CHILD PROTECTIVE SERVICES POLICY

West Virginia Department of Health and Human Resources
Bureau for Children and Families
Office of Children and Adult Services
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Section 1 Philosophy and Foundation

1.1 Introduction

The Safety Assessment Management System (SAMS) is a safety based model developed and implemented in West Virginia in 2009 and 2010. The Safety Assessment Management System contains concepts and tools developed through consultation with the National Resource Center for Child Protective Services (NRCCPS), through research of case decisions made by the West Virginia Supreme Court, the Child Abuse Prevention and Treatment Act and the Adoption and Safe Families Acts, both enacted by the U. S. Congress. The model relies heavily on the extensive work done by Action for Child Protection, a non-profit child welfare agency with headquarters in Charlotte, North Carolina and Albuquerque, New Mexico. It should be noted that the NRCCPS grant contract during the development of the Safety Assessment Management System for CPS was held by Action for Child Protection.

This material is also 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.

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 19th century. During the first half of the 20th 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 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 Child Protection system of the 21st 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.

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.

The philosophical principles of the Safety Assessment and Management System are:

Child Safety is Paramount
The mission of CPS is to assure that children are protected. SAMS 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 SAMS 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 capacities 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 SAMS 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 SAMS 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.

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 danger while attempting to restore the protective capacities of their caregivers.

1.3 Mission of the Bureau for Children and Families

West Virginia's Department of Health and Human Resources (DHHR), Bureau for Children and Families (BCF) 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 CPS Social Worker has the following roles:

- **Problem Identifier** - CPS Social 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 capacities.
- **Case Manager**- In this capacity the CPS Social Worker assesses family problems and dynamics which contribute to safety threats and plans and devises strategies to eliminate impending dangers and to strengthen caregiver protective capacities. The worker orchestrates all planning, reporting, and a 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**- CPS Social 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 CPS Social 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.
- **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 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 State 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 www.legis.state.wv.us. The Rules of Procedure for Child Abuse and Neglect Proceedings and Court Opinions may be found on the internet at http://www.courtswv.gov/.

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 his or her 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;

(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 he or she 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.

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 handicapped 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 and 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 his or her 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.

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 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 his or her 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.

(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 his or her 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 his or her 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 his or her 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 (age 0-17) has been suspected to be abused or neglected or subject to conditions that are likely to result in abuse or neglect (as defined in WV Statute Chapter 49-1-201 legal definitions and DHHR operational definitions) by their parent, guardian or custodian. An abused child is partially defined in statute as 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…. A neglected child is partially defined as 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…. It is clear that a child does not have to be injured in order to be in the target population for Child Protective Services. (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 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, foster 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
- step-parent
- 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 day care provider
- any unlicensed group care situation, for 1-6 children, in a non-home setting in-home child care
- foster family care parents, specialized foster 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
- Family Functioning Assessment
- Safety planning, if necessary
- Family assessment
- 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 49-2-803.

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 forty eight 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, the reporter's children or other children in the subjects household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes 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 forty-eight 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 considered to be acceptable. At their discretion, CPS staff may request that a mandated reporter also submit a written report within forty-eight (48) 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 as a result of child abuse or neglect, shall report that fact to the coroner or medical examiner.
- Cross reporting between Child Protective Services and Humane Officers- Legislation in 2006 revised section 49-2-803, *Persons mandated to report abuse and neglect,* to include humane officers. These individuals will now be required to report suspected child abuse and neglect issues to CPS. Conversely, a new section was added, 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 referents include:

- Mail a notification letter within two (2) business days of the disposition of the intake assessment informing the mandated reporter whether or not the referral has been accepted or screened for assessment.
- Within two (2) 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. Chapter 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 CPS Social Workers begin a relationship with a family or at any time during CPS's involvement with a family, it is important that he or she 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 must be saved in the FACTS file cabinet. Examples of Material Changes of Circumstance could include letting the court know if a battering parent drops out of treatment 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 CPS Social 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 apprize 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 referents happen to be Family Court or Circuit Court Judges.

- When referrals 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 investigation, send the *Disposition of CPS Investigation Report for Family and Circuit Court form* and a copy of the investigation to the referring Family Court Judge as well as the Chief Circuit Court Judge. 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 a family functioning assessment on a family involved with Family Court proceedings, the worker must send a copy of the family functioning 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.

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

Section 2 Definitions

2.1 Terms Defined by Statute

Abandoned: To be without supervision or shelter for any unreasonable period of time in light of the child's age and the ability to care for him/ herself in circumstances presenting an immediate threat of serious harm to such child. *(49-1-201)*

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 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. *(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. *(49-2-207)*

Child: Any person less than eighteen (18) years of age. *(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 restore such children to their families; placing children in suitable adoptive homes when restoring the children to their families is not possible or 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. *(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. *(49-1-201)*

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 articles eight-b and eight-d, chapter sixty-one of this code; 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. *(48-27-202)*

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
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 60A-101-1, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety. *(49-1-201)*

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. *(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 he or she could have and should have recognized that abuse has occurred (Department of Health and Human Resources ex rel. Wright vs. Doris S. 1996).

