize the fundamental rights of children and parents;
  - (5) Develop and establish procedures and programs which are family-focused rather than focused on specific family members, except where the best interests of the child or the safety of the community are at risk;
  - (6) Involve the child, the child's family or the child's caregiver in the planning and delivery of programs and services;
  - (7) Provide community-based services in the least restrictive settings that are consistent with the needs and potentials of the child and their family;
  - (8) Provide for early identification of the problems of children and their families, and respond appropriately to prevent abuse and neglect or delinquency;
  - (9) Provide for the rehabilitation of status offenders and juvenile delinquents;
  - (10) As necessary, provide for the secure detention of juveniles alleged or adjudicated delinquent;

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- (11) Provide for secure incarceration of children or juveniles adjudicated delinquent and committed to the custody of the director of the Division of Juvenile Services; and
- (12) Protect the welfare of the general public.

(c) It is also the policy of this state to ensure that those persons and entities offering quality child care are not over-encumbered by licensure and registration requirements and that the extent of regulation of child care facilities and child placing agencies be moderately proportionate to the size of the facility.

(d) Through licensure, approval, and registration of child care, the state exercises its benevolent police power to protect the user of a service from risks against which they would have little or no competence for self-protection. Licensure, approval, and registration processes shall, therefore, continually balance the child's rights and need for protection with the interests, rights and responsibility of the service providers.

**W. Va. Code §49-2-101 Authorization and Responsibility** (Empowers the DHHR to accept custody of children.)

(a) The Department of Health and Human Resources is authorized to provide care, support and protective services for children who are disabled by dependency, neglect, single parent status, mental or physical disability, or who for other reasons are in need of public service. The department is also authorized to accept children for care from their parent or parents, guardian, custodian or relatives and to accept the custody of children committed to its care by courts. The Department of Health and Human Resources or any county office of the department is also authorized to accept temporary custody of children for care from any law-enforcement officer in an emergency situation.

(b) The Department of Health and Human Resources is responsible for the care of the infant child of an unmarried mother who has been committed to the custody of the department while the infant is placed in the same licensed child welfare agency as their mother. The department may provide care for those children in family homes meeting required standards, at board or otherwise, through a licensed child welfare agency, or in a state institution providing care for dependent or neglected children. If practical, when placing any child in the care of a family or a child welfare agency the department shall select a family holding the same religious belief as the parents or relatives of the child or a child welfare agency conducted under religious auspices of the same belief as the parents or relatives.

**W. Va. Code §49-2-802 Establishment of child protective services; general duties and powers; administrative procedure; immunity from civil liability; cooperation of other state agencies.** (Mandates the DHHR to establish CPS.)

(a) The department shall establish or designate in every county a local child protective services office to perform the duties and functions set forth in this article.

(b) The local child protective services office shall investigate all reports of child abuse or neglect. Under no circumstances may investigating personnel be relatives of the accused, the child or the families involved. In accordance with the local plan for child protective services, it shall provide protective services to prevent further abuse or neglect of children and provide for or arrange for and coordinate and monitor the provision of those services

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necessary to ensure the safety of children. The local child protective services office shall be organized to maximize the continuity of responsibility, care and service of individual workers for individual children and families. Under no circumstances may the secretary or their designee promulgate rules or establish any policy which restricts the scope or types of alleged abuse or neglect of minor children which are to be investigated or the provision of appropriate and available services.

(c) Each local child protective services office shall:

- (1) Receive or arrange for the receipt of all reports of children known or suspected to be abused or neglected on a twenty-four hour, seven-day-a-week basis and cross-file all reports under the names of the children, the family and any person substantiated as being an abuser or neglecter, by investigation of the Department of Health and Human Resources, with use of cross-filing of the person's name limited to the internal use of the Department;
- (2) Provide or arrange for emergency children's services to be available at all times;
- (3) Upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child's environment. As a part of this response, within fourteen days there shall be a face-to-face interview with the child or children and the development of a protection plan, if necessary for the safety or health of the child, which may involve law-enforcement officers or the Court;
- (4) Respond immediately to all allegations of imminent danger to the physical well-being of the child or of serious physical abuse. As a part of this response, within seventy-two hours there shall be a face-to-face interview with the child or children and the development of a protection plan, which may involve law-enforcement officers or the Court; and
- (5) In addition to any other requirements imposed by this section, when any matter regarding child custody is pending, the circuit court or Family Court may refer allegations of child abuse and neglect to the local child protective services office for investigation of the allegations as defined by this chapter and require the local child protective services office to submit a written report of the investigation to the referring Circuit Court or Family Court within the time frames set forth by the Circuit Court or Family Court.

(d) In those cases, in which the local child protective services office determines that the best interests of the child require Court action, the local child protective services office shall initiate the appropriate legal proceeding.

(e) The local child protective services office shall be responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care.

(f) To carry out the purposes of this article, all Departments, boards, Bureaus and other agencies of the state or any of its political subdivisions and all agencies providing services under the local child protective services plan shall, upon request, provide to the local child protective services office any assistance and information as will enable it to fulfill its responsibilities.

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(g)(1) In order to obtain information regarding the location of a child who is the subject of an allegation of abuse or neglect, the Secretary of the Department of Health and Human Resources may serve, by certified mail or personal service, an administrative subpoena on any corporation, partnership, business or organization for the production of information leading to determining the location of the child.

(2) In case of disobedience to the subpoena, in compelling the production of documents, the secretary may invoke the aid of:

(A) The Circuit Court with jurisdiction over the served party if the person served is a resident; or

(B) The Circuit Court of the county in which the local child protective services office conducting the investigation is located if the person served is a nonresident.

(3) A Circuit Court shall not enforce an administrative subpoena unless it finds that:

(A) The investigation is one the Division of Child Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose;

(B) The inquiry is relevant to that purpose;

(C) The inquiry is not too broad or indefinite;

(D) The information sought is not already in the possession of the Division of Child Protective Services; and

(E) Any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or their designee, determines it necessary to compel an individual to provide information regarding the location of a child who is the subject of an allegation of abuse or neglect, the secretary, or their designee, may seek a subpoena from the Circuit Court with jurisdiction over the individual from whom the information is sought.

(h) No child protective services caseworker may be held personally liable for any professional decision or action taken pursuant to that decision in the performance of their official duties as set forth in this section or agency rules promulgated thereupon. However, nothing in this subsection protects any child protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by gross negligence, willful and wanton misconduct or intentional misconduct.

## 1.6 Target Population

The target population for CPS agency intervention is a family in which a child (birth to age 18) has been suspected to be abused or neglected or subject to conditions that are likely to result in abuse or neglect (as defined in [W. Va. Code §49-1-201](#) legal definitions and DHHR operational definitions) by their parent, guardian or custodian. The terms “abused child” and “neglected child” are defined in statute (*See CPS Policy Section 2.1 for Terms Defined by Statute*).

A child does not have to be injured in order to be in the target population for CPS. (*See CPS Policy Section 2.1 Terms Defined by Statute* or State Statute for the complete definition of an abused and neglected child.) In the interest of brevity, the term “caregiver” is used throughout this policy to refer to the child’s caregiver(s) but may also

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be construed to refer to a parent, guardian, or custodian. The term caregiver is extended to include parent substitutes, non-custodial parents, extended family members, step-parents, unrelated persons living in the same household, paramours or any other intra-familial or quasi-familial situation, resource parents, adoptive parents, day care providers, day care centers, residential facilities and school personnel.

CPS shall be extended to children who have been or are suspected to be abused or neglected, or subjected to conditions that are likely to result in abuse or neglect by a:

- parent or guardian
- non-custodial parent
- parent substitute
- stepparent
- extended family member who provides care to the child
- unrelated person living in the same household
- paramour of parent
- employees of child-placing agencies and residential facilities
- employees of day care centers
- family day care facilities or homes
- in-home daycare provider
- any unlicensed group care situation, for one to six children, in a non-home setting in-home child care
- resource family care parents, specialized resource family care parents, or emergency shelter care parents
- school personnel

## **1.7 Casework Process**

The CPS casework process is based on a model for problem-solving. This includes assessment of safety throughout the life of a case, choosing among alternative treatment strategies, and continuously evaluating the effectiveness of selected strategies. The process is based on several principles:

- It is sequential, activities are ordered and continuous.
- The process is logical, based on reason and inference.
- It uses a unified approach, reflecting coherence.
- The process is progressive, based on step-by-step procedures.
- There is interconnectedness between the steps of the process based on progression.
- Flexibility is critical due to the dynamic nature of worker-client interaction; flexibility allows the worker to respond spontaneously to the client's needs.

The casework process in CPS consists of seven basic steps:

- Intake Assessment
- Initial Assessment
- Safety planning

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- Ongoing Assessment
- Family Case Plan
- Service provision
- Case evaluation
- Case closure

## 1.8 Reporting

The protection of abused and neglected children depends on the prompt identification of children whose health or welfare is threatened. Chapter 49 contains a detailed series of reporting requirements which can be found in Part VIII - Reports of children suspected to be abused or neglected, but specifically [W. Va. Code §49-2-803](#). Those mandated reporters with the knowledge of the alleged abuse and/or neglect, are required to report that information directly to the Department, regardless of what their policies at their place of employment may be. The duty of reporting suspected child abuse and/or neglect cannot be delegated to another individual, such as a supervisor.

Certain persons whose occupation brings them into contact with children on a regular basis are mandated to report suspected child abuse or neglect. Those who are required to report include:

- medical, dental, or mental health professionals
- Christian Science practitioners
- religious healers
- school teachers or other school personnel
- social service workers
- child care or foster care workers
- emergency medical services personnel
- peace officers or law-enforcement officials
- members of the clergy
- Circuit Court Judges, Family Court Judges, or magistrates
- humane officers
- employees of the division of juvenile services
- youth camp administrator or counselor
- employee, coach or volunteer of an entity that provides organized activities for children
- commercial film or photographic print processor

In addition to the mandated reporters outlined above, any person over the age of eighteen who receives a disclosure from a credible witness or observes any sexual abuse or sexual assault of a child, shall immediately and not more than 24 hours after receiving such a disclosure or observing the sexual abuse or sexual assault, report the circumstances or cause a report to be made to the Department or the State Police or other law-enforcement agency having jurisdiction to investigate the report. If the reporter feels that reporting the alleged sexual abuse will expose themselves, the child,

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the reporter's children or other children in the subject's household to an increased threat of serious bodily injury, the individual may delay making the report while they undertake measures to remove themselves or the affected children from the perceived threat of additional harm. The individual must make the report as soon as practical after the threat of harm has been reduced. The law enforcement agency that receives a report regarding sexual abuse must report the allegations to the Department.

Any other person, including a person who wishes to remain anonymous, may make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.

The duties of mandated reporters include:

When a mandated reporter has reasonable cause to suspect that a child is abused or neglected or observes the child being subjected to conditions likely to result in abuse or neglect, the person must immediately and not more than 24 hours after suspecting the abuse or neglect, report the circumstances or cause a report to be made to the DHHR. Reports of child abuse or neglect shall be made immediately by telephone to the local DHHR. A report made to the statewide Centralized Intake Unit for child abuse and neglect is acceptable. At their discretion, CPS staff may request that a mandated reporter also submit a written report within 24 hours.

In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter must also immediately report, or cause a report to be made to law-enforcement. The report must be made to the State Police **and** to any law-enforcement agency having jurisdiction to investigate the report, which would either be municipal police or the county sheriff's department. This report is **in addition** to the report made to CPS.

A mandated reporter who is a member of the staff of a public or private institution, school, facility or agency must immediately notify the person in charge of such institution, school, facility or agency or a designated agent thereof, who shall report or cause a report to be made. Nothing in the law precludes individuals from reporting on their own behalf.

Any person or official who is included in the list of mandated reporters, including employees of the Department, and who has reasonable cause to suspect that a child has died because of child abuse or neglect, shall report that fact to the coroner or medical examiner.

Cross reporting between CPS and Humane Officers became required when legislation in 2006 revised section [W. Va. Code §49-2-803](#), *Persons mandated to report abuse and neglect*, to include humane officers. These individuals will now be required to report

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suspected child abuse and neglect issues to CPS. Conversely, a new section was added, [W. Va. Code §49-2-806](#), *Mandatory reporting of suspected animal cruelty by child protective services workers*, which requires workers to “report reasonable suspicions that an animal is the victim of cruel or inhumane treatment” to humane societies within their counties.

- The duties of CPS, when receiving referrals from mandated reporters include:  
Mail a notification letter within two business days of the disposition of the intake assessment informing the mandated reporter whether the referral has been accepted or screened for assessment. Within two business days of the conclusion of the assessment, CPS shall mail a letter to the mandated reporter informing them that the assessment has been completed.

Any person, whether mandated or permitted to report, has certain legal protections. These protections are extended so that persons will not hesitate to report for fear of future legal difficulties. [W. Va. Code §49-2-810](#) states that any person who reports in good faith shall be immune from any civil or criminal liability.

As an aid in the detection of child abuse or neglect, as well as to gather physical evidence which can be used to protect an abused or neglected child, the law permits mandated reporters to take photographs or order x-rays. Radiological examinations (x-rays) are used to determine the scope of present and past injuries. A series of old fractures may indicate a repeated pattern of battering. The DHHR is responsible for payment of expenses incurred in taking the photographs or x-rays, when requested to do so. Photographs and reports of the findings from x-rays should be made available to the local DHHR/CPS office.

A mandated reporter of suspected child abuse or neglect, who fails to report, or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor, and if convicted, may be confined in the county jail, fined, or both.

#### **1.8.1 Reporting and Communication with the Family and Circuit Courts**

When child welfare workers begin a relationship with a family or at any time during CPS’s involvement with a family, it is important that they learn the specifics of any current or upcoming court cases. It is also very important that a Family Court Judge, who may be making decisions of custody, know of any issues of child abuse and/or neglect or threats to child safety that are occurring. Although CPS has no duty to provide oversight for Family Court cases, the worker has a duty to notify Family Court when a “**Material Change of Circumstance** ” occurs. A Material Change of Circumstance is a change in the case that, without the Family Court Judge knowing, could threaten the safety and/or welfare of the child. This Material Change of Circumstance can be made by phone but must also be made in writing. The notification by phone must be documented in contacts, and the notification in writing must be saved in the CCWIS file cabinet. Examples of Material Changes of Circumstance could include letting the court know if a perpetrator of domestic

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violence chooses to leave a treatment program or course centered around domestic violence or one of the parents begins a relationship with a sex offender. It should also include letting the court know if a petition is filed by the child welfare worker; if a case is closed or if a family moves out of the area. DHHR staff decides when the Court is notified about these changes. The Family Court, conversely, has a duty to apprise CPS of when such cases are closed or are pending. The Court has special orders for use in notifying CPS when their cases are pending or are closed.

There are further requirements of CPS when the mandated reporters happen to be Family Court or Circuit Court Judges.

- When referrals for CPS have been received from Family Court and/or Circuit Court, the worker must send a copy of the notification letter at the onset, as specified above. The worker must also, at the end of the Initial Assessment, send the *Disposition of CPS Investigation Report for Family and Circuit Court form* and a copy of the Initial Assessment to the referring Family Court Judge as well as the Chief Circuit Court Judge and Prosecuting Attorney. The worker would send the report directly to the Family Court Judge making the referral but would file the Circuit Court report via the Chief Circuit Court Judge, with a copy to the Prosecuting Attorney.
- When a worker does an Initial Assessment on a family involved with Family Court proceedings, the worker must send a copy of the Initial Assessment to the Family Court Judge who is presiding over the case, regardless of referral source. The worker will also send a copy of the Disposition of CPS Assessment Report for Family and Circuit Court form to the Chief Circuit Court Judge with a copy to the Prosecuting Attorney.

[W. Va. Code §48-9-209](#) states that if either of the parents so requests, or upon receipt of credible information, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan: Has made one or more fraudulent reports of domestic violence or child abuse: Provided, that a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

If the Court determines, based on the investigation described in part five of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the Court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against the accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

If the Court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be in camera. The Court may disclose to the party's

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information received from the department only if it has reason to believe a parent knowingly made a false report.

### **1.8.2 Child Protective Services Alert**

A Child Protective Services Alert is often necessary due to child welfare staff attempting to locate a caregiver or family who is believed to have fled with child(ren), either within the state or to another state to avoid child welfare intervention and the children are in immediate danger. An Alert can also be issued in the event that assistance is being requested in locating a child in the legal and physical custody of the State. It is to request immediate notification to the receiving county or state for any information regarding the child(ren).

The “Child Protective Services Alert Memorandum” template is editable and offers workers and supervisors places to provide specific information regarding the current issue resulting in the alert and all pertinent information that is available regarding the family and child(ren). All known information regarding the child(ren) and family or known contacts should be provided in the form. Finally, if possible, include a recent photograph of the child(ren) and any member of the family available so as to provide the most accurate assistance possible.

Completed Alert Memorandums are to be sent to the Administrative Secretary for the Division of Children and Adult Services for distribution to all Community Service Managers or Social Services Managers, or their designees and/or receiving State.

The Division of Children and Adult Services issues this Alert if a request is received from another state or federal government for assistance locating a family or child. If local staff receive information from another state, this information should be forwarded to the Administrative Secretary for Division of Children and Adult Services and copied to the Regional Program Manager for distribution.

Once the Community Service Managers or Social Services Managers, or their designee receives a Child Protective Services Alert, these are to be distributed to all relevant staff within the county or district offices immediately.

The purpose of a Child Protective Services Alert is to make diligent efforts to locate families who are the subject of a Child Protective Services assessment or case.

## **1.9 Meaningful Contacts**

Contacts with children, families, and collaterals are critical components to a thoroughly documented investigation, assessment, and case record. Contacts are intended to provide clarity regarding the conversation, interview, or other means of communication. The intention of the contact will vary with the point of contact. Contacts with children and families should focus mainly on the areas of safety, permanency, and well-being.

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A significant component of this protocol is thorough and timely documentation of all contacts. All documentation of contacts should be entered within three business days of the completion of the contact. To meet this requirement all contacts must provide sufficient information to reflect worker effort in gathering information and a summary of the information obtained. At a minimum, the worker must document the following:

- Name of person interviewed
- Location where interview was held
- A general description of information sought by worker
- A summary of information collected including that which pertains to the reported allegations of abuse and neglect and the child's environment
- Worker observations pertinent to decision making
- Contact with children and placement providers must be based upon the child's needs, behaviors and other circumstances, and the supervisor should be involved in making this determination, but in no case should face to face contact be less than once a month
- Face to face contacts with children must include private, individual discussions
- Face to face contact must occur with all substitute caregivers responsible for the caring the children at a minimum of one time per month but more if the case circumstances require
- Contact with placement providers, and children if age appropriate, should be made by phone as necessary but no less than bi-weekly

As mentioned in the above bulleted list, contacts should occur more often than monthly when circumstances change or there may be concern for the child's safety, permanency, or well-being.

- Example 1:
  - A child in the custody of the Department is placed in a psychiatric residential facility and is having a lot of concerning behaviors during the third week of the month. The child was already visited during the first week of that month. The staff member assigned to that child's case should make another contact with that child. If face-to-face contact is not feasible, phone contact would suffice.
- Example 2:
  - A staff member made their monthly contact with a family and there were no areas of concern. The following day, a provider contacts the ongoing worker to report there was a fight between the mother and father, and police were called to the residence. Although contact was made the previous day, there has been a change in circumstances, and a face to face contact is needed with the family.

In both examples above, the social worker needs to contact the child or family to ensure safety, permanency, and well-being.

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## SECTION 2 - DEFINITIONS

### 2.1 Terms Defined by Statute

Abandonment: Any conduct that demonstrates the settled purpose to forego the duties and parental responsibilities to the child. ([W. Va. Code §491-201](#))

Abused Child: A child whose health or welfare is harmed or threatened by a parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or sexual abuse or sexual exploitation; or the sale or attempted sale of a child by a parent, guardian or custodian, human trafficking or attempted human trafficking and domestic violence... In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment. ([W. Va. Code §49-1-201](#))

Court Appointed Special Advocate (CASA): Someone appointed primarily in civil protection proceedings involving child abuse and/or neglect. Duties of a CASA representative include an independent gathering of information through interviews and review of records; facilitating prompt and thorough review of the case; protecting and promoting the best interests of the child; follow-up and monitoring of Court orders and case plans; making a written report to the Court with recommendations concerning the child's welfare; and negotiating and advocating on behalf of the child. ([W. Va. Code §49-2-207](#))

Child: Any person less than 18 years of age. ([W. Va. Code §49-1-202](#))

Child Abuse and Neglect Services: Social services which are directed toward: protecting and promoting the welfare of children who are abused or neglected; identifying, preventing and remedying conditions which cause child abuse and neglect; preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family; in cases where children have been removed from their families, providing services to the children and the families so as to reunify such children to their families; placing children in suitable adoptive homes when restoring the children to their families is not possible or

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appropriate; and assuring the adequate care of children away from their families when the children have been placed in the custody of the Department or third parties. ([W. Va. Code §49-1-201](#))

**Custodian:**

A person who has or shares actual physical possession or care and custody of a child regardless of whether such person has been granted custody of the child by a contract, agreement or legal proceedings. ([W. Va. Code §49-1-204](#))

**Domestic Violence:** The occurrence of one or more of the following acts between family or household members: (1) attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons; (2) placing another in reasonable apprehension of physical harm; (3) creating fear of physical harm by harassment, psychological abuse or threatening acts; (4) committing either sexual assault or sexual abuse as those terms are defined in [W. Va. Code § 61-8b](#) and [W. Va. Code § 61-8d](#); and (5) holding, confining, detaining or abducting another person against that person's will. Family or household member means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together or a person with whom the victim has a child in common. ([W. Va. Code §48-27-202](#))

**Fictive Kin:**

An adult of at least 21 years of age, who is not a relative of the child, but who has an established, substantial relationship with the child, including but not limited to, teachers, coaches, ministers, and parents or family members of the child's friends. ([W. Va. Code §491-206](#))

**Imminent Danger:**

An emergency situation in which the welfare or the life of the child is threatened. Such emergency exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

1. Non-accidental trauma inflicted by a parent, guardian, sibling or a babysitter or other caretaker; or
2. A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or

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3. Nutritional deprivation; or
4. Abandonment by the parent, guardian or custodian; or
5. Inadequate treatment of serious illness or disease; or
6. Substantial emotional injury inflicted by a parent, guardian or custodian; or
7. Sale or attempted sale of the child by the parent, guardian or custodian; or

The parent, guardian or custodian's abuse of alcohol, or drugs or other controlled substance as defined in [W. Va. Code §60A-1-101](#), has impaired their parenting skills to a degree as to pose an imminent risk to a child's health or safety. [\(W. Va. Code §49-1-201\)](#)

**Kinship Parent:** A person with whom the department has placed a child to provide a kinship placement. [\(W. Va. Code §49-1-206\)](#)

**Kinship Placement:** The placement of the child with a relative of the child, or a placement of a child with a fictive kin. [\(W. Va. Code §49-1-206\)](#)

**Neglected Child:** A child whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or guardian. [\(W. Va. Code §49-1-201\)](#)

**Knowingly Allows Another Person to Inflict:** Another person inflicts (1) physical; or (2) mental or emotional injury; or (3) sexual abuse or exploitation; or (4) injury as a result of excessive corporal punishment upon a child; or (5) sells or attempts to sell a child and a parent has knowledge (or should have had knowledge) that this has occurred and has not yet taken any action to intervene or to ensure the child's safety. The term "knowingly" does not require that a parent actually be present at the time the abuse occurs, but rather that the parent was presented with sufficient facts from which they could have and should have recognized that abuse has occurred (Department of Health and Human Resources ex rel. Wright vs. Doris S. 1996).

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Relative of the child: An adult of at least 21 years of age who is related to the child, by blood or marriage, within at least three degrees. The three degrees of relationship is a grandparent, great-grandparent, aunt, uncle, great-aunt, great-uncle, or adult sibling of the child or children receiving care.

Resource Parent: A person with whom the department has placed a child and who has been certified by the department, a child placing agency, or another agency of the department to provide foster care. ([W. Va. Code §49-1-206](#))

Sexual Abuse: (A) As to a child who is less than 16 years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct: sexual intercourse or sexual intrusion or sexual contact (B) as to a child who is 16 years of age or older any of the following acts that a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such contact or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct: sexual intercourse, or sexual intrusion or sexual contact, or (C) Any conduct whereby a parent, guardian or custodian displays their sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child. ([W. Va. Code §49-1-201](#))

Sexual Exploitation: (1) An act whereby a parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to display their sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display their sex organs under circumstances in which the parent, guardian or custodian knows such display is likely to be observed by others who would be affronted or alarmed. ([W. Va. Code §49-1-201](#))

Serious Physical Abuse: Bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of

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health or prolonged loss or impairment of the function of any bodily organ. ([W. Va. Code §49-1-201](#))

**Transitioning Adult:** An individual with a transfer plan to move to an adult setting who meets one of the following conditions: (1) Is 18 years of age but under 21 years of age, was in Departmental custody upon reaching 18 years of age and committed an act of delinquency before reaching 18 years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the 18<sup>th</sup> birthday. (2) Is 18 years of age but under 21 years of age, was adjudicated abused, neglected, or in Departmental custody upon reaching 18 years of age and enters into a contract with the Department to continue in an educational, training, or treatment program which was initiated prior to the 18<sup>th</sup> birthday. ([W. Va. Code §49-1-202](#))

## 2.2 Operational Definitions

### 2.2.1 Abused Child

The statutory definition of an abused child is the standard for determining that a child has been abused. An abused child does not have to have already been injured. Statute indicates that an abused child is one whose health or welfare is harmed or **threatened** by a parent, guardian or custodian who inflicts or **attempts** to inflict the defined abuse listed below. Child Protective Services policy provides operational definitions below to further define caregiver conduct and/or conditions that could meet the statutory definition of an abused child. The operational definitions should be used to assist in screening reports and making a finding of maltreatment. (*Review CPS Policy Sections 3.3 Report Screening and 4.10 Maltreatment Findings for additional information*)

#### **Excessive Corporal**

##### **Punishment:**

Physical punishment inflicted directly upon the body which results in an injury to the child. This includes bruises, bites, scratches, cuts, abrasions, scars, burns or internal injuries.

#### **Mental or**

##### **Emotional Injury:**

The parent/caregiver has demonstrated a pattern of degradation of their child that is or will likely adversely affect the child's functioning. The parent/caregiver is aware that their child's mental health is being affected by maltreatment from someone other than the parent/caregiver and does not act to protect their child or prevent the action of others from affecting the child's functioning. Examples could include but not limited to: continual scapegoating or rejection of a child, constant berating, being left alone for

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extended periods of time on short notice with persons who are unfamiliar to the child, allowing and/or encouraging the child engage in illegal activities, and exposure to domestic violence in the home.

**Near fatality:** An act that, as certified by a physician, places the child in serious or critical condition.

**Physical Injury:** Non-accidental trauma to the body, such as bruises, bites, scratches, cuts, abrasions, scars, burns, fractures, asphyxiation, internal injuries, or poisoning.

**Serious bodily injury:** Bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**Sexual Abuse:** (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section [W. Va. Code § 61-8c-3](#), which

engage in, a parent, guardian or custodian engages in, attempts to  
child or knowingly procures another person to engage in with a  
sixteen notwithstanding the fact that for a child who is less than  
participated in that years of age the child may have willingly  
apparent physical injury conduct or the child may have suffered no  
that conduct or, for a or mental or emotional injury as a result of  
may have consented to child sixteen years of age or older the child  
no apparent physical that conduct or the child may have suffered  
result of that conduct; injury or mental or emotional injury as a

(B) Any conduct where a parent, guardian or custodian displays their sex organs to a child, or procures another person to display their sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making that display, or of the child, or for the purpose of affronting or alarming the child; or (C) Any of the offenses proscribed in sections [W. Va. Code §61-8b](#) and [W. Va. Code §49-1-201](#).

- 1) Sexual intercourse means sexual intercourse as that term is defined in [W. Va. Code §61-8b-1](#).
- 2) Sexual intrusion means sexual intrusion as that term is defined in section [W. Va. Code §61-8b-1](#).
- 3) Sexual assault means any of the offenses proscribed in section [W. Va. Code §§61-8b-3, 4, or 5](#).

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4) Sexual contact means sexual contact as that term is defined in section [W. Va. Code §61-8b-1](#).

Sexual

Exploitation:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct as that term is defined in [W. Va. Code §618c-1](#).

(B) A parent, guardian or custodian persuades, induces, entices or coerces a child to display their sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display their sex organs under circumstances in which the parent, guardian or custodian knows that the display is likely to be observed by others who would be affronted or alarmed.

Sale or Attempted

Sale of a Child:

The offering of a child in exchange for cash or other goods or services.

Child Exposed to

Domestic Violence: A child whose health or welfare is being harmed or threatened by: Domestic violence as defined in section [W. Va. Code §48-27-202](#).

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, stalking, psychological abuse or threatening acts;

(4) Committing either sexual assault or sexual abuse as those terms are defined in [W. Va. Code § 61-8b](#) and [W. Va. Code § 618d](#) and

(5) Holding, confining, detaining or abducting another person against that person's will.

Child born of

Sexual Assault:

During legislative session 2017, the definitions of an abused child were amended to include children born as a product of a sexual assault.

This addition to West Virginia Code was added to allow victims of sexual assault resulting in pregnancy to petition the court to terminate the parental rights of their abuser without the involvement of the DHHR. They may contact the prosecuting

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attorney to initiate a petition for Termination of Parental Rights (TPR) on their own.

Dangerousness

Lethality

Assessment

Guide:

Dangerousness Lethality Assessment Guide (D-LAG) is an evidence-based guide that assists professionals in assessing domestic violence perpetrators for highly dangerous and or potentially lethal behaviors and provide an effective response that heightens both safety measures for victims and accountability for highly dangerous or potentially lethal perpetrators.

### 2.2.2 Neglected Child

The statutory definition of a neglected child is the standard for determining that a child has been neglected. A neglected child does not have to be injured. Statute indicates that a neglected child is one who's physical or mental health is harmed or **threatened** by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education. Child Protective Services policy provides operational definitions to further define caregiver conduct and/or conditions that could meet the statutory definition of a neglected child. The operational definitions should be used to assist in screening reports and making a finding of maltreatment. *(Review CPS Policy Sections 3.3 Report Screening and 4.10 Maltreatment Findings for additional information)*

Abandonment:

The child is left for extended periods of time without adequate supervision or provision of basic needs. The parent has disappeared, and it is not known when they may return. No long-term provisions have been made for care of the child. May also include situations in which the parent may be physically present, but in a condition that prevents them from caring for the child; or the parents who are absent, temporarily or permanently, as the result of a natural disaster.

Failure or inability  
to supply necessary  
food:

The parent/caregiver does not feed their child or withholds food from their child or children. In a situation where the parent seeks food for the child but does not have the resources to purchase the food, a referral to the community may be warranted and a report will not be accepted.

Failure or inability

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to supply necessary clothing:

The parent/caregiver does not provide their child with clothing that provides protection from the elements of weather.

Failure or inability to supply necessary shelter:

The parent/caregiver does not provide a shelter or residence for their child, or the shelter is clearly unsafe and jeopardizes the child's physical safety including but not limited to, exposed and unprotected wires, unprotected areas where a child can fall and be injured, i.e. no heat in frigid weather.

Failure or inability to supply necessary supervision:

The parent/caregiver does not provide their child with adequate supervision, permits the child to be in unsafe situations, or leaves their child alone without a capable caregiver to provide appropriate supervision. This situation needs to be considered with due regard to the child's age, development and the circumstances being described.

Failure or inability to supply necessary medical care, including hygiene:

The parent/caregiver does not provide or seek medical or mental health care for a child's condition that if not cared for will cause or likely cause harm to the child; or the parent/caregiver chronically does not provide care for a child's need for physical hygiene.

Failure or inability to supply necessary education:

A child's physical or mental health is harmed or threatened due to the parent/caregiver's failure or inability to send their child or allow their child to attend school in accordance with legal requirements as outlined in [W. Va. Code §18-8](#); or a child's physical or mental health is harmed or threatened due to the parent/caregiver not attempting to notify authorities of their child's habitual truancy and refuses to seek assistance to correct the truancy or a child's physical or mental health is harmed or threatened due to the caregiver refusing or failing to participate in planning for the educational needs of a child.

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## 2.3 Additional Operational Definitions

ASO: An Administrative Services Organization (ASO) that manages and authorizes socially necessary services referrals for child welfare cases as laid out in child welfare policy.

AFCARS: The “Adoption and Foster Care Analysis and Reporting System” is designed to collect uniform, reliable information on children who are under the responsibility of the title IV-B/IV-E agency for placement, care, or supervision. Adoption and foster care data collection is mandated by the [Social Security Act, Section 479](#).

### Age or Developmentally

Appropriate: Activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity or that are determined to be developmentally-appropriate for a child, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; in the case of a specific child, activities or items that are suitable for the child based on the developmental stages attained by the child with respect to the cognitive, emotional, physical, and behavioral capacities of the child.

### Battered Child

Syndrome: A medical condition, primarily of infants and young children, in which there is evidence of repeated inflicted injury to the nervous, skin, or skeletal system. Frequently the history as given by the caretaker does not adequately explain the nature of occurrence of the injuries. A medical diagnosis is required to determine if a child suffers from battered child syndrome.

Caregiver: A parent, guardian, or custodian who is responsible for the care and supervision of a child.

### Caregiver Protective

Factors Behavioral, cognitive, and emotional characteristics possessed by the caregiver that help to reduce, control, or prevent threats of serious harm, which are specifically relevant to child safety.

Child Maltreatment: When a caregiver’s behaviors and interactions with a child are consistent with the statutory definition of child abuse or neglect.

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Services: A specialized Department service extended to families on behalf of children who are unsafe or abused or neglected by their parents, guardians or custodians having responsibility for their care.

Child Vulnerability: The degree to which a child cannot avoid, negate or modify the impact of safety threats or missing or insufficient protective factors and/or a child has characteristics more likely to elicit a dangerous response from a caregiver who has or can have uncontrolled access to the child.

Corporal

Punishment: Physical punishment inflicted directly upon the body.

Crime Victim's

Compensation Fund A special revenue fund within the state Treasury established by the Crime Victim's Compensation Act which can be utilized for victims of crimes, including minors in civil abuse and neglect cases, for payment of expenses attributed to or caused by their victimization ([W. Va. Code §14-2A-11a](#)). See also Foster Care Policy 7.1.

Critical Incident: A reasonable suspicion that a fatality or near fatality was caused by abuse or neglect or when abuse or neglect has been determined to have led to a child's death or near death.

Custodian: A person who has or shares actual physical possession or care and custody of a child regardless of whether such person has been granted custody of the child by a contract, agreement, or legal proceedings.

Drug Affected

Infants: Infants referred by medical staff, including hospital social workers, who are less than one year old, test positive for legal or illegal substances or prescribed medication or suffer from withdrawal symptoms resulting from prenatal drug exposure, or a Fetal Alcohol Spectrum Disorder.

Foster Care

Candidacy: Those children and youth who are at imminent risk of removal from their home, absent effective preventative services. A child or youth is at imminent risk of removal from the home if the state is pursuing removal or attempting to prevent removal by providing in-home services.

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**Guardian:** An individual who has been court appointed to care for a child and make decisions on the child's behalf.

**Hearing Request Form:** A document created by the Board of Review that initiates the administrative hearing process.

**Human Trafficking Victim:** A victim who has been forced, coerced, enticed, transported, isolated, harbored, obtained, or received for the purpose of debt bondage, sexual servitude, a commercial sex act, or forced labor.

**Immediate Safety Threats:** An immediate, significant, and clearly observable family condition (or threat to child safety) occurring in the present tense, endangering, or threatening to endanger a child and therefore requiring a prompt CPS response. (See CPS Policy Section 4.7 Immediate Safety Threat Assessment for more information)

**Impending Safety Threat:** Family behaviors, attitudes, motives, emotions and/or situations that pose a threat to child safety. (See CPS Policy section 4.9 Safety Evaluation for more information)

**Initial Assessment:** The gathering of information by a child welfare protective service worker to determine if a child is unsafe or has been abused or neglected by a parent, guardian or custodian.

**Kinship/Kin:** A person who is a relative, member of a tribe or clan, Godparents, stepparents, or anyone who has a family like relationship to a child. Anyone who the child considers to be kin or a close family friend, or anyone the child demonstrates a strong attachment.

**Neonatal Abstinence Syndrome (NAS):** A group of symptoms that occur in a newborn who was exposed to addictive legal or illegal substances or prescription medications while in the mother's womb.

**NCANDS:** The National Child Abuse and Neglect Data System (NCANDS) is a voluntary data collection system that gathers information from all 50 states, the District of Columbia, and Puerto Rico about reports

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of child abuse and neglect. NCANDS was established in response to the Child Abuse Prevention and Treatment Act of 1988.

*Plan of Safe Care:*

A Plan of Safe Care is a plan to ensure the safety and well-being for the infant born and identified as being affected by legal or illegal substance use or withdrawal symptoms or testing positive for substances, or a Fetal Alcohol Spectrum Disorder following release from the care of healthcare providers by addressing the health and substance use disorder treatment needs of the infant and affected family or caregiver. This includes referrals to and delivery of appropriate services for the infant and affected family or caregiver.

*Protective Caregiver:*

A parent, guardian or custodian who is responsible for the care and supervision of a child/children and who is able and willing to mentally, emotionally, and physically keep the child safe.

*Reasonable and Prudent Parent Standard:*

The standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State/Tribe to participate in extracurricular, enrichment, cultural, and social activities. In this context, 'caregiver' means a resource parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.

*Recovery Residence:* A single-family, drug-free, and alcohol-free residential dwelling unit, or other form of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment for the purposes of promoting sustained, long-term recovery from substance use disorder. (Child welfare workers can only make referrals to certified recovery residences. *See CPS Policy Section 9.4.6 for more information.*)

*Safety Plan:*

A temporary measure designed to control one or more impending safety threat(s) identified which threaten the safety of a vulnerable child and there are not sufficient caregiver protective factors to assure that impending safety threat can be offset, mitigated and controlled. (*See CPS Policy Section 4.13 Safety Analysis and Safety Planning for more information*)

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**Serious Harm:**

Refers to the effects of physical, emotional or mental injury that have already occurred and/or have the potential for harsh effects based on the vulnerability of a child and the family behavior, condition or situation that is out of control. Serious harm includes such effects as serious physical injury, disability, terror and extreme fear, impairment and death. It could result in harsh and unacceptable pain and suffering for a child. It could include but not limited to conditions that are considered “Imminent Danger” as defined by [W. Va. Code §49-1-201.](#)

It:

- Is life-threatening or poses the risk thereof;
- Substantively retards the child’s mental or physical health or development or poses the risk thereof;
- Produces substantial physical or mental suffering, physical disfigurement or disability, whether permanent or temporary, or poses the risk thereof; or
- Involves sexual victimization.

**Temporary Protection**

**Plan:**

A specific and concrete strategy implemented immediately to protect a child from immediate safety threats in order to allow completion of the Initial Assessment. (See CPS Policy section 4.8 Temporary Protection Plans for more information.)

**Third Party**

**Perpetrator:**

A person who abuses and/or neglects a child who’s care, and supervision is not their responsibility.

**Unsafe Child:**

Refers to the presence of immediate or impending safety threat to a child.

## **SECTION 3 – INTAKE ASSESSMENT**

### **3.1 Introduction**

The Intake Assessment is the first assessment in Child Protective Services. The Intake Assessment refers to all the activities and functions which lead to a decision about whether to conduct an Initial Assessment. **Safety assessment begins during the intake assessment.**

### **3.2 Intake Assessment Protocol**

An effective Intake Assessment depends on successfully gathering sufficient, relevant information which reveals whether there is reasonable cause to suspect that child abuse

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or neglect exists. Insofar as a reporter knows and can report relevant and sufficient information, the Intake worker should make reasonable efforts to collect it.

When collecting information from the reporter, in general, the worker will:

- Demonstrate respect for the reporter;
- Interview the reporter in non-leading ways, probing for information in all areas and clarifying information and attitude conveyed by the reporter, and whenever possible, recording exactly what the reporter says;
- Listen for tone of voice, voice level, rushed speech, contradictions in information and attitude conveyed by the reporter (helpful vs. harmful);
- Use feeling, support, educational and reality-orienting techniques to elicit information from the reporter;
- Assist the reporter in providing information;
- Interpret to the reporter what child maltreatment is;
- Gather sufficient information to make necessary decisions;
- Provide information to reporters about other DHHR programs and/or community resources that may be of assistance when the intake information indicates that the children are not abused or neglected or subject to conditions which will likely lead to abuse or neglect;
- Finish the intake screens, and if information is unknown to the reporter indicate so.

When interviewing the reporter, the worker will attempt to specifically gather information in the following areas:

- Client – family demographics including name, age, gender, race, and ethnicity for all members of the household and their relationship to each other, the family's address and phone number, the adults' places of employment, and the child's school or childcare, when applicable;
- Alleged child abuse and/or neglect, possible immediate or impending safety threats;
- Specific caregiver behavior indicative of child abuse and neglect;
- Events and circumstances associated with or accompanying the child abuse or neglect; immediate safety threat; and/or impending safety threat;
- Effects of child abuse or neglect; immediate safety threat; and impending safety threat or caregiver behavior on child; child's condition resulting from the child abuse or neglect; immediate safety threat; and/or impending safety threat; and/or family conditions.
- Child(ren) including:
  - General condition and functioning
  - Location
  - State of mind/emotion; specific fear
  - Proximity to threat
  - Access to those who can help and protect
- Primary Caregivers including:

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- General functioning
- General parenting
- General state of mind/emotion
- Current location
- Community relations
- Employment
- Use of substances
- Mental health functioning
- Attitudes toward/perceptions of child(ren)
- Previous relevant history including CPS history
- Likely response to CPS
- Family including:
  - Domestic violence, including power, control, entitlement, D-LAG indicators
  - Living arrangements
  - Household composition
  - Household activity – including people in and out
  - Condition of residence
- Description of any immediate safety threats including a description of possible/likely emergency circumstances.
- Identification of protective adults who are or may be available.
- Name and contact information of parents who are not subject to the allegations.
- The reporter's name, relationship to the family, motivation and source of information, if possible; why the reporter is reporting now; and any actions that the reporter suggests should occur.
- The names and contact information of other people with information regarding the child or family.

Following the information gathering process with the reporter, the worker will:

- Determine if a referral must be made to local law enforcement, the Prosecuting Attorney or medical examiner;
- Check to determine if there is prior or current agency involvement with the family and merge/associate if required;
- Indicate the alleged abuse or neglect category, type and specifics in the appropriate CCWIS fields;
- Document appropriate response time indicators, and aggravated or other circumstances not requiring reasonable efforts to prevent removal in the appropriate CCWIS fields;
- Review the intake for thoroughness and then transmit the report to the supervisor for review and decision-making regarding acceptance and response time.

### ***Supervisor Duties***

The supervisor duties during the CPS Intake Assessment are:

- Be available to provide the worker with support, guidance and case consultation and to monitor the quality of casework practice;

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- Review the referral to determine if more information is needed to make appropriate screening and response time decisions. If more information is needed assure that the reporter is contacted to gather the information if possible;
- Determine if the referral should be accepted for assessment by CPS. If needed, the reporter may be contacted to gather additional information (*see CPS Policy Section 3.3 Report Screening for more information*);
- If accepted, indicate the appropriate response time (*see CPS Policy Section 3.4 Response Times for more information*);
- If accepted, transmit the report to the Initial Assessment supervisor for assignment to a child welfare worker;
- Ensure that a sibling or other child has not been identified as the alleged maltreater unless the individual under the age of 18 is the parent of the alleged abused/neglected child and is responsible for the alleged maltreatment;
- Ensure that all mandated reporters receive notification of whether an assessment has been initiated or the referral has been screened out;
- If necessary, ensure that a referral to law enforcement, Prosecuting Attorney and medical examiner is completed (*See CPS Policy Section 3.5 Reporting to Law Enforcement, Prosecuting Attorney and Medical Examiner for more information*);
- Assign the referral as soon as possible but no later than the next working day. If an immediate response is indicated, the supervisor must have a Child Welfare Worker initiate the referral within the timeframe assigned.

### 3.3 Report Screening

Whether or not to accept a referral for Initial Assessment is a critical decision in CPS. When making this decision, the supervisor must analyze all the information in the report to determine whether there is reasonable cause to suspect a child is abused or neglected or is subjected to conditions which will likely result in abuse or neglect. A thorough understanding of the statutes and operational definitions related to child abuse and neglect are required to make the appropriate decision. All cases not accepted for Initial Assessment must include supervisory consultation and a justification/explanation for the decision which must be documented in the appropriate CCWIS field.

The screening decision is dependent to a large extent on the statutory definitions of abuse and neglect, as well as other statutes which outline the duties of CPS. [W. Va. Code §492-802\(c\)\(3\)](#) states that CPS shall “upon notification of suspected child abuse or neglect, commence or cause to be commenced a thorough investigation of the report and the child’s environment. [W. Va. Code §49-2-802\(b\)](#), “The West Virginia Child Protective Services Act”, requires “The acceptance by the department of referrals or reports of abuse or neglect” as well as “The vigorous and fair assessment and investigation of alleged cases of child abuse or neglect.”

Child Protective Services must accept for assessment any report which suggests that, assuming the reporter’s perceptions are true, an individual between birth and 18 years of

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age may have been subject to treatment which meets the definition of abuse or neglect in WV Code and CPS Policy. A reporter need not have witnessed a specific injury nor does there have to be an injury for there to be a reason to believe that parental conduct results in a threat of harm to a child which is included in the statutory definitions of an abused and neglected child. (See *CPS Policy Section 2.1 Terms Defined by Statute*)

Conversely, reports that do not constitute a reasonable cause to suspect that child abuse or neglect has or is likely to occur but describe some behavior that the reporter or the agency believes is inappropriate, may not be accepted for Initial Assessment. The authority to conduct Initial Assessments extends to those cases when the reported information potentially meets the definitions of child abuse or neglect.

Adoptive parents may allow their adopted children to have contact with anyone they deem appropriate, provided there are no safety threats to the child. An adoptive parent, allowing contact with a previous parent whose parental rights have been terminated is not abuse or neglect. Current circumstances and threats to safety are to be the only considering factors regarding abuse and neglect, not previous court orders for termination or no contact. *For further information, see [Adoption Policy Section 13.4](#).*

In determining whether to accept a CPS report or screen it out, the supervisor must consider:

- Whether the information collected meets required definitions of child abuse and neglect. Both the legal and operational definitions for child abuse and neglect will be used to make this judgment, which includes children who have yet to be injured. (See *CPS Policy Sections 2.1 Terms Defined by Statute and 2.2 Operational Definitions for more information*). The operational definitions are not an exhaustive list of potential allegations of child abuse or neglect. Other conditions which harm or threaten a child's health and welfare may arise that are not included in the operational definitions. If this occurs, any doubt about whether to accept the report for an Initial Assessment will be resolved in favor of the child and the report will be accepted;
- The sufficiency of information to locate the family;
- The motives and veracity of the reporter.

Reasons for screening out a report include:

- Duplicate referral during Initial Assessment. (See *CPS Policy Section 3.7 Recurrent Reports for more information*);
- Information does not meet the legal definition of abused or neglected child found in [W. Va. Code §49-1-201](#), nor does it meet the operational definition for child abuse or neglect;
- There is insufficient information to locate the family;
- There are no children under the age of 18;
- Family does not reside in West Virginia.

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Any other reason for screening out a report must be thoroughly documented in CCWIS.

### 3.4 Response Times

Response time is measured from the date and time the report is received by the Department of Health and Human Resources until face-to-face contact with the alleged child victim. The phrase victim child means the child or children in the household who have been suspected to be abused or neglected or are subjected to conditions which could result in abuse or neglect. The caregivers should be contacted the same day as the child victim unless contact will jeopardize child safety or extenuating circumstances exist (example would be a caregiver who is out of town). The response time is the **maximum** amount of time that the child welfare worker has to make face to face contact in order to assess for immediate safety threats and gather information to complete the Initial Assessment. It is recommended that contact with the victim child and family be made as soon as possible unless contact will jeopardize child safety based upon information provided in the intake assessment. The correct response time must be identified, regardless of the availability of staff. If the response time cannot be met, the justification will be explained in the Initial Assessment.

The selected response times are as follows:

- Zero-24 hour response: Child welfare worker must respond as soon as the report of abuse or neglect is received unless there is a protective caregiver. If there is a protective caregiver **clearly** documented in the intake assessment, contact must be made within the same day while the child is still under the care of that protective caregiver. If D-LAG indicators are present, the response time is always considered for a zero-24 hour response.
- Zero-72-hour response: face-to-face contact must be made with the child(ren) within 72 hours. The supervisor may require a response be made sooner based upon the specifics of the intake assessment.
- Zero-14-day response: face-to-face contact must be made with the child(ren) within 14 days. The supervisor may require a response be made sooner based upon the specifics of the intake assessment.

The supervisor is responsible for ensuring that the referral is responded to in the manner required to ensure child safety based upon the allegations and family conditions. The supervisor may require child welfare workers to respond quicker than the maximum time frame allowed. For example, a referral may allege that a vulnerable child is experiencing an impending safety threat. The supervisor may assign a 72-hour **maximum** response time but advise their staff to respond the next day if the situation so indicates.

The information collected in the referral must be analyzed to determine if a child may be experiencing an Immediate Safety Threat as it relates to the intake Assessment. A zero-24 hour response is required if an Immediate Safety Threat is indicated unless the child is with a responsible adult/protective caregiver. If the child is with a responsible

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adult/protective caregiver that is clearly documented in the intake assessment, the child welfare worker may respond within the day as long as child safety will in no way be jeopardized. Immediate safety threats are immediate, significant and clearly observable family conditions (or threat to child safety) occurring in the present tense, endangering or threatening to endanger a child and therefore requiring a prompt CPS response. Immediate safety threats related to the intake assessment can be divided into four categories, Maltreatment, Child, Parent and Family. Immediate safety threats are further described below:

### **Maltreatment**

- **Maltreating Now**

The report indicates that a parent/caregiver(s) is maltreating a child concurrent with a report being made. The maltreatment will typically be physical, verbal or sexual in nature. This does not include chronic neglect that is reported as being ongoing but does not necessarily meet the criteria for an immediate safety threat.

- **Multiple Injuries**

The report indicates that a child has suffered from different types of injuries because of the maltreatment. For example, a child who has a burn on their hand and their arm also has significant bruising, and information indicates that the injuries occurred because of maltreatment by a caregiver.

- **Face/Head**

The report identifies a child that has an injury on their face or head which includes bruises, cuts, abrasions, swelling or any physical manifestation to have occurred because of parental mistreatment of the child.

- **Serious Injury**

The report identifies a child that has a serious injury to any part of their body, including bone breaks, deep lacerations, burns, malnutrition, etc. that has occurred in the current time or been medically diagnosed for the first time concurrent with the report.

- **Several Victims**

The report identified more than one child who currently is being maltreated by the same caregiver. It is important to keep in mind that several children who are being chronically neglected do not meet the standard of Immediate Safety Threat in this definition.

- **Life Threatening Living Arrangements**

The report describes specific information that indicates that a child's living situation is an immediate threat to their safety. This includes serious health and safety circumstances such as unsafe buildings, serious fire hazards, accessible weapons, unsafe heating or wiring, guns/knives available and accessible etc.

- **Unexplained Injuries**

The report indicates non-accidental injuries to a child which parents or other caregivers cannot or will not explain.

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### Child

- **Parent's Viewpoint of Child Is Dangerously Negative**

The report identifies a caregiver who expresses having an extremely negative viewpoint of a child. This is not just a general negative attitude toward the child. The caregiver's reported perception or viewpoint toward a child is so skewed and distorted that it poses an immediate danger to that child. It is consistent with the level of seeing the child as demonic.

- **Child Is Unsupervised or Alone for Extended Periods**

The report indicates that there is a vulnerable child who is currently not being supervised. The report describes a child that is truly without care and unsupervised right now. If the child was unsupervised the previous night but is not alone now, it is not an immediate safety threat of harm.

- **Child Needs Medical Attention**

The report identifies a child that is in immediate need of emergency medical care. To be an immediate safety threat of harm, the medical care required must be significant enough that its absence could seriously affect the child's health and safety. In other words, if children are not being given routine medical care, it would not constitute an immediate safety threat. It should have an emergent quality.

- **Child Is Fearful or Anxious**

The report describes a child who is currently and obviously afraid. The child's fear tends to be extreme, specific, and presently active. The fear is directed at people and/or circumstances associated with the home situation, and it is reasonable to conclude there is a personal threat to the child's safety if the condition is currently active. Information would likely describe actual communication or emotional/physical manifestation from the child's knowledge or perception of their situation.

### Caregiver

- **Caregiver Is Intoxicated (alcohol or other substances)**

Report identifies a caregiver who is currently drunk or high on legal or illegal substances and unable to provide basic care and supervision to a child right now. In order to qualify as an immediate safety threat, it must be evident in the report that a caregiver who is primarily responsible for child care is unable to provide care for their child right now due to their level of intoxication. The state of the parent/caregiver's condition is more important than the use of a substance (drinking compared to being drunk; uses substances as compared to being incapacitated by the substances); and if accurate affects the child's safety.

- **Caregiver Is Out of Control**

Report describes individuals in the caregiver role who are currently acting incapacitated, bizarre, aggressive/extremely agitated, emotionally immobilized, suicidal, or dangerous to themselves or others at the time of the report. To qualify as an immediate safety threat, it must be determined that due to a caregiver's state of mind, uncontrolled behavior and/or emotions, they are unable to provide basic care and supervision to their child right now.

- **Caregiver Described as Dangerous**

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Report describes a caregiver who is physically or verbally imposing and threatening, brandishing weapons, known to be dangerous and aggressive, currently behaving in an attacking or aggressive manner, etc.

- **Parent/Caregiver Is Not Performing Parental Responsibilities**

Report indicates that caregivers are not providing basic care to their children right now. To qualify as an immediate safety threat, there must be information in the report that indicates that caregivers are not providing essential child care and the absence of care poses an immediate threat to child safety. This is not associated with whether the parent/caregiver is generally effective or appropriate. It is focused on whether their inability to provide child care right now leaves the child in a threatened state at the time of the report or at the point of contact.

### **Family**

- **Family Violence Present**

Report indicates that alleged child maltreatment is associated with family violence. To qualify as an Immediate Safety Threat, there must be an indication that the family violence associated with the report of maltreatment has occurred. This requires a judgment as to whether the family violence is actively threatening to family members right now concurrent with the report. D-LAG indicators that are considered in family violence as Immediate Safety Threats are:

- Possession, access and/or use of weapons
- Direct threats to kill
- Victim perceives that perpetrator might kill them
- Stalking behaviors
- Strangulation
- Intrusive coercive behaviors
- Forced sex
- Victim has left or is attempting to leave the relationship
- Offender is unemployed
- Victim has a child that is not the perpetrator's child
- Violence is escalating

- **Family Will Flee**

Report indicates that a family will flee with the child or attempt to hide the child. To qualify as an immediate safety threat, it is necessary to consider other threats to child safety at the time of the report which would have serious implications for not being able to gain access to the child. This includes transient families or families where homes are not established.

In addition, if the reporter alleges the following conditions to the department CPS must respond immediately:

- Critical incident
- Certain abandoned children (Safe Haven)
- Medical neglect of a disabled child (Baby Doe)
- Law enforcement requesting emergency contact

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If the report alleges any of the following conditions, the response time must be a **maximum** of 72 hours, however the supervisor may instruct child welfare workers to contact the children and caregivers sooner based on the information collected. The supervisor must take into consideration if the allegations would indicate a child is experiencing an impending safety threat to determine the appropriate plan for initiating the referral. In determining response time for accepted CPS intakes, the CPS supervisor must take into consideration the following response time indicators when determining response times.

- The presence of allegations of imminent danger to the physical well-being of the child(ren) or of serious physical abuse. Such allegations require either a zero-24 hour response or a response within 72 hours. This is required by [W. Va. Code §492-802\(c\)\(4\)](#). Imminent danger is defined by [W. Va. Code §49-1-201](#) as an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:
  1. Non-accidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker; or
  2. A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or
  3. Nutritional deprivation; or
  4. Abandonment by the parent, guardian, or custodian; or
  5. Inadequate treatment of serious illness or disease; or
  6. Substantial emotional injury inflicted by a parent, guardian, or custodian; or
  7. Sale or attempted sale of the child by the parent, guardian, or custodian; or
  8. The parent, guardian or custodian's abuse of alcohol, drugs or other controlled substance as defined in [W. Va. Code §60A-1-101](#), has impaired their parenting skills to a degree as to pose an imminent risk to a child's health or safety. [W. Va. Code §49-1-201](#)
- Serious physical abuse is defined by [W. Va. Code §49-1-201](#) as bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
- Whether the allegations would indicate the child is experiencing an impending safety threat as outlined in *CPS Policy Section 4.9 Safety Evaluation*.

To assist the supervisor in determining response times, child vulnerabilities have been included in the intake Assessment. A child who is vulnerable does not indicate the referral must be accepted, nor does it indicate that an expedited response is always required. The

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referral should be screened out due to not meeting the legal and operational definitions of child abuse and/or neglect. Child vulnerabilities are included to assist child welfare workers and supervisors in getting a thorough view of the family and aid in decision making concerning response times.

1. **Age:** Children from birth to five years old.
2. **Physical Limitation:** Children who are physically disabled and therefore unable to remove themselves from safety threats are vulnerable. Those who, because of their physical limitations, are highly dependent on others to meet their basic needs are vulnerable.
3. **Mental Limitation:** Children who are cognitively limited are vulnerable because of a number of possible limitations: recognizing safety threats, knowing who can be trusted, meeting their basic needs and seeking protection.
4. **Provocative:** Children's emotional, mental health, behavioral problems can be such that they irritate and provoke others to act out toward them or to totally avoid them.
5. **Powerless:** Regardless of age, intellect and physical capacity, children who are highly dependent and susceptible to others are vulnerable. These children typically are so influenced by emotional and psychological attachment that they are subject to the whims of those who have power over them. Within this dynamic, you might notice children being subject to intimidation, fear and emotional manipulation. Finally, remember that powerlessness could also be observed in vulnerable children who are exposed to threatening circumstances which they are unable to manage.
6. **Defenseless:** Regardless of age, a child who is unable to defend themselves against aggression or dangerous environments is vulnerable. This can include those children who are oblivious to danger. Remember that self-protection involves accurate reality perception particularly related to dangerous people and dangerous situations. Children who are frail or lack mobility are more defenseless and therefore vulnerable.
7. **Non-Assertive:** Regardless of age, a child who is so passive or withdrawn to not make their basic needs known is vulnerable. A child who cannot or will not seek help and protection from others is vulnerable.
8. **Illness:** Children who have continuing or acute medical problems and needs.
9. **Invisible:** Children who are not visible to be noticed and observed, should be considered vulnerable regardless of age.

### 3.5 Reporting to Law Enforcement, Prosecuting Attorney and Medical Examiner

In reports alleging serious physical injury, sexual abuse, or sexual assault, the DHHR supervisor or designee must:

- Forward a copy of the report to the appropriate law-enforcement agency, the prosecuting attorney or the coroner or medical examiner's office, as required by [W. Va. Code §49-2-809\(b\)](#). The report must be forwarded regardless of the

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screening decision. The appropriate report to send is contained within CCWIS and is a DDE report titled Referral for Child Protective Services (CPS-0083). The report should be printed from CCWIS and mailed promptly to the appropriate agencies. If the report is being accepted by CPS for Initial Assessment, the report should be sent prior to contact with the family if possible. A copy of the report should be filed in the CCWIS file cabinet to document whether DHHR fulfilled its duty.

- Make a report to the Multidisciplinary Investigative Team (MDIT), as established by [W. Va. Code §49-4-402](#) per the local protocol for MDIT's.

### **3.6 Centralized Intake**

The DHHR currently provides a toll-free phone number, **1-800-352-6513**, for child abuse and neglect reports. The Centralized Intake Unit operates 24 hours per day, seven days a week, including weekends and holidays. Reports accepted for assessment by the Centralized Intake Unit shall be transmitted promptly to the local DHHR office by the Centralized Intake Unit for appropriate response by local DHHR Office.

### **3.7 Repeat Maltreatment (Intake)**

If a referral is received before the due date of an open assessment (30 days from receipt of the report), and involves the exact same allegations, the referral can be screened out and associated with the pending assessment. If allegations are different from the initial referral and meet the definition of abuse and/neglect, the referral will be accepted.

When CPS referrals are received after the due date of the most recent assessment (30 days from receipt of the report), centralized intake (CI) will accept the referrals if they meet definition, even if the referral is alleging the same abuse/neglect as the most recent referral. Reports involving allegations that do not meet the definition of abuse/neglect will be screened out by CI. If the CPS supervisor feels that a thorough assessment with pertinent collaterals was completed, or is in the process of being completed, the supervisor can submit the referral for the reconsideration process.

If a referral is received on an open CPS case, those referrals are to be accepted and assigned to the district.

If allegations are identical in an open referral regardless of timeframe, the referral can be screened out. For example; if Johnny comes to school with a black eye and reports that mom hit them, and the teacher, counselor and grandma all report that Johnny has a black eye and was hit by mom. This identical referral should be screened out.

### **3.8 Reports Involving Another Jurisdiction**

For reports of suspected child abuse or neglect involving another state, the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect.

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The supervisor will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect;
- Contact the child protective services agency in the other state and make a report to them;
- Contact the appropriate law enforcement agency in the other state and make a report to them, if required;
- Depending upon the case situation, it may be necessary for both states to work together to conduct an Initial Assessment;
- If providing a courtesy interview is the only activity required, the report should be screened out and an intake for Request to Receive Services should be documented in CCWIS.

For reports of suspected child abuse or neglect involving another county, the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect.

The supervisor will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect.
- Contact the CPS Initial Assessment supervisor in the other county to share the information and discuss how best to respond to the report.
- Depending upon the case situation, it may be necessary for both counties to work together to conduct an Initial Assessment and safety evaluation. Courtesy interviews may be necessary. Workers may travel to another county to conduct an interview at the discretion of the supervisors involved. The decision should be made in consideration of what will be the most effective way to conduct the assessment. The most important aspect will be the communication between the two supervisors in planning how to complete the Initial Assessment. If both parents live in the same county, but the abuse occurred in another county, the county where the child resides would be the primary child welfare worker.
- If the parents live in separate counties, the county where the maltreating caretaker resides/county where abuse occurred would be the primary child welfare worker.
- A petition may be filed where the child resides, where the alleged abuse or neglect occurred, where the custodial respondent or one of the other respondents resides, or to the Judge of the Court in vacation. A petition may be filed in only one county.

### **3.9 Reports Involving Non-Custodial Parents**

Children sometimes live in more than one household. Information collected in the CPS intake assessment is based on the conditions in a specific household. For example, in a case with parents living apart, if the child lives with the father but is allegedly abused or

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neglected by the mother and stepfather while on a weekend visit, the report is completed on the mother and stepfather's household since that is where the alleged abuse or neglect occurred. If abuse or neglect is alleged in both households, separate intake assessments must be completed on each residence. Reports **may not** be screened out because the child does not live with the suspected maltreating parent full-time or the parent does not have custody of the child. In addition, reports **may not** be screened out due solely to the parents having a dispute over the custody of the child.

For reports of suspected child abuse or neglect involving a non-custodial parent, the worker and the supervisor will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect by a custodial parent;
- The case name will be that of the alleged maltreater;
- If the report alleges abuse or neglect in multiple households, do not combine the two cases but enter separate reports with separate screening and response time decisions.

### 3.10 Reports Involving Certain Abandoned Children (Safe Haven)

The [W. Va. Code §49-4-201](#) mandates the acceptance of certain abandoned children by hospitals or health care facilities, without court order. The statute permits hospitals or health care facilities to take possession of a child if the child is voluntarily delivered to the hospital or health care facility by the child's parent within thirty days of the child's birth and the parent did not express intent to return for the child. The hospital or health care facility may not require the parent to identify themselves and shall respect the parent's desire to remain anonymous. The hospital or health care facility must notify CPS by the close of the first business day after the date the parent left the child, that it has taken possession of the child. Any information provided by the parent shall be given to CPS by the hospital or health care facility.

For reports of suspected child abuse or neglect involving certain abandoned children, the worker and the supervisor will:

- Enter the caregiver's name as **Unknown**.
- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect, indicating the maltreatment category as **Neglect**, the type as **Abandonment**, accepting the report for an Initial Assessment and transmitting the report to the Initial Assessment supervisor for assignment to a worker.

### 3.11 Reports Made by the Court During an Infant Guardian Proceeding

WV Code allows suitable individuals to petition for guardianship of minor children. If the basis for the Infant Guardianship petition is abuse and/or neglect, the Circuit Court will hear the case.

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If the Infant Guardianship petition is based upon abuse and/or neglect, the Department will receive notice of the Infant Guardianship proceedings. This will serve as a mandatory referral for Initial Assessment. CPS will then have not more than 45 days to submit a report regarding the findings of the Initial Assessment or appear before the Circuit Court to show cause why the report has not been completed and submitted to the court within those timeframes. If the Circuit Court believes the child to be in imminent danger, the Court may shorten the time for the Department to act upon the referral and appear before the Court. This will occur using the *Disposition of CPS Investigation Report for Family and Circuit Court* form.

For reports from Circuit Court regarding Infant Guardianship proceedings, the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse and/or neglect, indicating the response time to be within the time frames established by state statute.

### **3.12 Reports Involving Critical Incidents**

#### **3.12.1 Definitions:**

**Critical Incident:** A reasonable suspicion that a fatality or near fatality was caused by abuse or neglect or when abuse or neglect has been determined to have led to a child's death or near death.

**Known to the Agency:** A case known to the agency is defined as a family with an open CPS case or a YS case in the last 12 months or whom CPS or YS assessed within the last 12 months.

#### **3.12.2 Procedures:**

1. A referral is made to Centralized Intake (CI) regarding a child fatality/near fatality;
2. CI staff performs an intake assessment;
3. CI staff will check the appropriate Critical Incident box in the Comprehensive Child Welfare Information System (CCWIS). (This will initiate an email alert to the appropriate personnel on the email list);
4. If the referral meets the definition for child abuse and/or neglect, then the case is assigned to the district;
5. If the intake is screened out, the policy staff will review the intake assessment to ensure it was an appropriate screening decision;
6. If it is determined the screened intake needs to be assigned to the district for assessment, the policy staff will notify the Director of CI to accept and assign the intake.
7. The district is responsible for completion of the Critical Incident Form for accepted critical incidents.

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### 3.13 Reports Involving DHHR Staff or Other Potential Conflicts of Interest

For reports of suspected child abuse or neglect involving DHHR employees or others who may present a conflict of interest, such as relatives of DHHR employees, the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect, unless the report involves a relative, DHHR employee, intimate friend, or close associate of the intake worker. If so, the intake worker should immediately refer the reporter to the supervisor or designee to take the report.

The supervisor will:

- Contact the Social Services Manager or designee to discuss the report and to determine how it may best be handled. Under no circumstances should a child welfare worker be assigned to the report if the worker is a relative of the alleged maltreater, the child or the families involved. [\(W. Va. Code §49-2-802\(b\)\)](#). Reports involving DHHR employees should not be handled by the district in which the person is employed. Other situations may also present a conflict of interest with CPS staff, such as situations involving an intimate friend or close associate of the staff. Those situations should be referred to the Social Services Manager and a determination made about how to best handle the Initial Assessment. If there is any doubt as to whether the Initial Assessment may be compromised by a conflict of interest, the report should be transferred to another district for Initial Assessment;
- Take appropriate action within CCWIS to have access to the case restricted.

The Social Services Manager or designee will:

- Review the report and determine whether it is necessary to transfer the report to another district;
- Contact the Deputy Commissioner of Field Operations or designee to arrange for the report to be transferred to another district for Initial Assessment when necessary;
- Contact the Social Services Manager and CPS supervisor in the other district to notify them of the transferred Initial Assessment.

### 3.14 Reports Involving Medical Neglect of a Disabled Child

The Child Abuse Prevention and Treatment Act requires that states have procedures for responding to instances of withholding medically indicated treatment from disabled infants with life-threatening conditions. This would include every child who is born alive at any stage of development, regardless of whether the birth occurs because of natural or induced labor, cesarean section, or induced abortion. For reports of disabled infants or children with life-threatening conditions, the worker will attempt to gather the following information:

- The name and address of the child and parents/caregivers;

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- The name and address of the hospital where the child is being treated;
- The condition of the child, and information regarding whether the child may die or suffer harm within the immediate future if medical treatment or appropriate nutrition, hydration or medication is being or will be withheld;
- The name and address of the person making the report, the source of their information, and their position to have reliable information;
- The names, addresses, and telephone numbers of others who might be able to provide further information about the situation.

Following the information gathering process, the worker will:

- Complete this information and send it to the supervisor for decision making about acceptance.

The supervisor will:

- Review the intake for thoroughness and completeness;
- Indicate whether the report will be accepted or screened out (if screened out, the supervisor must provide an explanation for the decision);
- Identify the response time as zero to 24-hour response for all accepted reports;
- If accepted, transmit the report to the Initial Assessment supervisor for assignment to a worker.

### **3.15 Reports Involving Domestic Violence**

Domestic Violence is included in the statutory definition of an abused child. The term Domestic Violence is defined in [W. Va. Code §48-27-202](#). Domestic violence is often characterized by a pattern of coercive behaviors used by one person in order to maintain power and control in a relationship. The pattern of coercive behaviors includes tactics of physical, sexual, verbal, emotional and economic abuse, threats, intimidation, isolation, minimizing, and using children against the victim parent. When there is reason to suspect that a child has been abused or neglected or is subject to conditions that are likely to result in abuse or neglect, as a result of domestic violence occurring between the adults in the home a report should be made to CPS.

It is important that workers guide the interview with the reporter to gather as much information as possible about the battering dynamics. Direct questions should probe the reporter about the presence of power and control displayed in the behavior of one individual in the adult relationship. If power and control appear to be present, it is imperative that the adult victim be documented as such which will allow the Child Welfare Worker to be better able to prepare for the first steps of intervention. Intra-familial violence caused by substance use, mental illness, etc. may not require the same type of intervention due to the lack of power and control the abuser has over the victim.

For reports of suspected child abuse or neglect involving domestic violence, including reports of child exposure to domestic violence, the worker and the supervisor will also determine if:

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- D-LAG indicators of domestic violence are indicated or suspected by the reporter, which may determine the immediacy and lethality of the situation. The worker should probe for the following indicators:
  - Possession, access and/or use of weapons
  - Direct threats to kill
  - Victim perceives that perpetrator might kill them
  - Stalking behaviors
  - Strangulation
  - Intrusive coercive control
  - Forced sex
  - Victim has left or is attempting to leave the relationship
  - Offender is unemployed
  - Victim has a child that is not the perpetrator's child
  - Violence is escalating
- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect.
- Complete demographic screen "Role in Intake" pick lists using the proper identifying values. Please note that more than one value can be used per family member. Special consideration should be given to the following:
  1. **"Alleged Batterer"** and **"Alleged Maltreater"** should be used to identify the predominant aggressor. This means that if the reporter states that "parents fight all the time", the intake worker will need to ask probing questions to determine the presence of power and control in the relationship.
  2. **"Adult Victim of Domestic Violence"** should be used to identify the individual who is a victim of domestic violence.

### 3.16 Reports Made by the Court During Domestic Violence Protective Order Hearings

[Rule 48](#) of the *West Virginia Rules of Practice and Procedure for Family Court* requires reporting to CPS whenever allegations of child abuse and neglect arise during (1) a petition for a Domestic Violence Protective Order; or (2) during a Family Court hearing on a petition for a Domestic Violence Protective order.

When these allegations arise, the Family Court will send a written report to CPS, the Circuit Court and to the Prosecuting Attorney. The Circuit Court will then enter an administrative order to the Department, ordering an Initial Assessment and a report back within 45 days (or less if the allegations involve imminent danger). The Circuit Court will also set a date for a hearing regarding the Initial Assessment report. DHHR can avoid this hearing if (a) the child welfare worker/supervisor files the report within 45 days or less if the allegations involve imminent danger, or (b) files a petition.

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For reports from Circuit Court regarding allegations made during Domestic Violence Protective Order proceedings, the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect.

### **3.17 Reports Involving Allegations Made During Divorce/Custody Proceedings**

[Rule 48](#) of the *West Virginia Rules of Practice and Procedure for Family Court* requires the Family Court to report to CPS whenever allegations of child abuse and/or neglect arise during divorce and/or custody proceedings in Family Court.

When these allegations arise, the Family Court will send a written report to CPS, the Circuit Court and to the Prosecuting Attorney. The Circuit Court will then enter an administrative order to the Department, ordering an Initial Assessment and a report back within 45 days (or less if the allegations involve imminent danger). The Circuit Court will also set a date for a hearing regarding the Initial Assessment report. DHHR can avoid this hearing if (a) the child welfare worker/supervisor files the report within 45 days (or less if the allegations involve imminent danger, or (b) files a petition.

For reports arising out of divorce/custody proceedings, the worker and supervisor will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect, indicating the response time to be within the time frames established within state code.

### **3.18 Reports Involving Substance Use, Misuse or Substance Use Disorder**

When a report is received alleging caregiver substance use, misuse or substance use disorder a thorough interview must be conducted with the reporter in order to determine if there is reason to suspect that the child is abused or neglected in any way, or subject to conditions or circumstances that would likely result in abuse or neglect due to **any** substance use, misuse or substance use disorder (legal or illegal or prescribed) by the caregiver(s).

For reports of suspected child abuse or neglect involving caregiver(s) substance use, misuse or substance use disorder, the worker and the supervisor will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect, indicating the allegations of maltreatment specific to the circumstances in the referral. When there are no specific allegations, the referral will be accepted for “Abuse” and the type would be “Mental/Emotional Injury.”

#### ***For referrals specific to newborns and infants***

The [Child Abuse Prevention and Treatment Act \(CAPTA\)](#) is a key piece of federal legislation that guides CPS. This legislation requires that CPS and other community service providers

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address the needs of new-born infants who have been identified as being affected by alcohol, legal and/or illegal substances or experiencing withdrawal symptoms resulting from prenatal substance exposure. Health care providers or medical professionals who are involved in the delivery or care of such infants are required to make a report to CPS. Hospital Social Workers who report are acting on behalf of the hospital or birthing center and should be considered medical professionals in this capacity.

All newborns are extremely vulnerable as their safety and well-being is dependent upon their caregivers. Infants who test positive for prescribed, non-prescribed, legal or illegal substances, present with withdrawal symptoms, or are diagnosed with fetal alcohol spectrum disorder, are even more vulnerable due to their medical condition.

**Neonatal abstinence syndrome (NAS)** is a group of symptoms that occur in a **newborn** who was exposed to addictive illegal or prescription substances while in the mother's womb.

When a report is received specifically from a **medical professional**, including a hospital social worker, indicating that an infant was born testing positive for a legal or illegal substances or prescribed medication or an infant is suffering from withdrawal from a legal or illegal substance or prescribed medication (including medications that treat addiction), or Fetal Alcohol Spectrum Disorder the child will be identified as a **Drug-Affected Infant**.

For reports received from medical professionals of drug-affected infants, the intake assessment worker will gather the following information:

- The name and address of the medical facility where the child was delivered;
- The infant's drug test results if applicable, including type of substance for which the infant tested positive;
- The birth mother's drug test results if applicable, including type of substance for which the mother tested positive, as well as any medication the mother was administered prior to and during delivery;
- Information from the delivering obstetrician, nurse practitioner, midwife, or other qualified medical personnel as to the condition of the infant upon birth. The statement should include specific data as to how the in-utero substance or alcohol exposure has affected the infant (e.g., withdrawal, physical and/or neurological birth defects);
- The infant's birth weight and gestational age;
- The extent of prenatal care received by the birth mother;
- Information regarding any substance use treatment or medication assisted treatment (MAT) that the parent may be involved with or has accessed previously for substance use treatment;
- The names and ages of any siblings the infant may have, including any abuse, neglect, or safety concerns regarding the siblings.

Following the information gathering process with the reporter, the worker will:

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- Follow the same rules and procedures for entering intakes as other reports of suspected child abuse and neglect into CCWIS;

*For Example: If a mother gives birth and uses substances intravenously in the alley of the hospital two hours after the delivery of the child. The child does not test positive or have withdrawal symptoms and is not identified as Drug-affected. The referral will be accepted due to the mother's substance use and potential safety concerns created by this substance use if the infant was discharged to the mother. An assessment is necessary to determine if the child is safe.*

The supervisor will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect by a caregiver.

### **3.19 Reports Involving Informal, Unlicensed/Unregistered Child Care Settings**

Informal, unlicensed/unregistered child care settings are assessed by CPS staff using the Initial Assessment format. For reports of suspected child abuse or neglect involving these settings, the worker will attempt to gather the following information:

- The name, age, and current location of the child;
- The name, address, and position of the suspected maltreater;
- Information about the suspected maltreatment, including time(s) and date(s);
- How the child functions, including pervasive behaviors, feelings, intellect, physical capacity and temperament;
- The names of individuals, staff or residents who have direct knowledge of the incident and their whereabouts;
- Where the suspected maltreater is at the time of the intake;
- Who the reporter is (name, address, and phone);
- How the reporter came to know about the concerns;
- Why the reporter is reporting the situation currently;
- Whether the maltreater knows the report is being made;
- The reporter's opinions about needed actions and child's safety.

Following the information gathering process with the reporter, the worker will:

- Indicate whether the allegations of maltreatment are abuse, neglect, sexual abuse or other;
- Enter the name of the informal provider in the facility field within CCWIS;
- Review the intake for thoroughness and then transmit the report for review and decision-making regarding acceptance and response time;
- Determine if the provider is listed in CCWIS as a child care provider. If the provider is not listed in CCWIS, forward the referral to the CPS supervisor. If the childcare setting is listed in CCWIS as a registered/licensed setting, forward to the IIU supervisor;
- Transmit report to the CPS intake supervisor.

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The supervisor will:

- Review the intake for thoroughness and completeness.

In determining whether to accept the report or screen it out, the supervisor must consider:

- Whether the information collected meets the statutory or operational definitions of child abuse or neglect. CPS will not investigate non-compliance or referrals that do not meet the definitions of abuse and neglect.

For reports of suspected child abuse or neglect involving group residential and resource family settings and child care center settings, please refer to the *IIU Policy Sections 3.29 Reports Involving Institutional Investigative Unit (IIU) and Child Maltreatment in Group Residential and Resource Family Settings*.

### **3.20 Reports Involving Non-caregivers and/or Requests from Law Enforcement**

For reports of suspected child abuse and neglect perpetrated by someone other than a caregiver, (parent, guardian, or custodian), the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect by a caregiver.
- If the third-party perpetrator has children of their own or children living in their home, a second intake will be entered on their household.

The supervisor will:

- If the third party has no children of their own or living in their home, screen out the report and refer the intake to law enforcement.
- If the third party does have children of their own or children living in their home, follow the same rules and procedures for intake as other reports of suspected child abuse or neglect by a caregiver.
- If the report suggests that the parent, guardian, or custodian of the child had knowledge that the third party was not an appropriate caregiver, a referral must be entered on the victim's family.

If there is a request from Law Enforcement for a worker to interview the child, the supervisor will determine whether the request is reasonable in consideration of the CPS role on the local Multidisciplinary Investigative Team (MDIT). Child welfare workers may assist the MDIT with criminal investigations of serious child abuse or sexual assault and provide expertise in child interviewing, evaluating the need for services and making referrals to community resources and support services. This assistance may be provided at the discretion of the Social Services Manager.

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### 3.21 Reports Involving Abusive Interactions Between Children

Children may engage in roughhousing, fighting, sexual play or exploration with other children. Such activities may be within the boundaries of normal, natural child or adolescent behavior. When inappropriate, abusive or excessive sexual interactions occur between siblings, unrelated children, young children and adolescents, the parent of the aggressive child has the responsibility to find and understand the cause of the behavior, protect the child from recurrence and obtain treatment for the aggressive child if indicated. **In these situations, the aggressor should not be listed as the maltreater.** For reports of suspected child abuse or neglect involving sexual or abusive interactions between children, the worker will:

- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect;
- Attempt to gather information concerning the caregiver's previous knowledge of the abuse, if they are currently aware, and what steps they may have taken to prevent the abuse from occurring in the future.
- Gather demographic information on the child victim and the victim's family.
- Consider the appropriateness of a referral on the alleged victim's family if there is information that may suggest the victim's family knowingly allowed the abuse to occur or failed to act to ensure their child's safety.

The supervisor will:

- Consider whether the incident may be a result of abuse or neglect by the caregiver;
- Consider the appropriateness of the caregiver's response to the incident and their willingness and ability to address the child's needs, both medical and emotional;
- Consider whether the reported incident is within the realm of normal, natural child play or exploration between same age children;
- Forward a copy of the report to the Prosecuting Attorney and appropriate Law Enforcement agency, if indicated;
- Refer the caregiver to community services which may be of assistance to the family, if indicated;
- Refer the caregiver to the Juvenile Probation Office or appropriate Law Enforcement Agency, if indicated;
- Accept the referral and transmit it to the Initial Assessment supervisor if the supervisor is not reasonably confident that the incident is within the realm of normal, natural child play or exploration is not the result of abuse or neglect or that the caregiver is going to seek appropriate treatment for the child;
- Follow the same rules and procedures for intake as other reports of suspected child abuse or neglect.

### 3.22 Reports Involving Registered Sex Offenders

[W. Va. Code §15-12](#), Sex Offender Registration Act, requires that certain sex offenders register demographic information about themselves in order that citizens may take

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appropriate precautions to protect its vulnerable populations. This statute also requires lifetime registration for any individual who commits a sexual crime against a child under the age of 18.

To help further protect children from harm by registered child sex offenders, CPS will accept for assessment referrals alleging that a registered child sex offender has unlimited and/or unrestricted access to a child under the age of 18. An example of unlimited and/or unrestricted access would be if the biological parent cohabitates with the registered child sex offender and the children also reside in the home, even if only part-time. Other examples of unlimited and/or unrestricted access include child sex offenders who: act as a caregiver, even part-time; spend the night with the non-child sex offender caregiver and is able to come and go from room-to-room at will; is a relative and the non-child sex offender parent leaves the child in the child sex offender's care, even if only one day per week. **Please note that this is not to mean the children must be unsupervised for it to qualify as "unlimited and/or unrestricted".** "Part-time" means someone who may be a paramour or relative, who has frequent access but is not a resident. It could also be used to describe an offender who may be present only on weekends, but not during the week. For reports of unlimited and/or unrestricted access of a child to a registered sex offender, the worker will:

- Follow the same rules and procedures for intake as other reports of suspect child abuse or neglect;
- Complete a search of the [West Virginia State Police Sex Offender Registry](#); making sure that (1) the individual is, indeed, listed on the registry, and (2) that the individual was convicted and registered for a sex offense against a child under the age of 18;
- Document the results of the search in the intake assessment.

The supervisor will:

- Indicate whether the referral will be accepted or screened out. If screened out, the supervisor must provide an explanation as to why the referral does not indicate that the child is being subjected to conditions that are likely to result in abuse or neglect.

### **3.23 Reports Involving Individuals on the Child Abuse and Neglect Registry**

[W. Va. Code §15-13-1 et seq.](#) requires individuals convicted of child abuse and neglect register with the State Police for a period of ten years. The State Police must forward the initial registration and future updates to the Department of Health and Human Resources (DHHR). DHHR is then responsible for distributing the information to various entities, maintaining a record of requests for information, and conducting Initial Assessments when appropriate. This protocol will outline the steps necessary to satisfy the legislative requirements.

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The Division of Children and Adult Services will receive the notifications from the State Police and will forward the notifications to the appropriate DHHR District Offices within two business days. The District Office will receive the notifications when a registrant resides, is employed, or attends school or training facility in the home county of the District Office.

When the DHHR District Office receives a Child Abuse Notification due to a registrant working or attending school in a county within that district's jurisdiction, the following must occur:

- Within three business days of receiving the notification statement mail a copy of the notification to the supervisor of the sheriff's department, as well as the supervisors of all municipal and campus law enforcement agencies, in the county where the registrant is employed or attends school
- Within three business days of receiving the notification statement mail a copy of the notification to the county superintendent of schools where the registrant is employed or attends school

When the DHHR District Office receives a Child Abuse Notification and the registrant resides within that district's jurisdiction, the following must occur:

- Within three business days of receiving the notification statement mail a copy of the notification to the supervisor of the sheriff's department, as well as the supervisors of all municipal and campus law enforcement agencies, in the county where the registrant resides;
- Within three business days of receiving the notification statement mail a copy of the notification to the county superintendent of schools where the registrant resides;
- Review the notification to determine if the registrant is residing with children.

If the notification indicates that the registrant is residing with children, a CPS referral must be entered in CCWIS due to the children being subject to conditions that are likely to result in abuse or neglect. An Initial Assessment must be completed on the family unless:

- An Initial Assessment has previously been completed on the family due to the registrant's status on the child abuse registration; and
- The notification is an update with no additional children listed.

If an updated notification is received listing children not in the residence at the time of the previous Initial Assessment, a new Initial Assessment should be completed.

### **3.24 Reports Involving Pregnant Women Who do not have Children**

When a referral is received concerning a pregnant woman who has no children the following must occur:

- Inform the reporter of community resources explaining that, if appropriate, they

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- can educate the woman on the available services.
- Centralized Intake supervisor will screen out the referral for CPS due to the allegation not meeting the legal definition of abused or neglected child found in Chapter [W. Va. Code §49-1-201](#) and then notify the district supervisor of the screened out referral via email.
- The district CPS supervisor will notify the client of the referral and inform them of resources available to assist them. Examples of resources available include but are not limited to: Right from the Start, Family Resource Centers, Community Behavioral Health Centers, Medicaid, and the Women Infants and Children Program. This notification can be made by phone, in writing or face to face.

Record the notification in the contacts screen in CCWIS.

### **3.25 Reports Involving Educational Neglect**

While it is a caregiver's responsibility to ensure that their child receives an education regardless of their child's age, it is recognized that caregivers should have more control, influence, and responsibility for children between five and 11 years of age. When a referral alleging a child is being neglected due to lack of education, CPS should examine the referral to determine if it is appropriate for CPS intervention. Issues to consider prior to accepting the referral for educational neglect:

- The school's efforts to address the child's absences or educational needs with the caregiver;
- The caregivers' responses to the school's efforts;
- Any other allegations that would indicate the child is abused or neglected, or subject to conditions where abuse or neglect is likely to occur.

The referral for CPS must be accepted if the allegations indicate that the school has made efforts to correct the absences or educational needs yet has been unsuccessful due to the caregiver's lack of cooperation with the school, or if there are any other allegations that would indicate the child is abused or neglected or subject to conditions where abuse or neglect is likely to occur.

### **3.26 Reports Involving Methamphetamine Manufacturing or Exposure**

The chemicals used to manufacture methamphetamine, the production process, and the waste generated because of that process pose real and serious dangers to the public and environment. These dangers include toxic poisoning, chemical and thermal burns, fires, and explosions.

Methamphetamine residue generated during the final "gas" phase of production is a contaminant that cannot be seen with the naked eye. Smoking methamphetamine can cause the same residual contamination. Exposure to methamphetamine residue may cause respiratory problems, flu-like symptoms, sleeplessness, agitation, etc. See [W. Va.](#)

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[Code §60A-11-3](#) for regulations on how properties exposed to residual methamphetamine contamination are handled.

The children who live in and/or near methamphetamine labs, or are exposed to vapors from smoking methamphetamine, are at the greatest risk for health issues due to their proximity to areas where the residue can be found, i.e. carpeted floors, tables, clothing, toys, ventilation, etc.

Responding to a suspected meth lab where children are present requires a carefully planned and coordinated approach involving multiple partners. Those who make meth often use meth, making them prone to violent behavior. Often, meth producers try to keep secret and protect their illegal operations by using weapons, explosive traps, and surveillance equipment.

The following plan, derived from the West Virginia Drug Endangered Children *“Interdisciplinary Guide for the Removal of Children from Methamphetamine Environments”* applies to situations where there is reason to believe that abuse and neglect of a child has occurred through exposure to controlled substances, or chemicals and processes involved in manufacturing illegal substances. ***Reminder: Smoking methamphetamine can cause the same residual methamphetamine contamination as manufacturing.***

### 3.27 Reports Involving Human Trafficking

For reports of suspected child abuse and neglect in the form of human trafficking perpetrated by a caregiver (parent, guardian, or custodian) or a third-party perpetrator the worker will:

- Enter the CPS referral on the home of the alleged perpetrator/trafficker.
- Enter each trafficked victim as a child and a victim in the trafficker’s referral.
- Enter the alleged perpetrator/trafficker as the maltreater.
- If the alleged perpetrator/trafficker has children of their own, a separate referral on the trafficker and their children may be necessary if abuse and/or neglect is suspected against those children.
- For Trafficking select maltreatment type **Abuse/ Human Trafficking. Select Sex Trafficking by Parent, Sex Trafficking by non-parent, Labor Trafficking by Parent or Labor Trafficking by non-parent.** Complete the explanation text box with details of the trafficking.

The Centralized Intake supervisor will:

- Accept the report and assign a zero to 24-hour response.

Since the referral was received as a report of human trafficking, the CI supervisor will notify Law Enforcement within 24 hours of receipt of the referral. If the Law

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Enforcement agency who handles human trafficking was the reporter, there is no need to contact that agency in return.

### **3.28 Reports Involving Temporary Assistance for Needy Families (TANF) Drug Testing**

[W. Va. Code §9-3-6\(h\)](#) require abuse and/or neglect referrals to be made by TANF staff:

- An individual has had their benefits suspended and who has not designated a protective payee; or
- An individual's benefits have been terminated due to failure to pass a drug test.

The Centralized Intake worker will:

- Collect identifying information and demographic information on the TANF applicant and the applicant's family.
- Gather information about alleged substance use, misuse or substance use disorder.
  - Drug Screen Results
  - Family impact of substance use, misuse or substance use disorder
  - Criminal history resulting from substance use, misuse or substance use disorder
- Assess for and document other suspected forms of abuse and/or neglect.
- Document allegations of Emotional/Psychological Abuse (Drug Use by Caretaker).

The Centralized Intake supervisor will:

- Accept and assign the referral for assessment if the allegations meet the definition of abuse or neglect per [Chapter 49](#) of WV Code or if children are identified as unsafe.
- The Mandated Reporter Letter will serve as notification to the TANF worker.

### **3.29 Reports Involving Institutional Investigative Unit (IIU) and Child Maltreatment in Group Residential and Resource Family Settings**

#### ***Pre-Investigation-Introduction***

Reports of suspected child abuse or neglect in group residential or resource family settings are assessed in a different manner than reports of suspected child abuse or neglect in intra-familial settings. The initial assessment and safety evaluation of suspected abuse or neglect in intra-familial settings focuses on assessing the presence and level of risk to a child within the family setting and the evaluation of safety of the child, promotion of family preservation when the safety of the child can be maintained and the provision of safety services to prevent family disruption. Investigations involving group residential or resource family care are not focused on family functioning and family preservation and for that reason, the same initial assessment and safety evaluation is not used in IIU. The process used for IIU investigations is one that focuses on ensuring safety

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of the child, determination of whether the incident occurred, whether maltreatment (child abuse or neglect) occurred, and areas of concern identified during the investigation that may indicate non-compliance.

### ***Institutional Investigative Unit Intake Protocol***

The primary purpose of intake is to identify cases of child abuse or neglect. During this process, the Centralized Intake worker will attempt to explore with the reporter, insofar as possible, the allegations being made to determine whether there is reasonable cause to suspect that child abuse or neglect exists.

1. For reports of suspected child abuse or neglect involving a group residential facility or resource family care home the Centralized Intake worker will attempt to gather the following information:
  - The name, age, and current location of the child;
  - The name of the child's worker and the worker's county office;
  - The name, address, and position of the suspected alleged maltreater;
  - Information about the suspected maltreatment, including time(s) and date(s);
  - How the child functions, including pervasive behaviors, feelings, intellect, physical capacity, and temperament;
  - The names of individuals, staff or residents who have direct knowledge of the incident and their whereabouts;
  - Where the alleged maltreater is at the time of the intake;
  - The name and contact information for the reporter;
  - Whether the alleged maltreater knows the report is being made;
  - What actions, if any, have been taken by the agency or provider;
  - The reporter's opinions about needed actions and child's safety.
2. Following the information gathering process with the reporter, the Centralized Intake worker will:
  - Indicate whether the allegations of maltreatment are abuse, neglect, sexual abuse or other;
  - Enter the name of the agency or provider in the Facility field within CCWIS;
  - Review the intake for thoroughness and then transmit the report to the IIU supervisor, PRIOR to screening the report.
3. The IIU supervisor will:
  - Review the intake and determine whether the information collected meets the statutory or operational definitions of child abuse or neglect or whether the information indicates a possible violation of licensing regulations or Home Finding policies and standards.
4. If the information indicates there is a reasonable cause to suspect that child abuse or neglect may have occurred, the IIU supervisor will:
  - Accept the report for investigation, identify the response time and assign it to an IIU Worker.

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*Note: Only those reports indicating that child abuse or neglect may have occurred per the statutory and operational definitions will be accepted for investigation by IIU.*

5. The Social Services Manager or designee will:

- Assure that the child's immediate needs for safety, medical care and/or removal are addressed;
- Notify the IIU Worker of any information that may be relevant to the investigation.

6. The Home Finding Program Manager or designee will:

- Require immediate removal of the foster children and prohibit any contact with the children and any new placements in the home until the investigation is completed, whenever the report involves sexual abuse or serious physical injury to a child, or there is any other indication the home is unsafe;

*Note: Home Finding Staff should also refer to Foster Care Provider (Home Finding Policy) Section 1.17, for further instructions.*

- Notify the IIU Worker of any information that may be relevant to the investigation.

7. If the information does not indicate there is a reasonable cause to suspect that child abuse or neglect may have occurred, the IIU supervisor will:

- Transmit the report to the Home Finding Program Manager or Residential Licensing Specialist and/or Licensing Program Manager if the information indicates that a possible violation of licensing regulations or Home Finding standards has occurred; or
- Screen out the report;

Ensure that all mandated reporters receive written or verbal notification if the reported suspected abuse or neglect has been screened out.

### **3.30 Reports Involving the Institutional Investigative Unit (IIU) and Child Maltreatment in School Settings**

#### ***Introduction***

Reports of suspected child abuse or neglect in school settings are assessed in a different manner than reports of suspected child abuse or neglect in intra-familial settings. The Initial Assessment in intra-familial settings focuses on assessing safety of the child, promotion of family preservation when the safety of the child can be maintained and the provision of safety services to prevent family disruption. Investigations involving schools are not focused on family functioning and family preservation and for that reason; the Initial Assessment is not used in IIU. The process used for IIU investigations is one that focuses on ensuring safety of the child, determination of whether the incident occurred and whether maltreatment (child abuse or neglect) occurred.

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### ***Institutional Investigative Unit Intake Protocol***

The primary purpose of intake is to identify cases of child abuse or neglect. During this process, the Centralized Intake worker will attempt to explore with the reporter, insofar as possible, the allegations being made in order to determine whether or not there is reasonable cause to suspect that child abuse or neglect exists.

*(Note: Reporters of child abuse or neglect in school settings should be referred to the Centralized Intake Unit.)*

1. For reports of suspected child abuse or neglect involving school personnel, the worker will attempt to gather the following information:
  - The name and address of the child and caregivers;
  - The name, address, and position of the suspected maltreater;
  - Information about the suspected maltreatment and the surrounding circumstances accompanying the suspected maltreatment;
  - How the child(ren) functions, including pervasive behaviors, feelings, intellect, physical capacity, and temperament;
  - Where the child(ren) is at the time of the intake;
  - Where the suspected maltreater is at the time of the intake;
  - Who the reporter is (name, address, phone);
  - How the reporter came to know about the concerns;
  - Why the reporter is referring the situation currently;
  - Whether the maltreater knows the report is being made;
  - The reporter's opinion about needed actions and child's safety.
2. Following the information gathering process, the DHHR/CPS intake worker or the supervisor will:
  - Indicate whether the allegations of maltreatment are abuse, neglect, sexual abuse or other;
  - Enter the name of the school in the Facility field within CCWIS;
  - Review the intake for thoroughness and then transmit the report to the IIU supervisor for review and decision-making regarding acceptance and response time, PRIOR to screening the report.
3. The IIU supervisor will:
  - Review the intake and determine whether the information collected meets the statutory or operational definitions of child abuse or neglect.
4. If the information indicates there is a reasonable cause to suspect that child abuse or neglect may have occurred, the IIU supervisor will:
  - Accept the report for investigation, identify the response time and assign it to an IIU Worker.

*Note: In determining whether to accept the report or screen it out, the supervisor must consider:*

- *Whether the information collected meets required definitions of child abuse or neglect;*

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- *Whether the allegations of abuse or neglect involving school personnel have occurred on school property or during a school-sponsored event, activity, or job assignment.*
5. If the information does not indicate there is reasonable cause to suspect that child abuse or neglect may have occurred, the IIU supervisor will screen out the report.
  6. Ensure that all mandated reporters receive written or verbal notification if the reported suspected abuse or neglect has been screened out. Document the notification in CCWIS on the Contact screen identifying “reporter” as the Non-Client/Non-Collateral Participant.

### **3.31 Reports Involving Institutional Investigative Unit (IIU) and Licensed Child Care Centers/Registered Family Child Care Facilities/Registered Family Child Care Homes**

#### ***Introduction***

Reports of suspected child abuse or neglect in licensed child care centers, registered family child care facilities and registered family child care homes are assessed in a different manner than reports of suspected child abuse or neglect in intra-familial settings. The initial assessment and safety evaluation of suspected abuse or neglect in intra-familial settings focuses on assessing the presence and level of risk to a child within the family setting and the evaluation of safety of the child, promotion of family preservation when the safety of the child can be maintained and the provision of safety services to prevent family disruption. Investigations involving licensed child care centers, licensed family child care facilities and registered family child care homes are not focused on family functioning and family preservation and for that reason, the same initial assessment and safety evaluation is not used in IIU. The process used for IIU investigations is one that focuses on ensuring safety of the child, determination of whether the incident occurred, whether maltreatment (child abuse or neglect) occurred, and areas of concern identified during the investigation that may indicate non-compliance. If non-compliance has been identified, the need for a Corrective Action Plan will be at the discretion of the Child Care Licensing Specialist or Child Care Regulatory Specialist.

#### ***Institutional Investigative Unit Protocol for Licensed Child Care Centers, Licensed Family Child Care Facilities and Registered Family Child Care Homes***

##### **A. Intake**

The primary purpose of intake is to identify cases of child abuse or neglect. During this process, the intake worker will attempt to explore with the reporter, insofar as possible, the allegations being made in order to determine whether or not there is reasonable cause to suspect that child abuse or neglect exists.

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*Note: Reporters of child abuse or neglect should be referred to the Centralized Intake Unit.*

1. For reports of suspected child abuse or neglect involving a licensed child care center or licensed family child care facility/registered family child care home, the intake worker will attempt to gather the following information;

- a. The name, age, and current location of the child;
- b. The name of the child's parents or guardians and their address and phone number;
- c. The name, address, and position of the suspected alleged maltreater;
- d. Information about the suspected maltreatment, including time(s) and date(s);
- e. How the child functions, including pervasive behaviors, feelings, intellect, physical capacity, and temperament;
- f. The names of individuals, staff or residents who have direct knowledge of the incident and their whereabouts;
- g. Where the alleged maltreater is at the time of the intake;
- h. The name and contact information for the reporter;
- i. Whether the alleged maltreater knows the report is being made;
- j. What actions, if any, have been taken by the agency or provider;
- k. The reporter's opinion about needed actions and child's safety.

2. Following the information gathering process with the reporter, the DHHR/CPS intake worker or the Centralized Intake worker will:

- a. Indicate whether the allegations of maltreatment are abuse, neglect, sexual abuse or other;
- b. Enter the name of the agency or provider in the provider field within CCWIS;
- c. Review the intake for thoroughness and then transmit the report to the IIU supervisor, PRIOR to screening the report.

3. The IIU supervisor will;

- a. Review the intake and determine whether the information collected meets the statutory or operational definitions of child abuse or neglect or whether the information indicates a possible violation of licensing regulations or child care policies and standards.

4. If the information indicates there is a reasonable cause to suspect that child abuse or neglect may have occurred, the IIU supervisor will;

- a. Accept the report for investigation, identify the response time and assign it to an IIU Worker;
- b. If the allegations involve sexual abuse or serious physical injury to a child, the IIU supervisor will recommend the restriction of use of the particular provider or the removal of the alleged maltreater from the premises pending the outcome of the investigation.

*Note: Only those reports indicating that child abuse or neglect may have occurred per the statutory and operational definitions will be accepted for investigation by IIU.*

5. The Child Care Licensing Specialist or Child Care Regulatory Specialist will:

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- a. Notify the IIU Worker of any information that may be relevant to the investigation;
  - b. Assure that appropriate action has been taken at the Center or Facility to protect the children and remove the alleged maltreater from access to children, pending the completion of the investigation.
- 6.If the information does not indicate there is a reasonable cause to suspect that abuse or neglect may have occurred, the IIU supervisor will:
  - a. Transmit the report to the Child Care Licensing Program Manager or Regional Child Care supervisor if the information indicates that a violation of licensing regulations, child care policies and/or standards;
  - b. Screen out the report;

Ensure that all mandated reporters receive written or verbal notification if the reported suspected abuse or neglect has been screened out. Document the notification in CCWIS.

## **SECTION 4 - INITIAL ASSESSMENT**

### **4.1 Purpose of the Initial Assessment**

The Initial Assessment is the second assessment within Child Protective Services (CPS). The term and label *Initial Assessment* refers to the function that is commonly referred to as investigation or initial assessment. The Initial Assessment determines who CPS will serve by assessing and reaching conclusions about caregivers who are unable or unwilling to protect their children from impending safety threats.

The purpose of the Initial Assessment is:

- To respond in a timely manner in accordance with content contained with the intake assessment;
- To inform caregiver's that there is a reported concern for the safety of their children;
- To engage caregivers in a process that provides a picture of the family and reveals whether children are in danger;
- To meet emergency needs that are apparent at the onset or during the Initial Assessment;
- To conduct a structured, thorough information collection process that includes relevant family members;
- To keep caregivers informed and appropriately involved in case decision making;
- To reach a finding regarding the existence of child maltreatment consistent with state statute;
- To determine if a child in the home is unsafe;
- To establish a sufficient, least intrusive Safety Plan when indicated.

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## 4.2 Initial Assessment Protocol

The Initial Assessment provides a uniform, systematic, and structured approach to all family situations when a child is alleged to be abused or neglected. It is designed to assure that a family centered approach is taken. The Initial Assessment begins with the preparation phase and continues until sufficient information is collected to make the necessary Initial Assessment decisions. It is important to understand that several steps in this process can be completed during the same visit with the family.

Steps for completion of the Initial Assessment and Safety Evaluation are:

- Preparation
- Initial Family Contact Requirements
- Information collection
- Immediate safety threat assessment
- Protection planning
- Safety Evaluation
- Safety Evaluation Conclusion

There may be reports which require a variant response due to the nature of the allegations. Specific policies related to those reports can be found in *CPS Policy Section 4.26 through 4.42*.

## 4.3 Child Welfare Worker Preparation

Upon assignment of a report for Initial Assessment, the child welfare worker will:

- Review the report and all previous reports, records and documentation on the family which are relevant to CPS;
- Consider alleged threats of serious harm to the children;
- Determine if the report requires a variant response based upon the allegations and review the corresponding policy section;
- If necessary, consult with a supervisor to determine the best course of action for responding to the report;
- Develop a plan for completion of the Initial Assessment, considering the personal safety policy and response time indicated at intake. The preferable site to interview the child is one which is child-friendly, neutral, confidential, aiding in a feeling of psychological safety. It is the position of the DHHR that the choice of the site of the interviews and who is present during an interview is left to the discretion of the CPS staff. This choice is affirmed in [W. Va. Code §49-2-802](#) which requires certain groups to provide such assistance..... as will enable it to fulfill its responsibilities. Such assistance can and should, when necessary, be interpreted to mean private interviews. There are some exceptions. If a child indicates that they would be more comfortable with a teacher, counselor or other person present during an interview, then the worker can include that person if the person is **not** the alleged maltreater. The alleged maltreater or non-maltreating parent may also indicate that they would like to have an advocate, counselor, attorney or

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other person present during an interview, and the worker must make arrangements to accommodate that request. However, under no circumstances should a child be left in an unsafe situation while waiting to make arrangements for the interview;

- Contact law enforcement, the Prosecuting Attorney, or the medical examiner if the report involves serious physical injury, sexual abuse, sexual assault, or death of a child to coordinate any arrangements for a joint investigation/initial assessment. If the Prosecuting Attorney and/or the law enforcement official declines to proceed with a joint investigation/assessment, CPS must proceed as the sole entity conducting the Initial Assessment. The failure of law enforcement or the Multidisciplinary Investigative Team to investigate reports of suspected child abuse or neglect does not relieve DHHR of its responsibilities to protect children. Reports alleging physical injury, sexual abuse, and critical incident will be automatically referred to the WV State Police Child Abuse Unit. The referral to the WV State Police Child Abuse Unit does not abolish the requirement to contact local law enforcement;
- Contact the local Multidisciplinary Investigative Team according to the protocol established in collaboration with the Prosecuting Attorney and local law enforcement. A Multidisciplinary Investigative Team should be established in each county and should be headed and directed by the Prosecuting Attorney, pursuant to [W. Va. Code §49-4-402\(a\)](#). The team should be responsible for ....coordinating or cooperating in the initial and on-going investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect... [\(W. Va. Code §49-4-402\(c\)\)](#).

#### Supervisor Duties:

- Review the referral and, if necessary, provide guidance on completing the Initial Assessment;
- Assure that law enforcement, the Prosecuting Attorney or the medical examiner has been contacted if required.

## 4.4 Initial Family Contact

Due to the nature of CPS, there are requirements that must be adhered to when initially contacting families. Those requirements include:

- Make face-to-face contact with the identified child(ren) in the time indicated as the response time on the intake. If unable to do this, the worker must document the reasons in CCWIS. All initial face-to-face contacts or attempted face-to-face contacts with the identified child(ren) should be documented within three business days of the contact or attempted contact. The response time is the maximum amount of time that is allowed to contact the victim child; it is best practice to contact the victim child, other children and caregivers as soon as possible;
- Identify themselves as a child welfare worker from the WV Department of Health

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- and Human Resources. Display state employee identification to all family members and any other individuals to be interviewed;
- Inform the caregivers, with a brief description, of the child abuse or neglect allegations, the reason for the contact and the process for completing the Initial Assessment. If permission to conduct interviews with the child is denied, then the worker will explain to the family that they must discuss this situation with the CPS supervisor. Once the supervisor has reviewed the situation, the supervisor or worker must contact the Prosecuting Attorney or Regional Attorney for consultation on how to gain access so that the child/family may be interviewed;
  - The child welfare worker must notify parents of the intent to interview a child unless notification could compromise the child's safety. Initial contact can occur at school where children attend if child safety may be compromised based on the allegations. When it is necessary to interview/observe the children prior to notifying the parents/primary caregivers, the parents and primary caregivers **must** be immediately contacted to inform them about the report and then interviewed as soon as possible thereafter. The child welfare worker **must** provide the parents and/or caregivers with a full explanation about the decision to contact the children prior to their being contacted;
  - Provide the caregivers with the booklet, A Parent's Guide to Working with Child Protective Services. The child welfare worker will place their name and contact information in the appropriate place in the booklet. Briefly explain the content with emphasis on the parent's rights during the CPS Process. The worker will assure the parents that they can help answer any questions they have during the assessment process;
  - Ask the child's parents if they are represented by legal counsel. If the parents are represented by legal counsel, then the worker should not continue the interview without first obtaining the permission of counsel to do so as required by the Gibson Decree. If permission to conduct the interview is denied, then the worker will discuss this situation with their supervisor. Once the supervisor has reviewed this situation, the supervisor or the worker must contact the Prosecuting Attorney or Regional Assistant Attorney General for consultation on how to gain access so that the child/family may be interviewed;
  - If possible, the interviews should occur sequentially on the same day in the following order:
    1. **identified child**
    2. **siblings**
    3. **non-maltreating parent**
    4. **maltreating parent**
    5. **other adults in the home**
  - If there is an infant in the home under age one, the child welfare worker should observe the sleeping conditions of the infant and review safe sleep practices with the parent or caregiver
  - If multiple families reside in a household and maltreatment is suspected in the home, then two referrals should be entered and both families assessed;

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*For example: Family A has two children ages six years old and eight years old with grandmother and grandfather residing in the home. Family B has three children ages six months old, two years old and six years old. Grandmother and Grandfather are the same as family A. Two separate referrals should be entered and both families assessed, and the grandmother and grandfather's information should be included in both assessments.*

- Assess for Immediate Safety Threats and implement a protection plan if necessary;
- Consult with a child welfare supervisor within 24 hours of contact with the identified child unless an Immediate Safety Threat is identified. *See CPS Policy Section 4.7 Immediate Safety Threat Assessment for more information.*

## **4.5 Notification of Parents and Children's Rights**

Child Protective Services (CPS) has always had legal and moral duties to notify clients of the allegations against them and their legal rights during CPS proceedings. However, there is now greater consensus among lawmakers and social workers as well as community stakeholders that clients have an inalienable right to be as educated and involved as possible in the decisions being made about their families. An amendment to the Child Abuse Prevention and Treatment Act (CAPTA) entitled Keeping Children and Families Safe Act of 2003 placed into effect higher standards of notification.

Studies show that the more knowledgeable and invested families are, the better they do during CPS intervention. The worker is entrusted with the responsibility to share information with the family during key points throughout the intervention process, not just those concerning the Initial Assessment. It is also important to keep in mind that the way in which information is disclosed is important. The Child Welfare Worker must balance the right of notification with concern for not compromising any criminal proceedings that may be initiated as a result of the maltreatment. Clients have the following rights and must be advised of such by the worker:

- The right to be free from warrantless search and seizure.
- The right to be free from intrusion into one's home except upon lawful consent.
- The right to have information collected and maintained in the course of an investigation and delivery of services held in confidence in accordance with [W. Va. Code §49-5-101\(a\).](#)
- The right to be allowed access to one's personal file in accordance with [W. Va. Code §49-5-101\(b\).](#)
- The right to appeal the exclusion or inclusion of a parent or child from any service program and the right to request a grievance hearing with regard to either the manner in which the parents and the child are treated by agency personnel or any other concern related to the service programs of the agency.
- The right to refuse child protective services as well as the right to be advised of the consequences when individuals refuse said services.
- The right to be free from discrimination for reasons of age, race, color, sex, mental or physical disability, religious creed, national origin or political belief.

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- The right to auxiliary aids to individuals with disabilities, at no additional cost, where necessary to ensure effective communication with individuals with hearing, vision or speech impairments.
- The right to be informed of complaints or allegations made against an individual in a manner that is consistent with law protecting the rights of the reporter.
- The right to be informed of the findings of child abuse and neglect investigations and how the findings will affect the family, as well as the individual.
- The right to be made aware of all actions taken in regard to the family throughout the life of the case and the reasons for such action.

## 4.6 Information Collection

The child welfare worker must apply a child centered and family focused approach when collecting information during the Initial Assessment. This approach seeks to support and involve children, caregivers/parents, and other individuals in CPS intervention. The child welfare worker must make every effort to constructively engage children, caregivers, and other persons involved with and knowledgeable of the circumstances surrounding the information within the CPS intake assessment as well as additional information that may be learned during the Initial Assessment.

Detailed information must be collected through interviews, observations, and written materials provided by knowledgeable individuals, including complete demographic information. All documentation of face to face contacts should be entered within three business days of the completion of the contact. The child welfare worker must conduct sufficient interviews of sufficient length and effort necessary to assure that due diligence is demonstrated, and sufficient information is collected to assess threats of serious harm and determine if the children are abused or neglected.

The child welfare worker must conduct interviews with all parents and caregivers, children and other adults residing in the home, persons allegedly responsible for abuse/neglect/threats of serious harm, and collaterals. To assure that a family centered approach is taken, the following should occur when interviewing parents/caregivers, children and collaterals:

### 1. Children in The Home

- Individual, in-person, private interviews must be conducted with all children in the home within the response time designated at intake.
- Non-verbal children must be observed.
- If there are any infants under the age of one in the home, safe sleep conditions should be observed by the CPS Social Worker. The worker should observe the sleeping area of the child and discuss with the parent or caregiver safe sleep practices and recommendations. The worker should visit [Our Babies: Safe and Sound](#), for resources, educational material, and information to share with the family regarding safe sleep practices. The infant should have a separate crib, bassinet or “pack and play” that is clear of toys, heavy or loose blankets, bumper

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pads and pillows. The mattress should be firm and only covered in a snug fitted sheet. The infant should always sleep alone on their back in a smoke and vape-free space. The worker can also provide the parent or caregiver a copy of the ["Say YES to Safe Sleep"](#) parent brochure.

- The number and identity of all children residing in the home must be verified and documented. The verification source may include, but is not limited to, relatives, neighbors, friends or DHHR records. If verification cannot be obtained and all efforts have been exhausted, the child welfare worker must document efforts made, sources contacted, and information reviewed.
- When it is necessary to interview/observe the children prior to notifying the parents and primary caregivers of the intent to interview the children, the parents and primary caregivers must be immediately contacted to inform them about the report and then interviewed as soon as possible thereafter. The child welfare worker must provide the parents and primary caregivers with a full explanation about the decision to contact the children prior to their being contacted.
- Other children in the home who were not identified in the intake report must be interviewed in order to gather sufficient information to provide an understanding of whether they are also experiencing abuse/neglect or are at threat of serious harm and to determine if they have information related to what is alleged in the report.

***Note: When there are allegations of sexual abuse, sexual assault, physical trauma or other concerns regarding the genital, breast or anal/buttock area of a child, the child welfare worker must refer the child to be seen by a medical professional for examination and photographs, if needed, of the trauma. A worker shall not take photographs of a child's genital, breast or anal/buttock area, even with permission of their parent/caregiver.***

## **2. Parents/Caregivers**

- Seek the parents' and caregivers' assistance with completing the Initial Assessment. The parents' and caregivers should be interviewed separately with the non-maltreating parent being interviewed first. The child welfare worker must also encourage and support parents/caregivers to ask questions and express their concerns about the Initial Assessment process and continued involvement with CPS.
- Interviews must focus on obtaining behaviorally specific, detailed information related to the alleged abuse/neglect/threats of serious harm and exploring family conditions and circumstances relevant to the allegations and Initial Assessment areas.
- The child welfare worker must be alert to evidence of any safety threats that were unreported or unidentified during the intake assessment.
- The Child Welfare Worker must gather specific information concerning parents not subject to the Initial Assessment. Information should be gathered regarding the parental rights, custody and visitation of the parent. The information is needed in order to notify the parent if their child has been abused, neglected,

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unsafe and to make reasonable efforts to prevent removal or entry into foster care. (Note: Information should be documented in contacts and as appropriate in the Initial Assessment.)