Sexual Abuse: (A) As to a child who is less than sixteen (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 sixteen (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 his or her 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. (*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 his or her sex organs for the sexual gratification of the parent, guardian, custodian or a third person, or to display his or her 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. (*49-1-201*)

Serious Physical Abuse: 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. *(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 eighteen years of age but under twenty-one years of age, was in departmental custody

upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen 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 eighteenth birthday. (2) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in departmental custody upon reaching eighteen 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 eighteenth birthday. (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... 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 Section 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 take action to protect their child or prevent the action of others from affecting the child's functioning. Examples could include but not limited to: continual scape-goating or rejection of a child, constant berating, being left alone for 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.

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

Sale or Attempted Sale of a Child: The offering of a child in exchange for cash or other goods or services.

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 Section 3.3 Report Screening and 4.10 Maltreatment Findings for additional information)

Abandonment: Child left for extended periods of time without adequate supervision or provision of basic needs. Parent has disappeared and it is not known when he/she may return. No long-term provisions have been made for care of child. May also include situations in which the parent may be physically present, but in a condition that prevents him/her from caring for the child.

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 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 WV 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.

2.3 Additional Operational Definitions

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 Capacities: 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.

Child Protective 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 capacities 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.

Drug Affected Infants: Infants born and identified as **affected** by legal or illegal substance abuse or 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.

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

Kinship/Kin: A person who is a relative, member of a tribe or clan, Godparents, step-parents, 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 to child demonstrates a strong attachment.

Present Dangers: 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 policy section 4.7 Present Danger Assessment for more information)

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 foster 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.

Safety Plan: A temporary measure designed to control one or more impending danger(s) identified which threaten the safety of a vulnerable child and there is not sufficient caregiver protective capacities to assure that impending danger can be offset, mitigated and controlled. (See policy section 4.13 Safety Analysis and Safety Planning for more information)

Serious Harm: Refers to the effects of physical, emotional or mental injury that has already occurred that have 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. Severe 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 Chapter 49-2-201. 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.

Severe Forms of Trafficking in Persons: a.) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or
b.) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Sex Trafficking Victim: A victim of the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

Temporary Protection Plan: A specific and concrete strategy implemented immediately to protect a child from present danger threats in order to allow completion of the Family Functioning Assessment. (See 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 present or impending danger 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 of the activities and functions which lead to a decision about whether or not to conduct a Family Functioning 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 or not there is reasonable cause to suspect that child abuse or neglect exists. In so far as a reporter knows and is able to 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;
- Complete the intake screens completely, and where information is unknown to the reporter, indicate that.

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 present or impending dangers;
- Specific caregiver behavior indicative of child abuse and neglect;
- Events and circumstances associated with or accompanying the child abuse or neglect; present danger; and/or impending danger;
- Effects of child abuse or neglect; present danger; and impending danger or caregiver behavior on child; child's condition resulting from the child abuse or neglect; present danger; and/or impending danger; 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:
  - 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
  - Living arrangements
  - Household composition
  - Household activity – including people in and out
  - Condition of residence

- Description of any present danger 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.
- Information concerning the name and contact information for biological parents who are not subject of the report.
- 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 FACTS fields;
- Document appropriate response time indicators, and aggravated or other circumstances not requiring reasonable efforts to prevent removal in the appropriate FACTS 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 regulate the quality of casework practice;
- 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 policy section 3.3 Report Screening for more information);
- If accepted, indicate the appropriate response time (see Section 3.4 Response Times for more information);
- If accepted, transmit the report to the Family Functioning Assessment Supervisor for assignment to a CPS Social Worker;
- Ensure that a sibling or other child has not been identified as the alleged maltreater unless the individual under the age of eighteen (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 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 CPS Social Worker initiate the referral within the timeframe assigned.

3.3 Report Screening

Whether or not to accept a referral for Family Functioning Assessment is a critical decision in Child Protective Services. 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 Family Functioning Assessment must include supervisory consultation and a justification/explanation for the decision which must be documented in the appropriate FACTS 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 Child Protective Services. WV Code 49-2-802(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. WV 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 eighteen (18) years of 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 witness 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 Family Functioning Assessment. The authority to conduct Family Functioning Assessment extends to those cases when the reported information potentially meets the definitions of child abuse or neglect.

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 Section 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 or not to accept the report for a Family Functioning Assessment will be resolved in favor of the child and the report will be accepted;
- The sufficiency of information in order to locate the family;
- The motives and veracity of the reporter.