- The child welfare worker must provide information about the Initial Assessment status and progress with the parents/caregivers as the Initial Assessment continues including:
  - Concerns about child safety;
  - Status and oversight of the protective plan (if one is in place) including parents/caregivers continuing attitudes, willingness, and concerns;
  - General observations and impressions emerging from the Initial Assessment process; and
  - Specifics about any court activity, evaluation appointments; service provision issues that are a part of the Initial Assessment process.

### **3. Other Adults in the Home**

- Individual, in-person, private interviews must be conducted with all other adults in the home.
- The purposes of these interviews are to corroborate information provided by individuals previously interviewed; to obtain additional information regarding the alleged abuse/neglect/threat of serious harm; to assess their involvement in or association with threats of serious harm; and/or to assess them as a resource to provide protection to children who are at threat of serious harm.

### **4. Collaterals**

- Collaterals are any third party (e.g., friends, neighbors, relatives, or professionals) with information about the alleged abuse/neglect and risk of serious harm to the children.
- Collaterals are contacted to corroborate information provided by individuals previously interviewed; to obtain additional information about the family; and to assess as protective resources.
- The child welfare worker must interview as many collaterals as needed to reach conclusions regarding the alleged abuse/neglect and threat of serious harm. All individuals known to have first-hand knowledge of the allegations must be contacted. Interviews must be conducted individually and privately, by telephone or in-person. Collaterals can be interviewed at any point during the Initial Assessment. When interviewing collaterals stress the confidential nature of the Initial Assessment.

#### **4.6.1 Initial Assessment Areas**

The child welfare worker must make diligent efforts to gather behaviorally specific, detailed information related to each Initial Assessment Area listed below. The Initial Assessment Areas are specifically related to child safety and the information must be used to support and justify Initial Assessment decision making.

The Initial Assessment Areas are:

1. **Maltreatment:** The types of maltreatment apparent; this includes all types of

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maltreatment, physical injury or mental or emotional injury, sexual abuse, or sexual exploitation, sale or attempted sale, domestic violence, excessive corporal punishment, failure or inability to supply necessary food, clothing, shelter, supervision and education. A specific description of the maltreatment – type of injury or threats that occurred and to whom. The severity of the abuse or neglect, including the frequency and chronicity. Detailed description of the incident(s) – when (i.e., date, time), where (i.e., location), how it occurred, and whether any instruments (animate or inanimate) were used to threaten the child or inflict the injury; who was present; who was responsible for the abuse/neglect.

2. **Nature:** The Nature (surrounding circumstances) which accompany the maltreatment; this should always include the parents' explanation of the circumstances related to the alleged maltreatment.
3. **Child Functioning:** Information is collected on all children in the home regarding how they function daily, including pervasive behaviors, feelings, intellect, physical capacity, and temperament. This must include consideration of capacity for attachment, general temperament, expressions of emotions/feeling, typical behaviors, presence and level of peer relationships, school performance and behaviors, known mental disorders (organic/inorganic), issues of independence/dependence, motor skills and physical capacity. The effects of any maltreatment should be documented in the Child General Functioning element. This element will be completed on all children residing in the home.
4. **General Parenting:** The overall, typical, pervasive parenting practices used by the parent(s); this must include consideration of perception of children, reasons for being a parent, nurturing, understanding of child's needs and capabilities, expectations of child, satisfaction with parenting role, feelings about being a parent, knowledge and general skill, basic care, decision making about parenting, parenting style, history of parental behavior and success, sensitivity and understanding toward children, empathy and expectations.
5. **Parenting Discipline:** The disciplinary approaches used by the parent(s), including the typical context; this must include consideration of when, how, where and for what reasons/purpose discipline might occur.
6. **Adult Functioning:** Adult functioning in respect to daily life management and adaptation; this must include consideration of communication, coping, stress management, impulse control, problem solving, judgment, decision making, independence, money and home management, employment, social relationships, citizenship and community involvement, self-esteem, life management, control of emotions, use of legal or illegal substances or alcohol, mental health functioning, use of violence to meet needs, self-concept, etc., will be documented in the Adult Functioning element. This element should be completed on each adult in the home.

#### 4.7 Immediate Safety Threat Assessment

At the initial contact with the family or at any time during CPS involvement with families when new information is learned, when there is a reported crisis or new report, CPS will

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begin focusing on whether there are Immediate Safety Threats to a vulnerable child's safety. Immediate Safety Threats can be identified **at any time** during the Initial Assessment or On-Going CPS and if identified, a protection plan must be implemented prior to leaving the family or situation.

Immediate Safety Threats are immediate, significant, and clearly observable family conditions (or threat to child safety) that is actively occurring or "in process" of occurring and will likely result in serious harm to a child. Immediate Safety Threats can be divided into four categories, and they include **Maltreatment, Child, Parent and Family**. They are described in detail below:

#### **Maltreatment**

- **Maltreating Now**

Refers to caregivers who are maltreating their children at the point of contact during the assessment process. Maltreatment will typically be physical, verbal, or sexual in nature. This does not include indications of chronic neglect that are reported as being ongoing but may not necessarily meet the criteria for an Immediate Safety Threat.

- **Multiple Injuries**

Refers to different types of injuries that are non-accidental and have resulted from child maltreatment. For example, a child who has a burn on their hand and their arm also has significant bruising, and information indicates that the injuries occurred as a result of maltreatment by a caregiver.

- **Face/Head**

Refers to any injury to the face or head including bruises, cuts, abrasions, swelling, etc. identified in a report and/or verified at any point of contact during the assessment process. There must be a determination that the injuries occurred because of child maltreatment by a caregiver. Injuries to the face and head which may have occurred last week, or month are not an Immediate Safety Threat.

- **Serious Injury**

Refers to injuries that are consistent with bone breaks, deep lacerations, burns, malnutrition, etc. because of caregiver maltreatment (action or inaction). This relates to serious injuries that are identified in a report and/or evident at the point of contact during the assessment or medically diagnosed concurrent with the report.

- **Several Victims**

Refers to the identification of more than one child who currently is being maltreated by the same caregiver. It is important to keep in mind that several children who are being chronically neglected do not meet the standard of Immediate Safety Threat in this definition.

- **Premeditated**

Refers to child maltreatment by a caregiver that indicates that the abuse was deliberate, a preconceived plan or intentional. This may include information that indicates that the caregiver's motive was to inflict harm on the child.

- **Life Threatening Living Arrangements**

Refers to specific information which indicates that a child's living situation is an immediate threat to their safety. This includes serious health and safety

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circumstances such as unsafe buildings, serious fire hazards, accessible weapons, unsafe heating or wiring, guns/knives available and accessible etc.

- **Unexplained Injuries**

Refers to non-accidental injuries to a child which parents or other caregivers cannot or will not explain.

- **Bizarre Cruelty**

Refers to maltreatment that is exaggerated and seriously detrimental to a child's emotional and physical state. This includes such things as locking children up to keep them in an "imprisoned state," chaining up children, forcing children to eat off the floor, extreme physically demanding punishment, and serious emotional abuse. This qualifies the nature of identified maltreatment and requires interpretation to determine that abuse meets the definition of an Immediate Safety Threat.

### Child

- **Parent's Viewpoint of Child Is Dangerously Negative**

Refers to an extremely negative viewpoint of a child that is identified in the report and/or clearly expressed by a caregiver at any point during the assessment process. This is not just a general negative attitude toward the child. The caregiver's perception or viewpoint toward a child is so skewed and distorted that it poses an Immediate Safety Threat to that child. It is consistent with the level of seeing the child as demonic.

- **Child Is Unsupervised or Alone for Extended Periods**

Refers to vulnerable children (more likely to be a younger child) who are unsupervised and without care right now concurrent with the report and/or at any point of contact during the assessment process. The time of day, of course, is as important as is the length of time the child has been unsupervised. To qualify as an Immediate Safety Threat, there must be information that indicates that a child is alone now and there is no responsible caregiver providing supervision. If the child was unsupervised the previous night but is not alone now, it is not an Immediate Safety Threat of harm.

- **Child Needs Medical Attention**

Refers to emergency medical care that is needed immediately for a child of any age. To be an Immediate Safety Threat, the medical care required must be significant enough that its absence could seriously affect the child's health and safety. In other words, if children are not being given routine medical care, it would not constitute an Immediate Safety Threat. It should have an emergent quality.

- **Child Is Fearful or Anxious**

Refers to children who are obviously afraid. The child's fear tends to be extreme, specific, and presently active. The fear is directed at people and/or circumstances associated with the home situation, and it is reasonable to conclude there is a personal threat to the child's safety if the condition is currently active. Information would likely describe actual communication or emotional/physical manifestation from the child's knowledge or perception of their situation.

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## **Caregiver**

- **Caregiver Is Intoxicated (alcohol or other substance)**

Refers to a caregiver who is currently drunk or high on legal or illegal substances and unable to provide basic care and supervision to a child right now. In order to qualify as an Immediate Safety Threat, it must be evident that a caregiver who is primarily responsible for child care is unable to provide care for their child right now due to their level of intoxication. The state of the parent/caregiver's condition is more important than the use of a substance (drinking compared to being drunk; uses substances as compared to being incapacitated by the substances); and if accurate affects the child's safety.

- **Caregiver Is Out of Control**

Refers to individuals in the caregiver role who are currently acting incapacitated, bizarre, aggressive/extremely agitated, emotionally immobilized, suicidal, or dangerous to themselves or others at the time of the report or at any point of contact during the assessment process. To qualify as an Immediate Safety Threat, it must be determined that due to a caregiver's state of mind, uncontrolled behavior and/or emotions, they are unable to provide basic care and supervision to their child right now.

- **Caregiver Described as Dangerous**

Refers to caregivers described as physically or verbally imposing and threatening, brandishing weapons, known to be dangerous and aggressive, currently behaving in an attacking or aggressive manner, etc.

- **Parent/Caregiver Is Not Performing Parental Responsibilities**

Refers to caregivers who currently are not providing basic care to their children right now. To qualify as an Immediate Safety Threat, there must be information in the report or any point of contact during the assessment process that indicates that caregivers are not providing child care necessary and the absence of care poses an immediate threat to child safety. This is not associated with whether the parent/caregiver is generally effective or appropriate. It is focused on whether their inability to provide child care right now leaves the child in a threatened state at the time of the report or at the point of contact.

- **Caregiver Overtly Rejects Intervention**

Refers to situations where a caregiver refuses to see or speak with CPS staff and/or to let CPS staff see the child; is openly hostile (not just angry about CPS presence) or physically aggressive towards CPS staff; refuses access to the home, hides child or refuses access to child.

## **Family**

- **Family Violence Present**

Refers to family situations in which the alleged child maltreatment is accompanied by spouse abuse. To qualify as an Immediate Safety Threat, there must be an indication that the family violence associated with the allegations of maltreatment has occurred. This requires a judgment as to whether the family violence is actively threatening to family members right now concurrent with the report or at any point of contact during

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the assessment process. It is important to also consider if the child and spouse are being abused at the same time as a result of how the violence is occurring. D-LAG indicators that are considered in family violence as Immediate Safety Threats are:

- Possession, access and/or use of weapons
- Direct threats to kill
- Victim perceives that perpetrator might kill them
- Stalking behaviors
- Strangulation
- Intrusive coercive control
- Forced sex
- Victim has left or is attempting to leave the relationship
- Offender is unemployed
- Victim has a child that is not the perpetrator's child
- Violence is escalating

● **Family Will Flee**

Refers to situations where there are other possible threats to child safety and there is an indication that the family may flee CPS intervention. This qualifies as an Immediate Safety Threat if alleged child maltreatment and possible threats to child safety are coupled with concerns about not having access to the children. This includes transient families or families where homes are not established as examples.

## 4.8 Temporary Protection Plans

With the identification of any Immediate Safety Threats, it is the Child Welfare Worker's responsibility to assure that children are safe while the Initial Assessment continues by establishing a protection plan. Temporary Protection Plans are a specific and concrete strategy implemented the same day an Immediate Safety Threat is identified before the worker leaves the family or situation, unless Worker safety is being threatened. If the Worker's safety is being threatened, the Worker needs to get to a safe place, contact law enforcement if needed, then contact their supervisor for consultation.

A Temporary Protection Plan must meet the demand for **immediate** action to control Immediate Safety Threats while more information about the family is being gathered. When developing a Temporary Protection Plan with the parents/caregivers, the following decisions and supporting rationale are important in the process and must be documented in CCWIS.

1. What are the options for the Temporary Protection Plan?
2. What is the parent's/caregivers' willingness to develop and agree to a Temporary Protection Plan?
3. Are there adults who are suitable and willing to provide protection?
4. What contacts and arrangements need to be made with members of the family's support system or others to ensure the supervision of the child?
5. Are roles and responsibilities clear and well defined for the parents/caregivers and

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- others included in the Temporary Protection Plan?
6. Is the worker able to confirm and implement each step/aspect of the plan to keep the child safe?
  7. Are the logistics of the Temporary Protection Plan accounted for (e.g. safety resource/supervision timeframes, transportation, etc.)?

In some situations, Temporary Protection Plans may be implemented when an Immediate Safety Threat has not been identified. All protection planning standards and requirements must be adhered to anytime a protection plan is implemented. Temporary Protection Plans may be implemented in the following situations:

1. To complete interviews to confirm an Impending Safety Threat;
2. To complete documentation and decision-making justification when an Impending Safety Threat has been identified; or
3. To complete rigorous safety analysis and planning when an Impending Safety Threat has been identified.

When creating a Temporary Protection Plan, the worker must:

1. Inform the caregivers why a Temporary Protection Plan is necessary;
2. Consult with the supervisor, insofar as possible, to determine the best course of action.
6. **Identify with the caregivers** what Temporary Protection Plan options are available and acceptable to ensure child safety;
3. Attempt to use resources within the family network to form the Temporary Protection Plan;
4. Confirm that there is agreement by caregivers and safety resources;
5. Verify that the safety resources are responsible, available, capable, trustworthy and able to sufficiently supervise and protect;
6. Put the Temporary Protection Plan in place prior to leaving the family or situation;
7. Consult with the supervisor, preferably before leaving the family but at a maximum within 24 hours of the implementation of the Temporary Protection Plan;
8. If an Immediate Safety Threat exists and the parents/caregivers are unwilling or unable to permit the child welfare worker to implement a Temporary Protection Plan, the worker should consult with the supervisor about attempting to gain legal custody through court intervention. *See CPS Policy Section 10.4 Emergency Custody.*
9. Complete the Initial Assessment within seven days. In limited circumstances, the Temporary Protection Plan can be reauthorized. A reauthorization can be granted to collect more information to correctly determine if a child is experiencing an Impending Safety Threat and the appropriate safety plan be implemented. The reason for the reauthorization must be clearly outlined in the case record and be approved by the CPS supervisor. Consultation with a Child Welfare Consultant or Regional Program Manager must occur prior to the approval to determine if the reauthorization is appropriate and to assist the supervisor and worker in clearly

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identifying the additional information required to make the necessary decisions;  
11. Document all information, supervisory consultation and approval and action taken on the appropriate Initial Assessment screens within CCWIS.

The supervisor will:

1. Be available or arrange for availability of supervisory consultation for emergency situations;
2. Review all information available relevant to the Immediate Safety Threat of the child;
3. Approve legal action to protect the child, if indicated and no other alternatives are appropriate or available;
4. Document supervisory consultation and approvals on the appropriate screens within CCWIS.

The Temporary Protection Plan options include but are not limited to:

1. A responsible, suitable person agrees to reside in the household and supervise the child always or as needed to assure protection until the Initial Assessment is complete. If this is part of the Temporary Protection Plan, visit the residence and complete a Safety Check.
2. The child is cared for part or all of the time outside the child's home by a friend, neighbor, or relative until the Initial Assessment is complete (maximum of seven days.) The parent/caregiver has no stipulations to their contact or access to the child as long as the parent/caregiver is supervised by the safety resource.
3. A maltreating or threatening person, who has no custodial or legal responsibility to the child, voluntarily agrees to leave and remain away from the home and child until the Initial Assessment is completed.
4. The child is legally removed from the caregivers and placed in an out of home placement pending the completion of the Initial Assessment.

The *West Virginia Safety Plan* form that indicates a Temporary Protection Plan is being done, contains specific information that must be documented and clearly defined in the case record. This includes a description of the:

1. Identified Immediate Safety Threat including the circumstances in which the assessment of Immediate Safety Threats occurred;
2. Parent/caregivers' attitudes and intent to support the Temporary Protection Plan;
3. Name(s) of the responsible/protective adult(s) related to the Temporary Protection Plan and an explanation of the person(s) relationship to family;
4. Suitability of individuals that will assure supervision and protection (e.g. *trustworthiness, reliability, commitment, availability*);
5. Details of the Temporary Protection Plan (e.g., *how it will work, time frames, activities, child location, caregiver and child supervision*), the plan to communicate with the family and safety resources, and how the child welfare worker will oversee/manage the protection plan;
6. Arrangements for visitation and contact with children **must** be described when

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the Temporary Protection Plan involves parent/caregiver – child separation due to the children being removed by Emergency Ratification.

The Child Welfare Worker must oversee the Temporary Protection Plan as the Initial Assessment continues by seeing children and by having personal contact with those responsible for carrying out the Temporary Protection Plan. The purposes of oversight are to assure that the Temporary Protection Plan is occurring as agreed to; that those responsible for the Temporary Protection Plan are carrying out their responsibilities; that supervision of parents/caregivers and children is occurring as planned; that those responsible for the Temporary Protection Plan continue to be committed to their agreements.

## 4.9 Safety Evaluation

When sufficient information is collected concerning the family, the worker must complete the safety evaluation as soon as possible. It is inappropriate to have collected sufficient information about the family and not immediately complete the safety evaluation to determine if a child is in need of protection and if so, deploy the appropriate Safety Plan. No obligation of Child Protective Services supersedes this requirement. The Safety Evaluation examines the information collected in the Initial Assessment areas to determine if the child is living in Impending Safety Threat.

Impending Safety Threats are family behaviors, attitudes, motives, emotions and/or situations that pose a threat to child safety. The definition for Impending Safety Threat indicates that negative family conditions that are out of control and likely to result in serious harm to a child, are *specific and* observable, and the threat to child safety can be clearly understood and described.

An Impending Safety Threat is often not immediately apparent and may not be active or “in process” and threatening child safety upon initial contact with a family. An Impending Safety Threat is often subtle and can be more challenging to detect without sufficient assessment and evaluation. Identifying Impending Safety Threats requires thorough information collection regarding family/ caregiver functioning to sufficiently assess and understand how family conditions occur.

### ***Impending Safety Threat and the Danger Threshold Criteria***

The Danger Threshold Criteria **must be applied** when considering and identifying any of the Impending Safety Threats. In other words, the specific justification for identifying any Impending Safety Threat is based on a specific description of how negative family conditions meet the Danger Threshold Criteria.

The Danger Threshold is the point at which a negative condition goes beyond being concerning and becomes dangerous to a child’s safety. Negative family conditions that rise to the level of the Danger Threshold and become Impending Safety Threats, are in essence negative circumstances and/or caregiver behaviors, emotions, etc. that

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negatively impact caregiver performance at a heightened degree and occur at a greater level of intensity.

### ***Danger Threshold Criteria and Definitions***

- **Observable** refers to family behaviors, conditions or situations representing a danger to a child that are specific, definite, real, can be seen and understood and are subject to being reported and justified. The criterion “observable” does not include suspicion, intuitive feelings, difficulties in worker-family interaction, lack of cooperation, or difficulties in obtaining information.
- **Vulnerable Child** refers to a child who is dependent on others for protection and is exposed to circumstances that they are powerless to manage, and susceptible, accessible, and available to a threatening person and/or person in authority over them. Vulnerability is judged according to age; physical and emotional development; ability to communicate needs; mobility; size and dependence and susceptibility. This definition also includes all young children from zero to 5 and older children who, for whatever reason, are not able to protect themselves or seek help from protective others.
- **Out-of-Control** refers to *family* behavior, conditions or situations which are unrestrained resulting in an unpredictable and possibly chaotic family environment not subject to the influence, manipulation, or ability within the family’s control. Such out-of-control family conditions pose a danger and are not being managed by anybody or anything internal to the family system.
- **Imminent** refers to the belief that dangerous family behaviors, conditions, or situations will remain active or become active within the next several days to a couple of weeks. This is consistent with a degree of certainty or inevitability that danger and serious harm are possible, even likely outcomes, without intervention.
- **Severity** refers to the physical, emotional, or mental injury that has already occurred and/or the potential for harsh effects based on the vulnerability of a child and the family behavior, condition or situation that is out of control. As far as danger is concerned, the safety threshold is consistent with serious harm. Serious harm includes such effects as serious physical injury, disability, terror and extreme fear, impairment, and death. The safety threshold is in line with family conditions that reasonably could result in harsh and unacceptable pain and suffering for a vulnerable child.

### ***Standardized Impending Safety Threats***

There are 11 standardized Impending Safety Threats that are used to assess child safety. The identification of any one of the 11 Impending Safety Threats means that a child is in a state of danger. If an Impending Safety Threat has been identified the child is unsafe. The following list of Impending Safety Threats may be associated with a child being in danger of serious harm. When assessing children’s safety, consider the effects that any adults or members of the household who have access to the children could have on their safety.

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### **1. Living arrangements seriously endanger a child's physical health.**

Based on the child's age and developmental status, this threat refers to conditions in the home which are immediately life-threatening or seriously endangering a child's physical health (e.g., people discharging firearms without regard to who might be harmed; the lack of hygiene is so dramatic as to cause or potentially cause serious illness). To identify this Impending Safety Threat there must be specific information that justifies and describes how living arrangements/ conditions of a home threaten child safety.

Examples may include but are not limited to:

- Housing is unsanitary, filthy, infested, a health hazard.
- Fecal contamination.
- No or ineffective waste disposal and containment.
- Dangerous cooking practices, food storage, food preparation and food management.
- The house's physical structure is decaying, falling down.
- Wiring and plumbing in the house are substandard, exposed.
- Furnishings or appliances are hazardous.
- Heating, fireplaces, stoves, are hazardous and accessible.
- Accessible alcohol, legal or illegal substances, weapons, matches / lighters.
- There are natural or man-made hazards located close to the home.
- The home has easy access to dangerous balconies and upper floor windows.
- Dangerous people or activity within the home.
- Illegal substance production; legal or illegal substance sales or trafficking.
- Gang activity.

### **2. Family does not have resources to meet basic needs.**

"Basic needs" means shelter, food, and clothing. This includes both the lack of such resources and the lack of capacity to use such resources if they were available. To identify this Impending Safety Threat there must be specific information to suggest that a family is consistently unable to meet basic needs daily. The inability for a family to meet basic needs may be situational but is often more likely to be a longstanding pattern and problem. The inability of a family to meet basic needs may often be associated with a caregiver's inability to be proactive in planning; resourceful; and/or demonstrate follow through.

Examples of this Impending Safety Threat may include but are not limited to:

- Family has no money for safety-related necessities and resources because caregivers do not pursue and maintain gainful employment or caregivers do not seek out and/or use available basic services such as food stamps, housing, food or clothing banks, etc.
- Caregiver is unable to sufficiently manage the household; pattern of poor decision-making; lack of forethought; lack of planning.
- Family does not have access or the ability to obtain food, clothing, or shelter.
- Family finances are insufficient to support essential needs at the basic care level.

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- Family does not have resources for serious medical care and the medical condition is such that if left unmet will likely result in a child being in danger.
- Caregiver lacks life management skills to acquire and properly use resources when they are available, which impacts child safety.
- Family is routinely using their resources for things (e.g. recreational substances) other than for basic care and support thereby leaving children without their basic needs being adequately met.
- Child's basic needs exceed normal expectations because of unusual conditions (e.g. disability) and the family is unable to adequately address the needs.
- Caregiver's functioning and decision making are such that a child's basic safety needs are not met; resources are not available and/or are not being used appropriately.
- Caregiver limitations result in the inability to gain, sustain, and use resources to assure a child's safety.

### **3. One or both caregivers intend(ed) to hurt the child.**

"Intended" suggests that before or during the time the child was harmed, the caregivers' conscious purpose was to hurt the child. This should be distinguished from an instance in which the caregiver meant to discipline or punish the child and the child was inadvertently hurt.

To identify this Impending Safety Threat there must be specific information to suggest that a caregiver intentionally maltreated a child to inflict physical harm. The maltreatment may be chronic in nature or an isolated occurrence if there is a clear indication that the intent was to inflict harm. Regardless of the nature of the maltreatment or the harm caused, any information that suggests that a caregiver actually intended to inflict harm on a child is the essence of what is dangerous and a threat to child safety.

Examples of this Impending Safety Threat may include but are not limited to:

- The incident was planned or had an element of premeditation and there is no remorse.
- The nature of the incident or use of an instrument can be reasonably assumed to heighten the level of pain or injury (e.g. cigarette burns, submersion in scalding water) and there is no remorse.
- Caregiver's motivation to teach or discipline seems secondary to inflicting pain or injury.
- Caregiver can reasonably be assumed to have had some awareness of what the result would be prior to the incident and there is no remorse.
- Caregiver's actions were not impulsive, there was sufficient time and deliberation to assure that the actions hurt the child, and there was no remorse.
- Caregiver does not acknowledge any guilt or wrongdoing and there was intent to hurt the child.
- Caregiver intended to hurt the child and shows no empathy for the pain or trauma

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- the child has experienced.
- Caregiver may feel justified, may express that the child deserved the mistreatment, and they intended to hurt the child.
- Caregiver behaved in ways to bring about serious illness or medical conditions to gain attention (i.e. Munchausen Syndrome).
- Caregiver kept the child tied up or in some other way restricted (e.g. locked in a basement or dark room) that terrorized the child.
- Caregiver employed situations, communication, interaction, and/or threatening behavior to terrorize the child.
- Caregiver force-fed the child or starved the child.

**4. Child is perceived in extremely negative terms by one or both caregivers.**

This refers to a perception of the child that is totally unreasonable. It is out of control because the view of the child is extreme and out of touch with reality. In order for this condition to apply, the negative perceptions must be active, and the perceptions must be inaccurate. To identify this Impending Safety Threat there must be specific information to suggest that a caregiver's negative perception of their child is longstanding; consistent and pervasive. The negative perception toward the child is apparently negative to a heightened degree that there are implications that the child is likely to be seriously harmed.

Examples may include but are not limited to:

- Child is perceived to be the devil, demon-possessed, evil, or deformed, ugly, deficient, or embarrassing; caregiver views the child as undesirable or the child is unwanted.
- Child has taken on the same identity as someone the caregiver hates and is fearful of or hostile towards; the caregiver transfers feelings and perceptions of the person to the child.
- Caregiver is completely intolerant of the child; caregiver cannot stand to be around the child and isolates the child.
- Caregiver has completely unrealistic expectations of the child; has expectations for the child that are impossible or improbable to meet.
- Caregiver views the child as responsible and accountable for the caregiver's problems; blames the child for losses and difficulties that they experience (job, relationships, and conflicts with CPS / police).
- Child is punishing or torturing the caregiver.
- Caregiver views the child as an undesirable extension; exhibits extreme jealousy toward the child; views child as a detriment.

**5. The Caregiver is unwilling or unable to perform parental duties and responsibilities, which could result in serious harm to the child.**

This Impending Safety Threat refers only to adults (not children) in the home who are or can assume a caregiver role. Caregivers who are consistently and/or routinely unwilling and unable to perform basic duties and responsibilities related to the provision of food,

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clothing, shelter, and supervision would fit this Impending Safety Threat. This Impending Safety Threat should be considered at a basic needs level. It is the absence of providing basic provisions that is dangerous and directly affects child safety. To identify this Impending Safety Threat there must be specific information to suggest that caregiver(s) are not providing adequate and appropriate basic care for the child including supervision.

Examples may include but are not limited to:

- Caregiver cannot or will not provide adequate food, clothing and / or shelter.
- Caregiver does not provide adequate supervision; leaves the child for prolonged periods of time.
- Caregiver often does not know where the child is at; frequently allows a child to wander out of the home or does not monitor the child's location.
- Caregiver allows child to play with dangerous objects or to be exposed to serious hazards and is unmanaged.
- Caregiver's physical or mental disability / incapacitation renders them unable to provide basic care for the child.
- Vulnerable children who often must fend for themselves; child is primarily responsible for taking care of the caregiver.
- Unable to locate caregiver (s); caregiver incarcerated, abandonment, etc.
- Caregiver has a frequent pattern of making inadequate or inappropriate childcare / supervision arrangements.
- Caregiver allows other adults to improperly influence (legal or illegal substances, alcohol, abusive behavior) the child and the caregiver is present or approves.

**6. One or both caregivers fear they will maltreat their child and/or are requesting placement.**

This Impending Safety Threat refers to caregivers who are expressing a specific concern that they will hurt their children. It is the expression of a specific concern about maltreating the child that is a threat to safety. This threat refers to caregivers who express anxiety and dread about their ability to control their emotions and reactions toward their child. This expression represents a "call for help." To identify this Impending Safety Threat there must be specific information communicated from a caregiver that indicates that they are on the verge of losing control with the child; that they feel that they are at a breaking point and are concerned about hurting the child; and/or they do not want the child to be around them.

Examples of this Impending Safety Threat may include but are not limited to:

- Caregiver states they will maltreat; may even use specific threatening terms, identifying how they will harm the child or what sort of harm they intend to inflict.
- Caregiver threats are plausible, believable.
- Caregiver describes specific conditions and situations that stimulate them to think about maltreating the child.
- Caregiver is preoccupied with thoughts of maltreating and harming the child.
- Caregiver that is seriously worried and fearful that they will lash out at the child.

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- Caregiver identifies specific things that the child does that aggravate or annoy them in ways that makes them want to attack the child.
- Caregiver describes disciplinary incidents that have become out-of-control and they are continuing to feel overwhelmed and they are concerned they will become aggressive with the child.
- Caregiver is distressed or "at the end of their rope" and are asking for relief in either specific ("take the child") or general ("please help me before something awful happens") terms.
- One caregiver is expressing concerns about what the other caregiver is capable of or may be doing.

**7. One or both caregivers lack parenting knowledge, skills, or motivation which affects child safety.**

The judgment is based on caregivers: 1) lacking the basic knowledge or skills which prevent them from meeting the child's basic needs, or 2) lacking motivation resulting in abdicating their role to meet basic needs, or 3) failing to adequately perform the caregiver role to meet the child's basic needs.

To identify this Impending Safety Threat there must be specific information that describes what essential knowledge, skill or ability a caregiver lacks that affects the provision of basic needs and protection, and/or a specific justification for how a caregiver lack of motivation to care for the child or unwillingness to perform in the caregiver role threatens child safety. It is the inability and/or unwillingness of a caregiver to meet basic needs that poses a threat to child safety.

Examples of this Impending Safety Threat may include but are not limited to:

- Caregiver's intellectual capacities affect judgment and/or knowledge in ways that prevent the provision of adequate basic care.
- Young or intellectually limited caregivers who have little or no knowledge of a child's needs and capacity.
- Caregiver's expectations of the child far exceed the child's capacity thereby placing the child in unsafe situations.
- Caregiver does not know what basic care is or how to provide it (e.g. how to feed or diaper; how to protect or supervise according to the child's age).
- Caregivers' parenting skills are exceeded by a child's special needs and demands in ways that affect safety.
- Caregiver's knowledge and skills are adequate for some children's ages and development, but not for others (e.g. able to care for an infant, but unable to meet the needs of a toddler).
- Caregiver does not want to be a parent and does not perform the role, particularly in terms of basic needs.
- Caregiver avoids parenting and basic care responsibilities.
- Caregiver allows others to parent or provide care to the child without concern for the other person's ability or capacity (whether known or unknown).

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- Caregiver does not know or does not apply basic safety measures (e.g. keeping medications, sharp objects, or household cleaners out of reach of small children).
- Caregiver places their own needs above the children's needs thereby affecting the children's safety.
- Caregivers do not believe the children's disclosure of abuse/neglect even when there is a preponderance of evidence and this affects the children's safety.
- Caregiver's knowledge, skill or motivation is not sufficient to assess, address and manage threats that might exist within the child's environment in the home or outside the home.
- Caregiver is not attached or bonded with the child and does not hold deep feelings for the child; is not involved with the child.
- Caregiver does not view themselves as being primarily responsible for making sure that the child is protected and cared for; does not identify with the child; is not interested in caring for or protecting the child.
- The caregiver is developmentally unprepared to be a parent.

#### **8. The Caregiver's drug and / or alcohol use is pervasive and threatens child safety.**

This threat directly relates to parental substance use, misuse or substance use disorder that significantly impacts family functioning and caregiver performance. To identify this Impending Safety Threat there must be specific information to suggest that caregiver(s)' substance use is a consuming aspect of their lifestyle. The substance usage is occurring to the degree and frequency that it is having a prohibitive impact on a caregiver's ability to provide for the basic care and safety of the child.

Examples of this Impending Safety Threat may include but are not limited to:

- Substance use renders the caregiver incapable of routinely and consistently attending to the child's basic needs, including adequate supervision.
- Substance usage consistently results in a caregiver becoming violent and/or lashing out at a child or other family members.
- A caregiver who constantly uses substances and is frequently inaccessible to a child physically and emotionally.
- A caregiver's substance usage results in a chaotic home environment including numerous individuals coming into the house; parties at all hours; child being accessible to strangers.
- A caregiver's substance usage becomes the driving influence and number one priority over all other aspects of their life; substance usage is the defining characteristic of a caregiver's lifestyle;
- Caregiver's lifestyle results in legal or illegal substances and/or substance use paraphernalia being accessible to a child; caregiver allows and/or encourages the child to use and/or sell legal or illegal substances.
- Child is fearful of home environment due to legal or illegal activity inside the home or traffic in and out of the home.
- Caregiver has routinely driven with the child in the vehicle when intoxicated or impaired by substance use or misuse.

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**9. One or both caregivers are violent; this includes Domestic Violence and General Violence.**

This refers to adults / caregivers in the home who routinely and consistently relate to and interact with others in an aggressive, hostile, and/or violently impulsive manner. To identify this Impending Safety Threat there must be specific information to suggest that a caregiver's volatile emotions and tendency toward violence is a defining characteristic of how they often behave and/or react toward others. The caregiver exhibits violence that is unmanaged; unpredictable and/or highly consistent.

Examples of this Impending Safety Threat may include but are not limited to:

***Domestic Violence:***

- Caregiver/household member physically and/or verbally assaults another household member; the child is present during the violence and may even attempt to intervene to protect the battered individual.
- A child routinely witnesses the violence in the home.
- A child is fearful for their safety and/or the safety of others in the home; the child is preoccupied with the violent episodes and is feeling insecure and highly anxious.
- Caregiver/or other household member threatens, attacks and/or causes injuries to another adult or child in the home.
- Violence has occurred in which a child attempted to intervene. Violence has occurred in which the child is harmed or may be harmed, even though the child may not be the actual target of the violence.
- Caregiver/household member consciously uses force, aggression, control and/or violence to threaten, punish and/or intimidate.

***General violence:***

- Caregiver whose behavior outside of the home (e.g. legal or illegal substance use or misuse, violence, aggressiveness, and hostility) creates an environment within the home that threatens child safety (e.g. drug parties, gangs, drive-by shootings).
- Caregiver who is impulsive, explosive, or out of control, having temper outbursts which result in violent physical actions (e.g. throwing things).

**10. One or both caregivers cannot control behavior.**

This threat includes frequently unmanaged; unstrained behaviors (other than aggression/violence) and/or emotions that pose an imminent danger of serious harm to a child. To identify this Impending Safety Threat there must be specific information to suggest that a caregiver's impulsive behaviors; addictive behaviors; bizarre behaviors; compulsive behaviors; depressive behaviors; etc. cannot be controlled by the individual. The out of control behaviors results in the inability or unwillingness of the caregiver to provide for the basic needs and safety of the child.

Examples of this Impending Safety Threat include but are not limited to:

- Caregiver is experiencing an emotional or mental health disturbance (e.g. severe depression, emotional immobilization, delusional, hallucinations), whether

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- chronic or situational, and is unable to control their emotions or behaviors, directly and significantly affects child safety (including meeting basic needs). The emotional and/or mental health issue is so severe that the caregiver is unable to function adequately to perform caregiver responsibilities.
- Caregiver addiction is all consuming and results in their inability to provide adequate care for the child.
  - Caregiver routinely makes impulsive decisions; a caregiver that is unpredictable; or in a state of constant chaos; a caregiver that often fails to make adequate plans for the care of the children and the failure to plan leaves the children in precarious situations (e.g. in a dangerous environment, unsupervised, supervised by an unreliable person).
  - Caregiver mismanages money (e.g. impulsive spending), resulting in a lack of necessities.
  - Caregiver has addictive patterns or behaviors (e.g. addiction to substances, gambling, computers, sex) that are uncontrolled and leave the child in unsafe situations (e.g. failure to supervise or provide basic care).
  - Caregiver is not reality oriented and the inaccurate perception of reality results in the child being unsafe.

**11. Child has exceptional needs which the caregivers cannot or will not meet.**

“Exceptional” refers to specific child conditions (e.g. developmental delays, physical disability, dependency, serious health problems, and serious behavioral / emotional needs) which are either organic or naturally induced as opposed to parentally induced. The key here is that the child’s needs are so tremendous; constant and/or immediate that when left unmet or failed to be addressed it results in a threat to the child’s safety and well-being.

To identify this Impending Safety Threat there must be specific information that identifies a child’s exceptional condition and a caregiver’s inability to meet or address that condition. This Impending Safety Threat considers a caregiver’s willingness and ability to manage and meet the specific needs including the level of demand, timeliness, regularity, knowledge, skill and oversight.

Examples of this Impending Safety Threat include but are not limited to:

- Child has a physical or mental condition that, if untreated, threatens their safety.
- Caregiver does not recognize the condition for what it is.
- Caregiver views the condition as less serious than it is; minimizes the urgency or need to address the condition or act.
- Caregiver refuses to address the condition for religious, or other reasons, and it threatens the child’s safety.
- Caregiver lacks the capacity to fully understand the condition and the need to respond.
- Caregiver will not or cannot perform basic functions to meet the child’s exceptional needs (e.g., feeding tubes, breathing machines, medication, wound

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- care) due to their own lack of understanding, motivation, or ability.
- Caregiver's expectations of the child are totally unrealistic in view of the child's condition.
- Caregiver allows the child to live or be placed in situations in which harm is increased by the child's condition.
- Caregiver's physical capacity (e.g., energy, robustness, and strength), accompanied by other distractions (e.g., limited motivation or conviction), is sufficiently limited and prevents their diligent need-meeting performance.

#### 4.10 Maltreatment Findings

During the Initial Assessment, the child welfare worker gathers information in Initial Assessment Areas related to child safety, including Maltreatment and Nature. The specific, detailed information in the Maltreatment and Nature Assessment Areas must be analyzed to determine if maltreatment did or did not occur. The Maltreatment finding is based on whether "a preponderance of the evidence" (e.g., eye witness accounts, worker observations, medical reports, professional evaluations) obtained during the Initial Assessment would lead the Child Welfare Worker to conclude that maltreatment (abuse/neglect) did or did not occur. The legal definition of an abused or neglected child is the standard for determining that a child has been abused or neglected *CPS Policy Section 2.2 Operational Definitions* further defines caregiver conduct and/or conditions that meet the statutory definition of an abused or neglected child. The operational definitions must be examined when making a finding of maltreatment.

Maltreatment is considered to have occurred when a preponderance of the credible evidence indicates that the conduct of the caregiver falls within the boundaries of the statutory and operational definitions of abuse or neglect. Maltreatment is considered to not have occurred when a preponderance of the credible evidence indicates that the conduct of the caregiver does not fall within the boundaries of the statutory and operational definitions of abuse or neglect. After **diligent** information collection, if the worker is unable to determine by a preponderance of the evidence that maltreatment had occurred then the finding must reflect that decision. The Statutory definitions of child abuse and neglect can be found in [W. Va. Code §49-1-201](#) as well as *CPS Policy Section 2.1 Terms Defined by Statute*.

Note: Adoptive parents have all the same rights and privileges concerning the adopted child that a biological parent has. These rights include the right to make decisions concerning the care, custody, and control of the child. An adoptive parent merely allowing a child to be around a former parent that was barred from having contact with the child in a prior court order is not grounds for a finding of abuse and neglect. There must be evidence of a safety threat or that maltreatment is occurring as a result of the adoptive parent's decision for abuse and neglect to be substantiated. See *Adoption Policy Section 13.8 Adoptive Parent's Rights*.

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## 4.11 Safety Evaluation Conclusion

Evaluating the safety of a child is a discrete function within CPS which is **separate** from determining whether child abuse or neglect occurred. The Safety Evaluation Conclusion must be completed in all Initial Assessments. The safety decision must be based upon a consideration for Impending Safety Threats. The following decisions will be documented in the Safety Evaluation Conclusion:

1. The children are safe or unsafe;
2. Whether or not the family will be open for On-Going CPS.

### **The Child(ren) is/are safe (because):**

- No Impending Safety Threats were identified. Based on currently available information, there is no child(ren) likely to be in danger of serious harm. No Safety Plan needed at this time. If a Temporary Protection Plan is currently implemented, consult with a supervisor regarding the dismissal of that Temporary Protection Plan.

### **The Child(ren) is/are unsafe (because):**

- One or more Impending Safety Threats were identified which threaten the safety of a vulnerable child and there are not sufficient caregiver protective factors to assure that Impending Safety Threat can be offset, mitigated, and controlled. The case must be opened for Ongoing CPS. Proceed to Safety Analysis and Planning.

### ***Initial Assessment Conclusion: Decision to Provide Ongoing CPS and Transfer Summary***

In this section of the Safety Evaluation Conclusion, you will indicate the reason(s) why the family is or is not being opened for ongoing CPS in the appropriate CCWIS field. Specify in detail any immediate needs that were addressed during or at the conclusion of the Initial Assessment (if applicable). If a case is to be closed at the conclusion of the Initial Assessment document efforts that were made to connect the family with agency and/or community-based resources and services when applicable. Document the family's response to the receipt of community connections following the Initial Assessment. The decisions are:

- Child(ren) in the household were identified as UNSAFE. The case will be opened for Ongoing CPS. Proceed to Safety Analysis and Planning in order to develop and implement a sufficient safety plan.
- There were no children in the household identified as unsafe. The case will not be opened for Ongoing CPS. The family should be referred for community resources and services, if applicable, unless maltreatment was substantiated (see below).
- There were no children in the household identified as unsafe, however maltreatment was substantiated based on [W. Va. Code §49-1-201](#). [W. Va. Code §49-2-802\(e\)](#) mandates that CPS is responsible for providing, directing or coordinating the appropriate and timely delivery of services to any child suspected or known to be abused or neglected, including services to the child's family and those responsible for the child's care. For this reason, the case will be open for

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- CPS Ongoing Services. Complete an ASO referral for Case Management, Needs Assessment and Support Case Services Plan.
- Ongoing CPS is court ordered.

You must justify the decision to open the case for Ongoing CPS or close the case following the Initial Assessment and Safety in the appropriate text field in CCWIS.

## 4.12 Safety Analysis and Safety Planning

Safety Analysis and Planning must be completed in all cases where children are identified as unsafe and in need of protection.

The Safety Analysis determines the level of CPS intrusiveness with families in order to manage Impending Safety Threats and assure child safety. Safety Analysis results in the development and implementation of sufficient safety plans to manage identified Impending Safety Threats. The appropriate Safety Plan must be implemented the same day that children were identified as in need of protection because of the Safety Evaluation Conclusion.

If the answer is “NO” to any of the safety analysis questions below, then the worker will need to utilize Foster Care services to keep the child(re) safe and pursue legal and physical custody from the courts (*see CPS Policy Section 10.7*). A child may be safely maintained in the home **if** the following question can be answered “Yes”:

- Are the caregivers and youth willing for a Safety Plan to be developed and implemented and have they demonstrated that they will cooperate with all identified safety resources?
- Is the home environment calm and consistent enough for a Safety Plan to be implemented and for safety resources to be in the home safely?
- Are safety resources available at a sufficient level and to the degree necessary in order to manage the way in which Safety Threats are manifested in the home?
- Do the caregivers have a residence in which to implement a Safety Plan?

Once the child welfare worker determines whether the child(ren) can be safely maintained in the home, the Worker will need to meet with the family to explain the Initial Assessment findings and the next steps. When the Initial Assessment information leads to a conclusion that a child(ren) is unsafe and is in need of protection, the Worker must explain to the family why the Initial Assessment supports this determination and work collaboratively with the family to develop an appropriate Safety Plan.

If it is determined that a child(ren) cannot be safely maintained in the home but the Prosecuting Attorney will not assist the DHHR in filing a petition to obtain legal and physical custody, the DHHR **must** initiate the provision for Dispute Resolution, pursuant to [W. Va. Code §49-4-501\(c\)](#). (*Please Review CPS Policy Section 10.8 Role of Prosecuting Attorney for additional information*)

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During the Safety Analysis and Safety Planning process, it is necessary for the Initial Assessment Worker to meet with the family. This meeting should occur the same day Impending Safety Threats are identified unless there are extenuating circumstances. The following must occur during the meeting:

- Thoroughly explain the safety decision and Impending Safety Threat(s) that must be addressed to appropriately plan for the child(s) safety;
- Listen to the caregiver's concerns, answer their questions, and allow the caregivers to be an intrinsic part of the safety planning process;
- Engage the family in exploring safety resources and safety planning options
- Identify absent parents and their locations/contact information;
- Meet with both formal and informal safety resources (extended family, friends, etc.) if appropriate to assist in safety planning;
- Complete the Safety Analysis and Safety Planning process and implement the appropriate safety plan.

Note: Workers must locate information regarding absent, non-custodial or non primary residential parents who are not subject to the Initial Assessment. These parents would need to be contacted regarding assessment, safety planning and in the event of the removal of the child(ren). **These contacts should be appropriately documented.**

### ***Safety Planning***

**Safety Plans are written plans to keep child(ren) safe until a Family Case Plan can be implemented to treat the family conditions which led to the child(ren) being unsafe.** Safety Plans contain coordinated safety resources, actions, and responsible providers and family members working to provide safety for child(ren). This plan may include time-limited supervision of parents/caregivers and their child(ren) to prevent court-ordered child and caregiver separation. These voluntary arrangements may be certain times a day or certain days of the week and must be staffed with a supervisor prior to implementation.

All Safety Plans must identify the Safety Threat and the service which will control the unsafe situation it causes. If Foster Care is a safety resource which must be utilized and the child(ren) and caregiver will require court-ordered separation, then the Worker must also include the plan for visitation between siblings (if separated) and caregivers with their child(ren).

Child Welfare Workers must inform caregivers of their right to accept or reject a developed Safety Plan. Child welfare workers must also explain any alternatives or possible consequences to refusing a Safety Plan or not following an implemented Safety Plan. Safety Plans must be signed by the child welfare worker, family, and safety resources and must be finally approved by the supervisor.

### ***Safety Planning that Requires Removal***

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A Safety Plan that primarily depends on separation of a child from their home and separation from parents/caregivers who lack sufficient protective factors to assure the child will be protected from the Safety Threat requires Court oversight.

Safety planning for cases that require Foster Care as a safety resource also require a Safety Plan, as well as a petition to be filed with the Circuit Court:

- alleging that the child is abused and/or neglected;
- requesting a finding that continuation in the home is contrary to the best interests of the child and why this is so (child is unsafe);
- requesting a finding that the DHHR made reasonable efforts to prevent removal (considered a Safety Plan with safety resources in the home through the Safety Planning and Analysis process, but ruled out) or that the situation is an emergency (child is unsafe) and such efforts would be unreasonable or impossible (child cannot be protected by a Safety Plan with safety resources in the home);
- if applicable, request a finding regarding Aggravated Circumstances or other circumstances which may be present and Reasonable Efforts are not required.

*See CPS Policy Section 10.7 Filing a Petition for more information*

**Note:** In cases of domestic violence, the worker should know that to stay safe some victims will use the Address Confidentiality Program out of the West Virginia Secretary of State's Office ([W. Va. State Rule §153-37](#)). Additionally, it is prohibited by [W. Va. State Rule §191-2-3](#), for a domestic violence program to disclose personally identifiable information of a program participant.

#### **4.13 Reasonable Efforts to Prevent Removal**

The right of a parent to the custody of their child is a fundamental personal liberty protected and guaranteed by the Due Process Clauses of the W. Va. and U.S. Constitutions. "Reasonable efforts" have been a concept in child welfare practice since the Federal Adoption Assistance and Child Welfare Act of 1980. The Federal Adoption and Safe Families Act of 1997, Public Law 105-89 (ASFA), clarified this concept. Under the Adoption and Safe Families Act reasonable efforts shall be made to preserve and reunify families:

- Prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and
- To make it possible for a child to safely return to the child's home; if continuation of reasonable efforts of the type described in subparagraph (B) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child. [\[42 U.S.C. §671\(a\)\(15\)\]](#).

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Reasonable efforts to prevent removal is the term used to describe those actions taken by the DHHR to prevent or eliminate the need for removing the child from the child's home and to stabilize and maintain the family situation. Before initiating any procedure to take custody of a child, the DHHR must first determine that there are no appropriate or available services that would alleviate or mitigate the safety threat to the child. The DHHR makes reasonable efforts to prevent removal of the child by completing and documenting the process for the Initial Assessment.

In certain situations, reasonable efforts to prevent placement are not required. Those situations include:

- Imminent danger of serious bodily or emotional injury or death in any home. ([W. Va. Code §49-1-201](#))
- The parent has subjected the child to Aggravated Circumstances which include, but are not limited to abandonment, torture, chronic abuse and sexual abuse ([W. Va. Code §49-4-602\(d\)\(1\)](#));
- The parent has:
  - Committed murder of the child's other parent, guardian or custodian;
  - Committed murder of another child of the parent or any child residing in the same household or under the temporary or permanent custody of the parent;
  - Committed voluntary manslaughter of the child's other parent, guardian or custodian;
  - Committed voluntary manslaughter of another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;
  - Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime; or
  - Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian,
  - Committed unlawful or malicious wounding that results in serious bodily injury to another child of the parent or any other child residing in the same household or under the temporary custody of the parent;
  - Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian;
  - Committed sexual assault or sexual abuse of another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or
  - Has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding prior charges against that parent, that the child's interests would not be promoted by a preservation of the family;
  - The parental rights of the parent to a sibling have been terminated involuntarily ([W. Va. Code §49-4-602\(d\)\(3\)](#)); or
  - Has a child that has been removed from the parent's care, custody, and control by an order of removal voluntarily fails to have contact or attempt to have

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contact with the child for a period of 18 consecutive months: *Provided*, that failure to have, or attempt to have, contact due to being incarcerated, being in a medical or substance use disorder treatment facility, or being on active military duty shall not be considered voluntary behavior.

*For information see CPS Policy Section 4.27 Completing Initial Assessments in which reasonable efforts to prevent the child from removal of the home is not required.*

*(For more information on reasonable efforts and aggravated circumstances see the Legal Requirements and Processes: Child Protective Services and Foster Care Policy; the federal Child Abuse Prevention and Treatment Act (1996) and the federal Adoption and Safe Families Act (1997).)*

#### **4.14 Safety Resources**

Safety resources refers to actions identified as part of a Safety Plan utilized specifically for controlling or managing Impending Safety Threats 24 hours a day. Safety resources must control the Impending Safety Threat immediately upon being put in place. Safety resources are categorized according to the objective they seek to address within a safety plan.

When developing a Safety Plan, safety resources must be implemented which mitigate the Impending Safety Threat and in turn allows the child to remain in their home and under the care, custody and control of their parents/caregivers. Safety resources differ from long-term treatment responses in that they are short-term and strictly for controlling for safety. Safety resources can be “formal” or “informal” but **must** work in conjunction to ensure safety. Some “formal” safety resources are available as Socially Necessary Services through the ASO. Others may be obtained through community resources, other Department of Health and Human Resources programs, or may be obtained by special medical card or demand payments if there are no other sources for payment.

For example, an infant is determined to be unsafe due to the caregiver being unwilling or unable to perform parental duties and responsibilities. The parent/caregiver agrees to allow a relative(s) and the Socially Necessary Services provider to assist the caregiver in preparing bottles, home making, assist in bathing the child, etc. in the evenings and weekends. The child is also in daycare during the week which provides a safe environment when the relative(s) and the Socially Necessary Services provider is not available. These safety resources would control the Impending Safety Threat and allow the child to remain safely in their home while treatment services were being established based upon the Ongoing Assessment and Family Case Plan.

**Formal and Informal Safety Resources** may include the following;

- **Supervision:** “Eyes on” oversight of the child or family which provides an active, ongoing assessment of stresses which affect safety and may result in necessary

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action. The emphasis here is that the provision of supervision will assist in controlling one or more of the identified Impending Safety Threats. The identified child or family requiring supervision must be within the defined boundary in which the resource can intervene immediately if needed to ensure safety, permanency, and well-being. The safety resource controls for conditions created by a caregiver's reaction to stress, caregivers being inconsistent about caring for children; caregivers being out of control, caregivers reacting impulsively and caregivers having detrimental expectations of children.

- **Parenting Assistance:** Assists caregivers in performing basic parental duties or responsibilities which caregiver has been unable or unwilling to perform. Basic parental duties and responsibilities include such activities as feeding, bathing, basic medical care, basic social/emotional attention, and supervision. The lack of these basic parenting skills must affect the child's safety. The use of safety resources must have an immediate effect on controlling the Impending Safety Threats. This safety resource is different than formal parenting education in that it is strictly for controlling the Impending Safety Threat.
- **Family Crisis Response:** Family crisis response is a face-to-face intervention in the family's natural environment to assess and assist in order to de-escalate a family crisis which affects child safety and controls the Impending Safety Threat. This safety resource differs from traditional individual or family counseling in that the emphasis is to provide immediate relief and support from the crisis being experienced. A crisis is defined as a situation which involves disorganization and emotional upheaval. These safety resources may target dysfunctional family interactions or environmental situations that have escalated to a point that affects the safety of the child and has resulted in an inability to adequately function and problem solve.
- **Home Management:** Aids with general housekeeping/homemaking tasks caregivers must do in order to provide a safe environment for their child. Examples may include meal preparation, grocery shopping, budgeting, or cleaning and maintaining a physically safe residence. The emphasis is on controlling the Impending Safety Threat.
- **Social/Emotional Support:** Provision of basic social connections and basic emotional support to caregivers. The lack of support must affect the child's safety. The safety resource must have an immediate impact on controlling the danger. Once formal linkage to community support systems or access to supportive services, such as therapy or counseling, has been established, this service ends.
- **Emergency Respite:** Unplanned break for primary caregivers who are in challenging situations in which a trained provider, friend or family member assumes care giving and supervision of a child(ren) for a brief period. Respite may be provided in or out of the natural home or on an hourly/daily basis. Temporary relief from parenting responsibilities is provided to control an Impending Safety Threat.
- **Respite:** Planned break for primary caregivers who are in challenging situations in which a trained provider, friend or family member assumes care giving and

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supervision of a child(ren) for a brief period to control an Impending Safety Threat. Respite may be provided in or out of the natural home or on an hourly/daily basis. Respite may also be utilized if the caregiver has a scheduled inpatient medical procedure.

- **Private Transportation:** Provision of transportation services in a personal vehicle to obtain goods or services provided to control an Impending Safety Threat.
- **Public Transportation:** Provision of transportation on buses, planes, and/or trains to obtain goods or services provided to control an Impending Safety Threat.
- **Hospitalization:** Admission of a child and/or caregiver into a physical or mental health hospital. The condition requiring admission must relate to the danger which affects the child's safety.
- **Child Care:** Direct care provided to a child for a portion of a day in an approved child care program. The service responds to conditions where the child care responsibilities of the caregivers affect the child's safety. In addition to meeting the needs of the child, the service provides relief for the caregiver.
- **Financial services:** Provision of financial assistance to the family in meeting the child's safety needs which results from the lack of finances. This includes the lack of utilities which present an immediate threat to the child's well-being.
- **Housing:** Provision of housing or the securing of more affordable housing for a family where the lack of housing is affecting the child's safety.
- **Food/clothing resources:** Provision of food and clothing when the child does not have adequate food and/or clothing and the lack of these life necessities affect the child's safety. The family cannot afford to provide these necessities to the child.
- **Other safety resources (must specify):** any other safety resource which may directly relate to controlling the immediate safety of the child and has not otherwise been listed.

Safety resources may be provided by informal or natural supports, such as family members, community members or friends, without payment and/or may be provided by the child welfare worker.

The child welfare worker should check all available resources for payments for service including, **but not limited to:**

- Private insurance
- Medicaid
- LIEAP
- TANF
- SNAP
- Emergency Assistance
- HUD and low-income housing assistance
- Family income
- Community agencies and resources
- CHIP

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- Charitable and faith-based organizations
- Public Health Department
- Free Health Clinics
- Comprehensive Behavioral Health Centers
- WIC
- Child Care program
- Homeless program
- Volunteer organizations
- WVRx

Some families may be eligible for a special medical card or payments for housing, food and utilities. See [CPS Policy Section 9.4.5](#) for more information.

#### **4.14.1 Safety Services and Socially Necessary Services**

Socially Necessary Services are formal services and interventions to help preserve or reunify the family. Socially Necessary Services assist in achieving the child welfare goals of safety, permanency, and well-being.

The Bureau for Social Services administers the provision of some Socially Necessary Services through an Administrative Services Organization (ASO) which is managed by Kepro.

One of the services that are provided through the ASO is Safety Services. The Safety Services is a grouping or bundle of services for families to assist in assuring safety for children by controlling Impending Safety Threats identified during the Initial Assessment. The bundled services must be carefully coordinated by the child welfare worker with any other formal or informal safety resources that are put in place. The safety services bundle is available 24 hours, seven days a week and must commence within 24 hours of referral. The provider must be available to respond to crisis within the family during business and non-business hours. Eighty percent of the services must occur in the family's home or community.

The Safety Services Bundle includes:

- Supervision
- Parenting Assistance
- Family Crisis Response
- Crisis Home Management
- Social Emotional Support

The family may receive 200 hours of the Safety Services bundle over a 92-day period and may be reauthorized. The services may be more intensive at the beginning of the service period and less intensive at the end of the service period, if needed. The child welfare worker should specify the intensity/frequency of the services in the safety plan. The mix of the services in the bundle should be specified by the child welfare worker in the Safety Plan, also. All services in the bundle do not have to be provided to every family but may

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be provided. The services must be apportioned according to the need to control the Impending Safety Threat and must be specified in the Safety Plan.

Other Safety Services that can be provided through the ASO in conjunction with the Safety Services bundle are:

- Emergency Respite
- Public or Private Transportation

The Child Welfare Worker must develop the safety plan and make the referrals to the necessary Safety Services as needed.

(For more information about Social Necessary Services, refer to the [Utilization Management Guidelines Manual.](#))

## **4.15 Statutory Remedies for Protecting Children**

[Chapter 49](#) of the West Virginia Code provides several legal remedies for protecting children. The Circuit Court can, under certain specified circumstances, address the condition of children in need of protection, and as necessary, enter an order directing that certain actions be taken to promote the safety of children.

The Court is a safety resource, **not** just an avenue to place children in the Department's custody. The Court should be used, when necessary, to assure children the protection they need and motivate and assist parents to improve their standard of care. In order to properly use the services of the Court, Child welfare workers and supervisors must understand all the possible options available to the Court and select those which can be of benefit to each family they serve on a case-by-case basis.

The following are examples of situations in which the assistance of the Circuit Court can be sought. **This list is not exhaustive.** The proper use of the Court requires close collaboration between the child welfare worker and supervisor, and, as necessary, consultation with the Prosecuting Attorney and/or Regional Assistant Attorney General.

1. When a report of suspected abuse or neglect has been received and the parents refuse to allow access to the children to be interviewed, Court intervention may be appropriate. The relief that could be sought would be a petition to the Court seeking judicial sanction for those actions necessary to complete the assessment to determine if the child is unsafe. Those actions may include access to the home, to the child, or other steps necessary to determine if the child is unsafe;
2. When Immediate Safety Threats or imminent danger exists and there are no safety resources available and/or the primary caregivers are unwilling to permit the child welfare worker to deploy a protection plan. The relief that could be sought would be a petition to the court seeking legal and physical custody to place the child in a safe environment;
3. When a child is unsafe, and the Safety Analysis and Planning determines that a

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Safety Plan is required, the child welfare worker may need to utilize Foster Care services in the Safety Plan.. The relief that could be sought would be a petition to the court seeking legal and physical custody to place the child in a safe environment.

4. When aggravated or other circumstances exist as described in [W. Va. Code §49-4602\(d\)](#). (see CPS Policy Section 4.27 Completing Initial Assessments in which reasonable efforts to prevent the child from removal of the home is not required)
5. A co-petition with the non-offending parent may be filed with the circuit court even in circumstances where the parents or guardians are no longer living together, separated or divorced and the offending parent or guardian would be substantiated against for child abuse and/or neglect. The Department **shall not** request physical **or** legal custody of the children as the non-offending parent will maintain care, custody and control of their children. If the non-offending parent or guardian **does not** have physical **or** legal custody of the children, the Department **can** request physical **or** legal custody to be placed with the non-offending parent. (*Please see CPS Policy Section 10.7 Filing a Petition for additional information.*)

#### 4.16 Imminent Danger

Imminent Danger is defined in state statute. Imminent Danger to the physical well-being of a child means an emergency situation in which the welfare or life of the child is threatened. Such an emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited or reasonable cause to believe that the following conditions threaten the health or life of any child in the home.

- Non-accidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter or other caretaker which can include intentionally inflicted major bodily damage such as broken bones, major burns or lacerations or bodily beatings. This condition also includes the medical diagnosis of battered child syndrome which is a combination of physical and other signs indicating a pattern of abuse; or
- Nutritional deprivation; or
- Abandonment by the parents, guardian, or custodian; or
- Inadequate treatment of serious illness or disease; or
- Substantial emotional injury inflicted by a parent, guardian, or custodian; or
- Sale or attempted sale of the child by the parent, guardian, or custodian; or
- The parent, guardian or custodian's abuse of alcohol, or drugs or other controlled substance as defined in section one-hundred one, article one, chapter sixty-a of this code, has impaired their parenting skills to a degree as to pose an imminent risk to a child's health or safety. ([W. Va. Code §49-1-201](#)).

If a child or children in the presence of a child welfare worker be in an **emergency** situation which constitutes an imminent danger to the physical well-being of the child or children **and** if the child welfare worker has probable cause to believe that the child or children

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will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the child welfare worker may, prior to the filing of a petition, take the child or children into their custody without a court order: After taking custody of such child or children prior to the filing of a petition, the child welfare worker must appear before a Circuit Judge or a juvenile referee of the county wherein custody was taken, or if no such Judge or referee be available, before a Circuit Judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition.

#### 4.17 Completion of the Initial Assessment

To conclude the Initial Assessment, the worker will:

- Complete the documentation of the Initial Assessment when sufficient information has been gathered to make the decisions in the Safety Assessment and safety evaluation. The maximum timeframe for completion of the Initial Assessment is within 30 days from receipt of the report. If extenuating circumstances have prevented the completion of the Initial Assessment within the time frame, the worker will request the approval of an extension from the supervisor;
- Contact the family to discuss the findings from the Initial Assessment. This contact can be made in person or by phone if the case will not be open for Ongoing CPS;
- Make a referral for Socially Necessary Needs Assessment and Case Management Services if the child is safe **but** maltreatment occurred. *See CPS Policy Section 5.3 for further instruction;*
- Transmit the case to the supervisor for review and approval.

The supervisor will:

- If requested, review the request for an extension of the time frames for the completion of the Initial Assessment and make a decision, as indicated. Reasons for granting an extension may include:
  - Assigned workload prevented completion;
  - Delay in receipt of necessary information;
  - Assessment complete, paperwork pending;
  - Other cases/reports have taken priority due to identified safety threats;
  - Unable to yet contact client or client has not cooperated;
  - Other (must specify).
- Review the Initial Assessment as well as any safety plans for thoroughness and completeness;
- Review the procedure followed by the worker in completing the Initial Assessment;
- Review whether the information is sufficient to make the necessary decisions;
- Review whether all of the required screens were completed;
- Review whether the information is documented in the correct Initial

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- Assessment areas. Is the documentation coherent? Does it contain both positive and negative information? Are the sources of information cited?
- Review whether necessary information was obtained from collaterals;
  - Review whether the contacts are documented appropriately in order to show due diligence in collecting information;
  - Review whether the Multidisciplinary Investigative Team was involved as appropriate;
  - Review whether the analysis of the presence of maltreatment is documented and correct;
  - Review whether Impending Safety Threats have been identified;
  - Review the adequacy and the specific details of the safety plan in terms of services initiated, frequency, etc.;
  - Based on the conclusions from the Initial Assessment, assure that CPS is responsible to provide, direct or coordinate services to children and families or whether no service need is present;
  - Initiate arrangements to transfer the case for On-Going CPS services;
  - Ensure that either a safety plan has been developed and implemented in all situations in which a child has been determined to be unsafe or the safety plan implemented is appropriate. It is unacceptable to omit the development and implementation of a safety plan when a child has been determined to be unsafe;
  - Review whether the Early Intervention Birth-to-Three referral was made as appropriate;
  - Review whether the Socially Necessary Services referral for a needs assessment and service plan was made as appropriate;
  - Document supervisory consultation and approval within the appropriate screens within CCWIS;
  - Ensure that mandated reporters receive notification at the conclusion of the Initial Assessment.

If the Initial Assessment or safety plan is unsatisfactory for any reason, the supervisor will:

- Meet with the worker to discuss the areas that need improvement;
- Provide or arrange for any assistance that the worker needs to make the requested improvements;
- Assure that the improvements are made, prior to approving the Initial Assessment and Safety Plan.

At the conclusion of the Initial Assessment, if the decision is to open the case, the Initial Assessment supervisor and On-going supervisor will designate a time for both them and the Initial Assessment worker and Ongoing Worker to meet for a transfer staffing to discuss the family and any needed actions. This may be a designated time each week.

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The Initial Assessment worker will ensure that any needed safety services have been put into place and the safety plan has been signed. All needed ASO referrals for services should be made by the Initial Assessment worker.

#### **4.18 Notification to Individuals Subject of the Initial Assessment**

Upon supervisor approval of the Initial Assessment a notification letter is completed and mailed to the parties, as defined in [W. Va. Code §49-2-101](#), and documented in CCWIS. If there is not a substantiation of maltreatment of abuse and/or neglect in the finding of the Initial Assessment, the notification letter will be completed and mailed to the parties. If there is a substantiation of abuse and/or neglect in the Initial Assessment, a notification letter will be printed, signed by the child welfare worker and sent to each individual maltreater listed in the intake and/or assessment via certified mail for each individual letter. This must also include a return receipt for each individual letter requested within 15 days of the maltreatment substantiation. Failure to accept the letter will be deemed as receipt of the notice. A copy of the signed document will be uploaded to the electronic filing cabinet as well as the certified mailing receipt. An original copy of the signed notification letter will be placed in the client's paper record. The letter must specify the victim(s) of the abuse and/or neglect for which the maltreater was substantiated, where the abuse and/or neglect occurred and when the abuse and/or neglect occurred. The letters will state that the maltreatment findings could affect employment or from providing foster or kinship care to a child in the future. The letter will also notify the family of their right to appeal and the process to request a grievance. *(Please see CPS Policy Section 9.1 the Grievance Process)*

If the child welfare worker or supervisor discovers a client did not receive their notification letter, it is the child welfare worker or supervisor's obligation to mail the appropriate notification letter as soon as possible. **Each adult and alleged maltreater** subject of the Initial Assessment gets their own letter addressed to them.

##### **4.18.1 Notification to parents who are not subject of the Initial Assessment**

In most instances, parents who are not the subject of the Initial Assessment should be notified if their children are unsafe or have been maltreated. This requirement does not apply if the case is unsubstantiated and the children are safe. If the child has been maltreated or is determined to be unsafe, the parent who is not subject of the Initial Assessment must be notified unless there is good cause documented in the case file to show that the information would be seriously detrimental to the best interests of the child. Good cause would include documentation in the record of the following circumstances: no contact order with the parent who is not the subject of the Initial Assessment, the parent's rights have been terminated, or there is a documented pattern of violent behavior that could place the children in danger by the parent who is not the subject of the Initial Assessment. This notification cannot be automated in CCWIS due to the complexity of the decision to notify.

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*Notification at the conclusion of the Initial Assessment does not preclude the notification of parents not subject to the report during the Initial Assessment as part of reasonable efforts to prevent removal.*

#### **4.18.2 Mandatory reporter notification**

[W. Va. Code §49-2-804](#) requires mandatory reporters to be notified of our decision whether or not to accept a referral and, if accepted, when the assessment of the referral is complete. Upon supervisor approval of the Initial Assessment, the mandatory reporter notification letter will print automatically on the supervisor's printer. It is the supervisor's responsibility to ensure that the mandated reporters received the notification letter.

### **4.19 Diligent Efforts to Locate Children who are Reportedly Abused or Neglected**

Child welfare workers are expected to make diligent efforts to locate children reported to be abused or neglected. Diligent efforts, in this context, are persistent, relevant attempts to locate the child and their family. Child welfare workers are expected to be creative and flexible in determining the whereabouts of families who are not located by routine means. The list **is not** all inclusive but identifies several sources which may assist the child welfare worker when attempting to locate a family or re-locate missing families.

- Visit the home after regular work hours;
- Mail certified letters to the last known address;
- Check the telephone book, directory assistance, internet phone searches such as [whitepages.com](#) or [411.com](#), as well as the post office for alternative addresses or telephone number changes;
- Review DHHR case records, including but not limited to CPS records, APS Records, Youth Services Records, Oscar, Rapids, etc. to attempt to locate alternative addressed, phone numbers, extended family members, etc.;
- Contact the schools and day care attended by the children to determine if they have information concerning a new school or address;
- Contact the reporter and any known friends or relatives to get information on possible whereabouts of the family;
- Contact the landlord for the forwarding address;
- Contact utility companies to determine if they have a forwarding address.

#### **4.19.1 Administrative Subpoena**

[W. Va. Code §49-2-802\(g\)\(1\)](#) gives the Secretary of the Department of Health and Human Resources, or designee, the ability to issue an administrative subpoena in order to facilitate the location of a child suspected of being a victim of abuse or neglect. Should you believe that a child is subjected to abuse or neglect and a corporation, partnership, business, organization or individual refuses to provide information that would assist you in locating a child, the procedures below should be followed:

1. Directly ask the entity or individual for the information;
2. Make certain that the information being sought is not readily available from

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- secondary sources;
3. If primary and secondary sources are not fruitful, consider issuing an administrative subpoena directly to the entity or individual. To facilitate this option, first contact the Social Services Manager for assistance. Delivery of the administrative subpoena by certified mail or personal service, or both, should be under the name of the Social Services Manager. Personal services should not be attempted by any DHHR employee, but rather personal service should be performed by the aid of the county sheriff or a professional process server;
  4. If the entity or individual provides the information requested, no further action is needed;
  5. Should the entity or individual fail to respond or refuses to provide the requested information, the Social Services Manager should contact the cabinet secretary for DHHR, explain the circumstances in which the information is being sought and the response thereto and ask to be designated with the authority to invoke the aid of a Circuit Court for compelling the information under the applicable statute;
  6. Once the Social Services Manager is designated, the Social Services Manager should contact the county Prosecutor and request that they file a petition before the appropriate Circuit Court in order to compel the information sought.

If the county Prosecutor is unable or unwilling to assist you in compiling the information before the Circuit Court, you should seek the aid of your Regional Assistant Attorney General or the Assistant Attorney Generals assigned to the Bureau for Social Services.

#### 4.20 Incomplete Initial Assessments

All Initial Assessments are to be thoroughly completed. However, there may be some unanticipated circumstances in which it is impossible to complete the entire process. Those include;

- **Blatantly False Report:** This would apply only to situations in which the worker finds that the reported family does not exist, the location does not exist, or a reported emergency does not exist. For example, a report alleges that a child is left unattended on the side of the road. Upon arrival to the location, the worker does not find any child on the road and can find no such situation or family. This **does not** apply to situations in which the worker has a face-to face contact with the identified child and does not observe any visible signs of maltreatment. In this latter situation, the worker must continue to follow the Initial Assessment through to completion.
- **Child Turned 18 During Initial Assessment:** This would apply to situations in which the identified child turned 18 during the Initial Assessment and there are no other siblings/children under 18 years of age in the home.
- **Death of a Child:** This would apply to situations in which the identified child dies during the Initial Assessment and there are no other siblings/children under 18 years of age in the home. In this situation, information learned during the Initial Assessment must be documented in CCWIS.

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- **Client Moved/Unable to Locate:** This would apply to situations in which the child and family have moved, and/or the child or family cannot be located. It **does not** apply to situations in which the family moves to another county and the worker knows the new location. Those intake referrals should be transferred to the new county. If a family moves to another state, the intake referral should be transferred to the other state. Prior to concluding an Initial Assessment as incomplete due to inability to locate, the worker **must** first exhaust all available remedies to locate the family, including the Administrative Subpoena Protocol if appropriate.
- **Duplicate Entry of Data:** This would apply to situations in which an Initial Assessment was already completed or in process on the same allegation, but the report was mistakenly accepted and assigned rather than screened out. For example, a report is made by a daycare center that a child is malnourished. The report is accepted for an Initial Assessment and is assigned to a social worker. The next day a report is made by a pediatrician that a child is malnourished. For whatever reason, the report is accepted. The report is assigned to another social worker. Both social workers begin an Initial Assessment only to discover they are working the same case. The second Initial Assessment may be discontinued and documented as incomplete due to duplicate entry of data.
- The district must consult with their Regional Program Manager or Child Welfare Consultant if they are unable to complete an Initial Assessment before the Incomplete Assessment can be approved.

#### 4.21 WV Birth to Three Program Referrals

Children who have been abused or neglected are at considerable risk for a range of developmental delays. WV Birth to Three provides early intervention services, under Part C of the Individuals with Disabilities Education Improvement Act, to eligible infants and toddlers who are experiencing substantial developmental delays or who are at risk of substantial developmental delay if early intervention services were not provided.

Pursuant to the Child Abuse Prevention and Treatment Act (CAPTA), children under three for whom maltreatment has been substantiated must be referred to the WV Birth to Three Program in order to be screened for the presence of the above-stated delays and risks.

If there are children younger than three years of age in the home for whom the worker has substantiated maltreatment, the worker will:

- Inform the child's family that a referral to WV Birth to Three is required by Federal law;
- Complete the referral form for Early Intervention Part C- Birth-to-Three services within two working days of entering a substantiated disposition into the CCWIS system. Send a copy to the WV Birth to Three Regional Administrative Unit in which the child resides, file in the CCWIS file cabinet and provide the family with a copy;

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- When appropriate, request the family's written consent for release of information to share pertinent information regarding the child's health and/or developmental status or if Birth-to-Three Staff should be made aware of specific safety concerns.

WV Birth-to-Three must also be considered for all children under the age of three when abuse or neglect was not substantiated but through the Initial Assessment process have been identified as experiencing or at risk of developing substantial delays or atypical developmental patterns or; have been determined to fall under at-risk categories.

## 4.22 Personal Safety

Within the scope of the duties of child welfare workers and other DHHR employees, they must take precautions to prevent harm to themselves. Before making client contact, child welfare workers should make ongoing assessments of situations based on the nature of the allegation(s) or changing case characteristics. The following are issues for social workers and supervisors to consider before making field visits:

- Are firearms or other weapons noted in the report or record?
- Is there a previous history of domestic violence or other violent behavior towards others (this includes adults and youth)?
- Is there a history of criminal activity, mental illness, substance use, and ritualistic abuse or cult practices?
- Is the family's geographic location isolated or dangerous and is there cell phone coverage in that location?
- Is the contact scheduled after normal working hours?
- Are there aggressive animals on or near the premises?
- Is there a "danger to worker" notification screen on the referral?
- Is there lack of available information?

If the intake assessment reveals possible risk to the child welfare worker, the following could be considered as part of a personal safety plan:

- Call law enforcement and/or another staff person for accompaniment;
- Carry a cell phone;
- Use a state car rather than personal vehicle (or vice versa);
- Carry personal safety equipment, such as a whistle or personal alarm;
- Check with local law enforcement, prosecutor's office or magistrate's office for information regarding criminal history or obtain history of complaints before making contact;
- Consult with other informal sources, such as local law enforcement, previous social workers, collaterals, coworkers, or colleagues from other agencies.

During every interaction with clients the child welfare worker must:

- Always notify a supervisor where they are going and how long they anticipate being there through their districts sign out protocol;
- Avoid wearing or carrying valuables into homes;

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- Take only what is necessary into the home;
- Park in an area that would allow the child welfare worker to leave the residence quickly if necessary;
- Be cautious entering homes with large groups of people;
- Do not invade the individual's personal space and never touch them;
- Be aware of the surroundings and identify potential safety risks;
- Always have a clear path to the exit, free from human or other obstacles that could block the ability for a worker to freely leave in the event of an emergency;
- Child welfare workers are expected to use state issued or rental vehicles for work purposes. However, in the event that a child welfare worker must use a personal vehicle in the execution of their job duties, it should be maintained in good mechanical condition;
- If the child welfare worker feels unsafe, end the visit immediately and seek assistance. Leave immediately.

Despite precautions, threats and other incidents may occur. Child welfare workers and other employees must immediately notify their supervisor, another supervisor in the office, or other person in the chain of command following an incident such as assault, a threat of harm to staff and/or family members or property damage. The supervisor and/or supervisor or designee will:

- Provide the opportunity to debrief and explore the possibility of staff receiving counseling or other services;
- When warranted, report to law enforcement and request restraining orders for individuals and/or offices;
- Report the incident to the supervisor and Social Services Manager;
- Any child welfare worker or other staff who suspect they have entered an area where methamphetamine is manufactured will exit the residence and the property immediately and call 911 to request law enforcement response to address the safety of the children;
- Any staff person suspected of methamphetamine exposure should consult with their personal physician within two hours of exposure. ([W. Va. Code §60A-11-3](#) for more information).

#### **4.23 Initial Assessments When Children are Determined to be Abused or Neglected but Safe**

Once the supervisor reviews the Initial Assessment and/or consults with the child welfare worker and agrees that there is abuse or neglect but not Impending Safety Threats in the home, the following must occur by either the child welfare worker or supervisor:

- Contact the family to discuss the findings from the Initial Assessment;
- Explain to the family that due to a finding that abuse or neglect occurred, either a child welfare worker will complete a services plan or a referral to an ASO Provider will be made for the completion of a needs assessment and services plan. Inform the caregivers of the issues/dynamics that may have led to the abuse or neglect

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- as well as the expectations of CPS, the Providers when appropriate, as well as the family's expectations;
- Discuss the case with the Ongoing CPS supervisor and Open the Family for Ongoing Child Protective Services (*See CPS Policy Section 5.3 Ongoing Services to children abused or neglected but not unsafe for additional information*).

#### **4.24 Completing Initial Assessments When Reasonable Efforts to Prevent Removal is Not Required [W. Va. Code §49-4-602\(d\)](#)**

The Department is not required to make reasonable efforts to prevent the removal of a child if the court determines the parent has subjected the child to *Aggravated Circumstances* which include but are not limited to abandonment, torture, chronic abuse and sexual abuse. Other instances when reasonable efforts are not required are when the parent has:

- Subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;
- Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime; or
- Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or
- Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or,
- Has been required by state or federal law to register with a sex offender registry and the court has determined in consideration of the nature and circumstances surrounding the prior charges against the parent, that the child's interests would not be promoted by a preservation of the family; or
- The parental rights of the parent to another child have been terminated involuntarily.

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*Note: The child welfare worker can present to the court information about the acts of a parent other than those described above and ask that the court consider these acts as aggravated circumstances.*

When completing the Initial Assessment on referrals alleging aggravated circumstances or other situations not requiring reasonable efforts to prevent removal, the child welfare worker must:

- Follow the same rules and procedures for Initial Assessments as other assessments of suspected child abuse or neglect;
- If the parent's rights to previous children had been terminated, examine the circumstances of the removal and termination to determine what actions, if any, the parent has taken to remedy the circumstances which led to the prior termination(s);
- File a petition with the court detailing the conditions which would not require reasonable efforts to prevent removal, what actions, if any, the parent has taken to remedy the circumstances which led to the prior termination(s), as well as the results of the Initial Assessment and Safety Evaluation;
- If the results of the Initial Assessment indicate that the child/children are safe but the Judge orders Ongoing CPS Involvement, contact the appropriate Child Welfare Consultant or Regional Program Manager in order to proceed with the case.

#### **4.25 Initial Assessments Involving Another Jurisdiction**

For Initial Assessments involving another state, the worker will:

- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect, insofar as possible, documenting any reasons for not following the established protocol;
- Follow the plan that was established by the two jurisdictions for handling the case, which may include a courtesy interview only. If so, the interview should be handled within CCWIS as a request to receive services. If the other state is conducting a courtesy interview for this state, the information received should be used in the appropriate elements for Initial Assessment.

The supervisor will:

- Follow the same rules and procedure for Initial Assessment as other assessments of suspected child abuse or neglect, insofar as possible, documenting any reason for not following the established protocol;
- Ensure that the plan that was established by the two jurisdictions for handling the case was followed;
- Initiate any necessary arrangements to transfer the case to another jurisdiction, which includes a telephone call or letter to the supervisor of the other jurisdiction, or to ensure that a referral to community services was completed.

For Initial Assessment involving another county, the child welfare worker will:

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- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect, insofar as possible, documenting any reason for not following the established protocol;
- Follow the plan that was established by the two jurisdictions for handling the case, which may include a courtesy interview only. Depending upon the case situation, it may be necessary for both counties to work together to conduct an Initial Assessment. Workers may travel to another county to conduct an interview at the discretion of the Supervisors involved. The decision should be made in consideration of what will be the most effective manner for the child in which to conduct the assessment. Generally, the child's county of residence would be considered the home county of jurisdiction and the county in which the alleged incident occurred would conduct any necessary courtesy interviews, which means if both parents live in the same county, but the abuse occurred in another county, the county where the child resides would be the appropriate jurisdiction to complete the assessment;
- If the parents live in separate counties, the county where the abusive caretaker resides/county where abuse occurred would be the appropriate jurisdiction to complete the assessment;
- A petition may be filed where the child resides, where the alleged abuse or neglect occurred, where the custodial respondent or one of the other respondents resides, or to the Judge of the Court in vacation. A petition may be filed in only one county.

#### **4.26 Initial Assessments Involving Safe Haven Children**

The [W. Va. Code §49-4-201](#) mandates the acceptance of certain abandoned children by hospitals or health care facilities, without court order. The statute permits hospitals or health care facilities to take possession of a child if the child is voluntarily delivered to the hospital or health care facility by the child's parent within 30 days of the child's birth and the parent did not express intent to return for the child. The hospital or health care facility may not require the parent to identify themselves and shall respect the parent's desire to remain anonymous. The hospital or health care facility must notify CPS by the close of the first business day after the date the parent left the child, that it has taken possession of the child. Any information provided by the parent shall be given to CPS by the hospital or health care facility.

When a hospital notifies CPS that they have accepted custody of an abandoned child within thirty days of the child's birth, the child welfare worker will:

- Not attempt to identify or contact the parent;
- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect;
- Initiate the filing of a petition alleging child abandonment pursuant to [W. Va. Codes §49-4-601](#) and [§49-4-602](#);

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- Initiate placement of the child in emergency family care or foster/adopt care;
- Gather information concerning the alleged maltreatment, nature and the child's condition and document the information in the appropriate Initial Assessment Areas.

*(Please review Foster Care Policy Section 1.15 for more information concerning the court process when a child has been abandoned)*

## **4.27 Initial Assessments Involving Child Custody**

In matters involving both child custody and suspected child abuse or neglect, a Family Court Judge or a Circuit Judge must report suspected child abuse or neglect to the DHHR as mandatory reporters. Upon completion of the Initial Assessment, a copy of the report will be sent by the worker to the Family Court Judge or Circuit Court Judge, with a copy to the Prosecuting Attorney. [W. Va. Code §49-2-802\(c\)\(6\)](#) states, "when any matter regarding child custody is pending, the Circuit Court or Family Court judge may refer allegations of child abuse and neglect to the local child protective service for assessment of the allegations as defined by this chapter and require the local child protective service to submit a written report of the Initial Assessment to the referring Circuit Court or Family Court judge within the time frames set forth by the Circuit Court or Family Court judge."

[W. Va. Code §48-9-209](#) states that if either of the parents so request, or upon receipt of credible information, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan: Has made one or more fraudulent reports of domestic violence or child abuse: Provided, that a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

The worker will:

- Establish a plan to complete the Initial Assessment within the time frames set forth by the Judge; follow the same rules and procedures for the Initial Assessment as other assessments of suspected child abuse or neglect;
- Prepare a written report as requested by the Judge, including but not limited to the following information:
  - Outlining the identifying information concerning the family;
  - Allegations of maltreatment;
  - Findings of maltreatment;
  - Surrounding circumstances which accompany the maltreatment;
  - How the child functions on a daily basis;
  - Disciplinary approaches used by the parent;
  - Overall parenting practices used by the parent;
  - Daily mental health functioning and substance use by the parent;
  - General adult functioning of the parent.

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The report should indicate whether maltreatment occurred, whether there is risk of future maltreatment to the child, any issues that influence the child's safety, and the action taken regarding any necessary development and implementation of a safety plan;

- Submit the report to the Circuit Court, Family Court Judge and Prosecuting Attorney within the specified time frames;
- Import the report/document into CCWIS and upload within the file cabinet to document compliance with the request from the Circuit Court or Family Court Judge.

The supervisor will:

- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect;
- Ensure that the Initial Assessment is completed within the specified time frames;
- Ensure that a written report is prepared and submitted to the Circuit Court or Family Court Judge within the specified time frame;
- Ensure that the report is filed within CCWIS.

*Note: The target population for CPS includes non-custodial parents or caregivers. The temporary transfer of custody/guardianship does **not** relieve CPS from working with non-custodial parents in situations where children have been or suspected to have been abused or neglected or subject to conditions that are unsafe. The temporary nature of protective orders and temporary guardianship **does not** ensure for children long term nor does it provide due process for children and parents for an opportunity to be safely reunified through service provision and close monitoring of improvement periods.*

#### **4.28 Initial Assessments Involving Allegations Made During Infant Guardianship Proceedings**

[W. Va. Code §44-10-3](#) allows suitable individuals to petition for guardianship of minor children. If the basis for the Infant Guardianship petition is abuse and/or neglect, the Circuit Court will hear the case.

If the Infant Guardianship petition is based upon abuse and/or neglect, the Department will receive notice of the Infant Guardianship proceedings. This will serve as a mandatory referral for CPS intervention. The Circuit Court may (with court discretion) enter an administrative order for the Department to conduct a CPS Initial Assessment whereby CPS will then have not more than 45 days to submit a report regarding the findings of the Initial Assessment or appear before the circuit court to show cause why the report has not been submitted. CPS will have 30 days per policy to complete the Initial Assessment unless a temporary protection plan is initiated as per *CPS Policy Section 4.8*. If the circuit court believes the child to be in imminent danger, the court may shorten the time for the Department to act upon the referral and appear before the court. This will occur using the *Disposition of CPS Investigation Report for Family and Circuit Court* form. If an Initial

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Assessment was completed within 30-45 days of when this referral is received, which contains the exact same allegations, a report on the prior referral Initial Assessment can be made to the court and the new referral screened as duplicate.

For Initial Assessments involving Infant Guardianship proceedings, the worker will:

- Follow the same rules and procedures for Initial Assessments as other assessments of suspected child abuse or neglect;
- Provide a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Initial Assessment to the Family Court Judge and the Circuit Court Judge within 45 days of receipt of referral, with a copy to the Prosecuting Attorney.

The supervisor will:

- Ensure that the worker provides a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Initial Assessment to the Family and Circuit Courts within 45 days (or less if the allegations involve imminent danger), with a copy to the Prosecuting Attorney.

After submission of the *Disposition of CPS Investigation Report for Family and Circuit Court*, the Circuit Court Judge will review the assessment to determine whether CPS intends to file a petition and if not, whether CPS should be ordered to file such a petition. Specifically, the Judge will want to make sure that the Department addressed any alleged circumstances that require that a petition to terminate parental rights is filed, or if certain aggravated circumstances exist that require a petition to be filed. In other words, if CPS substantiates any allegations that might require the filing of a petition to terminate parental rights under [W. Va. Code §49-4-604\(c\)](#) such as abandonment or the murder of another of the parent's children, the court will consider whether the circumstances are such that the duty to file a petition is essentially non-discretionary. If so, then CPS will be ordered to file a petition. Or, if CPS substantiates any allegations which do not require CPS to make reasonable efforts to preserve the family under [W. Va. Code §49-4-604\(b\)\(7\)\(A\)](#) (aggravated circumstances), then the court will consider whether CPS has acted arbitrarily in deciding not to file a petition.

If, when the Circuit Court compares the referral to the Initial Assessment and finds that the worker may be under a duty to file a petition but does not intend to do so, the Circuit Court will enter a show cause order setting a hearing. The purpose of the hearing is to determine whether a Writ of Mandamus should be issued, requiring the worker to file a petition.

The Show Cause Order will be circulated to the Social Services Manager. It will require the worker to appear to show cause why they have decided not to file a petition in view of substantiated allegations that come within [W. Va. Codes §49-4-604\(c\)](#) or [§49-4-604\(b\)\(7\)\(A\)](#).

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## **4.29 Initial Assessments Involving Critical Incidents**

Whenever a deceased or severely injured child has siblings, and the cause of the death or injury of said child is suspected abuse and/or neglect, an Initial Assessment must occur. For these Initial Assessments, the worker will (see also Critical Incident SOP).

- Contact the Prosecuting Attorney and the appropriate law enforcement official to establish a plan for a joint investigation/assessment. The purpose of the contact is to clarify roles, establish a means for communication and to share information. If the Prosecuting Attorney and/or the law enforcement official declines to proceed with a joint investigation/assessment, CPS must proceed as the sole entity conducting the investigation/assessment. The failure of law enforcement or the Multidisciplinary Investigative Team to investigate a report of suspected child abuse or neglect **does not** relieve the DHHR from its responsibilities to protect children;
- The district is responsible for completion of the Critical Incident Form;
- The completed Critical Incident Form shall be submitted within five days from the date of intake via email through the chain of command including the Social services Coordinator if applicable, Social Services Manager, Social Services Program Manager, Deputy Commissioner over Field Operations, Commissioner, Director of Children and Adult Services (CAS), the Director of the Division of Planning and Quality Improvement (DPQI) and their designee the Director of Social Service Programs (SSP);
- Begin an Initial Assessment immediately regarding any surviving siblings or other children in the home or custody of the alleged maltreater;
- Defer to the law enforcement investigation if there are no surviving siblings or other children in the home or custody of the alleged maltreater. CPS may participate in the investigation as part of the Multidisciplinary Investigative Team. The worker will complete the Initial Assessment including any critical information about child's death due to maltreatment, if applicable, and the alleged maltreater's information. All functioning areas must be completed with as much information as possible;
- Refer any inquiries from the news media to the **Deputy Commissioner of Field Operations** who will consult with the Director of Communications within the DHHR Office of the Secretary about how to respond;
- Follow all other rules and procedures for Initial Assessments as other assessments of suspected child abuse or neglect, insofar as possible.

When a child dies due to alleged maltreatment and there are no other children in the household, the CPS caseworker will complete an Initial Assessment. The CPS caseworker does not have to interview the alleged maltreater when there is sufficient and credible information from other sources (e.g., medical personnel, law enforcement) to provide the basis for making a maltreatment finding determination. Critical information about child

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deaths due to maltreatment and alleged maltreater should be recorded in CCWIS. Again, Maltreatment Findings should be documented in CCWIS in the event a parent/caregiver applies for licensure of a day care or foster care facility or has future children. The worker will complete the Initial Assessment including any critical information about child's death due to maltreatment, if applicable, and the alleged maltreater's information. The maltreatment and nature sections must be fully completed. All other functioning areas must be completed with all known information that was gathered during the assessment process.

In all critical incidents involving a child where the Department has been involved, either through an Initial Assessment or an open case, the fatality shall be reported through the Field Operations Chain of Command, as cited above and in *CPS Policy Section 3.12 Reports Involving Critical Incidents*. A decision shall be made following the Critical Incident Standard Operating Procedure as to whether a Critical Incident Review is initiated. If a Critical Incident Review is initiated, the Director of the Division of Planning and Quality Improvement or their designee shall initiate the following procedure:

- The Director of the Division of Planning and Quality Improvement or designee will name a team of experts to assist in the review. The team shall consist of; the Child Welfare Consultant from the region in which the critical incident occurred; a member of the Office of Children and Adult Services Policy Unit; and a DPQI Reviewer.
- The **Division of Planning and Quality Improvement** will notify the affected District of the intent to review;
- A record review of the case will be conducted in CCWIS;
- A conference call will be scheduled among the team members to discuss the Department's documented involvement, as well as to solicit expertise from the team regarding review content;
- Interview with pertinent parties will be scheduled;
- The assigned review team will conduct the interviews and gather other significant documentation;
- Staff from the Office of Planning and Quality Improvement will present the team findings using the approved Power Point at the next scheduled quarterly statewide Critical Incident Review Team meeting.

Following the Critical Incident Review Team meeting, a copy of the presentation with recommendations will be emailed to the Social Services Manager of the district, the Director of Social Services, the Deputy Commissioner of Field Operations, the Director of Policy and Programs and the BSS Commissioner.

At all points during the review, conflicts of interest will be avoided. It shall be the intent of the review procedure to involve personnel who have no vested interest in the case being reviewed. All participants in the review are required to keep the information confidential and to divulge information only in the interest of completing the review.

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#### **4.30 Initial Assessments Medical Neglect of a Disabled Child (Baby Doe)**

For Initial Assessments and safety evaluations involving disabled infants or children with life-threatening conditions, including any infant who is born alive at any stage of development, the worker will:

- Follow the same rules and procedures for Initial Assessments as other assessments of suspected medical neglect, insofar as possible;
- Contact the hospital or appropriate medical personnel to coordinate interviews and information-gathering, including the obtaining of medical records;
- Contact the medical personnel and any other relevant persons who can provide the information necessary to evaluate the alleged medical neglect. If the child is in a hospital and there is a designated hospital liaison for these cases, then that person should be contacted. If the hospital has a review committee and a meeting regarding this child has taken place or one is scheduled, then contact should be made with the review committee chairperson or designee. If there is not a designated hospital representative, or review committee, contact the child's physician and other persons involved in the child's treatment and/or the hospital social services unit. In many instances, the hospital pediatric social worker will serve as a liaison to the DHHR;
- Contact the Prosecuting Attorney for assistance in gaining access to medical records if access is denied;
- Attempt to gather the following information:
  - the child's physical condition;
  - seriousness of the current health problem;
  - probable medical outcome if the current health problem is not treated and the seriousness of that outcome;
  - generally accepted medical benefits of the prescribed treatment;
  - generally recognized side effects/harms associated with the prescribed treatment;
  - the opinions of the Infant Care Review Committee (ICRC) or the Hospital Review Committee (HRC), if the hospital has one;
  - The parent's knowledge and understanding of the treatment and the probable medical outcome;
  - Arrange for a consultation with another physician not associated with the case, if indicated, to gain an independent opinion and recommendation;
  - Determine whether medically indicated treatment, including appropriate nutrition, hydration or indicated medication was withheld from the child;
  - Determine whether immediate action is necessary to assure that the child receives medically indicated treatment. If the parent is unable or unwilling to consent for medically indicated treatment, including appropriate nutrition, hydration or indicated medication, initiate the filing of a petition alleging child neglect.

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The supervisor will:

- Ensure that the protocol for handling Initial Assessments involving disabled infants or children with life-threatening conditions was followed;
- Follow the same rules and procedures for Initial Assessments as other assessments of suspected medical neglect, insofar as possible.

#### 4.31 Initial Assessments Involving Domestic Violence

For Initial Assessments when domestic violence is reported or when domestic violence is identified during the completion of the Initial Assessment, the child welfare worker will:

- Plan for their own safety; (i.e. when interviewing the alleged maltreater/batterer, have another child welfare worker or police present. *See CPS Policy Section 4.25 Personal Safety*);
- Consider the safety of all family members when structuring interviews. Make reasonable efforts to interview household members separately. If domestic violence is indicated, the adult victim must be interviewed the same day as the children (**the adult victim of domestic violence should never be interviewed jointly with the alleged perpetrator or while the alleged perpetrator is within close proximity**);
- Gather information about the domestic violence and its association to Immediate or Impending Safety Threats to the child in separate interviews with the adult victim of domestic violence;
- When possible, check with magistrate and family court to see if a protection order has been issued to this family;
- If an Immediate Safety Threat exists, develop a protection plan with the adult victim before leaving the interview. The protection plan must include referral information about services provided by a licensed domestic violence program;
- If there is extreme danger for the adult victim and the children have learned to survive by identifying with the maltreater/batterer (i.e., cannot keep confidentiality from the alleged maltreater/batterer), then direct questioning of the children may be postponed until safety can be achieved. This same thinking applies to interviewing the alleged maltreater/batterer. If an adult victim is fearful of the consequences of questioning the alleged maltreater/batterer using the D-LAG indicators, then it should not be done until safety can be achieved. Safety always comes first;
- If an Immediate Safety Threat exists due to domestic violence, begin protection planning immediately. (*See CPS Section 4.7 Immediate Safety Threat Assessment*)
- If domestic violence is occurring in the family, provide the adult victim with information about their rights and about local domestic violence programs such as hotline, shelter, counseling, and advocacy services. Services should be offered even if the client chooses to remain in the relationship. Explore with the adult victim what safety measures work best for their situation.
- Do not force a victim of domestic violence to select any one option for safety. Coordinate with resources for battered adults, (e.g., the local domestic violence

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shelter and outreach programs). Involve an advocate from the domestic violence program as soon as possible.

- Child welfare workers must be careful to not confuse violence involving substance use, illegal substance manufacturing/sales or mental illness as domestic violence; however, both types of violence can result in a child experiencing an Immediate or Impending Safety Threat. The child welfare worker should consult the “Power and Control Wheel” for clarification, as well as the operational definition of domestic violence. The worker should use these tools to determine if domestic violence is exacerbated by substance use, illegal substance manufacturing or sales, or mental illness.
- Remember that the adult victim is often more afraid of the batterer than of anything else. It may appear as though the adult victim is condoning the abuse and/or neglect. Being aware of this dynamic and confronting it in a supportive manner will ensure correct identification of the problems.
- Avoid blaming the adult victim for the violence committed by others.
- Provide information to the adult victim about legal and emergency service alternatives for protection.
- Present options that are available to the adult victim, which may include contacting the police department or Prosecuting Attorney’s office to initiate legal proceedings.
- Respond to the safety needs of all victims in the family.
- If the non-maltreating parent is agreeable, a domestic violence petition can be filed in Magistrate Court requesting a protective order. The worker will assist the non-maltreating parent with the process.
- In no way, however, should the worker force the adult victim to file a domestic violence petition and/or threaten to remove the child if one is not obtained. A domestic violence protective order is not the only option and does not always guarantee safety.
- Not seeking a protective order by a non-maltreating parent in no way relieves the worker of their responsibility for protecting children.
- If obtaining a domestic violence protective order is included in the temporary protection plan or safety plan, the child welfare worker must:
  - Notify in writing the Family Court Judge advising them that CPS is involved with the family and obtaining a domestic violence protective order is part of the safety plan and/or protection plan;
  - Mail a copy of the protection plan and/or safety plan to the Family Court Judge and advise the Court that you can be available to testify in person or by phone;
  - Attend the domestic violence protection order hearing or testify by phone if requested by the Family Court Judge.
- Consider Temporary Protection Plans or Safety Plans that preserve the unity of the child and the non-maltreating parent/adult victim if the child’s safety can be assured. Court intervention is likely to be necessary to protect the child and the non-maltreating parent. This can be achieved by the filing of a co-petition in Circuit Court by the DHHR and the non-maltreating parent, requesting custody be

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retained by the non-maltreating parent. In appropriate cases, a co-petition under [Chapter 49](#), brought by both CPS and the non-maltreating parent/adult victim may offer greater protection for both the adult victim and the children. For co-petitions to work effectively, it is best that both the Department and the co-petitioner agree regarding the approach to be taken. If this approach is agreeable to the co-petitioner, the worker will consult with the Prosecuting Attorney regarding filing the co-petition. The language of the co-petition should contain specific language to preclude the maltreating parent from living in the home or having contact with the child. (See [W. Va. Code §49-4-602](#)). A co-petitioning parent will be appointed separate counsel. Rule 17 (a) of *The West Virginia Rules of Practice and Procedure for Child Abuse and Neglect* states that "If one of the petitioners is a parent, then that parent shall be appointed counsel pursuant to [W. Va. Code §49-4-602](#), separate from the Prosecuting Attorney."

- A co-petition with the non-offending parent may be filed with the Circuit Court even in circumstances where the parents or guardians are no longer living together, separated or divorced and the offending parent or guardian would be substantiated against for child abuse and/or neglect. The Department **shall not** request physical **or** legal custody of the children as the non-offending parent will maintain care, custody and control of their children. If the non-offending parent or guardian **does not** have physical **or** legal custody of the children, the Department **can** request physical **or** legal custody to be placed with the non-offending parent. (Please see CPS Section 10.7 Filing a Petition for additional information.)
- If a co-petition is not feasible, but an abuse/neglect petition is filed in Circuit Court by the child welfare worker, a no fault finding of "battered parent" may be applied to the non-maltreating parent during court proceedings. The language of the co-petition should employ specific language to preclude the maltreating parent from living in the home or having contact with the child, outside a court-sanctioned visitation plan. (See [W. Va. Code §49-4-602\(a\)](#).)
- If the adult victim is not ready or able to accept services and/or the dangerousness of the alleged maltreater/batterer renders services insufficient to protect children from the threat to child safety, explore other options in consultation with the supervisor. The child welfare worker should consult with a domestic violence advocate for guidance in helping develop a safety plan with the non-maltreating parent/adult victim of domestic violence. Domestic Violence Advocates are experts in assisting with Safety Planning for adult victims and can be a valuable resource for child welfare workers.
- If the adult victim presents as severely depressed, assess carefully for suicidal ideation. Do they present as passive and cooperative, yet nothing changes in the home? Depression is symptomatic of trauma and may not subside until safety is achieved. Interventions and services should be decided in partnership with the adult victim to promote a personal sense of competence and power.

In completing the Initial Assessments in CCWIS, the worker must:

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- Document the presence of domestic violence in the maltreatment, nature, and adult general functioning in the Initial Assessment areas;
- Identify the batterer as the maltreater;
- Avoid identifying the adult victim as the maltreater (see above);
- Follow all other rules and procedures for Initial Assessments as other assessments of suspected child abuse or neglect.

The supervisor will:

- Ensure that the Initial Assessment is completed with due consideration of all the dynamics related to domestic violence;
- Follow all other rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect.

In cases of domestic violence, the worker should guide their interview to seek information from the reporter regarding any steps that the alleged victim of domestic violence has taken in order to protect the child(ren) given the threat posed by the batterer to the non-abusing parent or caregiver in the home in order to determine if the victim of domestic violence knowingly allowed the other parent or caregiver to abuse the child(ren). It is important that workers, when completing referrals, gather as much information as possible about patterns of coercive behaviors by the alleged perpetrator. Answering the question of **who is doing what to whom and with what impact**, will guide the worker on gathering information in regards to the context of the abuse and the effects of the abuse on the adult victim and the child(ren). It is imperative that the adult victim be documented as **“Adult Victim of Domestic Violence”** and the alleged perpetrator be documented as both the **“Alleged Batterer”** and **“Alleged Maltreater”**.

The “knowingly allows” standard for parents who are victims of domestic violence should be carefully analyzed. When an adult victim takes “steps to protect” their children that are reasonable in light of the threat posed by the batterer to the adult victim and does not defend the abuser’s actions or condone the abusive conduct, then the individual does not “knowingly allow” the abuse.

It is important that workers, when completing assessments, guide the interviews to gather as much information as possible about the abuse dynamics. Direct questions should probe about the non-abusive parent or caregiver’s knowledge of the abuse and any action or inaction about which the non-abusive parent or caregiver is aware, as well as thoroughly screen for any indications of domestic violence including D-LAG indicators.

When assessing for “knowingly allow” in assessments involving domestic violence some things should be considered:

- Determine whether there is domestic violence within the family dynamics. If the worker finds the presence of domestic violence, they cannot find that the non-abusive parent or caregiver “knowingly allowed” the abusive behavior unless the non-abusing parent or caregiver did not take any steps to protect the child that

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were reasonable given the threat posed by the batterer to the non-abusing parent or caregiver.

- In assisting with determination of “knowingly allows” use the following questions to guide your decision:
  - *What was the overall threat posed by the perpetrator to the adult victim’s physical, emotional, and/or economic security?*
  - *What steps did the adult victim take to protect the child?*
  - *Were the steps reasonable considering the overall threat of harm to the adult victim?*
- Choose the “Maltreatment Type” that the parent/caregiver knowingly allowed to occur *if one of the above-listed criterion has been met*. The substantiation of maltreatment will be assigned to this parent/caregiver, as another maltreatment type would be assigned for the parent/caregiver perpetrating other form(s) of abuse and/or neglect;
- Include “knowingly allowing abuse and/or neglect” in the petition, as well as the other forms of abuse and/or neglect that were substantiated, if the worker must file a petition to either compel compliance with CPS recommendations, or to remove the children from the parent(s)’ custody.

#### **4.32 Initial Assessments Involving Allegations Made During Domestic Violence Protective Order Proceedings**

For Initial Assessments involving allegations made during domestic violence protective order proceedings, the child welfare worker will:

- Establish a plan to complete the Initial Assessment;
- follow the same rules and procedures for Initial Assessment as outlined in *CPS Policy Section 4.32 Initial Assessments Involving Domestic Violence*;
- Provide a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Initial Assessment to the Circuit Court within 45 days (or less if the allegations involve imminent danger). **If the worker and supervisor do not file the report to the Circuit Court, Family Court, and Prosecuting Attorney within 45 days (or less if the allegations involve imminent danger), the hearing that was set when the administrative order was written will occur. CPS will be required to attend this hearing to discuss the Initial Assessment findings and why a report was not made to the court within the 45-day (or less) time period.**

The supervisor will:

- Follow the same rules and procedures for Initial Assessment as outlined in *CPS Policy Section 4.32 Initial Assessments Involving Domestic Violence*;
- Ensure that the Initial Assessment is completed within the specified time frames;
- Ensure that the worker provides a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Initial Assessment to the Family and Circuit Court within 45 days (or less if the allegations involve imminent danger), with a copy to the Prosecuting Attorney. **If the worker and**

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- supervisor do not file the report to the Circuit Court, Family Court and Prosecuting Attorney within 45 days (or less if the allegations involve imminent danger), the hearing that was set when the administrative order was written will occur. CPS will be required to attend this hearing to discuss the Initial Assessment findings and why a report was not made to the court within the 45 day (or less) time period;**
- If an Initial Assessment was completed within 30-45 days of when this referral is received, which contains the exact same allegations, a report on the prior referral/Initial Assessment can be made to the court and the new referral screened as duplicate.

After submission of the *Disposition of CPS Investigation Report for Family and Circuit Court*, the Circuit Court Judge will review the Initial Assessment to determine whether CPS intends to file a petition and, if not, whether CPS should be ordered to file such a petition. Specifically, the Judge will want to make sure that the Department addressed any alleged circumstances that require that a petition to terminate parental rights is filed, or if certain aggravated circumstances exist that require a petition to be filed. In other words, if CPS substantiates any allegations that might require the filing of a petition to terminate parental rights under [W. Va. Code §49-4-604\(c\)](#) such as abandonment or the murder of another of the parent's children, the Court will consider whether the circumstances are such that the duty to file a petition is essentially non-discretionary. If so, then CPS will be ordered to file a petition. Or, if CPS substantiates any allegations which do not require CPS to make reasonable efforts to preserve the family under [W. Va. Code §49-4-604\(b\)\(7\)\(A\)](#) (aggravated circumstances), then the Court will consider whether CPS has acted arbitrarily in deciding not to file a petition.

If, when the Circuit Court compares the referral to the Initial Assessment and finds that the worker may be under a duty to file a petition but does not intend to do so, the Circuit Court will enter a show cause order setting a hearing. The purpose of the hearing is to determine whether a Writ of Mandamus should be issued, requiring the worker to file a petition.

The Show Cause Order will be circulated to the Social Services Manager. It will require the worker to appear to provide show cause why they decided not to file a petition in view of substantiated allegations that come within [W. Va. Codes §49-4-604\(c\)](#) or [§49-4-604\(b\)\(7\)\(A\)](#).

*Please also see CPS Policy Section 4.28*

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### 4.33 Initial Assessments Involving Allegations Made During Divorce/Custody Proceedings

[Rule 48](#) of the *West Virginia Rules of Practice and Procedure for Family Court* requires the Family Court to report to CPS whenever allegations of child abuse and/or neglect arise during divorce and/or custody proceedings in Family Court.

When these allegations arise, the Family Court will send a written report to CPS, the Circuit Court and to the Prosecuting Attorney. The Circuit Court will then enter an administrative order to the Department, ordering an Initial Assessment and a report back within 45 days (this timeframe may be very shorter if the allegations involve imminent danger). The Circuit Court will also set a date for a hearing regarding the Initial Assessment report. DHHR can avoid this hearing if (a) the child welfare worker/supervisor files the report within 45 days (or less if the allegations involve imminent danger, or (b) the child welfare worker/supervisor files a petition.

For initial assessments and safety evaluations involving divorce/custody proceedings, the worker will:

- Establish a plan to complete the Initial Assessment;
- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect;
- Provide a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Initial Assessment to the Family and Circuit Court within 45 days (or less if the allegations involve imminent danger), with a copy to the Prosecuting Attorney. **If the worker and supervisor do not file the report to the Circuit Court, Family Court, and Prosecuting Attorney within 45 days (or less if the allegations involve imminent danger), the hearing that was set when the administrative order was written will occur. CPS will be required to attend this hearing to discuss the Initial Assessment findings and why a report was not made to the court within the 45-day (or less) time period;**
- If an Initial Assessment was completed within 30-45 days of when this referral is received, which contains the exact same allegations, a report on the prior referral/Initial Assessment can be made to the Court and the new referral screened as duplicate.

The supervisor will:

- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect;
- Ensure that the Initial Assessment is completed within the specified time frames;
- Ensure that the worker is prepared for the Court appearance and that proper referrals for supportive services (e.g. ASO services, community services, mental health or substance use disorder treatment, informal supports, etc.) have been made, if necessary;
- Ensure that the worker provides a copy of the *Disposition of CPS Investigation*

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*Report for Family and Circuit Court* form and a copy of the Initial Assessment to the Circuit Court, Family Court and Prosecuting Attorney within 45 days (or less if the allegations involve imminent danger). **If the worker and supervisor do not file the report to the Circuit Court within 45 days (or less if the allegations involve imminent danger), the hearing that was set when the administrative order was written will occur. CPS will be required to attend this hearing to discuss the findings and why a report was not made to the Court within the 45-day (or less) period.**

After submission of the *Disposition of CPS Investigation Report for Family and Circuit Court*, the Circuit Court Judge will review the Initial Assessment to determine whether CPS intends to file a petition and, if not, whether CPS should be ordered to file such a petition. Specifically, the Judge will want to make sure that the Department addressed any alleged circumstances that require that a petition to terminate parental rights is filed, or if certain aggravated circumstances exist that require a petition to be filed. In other words, if CPS substantiates any allegations that might require the filing of a petition to terminate parental rights under [W. Va. Code §49-4-604\(c\)](#), such as abandonment or the murder of another of the parent's children, the Court will consider whether the circumstances are such that the duty to file a petition is essentially non-discretionary. If so, then CPS will be ordered to file a petition. Or, if CPS substantiates any allegations which do not require CPS to make reasonable efforts to preserve the family under [W. Va. Code §49-4-604\(b\)\(7\)](#) (Aggravated Circumstances), then the Court will consider whether CPS has acted arbitrarily in deciding not to file a petition.

If, when the Circuit Court compares the referral to the Initial Assessment and finds that the worker may be under a duty to file a petition but does not intend to do so, the Circuit Court will enter a show cause order setting a hearing. The purpose of the hearing is to determine whether a Writ of Mandamus should be issued, requiring the worker to file a petition. The Show Cause Order will be circulated to the Social Services Manager. It will require the worker to appear to provide show cause why they decided not to file a petition in view of substantiated allegations that come within [W. Va. Codes §49-4-604\(c\)](#) or [§49-4-604\(b\)\(7\)](#).

*Please also see CPS Policy Section 4.28.*

#### **4.34 Investigations Involving Informal, Unlicensed/Unregistered Child Care Settings**

Reports of suspected child abuse or neglect in informal, unlicensed/unregistered child care settings are assessed in a different manner than reports of suspected child abuse or neglect in intra-familial settings. The Initial Assessment of suspected child abuse or neglect in intra-familial settings focuses on assessing the presence of threats to child safety, the promotion of family preservation when the safety of the child can be maintained and the provision of safety services to prevent family disruption. Initial

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Assessments involving private family child care settings are not focused on family functioning and family preservation and for that reason; the Initial Assessment process is not used for assessing suspected child abuse and neglect in these “out-of-home” settings. The worker will complete the maltreatment and nature the Initial Assessment sections. The process used for these investigations is one that focuses on the determination of whether maltreatment occurred.

For investigations involving informal, unlicensed/unregistered child care settings, the worker will:

- Review the report and all previous reports, records, and documentation on the facility/provider which are relevant to CPS. Develop a plan for completion of the investigation, considering the response time indicated at intake. It is the position of the DHHR that the choice of the site of the interviews and who is present during an interview is left to the discretion of the CPS staff;
- Contact law enforcement, the Prosecuting Attorney, or the medical examiner if the report involves serious physical injury, sexual abuse, sexual assault, or death of a child, to coordinate any arrangements for a joint investigation. If the Prosecuting Attorney and/or law enforcement official declines to proceed with a joint investigation/assessment, CPS must proceed as the sole entity conducting the investigation. The failure of law enforcement or the Multidisciplinary Investigative Team to conduct an investigation of reports of suspected child abuse or neglect does **not** relieve the DHHR of its responsibilities to protect children.

In completing the investigation, the worker will:

- Make face-to-face contact with the identified child(ren) in the time indicated as the response time on the intake. If unable to do this, the worker must document the reasons in CCWIS;
- Privately interview all parties in the following order: (this means separate, private interviews for all parties.)
  - identified child(ren)
  - other witnesses, including other children in the facility/home
  - employees
  - administrative personnel (if applicable)
  - maltreater
  - any other collaterals, as appropriate
- Ask the parties if they are represented by legal counsel. If the parties are represented by legal counsel, then the worker should not continue the interview without first obtaining the permission of counsel to do so. If permission to conduct the interview is denied, then the worker will discuss this situation with their supervisor. Once the supervisor has reviewed this situation, the supervisor or the worker must contact the Prosecuting Attorney or Regional Assistant Attorney General for consultation on how to gain access so that the parties may be interviewed;
- There is no requirement that interviews with children or with maltreaters be audio

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or video taped. However, some local Multidisciplinary Investigative Teams (MDIT) have found audio or video taping interviews to be effective in reducing the number of times that a child is interviewed, especially when there are criminal allegations as well as civil allegations of child abuse or neglect. Local MDITs are encouraged to become informed about the advantages and disadvantages of audio and video taping of interviews. If the team decides to use either audio or video taping as part of their MDIT protocol, then the DHHR may participate. It is recommended that the tapes become part of the criminal investigative file to be located with the law enforcement agency records, and not with CPS records maintained by the DHHR;

- Document the sources of information;
- Determine whether maltreatment occurred, utilizing the legal and operational definitions for child abuse or neglect.

When completing the interviews, the worker will attempt to specifically gather information in the following areas:

- The types of maltreatment apparent; this includes all types of maltreatment, physical abuse, sexual abuse, emotional abuse, and neglect. Include any physical description of maltreatment;
- The surrounding circumstances which accompany the maltreatment; this should always include the explanation of the circumstances related to the alleged maltreatment;

*(Note: although the setting of the investigation is different from an intra-familial Initial Assessment and safety evaluation, the basic format and techniques for interviewing which are taught in training still apply.)*

- Indicate whether maltreatment occurred;
- Complete the investigation within 30 days of the receipt of the report, unless extenuating circumstances prevent the completion. If so, request the approval of an extension from the supervisor;
- Transmit the investigation to the supervisor for review and approval.

The supervisor will:

- Notify the informal child care provider, if different than the maltreater, in writing, of the findings and recommendations resulting from the investigation (the alleged maltreater will receive an automatically-generated letter regarding the disposition of the investigation);
- Ensure that the informal child care provider's notification letter is imported into the CCWIS file cabinet to document that notification has been made;
- Contact the child victim's parent or appointed counsel (guardian ad litem) to explain the allegations made, the findings of the investigation and the outcomes. If there are other children within the informal provider's home that may be unsafe, notify the parents of those children and inform them of the allegations, the findings of the investigation and the outcomes, without revealing any confidential identifying information. It is expected that parents will make

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alternative child care arrangements.

Investigation of informal child care providers will not be opened for on-going CPS.

For assessments of suspected child abuse or neglect involving group residential and resource family settings and registered **child care** settings, *please refer to the IIU Policy Section 4.49 Investigation Involving Institutional Investigative Unit (IIU) and Licensed Care Centers/Registered Family Care Facilities/Registered Family Child Care Homes.*

#### **4.35 Initial Assessments Involving Non-Custodial Parents**

For initial assessments and safety evaluation involving a non-custodial parent, the worker and the supervisor will:

- Follow the same rules and procedures for Initial Assessments as other assessments of suspected abuse or neglect by a custodial parent. Maltreatment and safety will be evaluated with the child in the field with the maltreating non-custodial parent.

#### **4.36 Initial Assessments Involving Substance Use, Misuse or Substance Use Disorder**

For initial assessments and safety evaluations involving parents who are alleged to be creating an unsafe living environment for their children due to their substance or alcohol use, misuse or substance use disorder the worker will:

- Assess the physical appearance of the parent such as pupil size, lack of attention to hygiene;
- Assess the behavior of the parent including unstable gate, slurred speech, fatigue;
- Assess the living environment for cleanliness, lack of food, lack of utilities, items in the home being sold, substance use paraphernalia, abundance of prescribed medications;
- Talk with additional collaterals such as extended family, neighbors, and law enforcement;
- Ask the children additional questions about their parents taking medicine, giving themselves shots, sleeping during the day or being hard to wake up, etc.;
- Observe and address sleeping arrangements of young children in a parental substance use, misuse or substance use disorder referral;
- Educate the family about safe sleep practices for infants and children and document in CCWIS;
- Gather information from the parent and collaterals about any substance use treatment including medication assisted treatment (MAT) that the parent may be involved with or has accessed previously for substance use treatment **(Please note that a worker cannot discriminate against a parent based upon the history of substance use disorder (SUD). This includes a parent participating in a MAT program that is not currently engaged in the illegal use of drugs, as this is a**

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**protected class under the Americans with Disabilities Act (ADA) Section 504 Title II;**

- Follow the same rules and procedures for Initial Assessments as other assessments of suspected abuse or neglect;
- Not all referrals alleging parental substance use, misuse or substance use disorder result in a finding of a drug affected-infant however, parental substance use, misuse or substance use disorder, may still be creating an unsafe environment for an infant. Some cases will need to be opened for abuse or neglect due to parental substance use even though the child is not identified as drug affected.

**Drug-Affected infants:**

Substance use may be identified at various stages throughout the assessment process and it can affect safety in various ways. However, the purpose of this section will include a focus on reports received from **medical staff or hospital social workers acting on behalf of medical staff** on children under the age of one year who **test positive or exhibit withdrawal symptoms** due to legal or illegal substances or alcohol or prescribed medication (including medications used to treat addiction).

- Once the referral is assigned to the district, the child welfare worker will review the family's available records and history of past involvement with the Department of Health and Human Resources, this includes other adults that would be considered caregivers and residing in the household;
- CAPTA requires that children identified as being drug-affected have a Plan of Safe Care;
- If the assessment indicates a case should be opened, the Ongoing Assessment and Family Case Plan will become the Plan of Safe Care;
- Since most children are released within 24 hours of birth, the child welfare worker must meet face to face with the infant and infant's family to begin the assessment and implement a Protection Plan if needed. The child welfare worker should obtain identifying information about the father. Hospital Staff should be asked if paternity declaration was established;
- The child welfare worker should thoroughly assess the family, gathering information from the parents, and other pertinent collaterals. Suggested collaterals are, but should not be limited to; hospital staff, social worker, pediatrician, substance use disorder counselors, therapist, and teachers. **Both mother and child(ren) records from the hospital must be obtained.** This could include toxicology reports and withdrawal scores of the infant, and nurses/doctors progress notes;
- It is important for the worker to obtain information about the parents' interaction with the infant and any relevant statements the parents revealed to staff about the ability to properly care for the child(ren);
- Upon the child's discharge from the hospital, the child welfare worker should visit the family's home to assess for safety and continue the assessment process. The worker should consider the parent's preparedness for the child as evidenced by

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- the presence of adequate baby supplies, sleeping arrangements and intentions/beliefs the parents have regarding sleeping arrangements should also be discussed with all caregivers;
- During the assessment process, it is important to assess the caretakers/parent's ability to parent the child(ren), and if the caretakers/parents have made strides to correct the substance use disorder. This could include what methods of treatment intervention the parent chose, and compliance with those treatments. When assessing a parent who has a history of an opioid use disorder (OUD), it is essential that the child welfare worker understands that participating in a MAT program that complies with [W. Va. Code §16-5Y](#), regardless of the length of time, is not the same as the use of illegal opioid drugs or the illegal use of prescription opioid drugs. It does not indicate that an individual has chosen to "trade one addiction for another" or is using the MAT program to "get high". Treatment in a MAT program can be time-limited for life-long. Workers must set aside their personal bias regarding the use of a MAT program in the treatment of an OUD when assessing a parent;
    - A worker cannot discriminate against a parent based upon the history of SUD. This includes a parent participating in a MAT program, regardless of the time in treatment, as this is a protected class under the Americans with Disabilities Act (ADA) Section 504 Title II. To be considered a disability under this protected class, an individual must qualify as having a drug addiction or substance use disorder that substantially limits a major life activity when:
      - individuals have successfully completed a supervised drug rehabilitation program or have otherwise been successfully rehabilitated and are not currently engaged in the illegal use of drugs;
      - individuals are participating in a supervised substance use rehabilitation program and are currently not engaged in the illegal use of drugs; or,
      - individuals are erroneously regarded as engaging in such use but are not engaging in such use.
  - The child welfare worker will determine if the child is safe and if maltreatment has occurred. If maltreatment occurred and no other Impending Safety Threats are identified, a case will be opened and the Ongoing Assessment and Family Case Plan completed, and appropriate services put in place to address the substance use, misuse or substance use disorder and/or any other contributing factors;
  - If it is determined through the assessment process that the child is not safe, a safety plan will be developed.

When working with a parent/caregiver in a MAT program, it is crucial that toxicology reports are not the **only** piece of information that a child welfare worker uses to determine if a parent/caregiver is adhering to the use of a prescribed medication. Due to many factors that may affect a drug's metabolism in the body, it is best practice to look

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at the entire clinical picture of the parent/caregiver in their MAT program and consult with their treatment team when determining their adherence to a prescribed medication. It is also very important to have confirmatory lab testing results when a urine drug screen is completed due to the occurrence of “false positive” results from this type of test. Child welfare staff are required to make serious case decisions based on collective information and not solely based on drug testing results.

When staff receive a toxicology report, it is never appropriate for child welfare staff to attempt to interpret the report; such as, attempting to interpret “levels” of a substance that is found to be “positive” in an individual’s toxicology screen. Child welfare staff are not trained to interpret toxicology reports and therefore prohibited from making client decisions based on their own interpretation of such results. This can be especially important when working with a parent/caregiver participating in a Medication-Assisted Treatment Program (MAT).

In situations where the mother has been prescribed medication due to a physical illness or mental illness, including medications to treat addiction, it is very important for the child welfare worker to:

- Obtain documentation from the mother’s medical or mental health providers regarding prescribed medication;
- Review records and consult with their treatment team regarding adherence to a prescribed medication;
- Obtain records and consult with the mother’s obstetrician to determine the mother’s cooperation with prenatal appointments, if available;
- Obtain confirmatory lab testing results when a urine drug screen is requested.

*For Example: A mother is in a severe car wreck while pregnant and has several surgeries due to injuries. The mother takes medication as prescribed by a physician. Upon delivery, a safety plan/protection plan **may not** need to be developed. A full assessment should be completed to determine the mother’s ability to parent is not compromised.*

In situations where the Department has knowledge of a drug affected infant, a referral to [Birth to Three](#) must be initiated and clearly documented.

As indicated, **all** Drug-Affected infants require a Plan of Safe Care according to CAPTA but not all infants identified as drug-affected are maltreated. An assessment needs to be completed to make that determination.

For those infants who need a Plan of Safe Care because they are identified as drug-affected (less than one year of age, test positive or show withdrawal symptoms and the referral is from medical source), and if the assessment indicates a case should be opened (maltreatment has occurred and/or Impending Safety Threat has been identified), the Ongoing Assessment and Family Case Plan is their Plan of Safe Care.

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If the assessment determines that there is a drug-affected infant but there is no maltreatment finding and no impending safety threats identified, the worker will open a case for “Plan of Safe Care Only”, document the Plan of Safe Care in the Service Log, document other services put in place on the service log screen and close the case immediately.

*For Example: An expecting mother is prescribed suboxone and is currently in a MAT program for the treatment of a substance use disorder. The mother is taking the medication as prescribed. The infant and mother test positive for suboxone at delivery and the infant is now considered to be drug-affected. The hospital makes a CPS referral. The child welfare worker finds that the mother has no other substance use or misuse at the time of delivery or CPS history, the medication is prescribed, the mother is using it as prescribed, and the medication does not affect their ability to care for the infant. No maltreatment has occurred. No Impending Safety Threats were identified. A CPS case must be opened in order to put the Plan of Safe Care in place. The worker will open a case for “Plan of Safe Care Only”, document the Plan of Safe Care in the Service Log, document other services put in place on the service log screen and close the case immediately.*

**Comprehensive Addiction and Recovery Act (CARA)**- The Comprehensive Addiction and Recovery Act (CARA) establishes a comprehensive, coordinated, balanced strategy through enhanced grant programs that would expand prevention and education efforts while also promoting treatment and recovery.

On July 22, 2016, President Obama signed into law the Comprehensive Addiction and Recovery Act ([P.L. 114-198](#)). This is the first major federal addiction legislation in 40 years and the most comprehensive effort undertaken to address the opioid epidemic, encompassing all six pillars necessary for such a coordinated response – prevention, treatment, recovery, law enforcement, criminal justice reform, and overdose reversal. While it authorizes over \$181 million each year in new funding to fight the opioid epidemic, monies must be appropriated every year through the regular appropriations process in order for it to be distributed in accordance with the law.

**Sec. 503** of CARA – *Infant Plan of Safe Care*: Requires Health and Human Services to produce information concerning best practices on developing plans for the safe care of infants born with substance use affects or showing withdrawal symptoms. This section also requires that a State plan address the health and Substance Use Disorder treatment needs of the parents, among others.

### **Plan of Safe Care**

A Plan of Safe Care is not to be viewed concretely, as a singular document. It is fluid and functions on a continuum. It will change as the needs of the child and family change. A child welfare worker’s responsibility is to complete an assessment after the receipt of the referral when the child is born drug-affected, determine the needs of the family and provide the appropriate services.

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If the child is born testing positive or suffers withdrawal from substances used during pregnancy, the child is drug-affected. If maltreatment is substantiated or an Impending Safety Threat identified, a case will be opened, needs will be identified, and services will be put in place to address those needs of the child and family. Needs will vary from family to family, but Child Abuse Prevention and Treatment Act requires that we address substance use disorders, other mental health needs and the medical needs of the infant. A Plan of Safe Care will be documented in our normal case work process. It will be reflected in Protection Plans, Petitions, Safety Plans, Family Case Plans and Service Logs. The work we already do will reflect the Plan of Safe Care. Examples of interventions that may be necessary include but are not limited to:

- Protection Plan
- Safety Plan
  - Socially Necessary Services Safety Services
  - Informal safety resources
- Drug/alcohol assessment
- Drug/alcohol treatment
- Medication Assisted Treatment
- Mental health assessment/psychological evaluation
- Psychiatric Evaluation
- Counseling
- AA/NA
- Birth to Three services
- Right from the Start
- Home visitation
- Medical Services
- Education
  - Safe Sleep
  - Drug-affected infant needs

#### **Drug Affected Infant with no maltreatment and no Impending Safety Threats**

If an assessment is completed and no maltreatment has occurred, and no Impending Safety Threats have been identified, then only a Plan of Safe Care is required to be completed. Workers will open a case for “Plan of Safe Care Only”, document the Plan of Safe Care in the Service Log, document other services put in place on the service log screen and close the case immediately. The worker will document if the parent is in a substance use disorder treatment program, community and family supports that are already in place, AA/NA, referrals for Birth to Three services, referrals for other services such as housing, clothing, food banks. We will document services already being received such as TANF, WIC, HUDD, SNAP. All this information will be listed on the Service Log. Select “Plan of Safe Care” in the Service Log to identify there is one in place. Select every other service being received or referred on the Service Log as well. This meets our requirement for having a Plan of Safe Care for drug-affected infants.

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#### **4.37 Initial Assessments Involving Children Found at Clandestine Drug Laboratories and/or Exposed to Methamphetamine Residue Contamination.**

If a child welfare worker discovers a methamphetamine lab or suspects that they have come across chemicals being used to produce methamphetamine during a home visit or child maltreatment assessment; the CPSW will do the following:

- Leave the property, depart the immediate area, and contact law enforcement;
- Remain away from the property until law enforcement has responded to the call and secured the house and the people;
- Respond to the scene;
- Facilitate appropriate safe placement of child including children who are not on the premises;
- Arrange for decontamination of child – provide clean clothing and wash exposed skin, using either paper towels and soap/water or packaged pre-moistened wipes;
- Facilitate the transportation of child to a medical facility for evaluation – Child's personal items (clothes, toys, book bags, etc.) need to remain at the because they are presumed to be contaminated;
- If emergency medical examination is required – the medical staff will treat immediately;
- If non-emergency medical examination is required – the medical staff shall collect a urine sample using proper protocol, conduct medical examination and perform the Early Periodic Screening, Detection and Treatment (EPSDT) exam;
- Conduct initial interview with child – Forward reports to law enforcement and Prosecuting Attorney;
- Advise resource parents or relative placement of the immediate needs of the child because of the meth contamination;
- Follow medical care needs to be scheduled and maintained;
- Follow up with court proceedings on behalf of the child.

If law enforcement contacts CPS regarding children located during a methamphetamine lab seizure and needs immediate response, the CPSW shall respond using the following plan:

- Respond to the scene;
- Facilitate appropriate safe placement of child including children who are not on the premises;
- Arrange for decontamination of child, provide clean clothing, and wash exposed skin, using either paper towels and soap/water or packaged pre-moistened wipes;
- Facilitate the transportation of the child to a medical facility for evaluation. The child's personal items (clothes, toys, book bags, etc.) need to remain at the drug lab site because they are presumed to be contaminated;
- Conduct initial interview with child, forward reports to law enforcement and Prosecuting Attorney;

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- Advise resource parents or relative placement of the immediate needs of the child because of the meth contamination;
- Follow medical care needs to be scheduled and maintained;
- Follow up with court proceedings on behalf of the child.

#### **4.38 Initial Assessments Involving Abusive Interactions Between Children**

For Initial Assessments and safety evaluations involving sexual or abusive interactions between children the worker and supervisor will:

- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect;
- Determine whether the alleged incident was a result of the parent knowingly allowing abuse or neglect to occur;
- Determine whether the alleged incident occurred within the realm of normal, natural child play or exploration between children of the same age. If so, there will be no finding of maltreatment;
- Determine whether the parent responded appropriately to the child's needs for medical or mental health treatment, including the need for emotional support.

In assessing for a parent or caregiver "knowingly allowing" another person to inflict sexual abuse or exploitation it must be determined that the parent or caregiver has knowledge (or should have had knowledge) that this has occurred and has not yet taken any action to intervene or to ensure the child's safety. The term "knowingly" does not require that a parent or caregiver actually be present at the time the abuse occurs, but rather that the parent or caregiver was presented with sufficient facts from which they could have or should have recognized that abuse has occurred. In assessing for knowingly allow involving sexual abuse or exploitation consider the following:

- A parent should have known their child was being abused and/or neglected-It may be difficult, at first, for staff to determine whether a parent could have known that their child was being abused or neglected. To use this finding, the worker must find sufficient evidence that the parent was presented with information that would have led them to know. For example: A parent tells the worker that they didn't know their child was being sexually abused by an older sibling, yet the children disappeared for several hours at a time; the abused child told their mother that they hated their older sibling and wished the older sibling would die; and the abused child was acting out sexually toward other children. When determining if a parent should have known, the worker will need to employ very specific questioning of the child's behaviors or symptoms of the abuse; who the child may have told about the abuse or how they told of the abuse. Often, children may not tell anyone in an actual disclosure but may hint or tell stories. Other children may never say a word, but their behavior changes drastically;
- The parent knew but took no action to prevent or stop the abuse- The worker must find that this parent supported and/or condoned the abusive behavior.;

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- The parent supports the explanation of the abuse, but the evidence suggests that the abuse did not occur in the fashion that is described- The worker must determine, sometimes with the assistance of a medical professional, that the abuse could not have occurred according to the explanation given.;
- Both parents or caregivers refuse to identify the abuser, and/or both deny that the abuse has occurred- The worker must determine if the parents or caregivers really do not know what has occurred or are simply covering for one another or someone else. The worker will need to use the child's statement, if possible, as well as other collateral information. For example: A child is admitted to the hospital for high fever and vomiting. Blood work reveals that the child is infected with an STD. Blood work conducted during previous medical exams reveal that the child was not infected in the past. Both parents deny that the child has been sexually abused but refuse to disclose the names of individuals with whom the child has spent time.;
- Choose the "Maltreatment Type" that the parent/caregiver knowingly allowed to occur *if one of the above-listed criteria has been met*. The substantiation of maltreatment will be assigned to this parent/caregiver, as another maltreatment type would be assigned for the parent/caregiver perpetrating other form(s) of abuse and/or neglect;
- Include "knowingly allowing abuse and/or neglect" in the petition, as well as the other forms of abuse and/or neglect that were substantiated, if the worker must file a petition to either compel compliance with CPS recommendations, or to remove the children from the parent(s) or caregiver(s)' custody.

#### **4.39 Initial Assessments Involving Registered Child Sex Offenders**

For Initial Assessments concerning registered child sex offenders who are on probation or parole or only on the sex offender registry, the worker and supervisor will:

- Follow the same rules and procedures for Initial Assessment as other assessments of child abuse and neglect;
- Determine the status of the registered child sex offender's parole or probation. Each convicted sex offender is required to fulfill a period of parole or probation. The length of time is individualized, and Dependent upon specifics of time served and good behavior. The state code stipulates that if the sex offense was committed against a child under the age of 18, that individual will not be allowed around children under the age of 18 during their parole/probation period;
- The worker or supervisor will notify the probation or parole officer that the Department has received a referral that the registered sex offender has violated the terms written in [WV State Code Chapter 62](#). WV State Code Chapter 49, section [W. Va. Code §49-5-101\(c\)\(1\)](#) provides that information can be disclosed to "Federal, state or local government entities, or any agent of such entities, including law enforcement agencies and Prosecuting Attorneys, having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect". This allows for CPS to share specifics of the

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- referral with the parole or probation officer;
- If the worker determines that the registered child sex offender is (1) on parole or probation, and (2) being allowed unlimited and/or unrestricted access to a child under the age of 18, that worker must address this issue with the custodial parent(s) and/or the non-child sex offender parent;
- Worker must inform the non-sex offender parent of the registered child sex offender's status on the West Virginia State Police Sex Offender Registry as well as actively serving a parole or probation period which prohibits them from being around children under the age of 18. The worker must emphasize that the offense was **child** sex abuse;
- If the non-sex offender parent makes no effort to change the circumstances once they have been made aware of the child sex offender's status on the registry, this parent is **knowingly allowing** (See *CPS Policy Section 2.1 Definitions by Statute*) their child to continue in a situation that poses potential harm to the children. The worker must then notify the non-sex offender parent that the Prosecuting Attorney will be contacted;
- The worker must contact the Prosecuting Attorney to file a petition for either removal of the children or to compel compliance from the non-sex offender parent ([W. Va. Code §49-1-204\(B\)](#)) definition of parent: "Parent" means an individual defined as a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds;
- The worker must also notify both parents, that due to the parent that is on the sex offender registry for an offense against a child, the worker is required to contact the Prosecuting Attorney and request to file a petition with the Circuit Court for a Circuit Court Judge to determine if it is in the best interest of the child(ren) for the parent or child(ren) to remain in the home. (For more information on filing a petition due to a parent being a registered sex offender see [W. Va. Code §49-4-604.](#));
- If a petition is filed, the Court will consider the nature and circumstances surrounding the prior charges of the parent of the sexual offence against a child and the Court will determine if the "child's interests would not be promoted by preservation of the family" ([W. Va. Code §49-4-604](#));
- If the Prosecuting Attorney denies to file the petition, the worker and supervisor must consult with the Social Services Manager or designee, Regional Program Manager or designee and the Regional Assistant Attorney General to determine an approach to assure the child(ren's) safety.

For Initial Assessments involving registered child sex offenders who are on probation, parole or only on the registry, the worker and supervisor will:

- Follow the same rules and procedures for Initial Assessment as other assessments of child abuse and neglect. If the child is unsafe then proceed to safety analysis and planning.

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#### 4.40 Initial Assessments Involving Registered Child Abusers

For Initial Assessments involving individuals on the Child Abuse and Neglect Registry who reside with children, the worker shall:

- Follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect;
- Contact the registrant's probation or parole officer, if applicable, to determine if the registrant is in violation of their probation/parole due to residing with a minor;
- Notify the non-offending custodial parent(s) of the registrant's status on the Child Abuse and Neglect Registry
- Contact the appropriate officials to gather more detailed information regarding the registrants actions that led to the conviction in order to assess safety and to determine if aggravated circumstances exist (*for information regarding see CPS Policy Section 4.25 Completing Initial Assessments in which reasonable efforts to prevent the child from removal of the home is not required, as well as [W. Va. Code §49-4-604\(b\)\(7\)](#).*

#### 4.41 Initial Assessments Involving Educational Neglect

When the Department accepts the referral for assessment of alleged educational neglect, the Department must complete a vigorous and fair examination of the family. This assessment must not only include gathering information related to educational neglect, but also additional information necessary to make informed decisions regarding the caregiver(s) ability to protect their child from physical or mental harm. During the assessment, the child welfare worker must interview the child or children, parent(s)/caregiver(s), school officials as well as other collaterals who may have relevant knowledge of the family.

A determination that abuse or neglect does or does not exist will be made at the conclusion of the Initial Assessment. Abuse or neglect is considered to have occurred when a preponderance of the credible evidence indicates that the conduct of the caregiver falls within the boundaries of the statutory definition of abuse or neglect. Abuse or neglect is considered to not have occurred when a preponderance of the credible evidence indicates that the conduct of the caregiver does not fall within the boundaries of the statutory and operational definitions of abuse or neglect.

To determine if a child is educationally neglected, the following must be considered by the child welfare worker and supervisor:

- the child's caregivers are getting the child's schoolwork and is the child turning in the schoolwork;
- the child's current and past grades to assist in determining if the current absences are directly related to the child's school performance;
- school officials feel the child's absences are the cause of the child failing school;

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- the reason for the absences to assist in determining if caregiver is presently refusing, failing or unable to get the child to attend school and in turn supply the child with an appropriate education;
- reasons for absences that may indicate a child's caregiver is able to supply the child with an education include but are not limited to:
  - suspension
  - sickness of the child
  - legitimate family emergencies
- reasons for absences that may indicate a child's caregiver is unable to supply the child with an education include but are not limited to:
  - chronic oversleeping by the parent
  - the child does not wish to go to school and the caregiver does not enforce school attendance
  - the caregiver has not or will not participate in the school's student assistant team process or other school efforts to address the child's absences
  - substance usage, mental health issues, or other characteristics that indicate the caregiver will be unlikely to supply the child with a necessary education

If the child welfare worker and supervisor believes that the preponderance of the evidence indicates a child's physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's caregiver to supply the child with necessary education, then a finding of educational neglect should occur, and the case opened for Ongoing Child Protective Services.

If the child welfare worker and supervisor feel that the preponderance of the evidence does not indicate a child's physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's caregiver to supply the child with necessary education, then a finding of educational neglect should not occur.

If the child is deemed safe and not neglected at the conclusion of the assessment, the child welfare worker must refer to the appropriate community-based resource(s) that can assist the family in addressing the child's absences. These resources include, but are not limited to, Family Resource Networks, the local school social worker or attendance director, or community behavioral health center.

At the conclusion of the Initial Assessment, the Department must also determine what, if any, protective measures are necessary to assure the child is safeguarded from mental or emotional harm from their parent, guardian or custodian's actions or inactions. Protective measures may include filing an abuse and neglect petition with Circuit Court, opening the family for Ongoing Child Protective Services, or referring the family to appropriate community-based resources.

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#### 4.42 Repeat Maltreatment

One of the primary responsibilities of Child Protective Services (CPS) is to prevent future harm to children who have been identified as abused or neglected. Repeat maltreatment measures the percentage of children who are repeat victims of abuse or neglect, after receipt of the first referral to CPS. Each reported incidence of maltreatment must be captured by the date the allegation was received by DHHR and the finding, upon assessment.

After a referral/intake has been accepted for assessment, Centralized Intake must accept any subsequent referrals on that family which allege separate and distinct allegations and meet the criteria for acceptance. All open referrals should be assigned to the same worker. Each allegation must be investigated following its acceptance. **Workers must make additional contact with the family to specifically discuss each new allegation.**

Multiple accepted referrals on the same family do not require multiple assessments. In situations with more than one outstanding intake/referral open (alleged repeat maltreatment) workers can document all the information and analysis into one assessment. However, each intake/referral must have its own initial contacts, validations and findings entered on all allegations. Each of these subsequent open referrals can reference the intake number of the completed assessment, and that referenced intake should fully assess all the allegations of maltreatment.

Occasionally DHHR receives multiple referrals referencing the same incident of abuse or neglect. In this instance, Centralized Intake would accept the first referral and screen out additional referrals of the same incident, documenting those as a duplicate and referencing the original intake/referral that was accepted.

#### 4.43 Initial Assessments Involving Human Trafficking

Identifying victims and assessing the needs of human trafficking victims is vital to effective services and treatment. Chapter 49 of the W. Va. Code requires that services be provided to minor trafficking victims and those where an attempt to traffic is determined, as they are defined as abused and/or neglected children. The victim's immediate needs should be assessed first. Immediate needs would include their safety, any medical treatment they may need for physical or sexual trauma, as well as food, clothing, and shelter. Other needs of trafficking victims may include, but are not limited to, mental health needs that can include comprehensive trauma-informed services that are specialized to the needs of child victims of sexual abuse and exploitation or child sex trafficking victims legal services, education services, and possibly life skills for teens. The ongoing needs of trafficking victims are just as important as their immediate needs. Many victims have deeply rooted psychological trauma that will require months, if not years of treatment and management.

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The Child Welfare Information Gateway, along with the collaboration with other agencies, has provided specific signs to look for in aiding to identify potential sex trafficking victims:

- A history of physical, emotional, or sexual abuse;
- Signs of current physical abuse and/or sexual abuse;
- History of running away or current runaway status;
- The sudden onset of expensive property, such as cell phones, jewelry, clothing or tattoo markings;
- The sudden withdrawal or lack of interest in activities previously interesting in.

The Child Welfare Information Gateway has also provided specific signs to look for in aiding to identify potential labor trafficking victims:

- The lack of freedom to come and go;
- The lack of payment or very little pay;
- Excessive or unusual work hours;
- No breaks at work, including lunch;
- Excessive amount of debt that cannot be paid off;
- Recruitment based on false promises related to the conditions of the work;
- Heightened security measures at work or place of residence;
- Unable to communicate their whereabouts and lacking sense of time.

It may be necessary for the child/youth trafficking victims to be removed from their home due to their parent's involvement in trafficking the child. It is imperative to assess the child/youth's needs and begin appropriate services as quickly as possible. The [Comprehensive Human Trafficking Assessment](#) can be completed with the child/youth by the worker to determine possible trafficking victimization.

It is vital to understand and remember that all children/youth who are trafficking victims are considered abused and neglected children by law, and they are entitled to receive services for the treatment of their victimization. Therefore, it is important to distinguish the difference in circumstances of how a child/youth becomes a victim of trafficking. The worker must take the necessary steps to ensure the situations, where parents are found not to be abusive or neglectful in their child/youth's trafficking victimization, are not entered as maltreaters in the abuse and neglect referral entered in CCWIS or while completing the assessment. The child/youth may be released to the non-abusive parent. In these cases where the parents are not the maltreater, the individual(s) accused or charged with trafficking the victim(s) is entered in CCWIS as the maltreater. If the parents are found to be the traffickers, they will be entered as the alleged maltreater in CCWIS and the referral will be assigned and assessed as an abuse and neglect referral. Law enforcement must be notified within 24 hours of receiving any human trafficking referral.

*Example: Children involved in the child welfare system may have also been trafficked by their own parents. An example of this would be: A thirteen year old youth is living with their father, who has a substance use disorder, is unemployed, and has no income. The father owes the drug dealer three hundred dollars and has no way of paying the drug dealer. The drug dealer informs the*

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*father, that they will consider the debt settled if the father allows them to have sex with the daughter. The father agrees. The father then sees this situation as an opportunity to get illegal substances for free and begins to advertise the daughter for sex in exchange for illegal substances. This child is an abused and neglected child in two ways. The child is abused and neglected by the father, and the child is abused and neglected as a victim of trafficking. This child would become involved with the child welfare system, as a petition would be filed against the father and the child would be removed from the home.*

For Initial Assessments involving Human Trafficking, the worker will:

- The intake and case will be opened in the name of the trafficker.;
- Choose the **“Maltreatment Type”** of *Abuse/ Human Trafficking/ Sex Trafficking by Parent, Sex Trafficking by Non-parent or Labor Trafficking by Parent, Labor Trafficking by Non-parent*. The substantiation of maltreatment will be assigned to trafficker or parent, non-parent or both in some cases;
- If an emergency ratification or emergency petition requesting custody is needed, the ratification or petition must indicate that the child/youth is a victim of trafficking.;
- An Emergency Ratification would allow the department to assume temporary custody of a trafficking victim and allow time for the non-abusive parent to be contacted. The parent may assume custody of the child/trafficking victim so long as abuse or neglect has not been alleged against that parent. In this instance, the worker would not file an emergency petition following the ratification.;
- **If it is discovered that the parents have abused or neglected the child, a separate CPS referral on the parents will be entered and identifying the types of maltreatment discovered during the assessment;**
- If a petition has been filed against the trafficker and removal has been documented but a petition is also necessary against the parent for abuse and/or neglect, the removal in the traffickers open case should be end dated in CCWIS and a removal episode should be documented in the open case of the parent.;
- **If the trafficker has children of their own, a separate referral must be made on the trafficker and their family if abuse and/or neglect has been alleged;**
- **If human trafficking was discovered *during* the Initial Assessment and Law Enforcement was not the original source of the referral, the worker will notify Law Enforcement within 24 hours of becoming aware of the trafficking.;**
- For assessments on the home of the trafficker, the worker will complete Maltreatment, Nature and Child Functioning assessment areas. Gather as much information about the trafficker as possible from Law Enforcement and other collaterals. Complete Maltreatment/Findings and Contacts in CCWIS. Any police reports or investigation findings that can be obtained should be uploaded to the file cabinet.;
- Services will be put in place to address the issues around the abuse and/or neglect suffered by the child victim of trafficking. [W. Va. Code §49-1-201\(B\)](#)

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For Initial Assessments involving Human Trafficking, the supervisor will:

- Follow the same rules and procedures for Initial Assessment as other assessments of child abuse and neglect.
- In situations requiring an incomplete assessment, the supervisor must ensure that a Finding of Maltreatment in the form of Trafficking is selected before submitting to the Child Welfare Consultant for approval.

#### **4.44 Initial Assessments Involving Unaccompanied Children in Disasters**

In the event of any natural disaster, the West Virginia Department of Health and Human Resources will assist in community efforts, when needed, to assure unaccompanied children remain safe. For those children who do not have family, friends or community resources to assure their safety, the Department of Health and Human Resources will use the following procedures.

[W. Va. Code §49-4-303](#) authorizes, prior to the filing of a petition, a child welfare worker to take the child or children into their custody (also known as removing the child) without a court order when:

- In the presence of a child welfare worker a child or children are in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children; and
- The worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered.

**The worker should always receive prior approval from their supervisor before taking custody of the child(ren).**

If a child or children should appear to be abandoned due to a natural disaster, emergency or accident, the worker will assume emergency custody of the child/children.

- The worker will follow established procedures and policies for other abandoned children if possible.;
- Gather as much information about the parent, children, and current situation as possible.;
- After taking emergency custody of the child(ren), the worker must request an order ratifying emergency custody with the Magistrate or file a petition alleging child abandonment pursuant to [W. Va. Codes §49-4-601](#) and [§49-4602.](#);
- In order to request an order ratifying emergency custody, the worker will take the child(ren) immediately to a Circuit Judge or a Magistrate, acting as the juvenile referee, in the county in which custody was taken, or if no such Judge or magistrate/juvenile referee be available, before a circuit Judge or magistrate/juvenile referee of an adjoining county, and make application for

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- an order ratifying the emergency custody. Note: *If a Circuit Court Judge is available, you must approach the Court with a request for an order of ratification before you approach the magistrate or juvenile referee;*
- The worker will receive the order giving custody from a magistrate/juvenile referee or Judge after filing the application. The application does not serve as the order; they are two different documents. If seeking emergency custody through a magistrate/juvenile referee, the worker is not to leave the magistrate's/juvenile referee's office without the order;
  - The worker does not need to take a template of the custody order with them but will need to ensure that certain language is contained in the order.
    - Specifically, the following language must be covered in the order:
      - that remaining in the home is contrary to the welfare of the child(ren);
      - that reasonable efforts are not required due to imminent danger to the child(ren);
      - that physical and legal custody are being granted to the Department of Health and Human Resources.

If the emergency custody is granted then the worker will initiate placement of the child in emergency family care, foster/adopt care or emergency shelter care.

- If placement with family members, foster care or emergency shelter is not possible during a natural disaster or emergency situation, the child/children will be taken to an established disaster relief site by the worker;
- Workers will provide supervision to the unaccompanied children at the disaster relief site as needed;
- The worker will see that the children's basic needs are met during the disaster or emergency situation to the best of their ability; and
- *(Please review Foster Care Policy Section 1.15 for more information concerning the court process when a child has been abandoned)*

### ***Time Limits on Worker Custody***

*When a request for emergency custody is ratified, the worker can retain custody of the child until the end of the next two judicial days unless a petition requesting temporary custody pending a hearing has been filed and custody of the child has been transferred to the Department by court order.*

- If the child's parents or family members are located before the end of the two judicial days, the child may be returned to the family at that time;
- If the family cannot be located, the worker will file the petition requesting temporary custody; or
- If the family is located after the DHHR has requested and received custody of the child/children, the worker can return the child/children to the parent or family members and then request that the petition requesting custody be dismissed at the first court hearing.

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## 4.45 Initial Assessments Involving Referrals on Families in the Military

During the 2018 Legislative session, [W. Va. Code §49-2-802\(c\)\(4\)](#) was revised to require the Department to make efforts as soon as practicable to determine the military status of parents whose children are subject to abuse or neglect allegations. If the worker determines that a parent or guardian is in the military, the worker shall notify a Department of Defense family advocacy program that there is an allegation of abuse and neglect that is screened in and open for assessment that relates to that military parent or guardian.

The worker will:

- Determine if a parent/parents of the child victim is a member of the military and the branch of the military in which they serve.
- Contact the appropriate branch by phone to make a report with the information below:

ARMY	NAVY
<p>Family Advocacy Program, US ARMY Carlisle Barracks  Family Advocacy Program Manager for WV, OH, and PA  Kelly Villalobos, LCSW-C  632 Wright Ave.  Carlisle, PA 17013  (717) 245-3775-office  (717)962-5267 (cell)  Email: <a href="mailto:Kelly.j.villalobos@civ.mail.mil">Kelly.j.villalobos@civ.mail.mil</a></p>	<p>Family Advocacy Program Manager  Lolita T. Allen, LCSW  Commander, Navy Installations Command (CNIC)  716 Sicard Street, SE, Suite 1000  Washington Navy Yard, DC 20373-5140  202 433-4683 (office)  571-455-5155 (cell)  Email: <a href="mailto:Lolita.allen@navy.mil">Lolita.allen@navy.mil</a></p>
	<p>Counseling, Advocacy, and Prevention (CAP) Program Manager  Crystal C. Griffen, LCSW  Commander, Navy Installations Command (CNIC)  716 Sicard Street, SE, Suite 1000  Washington Navy Yard, DC 20373-5140  (202) 433-4597 (office)  (910) 546-1671 (cell)  Email: <a href="mailto:crystal.c.griffen@navy.mil">crystal.c.griffen@navy.mil</a></p>
AIR FORCE	MARINE CORPS
<p>Clinical Director, Air Force Family Advocacy Program  Pamela S. Collins, LCSW  AFMOA/SGHW  Family Advocacy Branch</p>	<p>Family Advocacy Program Manager  Jayne Hart, LISW, MBA, CEIM  Section Head, Family Advocacy Program (MFCP2)  Behavioral Health Branch</p>

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<p>2261 Hughes Avenue, Suite 162  JBSA Lackland, TX 78236-1025  (210) 395-9156; DSN 969-9156  (210) 379-7262 (cell)  Email: <a href="mailto:pamela.collins@us.af.mil">pamela.collins@us.af.mil</a></p> <p>Chief, AF Family Advocacy Program  Christopher I. Patrick, LtCol, USAF, BSC  AFMOA/SGHW  Family Advocacy Branch  2261 Hughes Avenue, Suite 162  JBSA Lackland, TX 78236-1025 (210) 395-9090; DSN 969-9090  (210) 535-6906 (cell)  Email: <a href="mailto:christopher.patrick@us.af.mil">christopher.patrick@us.af.mil</a></p>	<p>Headquarter Marine Corps Base Quantico  3280 Russell Road  Quantico, VA 22134  COM: 703-784-1290  CELL: 703-457-0603  Email: <a href="mailto:jayne.hart@usmc.mil">jayne.hart@usmc.mil</a></p>
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- Follow up the verbal report by copying and pasting the following information contained in the Military Letter to your county or district letterhead.

#### 4.46 Initial Assessments Involving Temporary Assistance for Needy Families (TANF) Drug Testing

W. Va. Code §9-3-6(h) requires abuse and/or neglect referrals to be made by TANF staff if an individual has had their benefits suspended and has not designated a protective payee; or an individual's benefits have been terminated due to failure to pass a drug test.

For these referrals received from TANF staff, the worker will:

- Complete the Initial Assessment like any other assessment to determine if maltreatment is present and/or if children in the home are unsafe;
- W. Va. Code §9-3-6(h) requires an investigation and home visit; and
- Open the case for services to be provided if warranted by the assessment findings.

#### 4.47 Investigations Involving Institutional Investigative Unit (IIU) and Child Maltreatment in Group Residential and Resource Family Settings

##### Pre-Investigation

The primary purpose of investigation is to determine whether the child's needs for safety have been met, whether the incident occurred, whether child abuse or neglect occurred and whether the agency or provider is culpable.

For investigations of suspected child abuse or neglect involving a group residential facility or resource family care home the IIU Worker will:

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- Review the report and all previous reports, records and documentation on the agency or provider, alleged maltreater and identified child(ren) which are relevant to CPS/IIU;
  - Notify the following from the district of the alleged victim's origin: Social Services Manager, Caseworker/Adoption Worker, Regional Program Manager and Bureau for Social Service (BSS) Licensing Specialist (when involving a licensed agency) by e-mail or, in the case of a resource family home managed by the department's Homefinding unit, include the home finding program manager in lieu of the licensing specialist;
  - Notify the BSS Commissioner, appropriate Deputy Commissioner and the Deputy Commissioner of Programs and Policy of all out of state group residential investigations;
  - Notify the BSS Commissioner, appropriate Deputy Commissioner and the Deputy Commissioner of Programs and Policy of any investigations regarding allegations of sexual abuse or serious physical abuse;
  - Notify the licensed agency that a report has been received and will be investigated, providing their name and contact information and direct any actions to ensure safety of the resident(s) pending the completion of the investigation whenever sexual abuse or serious physical injury has been alleged;
  - Contact the agency or identified child's DHHR child welfare worker (depending upon whereabouts of the child) to verify current safety and well-being;
  - Verify whether the agency and/or DHHR child welfare worker has obtained a medical examination of the child, transferred or suspended the alleged maltreater, contacted law enforcement, removed or transferred identified child or changed or ceased a particular practice;
  - Require immediate removal of the foster children and prohibit any contact with the children and any new placements in the home until the investigation is completed whenever the report involves sexual abuse or serious physical injury to a child, or there is any other indication the home is unsafe;
  - Require immediate removal of the alleged maltreater(s) and prohibit any contact with the children in placement in the residential facility.;
- See Homefinding Policy section 8.2 for further details regarding the process and procedures for investigation of allegations of abuse and neglect in resource family homes and group residential settings.*
- Determine whether there are additional actions that should be taken to ensure safety of identified child and proceed as indicated;
  - Develop a plan for completion of the investigation (*See CPS Policy Section 4.3 regarding choice of sites and support persons for an interview*);
  - Forward a copy of any report of serious physical abuse, sexual abuse or assault to the appropriate law-enforcement agency, the Prosecuting Attorney or the coroner or medical examiner's office, per [W. Va. Code §49-2-809b](#);
  - Ensure that all mandated reporters receive written or verbal notification if an investigation into the reported suspected abuse or neglect has been initiated.

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Document the notification in CCWIS on the Contact screen identifying “reporter” as the Non-Client/Non-Collateral Participant.

**Note:** *If the agency refuses to participate in an investigation, the IIU Worker will immediately notify the Residential Licensing Specialist for further regulatory action.*

*If the investigation involves a resource family home, the IIU Worker will send written notification to the resource family informing them of the referral and if they fail to contest the allegation within twenty calendar days of receiving written notice, all foster care arrangements with them will be permanently terminated.*

### **Investigation**

In completing the investigation, the IIU Worker will:

Conduct interviews with:

- Administration
- Identified Child
- Staff
- Other residents
- Any other collaterals, as appropriate, including identified child’s worker
- Alleged maltreater

*Note: All interviews should be conducted privately. Whenever interviews are conducted within the same setting, all should be done on the same day and in sequential order, insofar as possible. The IIU Worker must provide identification to the interviewee and explain reasons for the interview and process for completing the investigation. The IIU Worker must inform the agency and alleged maltreater of the alleged child abuse or neglect. In those instances, in which it is known the alleged maltreater is represented by legal counsel in the matter, the Worker must have the consent of such counsel to conduct the interview. If so, the Worker should not continue the interview without first obtaining the permission of counsel to do so. The IIU worker may ask for assistance from the WV Department of Health and Human Resources caseworker and/or the home finder when arranging interviews with resource parents and children.*

- Review Agency or Provider Records;
- Document the interviews and other appropriate information within CCWIS by describing in as much detail as possible the information obtained from the interviews;
- Determine whether maltreatment occurred, utilizing the legal and operational definitions for child abuse or neglect and the preponderance of evidence standard;
- Take appropriate action at any point in the process to assure the safety of the child, pending the final outcome of the investigation. Possible actions may include the removal of the child or removal of alleged maltreater’s access to children.

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### ***Conclusion of Investigation***

To conclude the investigation, the IIU Worker will:

- Complete the investigation, including all documentation, within sixty days of the receipt of the report;
- Prepare a copy of the "IIU/CPS Summary Report" (IIU-0527). Save the report within the CCWIS file cabinet;
- Transmit the investigation and report to the IIU supervisor for review and approval.

The IIU supervisor will;

- Review and approve investigation and report, as indicated.

### ***Corrective Action Plan***

The IIU Worker, upon supervisory approval, will:

- Provide a copy of the "IIU/CPS Summary Report" (IIU-0527) to the agency or Home Finding Program Manager;
- Notify the following from the district of the alleged victim's origin: Social Services Manager, Caseworker/Adoption Worker, Regional Program Manager; Bureau for Social Services (BSS) Licensing Specialist (when involving a licensed agency), by e-mail of the findings of the investigation or, in the case of a resource family home managed by the department's Homefinding unit, include the home finding program manager in lieu of the licensing specialist;
- The Home Finding unit or Residential Licensing Specialist will determine policy or licensing violations based on the information provided within the IIU/CPS Summary Report;
- The child(ren)'s immediate needs for safety, medical care and/or removal are addressed, especially whenever the report involves sexual abuse or serious physical injury to a child(ren) or the home is unsafe (*See Homefinding Policy Section 8.2 Investigations of Allegations of Abuse and/or Neglect in Resource/Adoptive Family Homes*);
- If noncompliance is identified in group residential facilities or specialized foster care agencies the Residential Child Care Licensing Specialist will direct the Child Placing agency or group residential facility to develop a time limited Corrective Action Plan. For DHHR Resource Family Homes the Home Finding supervisor will direct the Home Finder to develop a time limited Corrective Action Plan. The development of all Corrective Action Plans must be time limited with clear and specific objectives to be accomplished (*See Homefinding Policy Section 8.1 Non-Compliance and Corrective Action*);
- Failure to cooperate with the terms of the corrective action plan and/or to correct existing situations identified in the corrective action plan will result in the closure of the home or group residential facility (*See [Homefinding Policy Section 8.1 Non-Compliance and Corrective Action](#)*);

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- Send each maltreater a Findings letter in accordance with policy. When maltreatment has been substantiated, this letter must be sent certified. Save a copy of each Findings letter and Certified Mail Receipt to the File Cabinet.
- Notify the resource family home in writing that foster care arrangements are being terminated and provide a copy of the IIU Summary report when it is determined that child abuse or neglect occurred in a resource family home, per [W. Va. Code §49-4-111\(a\)](#);
- Ensure that all mandated reporters receive written notification of when the investigation has been completed. Document the notification in CCWIS by saving the written notification to the file cabinet.

*Note: Upon closure of the investigation, a notification letter will be sent to the alleged maltreater, informing them of the official findings, how the findings may be used and right to appeal.*

#### **Corrective Action and Monitoring**

The primary purpose of corrective action and monitoring is to assure that any factors contributing to the occurrence of child abuse or neglect and/or non-compliance with regulations or policies are rectified.

For investigations resulting in a Corrective Action Plan, the Residential Licensing Unit or Home Finding Unit will;

- Ensure that all the problems identified in the investigation that contributed to abuse or neglect or non-compliance with regulations or policies are adequately addressed in the Corrective Action Plan.

### **4.48 Investigations Involving the Institutional Investigative Unit (IIU) and Child Maltreatment in School Settings**

#### **Pre-Investigation**

For investigations of suspected child abuse and neglect perpetrated by school personnel, the worker will:

- Review the report and all previous reports, records, and documentation on the school personnel which are relevant to CPS;
- Contact the child's parent or guardian to advise them of the report, verify the child's immediate condition and make arrangements for completion of the investigation;
- Contact the school principal to advise them of the report and to verify current safety of the child in the school setting;
- Determine whether there are additional actions that should be taken to ensure safety of identified child and proceed as indicated;
- Develop a plan for completion of the investigation (*See CPS Policy Section 4.3 regarding choice of sites and support persons for an interview*);

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- Forward a copy of any report of serious physical abuse, sexual abuse or assault to the appropriate law-enforcement agency, the Prosecuting Attorney or the coroner or medical examiner's office, per [W. Va. Code §49-2-809\(b\)](#);

Forward a copy of the report to the Multidisciplinary Investigative Team. Ensure that all mandated reporters receive written or verbal notification if an investigation into the reported suspected abuse or neglect has been initiated. Document the notification in CCWIS on the Contact screen identifying "reporter" as the **Non-Client/Non-Collateral Participant**

### ***Investigation***

In completing the investigation, the worker will:

Conduct interview with:

- School Administration
- Identified Child, Staff, as indicated
- Other children, as indicated
- Any other collaterals, as indicated, including identified child's parent or guardian
- Alleged maltreater

*Note: All interviews should be conducted privately. Whenever interviews are conducted within the same setting, all should be done on the same day and in sequential order, insofar as possible. The IIU Worker must provide identification to the interviewee and explain reasons for the interview and process for completing the investigation. The IIU Worker must inform the school and alleged maltreater of the alleged child abuse or neglect. In those instances, in which it is known the alleged maltreater is represented by legal counsel in the matter, the Worker must have the consent of such counsel to conduct the interview. If so, the Worker should not continue the interview without first obtaining permission of counsel to do so.*

- Review school records relevant to the investigation of the alleged incident.
- Document the interviews and other appropriate information within CCWIS by describing in as much detail as possible the information obtained from the investigation.
- Determine whether maltreatment occurred, utilizing the legal and operational definitions for child abuse or neglect and the preponderance of evidence standard.

### ***Obtaining Video Recordings from Schools for Completion of the IIU Investigation*** IIU

workers may request to view or to be provided a copy of video recordings from a public school or school district to complete an IIU investigation of allegations of child abuse or neglect. The IIU worker may verbally or in writing make a request to the district

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Superintendent or designee to view or be provided a copy of video recordings. Within seven days of the request, the school or school district must allow the worker to view the requested video or provide the requested video recording to the IIU worker. The IIU worker will:

- **NOT** distribute any video recording provided by a school or school district;
- Keep all video recordings in a secure, locked location during an investigation;
- View video recordings in a private location;
- NOT delete, destroy or dispose of any video recordings as they are a part of the IIU record; and
- Send all video recordings to the IIU supervisor with an attached designated cover letter, "Investigation Face Sheet", at the completion of an investigation.

If a request for viewing or a copy of the video is denied or not provided by the school or school district, the IIU worker will:

- Provide a written request to the school district superintendent or designee which includes the investigation number, name/contact information of IIU worker and supervisor, and what is being requested;
- Notify the IIU Supervisor;
- Submit a summary of the allegations and reason for requesting to view the video recording or obtain a copy of the video recording to the IIU Supervisor;
  - include when and to whom the request was submitted; and
  - include any information as to why the request was denied, if known.

Once the IIU Supervisor has received the summary, the IIU Supervisor will:

- Review the allegations and reason for requesting to view the video recording or obtain a copy of the recording from the IIU worker;
- Determine if the video recording is necessary for completion of the investigation;
- Submit a summary to General Counsel for review, if the request to view or obtain a copy of the video recording is denied: and
- Request General Counsel to assist in obtaining the video recording that was requested per [W. Va. Code §18-20-11\(l\)\(1\)](#).

If a video recording is to be presented during an Administrative Hearing with the Board of Review as part of evidence, the usage of the video shall conform to [Common Chapters 700](#) governing the Board of Review, as well as an Administrative Order pursuant to [W. Va. Code §18-20-11\(l\)](#).

### ***Conclusion of the Investigation***

To conclude the investigation, the IIU Worker will:

- Complete the investigations, including all documentation, within sixty days of the receipt of the report;
- Prepare a copy of the "IIU/CPS Summary Report for Schools". Save the report within the CCWIS file cabinet;
- Transmit the investigation and report to the IIU supervisor for review and approval.

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The IIU supervisor will:

- Review and approve investigation and report, as indicated.
- Store all video recordings from schools or school districts in a secure, locked location.
- NOT delete, destroy or dispose of any video recordings as they are a part of the IIU record and must confidentially maintain the recording.

The IIU Worker, upon supervisory approval, will:

- Provide a copy of the “IIU/CPS Summary Report for Schools” to school administration (the School Principal and the county Superintendent of Schools) and to the identified child’s parent or guardian;
- Ensure that all mandated reporters receive written notification of when the investigation has been completed. Document the notification in CCWIS by saving the written notification to the file cabinet.

If the parent does not believe a resolution has been reached, the worker or supervisor will advise the parent to:

- Contact the school principal;
- Contact the school principal’s superior at the county board of education office;
- Contact the president of the county board of education;
- Contact the state Department of Education.

*Note: Upon closure of the investigation, a CPS notification letter will be sent to the alleged maltreater, informing them of the official findings, how the findings may be used and right to appeal.*

#### **4.49 Investigation Involving Institutional Investigative Unit (IIU) and Licensed Child Care Centers/Registered Family Child Care Facilities/Registered Family Child Care Homes**

##### ***Pre-Investigation***

The primary purpose of investigation is to determine whether the child’s needs for safety have been met, whether the incident occurred, whether child abuse or neglect occurred and whether the agency or provider is culpable.

For investigations of suspected child abuse or neglect involving a licensed child care center or registered family child care home, the IIU Worker will:

- Review the report and all previous reports, records, and documentation on the center/facility, alleged maltreater and identified child(ren) which are relevant to CPS/IIU;
- Notify the Regulatory Program Manager, supervisor, Regulatory Specialist and the Child Care Licensing Program Manager, Child Care Licensing Specialist by e-mail that a report has been received and will be investigated, providing the IIU

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Worker's name and contact information and whether a copy of the report will be forwarded to law enforcement and the Prosecuting Attorney;

- Notify the licensed child care center or registered family child care home that a report has been received and will be investigated, providing their name and contact information and direct any actions to ensure safety and well-being of the children. At this time, the IIU worker can arrange for the most desirable location to conduct interviews with the child care provider(s);
- Verifying whether the center/facility removed the alleged maltreater from access to the child, transferred or suspended the alleged maltreater, contacted law enforcement, changed, or ceased a practice;
- Contact the identified child's parent or guardian to advise them of the report, verify the child's immediate condition and make arrangements for completion of the investigation;
- Determine whether there are additional actions that should be taken to ensure safety of identified child and proceed as indicated;
- Develop a plan for completion of the investigation (*See CPS Policy Section 4.3 regarding choice of sites and support persons for an interview*);
- Forward a copy of any report of serious physical abuse, sexual abuse or assault to the appropriate law-enforcement agency, the Prosecuting Attorney or the coroner or medical examiner's office, per [W. Va. Code §49-2-809\(b\)](#);
- Ensure that all mandated reporters receive notification if an investigation into the reported suspected abuse or neglect has been initiated.

*Note: If the center/facility/home refuses to participate in an investigation, the IIU will immediately notify the Child Care Licensing Program Manager or Regional Child Care supervisor for further regulatory action.*

### **Investigation**

In completing the investigation, the IIU Worker will:

Conduct interviews with:

- Administration;
- Identified Child;
- Staff;
- Other children;
- Any other collaterals, as appropriate, including identified child's parent or guardian, the Child Care Regulatory Specialist or Child Care Licensing Specialist;
- Alleged maltreater.

*Note: All interviews should be conducted privately. Whenever interviews are conducted within the same setting, all should be done on the same day and in sequential order, insofar as possible. The IIU Worker must provide identification to the interviewee and explain reasons for the interview and process for completing the investigation. The IIU Worker must inform the agency and/or alleged maltreater of the alleged child abuse or*

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*neglect. In those instances, in which it is known the alleged maltreater is represented by legal counsel in the matter, the Worker must have the consent of such counsel to conduct the interview. If so, the Worker should not continue the interview without first obtaining the permission of counsel to do so.*

- Review center/facility records;
- Document the interviews and other appropriate information within CCWIS by describing in as much detail as possible the information obtained from the interviews;
- Determine whether maltreatment occurred, utilizing the legal and operational definitions for child abuse or neglect and the preponderance of evidence standard; and
- Take appropriate action at any point in the process to assure the safety of the child, pending the outcome of the investigation, including the removal of the child.

### ***Conclusion of Investigation***

To conclude the investigation, the IIU Worker will:

- Complete the investigation, including all documentation, within sixty days of the receipt of the report;
- Prepare a copy of the "IIU/CPS Summary Report" (IIU-0527). Save the report within the CCWIS file cabinet;
- Transmit the investigation and report to the IIU supervisor for review and approval.

The IIU supervisor will;

- Review and approve investigation and report, as indicated.

The IIU Worker, upon supervisory approval, will:

- Provide a copy of the "IIU/CPS Summary Report" (IIU-0527) to the center/facility administrator or Regulatory Child Care Program Manager, supervisor and Regulatory Specialist;
- Notify the Child Care Licensing Program Manager and the Child Care Licensing Specialist or the Regional Child Care supervisor and Child Care Regulatory Specialist by e-mail of the findings of the investigation and provide a copy of the "IIU/CPS Summary Report" (IIU-0527);
- The Regional Child Care supervisor or Child Care Licensing Specialist will determine policy or licensing violations based on the information provided within the IIU/CPS Summary Report;
- If noncompliance is identified in a Child Care Center the Child Care Licensing Specialist will address the need for a corrective action plan with the Child Care Center. For Registered Family Child Care Facilities/Registered Family Child Care Homes the Regional Child Care supervisor will direct the Child Care Regulatory Specialist to develop a Corrective Action Plan;

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- Ensure that all mandated reporters receive written notification of when the investigation has been completed. Document the notification in CCWIS by saving the written notification to the file cabinet.

*Note: Upon closure of the investigation, a CPS notification letter will be sent to the alleged maltreater, informing them of the official findings, how the findings may be used and right to appeal.*

### **Corrective Action and Monitoring**

The primary purpose of corrective action and monitoring is to assure that any factors contributing to the occurrence of child abuse or neglect and/or non-compliance with regulations or policies are rectified.

### **Corrective Action Plan**

For investigations resulting in a Corrective Action Plan, the Child Care Licensing or Regional Child Care Unit will:

- Ensure that all the problems identified in the investigation that contributed to abuse or neglect or non-compliance with regulations or policies are adequately addressed in the CAP.

### **Monitoring**

Whenever a CAP has been approved and implemented, the Child Care Licensing or Regional Child Care Unit will:

Verify through written documentation and/or on-site reviews whether the steps of the CAP have been carried out and whether the desired results have been achieved.

## **SECTION 5 - CASE TRANSFER TO ONGOING SERVICES**

### **5.1 Introduction**

The determination that a family requires ongoing child welfare involvement should be made immediately upon conclusion of the initial assessment process. The decision to provide ongoing child welfare services means a likely transfer from an Initial Worker to an Ongoing Worker, requiring conference between the two (2) workers and their supervisors and decisions about how best to proceed to case planning. Transferring cases from the initial phase of child welfare to the ongoing phase of child welfare services requires:

- The handoff of all documentation of the initial assessment from the initial assessment worker to the ongoing child welfare worker;
- A Case Transfer Meeting by the Initial Worker with the Ongoing Worker and appropriate supervisors, and;
- Review of the appropriateness of the current Safety Plan, if applicable.

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There may be situations in which a child has been maltreated but there are no ongoing Safety Threat(s). In these instances, it will not be feasible to complete a Safety Plan. However, the Department has a codified responsibility to provide services to these children and families. In these specific situations *please review Section 5.3 Ongoing Services to Maltreated Children that are Safe.*

## **5. 2 Case Transfer Meeting**

The intent of the Case Transfer Meeting is to ensure that there is adequate attention to child safety at the initiation of ongoing child welfare services, and to prepare the Ongoing Worker for the completion of the Ongoing Assessment and Case Plan.

### **A. Case Transfer Timeframe**

- The Initial Worker's supervisor must arrange for scheduling the Case Transfer Meeting within three (3) calendar days of the approval of the initial assessment and the Safety Plan.
- The Ongoing supervisor will notify the prospective Ongoing Worker of the transfer, so the worker may review the case prior to the staffing.
- The Case Transfer Meeting must occur within seven (7) calendar days of the disposition of the initial assessment process but can occur during the implementation of the Safety Plan.
- The Case Transfer Meeting must occur between the Initial Worker and Ongoing Worker. The Initial Worker's supervisor and the Ongoing supervisor should attend and participate in the Case Transfer Meeting.
- The Initial Worker must maintain responsibility for managing the Safety Plan until the Case Transfer Meeting occurs with the Ongoing Worker and the case transfer is complete.

### **B. Documentation Review and Supervisor Consultation**

The Ongoing Worker must review the initial assessment, Safety Plan and case decision-making prior to the Case Transfer Meeting. Assessment information collected, and documentation related to safety about the family together, caregivers, and children inform decision-making for the Case Plan and serve as the fundamental basis for discussions during the planning process.

When reviewing documentation, the Ongoing Worker must seek to identify and understand the following:

- The sufficiency of information necessary to assess safety, Maltreatment, Nature (Surrounding Circumstances), and each family member within the household;
- How the information gathered indicates the need for action; and
- The Safety Plan identified safety resources, and its sufficiency in controlling for identified Safety Threat(s).

In certain circumstances, the Initial Worker's supervisor (if applicable) or Initial Worker may need to be contacted prior to the Case Transfer Meeting to reconcile significant questions regarding case information and/or decision-making including but not limited

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to:

- Quality and quantity of assessment information;
- Clarity and justification of decision making;
- Clarity regarding Safety Threat(s);
- Basis for safety decisions;
- Safety Plan approach, rationale, and responsibilities;
- Rationale for the decision to open the case for ongoing services; and
- Nature and quality of client response to CPS.

#### C. Case Transfer Meeting Content

Content to be addressed during the Case Transfer Meeting between workers and supervisors must include:

- Significant information collected during the initial assessment process and the meaning and relationship between pieces of information;
- Any gaps in information and rationale for decision-making;
- A thorough review of the initial assessment;
- Review of current Safety Plan and identified safety resources;
- Discuss existing family and individual strengths, if known;
- Status of caregiver involvement with CPS; anticipation of how caregivers will react to ongoing CPS and likelihood to participate in the case planning process;
- Suggestions for how to best proceed in completing the case planning process.
- Review of existing court orders, upcoming court obligations and timeframes for the completion of court reports if applicable; and
- Review of visitation schedule and logistics, if applicable.

#### D. Safety Management Responsibilities at Case Transfer

While Safety Plans that were developed during the initial assessment process may have been determined to be sufficient, it is important to recognize that even a slight shift in circumstances or caregiver perception and commitment can render a Safety Plan ineffective or unnecessary.

As the Ongoing Worker assumes responsibility for safety management, it is crucial that Safety Plan sufficiency is thoroughly evaluated to determine if CPS must act promptly to begin adjusting a Safety Plan.

- The Initial Worker and supervisor must determine that the Safety Plan is sufficient prior to a case being transferred and assigned to the Ongoing Worker.
- If it is determined adjustments must be made, it is the responsibility of the Initial Worker to contact the necessary providers (formal and informal) to make the required adjustments.

#### **Determining Safety Plan Sufficiency at Case Transfer**

By the conclusion of the Case Transfer Meeting it must be reconfirmed that a Safety Plan is sufficient. Confirmation of Safety Plan sufficiency must include a consideration of the following:

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- The Initial Assessment supports the decision to keep a child separated from their caregiver or keep them in their home;
- The Safety Plan is the least intrusive means possible for controlling and managing child safety based on the results of the Initial Assessment;
- Identified safety actions match up with how Safety Threat(s) are occurring in the family;
- Clarity regarding who is responsible for each of the identified safety activities, and; and
- Safety resources are available and implemented at the frequency and level of effort required to control Safety Threat(s).

#### **Modifying the Safety Plan at Case Transfer**

- If a child is separated from their caregiver at the time of the Case Transfer Meeting and it is determined that a less intrusive Safety Plan can be implemented, a Continuing Safety Evaluation must be completed to justify the decision to reunify with the implementation of a new Safety Plan.
  - If a petition has been filed for the removal of the children, then the Prosecuting Attorney must be consulted and if already convened, the MDT must be advised of the results of the Continuing Safety Evaluation for placement decision.

### **5.3 Ongoing Services to Children Abused or Neglected but Safe**

Following the completion of Initial Assessment, certain cases may have a finding that child abuse or neglect occurred but there will be no identified Impending Safety Threats. In those situations, the case **must** be open for Ongoing Child Protective Services.

Before Case Transfer, the child welfare worker and supervisor will determine if there is an ASO Service Provider who can complete a Needs Assessment. If so, the child welfare worker will complete the referral process for the Needs Assessment and send the ASO Provider a copy of the Initial Assessment, ASO referral form, and communicate with the provider that the needs assessment must be completed within 30 days and the family referred to community services to address the problems that lead to the maltreatment.

The Child Welfare Worker and supervisor will staff the case as per *CPS Policy Section 5.2* with the Ongoing Worker and supervisor. If no ASO Provider is available to complete a Needs Assessment, the Ongoing Worker will contact the family within five working days, explaining the purpose of the Service Plan and complete the Service Plan with the family based upon information collected during the Initial Assessment as well as additional information provided by the family. (*note the Initial Assessment will substitute for the Needs Assessment*). The Service Plan must be completed within 30 days of the findings of maltreatment, signed, and uploaded to the CCWIS filing cabinet.

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The Ongoing Worker will continue to monitor the case and make monthly face to face contact with the family during the 90 days, whether an ASO Needs Assessment is being done by a provider or the Ongoing Worker is doing a Service Plan. Prior to the 90 days, the Ongoing Worker will:

- Ensure that the Needs Assessment done by the ASO provider, monthly reports, and service plan have been completed, reviewed, and uploaded to the CCWIS Filing Cabinet;
- Services have been end dated for the ASO Needs Assessment;
- If an ASO provider was not used, upload the Service Plan done by the Ongoing Worker and end date any services listed on the service log;
- Follow up with service providers regarding their contact with the family during the last 90 days and document all contacts;
- Ensure all monthly face to face contacts with the family by the Ongoing Worker have been documented within three business days of the completion of the contact;
- Ensure no new referrals or safety concerns have arisen during the 90 days by reviewing CCWIS and any Needs Assessment completed by an ASO Provider;
- Request closure of the case.

At any time during the 90 days that the case is open, any new concerns for maltreatment or safety require a new intake assessment to be completed and screened appropriately.

## **SECTION 6 ONGOING SAFETY MANAGEMENT**

### **6.1 Introduction**

After case transfer, it is the responsibility of the ongoing child welfare worker to assure the safety of the child(ren) going forward. Ultimately, it is the mission of CPS to enable the child's known caregivers to provide a safe environment for their child(ren). However, until caregivers can restore the necessary protective factors to ensure child(ren) safety themselves, the Ongoing Worker will manage child(ren) safety through the implemented Safety Plan. The requirement of the Ongoing Worker to effectively manage safety and related services is an ongoing responsibility throughout the life of the case. The Ongoing worker will utilize the Initial Assessment, Ongoing Assessment once completed (see section 7), and the Continuing Safety Evaluation to help evaluate changes within the family as it relates to safety.

### **6.2 Managing Safety and the Safety Plan**

Ongoing Workers are accountable, among other things, for the Ongoing Assessment and analysis of Safety Threat(s) and the management of Safety Plans. Generally, managing a Safety Plan requires:

- Continually evaluating the sufficiency and ongoing commitments of current safety resources;
- Continually evaluating Safety Threat(s);

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- Revising Safety Plans when necessary; and
- Ensuring open communication with families and safety resources.

To ensure the ongoing sufficiency of Safety Plans, the Ongoing Worker must:

- Have frequent contact with caregivers, children, and with formal and informal safety resources to ensure the Safety Plan is being followed as detailed and it is continuing to provide safety.
- Face-to-face contact must occur once per month with all household members, but more frequent contact may be necessary and/or directed at the discretion of the supervisor.
- If there is an infant in the home under age one, the Ongoing Worker should observe the sleeping conditions of the infant and review safe sleep practices with the parent or caregiver.
- Have contact monthly with all identified safety resources.
  - All safety resources must be informed of their requirement to report Safety Threat(s) as they arise.
- Immediately contact family, caregivers, children, and safety resources should there be an indication of a need to make changes to the plan.

Based on discussions with caregivers and safety resources, the Ongoing Worker must decide the appropriateness of the level of involvement needed to assure child safety. If changes in case circumstances indicate that a less intrusive Safety Plan can assure child safety, the Ongoing Worker must consult with a supervisor about modifying the safety resources in the Safety Plan. Likewise, if the worker discovers a Safety Plan must be intensified, by adding safety resources or frequency of safety related services, the worker will revisit the Ongoing Assessment to reevaluate the identified impending safety threats. Although the Case Plan and Safety Plan are two distinct and separate plans, they are reevaluated concurrently every 90 days (See CPS Policy Section 8.3 Case Plan and Safety Plan Reevaluation).

### **Managing Safety Plans that include the Safety Resource of Foster Care Services**

Safety Plans which contain a separation from the caregiver as a safety resource have the additional requirement of ensuring the child's safety in the placement environment. The standard for managing safety in placement is consistent with requirements set forth in the Adoption and Safe Families Act. The Ongoing Worker is responsible for a child's safety by assuring the absence of Safety Threat(s) or indications of maltreatment in the placement setting. Ensuring the child is safe in the placement environment is part of evaluating the ongoing effectiveness of the safety resource. To properly evaluate the effectiveness of the placement safety resource, the worker must:

- Ensure adequate contact with each child and substitute caretaker.
  - Face-to-face contact by the child welfare worker must occur no less than once per calendar month.
  - Telephone contact must occur at least two times each calendar month, with each substitute caretaker and child, as age appropriate.

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- If a child is placed through a child placing agency (CPA), the child's Department child welfare worker must make telephone contact with the child at least once during a calendar month.
- If the child is placed through a CPA, the child's Department child welfare worker is responsible for making a face to face contact with the child at least once every three calendar months.
- Contact's must include private and individual discussion with each child, and.
- All face to face contacts should be entered into the electronic database within three business days of the completion of the contact.
- Discuss with their supervisor the adequacy of established frequency of telephone and face-to-face contact.

Ongoing Workers must also ensure Safety Plans which require a separation from the child's known caregiver, include a visitation plan enabling face-to-face and/or telephone contact between the child(ren) and their respective caregiver(s). Visitation plans should be established to be the least intrusive while ensuring safety. Thus, visitation plans may include supervision by an appropriate individual. If it is believed that visitation with the caregiver will compromise the child's safety, then the Ongoing Worker must document on the visitation plan that visitation will not occur and the reasons safety is of concern.

Worker contacts with children who are receiving Foster Care Services must consider a myriad of factors to determine the appropriateness and effectiveness of the safety resource. These considerations include:

- The child's adjustment to the placement setting;
- The child's needs and the extent to which needs are being met;
- Changes in the placement setting that may influence the sufficiency of the Safety Plan; and
- Concerns or issues being expressed by the child(ren) or placement provider that require a prompt response and/or additional support for the placement.

#### **Requirements for Immediate Contact with a Child in the Placement Setting**

Ongoing Workers must make immediate contact with the placement provider and children in the placement setting if there is an indication of maltreatment or Safety Threat(s). A referral for CPS must be made in these situations.

If the placement setting is a certified resource family home or non-certified placement and general concerns or issues arise, the Ongoing Worker should address this with the resource parent(s). If there are conditions where abuse or neglect has occurred or is likely to occur as defined by statute, a CPS Referral should be made at that time.

#### **Supervisor Consultation**

Supervisor consultation and approval of the safety resource for foster care services must occur anytime a safety decision is being made. These consultations must occur at least monthly and:

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- Confirm the continued need for placement.
- Determine whether the intrusiveness of the Safety Plan continues to be necessary.
- Reconfirm that the placement setting continues to be a safe environment.

Supervisor consultation must occur any time concerns for child safety emerge in the placement setting.

Supervisory approval of the Safety Plan and the placement, if applicable, must occur every 90 days (following placement) as part of the Case Plan Evaluation and the formal Continuing Safety Evaluation.

## **SECTION 7 ONGOING ASSESSMENT**

### **7.1 Introduction**

The ongoing assessment process is a structured interactive process that is intended to build partnerships with caregivers to identify and seek agreement regarding what must change related to child safety. This allows for the meaningful development of family case plans that will effectively address caregiver protective factors and meet child needs. The ongoing assessment should be completed within the first 15 days of case transfer to ongoing services. When caregivers are reluctant or uncooperative in the ongoing assessment process the worker should review the Section 8 Case Planning policy subsection, “Uncooperative Caregivers” and consult with their supervisor on how best to proceed.

The Ongoing Worker will need to review the Safety Plan and complete the ongoing assessment process to determine if all Safety Threat(s) are being adequately addressed and identify additional family needs and strengths which may need to be addressed in case planning. The worker will:

- Make face-to-face contact with all family members.
- Interview each family member and gather information to adequately complete the Ongoing Assessment.
- Interview collaterals, as necessary.
- All face to face contacts should be entered into the electronic database within three business days of the completion of the contact.
- Review relevant documentation.
- If there is an infant in the home under age one, the Ongoing Worker should observe the sleeping conditions of the infant and review safe sleep practices with the parent or caregiver.

Once the Ongoing Assessment is completed, the worker will utilize this information throughout the life of the case. The Ongoing Assessment must be revisited at least every 90 days, or sooner due to a change in circumstances.

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## 7.2 Identifying Protective Factors

Several concepts are central to effective case planning; family centered practice, a safe home environment and caregiver Protective Factors. The identification of Protective Factors is central to the development of an effective Case Plan. Caregiver Protective Factors are personal and parenting behavior and cognitive and emotional characteristics that can be associated with being protective of one's children. Caregiver Protective Factors are "strengths" that are specifically associated with one's ability to perform effectively as a caregiver and to provide and assure a safe environment. Likewise, the absence of caregiver Protective Factors, or a substantially diminished factor may be viewed as a "need" which would require case planning to enhance. The charts below identify Protective Factors and provide examples:

Cognitive Factors	
Factor	Definition
Caregiver Understands Protective Role	<i>The caregivers understand their protective role, understand why it is important, and can articulate a plan to protect the child(ren). The caregiver(s) that can understand there are certain responsibilities and obligations in protecting the child(ren).</i>
Caretaking Knowledge	<i>The caregiver(s) have adequate knowledge to fulfill caretaking responsibilities and tasks. The caregiver(s) knows how to provide basic care to keep the child(ren) safe.</i>
Caregiver Oriented	<i>The caregiver(s) is reality oriented and perceives reality accurately. The caregiver(s) possess mental awareness and accuracy about one's surroundings. The caregiver(s) demonstrates they are alert to, recognize, and respond to threatening situations and people.</i>
Caregiver Perceptions of Child	<i>The caregiver(s) has accurate perceptions of the child(ren). The caregiver sees and understands the child(ren)'s needs, strengths, and limitations. The caregiver(s) can explain what a child(ren) needs for protection and why.</i>
Caregiver is Self-Aware	<i>The caregiver(s) can understand the cause and effect relationship between their own actions and how the results will affect their child(ren).</i>

Emotional Factors	
Factors	Definition
Caregiver Emotional Needs	<i>The caregiver(s) is reasonably able to meet their own emotional needs in a way that does not endanger the child(ren) safety. The caregiver(s) emotional stability and</i>

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	<i>resiliency allows them to recover quickly and to protect the child(ren). The caregiver(s) needs, and feelings do not immobilize them or reduce their ability to react promptly and appropriately with respect to protectiveness.</i>
<b>Tolerant Caregiver</b>	<i>The caregiver(s) can articulate that they see the “big picture”. The caregiver(s) do not overreact to situations and are able to accept, understand, and respect their caregiving role.</i>
<b>Emotionally Protective and Attached</b>	<i>The caregiver(s) has a strong bond with their child(ren). The caregiver(s) shows affection, warmth, and empathy and shows compassion through sheltering and soothing the child(ren). The caregiver(s) makes it clear through their words and actions that their child(ren) is their top priority.</i>

<b>Behavioral Factors</b>	
<b>Factors</b>	<b>Definition</b>
<b>Protective Caregiver</b>	<i>The caregiver(s) demonstrate clear and reportable evidence of protective behavior.</i>
<b>Caregiver Action</b>	<i>The caregiver(s) uses a positive course of action to resolve issues.</i>
<b>Impulse Control</b>	<i>The caregiver(s) think about consequences prior to reacting and act accordingly and appropriately.</i>
<b>Caregiver Skills</b>	<i>The caregiver(s) possesses skills and demonstrates those necessary skills to provide basic care to their child(ren).</i>
<b>Prioritizes Child’s Needs</b>	<i>The caregiver(s) prioritizes their child(ren)’s needs above their own.</i>
<b>Adaptive Caregiver</b>	<i>The caregiver(s) adjusts to changing situations and environments and can be creative and flexible in safely and positively caring for the child(ren).</i>
<b>Assertive Caregiver</b>	<i>The caregiver(s) is positive and assertive in advocating for their child(ren).</i>
<b>Caregiver Resources</b>	<i>The caregiver(s) uses resources, including community, public, and private resources to meet child(ren) needs.</i>
<b>Supportive Caregiver</b>	<i>The caregiver(s) consistently demonstrates actual and observable acts of sustaining, encouraging, and maintaining</i>

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	<i>a child(ren)'s psychological, physical, and social well-being.</i>
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Ongoing Workers assessment of families should be focused on identifying which of these factors are diminished causing the identified Safety Threat(s). Ongoing Workers will also identify those Protective Factors which are enhanced and may be leveraged to support safety while enhancing those factors which are diminished.

In addition to identifying the caregiver's needs, the Ongoing Worker must be vigilant in understanding and identifying each child's needs. Children are often left traumatized by the abuse and neglect they experience. Identifying needs and case planning for the abused or neglected child is critical to assuring the child's well-being. While the central goal of Child Protective Services is to enhance caregiver's Protective Factors to such an extent that they can provide for their child's needs themselves, it is the responsibility of the Ongoing Worker to ensure the child(ren)'s needs are met until the caregiver(s) can sustain this role themselves.

### 7.3 Identifying the Child's Needs

Child and family wellbeing are an important part of ensuring sustainable safe living environments. Ongoing Workers should focus on assessing educational, physical, and mental health needs and ensuring child(ren) receive adequate services. Similar to assessing caregiver protective factors, workers will utilize face-to-face contacts, collateral interviews, and relevant documentation review to identify a child(ren)'s needs. The chart below provides examples of information gathering areas to adequately assess a child's needs.

Educational Needs	
School Attendance	<i>The school-age child regularly attends school and is on time.</i>
Academic Achievement	<i>The child is academically progressing and is not in jeopardy of failing. A child has a special education plan that is working and is achieving and progressing.</i>
School Relationships	<i>The child has appropriate and reliable relationships with school teachers and administrators.</i>

Physical Health Needs	
Health Screenings	<i>The child has access to medical and dental treatment and vision screenings when needed and has regular well-child visits.</i>
Immunizations	<i>The child is up to date on all necessary immunizations and receives immunizations when they are due.</i>
Nutrition	<i>The child who receives proper nutrition.</i>

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<b>Auxiliary Aids</b>	<i>The child, who has physical health limitations including physical disabilities, has the necessary aides or devices to meet needs.</i>
<b>Developmental Milestones</b>	<i>The child is achieving developmental milestones on time.</i>

<b>Mental Health</b>	
<b>Behaviors</b>	<i>The child's behavior is age and developmentally appropriate.</i>
<b>Mental Health Diagnosis</b>	<i>The child does not have a mental health diagnosis; or the child has a mental health diagnosis and is receiving the necessary and proper treatment.</i>
<b>Substance Use</b>	<i>The child is not using or abusing substances.</i>
<b>Social Relationships</b>	<i>The child has appropriate and healthy social relationships and connectedness.</i>

The Ongoing Worker must ensure adequate information collection when assessing children's needs. Obtaining the names and contact information for a child(ren)'s physical and mental healthcare providers is essential in ensuring continuity in care. The Ongoing Worker must request available health and educational records for review and will likely need to obtain the caregiver consent. The review of all available records will allow the Worker to fully assess the physical, mental, and educational needs of the child(ren). It will also be necessary to identify the child's health insurance status and help the family obtain insurance when needed.

**A child or youth who is an identified victim in a civil abuse and neglect case may be entitled to benefits from the Crime Victim's Compensation Fund. For additional information, see Foster Care Policy 7.1 and W. Va. Code §14-2A-11a.**

## 7.4 Ongoing Assessment Decisions

Once the Ongoing Worker has completed the ongoing assessment process the worker will need to make decisions necessary to facilitate the case planning process. The worker should review the assessment and decide:

- If all Safety Threat(s) have been identified;
- Which diminished Protective Factor(s) is responsible for each identified Safety Threat(s);
- Are there existing Protective Factors that can be leveraged to enhance caregiver protectiveness; and
- What types of formal and informal resources are necessary to enhance diminished factors and child(ren)'s needs.

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As the Ongoing Worker evaluates this information and prepares to develop and implement an effective Case Plan, it will be important to consider whether there are resources or services which could enhance multiple diminished factors or if there are diminished factors which will take priority in the Case Plan development. The Ongoing Worker may need to revisit the Safety Plan if the identified Safety Threats have changed. Supervisor consultation should be sought to assist in clustering diminished protective factors and determine which resources or services may be most effective.

## **SECTION 8 CASE PLANNING**

### **Section 8.1 Introduction**

As mentioned in section 7, one of the three concepts central to case planning is family centered practice. The importance of engaging the family in goal development and service planning is critical to effectuating change. Sometimes CPS will encounter caregivers who are unable or unwilling to participate in this process. When this occurs, Ongoing Workers should attempt to understand their unwillingness or inability and break down barriers to enable participation and thus ownership of the family's plan. When all attempts fail, Ongoing Workers will have to develop the Case Plan with willing members or by themselves. The Ongoing Worker will still be required to discuss the ongoing assessment findings and the necessary services to enhance diminished Factors. Upon completion of the case planning process the Ongoing Worker will be required to receive the signatures of the caregivers identifying that the caregivers have received and understood their plan, and whether they have participated in the plan's development.

### **8.2 The Case Planning Process**

The Case Plan is an organized, written agreement between the child welfare worker and the caregivers, and children when appropriate. The Case Plan is a deliberate, reasonable, mutually agreed upon strategy to address identified needs and Safety Threat(s). It involves planned action to support the family toward achieving outcomes and goals designed to elevate the caregiver's Protective Factors to such an extent that the caregiver can create and sustain a safe living environment for their child(ren). The likelihood of achieving the desired outcome of a safe and permanent home for the child(ren) is directly related to the appropriateness of the Case Plan. The most difficult and most critical aspect of case planning involves engaging the family and seeking agreement from caregivers regarding the identification of goals for change. The Case Plan should be completed and signed by the family within 30 days of case transfer to ongoing services.

#### **Developing the Case Plan**

Engaging the family is not only central to building rapport but to effective case planning and a family's success. At every juncture, including when there is court involvement, the Ongoing Worker should be including the family and asking their thoughts and feelings

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about the process and request ideas and suggestions on solutions to the identified problems. However, some caregiver(s) may be reluctant or uncooperative in this process, regardless of the worker's level of effort to build rapport and engage them in the process. In these instances, the worker should review the below subsection "Uncooperative Caregivers" and consult with their supervisor for guidance on how best to proceed.

Once the worker begins to develop the Case Plan with the family the worker must:

- document each child in the home, their birthdate, and the associated court case number if applicable;
- identify and document all the adults living in the home, their date of birth, and their relationship to the child; and
- the reason CPS is involved with the family.

Once the worker moves to documenting the "Reason for Ongoing CPS Involvement", the worker will speak honestly with the family about the identified diminished Protective Factors and the resulting Safety Threat(s) it has caused and document in the corresponding place on the Case Plan. Each caregiver should have their identified diminished Protective Factors and Safety Threat(s) documented separately into their own matrix.

Each factor or related clusters of factors, the resulting Safety Threat(s), and the corresponding goals and services must be linked together through consistent numbering. The worker will proceed through these same steps until all the caregivers' diminished factors and Safety Threat(s) have been addressed. If a caregiver has clustered diminished factors and Safety Threat(s), it is possible the caregiver will only need one treatment service. The treatment services chosen, in any case, must be known and have shown effectiveness in resolving the identified problems.

Once each caregiver has a completed matrix, the worker must proceed to documenting the identified child's needs for each child utilizing a similar process for the caregiver's matrix.

It is critical the worker helps the family prioritize which goals will be worked on first. Some families may only need a couple of goals and some may have an extensive list of problems and goals to work through. How this is approached will need to be individualized to the family. The worker should always prioritize those most pressing protective factors or needs and if possible, allow the caregiver or child to identify a goal which may be easier to meet. Each goal the caregiver or child can meet will provide encouragement and a sense of accomplishment. This will allow the caregiver to feel empowered to accomplish more difficult goals.

Once the case planning process is completed the worker will request the signatures of the caregivers and, if appropriate, the child(ren). The family will be requested to sign two

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different statements. The worker must explain to the family what each statement means and why they are requested to sign.

The first signature requires the caregiver(s) to identify whether they were provided an opportunity to participate in the case planning process with the worker. This includes goal development, prevention service provision, and chosen providers. There is no penalty to the caregiver by selecting that they were not given the opportunity to participate. In some instances, the worker may have provided the opportunity to participate, but the caregiver(s) either were unable to develop goals that were relevant to CPS involvement or that they were uncooperative in the process. The caregiver(s) may choose in those instances to select the option “No, I was not provided the opportunity to participate in this plan” and then provide their signature. When this occurs, the worker must document in case contacts the specific efforts which were made to engage the family in participation and mediate the disagreements.

Children who are of sufficient maturity and capacity aged 14 and over must be offered the option to sign the case plan. Children under the age of 14 who are sufficiently mature and able to intelligently express their agreement or disagreement with the identified needs and necessary services through the assessment and planning process may sign the plan.

In situations when children are considered of appropriate age, developmental maturity, and capacity refuse to sign the case plan, the worker will indicate the child “refused to sign” in place of the signature line and document in the case record the reasons for the child’s disagreements and the worker’s efforts to mediate or mitigate these concerns.

In situations when a child is not of appropriate age and lacks the developmental maturity or capacity to intelligently participate in the casework process the worker will indicate on the signature line for that child the child “lacks decision making ability at this time”. A redetermination of the child’s ability to intelligently express their agreement or disagreement with the identified needs and necessary services, must be revisited at every case review, and in no case greater than 90 days, for a child aged 10 and over.

The second signature which is required informs that prevention services are being offered, the caregiver elects to participate in those services, and the caregiver(s) understands that absent the preventative services the identified child(ren) is at imminent risk of foster care placement. Prevention services are services which help keep the child out of foster care placement. Children whose caregiver(s) are involved with Child Protective Services due to substantiated abuse and neglect are at imminent risk of foster care placement should the caregiver(s) participation, or refusal to participate, in needed services not result in their ability to safely care for their child.

If in any case the caregiver refuses to sign their plan, the worker may simply write “Refuses to Sign” in the appropriate signature space and document in the case contacts

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the reasons the caregiver(s) refused to sign the Case Plan. A copy of the completed Case Plan will be provided to the family timely and the original uploaded to the electronic filing cabinet and added to the case record.

### **Uncooperative Caregivers**

When a caregiver(s) refuses to cooperate with the ongoing assessment or in developing the Case Plan the worker should try to understand why they are refusing and mediate the disagreements. When there are Safety Threat(s) and the caregivers are refusing to cooperate with the Case Plan the worker must:

- Thoroughly document all efforts to engage the caregiver and mediate disagreements.
- Consult with their supervisor to determine the immediate response needed.
- Consult with Child Welfare Consultants, the Regional Program Manager, or Regional Assistant Attorney Generals for further guidance, if necessary.

Consultation with the Prosecuting Attorney will likely be needed when caregivers are uncooperative, and safety is of concern. When this is necessary, the worker must:

- Thoroughly explain the Safety Threat(s) which have been identified, and any additional needs identified that the caregivers are refusing to address.
- Discuss the engagement efforts with the family and attempts to mediate the disagreements.
- File a petition with the Court. The petitioner may seek a Valid Court Order enforcing compliance with the plan or legal custody for removal of the children.

### **Foster Care Candidacy**

A foster care candidate is a child, under the age of 21, who is at imminent risk of foster care entry or re-entry, and who:

- A. has not been removed from their home and placed in foster care; or
- B. is not under the placement and care of the title IV-E agency and is residing with a relative or an individual with whom the child has an emotionally significant relationship characteristic of a family relationship (fictive kin); or
- C. has returned home on a trial home visit; or
- D. has returned from a foster care placement and is residing with their parent or a non-paid kinship relative caregiver; or
- E. has been adopted or is in a legal guardianship arrangement.

These children(ren) are considered at imminent risk of foster care entry, or re-entry, if at least one of the following conditions exist:

1. The child has been abused or neglected or has been identified as unsafe and without intervention is likely to be removed.
2. The child suffers a serious emotional, behavioral, or mental disturbance and without intervention will be unable to reside in their home.

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3. The child has committed a prosecutable offense in which the state has filed, or is considering filing, a juvenile petition and the planned out of home living arrangement is a foster care setting.
4. The child is a runaway or homeless youth.
5. The child is, or will be born, to a youth residing in foster care.
6. The child is an adopted child(ren) or in a legal guardianship arrangement which is at risk of disruption.

When a child welfare worker is working with a Foster Care Candidate, workers must develop a case plan and utilize preventative services designed to mitigate the problems identified through the assessment to prevent removal from the home or re-entry into foster care. The BSS has chosen to use the Case Plan, described in Section 6, as the case plan for all children who have not been removed from their home and children who have returned from a foster care placement to their home or the home of an appropriate kin/relative.

The parent(s) and caregiver(s) in the home will sign the Case Plan, acknowledging that they understand that should the family not be able to comply with the case plan and meet the goals laid out in it, their child(ren) may be removed from the home.

### **8.3 Case Plan and Safety Plan Reevaluation**

While the status and sufficiency of services and family progress is informally evaluated at every contact made with the family and/or service providers, the Ongoing Worker must formally measure and evaluate family progress and the Case Plan and Safety Plan sufficiency **every ninety (90) days**, or sooner when significant change in the family circumstance occurs.

To effectively reevaluate the Case Plan and Safety Plan, the worker will need to make observations and have discussions with the family, safety resources and service providers about the family's progress towards achieving their goals. After meeting and discussing progress with the family, safety resources and providers, the worker will need to make independent judgements as to the effectiveness of the Case Plan and Safety Plan and the family's progress. Additionally, the worker will:

- Meet with all family members to revisit the Ongoing Assessment, screen the child(ren) for any mental health needs and update any changes in strengths and needs identified;
- Revisit the initial Case Plan to provide a baseline for progress comparison;
- Utilize the "Progress Evaluation Tool" to evaluate the progress on each family member's goal achievement;
- Document the date and progress in the appropriate sections of the Case Plan;
- Make any adjustments to the Case Plan goals that are necessary;
- Make any revisions to the Safety Plan that are needed; and
- Obtain the signatures of the caregivers.

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The worker will proceed to determine whether adjustments to the safety resources, services or goals are necessary. This may be required if, for instance, a caregiver(s) completes a goal and is ready to start a new one or a service is completed. Sometimes goals may have been too large and need to be adjusted to be more focused or an ineffective safety resource, service or service provider is being utilized and will need changed. When adjustments are necessary the worker will indicate as such on the Case Plan or Safety Plan. If goals need revised or safety resources, services or providers need modified, then the worker should consult with the family and obtain their thoughts or feelings on the changes.

Supervisory consultation and approval are required when evaluating the Case Plan and Safety Plan, and should occur prior to discussing with the family. The worker and supervisor must discuss:

- The status of Safety Threat(s);
- The worker's analysis of family progress in goal achievement and how the worker has come to make this determination; and
- Whether the plan will be modified and the changes which may be necessary.

Once the supervisor has reviewed and agrees with the discussed changes, the worker will complete the revised Case Plan or Safety Plan, if necessary, and visit the family to review and obtain signatures.

The Case Plan and Safety Plan will then be uploaded to the electronic filing cabinet, indicating the date of evaluation. The worker will also add the documents to the paper case record.

## **8.4 Case Closure**

The decision to close a case is based on a variety of factors, with child(ren) safety being the predominant factor. The worker will utilize the formal evaluation process to aid in the decision to close cases. The worker must be able to conclude that:

- Caregivers have made sufficient progress in addressing the Case Plan goals.
- Caregiver's can adequately meet the needs of their families.
- Safety Threat(s) become controllable without DHHR intervention for a period of no less than ninety (90) days, it may be an indication that case closure could be appropriate.

If the worker recognizes that the family will need ongoing support to assure a safe living environment and well-being for their children, the worker should assist the family in establishing the necessary long term supports. This may come in the form of referrals to formal community programs or connections to informal supports like a local church, a summer camp program, or to recreational activities for the child(ren).

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The worker may never close a case without seeking supervisory consultation and approval to do so. Should the decision to close the case in between the formal evaluation periods, the worker must complete a formal Case Plan evaluation. The formal evaluation will officially document the supporting factors leading to case closure in the identified section on the Case Plan evaluation. The formal evaluation of the Safety Plan and the Case Plan is required to occur every ninety (90) days.

## **SECTION 9 – GENERAL INFORMATION**

### **9.1 Grievance Procedure to Contest the Substantiation of a Child Abuse or Neglect Substantiation**

If a child welfare worker or IIU worker through an assessment finds that a parent, guardian, or custodian abused or neglected a child as defined in [W. Va. Code §49-2-101](#), then the Bureau for Social Services shall provide written notice of the maltreatment substantiation to the parent, guardian, or custodian.

The maltreater may contact the supervisor of the child welfare worker or IIU worker to discuss the maltreatment substantiation. The contact information of the supervisor must be included in the notice. The maltreater also has the right to protest the maltreatment substantiation through the Board of Review's grievance process. The maltreater has the right to request a copy of their file at no charge to the maltreater. The only information not available, is the identifying information of the reporter of any child protective service referral of abuse and/or neglect. The maltreater has the right to appeal any adverse decision of the Board of Review to the circuit court, pursuant to [W. Va. Code §9-2-13](#).

Maltreatment substantiation grievance procedure:

- The maltreater must complete the hearing request form and return the form to the supervisor or send the form to the Board of Review within 60 days of receipt of the notice of substantiation of maltreatment.

The supervisor will:

- Review the investigation and determine if the maltreatment substantiation is appropriate;
- The supervisor may overturn the child welfare worker's or IIU worker's decision after consultation with program managers, child welfare consultants, or management deemed appropriate by the Department;
- Complete the Bureau's section of the hearing request form, if the maltreatment substantiation is appropriate;
- Send the completed hearing request form to the Board of Review. The form shall be sent to the Board of Review within 30 days of receipt.

Hearings shall be held by the Board of Review in accordance with [W. Va. Code §29A-5-1, et seq.](#) and 69 CSR 1.

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Procedure for overturning a maltreatment substantiation:

- When a maltreatment substantiation is overturned, the Bureau shall ensure that the decision is recorded within 60 days of the signed order. If the Bureau elects to appeal such an order, the time to record the decision is stayed.

## **9.2 Nondiscrimination Practice with Children and Families**

Children and families shall be treated with dignity and respect by the child welfare staff and all providers of service working with them. It is the Child Welfare System's responsibility to ensure the rights of children and families being served are protected. In doing so, child welfare workers (including Youth Service Workers, Child Protective Service Workers, & any agency contracted by the DHHR) shall not assume all children in care are heterosexual, cis-gender or gender conforming and will treat Lesbian, Gay, Bisexual, Transgender, Questioning, and Intersex (LGBTQI) Youth with respect and competence. They will also adhere to state and federal laws related to LGBTQI Youth.

All professionals in state and local child welfare systems have an obligation to understand and adhere to the federal laws that protect the families and children in the communities they serve. Decisions made by child welfare workers, (including Youth Service Workers, Child Protective Service Workers, & any agency contracted by the DHHR) should be made without intentional or unintentional discrimination. This includes discriminating on the basis of age, race, color, sex, mental or physical disability, religious creed, national origin, sexual orientation, political beliefs and limited proficiency in speaking, reading, writing or understanding the English language. Additionally, when necessary, children and families will have the right to auxiliary aids and limited language interpretation to ensure effective communication for individuals with hearing, vision, or speech impairments at no additional costs. This would include but not be limited to:

- Services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments;
- Qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments;
- Access to language and interpretation services.

For more information on obtaining auxiliary aids, contact:

Center for Excellence in Disabilities (CED)  
959 Hartman Run Road  
Morgantown, WV 26505  
Phone: 304-293-4692  
Toll Free: (888) 829-9426  
TTY: (800) 518- 1448

For Language translation and interpretation services Child Protective Services may contact:

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Vendor is 911 Interpreters Inc.  
1-855-670-2500 BSS code = 25646

### 9.3 Confidentiality

The confidential nature of child abuse and neglect records is governed by [W. Va. Code §49-5-101](#). In general, the child welfare records of DHHR must be maintained in a confidential manner. The information you have generated belongs to the client. Therefore, they have the right to read their case record at any time in accordance with law and policy. Information, judgments, and beliefs about clients should be shared with them in an open and honest manner. All information should be handled in a respectful and confidential manner. The information generated within DHHR pertaining to a child belongs to the child, and therefore, the child, and specified others have the right to access to the record, **except** for:

- adoption records;
- juvenile court records;
- records disclosing the identity of a person making a complaint of child abuse or neglect.

Records concerning a child or juvenile, except for those noted above, shall be made available under the following circumstances:

- To the child or the child's parent or the attorney for the child or the child's parent whenever they choose to review the record;
- With the written consent of the child or of someone authorized to act on behalf of the child;
- Pursuant to an order of a court of record;
- To the child fatality review team;
- To the Citizen Review Panel;
- To multidisciplinary investigative and treatment teams;
- To a grand jury, Circuit Court or Family Court upon a finding that information in the record is necessary for the determination of an issue before the grand jury, Circuit Court or Family Court Judge;
- Federal, state or local government entities, or any agent of such entities, including law enforcement agencies and Prosecuting Attorneys, having a need for such information to carry out its responsibilities under law to protect children from abuse and neglect; and
- In the event of a child fatality or near fatality due to child abuse and neglect, information relating to such fatality or near fatality shall be made public by the Department. Near fatality means an act that, as certified by a physician, which places the child in serious or critical condition. Any request for a public release of information under this provision must be referred to the Commissioner of the Bureau for Social Services to determine what information may be released.

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Non-custodial parents may request CPS records concerning their child. When a non-custodial parent requests their child's record, the following must occur prior to releasing the record:

- Determine if releasing the record would pose a serious threat to the custodial parent, other adults in the home, children, or collaterals. If so, seek legal advice immediately prior to releasing the record. It may be necessary for the non-custodial parent to seek a court order to get a copy of the record;
- Redact all information pertaining to the address, telephone numbers, employment information, etc. of the custodial parent and all other household members from the record;
- Redact any information that may lead to the identity of the reporter;
- Do not release any medical or psychological records produced by other entities to the non-custodial parent;
- Determine if there are children in the home who are not a child of the non-custodial parent. If so, those children's information must be redacted unless their behaviors pose a threat to the non-custodial parent's child.

***Note: the identity of a reporter, or information which could lead to the identity of a reporter, is not to be released to anyone including law enforcement officials or the Prosecuting Attorney.***

***Note: maltreating parents have the right to information and records concerning their child which includes information and records related to CPS, as long as parental rights have not been terminated.***

***Note: Alleged maltreators who are subject to a CPS investigation by the Institutional Investigative Unit, but are not biological parents to the children involved, have a right to due process and the investigative report. The identity of the reporter, the alleged victim, other children identified in the report, and the parents/families of the children identified in the report must be redacted prior to releasing the information. The redaction would include removing names, addresses, telephone numbers, and other potentially identifying information.***

#### ***Request for Records and Releases of Information***

Whenever a request for the release of child welfare records is received, the worker will:

- Inform the supervisor of the request.

The supervisor will:

- Determine whether the release of information should be made available under the provisions of [W. Va. Code §49-5-101](#). Consult with the Regional Assistant Attorney General and/or Prosecuting Attorney, if necessary;
- Determine exactly what information is being requested. Is it the entire record or a specific piece of information?;
- Arrange for the person requesting the information to come to the office at an

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- appointed time, if possible;
- Review all information within CCWIS and all written/paper records;
- Prepare the requested information that is contained in CCWIS by printing the relevant reports;
- Prepare the requested information that is contained in paper records, if any exists;
- Assure that there is no information concerning the identity of the reporter on any of the documents;
- Allow the person to review the documents/information within the office at the appointed time. If the person wants copies of the information, provide the copies as requested;
- Request assistance from the Regional Assistant Attorney General and/or the Prosecuting Attorney at any time there is uncertainty about whether to proceed with a request for release of information.

The Department may share information with the West Virginia Crime Victims Compensation Fund (W. Va. Code §49-5-101), to review allegations of injurious conduct committed against a child with child welfare involvement and, if appropriate, to make a determination for award of benefits to the victims. For further information on when and how the Crime Victim's Compensation Fund should be utilized see Foster Care Policy 7.1.

When a subpoena or subpoena duces tecum for child welfare records regarding a school employee is issued by the State Superintendent of the West Virginia Department of Education, the subpoena or subpoena duces tecum should be forwarded by the Social Services Manager to the Office of General Counsel.

## **9.4 Payment Guidelines**

### **9.4.1 Gibson Payments**

In the late 1970's a class action lawsuit was filed in federal court. One of the plaintiffs in that lawsuit was named Gibson. The lawsuit was settled by a consent decree, an agreement between the Department and the plaintiffs, in 1984. For simplicity's sake, the decree has always been referred to as the Gibson Decree.

The essence of the lawsuit was the allegation that the Department did not explore alternatives to the removal of children when there were allegations of child abuse and/or neglect. The Department agreed in the consent decree to explore the provision of certain services as an alternative to removal. The Department decided later to also consider certain services to facilitate the reunification of children with their family. Collectively, these services have become known as Gibson services and the payments associated with them as Gibson payments.

Because of the Gibson decree, the Department may purchase services for families in which;

- Their child is unsafe, and will be removed from the home if a service is not

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- obtained, and;
- Their child has been removed but will be returned home if a service is obtained.

The service that is to be purchased must be part of either a documented safety plan or a documented permanent plan for reunification. Gibson payments are restricted only to those CPS cases that will be opened for ongoing services or are already opened for ongoing services. No other services shall be approved as a Gibson type payment. Prior to requesting that the Department pay for the purchase of a service, the Social Worker shall assist the family to explore other alternatives for payments. Examples of other resources that are expected to be contacted are, TANF, Medicaid, CHIP, food stamps, food pantries, clothing closets, homeless shelters and services, emergency assistance, LIEAP, the Salvation Army, community action agencies, local behavioral health centers, local health departments, WIC, churches, and other community organizations and agencies. In addition, the Department may have state level or regional contracts with certain agencies to provide the services that are needed. For example, homeless services are available in multiple counties funded by grants from the Department. If the service that is necessary is available in the family's county of residence through a grant-funded agency, that agency service must be utilized in place of using a demand payment.

Medical services, including mental health services and prescription medications, that meet the other Gibson requirement (prevention of placement or reunification) shall be paid for by using the Special Medical Card (See below). All other resources shall be contacted by the social worker prior to requesting the use of a Special Medical Card. If the family has Medicaid or third-party insurance, that form of payment must be utilized first. If the family does not have a Medicaid card, but may be eligible for one, arrangements must be made for application for Medicaid and/or CHIP. Local behavioral health centers must be contacted for indigent mental health and substance use disorder services. Only if the local behavioral health center cannot or will not provide services, shall Special Medical Cards be authorized for payment of mental health and substance use disorder services. Similarly, the local health department, low-income clinics, and hospitals must be contacted for indigent health-related services, prior to using the Special Medical Card.

For CPS cases involving a child who is unsafe and will be removed from the home if a service is not obtained or a child has been removed, but will be returned home if a service is obtained, the worker will:

- Complete the safety plan or the child, youth and family case plan, including the permanency plan;
- Refer family to appropriate providers to implement the safety plan, as indicated;
- Seek and arrange for other needed safety services or reunification services, as indicated, within the community;
- Determine whether there are other resources available to pay for safety services (those outside of Home-Based Family Preservation) or reunification services or resources to receive those services without charge or at limited costs and decide

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- to do so;
- Complete the necessary information within CCWIS to execute a demand payment.

The supervisor will:

- Assure that the case meets the eligibility criteria for Gibson services, e.g. must be part of a safety plan or reunification plan;
- Assure that all other resources for payment have been explored and utilized, as indicated;
- Assure the payment has been marked as Gibson for tracking purposes;
- Approve payment within CCWIS.

#### **9.4.2 Medical and Mental Examinations**

Medical and/or mental examinations may be ordered by the Court in two situations concerning child abuse and neglect proceedings;

1. Pursuant to [W. Va. Code §49-4-603\(a\)\(1\)](#) at any time during child abuse and neglect proceedings, the court may order the child or other parties to be examined by a physician, psychologist or psychiatrist, and may require testimony from such expert.
2. Pursuant to [W. Va. Code §49-4-603\(b\)\(1\)](#), any person who has authority to file a petition may also request an order for a medical examination from a judge or juvenile referee to secure evidence of child abuse or neglect.

The availability of Medicaid, CHIP, private insurance or other third-party payment shall first be explored and utilized for payment for the examination. The services of the local behavioral health center and local health department shall also be explored and utilized. If the child, parent or custodian is indigent, and there are no other resources for payment for the examination or evaluation, the cost of the examinations shall be paid by the Department. The cost of the service shall be paid by using the Special Medical Card. The Department will reimburse providers at Medicaid rates only.

For cases involving an examination by a physician, psychologist or psychiatrist ordered by a court, the worker will:

- Determine whether there are other resources available to pay for the examination, and make arrangements, as necessary;
- If no other resources are available, complete the necessary information within CCWIS to issue a Special Medical Card.

The supervisor will:

- Assure that the case meets the eligibility criteria for use of a Special Medical Card e.g. a court has ordered an examination by a physician, psychologist or psychiatrist;
- Assure that all other resources for payment have been explored and utilized, as indicated;
- Approve the creation of a Special Medical Card within CCWIS.

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### 9.4.3 Photographs and X-rays

Pursuant to [W. Va. Code §49-2-808](#), any person required to report cases of children suspected of being abused and neglected may take or cause to be taken, at public expense, photographs of the areas of trauma visible on a child and, if medically indicated, cause to be performed radiological examinations of the child.

If a child who is the subject of an Initial Assessment has been photographed by a mandated reporter, reimbursement for the cost of the film and film development may be made by the Department, upon request. The reporter should provide the worker with the receipts for the film and film development. The worker can then enter a demand payment to reimburse for the cost. The payment type which shall be used is the court costs, advertisement and related fees.

If a child who is the subject of an Initial Assessment has been x-rayed or was caused to be x-rayed by a mandated reporter, reimbursement for the cost of the x-rays may be made if there are no other resources available for payment. The worker will approve a Special Medical Card for the child for that service.

For cases involving photographs of a child who is the subject of an Initial Assessment, the worker will:

- Complete the necessary information in CCWIS to execute a demand payment for the cost of the film and film development.

The supervisor will:

- Assure that the case meets the eligibility criteria for payment, e.g. a child who is the subject of an Initial Assessment was photographed by a mandated reporter;
- Approve the demand payment in CCWIS.

For cases involving x-rays of a child who is the subject of an Initial Assessment, caused to be done by a mandated reporter, the worker will:

- Determine whether there are other resources available to pay for the x-ray, and make arrangements, as necessary;
- If no other resources are available, complete the necessary information within CCWIS to create a Special Medical Card.

The supervisor will:

- Assure that the case meets the eligibility criteria for payment, e.g. a child who is the subject of an Initial Assessment.

### 9.4.4 Expert and Fact Testimony

Some professionals may be subpoenaed to testify in a child abuse or neglect proceeding. If the professional is being asked to testify as an expert witness, concerning an illness, child abuse injury, mental health issue, etc., the witness may receive compensation for expenses associated with their testimony through the Supreme Court of Appeals

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Administrative Office. The person providing the testimony should inquire with the Circuit Court for the necessary information about submitting claims for compensation.

Other professionals may be subpoenaed to testify concerning their own involvement in evaluating or providing treatment or services to a child and/or family in a child abuse or neglect proceeding. Fact witnesses may receive compensation for expenses associated with their testimony through DHHR. The person providing the testimony should submit a copy of their subpoena and their invoice to the Department of Health and Human Resources, Bureau for Social Services, Accounts Payable, 350 Capitol Street, Charleston, WV 25305. The rates of payments made will be according to those rates established by the legislature.

#### **9.4.5 Special Medical Card**

The Special Medical Card may be provided to eligible clients to obtain services from a medical provider within a specified date range. However, resources must first be explored before authorizing a Special Medical Card. The CPS clients who may be eligible to obtain medical services through authorization of the Special Medical Card include:

- children of families receiving child protective services;
- used to cover medical needs for children with whom the Department is involved through CPS and there is no other way to pay for this need, i.e., Medicaid, CHIP, or other third-party coverage. (This only applies to non-custody cases that are currently active and open for ongoing services.);
- Gibson (medical only); or
- used for medical services for either a child or parent, that, if not provided, will result in a child's removal or prevent the return of a child into custody;

Please refer to the version notes in CCWIS for information about issuing a Special Medical Card.

#### **9.4.6 Recovery Residences for Substance Use Disorder**

Recovery residences must be certified by the DHHR Bureau for Behavioral Health (BBH) to obtain referrals or state funds. Uncertified recovery residences **may not** receive state funding or any referrals from a medical or clinical treatment facility that receives any state funding. See [W. Va. Code §16-59-1 et seq](#) and the accompanying legislative rule, [W. Va. Code St. R. §69-15-1 et seq](#).

The West Virginia Alliance of Recovery Residences (WVARR) is the agency that certifies recovery residences in West Virginia. [WVARR](#) maintains a list of recovery residences that have obtained certification. Any uncertified recovery residence may not receive any funds from any source within the State Treasury even if it is court ordered.

Case workers must make referrals to those certified recovery residences listed on the [WVARR's](#) website. The website should be checked each time a referral is made to ensure that the recovery residence is certified.

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Child Welfare Workers can only make payments to a **certified recovery residence**. To submit payment for a certified recovery residence, the child welfare worker will enter a demand payment under “Other Approved Payment” type, for “in-patient substance use treatment”.

Note: At any time a court orders the Department to make a payment to an uncertified recovery residence, immediately notify and, if available, forward the accompanying court order, ***according to the staff’s chain of command***, to the appropriate Bureau for Social Services Regional Attorney and Deputy Commissioner.

## **SECTION 10 - CPS LEGAL REQUIREMENTS AND PROCESSES**

### ***Introduction and Overview***

The legal requirements and processes applicable to Child Protective Services (CPS) and Foster Care for children who come into custody because of child abuse and/or neglect court proceedings are based on a combination of requirements from a number of different sources. These sources include but are not limited to: state statutes; the Rules of Procedure for Child Abuse and Neglect Proceedings issued by the Supreme Court; the Consent Decree entered into on the case of Gibson v. Ginsberg; the Multidisciplinary Team Protocol; and, case decisions made by the West Virginia Supreme Court.

The sources cited above were developed at different times and may address the same subject from slightly different perspectives. In some cases, the different statutes, Court Rules and Procedures may appear to be confusing, overlapping, or difficult to follow. To provide guidance, the requirements and accompanying procedures have been set out in the following parts of this section. Some of these parts contain requirements which can be applied at different points in the life of a case while others are applicable at a single point. It is the responsibility of the worker and supervisor to ensure that all applicable procedures are followed.

### **10.1 Reasonable Efforts**

#### ***Statute***

State statute requires that court orders issued after certain judicial proceedings have been held must contain a finding on reasonable efforts. Those proceedings include: [W. Va. Code §49-4-602](#), Temporary custody pending a hearing; [W. Va. Code §49-4-604](#), Dispositional hearing; and, [W. Va. Code §49-4-110](#), Foster care review.

#### ***Definition***

Reasonable effort is the term used to describe those actions which are taken prior to the placement of a child in substitute care in order to prevent or eliminate the need for removing the child from the child’s home; and, those actions necessary to ensure that the safety of the child will be maintained if the child is returned home.

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### ***Purpose***

The purposes of the actions which constitute reasonable efforts are: to ensure that a child is removed from the child's home only when there is no other method for ensuring the safety of the child; and, to ensure that a child is not returned home unless the safety of the child can be assured.

### ***Findings***

As the result of its determination about reasonable efforts the Court should include one of these findings as a part of the court order:

- The Court may determine that reasonable efforts were required, and that the Department made such efforts; or,
- The Court may determine that reasonable efforts were required, and that the Department did not make such efforts; or,
- The Court may determine that the child was in imminent danger and that reasonable efforts were not possible; or,
- The Court may determine that reasonable efforts were not required because of aggravated circumstances or other situations as defined in WV Code [W. Va. Code §49-4-604.](#)

### ***Court Actions after a Finding on Reasonable Efforts***

If the Court determines that reasonable efforts were not required, then the Court should proceed with the next steps in the judicial process. If the Court determines that reasonable efforts were required but not made, or not made because of aggravated circumstances then one of the following should occur.

- If the Court determines as a part of the hearing requesting temporary custody that reasonable efforts were required but not made then the Court could refuse to grant the request for custody or, the Court could grant the request for temporary custody;
- Even though the Court may determine that reasonable efforts were required, and the Department did not make such efforts, the Court is not prohibited from transferring custody to the Department. The Court is required to determine what actions are necessary to ensure the safety of the child and can proceed to transfer custody;
- If the Court finds at the Dispositional Hearing that reasonable efforts were not made, then the Court could take that finding into consideration in determining what the appropriate disposition for the continuing care of the child;
- If the Court finds as a part of the Dispositional hearing that reasonable efforts were not required because of aggravated circumstances, then the Court must schedule a Permanency Hearing within thirty days following the entry of the order with that finding;
- If the Court finds that reasonable efforts were not made as a part of a Foster Care Review, then the Court should take that finding into consideration in deciding upon the future care of the child.

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## 10.2 Aggravated Circumstances and Other Situations Where Reasonable Efforts are not Required

### **Statute**

Aggravated Circumstances is the term used in state statute to define certain conditions which nullify the need to make reasonable efforts to prevent removal of a child and to provide reunification services once a child has been removed. This term is found in [W. Va. Code §49-4-604\(b\)](#).

### **Purpose**

The purpose of this statute is to define those conditions which are so harmful to children and are such an indicator of parental inability to provide proper care that preservation of the family is not required.

### **Definition**

The Department is not required to make reasonable efforts to prevent the removal of a child or to reunite the child with the child's parent if the Court determines the parent has subjected the child to aggravated circumstances which include but are not limited to abandonment, torture, chronic abuse and sexual abuse.

Other instances when reasonable efforts are not required are when the parent has:

- Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;
- Committed a malicious assault that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit malicious assault, or been an accessory before or after the fact to the same that results in serious bodily injury to the child, the child's other parent, guardian, or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit sexual assault or sexual abuse, or been an accessory before or after the fact to the same of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in

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- the same household or under the temporary or permanent custody of the parent;
- Has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family; or
- The parental rights of the parent to another child have been terminated involuntarily.

*Note: the definition of aggravated circumstances is not exhaustive. That is, a worker can present to the court information about the acts of a parent other than those described above and ask that the Court consider these acts as aggravated circumstances.*

### **Worker Actions**

If at any time during the CPS process it is determined that a parent has committed an act which meets the definition of an aggravated circumstance, the worker must immediately assess the parent's actions. The worker must follow the policies and protocols outlined in CPS Policy, in particular *CPS Policy Section 4.26*.

## **10.3 Imminent Danger**

### **Statute**

Imminent danger to a child is defined in state statute. The definition is contained in [W. Va. Code §49-1-201](#) of the Code of West Virginia.

### **Purpose**

The purpose of this statute is to provide a clear definition of those situations which place children at the greatest risk of serious harm.

In situations of imminent danger, the safety of the child is in question and it may be necessary to remove the child(ren) to protect them. Because of the need for immediate protection, removal in situations of imminent danger is usually accomplished by the filing of a petition requesting temporary custody pending a hearing.

### **Definition**

Imminent danger to the physical well-being of a child means an emergency situation in which the welfare or life of the child is threatened. Such an emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited or reasonable cause to believe that the following conditions threaten the health or life of any child in the home.

- Non-accidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter or other caretaker which can include intentionally inflicted major bodily damage such as broken bones, major burns or lacerations or bodily beatings; or
- A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or

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- Nutritional deprivation; or
- Abandonment by the parents, guardian or custodian; or
- Inadequate treatment of serious illness or disease; or
- Substantial emotional injury inflicted by a parent, guardian or custodian; or
- Sale or attempted sale of the child by the parent, guardian or custodian; or
- The parent, guardian or custodian's abuse of alcohol, or drugs or other controlled substance, as defined in [W. Va. Code §60A-1-101](#), has impaired their parenting skills to a degree as to pose an imminent risk to a child's health or safety. [W. Va. Code §49-1-201](#).

## 10.4 Emergency Custody

### 10.4.1 Taking Custody of a Child in Imminent Danger without Prior Judicial Authorization

#### **Statute**

State statute, [W. Va. Code §49-4-303](#) authorizes child welfare workers to take a child into custody absent a court order and to remove that child from their home in certain limited circumstances. According to the statute:

- The child must be in an emergency situation which constitutes imminent danger;
- A worker must have personally witnessed that the child is in imminent danger; and,
- The worker must have probable cause to believe that the child will suffer additional child abuse or neglect or be removed from the county before a petition can be filed and temporary custody can be ordered.

The Department, under provisions of the Gibson Decree, agreed that whenever possible the worker should receive prior approval from their supervisor before taking custody of the child.

#### **Purpose**

The purpose of this statute is to provide a method for ensuring the immediate protection of those children who are at the greatest risk of serious harm.

#### **Worker Conduct When Taking Custody absent Prior Judicial Authorization**

When a worker determines that a child is in imminent danger and requires immediate protection, then the worker must take the following actions:

- The worker should contact the Prosecuting Attorney to file a petition requesting temporary custody if time permits;
- If the worker has probable cause to believe that the child will suffer additional harm, or the parents will flee while a petition is being prepared then the worker may take the child into custody;
- In cases in which there is more than one child in the home the worker must

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- determine which of the children are in imminent danger and take custody of only those children who are in this condition;
- If the parents are present when the worker takes custody, then the worker must inform the parents that they can be present when the request for an order of the emergency custody ratification is requested and the name of the person to whom the request will be made;
  - If the parents are not present, then the worker must leave a note in the residence describing the actions taken and the name of the person and place where the application for emergency custody ratification will be made;
  - After taking custody of the child(ren) the worker must take the child(ren) immediately to a Circuit Judge or a magistrate, acting as the juvenile referee, in the county in which custody was taken, or if no such Judge or magistrate/juvenile referee be available, before a Circuit Judge or magistrate/juvenile referee of an adjoining county, and make application for an order ratifying the emergency custody. Note: *although the statute permits ratification by either a magistrate acting as the juvenile referee or Circuit Judge, whenever possible the worker should approach the Circuit Judge with the request for an order of ratification;*
  - The worker will receive the order giving custody from a magistrate/juvenile referee or Judge after filing the application. The application does not serve as the order; they are two different documents. If seeking emergency custody through a magistrate/juvenile referee, the worker is not to leave the magistrate's/juvenile referee's office without the order;
  - The worker does not need to take a template of the custody order with them but will need to ensure that certain language is contained in the order. Specifically, the following language must be covered in the order:
    - that remaining in the home is contrary to the welfare of the child(ren);
    - that reasonable efforts are not required due to imminent danger to the child(ren);
    - that physical and legal custody are being granted to the Department of Health and Human Resources;
  - If the request for an order ratifying emergency custody is not granted then the worker must return the child to their caretakers; or,
  - If the emergency custody is granted, then the worker will place the child in care.

*Note: at the time, an order of ratification is sought the worker can also request an order for a medical examination for evidentiary purposes.*

#### **Time Limits on Worker Custody**

When a request for emergency custody is ratified, the worker can retain custody of the child until the end of the next two judicial days unless a petition requesting temporary custody pending a hearing has been filed and custody of the child has been transferred to the Department by court order.

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#### **10.4.2 Circumstances where custody is taken during the pendency of a child abuse or neglect hearing**

There may be instances when a child abuse or neglect case is pending in Court and the Department must take emergency custody of a child from a parent. This includes situations when the Court orders a child in DHHR legal custody but places the child in the physical custody of a parent and the child must be removed from that parent. Regardless of whether the court has previously granted the Department custody of the child, if the Department takes physical custody of a child due to a change in circumstances and without a court order issued at the time of the removal, the Department must immediately notify the Court and a hearing must take place within ten days to determine if there is imminent danger to the physical well-being of the child and there is no reasonably available alternative to removal of the child.

**Worker Conduct:** The child welfare worker must follow the CPS Process, which includes supervisory approval at certain intervals, to determine if the child must be removed. Depending upon the specific situation, this could be the Immediate Safety Threat Assessment and protection plan, completing the Initial Assessment which includes the safety analysis, or a continuing safety analysis in ongoing cps cases. When a child must be taken into custody without a court order during a pending child abuse or neglect case, the child welfare worker must:

- Consult with the Prosecuting Attorney, informing the Prosecutor why the Department feels the child must be removed. If circumstances do not allow consultation with the Prosecutor prior to removal, notify the Prosecuting Attorney as soon as possible that the removal occurred and provide copies of documentation supporting the removal within three days;

Request that the Prosecuting Attorney to notify the Court and other parties that the child was removed and request that the date for the next hearing be scheduled within ten days of the removal.

#### **10.4.3 Custody of a Child Taken by a Law Enforcement Officer**

##### **Statutes**

State statute, [W. Va. Code §49-4-301\(a\)](#), authorizes a law enforcement officer to take a child believed to be abused or neglected into custody without a court order if: the child is abandoned; or the child requires emergency medical treatment by a physician and the child's parents, parent, guardian or custodian refuses to permit such treatment or is unavailable to consent.

State statute, [W. Va. Code §49-4-301\(b\)](#), allows the Department, in its discretion, to accept custody of a child from a law enforcement officer who has taken custody of a child in either of the circumstances described above.

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State statute, [W. Va. Code §49-4-301](#), contains explicit requirements for both law enforcement officers and Department staff when this section of the Code is used to provide protection for children.

### **Purpose**

The purpose of these statutes is to authorize law enforcement officers to take certain actions to protect children and to authorize the department to assist the officers in providing for the care of these children.

### **Initial contact by a Child Welfare Worker**

A worker at any point in the Initial Assessment process may determine that a child is abandoned or is in a condition requiring emergency medical treatment and the child's parents refuse to secure such treatment or are unable or unavailable to consent. In all such situations, the worker must take the actions necessary to protect the child. If the worker decides to contact a law enforcement officer, then the worker should do the following:

- Provide the law enforcement officer with a thorough description of the situation as the worker understands it to be; and,
- Discuss the emergency provisions with the law enforcement officer as necessary without requesting or directing the officer to take custody as that decision must be made solely by the officer.

If the law enforcement officer takes custody of the child then the worker may, at their discretion, accept custody of the child. If the worker accepts custody of the child, then the worker must:

- request a typed or legibly handwritten statement from the officer containing the officer's name, address, and office telephone number;
- gather pertinent information that led to the decision to take the child into protective custody, including the date, time, and place where custody of the child was taken and,
- provide for the care of the child in accordance with the provisions in the Section titled Worker Conduct--Abandonment.

*Note: In order to assist law enforcement officers with the preparation of the necessary information the worker can provide the officer with a copy of the SS-CPS-4, WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES LAW ENFORCEMENT OFFICERS EMERGENCY PLACEMENT CONTRACT for their use. If it is not possible to obtain this form or other similar written information at the time the worker accepts custody, the worker MUST obtain this information as soon as possible and no later than the next day.*

### **Worker Conduct--Abandonment**

State statute, [W. Va. Code §49-4-301](#), prohibits the removal of an abandoned child from the child's home until all reasonable efforts to make inquiries and arrangements with neighbors, relatives and friends have been exhausted, and the Department has explored

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the possibility of placing a worker in the home to care for the child until the parents return.

**A. Reasonable Efforts to Make Inquiries.**

- In order to demonstrate that a reasonable effort to make inquiries and arrangements has been completed, the worker will need to determine if the child and their family have a history of child welfare involvement. If the family has a history, then the worker will:
  - Review the case record to determine whether there are names and addresses of any persons known to have cared for the child;
  - If there are such persons, then contact them to discuss their willingness to care for the child;
  - If willing and able to meet the needs of the child, place the child with one of these persons;
  - Develop a plan to provide supervision until the child is returned home or a petition is filed; and,
  - Inform the person with whom the child is placed those conditions under which the child may be released to their parents.
- If the family does not have a history, then the worker will:
  - Ask the child, if appropriate, if they can provide the name and address of someone who has cared for them; and,
  - If a name is provided contact that person and discuss possible placement with them; or,
  - If a name is not provided, proceed with the steps in Item B.

**B. Placement of a Home Services Worker**

Whenever it appears that the parents will be gone for 12 hours or less, or whenever the worker is unable to initially determine how long the parents will be gone, then Department staff may be placed in the home for the initial 12-hour period.

Whenever the need for this type of care arises the worker will:

- Arrange for two persons, one of whom is a child welfare worker, to stay with the child;
- If the child's caretakers return before 12 hours have elapsed, then staff may leave at that time;
- Before leaving staff must review the situation with the caretakers including whether there will be any follow-up activity on the part of the Department; or, if at the end of 12 hours the child's caretakers have not returned then the child may be placed in emergency shelter care or another suitable facility.

***Exceptions***

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Whenever a child has been abandoned it will not be necessary to maintain the child in their own home under the following circumstances:

- The parent or parents are known to be violent or it is anticipated that the parent or parents may be incapacitated, using alcohol or other legal or illegal substances and would pose a threat to the safety of department staff; or,
- The child cannot be maintained safely in their own home because of conditions in the home which pose a substantial risk of harm to the child.

#### ***Worker Conduct--Need for Emergency Medical Care***

When a worker accepts custody of a child in need of emergency medical care from a law enforcement officer then the worker will:

- take the child to a hospital or a physician for treatment;
- attempt to locate the child's caretakers if medical care was necessitated by their unavailability;
- discuss the child's illness or injury with the physician to determine if a petition should be filed; and,
- as necessary, inform the physician that the child can be held in a hospital under the physician's care and against the will of the parents for a period of 96 hours if the physician considers it necessary to do so.

[W. Va. Code §49-4-301](#) defines a condition requiring emergency medical treatment as a condition which, if left untreated for a period of a few hours, may result in permanent physical damage; such a condition includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and evidence of ingestion of significant amounts of a poisonous substance.

#### **10.4.4 Family Courts ordering Children into Department Custody Statute**

[W. Va. Code §49-4-302](#) requires the Department to respond immediately and assist a Family Court Judge in the emergency custody and placement of a child when there is clear and convincing evidence that:

- There exists an imminent danger to the physical well-being of the child as defined in [W. Va. Code §49-1-201](#);
- The child is not the subject of a pending action before the Circuit Court alleging abuse and neglect of the child; and
- There are no reasonable available alternatives to the emergency custody order.

The statute also directs the Circuit Court to enter and serve an administrative order that directs the Department to submit, within 96 hours from the time the child was taken into custody, an investigative report to Circuit and Family Court. A copy should be sent to the Prosecuting Attorney as well. The investigative report shall include a statement of whether the Department intends to file a child abuse and neglect petition.

#### ***Purpose***

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The purpose of the statute is to authorize Family Court Judges to place children in emergency situations into the Departments custody.

### ***Worker Conduct***

When the Department receives a written order from Family Court requiring the Department to respond immediately and take custody of a child due to the conditions outlined above, the following must occur:

- A child welfare worker or supervisor must immediately respond to the situation based upon what is learned from the order. It may be necessary to call the Family Court Judge, or their designee, to determine the location of the child or children as well as determine if any family members or responsible adults were considered for placement;
- Contact the caregiver(s) who had custody at the time of the removal, notifying them that the Department has been court ordered to assume custody of the child(ren) and the reasons why the Department was ordered to assume custody. If their whereabouts are unknown, attempt to notify the child's nearest known relative that the child(ren) are being placed into state custody and request that they inform the parents, guardians or custodians to contact the Department as soon as possible;
- Follow the regular placement procedures of any child who is placed in Foster Care;
- Interview the child(ren), children's caregivers, Family Court Judge who ordered the children into custody if possible, and other collaterals as part of the Initial Assessment Process;
- Within 96 hours of the time the child was placed into protective custody, notify the appropriate Family Court Judge and Circuit Court Judge in writing using the form number CPS1948 titled "Emergency Custody Report". This notification must include whether CPS intends to file a child abuse and neglect petition in Circuit Court and applicable information gathered up until that point;
- If the Family Court finds that a child was in imminent danger and the only safe solution is custody with the Department, a child abuse and neglect petition must be filed in Circuit Court unless CPS can clearly determine and document within 96 hours that the child(ren) would be safe in their home with a safety plan, or safe (no imminent, impending or Immediate Safety Threats) without any type of safety plan if they were to be returned to one or both of to their caregivers. The factors supporting this decision must be clearly documented the Emergency Custody Report and provided to the Family and Circuit Courts;
- If the children must remain in custody longer than 96 hours from the time the child was placed in protective custody rather than return to their parent(s), guardian(s) or custodian(s) who had custody at the time of the removal, a petition **must** be filed as soon as possible but no later than 96 hours from the time the child was placed in protective custody.
- If CPS is unable to clearly determine within 96 hours that a Child Abuse or Neglect Petition is not required for child protection, a petition must be filed in Circuit Court due to the Family Court Judge finding that the child(ren) were in imminent danger.

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If at the conclusion of the Initial Assessment, CPS feels that the children are not required to be in state custody (a safety plan is not required for protection), then CPS must motion the Circuit Court requesting that the child(ren) be returned to the custody of their parent(s).

- Complete the Initial Assessment Process following all applicable policies and procedures including the court overlap procedures.

## 10.5 Multidisciplinary Investigative Teams

### 10.5.1 Multidisciplinary Investigative Process

#### **Statute**

[W. Va. Code §49-4-402\(a\)](#) requires the Prosecuting Attorney to establish a Multidisciplinary Investigative Team in every county.

#### **Purpose**

The purposes of the multidisciplinary investigative process are:

- To ensure that children are safe from abuse and neglect; and
- To coordinate investigations of alleged abuse and neglect and criminal prosecution of offenders.

### 10.6.2 Multidisciplinary Investigative Team

#### **Statute**

State statute [W. Va. Code §49-4-402\(a\)](#) provides for the establishment of a Multidisciplinary Investigative Team in every county. The Prosecuting Attorney is the head of the team and the permanent members are the Prosecutor, local child welfare services staff and local law enforcement staff. In addition to members required by statute, other persons who may contribute to the team's efforts may be appointed by the Prosecutor.

#### **Purpose**

The purpose of the statute is to ensure that the team membership is composed of the persons with the requisite knowledge and skills necessary to carry out an investigation of child abuse or neglect.

#### **Worker Conduct**

Because the statute designates the Prosecuting Attorney as the head of the multidisciplinary investigative process, the Prosecutor has the ultimate authority to decide how the team will function. Also, because the statute does not describe in detail the duties of the investigative team, procedures may vary from county to county.

The supervisor responsible for CPS should contact the Prosecuting Attorney to discuss the operation of the multidisciplinary investigative team. The initial contact should be to discuss and agree on protocols for team operation. Subsequent meetings should be

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devoted to a review of team operations and a discussion of changes or additions to operational protocols.

The team protocol should address:

- The types of cases which will be jointly investigated by CPS staff and law enforcement;
- The procedure for initiating a joint investigation;
- The procedures for sharing information;
- The procedures for interviewing the parties in a case; and
- Any other procedures the parties believe should be addressed.

### ***Commencement of an Initial Assessment***

Although child abuse and neglect cases should be investigated jointly by both law enforcement and child welfare staff, it may not always be possible for the initial investigation to be handled jointly. When circumstances require immediate initiation of an Initial Assessment and law enforcement cannot respond immediately, the child welfare staff must begin the Initial Assessment by themselves.

## **10.6 Medical Examination of a Child for Evidentiary Purposes**

### ***Statute***

State statute, [W. Va. Code §49-4-603](#), allows any person with authority to file a petition to request an order for a medical examination from a Judge or juvenile referee to secure evidence of child abuse or neglect.

### ***Purpose***

The purpose of the statute is to allow for a legally sanctioned examination of a child who may have been abused or neglected.

### ***Worker Conduct in Requesting an Order for a Medical Examination***

Whenever a child welfare worker determines that an examination under this statute is necessary then the following must occur:

- The worker will discuss the case with their supervisor and request supervisory approval to proceed;
- If supervisory approval is given the worker will prepare and submit the necessary request to a Judge or juvenile referee;
- If the request is granted the Judge or juvenile referee will issue an order directing a law enforcement officer to take the child into custody and deliver the child to a physician or hospital for examination;
- The worker shall inform the parents of the examination, and the parents may accompany the officer to the examination;

After the examination, the officer may return the child to the custody of the parents, or the officer may retain custody themselves, or the officer may give custody to the

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Department.

### ***Time Limits for Department Custody after a Medical Examination***

If a law enforcement officer gives custody of a child to the Department after a medical examination, such custody may be maintained only until the end of the next judicial day unless a petition requesting temporary custody pending a hearing has been filed and custody transferred to the Department by court order.

## **10.7 Filing a Petition**

### ***Statute***

The initiation of judicial proceedings in cases of abuse and neglect always begins with the filing of a petition with the Circuit Court. A petition may be filed by Child Protective Services or any reputable person who has knowledge of the alleged abuse or neglect. A petition may be filed where the child resides, where the alleged abuse or neglect occurred, where the custodial respondent or one of the other respondents resides, or to the Judge of the court in vacation. A petition may be filed in only one county.

Two or more parties, including the Child Welfare Worker and a non-offending parent or reputable person, may also file a co-petition jointly alleging a child is abused or neglected against the offending parent. Child Protective Services, a parent, or reputable person may move to be joined as a co-petition after the filing of the initial petition.

A co-petition with the non-offending parent may be filed with the Circuit Court even in circumstances where the parents or guardians are no longer living together, separated or divorced and the offending parent or guardian would be substantiated against for child abuse and/or neglect. The Department **shall not** request physical **or** legal custody of the children as the non-offending parent will maintain care, custody, and control of their children. If the non-offending parent or guardian **does not** have physical **or** legal custody of the children, the Department **can** request physical **or** legal custody to be placed with the non-offending parent.

Both [W. Va. Codes, §49-4-601](#) and [§49-4-602](#) for example, as well as the Court Rules and the Gibson Decree address the contents of a petition and specify the procedures that must be followed in initiating judicial procedures.

### ***Purpose***

The purposes of a petition and the procedures accompanying its use are to inform the child's caretakers of the specific allegations concerning their conduct towards their child(ren); ensure that all required legal procedures are followed; and, ensure that all legal rights and protections are extended to the child and the child's caregivers.

### ***Initiation of a Petition***

Petitions are initiated in cases where:

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- A report of suspected abuse or neglect has been received and the parents refuse to allow access to the children in order to assure that the children are safe;
- The child is unsafe and there are no available or appropriate in-home safety responses;
- The child is in imminent danger and there are no appropriate or available safety responses;
- The parent(s) has committed an act which meets the definition of aggravated circumstances or other situations as defined in [W. Va. Code §49-4-604](#); and,
- The child is unsafe, a safety plan with services in the home controls the danger, but the parents have demonstrated that they are incapable of or unwilling to take the actions necessary to reduce the threat to their child so that safety does not have to be controlled by external means.;
- Someone other than the Department/CPS files a petition alleging abuse or neglect.

Whenever the worker determines that it is necessary to file a petition, then the following must occur prior to filing:

- The worker will discuss the case with their supervisor since no petition may be initiated without supervisory approval;
- If the worker is unable to contact their immediate supervisor then the worker will discuss the case with a supervisor in a related unit, the Social Services Manager, or the Deputy Commissioner of Field Operations;
- The supervisor shall review the record to determine that all alternative and supportive services were pursued;
- if the supervisor does not agree with the worker then the supervisor must assist the worker in developing an appropriate safety plan;
- If the supervisor agrees with the worker, then the supervisor will direct the worker to contact the Prosecuting Attorney to request that a petition be filed and this decision will be documented in CCWIS.

Whenever someone other than DHHR files a petition, the Circuit Court may order CPS to complete an Initial Assessment or be a party to the petition. If an Initial Assessment is ordered, the child welfare worker and supervisor must follow the same rules and procedures for Initial Assessment as other assessments of suspected child abuse or neglect and adhere to the requirements of the court order. If an Initial Assessment is not ordered but the Judge rules that CPS be a party to the proceeding, the child welfare worker must adhere to the court order and follow applicable CPS and Foster Care Policies. The Department may also be given notice of the preliminary hearing and must attend the hearing and be prepared to report the results of the Initial Assessment. If an order is not issued requiring the Department to conduct an Initial Assessment, the Department must commence an Initial Assessment immediately upon receiving notice of the preliminary hearing. The Department may also be required to provide services to the family by the Court.

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## **Placement**

When placement options are located the following should be considered:

- Placement preference should be given to relatives and fictive kin of the child(ren);
- Grandparents of the child must be considered for placement first, as mandated by [W. Va. § Code 49-4-114\(a\)\(3\)](#), for purposes of adoption of the child should reunification become unachievable. The Department should make every effort to ensure that a diligent search for all grandparents is completed prior to initial placement;
- The Department must diligently search for relatives, fictive kin and previously placed/adopted siblings (if applicable);
- The Department must identify and provide notice of the child's need for placement to grandparents, other relatives, fictive kin and caretakers of previously placed/adopted siblings (if applicable) of the child(ren) known to the Department whether or not they have expressed a willingness to provide care or take custody of the child(ren);

*See Section 9.1 Nondiscrimination, Grievance Procedure & Due Process Standards, Reasonable Modification Policies for information regarding non-discriminatory placement practice for placement providers.*

*Note: As a reminder to staff, though resource parents have been trained in safe sleep practices, it is important and necessary to discuss safe sleep at the time of placement of an infant and during future visits in the home.*

Within 7 days of filing a petition, the Department must file a written report with the Court, a list of all of the grandparents, other relatives, fictive kin, and caretakers of previously placed/adopted siblings (if applicable) known to the Department, whether or not the grandparents, other relatives, fictive kin or caretakers of previously placed /adopted siblings (if applicable) have expressed a willingness to provide care or take custody of the child(ren). *See Foster Care Policy Section 2.4.2 Relative/Kinship and Relative Foster/Adopt Placements for detailed instruction on relative/kinship placement requirements; and Foster Care Policy Section 2.1.4 Sibling Placement for detailed instruction on sibling placement requirements.*

Within 45 days from filing the petition, the Department must also file a written report of individuals identified who are willing and able to act as resource or kinship parents to the child with the Court. [W. Va. Code § 49-4-601.](#)

## **Contact with the Prosecuting Attorney**

When approval for the filing of a petition has been given by the supervisor, the worker will contact the Prosecuting Attorney to:

- Discuss the case including any questions the Prosecutor may have; and,
- Request that the Prosecutor prepare the petition.

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### ***Summary of the Facts and Items for Inclusion in the Petition***

To enable the Prosecutor to prepare the petition, the worker will prepare a Summary of the Facts and Other Items for use by the Prosecutor. The Summary must include specific information, the information must be arranged in a specific format and the Summary must be reviewed and approved by the supervisor prior to submission to the Prosecutor.

### ***Format***

The information in a petition may vary from case to case depending on the circumstances in a case and the judicial hearing that the worker has asked the Prosecutor to initiate. The worker must include the required information in each of the following sections as appropriate.

***Identifying Information*** - List the names, address and relationship (parent, stepparent, custodian, etc.) of the child(ren)'s current caretaker(s). In addition, list the name and address, if known, of any absent parent. Finally, list the names, current address, sex, and age of all the children who are to be included in the petition.

Note: In situations of imminent danger all children in the home must be included in the petition and the petition must clearly indicate whether all or some of the children are threatened. **Also, in cases of domestic violence, the worker should know that to stay safe some victims will use the Address Confidentiality Program out of the West Virginia Secretary of State's Office ([W. Va. State Rule §153-37](#)). Additionally it is prohibited by [W. Va. State Rule §191-2-3](#), for a domestic violence program to disclose personally identifiable information of a program participant.**

***Conduct*** - The conduct of the child's caretakers which the worker considers to be maltreatment and/or a threat to child safety must be described in specific detail and must be related to the appropriate conditions in [W. Va. Code §49-1-201](#). In addition, this description must include the time(s) and place(s) where the conduct occurred.

The worker must include a specific description of the safety threats (If appropriate) identified during the Initial Assessment and, if maltreatment has also occurred, a specific description of the maltreatment.

If this is a case requiring termination, or a case in which there are aggravated circumstances, then the conduct of the child's caretakers which meet either of these two conditions must be described in specific detail.

***Supportive Services*** - List the threats which place the child(ren) in danger and all supportive services directed at remedying them. This description should include services provided by the Department, services arranged for through referrals to other agencies and services which were offered but not accepted.

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In addition, the worker should state the reason(s) why the supportive services were not successful in controlling the safety of the child.

***Alternatives to Removal*** - If the worker has determined that the child cannot be safe in their home then the worker must state why there is no alternative to removal. That is, the worker must explain why there are no services which can control safety to the point that the child can remain in their home.

***Alternative Placement*** - If the worker believes that the child cannot be protected in their own home, then the worker must describe why it was not possible to protect the child by arranging an alternative placement with relatives or neighbors instead of filing a petition.

***Witnesses*** - List the names, addresses, telephone numbers and relationship to the child's caretakers, if any, of those persons who could testify to the facts.

***Number of Contacts*** - List the number and the dates of the contacts the worker had with the child and the child's caretakers.

***Relief*** - List the relief and the actions, which the child welfare worker will ask the Prosecuting Attorney to request the Court to order. The relief requested must be one that is available under the provisions of the statutes and is designed to meet the specific circumstances of each individual case.

As a part of the relief the worker must ask the Court to address the issue of the child(ren)'s placement. The worker must have a specific placement in mind or a plan to develop one and this information must be included in the petition so that the Court can rule on it.

*Note: state statute prohibits the Court, in cases of temporary custody pending a hearing, from permitting the placement of the child(ren) in their own home unless the abusing parent has been precluded by court order from visiting or residing in that home.*

***Child Support*** - In every case in which a petition asking for the removal of a child is requested the worker must ask the Prosecutor to include the issue of child support. Specifically, the worker must include as part of the relief a request that the Court:

- Order each of the parent(s) to complete a financial disclosure statement; and,
- Order the parent(s) to pay child support.

The worker should also ask the Court to address, as part of its order, other forms of support such as medical insurance which the parents may have in place for their child.

***Findings Regarding Continuation in the Home and Reasonable Efforts*** - Whenever there is a request for the removal of a child from their home as a part of the relief being requested, the worker must include in the summary a request that the Court, as a part of the order in the case, state that:

- Continuation in the home is contrary to the best interests of the child(ren) and

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- why this is so;
- Whether or not the Department made a reasonable effort to prevent removal or that the situation is an emergency and such efforts would be unreasonable or impossible; and,
- Whether or not this is a case in which there are aggravated circumstances or other situations as defined in [W. Va. Code §49-4-604](#) and as a result reasonable efforts are not required.

*Note: The Supreme Court has developed and distributed a set of model orders for use in these types of cases. To ensure the inclusion of all necessary findings, the worker should encourage the Prosecutor to have these orders used by the Court.*

### **Review and Verification**

After the Prosecutor has prepared the petition, the worker will review it for accuracy and content. If the petition is accurate and complete and contains all required information, then the worker will sign it. If the petition contains any inaccurate information or if it is incomplete, then the worker **MUST** not sign it. Instead, the worker must describe the inaccuracies or omissions to the Prosecutor and request that they be corrected. Once the necessary corrections have been made then the worker will sign the petition. If the Prosecutor refuses to correct the petition, then the worker must refuse to sign it and must discuss the matter with their supervisor.

### **Prior Notice**

Once the decision to file a petition has been made the worker must make a reasonable effort to notify the child's caretakers of the day of presentation of the petition to the court. Prior notice is not required when the caretakers are: likely to flee; hide; or attempt to force the child to deny that they have been harmed or threatened with harm; or, when the whereabouts of the caretakers are unknown. Whenever prior notice is not provided for one of these reasons, the worker must document this decision in CCWIS.

*Note: A reasonable effort to notify means that the worker can inform the caretakers of their intention to file a petition even though supervisory approval has not yet been granted. Or, the worker can wait until supervisory approval has been granted and then telephone the caretakers or go to their home to notify them.*

### **10.7.1 Amendments to a Petition**

The Rules of Procedure for Child Abuse and Neglect Proceedings allow a petition to be amended at any time until the final adjudicatory hearing begins; provided that an adverse party is granted sufficient time to respond to the amendment. If a new allegation or threat to child safety arises after the final adjudicatory hearing, the allegations should be included in an amended petition rather than a separate petition in a new civil action, and the final adjudicatory hearing shall be reopened for hearing evidence on the new allegations in the amended petition. If allegations arise against a co-petitioner during a

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court case, then the petition may be amended which may include a realignment of the parties.

### ***Purpose***

Many times, the full scope of what is occurring in a family may not be evident prior to the initial filing of a petition. Allowing petitions to be amended assures the safety of children be safeguarded when new, pertinent information is discovered.

Worker Conduct in Requesting a petition be amended:

Whenever a child welfare worker determines that a petition should be amended, the following must occur:

- The child welfare worker will discuss the case with their supervisor and request supervisory approval to proceed;
- If the supervisor agrees, the child welfare Worker or supervisor will contact the Prosecuting Attorney advising why the Department is requesting the petition be amended;
- The child welfare worker will provide the Prosecuting Attorney with supportive documentation when applicable.

## **10.8 Role of the Prosecuting Attorney**

The Supreme Court addressed the role of the Prosecuting Attorney in child abuse and neglect cases in its ruling in the cases styled, “In Re: Jonathan G” and “In Re: Diva P.” The ruling is as follows: “Based on our conclusion that the prosecuting attorney’s role as related to DHHR in an abuse and neglect proceeding is that of a traditional attorney-client, we further determine that a prosecuting attorney has no independent right to formulate and advocate positions separate from its client in these cases.” This ruling means that the Prosecuting Attorney is supposed to represent the position of the Department throughout the stages of all judicial proceedings.

Staff involved in judicial proceedings should always be willing to discuss any and all aspects of a case with the Prosecutor but must remember that the final recommendations about the case are the responsibility of the Department. If the Prosecuting Attorney will not assist the DHHR in filing a petition, the DHHR must initiate the provision for Dispute Resolution, pursuant to [W. Va. Code §49-4-501\(c\)](#).

## **10.9 Temporary Custody Pending a Preliminary Hearing**

### ***Statute***

Under certain circumstances a worker may determine the implementation of a protection plan or a safety plan that requires the immediate and involuntary removal of a child from the home. State statute, [W. Va. Code §49-4-601](#), provides the worker the opportunity to file a petition requesting an immediate transfer of custody until a hearing can be held when:

- There exists imminent danger to the physical well-being of the child; and,

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- There are no reasonably available alternatives to the removal of the child.

***Purpose***

The purpose of this part of the statute is to provide the court with the opportunity to authorize an immediate transfer of custody in order to protect children at imminent risk of harm.

***Worker Preparation for a Temporary Custody Hearing***

Prior to the hearing on imminent danger the worker will:

- Arrange for the preparation and presentation of a petition; and,
- Provide notice of the hearing to the appropriate parties.

***Worker Conduct during the Hearing***

During the hearing, the worker will be present in Court in order to respond to any questions or requests for information from the Circuit Judge or other parties.

***Worker Conduct after the Hearing***

Once the Court has ruled on the petition, the worker will proceed to implement the order of the Court including removing the child from the home of the child's caretakers and placing the child in out-of-home care.

## **10.10 Placement Requirements**

When a Judge grants the Department temporary custody pending a hearing and the child is placed outside their home, the worker must ensure that the following placement requirements are met unless they are modified by court order.

**Visitation** - visitation with the child shall be allowed on a regular basis at any reasonable time as requested by the parents or legal guardian. Visitation can be denied if there is the likelihood of danger of physical violence to the child or another person, or if custody was obtained because of physical or sexual abuse, and it is determined that it is necessary to deny or limit visitation to protect the child.

Whenever visitation is denied or limited, the parents must be informed by the worker of the reasons why and the worker must document the reasons in CCWIS.

**Placement Facility** - child(ren) shall be placed only in those facilities which meet the Department's standards for adequate food, clothing and shelter, in addition, child(ren) shall only be placed in a facility which has no more than the number of children for which it has been approved or licensed.

**Placement of Siblings** - whenever siblings are removed they should, whenever possible and in their best interests, be placed together within the same home and in the same school district.

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**Worker Contact** - the worker shall maintain contact with the child or foster placement at least bi-weekly until the adjudicatory hearing unless modified by court order. Contact may be either a face-to-face meeting or can be a telephone call. Workers shall notify the foster placement of all court hearings, including the preliminary hearing. *See Section 7.15 Preliminary Hearing.*

**Transportation** - when a parent or legal guardian wants to visit their child(ren) and cannot make reasonable arrangements to do so, then the worker shall arrange the necessary transportation.

**Telephone Calls** - phone calls between the parents or legal guardians and the child will be permitted daily at least five days a week at the option of the parent or child. There will be no charge to the parent or child when the child is placed outside the calling area of the parent. When the parents request reimbursement for telephone calls, they must present an itemized telephone bill as verification of the expenses they incurred. Upon presentation of the itemized bill, reimbursement will be made via a demand payment.

It is expected that any telephone calls the child will make will be from the placement facility. Upon presentation of an itemized telephone bill, reimbursement to the facility will be made via a demand payment. Telephone calls may be denied or limited when custody has been obtained because of sexual or physical abuse and denial or limitation is necessary to protect the child. The reasons for any denial or limitation must be documented in CCWIS.

**See Foster Policy Section 2.6.2 General Placement Activities for more information.**

#### **10.10.1 Placement of a Child Whose Siblings are Already in Foster Care**

##### ***Statute***

[W. Va. Code §49-4-111](#), requires the Department, when placing a child in foster care who also has siblings in care, to notify the caretakers of the siblings of the availability of this additional child for possible placement in their home.

##### ***Purpose***

The purpose of the statute is to assure that a child who is placed in foster care after other siblings already in care or previously adopted shall be placed with those other children where possible and in the children's best interest.

##### ***Worker Responsibilities***

In all cases in which a child is to be placed, the worker must ask the child's caregivers at the time of placement if they have other children in foster care or other children for whom their rights have been terminated. If there is an affirmative answer to either question, then the worker must:

- Notify the resource or adoptive parents of the sibling(s) that this child is available

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- for placement;
- Discuss with the resource or adoptive parents their interest in caring for this child;
- Refer the family to the Home Finding unit as soon as possible if the resource or adoptive parents agree to care for the child coming into care; and,
- Document the results of all contacts made to place children with their siblings.

*Note: Because of time constraints in cases of imminent danger it may not be possible to initially place a child with their siblings. Whenever such a placement is not possible the worker must ask the court to approve the separate placement of the siblings.*

### **10.11 Court Appointed Legal Counsel**

In any legal proceeding in which the Department is petitioning the court in a case of child neglect or abuse, the child and their caretakers have a right to be represented at every stage of the proceedings.

A child and their caretakers may not be represented by the same legal counsel. A legal counsel may represent all the children or both parents if both parents agree to be represented by the same person. The court must appoint legal counsel to represent the child(ren) and, if the parents cannot afford legal counsel, then the Court must appoint counsel for them. Appointed counsel has a right to certain information and other materials from the Department. This information should be provided to the legal counsel by the worker who had the petition filed.

*Note: the duties and responsibilities of the legal counsel appointed to represent the child(ren) continue until the child is in a permanent placement.*

#### **Access to Records**

Both the legal counsel for the child and the legal counsel for the child's caretakers have a right to review the records and other information maintained by the Department about the child or the child's caretakers with one exception. The Department shall not allow access to records disclosing the identity of a reporter.

Whenever legal counsel makes a request to review a record, the worker will make the necessary arrangements for the review. The request does not have to be honored on the same day it was made. The worker must inspect the information required to be produced and delete any identifying information about the reporter. Once that information has been removed, then the worker should notify counsel of the availability of the record for review.

### **10.12 Court Appointed Special Advocate (CASA)**

A Court Appointed Special Advocate (CASA) is a trained volunteer who may be appointed by the court to serve as an independent representative of the child(ren) who is the subject

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of a child welfare proceeding. The appointment of a CASA volunteer does not in any way change the duties and responsibilities of the attorney for the child.

A CASA volunteer shall remain involved in a case until further order of the Court or permanent placement of the child(ren) is achieved.

### ***Access to Records***

Unlike legal counsel, a CASA volunteer does not have a statutory right to inspect the records of the child whom they are appointed to represent or the records of the child's family. According to the Supreme Court a CASA volunteer can gain access to these records either through a court order or through a waiver for the release of information from the parties.

Whenever a CASA volunteer requests access to Department records, the worker must verify the existence of a court order or waiver by all the parties before granting access. If there is no order or waiver, then access must be denied.

In those cases, in which access is permitted, the CASA volunteer cannot be allowed any information which discloses the identity of a reporter.

## **10.13 Discovery**

Under the Rules of Procedure issued by the Supreme Court, the Prosecuting Attorney is required to provide certain information to the legal counsel for the caretakers. Most of the information which is to be provided will consist of materials developed by or in the possession of the Department. The responsibility for providing this information to the Prosecutor for transmission to the caretakers' legal counsel rests with the child welfare worker who initiated the petition.

Within three days of the filing of the petition the worker will provide the following to the Prosecutor:

- A copy of any relevant written or recorded statements made by the caretakers and the substance of any oral statements which they made, and which will be offered in evidence during the hearing (examples include, but are not limited to: Initial Assessment contacts, Case contacts, or Initial Assessment);
- A copy of any books, papers, documents, photographs, tangible objects, buildings, or places which are material to the preparation of the case or are intended to be used as evidence in the case or were obtained from or belong to the caretakers (examples include, but are not limited to: photographs, police reports or school records);
- A copy of the results and reports of physical and/or mental examinations, if any, and a copy of scientific tests and/or experiments, if any, which are used in the preparation of the case or are intended to be used in evidence during the hearing; and (examples include, but are not limited to: medical records, parental fitness

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- evaluations or mental health records),
- A written list of names and addresses of all witnesses who will be called to testify together with any record of prior convictions of any such witnesses (examples include, but are not limited to: law enforcement, medical professionals or relatives who can testify to the allegations).

The disclosure provided for in this rule is not intended to limit the amount or nature of the disclosure in these cases. This rule merely establishes the minimum amount of disclosure required.

If, prior to or during any hearing a child welfare worker discovers additional evidence or material that should have been disclosed, they shall promptly notify the Prosecuting Attorney.

## **10.14 Preliminary Hearing**

### ***Statute***

The state statute regulating the preliminary hearing is contained in [W. Va. Code §49-4-708](#) of the Code of West Virginia and requires that: if at the time the petition was filed, the Court placed or continued the child in the emergency custody of the Department or a responsible person, then a preliminary hearing on emergency custody shall be initiated within ten days after the continuation or transfer of custody.

### ***Purpose***

The purpose of the preliminary hearing is to determine whether there is reasonable cause to believe that the child is in imminent danger; whether continuation in the home is contrary to the welfare of the child and set forth the reasons; whether the Department made reasonable efforts to preserve the family and to prevent the child's removal from their home or whether an emergency situation made such efforts unreasonable or impossible; and whether efforts should be made by the Department to facilitate the child's return, and if so, what efforts should be made.

### ***Worker Preparation for the Preliminary Hearing***

Prior to the preliminary hearing the worker will:

- Prepare and develop general terms or requirements to offer in the event that a pre-adjudicatory improvement period is requested. Provide the terms in writing to the Prosecuting Attorney prior to the hearing for presentation at the hearing;
- Based upon the time that a pre-adjudicatory improvement period may be granted and the stage of the Initial Assessment process, the terms that are offered may only be able to address the safety needs of the child and/or placement needs of the child. The protection plan or the safety plan must be used to determine the terms if the progress of the case does not extend beyond the Initial Assessment;
- Convene a preliminary meeting with the parent, when possible, and the child(ren), when appropriate, to determine known prospective multidisciplinary treatment team membership. (*This meeting need not be a separate event and should be*

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*conducted during other necessary face-to-face contact with the family prior to the hearing.);*

- Prepare and send the written notification for the date of the treatment team meeting to all the parties within seven days of the filing of the petition. In the event the membership of the MDT is not known within seven days of the filing of the petition, i.e. the guardian ad litem or the parent's attorney may not have been appointed; the notification letters will be taken to the hearing and provided to members at that time;
- Notify the Prosecuting Attorney in writing of any information that would negatively affect the granting of an improvement period;
- If the child is out of the home due to a protection plan being implemented, complete the Initial Assessment and Safety Analysis Process considering possible reunification if the child can be protected and safety can be maintained with a safety plan;
- Obtain a copy of the parent(s) financial disclosure statement for child support to use during the hearing as needed.;
- Notify the foster placement of the preliminary hearing date, time, and place.

#### ***Worker Conduct During the Preliminary Hearing***

During the hearing the social worker will:

- If the worker believes that a mental or medical examination is necessary, then the worker must be prepared to request that the court order the appropriate examination(s);
- If an improvement period is requested, provide the suggested terms to the Court and request that they be made part of the court record;
- In the event that reunification can be affected through a safety plan with services in the home, the safety services will be included in the terms recommended for the improvement period. This requires completion of the Initial Assessment or the completion of a continuing safety analysis if the family was open for ongoing cps services;
- Request that the order reflect that the parent(s) will participate with the MDT, will participate in the development of the Ongoing Assessment/Family Case Plan identified through the Ongoing Assessment and will participate and cooperate with the terms of the improvement period if one is granted;
- Obtain signed releases of information from the parent(s), guardian(s) or custodian(s) or request that the order reflect the appropriate language to obtain any necessary medical information;
- Request that the signed releases of information be made part of the court record;
- Request that the court order reflect financial support by the parents including the requirement that the parents complete a financial disclosure form as necessary;
- Request that the date for the next hearing be scheduled, placed on the docket and reflected in the court order;
- In the order granting the improvement period, the Court must order that a hearing be held to review the matter within 60 days or within 90 days of the granting of

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- the improvement period;
- Request that the written order reflect the department's financial responsibility for the expenses associated with the services identified in the improvement period terms if the Court so orders at the hearing;
- If the family demonstrates to the Court that they are unable to bear the cost of such expenses, the Court may order the Department to financially support the provision of services.

***Worker Conduct Following the Preliminary Hearing***

The actions which the worker must take after the conclusion of the preliminary hearing depend upon whether an improvement period was granted or whether an improvement period was not requested or granted.

***Worker Conduct When an Improvement Period is Granted***

Following the hearing, if a pre-adjudicatory improvement period is granted, the worker will:

- Complete Initial Assessment and make arrangements for transferring the case to on-going CPS if this has not occurred;
- Convene the multidisciplinary treatment team meeting;
- Prepare and educate the members of the multidisciplinary treatment team with the Ongoing Assessment process and the next steps related to the process. The multidisciplinary team meeting would be an appropriate vehicle to introduce the family to the worker that will be conducting the Ongoing Assessment and participating in the development of the treatment plan if the case was not active in Ongoing CPS Services;
- Direct the collaborative effort of the multidisciplinary team meeting in the development of the family case plan. (The family case plan also serves as the child assessment that is to be completed within 30 days of the receipt of custody.);
- File the uniform child or family case plan with the Court within 30 days of the hearing granting the pre-adjudicatory improvement period and provide all members of the multidisciplinary team with a copy of the plan;
- The statutes do not define the term "file with the Court," nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement;
- If the child is in an out-of-home placement, evaluate reunification efforts and determine if the child can be returned to the family if safety and protection can be maintained with a safety plan and in-home services by completing the Initial Assessment. If the case is further into the CPS process, the continuing safety analysis and plan will be used for this purpose;
- Provide the record keeping for the multidisciplinary team meeting;
- Provide services and closely monitor the participation of the family with the terms of the improvement period and family case plan;
- Ensure that the service providers of the uniform child or family case plan provide written reports every 30 days and provide copies of the reports to each treatment

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- team member;
- Convene the multidisciplinary treatment team to review the family case plan evaluation and provide input for the uniform child or family case plan evaluation of progress;
- Submit the uniform child or family case plan evaluation of progress report to the court and provide copies to the multidisciplinary treatment team members within 60 days of the hearing granting the improvement period;
- Request that the uniform child or case plan evaluation of progress report is entered as part of the court record;
- Contact the Prosecuting Attorney to ensure that the 60-day or 90-day hearing is scheduled and on the court's docket;
- Submit to the Court in writing any modification in the uniform child or family case plan. (The statutes do not define the term "file with the Court," nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and the Prosecuting Attorney to meet this requirement);
- Contact the Prosecuting Attorney 15 days prior to the expiration of the improvement period to ensure that the hearing is scheduled and on the court's docket;
- The adjudicatory hearing must take place no later than 60 days after the expiration of the improvement period. The worker will more than likely be the person accountable for keeping track of the dates of the improvement periods, hearings, mandated reports and multidisciplinary team responsibilities;
- Remind the Prosecutor of the Court's duty to specify a future date in the order if a motion for continuance of the hearing is received and there are no objections. *(If there is difficulty with receiving sufficient notice of a continuance motion or if there are objections to the continuance, the Prosecuting Attorney is to be immediately advised. If the Department is requesting a continuance, the Prosecuting Attorney must be consulted to request the written motion that must specify "good cause" for the continuance);*
- Collect progress reports from providers to furnish to the Court at the adjudicatory hearing.

***Worker Conduct When an Improvement Period is not Requested or Improvement Period is Denied***

Following the hearing, if a pre-adjudicatory improvement period is not granted, the social worker will:

- Complete the Initial Assessment and make arrangements for transferring the case to on-going CPS if this has not occurred;
- Convene the multidisciplinary treatment team;
- Prepare and educate the family and the members of the multidisciplinary treatment team regarding the Ongoing Assessment and Family Case Plan and the next steps related to the process. (The MDT meeting would be an appropriate vehicle to introduce the family to the worker that will be conducting the Ongoing

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- Assessment and participating in the development of the treatment plan if the case was not active in on-going services;
- Direct the collaborative effort of the multidisciplinary team meeting in the development of the uniform child or family case plan. (If a pre-adjudicatory improvement period was not granted, there is no requirement to file the family case plan with the Court. In this instance, the family case plan also serves as the child assessment that must be completed within 30 days of the receipt of custody);
  - If the child is in an out-of-home placement, evaluate reunification efforts and determine if the child can be returned to the family if safety and protection can be maintained with a safety plan and services in the home by completing the Initial Assessment. If the case is further into the CPS process, the continuing safety analysis and plan will be used for this purpose;
  - Provide the record keeping for the treatment team meeting;
  - Provide services and closely monitor the participation of the uniform child or family case plan;
  - Ensure that the service providers of the uniform child or family case plan provide written reports every 30 days and provide copies of the reports to each treatment team member;
  - Complete the Family Case Plan evaluation process with the family;
  - Convene the treatment multidisciplinary team to review the Family Case Plan evaluation and provide input regarding the uniform child or family case plan evaluation of progress;
  - Collect all progress reports from providers and include the reports with the case evaluation of progress to provide the Court at the adjudicatory hearing;
  - Contact the Prosecuting Attorney to ensure that the adjudicatory hearing is on the court's docket. (The adjudicatory hearing shall occur within 30 days of the entering of the temporary custody order unless a pre-adjudicatory improvement period is granted)

## 10.15 Child Support

### **Statute**

[W. Va. Code §49-4-801](#), requires that child support be ordered in all cases in which a child is placed in foster care. *The statute also requires the court to calculate child support according to the income shares formula.*

### **Purpose**

The purpose of these statutes is to enable the state to recover all or part of the costs of providing for the maintenance of children in foster care.

### **Court Action**

In deciding on the issue of child support, the Court has options which it may exercise. They are:

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- If the Court at the initial hearing believes that it has adequate financial information from a financial disclosure statement or from testimony to determine child support, then the Court should apply the income shares child support formula and include the amount(s) in the official standard form order appropriate to the proceeding.
- If the Court does not have adequate financial information at the initial hearing, then the Court should order that:
  - The parent or, in two parent households, each parent will complete a financial disclosure statement and a supplemental information form and submit the forms to the worker who filed the petition. (*The worker should bring a copy of the forms to the initial hearing in case they are needed.*) The order should include a date by which the forms are to be submitted;
  - The Court should also order that the parent(s) pay to the district financial clerk:
    - A minimum of \$50 per child monthly or, if the parents are living separately, \$50 monthly per parent per child or a higher monthly amount per child as the Court deems appropriate.

NOTE: The official name of the form which the parents must complete is: *“Financial Statement for Child Support (SCA-DR-100).” Copies of this form should be available in the Office of the Clerk of the Circuit Court or from the local Child Support Enforcement staff. Copies of the FC-1, the Supplemental Information form and the FC-2, Foster Care Referral form, should be available from the local Child Support Enforcement staff.*

#### **Worker Conduct**

##### **Income Shares Formula Applied by the Court**

When the Court has entered a child support order based on the income shares formula, then the worker should, whenever a report is made to the Court or a hearing is held, report on whether or not the parent(s) are complying with the order. The worker will enter all information on parents, including absent or unknown parents into CCWIS correctly and complete all necessary screens, including the Relationship Screens. CCWIS will generate a referral to the Child Support Enforcement Division, ten (10) days after a placement has been entered, for the possible assessment of fees to contribute to the cost of the child’s care as defined in [W. Va. Codes §49-4-801, §4811-101, §48-11-102 & §48-13-101](#) and explain this process to the parents.

##### **Income Shares Formula Not Applied by the Court**

If at the initial hearing the Court cannot decide based on the income shares formula, then the worker must:

- Review the financial disclosure statement when it is submitted by the parent(s);
- Determine whether the parent(s) income meets or exceeds the income shares formula (the level at which the parent(s) would not be responsible for child support);

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- If the income is less than the threshold level, the worker will take no further action except to periodically check to ensure that the parent(s) are making payments according to the court order;
- If the income meets or exceeds the threshold level, then the worker will refer the case to the Child Support Enforcement Division so that they may take the appropriate action;
- The referral will be sent via a DHS-1 to the Bureau for Child Support Enforcement (BCSE) in the county in which the petition was filed. The following information must accompany the DHS-1:
  - A copy of the court order transferring custody and ordering child support.
  - Each parent's completed financial disclosure statement.
  - Each parent's form FC-1 containing supplemental information.

### ***Failure to Pay Child Support***

When a parent who has been ordered to pay child support fails to do so, then the following action should be taken:

- The financial clerk will notify the worker assigned to the case of the non-payment.
- The worker will complete a Foster Care Referral form, FC-2 and send it to the local BCSE office in which the petition for custody was filed. The form will be transmitted via a DHS-1. In addition, the worker will attach a copy of the court order transferring custody and ordering child support if not previously provided.

*NOTE: The FC-2 is a two-page form which asks for certain identifying information on the first page and financial information on the second page. In completing the second page the worker will enter the amount(s) of child support received and the monthly foster care payments under the column Monthly IV-E Expenses if the child has been determined to be IV-E eligible. If the child is not IV-E eligible or if no determination has been made, then the foster care payments will be entered under the column Monthly Non-IV-E Expenses.*

### ***Procedures When a Child Returns Home***

When the child returns home and foster care payments are no longer being made on behalf of the child, the worker will notify the local BCSE office of this change. The notification should be made via a DHS-1.

## **10.16 Multidisciplinary Treatment Planning Process**

### ***Statute***

[W. Va. Code §49-4-401\(2\)](#), requires the Department to establish a multidisciplinary screening, advisory and planning system.

### ***Purpose***

The purposes of the multidisciplinary system are to:

- Assist Courts in facilitating permanency planning following the initiation of judicial proceedings;

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- Recommend alternatives to the Court; and,
- Coordinate evaluations and the provision of services.

### **10.16.1 Multidisciplinary Treatment Team**

#### ***Statute***

[W. Va. Code §49-4-403](#), requires the formation of a multidisciplinary treatment team in every case in which a petition alleging child abuse or neglect is filed.

#### ***Purpose***

The purposes of the multidisciplinary treatment team are to: assess; plan; implement; and, monitor a comprehensive, individualized service plan for children who are victims of abuse or neglect and their families.

#### ***Treatment Team Membership***

The treatment team is composed of the following individuals:

- the WVDHHR worker assigned to the child or family;
- the child's custodial parents or guardian;
- other immediate family members;
- the attorney(s) representing the parent(s) of the child, if assigned by the judge of the Circuit Court;
- the child if the child is over the age of 12 and the child's participation is otherwise appropriate;
- the child if under the age of 12 and when the team determines that the child's participation is appropriate;
- the guardian ad litem;
- the Prosecuting Attorney or his/her designee;
- the kinship/relative parent(s);
- resource parent(s);
- child's residential program staff;
- emergency shelter staff;
- an appropriate school official;
- a court-appointed special advocate (CASA);
- a member of a child advocacy center;
- any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family, including domestic violence service providers, [W. Va. Code 49-4-406\(d\)\(2\)\(I\)](#);
- and, any other agency, person or professional who may contribute to the team's efforts to assist the child and family. (This last category of membership should be interpreted to mean any professional or non-professional provider of direct and/or supportive services to the child and family.)

#### ***Team Operation and Worker Responsibilities***

Any prospective team member may convene a multidisciplinary team. Whenever a WVDHHR worker files a petition, that worker must take the steps necessary to initiate the

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multidisciplinary treatment team process and must offer to serve as the case manager during the operation of the team.

The members of the MDT must be properly notified at least 15 days prior to the MDT meeting, unless otherwise scheduled and ordered by the court, by printing the Notification of MDT letters from CCWIS. If five days or fewer are given to the worker, the child welfare worker must phone each member of the MDT advising that an MDT will be held and provide the date, time and location. The child welfare worker must also send out a written notice by printing the Notification of MDT letter from CCWIS after they have phoned or faxed the members with the information.

During the first MDT meeting, child welfare workers should begin gathering information regarding the family and more specifically the child, including the FC-12, FC-12a. The birth certificate and social security card of the child, and where to obtain birth records and medical records of the child should be requested from the family. If the family does not have the original birth certificate and social security card of the child, or refuses to provide it, the Department will then need to apply for those documents on behalf of the child for the child's record. The worker must also inquire about any sources of income for the child such as SSI, Social Security survivor benefits, life insurance policies, and any other assets, as well as any private or public medical insurance the family may have. This list is not exhaustive, but it helps to better improve child and family outcomes as well as to gain information for the child summary, if it were to become necessary. The child welfare worker must begin gathering information for the child summary at the time of removal. The child summary is a living document that contains information regarding the birth parents, family history, child's race/ethnicity, permanency plan, reason child is in care, child's adjustment while in placement, previous placement history, reason for out-of-state placement if required, child's special needs, goals and anticipated length of placement, and post placement plan.

In addition to the duties assigned to multidisciplinary teams and MDT case managers in the statute, the Court Rules impose further responsibilities on these teams. Specifically, the Court Rules require these teams to:

- Develop the uniform child and family case plan;
- Submit written reports to the Circuit Court;
- Meet with the Circuit Court at least every three months until the case is dismissed from the docket; and,
- Be available for status hearings and conferences as required by the Circuit Court.

***Note: For more information regarding Multidisciplinary Treatment Teams, see Foster Care Policy Section 4.1.***

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## 10.17 Medical and Mental Examinations

[W. Va. Code §49-4-603](#) permits the Circuit Judge or any party to the proceedings to order that the child or the child's caretakers be examined by a physician, psychologist or psychiatrist and may require the person conducting the examination to testify.

If the child's caretakers refuse to undergo an examination, the Court cannot hold them in contempt nor can the Court terminate parental rights because of such a refusal.

## 10.18 Adjudicatory Hearing

### **Statute**

The state statute regulating the adjudicatory hearing is contained in [W. Va. Code §49-4-601](#) the Code of West Virginia.

### **Purpose**

The purpose of the adjudicatory hearing is to provide the parties, the Department and the child's caretakers, with the opportunity to testify and to present evidence regarding the allegations contained in the petition.

At the conclusion of the hearing the Court shall make a determination based on the evidence and shall make findings of fact and conclusions of law as to whether or not the child is abused and/or neglected.

### **Worker Preparation for the Adjudicatory Hearing**

Prior to the adjudicatory hearing the worker will:

- Prepare and develop general terms or requirements to offer in the event a post-adjudicatory improvement period is granted. Provide the terms in writing to the Prosecuting Attorney prior to the hearing for presentation at the hearing;
- Notify the Prosecuting Attorney in writing of any information that would negatively affect the granting of an improvement period;
- Insure that the multidisciplinary treatment team has received notice of the hearing;
- Prepare any releases of information for signature;
- Prepare the multidisciplinary treatment team notices for the next meeting;
- If the child is in a foster care placement, evaluate reunification efforts and determine if the child can be returned to the family as long as protection and safety can be maintained with an in-home safety plan. (*This requires completion of the continuing safety analysis.*)

### **Worker Conduct During the Adjudicatory Hearing**

During the adjudicatory hearing the worker will:

- If an improvement period is requested, provide the suggested terms to the Court and request that they be made part of the court record (*In the event that reunification can be affected through a safety plan with services in the home, the*

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- safety services will be included in the terms of the court record.);*
- Testify regarding the worker's knowledge of the abuse and/or neglect and/or conditions threatening the child's safety;
  - Request that the uniform child or family case plan evaluation of progress that was previously provided to the Court and all progress reports by providers be made part of the court record (*If a pre-adjudicatory improvement period was not granted, request that the family case plan and the family case plan evaluation of progress developed through the collaboration of the MDT be entered in the court record.);*
  - Requests the order reflect that the parent(s) must participate and cooperate with the terms of the improvement period, must participate with the MDT and must participate in the development of the Family Case Plan identified through Ongoing Assessment;
  - Obtain signed releases of information from the parent(s) or request that the order reflect the appropriate language to obtain any necessary medical information;
  - Request that the releases of information be made part of the court record;
  - Request that the next hearing be scheduled, placed on the Court's docket, and reflects in the court order;
  - Schedule and provide written notification to all multidisciplinary treatment team members of the next treatment team meeting;
  - Request that the multidisciplinary treatment team notices be made part of the court record;
  - Request that the written order reflect the department's financial responsibility, if any, for the expenses associated with the services identified in the improvement period terms if the court so orders at the hearing (*If the family demonstrates to the Court that they are unable to bear the cost of such expenses, the Court may order the department to financially support the provision of services.);*
  - The worker must request that any medical expenses which are to be paid by the Department are to be paid at the current Medicaid rates for such services;
  - Payment for medical services can be made through the use special medical card;
  - Payment for other types of services can be made through the demand payment system;
  - Payment for medical services which exceed Medicaid coverage will be made by submitting a court order with the seal of the Court on the order and the invoice for services to the Bureau for Social Services, ATTN: Administrative Services. If the seal of the Court does not appear on the order, then payment cannot be made.

### ***Worker Conduct Following the Adjudicatory Hearing***

The actions which the worker must take after the conclusion of the adjudicatory hearing depend on whether an improvement period was granted or whether an improvement period was not requested or granted.

### ***Worker Conduct When an Improvement Period is Granted***

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Following the hearing, if a post-adjudicatory improvement period is granted, the worker will:

- Complete the Ongoing Assessment if this has not occurred;
- Convene the MDT;
- Update and educate the family and members of the multidisciplinary treatment team with the CPS process and the next steps related to the process;
- Direct the collaborative effort of the MDT meeting in the development of the family case plan;
- Provide the record keeping for the treatment team meeting;
- File the uniform child or family case plan with the Court within 30 days of the hearing granting the improvement period and provide all members of the multidisciplinary team with a copy of the plan (*The statutes do not define the term "file with the Court," nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement.*);
- Continue the CPS process, provide services and closely monitor the participation of the family with the terms of the improvement period and family case plan;
- Ensure that the service providers of the uniform child or family case plan provide written reports every 30 days and provide copies of the report to each treatment team member;
- Prepare the Family Case Plan evaluation;
- Convene the MDT, provide copies of the Family Case Plan Evaluation to the members, review other relevant information and provide input for the uniform child or family case plan evaluation of progress;
- Provide the uniform child or family case plan evaluation of progress to the court with copies to the MDT members within 60 days of the hearing granting the post-adjudicatory improvement period. (*Case evaluation is to occur every 90 days. The case evaluation date can be adjusted to occur prior to the hearing. The family case plan evaluation of progress will comply with the administrative review requirements for children in placement.*);
- Contact the Prosecuting Attorney 15 days prior to the 60-day or 90-day hearing for review of the parent(s) progress to insure it is scheduled and placed on the court's docket;
- Attend the hearing and request that the uniform child or family case plan evaluation of progress be made part of the court record and request the Court's signature on the signature attachment page;
- At the 60 or 90 day hearing, request that a hearing be scheduled for a review of progress which must occur every three months following the granting of an improvement period and request that it is placed on the Court's docket (*The Court may select to schedule a status conference devoted to reviewing the parent's progress instead of a hearing.*);
- Prepare in collaboration with the MDT the uniform child or family case plan evaluation of progress prior to each hearing or status conference;
- If modifications are made to the uniform child or family case plan as the casework

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process continues, file with the Court in writing any modifications to the family case plan (*The statutes do not define the term “file with the Court,” nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement.*);

- Contact the Prosecuting Attorney 15 days prior to all hearings or status conferences to insure they are scheduled and placed on the Court’s docket;
- Prior to each hearing or status conference, notify the members of the MDT of the dates and time of the scheduled hearing or status conference;
- Attend each hearing or status conference and provide a written report to the court of the family’s progress with the family case plan and the development in the case (*Case evaluation is to occur every 90 days. The case evaluation can be adjusted to occur prior to the hearings or status conferences. The family case plan evaluation of progress will serve as the case evaluation and will comply with the administrative review requirements for children in placement.*);
- Request that the uniform child or family case plan evaluation of progress be made part of the court record and request the Court’s signature on the signature attachment page;
- At the conclusion of each hearing or status conference request that the Court schedule and place on the docket the next hearing that must occur every 90 days (*The Court may elect to schedule a status conference devoted to reviewing the parent’s progress instead of a hearing.*);
- If a foster care permanency review hearing has not been conducted within the first 12 months or every 12 months thereafter, the worker will request that a hearing be scheduled to review the planning for the child and family instead of a status conference. This serves to meet the statutory requirements of the [W. Va. Codes §49-4-110](#) and [§49-4-608](#) for judicial review and Title IV-E of the Social Security Act;
- Ensure that the MDT is notified of each hearing or status conference;
- Prepare and distribute all required reports to the MDT;
- Contact the Prosecuting Attorney at least 15 days prior to the expiration of the improvement period to ensure that the hearing is scheduled and on the Court’s docket (*The disposition hearing must take place no later than 60 days after the expiration of the improvement period.*);
- Remind the Prosecutor of the Court’s duty to specify a future date in the order if a motion for continuance of the hearing is received and there are no objections (*If there is difficulty with receiving sufficient notice of a continuance motion, or if there are objections to the continuance, the Prosecuting Attorney is to be immediately advised. If the Department is requesting a continuance, the Prosecuting Attorney must be consulted to request the written motion that must specify “good cause” for the continuance.*);
- Notify the Prosecuting Attorney if the client is not participating in the terms of the improvement period and request that a motion be filed, and a hearing be held to terminate the improvement period (*The worker is responsible for providing the*

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*information that supports the request for the termination of the improvement period.);*

- Be prepared to answer the assertions if a motion is filed to extend the improvement period for a period up to three months (The motion filed for an extension of the improvement period must set forth specific assertions: 1) the family has substantially complied with the terms of the improvement period, 2) the continuation of the improvement period will not substantially impair the ability of the Department to permanently place the child, and 3) an extension is consistent with the best interest of the child. The burden of proof related to these conditions rests with the family. However, the worker and MDT will closely monitor and evaluate the uniform child or family case plan which provides the documentation and supportive information to provide to the Court.);
- Prepare, file with the Court and provide copies to the child's attorney and/or guardian ad litem, parent(s), and the parent's attorney, the uniform child or family case plan at least five judicial days prior to the dispositional hearing. (*The statutes do not define the term "file with the Court," nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement.*)

#### ***Worker Conduct When an Improvement Period not Requested or Improvement Period Is Denied***

Following the hearing, if a post-adjudicatory improvement period is not granted, the worker will:

- Complete the Initial Assessment and make arrangements for transferring the case to on-going CPS if this has not occurred;
- Update and educate the family and the members of the multidisciplinary treatment team with the CPS process and the next steps related to the process (*The MDT meeting would be an appropriate vehicle to introduce the family to the worker that will be conducting the Ongoing Assessment and participating in the development of the Family Case Plan if the case was not active in on-going services.*);
- Direct the collaborative effort of the MDT meeting in the development of the uniform child or family case plan (If a post-adjudicatory improvement period is not granted, there is no requirement to file the uniform child or family case plan with the Court.);
- If the child is in an out-of-home placement, evaluate reunification efforts and determine if the child can be returned to the family if safety and protection can be maintained with a safety plan with services in the home through the Continuing Safety Evaluation process;
- Provide the record keeping for the treatment team meeting;
- Continue the CPS process, provide services and closely monitor the participation of the family with the uniform child or family case plan;
- Ensure that the service providers of the uniform child or family case plan provide

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- written reports every 30 days and provide copies of the reports to each treatment team member;
- Provide copies of the Continuing Safety Evaluation and Family Case Plan Evaluation to each treatment team member;
  - Collect all progress reports from providers to provide to the Court at the dispositional hearing;
  - Contact Prosecuting Attorney to ensure that the disposition hearing is on the Court's docket (The disposition hearing shall occur within 45 days of the entering of the final adjudicatory order.);
  - Prepare, file with the Court and provide copies to the child's attorney and/or guardian ad litem, parent(s), and the parent's attorney, the uniform child or family case plan at least five judicial days prior to the dispositional hearing. (*The statutes do not define the term "file with the Court," nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement.*)

## 10.19 Dispositional Hearing

### **Statute**

The statute regulating the dispositional hearing is contained in [W. Va. Code §49-4-604](#) of the Code of West Virginia. This statute has been further defined and regulated by the Court Rules. Depending on the decision of the Court there may be more than one dispositional hearing.

### **Purpose**

The purpose of the dispositional hearing is to provide all the parties to the case with the opportunity to address the Court about the future care and custody of the child(ren). At the conclusion of the hearing the Court will choose from a number of specified options and enter an order regarding future care and custody.

### **Worker Preparation for the Dispositional Hearing**

Prior to the dispositional hearing the worker will:

- Prepare themselves to testify about the disposition which they would like the Court to make;
- Prepare and develop general terms or requirements to offer in the event an improvement period is granted as a disposition. Provide the terms in writing to the Prosecuting Attorney prior to the hearing for presentation at the hearing;
- Prepare and distribute copies of the uniform child or family case plan to the parties, their counsel, and persons entitled to notice and the opportunity to be heard, at least five judicial days prior to the disposition hearing;
- Notify the Prosecuting Attorney in writing of any information that would negatively affect the granting of an improvement period;
- Insure that the multidisciplinary team and all other parties with a right to be

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- present have received notice of the hearing;
- Prepare any releases of information for signature;
- Prepare the multidisciplinary treatment team notices for the next meeting;
- If the child is in an out-of-home placement, evaluate reunification efforts with the Continuing Safety Evaluation and determine if the child can be returned to the family if protection and safety can be maintained with a safety plan with services in the home.

### ***Worker Conduct During the Dispositional Hearing***

During the hearing the worker will:

- If an improvement period is requested, provide the suggested terms to the Court and request that they be made part of the court record (*In the event that reunification can be affected through a safety plan with services in the home, the safety services will be included in the terms recommended for the improvement period.*);
- Request that the uniform child or family case plan evaluation that was previously provided to the Court and all progress reports by providers be made part of the court record (*If a post-adjudicatory improvement period was not granted, provide the family case plan to the Court and request that it be entered on the court record.*);
- Request the order reflect that the parent(s) will participate and cooperate with the terms of the improvement period, will participate with the MDT and will participate in the development of the Family Case Plan identified through Ongoing Assessment;
- Obtain signed releases of information from the parent(s) or request that the order reflect the appropriate language to obtain any necessary medical information;
- Request that the releases of information be made part of the court record;
- Request that the date for the next hearing be schedule, placed on the docket and reflected in the court order;
- Schedule and provide written notification to all MDT members of the next treatment meeting;
- Request that the multidisciplinary treatment team notices be made part of the court record;
- Request that the written order reflect the department's financial responsibility for the expenses associated with the services identified in the improvement period terms if the Court so orders at the hearing. (*If the family demonstrates to the Court that they are unable to bear the cost of such expenses, the Court may order the Department to financially support the provision of services.*)

### ***Worker Conduct Following the Disposition Hearing***

The actions which the worker must take after the conclusion of the disposition hearing depend on the decision of the Court regarding the future care and custody of the child. The Court may grant an improvement period, or the Court may choose another option.

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### ***Worker Conduct When an Improvement Period is Granted***

Following the hearing the worker will:

- Convene the MDT;
- Update and educate the family the members of the MDT with the CPS process and the next steps related to the process;
- Direct the collaborative effort of the MDT meeting in the development of the uniform child or family case plan;
- Provide the record keeping for the MDT meeting;
- File the family case plan with the Court within 30 days of the hearing granting the improvement period and provide all members of the MDT with a copy of the plan (*The statutes do not define the term “file with the Court,” nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement.*);
- Continue the CPS process, provide services and closely monitor the participation of the family with the terms of the improvement period and uniform child or family case plan;
- Ensure that the service providers of the uniform child or family case plan provide written reports every 30 days and provide copies of the reports to each treatment team member;
- Prepare the family case plan evaluation;
- Convene the MDT, provide copies of the family case plan evaluation to the members, review other relevant information and provide input for the uniform child or family case plan evaluation of progress;
- Provide the family case plan evaluation of progress to the Court with copies to the treatment team members of the family’s progress within 60 days of the hearing granting the improvement period (*The family case plan evaluation of progress will serve as the case evaluation and will comply with the administrative review requirements for children in placement.*);
- Contact the Prosecuting Attorney 15 days prior to the 60 or 90 day hearing for review of the parent(s) progress to ensure that it is scheduled and placed on the Court’s docket;
- Attend the hearing and request that the family case plan evaluation of progress be made part of the court record and request the Court’s signature on the signature attachment page;
- At the 60 or 90 day hearing, request that a hearing be scheduled for a review of progress which must occur every three months following the granting of an improvement period and request that it is placed on the Court’s docket (*The court may select to schedule a status conference devoted to reviewing the parent’s progress instead of a hearing.*);
- Prepare, in collaboration with the multidisciplinary treatment team, the family case plan evaluation of progress prior to each status conference or hearing;
- If modifications to the family case plan occur as the casework process continues, submit to the Court in writing any modifications to the family case plan (*The*

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*statutes do not define the term “file with the Court,” nor do they specify a method for transmitting the plan to the Court. Therefore, it has been decided to provide the case plan to the circuit clerk and to the Prosecuting Attorney to meet this requirement.);*

- Contact the Prosecuting Attorney 15 days prior to all hearings or status conferences to insure they are scheduled and placed on the court’s docket;
- Prior to each hearing or status conference, notify the members of the MDT of the date and time scheduled for the hearing;
- Attend each hearing or status conference and provide a written report to the court of the family’s progress with the family case plan and the developments in the case (*case evaluation is to occur every 90 days. The case evaluation can be adjusted to occur simultaneously to the hearings or status conferences. The family case plan evaluation of progress will serve as the case evaluation and will comply with the administrative review requirements for children in placement*);
- Request that the uniform child or family case plan evaluation of progress be made part of the court record and request the Court’s signature on the signature attachment page;
- At the conclusion of each hearing or status conference request that the Courts schedule and place on the docket, the next hearing that must occur every 90 days (*The Court may elect to schedule a status conference devoted to reviewing the parent’s progress instead of a hearing. If a hearing has not been conducted within the first 12 months or every 12 months thereafter, the worker will request that a hearing be scheduled to review the planning for the child and family instead of a status conference. This serves to meet the statutory requirements of the [W. Va. Code §49-4-110](#) and [§49-4-608](#) for judicial reviews and Title IV-E of the Social Security Act*);
- Ensure that the MDT is notified of each status conference or hearing;
- Prepare and distribute all required reports for the multidisciplinary team;
- Contact the Prosecuting Attorney fifteen days prior to the expiration of the improvement period to ensure that the Final Dispositional Hearing is scheduled and on the Court docket (*The final disposition hearing must take place no later than 60 days after the expiration of the improvement period at disposition*);
- Remind the prosecutor of the Court’s duty to specify a future date in the order if a motion for continuance of the hearing is received and there are no objections (*If there is difficulty with receiving sufficient notice of a continuance motion or if there are objections to the continuance, the Prosecuting Attorney is to be immediately advised. The Department is requesting a continuance, the Prosecuting Attorney must be consulted to request the written motion that must specify “good cause” for the continuance.*);
- Notify the Prosecuting Attorney if the client is not participating in the terms of the improvement period and request that a motion be filed, and a hearing be held to terminate the improvement period;
- The worker is responsible for providing the information that supports the request for the termination of the improvement period;

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- Be prepared to answer the assertions if a motion is filed to extend the improvement period for a period up to three months.

***Worker Conduct When the Petition is Dismissed***

If the petition is dismissed or the child, the abusing parent or other family members are referred to a community agency and the petition is also dismissed the worker will:

- Return the child to the child's caretakers;
- Discuss with the caretakers any remaining service needs they may have and provide assistance to secure them; and,
- Proceed to close the CPS case.

***Worker Conduct When Continuing Supervision is Ordered***

Whenever the Court orders the return of the child to their own home under the supervision of the department, or, orders terms of supervision which prescribe the manner of supervision and care of the child, then the worker will:

- Convene the multidisciplinary treatment team;
- Update and educate the family and the members of the multidisciplinary treatment team with the CPS process and the next steps related to the process;
- Direct the collaborative effort of the multidisciplinary treatment team in the development of a plan to implement the order of the Court;
- Continue the CPS process, provide services and closely monitor the participation of the family with the terms of the court order;
- Obtain written reports from service providers every 30 days and provide copies of the reports to each treatment team member;
- Convene the multidisciplinary treatment team to review and provide input for the case evaluation of progress; and,
- Contact the Prosecuting Attorney to ensure that the case is scheduled for the Permanency Placement Review hearing no later than 90 days from the date of the initial disposition hearing.

***Worker Conduct When the Court Terminates Parental Rights***

When the Court terminates parental rights the actions the worker must take depend on the order of the Court regarding the custody of the child.

If the Court commits the child to the sole custody of the non-abusing parent, if there is one, or the permanent guardianship of a licensed child welfare agency, then the worker will:

- Make the arrangements necessary to transfer physical custody of the child to the non-abusing parent or agency; and,
- Take the steps necessary to close the CPS case.

If the Court terminates parental rights and commits the child to the guardianship of the Department, then the worker will:

- Initiate the permanency hearing review process. ***See Foster Care Policy Section 6.3.***

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### ***Worker Conduct When Custody of Child is Continued with the Department***

The Court may find that the parents are presently unwilling or unable to provide adequately for the needs of their child(ren) and may commit the child(ren) to the Custody of the Department. When the Court makes this ruling then the Court must also make a finding about reasonable efforts.

If the Court finds that reasonable efforts were not required because of aggravated circumstances then the court must proceed to hold a permanency hearing within 30 days following the date of the entry of the order containing the finding. Whenever the Court makes this finding the worker will:

- Convene the multidisciplinary treatment team to review the results of the dispositional hearing and to prepare for the permanency hearing; and,
- Continue to provide the appropriate services in the interim between the dispositional hearing and the permanency hearing.

If the Court does not find that aggravated circumstances exist, the Court should issue an order specifying under what circumstances the child's commitment to the Department will continue. The worker will:

- Convene the multidisciplinary team;
- Update and educate the family and the members of the multidisciplinary treatment team with the CPS process and the next steps related to the process;
- Direct the collaborative effort of the multidisciplinary treatment team in the development of a plan to implement the order of the Court;
- Continue the CPS process, provide services and closely monitor the participation of the family with the terms of the court order;
- Obtain written reports from service providers every 30 days and provide copies of the reports to each treatment team member;
- Convene the multidisciplinary treatment team to review and provide input for the case evaluation of progress; and,
- Contact the Prosecuting Attorney to ensure that the Permanency Placement review is scheduled no later than 90 days from the date of the initial disposition. ***Final Dispositional Hearing***

Prior to the hearing the worker will:

- Prepare to address the progress of the parent(s) related to the uniform child or family case plan;
- Collect all progress reports submitted by providers;
- Prepare to address the status of the recommended permanency plan for the child;
- Notify the MDT of the date of the hearing;
- Contact the Prosecuting Attorney to discuss any other preparations necessary for the hearing;
- Prepare and distribute copies of the uniform child or families' case plan to the

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parties, their counsel, and persons entitled to notice and the opportunity to be heard, at least five judicial days prior to the disposition hearing.

- If the child(ren) continues to be placed out of the home, determine if a safety plan with services in the home can be implemented as long as safety can be assured through the use of the continuing formal safety analysis.

During the hearing the worker will:

- Provide provider progress reports and request that they be made part of the court record;
- Recommend the permanency plan for the child(ren) and the steps necessary to achieve the permanent plan;
- Request that the court rule on a dispositional determination consistent with the best interests of the child;
- If the permanent placement plan is for reunification with the parent(s), request that the court order the parent(s) to continue to participate in the provision of the family case plan, the treatment MDT, and the steps to achieve the permanent plan for the child(ren).

After the hearing the actions the worker must take depend on the finding of the Court at the Final Dispositional Hearing. (The various actions which a worker may be required to take are described in the previous sections under this heading.)

## **10.20 Uniform Child or Family Case Plan**

### ***Federal and State Statute***

A Case Plan for Foster Care is required by federal statute. State statute requires family case plan whenever an improvement period is granted or there is an adjudication of abuse or neglect. In order to comply with the federal statute, the Uniform Child or Family Case Plan must be completed within 60 days of the child entering legal custody. A Family Case Plan is required by state statute and a Child's Case Plan is required by state statute. In order to comply with the state statutes, the Uniform Child or Family Case Plan must be filed with the Court at certain points in the legal proceedings which require a Family Case Plan or a Child's Case Plan.

### ***Preparation***

The family case plan will be prepared in conjunction with the members of the multidisciplinary team and the information for the family case plan will be derived from the information gathered through the application of the Ongoing Assessment and any other assessments that family has completed. For more information, review *CPS Policy Section 7*.

## **10.21 Family Case Plan**

### ***Statute***

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[W. Va. Code §49-4-408](#), requires the development of a family case plan whenever an improvement period is granted or there is an adjudication of abuse or neglect.

***Purpose***

The purpose of the family case plan is to clearly identify and set forth family problems and the steps necessary to resolve or lessen them.

When completed, the Uniform Child or Family Case Plan meets all of the statutory mandates of the family case plan.

## **10.22 Child's Case Plan**

***Statute***

[W. Va. Code §49-4-408](#), requires the Department to prepare and submit a Child's Case Plan including the permanency plan for every child found by the Court to be abused or neglected at the end of an adjudicatory hearing.

***Purpose***

The purpose of the Child's Case Plan is to provide to the Court information which will enable the Court to determine if all appropriate actions are being taken in regard to the care and well-being of children in foster care.

When completed, the Uniform Child or Family Case Plan contains all the statutory mandates of the child's case plan.

## **10.23 Reunification Services**

***Statute***

[W. Va. Code §49-1-201](#), contains definitions for a number of terms relating to abuse and neglect. One of these terms is reunification services.

***Definition***

Reunification services means individual, group, and family counseling, inpatient, residential or outpatient substance use disorder treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care and therapeutic services for families, including crisis nurseries and transportation to or from any such services, provided during 15 of the most recent 22 months a child has been in foster care, as determined by the earlier of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child is removed from home.

***Purpose***

The purpose of this term is to indicate that the process to reunify a child with their caretakers should not, in general, extend beyond 15 months. This limitation, while not

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absolute, is a clear statement that the permanency needs of children should be met within a reasonable period.

## **10.24 Quarterly Status Reviews**

[W. Va. Code §49-4-110](#), requires quarterly status reviews for all children in foster care until the Court files an order stating that the parents' rights have been terminated and the Department is not required to make reasonable efforts to preserve the family.

The purpose of quarterly status reviews is to determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the uniform child and family case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to and safety maintained in the home or placed for adoption or legal guardianship. For more information on Quarterly Status Reviews, *please see Foster Care Policy Section 6.2.*

## **10.25 Yearly Permanency Hearings and Permanency Hearing Reviews**

The statute related to Permanency hearings is contained in [W. Va. Codes §49-4-110](#) and [§49-4-608](#). The purpose of the permanency hearing is to determine the appropriate permanent placement and permanent plan for the child or transitioning adult. For more information related to Yearly Permanency Hearings and Permanency Hearing Reviews *please see Foster Care Policy Section 6.3.*

## **10.26 Change in a Child's Placement - Report to the Court**

### ***Statute***

[W. Va. Code §49-4-608\(g\)](#), requires the Department to file a report with the Court whenever a child in custody receives three or more placements a year.

### ***Purpose***

The purpose of this statute is to bring to the attention of the Court those children who are placed and replaced frequently.

### ***Worker Conduct***

When a child is scheduled to enter a third placement during the year then the worker will:

- Prepare a child or family case plan progress report describing the child's placement history for the year in question including the reason(s) for the various placements; and,
- Contact the Prosecuting Attorney and request that the report be filed with the Court and all appropriate parties and their counsel. *(If parental rights have been terminated then the unified child or family case plan progress report is not provided to the parents or the attorney for the parents.)*

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After receiving the report, the Court may hold a hearing to review the child's placement history to determine what efforts are necessary to provide the child with a stable placement. The Court may choose, and/or the worker may request that the Court review the child's placement as a part of any other court hearing.

## **10.27 Aggravated Circumstances and Other Situations Where Reasonable Efforts are not Required**

### ***Statute***

[W. Va. Code §49-4-605](#), requires that under certain circumstances the Department must: file a petition for termination of parental rights; or, must request to join in a petition for termination of parental rights filed by another party.

### ***Definition***

The Department is required to file a petition or to join in a petition to terminate rights or to otherwise seek a ruling to terminate parental rights in any pending proceeding when a parent, guardian or custodian has:

- Subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;
- Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;
- Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit malicious assault, or been an accessory before or after the fact to the same that results in serious bodily injury to the child, the child's other parent, guardian, or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Attempted or conspired to commit sexual assault or sexual abuse, or been an accessory before or after the fact to the same of the child, the child's other parent,

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- guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;
- Been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature of the circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family;
  - The parental rights of the parent to another child have been terminated involuntarily; or
  - Has a child that has been removed from the parent's care, custody, and control by an order of removal voluntarily fails to have contact or attempt to have contact with the child for a period of 18 consecutive months: *Provided*, that failure to have, or attempt to have, contact due to being incarcerated, being in a medical or substance use disorder treatment facility, or being on active military duty shall not be considered voluntary behavior.

### **Exceptions**

The Department may determine not to seek termination of parental rights when:

- At the option of the Department the child has been placed with a relative;
- the Department has documented in the unified child or family case plan made available for Court review a compelling reason, including but not limited to the child's age and preference regarding termination or the child's placement in custody of the Department based on any proceedings initiated under [Article 4, Part 604 of Chapter 49](#), that filing a petition would not be in the best interests of the child; or
- The Department has not provided, when reasonable efforts to return a child to the family are required, the services to the child's family as the Department deems necessary for the safe return of the child to the home.

### **Worker Actions**

Whenever a worker is involved in a case, or learns of a case where a petition requesting termination of parental rights was filed, because a Court has determined that a parent has abandoned a child, or a Court has determined that a parent has committed murder or voluntary manslaughter of their children, has attempted or conspired to commit such murder or voluntary manslaughter or has been an accessory before or after the fact of either crime or has committed unlawful or malicious wounding resulting in serious injury to the child or to another or their own children or the parental rights to a sibling have been terminated then the worker must either file a petition or seek to join in the petition which has already been filed. There are no exceptions to this requirement.

Whenever a worker is involved in a case in which a child has been in foster care for 15 of the most recent 22 months, the worker must either seek termination of parental rights or document in the case plan a compelling reason for not requesting termination. There are no exceptions to this requirement.

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### **10.27.1 Compelling Reason to not Request Termination of Parental Rights**

#### ***Statute***

[W. Va. Code §49-4-605](#), requires the Department to request termination of parental rights under certain circumstances unless there is a compelling reason not to do so.

#### ***Definition***

The statutes do not contain a specific definition of all circumstances which can or should be considered compelling reasons. The statute does state that the age of the child and the child's preference about termination should be considered when the child entered custody through a juvenile justice proceeding initiated under [W. Va. Code §49-4-701](#).

#### ***Purpose***

The purpose of this term is to allow the Department to exercise discretion in deciding when to request the termination of parental rights of children who have been in custody for more than 15 months.

#### ***Scope***

The statute allows the Department to determine whether or not it will seek termination of parental rights for those cases which meet the conditions contained in [W. Va. Code §49-4-605](#).

It is the policy of the Department that compelling reasons shall be limited to those cases described in [W. Va. Code §49-4-605\(1\)](#). Those are cases in which children have been in foster care for 15 of the most recent 22 months.

In all other cases described under [W. Va. Code §49-4-605](#), the Department will not exercise any discretion and will seek termination of parental rights.

## **10.28 Post-Termination Placement Plan**

### ***Child Abuse and Neglect Court Rules***

Child Abuse and Neglect Court Rule number 41, part (b) requires the development and submission by the Department of a post-termination placement plan within 90 days of the entry of the final termination order for both parents. The unified child or family case plan progress report can be utilized to fulfill the requirements for the Post-Termination Placement Plan.

## **Section 11 - Nondiscrimination, Grievance Procedure & Due Process Standards, Reasonable Modification Policies, and confidentiality**

### **11.1 Nondiscrimination**

As a recipient of Federal financial assistance, the Bureau for Social Services(BSS) does not exclude, deny benefits to, or otherwise discriminate against any person on the ground of

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race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in admission to, participation in, or receipt of the services and benefits under any of its programs and activities, whether carried out by BSS directly or through a contractor or any other entity with which BSS arranges to carry out its programs and activities.

This statement is in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (nondiscrimination on the basis of race, color, national origin) ("Title VI"), Section 504 of the Rehabilitation Act of 1973 (nondiscrimination on the basis of disability) ("Section 504"), the Age Discrimination Act of 1975 (nondiscrimination on the basis of age) ("Age Act"), and regulations of the U.S. Department of Health and Human Services issued pursuant to these three statutes at Title 45 Code of Federal Regulations Parts 80, 84, and 91.

The Bureau for Social Services shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because they have made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

In addition, BSS will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all BSS programs, services, and activities. For example, individuals with service animals are welcomed in the Department of Health and Human Resources, BSS offices even where pets are generally prohibited.

In case of questions, or to request an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a BSS program, service, or activity, please contact:

Children and Adult Services  
Section 504/ADA Coordinator  
350 Capitol St. Rm 691  
Charleston, WV 25301  
(304) 352-4429

## **11.2 Non-Discriminatory Placement Protocol**

The Department ensures that all parties involved in child welfare programs have equal opportunities. All potential placement providers for children and youth are afforded equal opportunities, free from discrimination and protected under the [American's with Disabilities Act](#) (ADA). The Department will not deny a potential placement provider the benefit of its services, programs, or activities due to a disability.

Under the Americans with Disabilities Act it defines a person with a disability as:

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“An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment.”

The ADA does not specifically name all the impairments that are covered. The ADA does not allow a person to be discriminated against due to a disability in employment, state and local government activities, public transportation accommodations, telecommunication relay services, fair housing, air carrier access, voting accessibility or education. Examples of disabilities include physical disabilities which require auxiliary aids and mental health issues. Those persons with substance use disorders, including opioid use disorder, currently participating in a treatment option such as Medication Assisted Treatment (MAT), are also covered by the ADA. Participation in a MAT program is not considered the illegal use of drugs. Qualifying MAT programs are defined in [W. Va. Code §16-5Y-1, et seq.](#) The ADA also addresses the civil rights of institutionalized people and architectural barriers that impact people with disabilities.

When making diligent efforts to locate and secure appropriate placement for foster children and youths, a worker cannot discriminate against a potential placement based upon a person with a disability according to the Americans with Disabilities Act (ADA) Title II. The Department shall determine if the potential placement for the child represents a direct threat to the safety of the child. Safety threat decisions will be based on assessment of the individual and the needs of the child, as the safety of the child always remains at the forefront of the determination of the best interest of a child, when placing a child in anyone’s home. This determination cannot be based on generalizations or stereotypes of individuals.

If a provider protected under the ADA is identified as an appropriate and best interest placement for a foster child they may, at some point, require services specific to their disability in order to preserve the placement. In such situations, consideration for services must be given if it is in the best interest of the child to preserve the placement. Any specific auxiliary aids or services should be determined by the child welfare worker at no cost to the provider and should be considered on a case by case basis.

### **11.3 Complaint Procedure and Due Process Standards**

#### **A: Complaints Based on Disability or other Forms of Discrimination**

It is the policy of the West Virginia Department of Health and Human Resources (DHHR), not to discriminate on the basis of on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed. DHHR has adopted an internal complaint procedure providing for prompt, equitable resolution of complaints alleging discrimination. Laws and Regulations, 28 C.F.R. Part 35 and 45 C.F.R. Part 84, may be examined by visiting <https://www.ada.gov/reg3a.html>. Additional laws and regulations protecting individuals from discrimination in child welfare programs and activities may be examined by visiting the U.S Department of Health and Human Services

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website at <https://www.hhs.gov/civil-rights/for-individuals/special-topics/adoption/index.html>.

Any person who believes someone has been subjected to discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion, or creed may file a complaint under this procedure. It is against the law for the Bureau for Social Services, (including employees, contracted providers other BSS representatives), to retaliate in any way against anyone who files a complaint or cooperates in the investigation of a complaint.

### **Procedure**

Complaints due to alleged discriminatory actions must be submitted to the Department of Health and Human Resources, Equal Employment Opportunity (EEO)/Civil Rights Officer within sixty (60) calendar days of the date the person filing the complaint becomes aware of the alleged discriminatory action.

The complainant may make a complaint in person, by telephone, by mail, or by email. To file the complaint by mail or email, a Civil Rights Discrimination Complaint Form, IG-CR-3 (See Appendix A) must be completed and mailed or emailed to the West Virginia Department of Health and Human Resources, Office of Human Resources Management, EEO/Civil Rights Officer, One Davis Square, Suite 400, Charleston, WV 25301 or email at [DHHRCivilRights@WV.Gov](mailto:DHHRCivilRights@WV.Gov). If the complainant requires assistance completing the IG-CR-3 form, they may request assistance from the department. The complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought. The complainant may also contact the WV DHHR, EEO/Civil Rights Officer, for more information.

West Virginia Department of Health and Human Resources  
Office of Human Resource Management  
EEO/Civil Rights Officer  
(304) 558-3313 (voice)  
(304) 558-6051 (fax)  
[DHHRCivilRights@WV.Gov](mailto:DHHRCivilRights@WV.Gov) (email)

The EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. The EEO/Civil Rights Officer will maintain the files and records of Bureau for Social Services relating to such complaints. To the extent possible, and in accordance with applicable law, the EEO/Civil Rights Officer will take appropriate steps to preserve the confidentiality of files and records relating to complaints and will share them only with those who have a need to know.

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The EEO/Civil Rights Officer shall issue a written decision on the complaint, based on the preponderance of the evidence, no later than thirty (30) calendar days after its filing, including a notice to the complainant of their right to pursue further administrative or legal remedies. If the EEO/Civil Rights Officer documents exigent circumstances requiring additional time to issue a decision, the EEO/Civil Rights Officer will notify the complainant and advise them of their right to pursue further administrative or legal remedies at that time while the decision is pending. The person filing the complaint may appeal the decision of the EEO/Civil Rights Officer by writing to the Director of Human Resources within fifteen (15) calendar days of receiving the EEO/Civil Rights Officer's decision. The Director of Human Resources shall issue a written decision in response to the appeal no later than thirty (30) calendar days after its filing.

The person filing the complaint retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the West Virginia Department of Health and Human Resources.

The availability and use of this procedure does not prevent a person from pursuing other legal or administrative remedies, including filing a complaint of discrimination on the basis of race, color, national origin, disability, age, sex, sexual orientation, gender identity, religion or creed in court or with the US Department of Health and Human Services, Office for Civil Rights. A person can file a complaint of discrimination electronically through the Office for Civil Rights Complaint portal at:

<https://ocrportal.hhs.gov/ocr/smartscreen/main.jsf> or by mail or by phone at:

U.S. Department of Health & Human Services  
Office for Civil Rights  
200 Independence Ave., S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201  
800-368-1019 (voice) 800-537-7697 (TDD)  
[OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

For complaints to the Office for Civil Rights, complaint forms are available at: <https://www.hhs.gov/ocr/complaints/index.html>. Complaints shall be filed within one hundred and eighty (180) calendar days of the date of the alleged discrimination.

The Bureau for Social Services will make appropriate arrangements to ensure that individuals with disabilities and individuals with Limited English Proficiency are provided auxiliary aids and services or language assistance services, respectively, if needed, to participate in this process. Such arrangements may include, but are not limited to, providing qualified interpreters, providing recorded material for individuals with low vision, or assuring a barrier-free location for the proceedings. The EEO/Civil Rights Officer will be responsible for such arrangements.

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## **B: Grievances Regarding the Child Protective Services Worker or Casework Process**

At any time that the Bureau for Social Services is involved with a client, the client (adult or child), or the counsel for the child has a right to express a concern about the manner in which they are treated, including the services they are or are not permitted to receive.

Whenever a parent, child or counsel for the parent or child has a complaint about Child Protective Services or expresses dissatisfaction with Child Protective Services the worker will:

- Explain to the client the reasons for the action taken or the position of the BSS which may have resulted in the dissatisfaction of the client.
- If the situation cannot be resolved, explain to the client their right to a meeting with the supervisor.
- Assist in arranging for a meeting with the supervisor.

The supervisor will:

- Review all reports, records and documentation relevant to the situation.
- Determine whether all actions taken were within the boundaries of the law, policies and guidelines for practice.
- Meet with the client.
- If the problem cannot be resolved, provide the client with the form "Client and Provider Hearing Request", SS-28.
- Assist the client with completing the SS-28, if requested.
- Submit the form immediately to the Chairman, State Board of Review, DHHR, Building 6, Capitol Complex, Charleston, WV 25305.

For more information on Grievance Procedures for Social Services please see Common Chapters Manual, Chapter 700, and Subpart B or see W.Va. Code §29A-5-1.

Note: Some issues such as the decisions of the Circuit Court cannot be addressed through the Grievance Process. Concerns about or dissatisfactions with the decisions of the Court including any approved Case plan must be addressed through the appropriate legal channels.

## **11.4 Reasonable Modification Policy**

### **A: Purpose**

In accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), the Bureau for Social Services shall not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities. The BSS shall make reasonable modifications in Child Protective Services program policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

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**B: Policy**

DHHR is prohibited from establishing policies and practices that categorically limit or exclude qualified individuals with disabilities from participating in the BSS Child Protective Services program.

The Bureau for Social Services will not exclude any individual with a disability from the full and equal enjoyment of its services, programs, or activities, unless the individual poses a direct threat to the health or safety of themselves or others, that cannot be mitigated by reasonable modifications of policies, practices or procedures, or by the provision of auxiliary aids or services.

The Bureau for Social Services is prohibited from making Child Protective Services program application and retention decisions based on unfounded stereotypes about what individuals with disabilities can do, or how much assistance they may require. The BSS will conduct individualized assessments of qualified individuals with disabilities before making Child Protective Services application and retention decisions.

The Bureau for Social Services may ask for information necessary to determine whether an applicant or participant who has requested a reasonable modification has a disability-related need for the modification, when the individual's disability and need for the modification are not readily apparent or known. BSS will confidentially maintain the medical records or other health information of Youth Services program applicants and participants.

The Bureau for Social Services upon request, will make reasonable modifications for qualified Child Protective Service, program applicants or participants with disabilities unless BSS can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. Individuals do not need to reference Section 504 or Title II or use terms of art such as “reasonable modification” in order to make a request. Further, BSS staff are obligated to offer such reasonable accommodations upon the identification of a qualifying disability or to an individual with Limited English Proficiency.

BSS must consider, on a case-by-case basis, individual requests for reasonable modifications in its Child Protective Services program, including, but not limited to, requests for substitute caregivers, respite caregivers, more frequent support from a case worker, additional classroom and/or online training, mentorship with an experienced resource parent, note takers, and other auxiliary aids and services. When auxiliary aids or language interpretation services to ensure effective communication for individuals with hearing, vision, speech impairments, or Limited English Proficiency (LEP) are needed, they shall be provided to the participant at no additional costs. DHHR evaluates individuals on a case by case basis to provide auxiliary aids and services as necessary to obtain effective communication. This would include but not be limited to:

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- Services and devices such as qualified interpreters, assistive listening devices, note takers, and written materials for individuals with hearing impairments.
- Qualified readers, taped texts, and Brailled or large print materials for individuals with vision impairments.
- Access to language and interpretation services.

For more information on obtaining auxiliary aids, contact:

Center for Excellence in Disabilities (CED)  
959 Hartman Run Road  
Morgantown, WV 26505  
Phone: 304-293-4692.  
Toll Free: (888) 829-9426  
TTY: (800) 518- 1448

For language translation and interpretation services Child Protective Services may Contact 911 Interpreters or the Section 504/ADA Coordinator (see also section 11.5 Limited English Proficiency). To contact 911 Interpreters, utilize the information below:

911 Interpreters Inc.  
1-855-670-2500  
BSS Code: 25646

When requesting language translation services directly through 911 Interpreters, staff must report the accommodation to the Section 504/ADA Coordinator by completing the *Reasonable Accommodation Reporting Form*.

The Bureau for Social Services will not place a surcharge on a particular qualified individual with a disability or any group of qualified individuals with disabilities to cover the cost of measures, such as the provision of auxiliary aids and services or program accessibility, that are necessary to provide nondiscriminatory treatment required by Title II of the ADA and Section 504.

To address any violations of this Reasonable Modification Policy, consult the Bureau for Social Services Grievance Procedure. To request reasonable modifications, or if you have questions, please contact:

Children and Adult Services  
Section 504/ADA Coordinator  
350 Capitol St. Rm 691  
Charleston, WV 25301  
(304) 352-4429  
[DHRCivilRights@WV.Gov](mailto:DHRCivilRights@WV.Gov) (email)

Staff who make reasonable accommodations for an individual must be reported to the Section 504/ADA Coordinator utilizing the *Reasonable Accommodation Reporting Form*.

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## **11.5 Limited English Proficiency**

The Bureau for Social Services (BSS) will take reasonable steps to ensure that persons with Limited English Proficiency (LEP) have meaningful access and an equal opportunity to participate in our services, activities, programs and other benefits. The policy of BSS is to ensure meaningful communication with LEP clients and their authorized representatives involving their case. The policy also provides for communication of information contained in vital documents, including but not limited to, information release consents, service plans, etc. All interpreters, translators and other aids needed to comply with this policy shall be provided without cost to the person being served, and clients and their families will be informed of the availability of such assistance free of charge. Language assistance will be provided through use of contracted vendors, technology, or telephonic interpretation services. All staff will be provided notice of this policy and procedure, and staff that may have direct contact with LEP individuals will be trained in the effective use of an interpreter and the effective use of technology including telephonic interpretation services. The Bureau for Social Services will conduct a regular review of the language access needs of our population, as well as update and monitor the implementation of this policy and these procedures, as necessary.

### **PROCEDURES:**

#### **1. IDENTIFYING LEP PERSONS AND THEIR LANGUAGE**

The Bureau for Social Services will promptly identify the language and communication needs of the LEP person. If necessary, staff will use a language identification card (or “I speak cards,” available online at [www.lep.gov](http://www.lep.gov)) or posters to determine the language. In addition, when records are kept of past interactions with clients or family members, the language used to communicate with the LEP person will be included as part of the record.

#### **2. OBTAINING A QUALIFIED INTERPRETER**

911 Interpreters Inc. has agreed to provide qualified interpreter services. The agency's telephone number is 1-855-670-2500 (BSS Code: 25646). Interpretation services are available 24 hours a day. Some LEP persons may prefer or request to use a family member or friend as an interpreter. However, family members or friends of the LEP person will not be used as interpreters unless specifically requested by that individual and **after** the LEP person has understood that an offer of an interpreter at no charge to the person has been made by the facility. Such an offer and the response will be documented in the person's file. If the LEP person chooses to use a family member or friend as an interpreter, issues of competency of interpretation, confidentiality, privacy, and conflict of interest will be considered. If the family member or friend is not competent or appropriate for any of these reasons, BSS will provide qualified interpreter services to the LEP person free of charge. Children and other clients will **not** be used to interpret, in order to ensure confidentiality of information and accurate communication.

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### **3.PROVIDING WRITTEN TRANSLATIONS**

When translation of vital documents is needed, BSS will submit documents for translation to 911 Translators Inc. or the Section 504/ADA Coordinator. BSS will generally provide language services in accordance with the following guidelines:

- (a) BSS will provide written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- (b) If there are fewer than 50 persons in a language group that reaches the five percent threshold in (a), BSS will not translate vital written materials but will provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

Additionally, when making a determination as to what language services will provided, BSS may consider the following factors: (1) the number and or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

Documents being submitted for translation will be in final, approved form with updated and accurate information. Staff who utilize 911 Translators must report the utilization using the *Reasonable Modification Reporting Form* to the Section 504/ADA Coordinator.

### **4.PROVIDING NOTICE TO LEP PERSONS**

The Bureau for Social Services will inform LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand. At a minimum, notices and signs will be posted and provided in DHHR office lobbies and waiting areas. Notification will also be provided through one or more of the following: outreach documents and program brochures.

### **5.MONITORING LANGUAGE NEEDS AND IMPLEMENTATION**

On an ongoing basis, BSS will assess changes in demographics, types of services or other needs that may require reevaluation of this policy and its procedures. In addition, BSS will regularly assess the efficacy of these procedures, including but not limited to mechanisms

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for securing interpreter services, equipment used for the delivery of language assistance, complaints filed by LEP persons, feedback from clients and community organizations, etc.

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## **Appendices**

**Appendix A:** DHHR Civil Rights Complaint Form

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**Appendix B:** WV DHHR – Board of Review (304)558-0955 IG-BR-29 INSTRUCTIONS  
**Appendix C:** Request for Removal of CPS or APS Findings and Hearing Request Form

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**Appendix A**  
DHHR Civil Rights Complaint Form

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## West Virginia Department of Health and Human Resources Civil Rights Discrimination Complaint Form

Complainant First Name		Complainant Last Name
Home Phone <i>(include area code)</i>		Work Phone <i>(include area code)</i>
Street Address		City
State	Zip Code	Email <i>(if available)</i>

Is this complaint being filled out by someone other than the complainant? ☐ Yes ☐ No If yes, please provide your information below:

First Name	Last Name	Telephone Number <i>(include area code)</i>
------------	-----------	---

The complainant feels they have been discriminated against on the basis of:

- ☐ Race/Color/National Origin      ☐ Religion/Creed      ☐ Sexual Orientation/Gender Identity  
☐ Disability      ☐ Age      ☐ Sex

☐ Other *(please specify)*:

Who or what bureau within the Department of Health and Human Resources is believed to have been discriminatory?

Name/Bureau/Office		
Street Address	City	County
Zip Code	Telephone	

Date(s) discriminatory action is believed to have occurred:

Which program(s) is the complainant alleging the discriminatory action took place in?

- ☐ Child Welfare *(includes CPS, Youth Services, Foster Care, Adoption, Home Finding, and Legal Guardianship)*      ☐ Adult Welfare *(includes APS, Guardianship, Health Care Surrogate, Residential Services Request to Receive and Request to Provide)*      ☐ Low Income Energy Assistance Program (LIEAP)  
☐ Temporary Assistance for Needy Families (TANF)      ☐ School Clothing Voucher      ☐ Indigent Burial

Complaints involving the Supplemental Nutrition Assistance Program (SNAP) must be sent directly to the U.S. Department of Agriculture. See below for more information.

**Describe briefly what happened. How and why does the complainant believe they have been discriminated against?  
What is the relief or remedy sought by the complainant?  
(Attach additional pages as needed.)**

**Please sign and date this form. If submitting by email, you may type your name and date. Your email will represent your signature.**

<b>Signature</b>	<b>Date (mm/dd/yyyy)</b>
------------------	--------------------------

The West Virginia Department of Health and Human Resources shall not retaliate against, intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title VI, Section 504 or the Age Act, or because she or he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.

EEO/Civil Rights Officer shall conduct an investigation of the complaint. This investigation may be informal, but it must be thorough, affording all interested persons an opportunity to submit evidence relevant to the complaint. EEO/Civil Rights Officer will maintain the files and records of DHHR relating to such grievances. The EEO/Civil Rights Officer shall issue a written decision on the complaint no later than thirty (30) calendar days after its filing, unless the Coordinator documents exigent circumstances requiring additional time to issue a decision. To submit this complaint or request additional information, please contact:

West Virginia Department of Health and Human Resources  
Office of Human Resource Management  
EEO/Civil Rights Officer  
(304) 558-3313 (voice)  
(304) 558-6051 (fax)  
[DHHRCivilRights@WV.Gov](mailto:DHHRCivilRights@WV.Gov) (email)

The person filing the grievance retains the right to file a grievance with the U.S. Department of Health and Human Services, Office for Civil Rights, regardless of the decision made by the West Virginia Department of Health and Human Resources. The availability and use of this grievance procedure does not prevent a person from filing a private lawsuit in Federal court or a complaint of discrimination on the basis of being a member of a protected class, with the:

U.S. Department of Health & Human Services  
200 Independence Ave., S.W.  
Room 509F HHS Bldg.  
Washington, D.C. 20201  
800-368-1019 (voice)  
202-619-3818 (fax)  
800-537-7697 (TDD)  
[OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov) (email)

The complaint form may be found at <https://www.hhs.gov/ocr/complaints/index.html>

*For SNAP complaints, please contact the U.S. Department of Agriculture.*

*The USDA Program Discrimination Complaint Form, can be found online at: <https://www.ocio.usda.gov/document/ad-3027>, or at any USDA office. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form by mail, email, or fax to:*

*U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW Washington, D.C. 20250-9410  
(202) 690-7442 (fax)  
(866) 632-9992 (telephone)  
[program.intake@usda.gov](mailto:program.intake@usda.gov) (email)*

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## Appendix B

### WV DHHR – Board of Review (304) 558-0955 IG-BR-29 INSTRUCTIONS

#### TO BE COMPLETED BY DEPARTMENT REPRESENTATIVE

1. Department Representative – Name of the employee responsible to attend the hearing and present on behalf of the Department.
2. County/Home Office – County that the Department Representative is housed in.
3. Address – Address of the office that the Department Representative is housed in.
0. Address continued.
4. Phone/Email – Phone number and e-mail for the Department Representative.
5. Date Department received request – Original date that the verbal or written hearing request was received by the Department.
6. Appellant Name – Individual/Entity that the hearing is in relation to (this may not always be the individual requesting the hearing).
7. Residing County – County Appellant resides in.
8. Address – Appellant USPS mailing address.
1. Address continued.
9. Phone/Email - Appellant phone/email address.
10. Case Number – Identification number(s) obtained from your database.
11. Program(s) being appealed – Only indicate program(s) hearing is in relation to.
12. Type of Request (Written or Verbal) – Select how hearing request was initiated.
13. Notification Letter Date – Letter issued by the Department that prompted the individual to request the hearing.
14. If not attached, explain – If notification letter does not exist, explain.
15. Are benefits or services continued pending hearing decision (Yes/No/N/A) – Indicate whether benefits are being continued during the Hearing process or if N/A.
16. Reason for Hearing Request and Principal Issue: Explain Briefly – Indicate your understanding of the reason the individual has requested the hearing.
17. Applicable Manual Section(s) – Manual Section used by Department referenced in the notification letter.
18. Appellant Representative (Self/Relative/Paralegal/Attorney/CMA/Other) – Select one or more options. Indicate self if you are unaware of a selection other than self.
19. Representative Name – If indicated self on line 20, leave blank. If not self, indicate the individual that initiated the hearing request.
20. Representative Phone and Email – If line 20 is self, leave blank. If not, indicate the Appellant Representative phone and email.
21. Address – If line 20 is self, leave blank. If not, indicate the USPS mailing address for the Appellant Representative.

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## WV DHHR – Board of Review (304) 558-0955 IG-BR-29 INSTRUCTIONS

- A complete referral consists of: IG-BR-29, Hearing Request and Notification Letter.
- All referrals are required to be submitted to the Board of Review at: [dhhroigbore@wv.gov](mailto:dhhroigbore@wv.gov) within two business days of the date indicated in line 6.
- Failure to fully complete this form and submit required documentation will result in an incomplete referral which slows the hearing process. You will then be required to submit the missing information/documentation before the referral can move forward as complete.
- Previous versions will not be accepted – do not alter the IG-BR-29.
- If you have questions, please contact the Board of Review at (304) 558-0955.

Revised and Effective Date: 01/01/2016

[dhhroigbore@wv.gov](mailto:dhhroigbore@wv.gov)

### Appendix C

West Virginia Department of Health and Human Resources  
Office of Inspector General – Board of Review

**CPS/APS Hearing Request Form**



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This form is to be used for CPS/APS cases when an individual wishes to have maltreatment findings removed from their record.

**CPS 11 APS 11 (CHOOSE ONE)**

**PART I – TO BE COMPLETED BY APPELLANT**

(Forward completed form to [DHHROIGBORE@WV.GOV](mailto:DHHROIGBORE@WV.GOV) or the supervisor)

NAME: \_\_\_\_\_ COUNTY OF RESIDENCE: \_\_\_\_\_

OTHER NAMES YOU HAVE USED: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ LAST DIGITS OF SOCIAL SECURITY NO.: \_\_\_\_\_

I have been advised that there are one or more substantiated maltreatment findings against me. I am requesting that the DHHR remove all findings from my record – if the DHHR does not remove all maltreatment findings, I request a Board of Review hearing. (I understand that I will be notified whether all findings have been removed from my record within 35 days of this request.)

Briefly Explain why you are requesting a hearing:

\_\_\_\_\_  
\_\_\_\_\_

If a hearing is scheduled, I will be represented by: ☐ MYSELF ☐ ATTORNEY ☐ OTHER

NAME OF REPRESENTATIVE: \_\_\_\_\_ TELEPHONE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SIGNATURE OF APPELLANT: \_\_\_\_\_

DATE: \_\_\_\_\_

**PART II – TO BE COMPLETED BY DEPARTMENT DISTRICT/REGIONAL STAFF**

Type of Request 11 VERBAL 11 WRITTEN (CHOOSE ONE)

Date Request Received: \_\_\_\_\_ County Where Investigation Occurred: \_\_\_\_\_

Department Representative 1: \_\_\_\_\_ Email Address: \_\_\_\_\_

Dept Rep 1 Home Office County: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Department Representative 2: \_\_\_\_\_ Email Address: \_\_\_\_\_

Dept Rep 2 Home Office County: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Intake Numbers: \_\_\_\_\_

Type and Date of Findings: \_\_\_\_\_

Intake Number(s): \_\_\_\_\_

Notice(s) of Findings Issued? ☐ Yes (Attach Copy to Referral) ☐ No ☐ Copy unavailable

Finding(s) Adjudicated in Court of Law? ☐ Yes (Send copy of order or petition to BOR) ☐ No

Reconsideration Decision by CWC or Program Manager: 11 Override Approved 11 Request of Reversal Denied

Date of Reconsideration: \_\_\_\_\_ CWC/Prog Mgr/Adult Consultant Initials: \_\_\_\_\_

Date Reconsideration Decision Made: \_\_\_\_\_

Staff Member Initials: \_\_\_\_\_

**PART III – TO BE COMPLETED BY BOARD OF REVIEW**

Action Number: \_\_\_\_\_ Hearing Official: \_\_\_\_\_

Decision: ☐ Upheld ☐ Reversed ☐ Abandoned ☐ Dismissed ☐ Withdrawn ☐ Remanded

Date Hearing Decision Completed and Mailed: \_\_\_\_\_

Certified Mail Tracking No.: \_\_\_\_\_

Forward completed form and request documents to [DHHROIGBORE@WV.GOV](mailto:DHHROIGBORE@WV.GOV)

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