Reasons for screening out a report include:

- Duplicate referral during family functioning assessment. (See policy section 3.7 Recurrent Reports for more information);
- Information does not meet the legal definition of abused or neglected child found in Chapter 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 eighteen (18);
- Family does not reside in West Virginia.

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

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 victim child. 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 victim child 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 CPS worker has to make face to face contact in order to assess for present dangers and gather information to complete the Family Functioning 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 Family Functioning Assessment.
The selected response times are as follows:

- Immediate response: CPS Social 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 report, contact must be made within the same day while the child is still under the care of that protective caregiver.
- 0-72 hour response: face-to-face contact must be made with the child(ren) within seventy-two (72) hours. The Supervisor may require response be made sooner based upon the specifics of the intake assessment.
- 0-14 day response: face-to-face contact must be made with the child(ren) within fourteen (14) days. The Supervisor may require 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 CPS Social Workers to respond quicker than the maximum timeframe allowed. For example, a referral may allege that a vulnerable child is in impending danger. The supervisor may assign a seventy-two (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 in Present Danger as it relates to the Intake Assessment. An Immediate Response is required if Present Danger is indicated unless the child is with a responsible adult/protective caregiver. If the child is with a responsible adult/protective caregiver that is clearly documented in the record, the CPS Social Worker may respond within the day as long as child safety will in no way be jeopardized. Present dangers 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. Present Dangers related to the intake assessment can be divided into four categories, Maltreatment, Child, Parent and Family. Present Dangers 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 present danger.

- **Multiple Injuries**
  The report indicates that a child has suffered from different type of injuries as a result of the maltreatment. For example, a child who has a burn on his hand and his arm also has significant bruising, and information indicates that the injuries occurred as a result of maltreatment by a caregiver.

- **Face/Head**
  The report identifies a child that has an injury on his/her face or head which includes bruises, cuts, abrasions, swelling or any physical manifestation to have occurred as a result of parental mistreatment of the child.

- **Serious Injury**
  The report identifies a child that has a serious injury to any part of his or her 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's important to keep in mind that several children who are being chronically neglected do not meet the standard of Present Danger 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 his/her 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.

Child

- **Parent's Viewpoint of Child Is Bizarre**
  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 demon possessed.

- **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 a present danger threat of harm.

- **Child Needs Medical Attention**
  The report identifies a child that is in immediate need of emergency medical care. To be a present danger 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 a present danger threat. It should have an emergent quality.

- **Child Is Fearful or Anxious**
  The report describes children who are 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 drugs)**
  Report identifies a caregiver who is currently drunk or high on illegal drugs and unable to provide basic care and supervision to a child right now. In order to qualify as present danger, it must be evident in the report that a caregiver who is primarily responsible for child care is unable to provide care for his/her child right now due to his/her 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 drugs as compared to being incapacitated by the drugs); 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 present danger, it must be determined that due to a caregiver's state of mind, uncontrolled behavior and/or emotions, he/she is unable to provide basic care and supervision to his/her child right now.

- **Caregiver Described as Dangerous**
  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 present danger, 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

- **Spouse Abuse Present**
  Report indicates that alleged child maltreatment is associated with spouse abuse. To qualify as present danger, there must be an indication that the family violence associated with the report of maltreatment continues to be in process of occurring. This requires a judgment as to whether the family violence is actively threatening to family members right now concurrent with the report.

- **Family Will Flee**
  Report indicates that a family will flee with the child or attempt to hide the child. To qualify as Present danger, 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

If the report alleges any of the following conditions, the response time must be a **maximum** of seventy-two (72) hours, however the Supervisor may instruct CPS Social Workers to make contact with the children and caregivers sooner based on the information collected. The Supervisor must take into consideration if the allegations

would indicate a child is in impending danger 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 an immediate response or a response within seventy-two (72) hours. This is required by Chapter 49-2-802(c)(4). Imminent danger is defined by Chapter 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, or drugs or other controlled substance as defined in Chapter 60A-1-101, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety. 49-1-201

- Serious physical abuse is defined by Chapter 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 in impending danger as outlined in CPS Policy Section 4.9 Safety Evaluation.

In order 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. For example, a CPS referral is received that does not allege a child has been abused or neglected or subject to conditions where abuse or neglect is likely to occur. The child happens to be four (4) years old which could indicate that they are vulnerable due to their age, being powerless, defenseless and invisible. The 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 CPS Social 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 (5) years old.
2. **Physical Limitation**: Children who are physically handicapped and therefore unable to remove themselves from danger 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 danger, 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 him/herself against aggression or dangerous environments are 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 his or her 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 to be 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 Chapter 49-2-809(b). The report must be forwarded regardless of our screening decision. The appropriate report to send is contained within FACTS and is a DDE report titled CPS Report for Law Enforcement (CPS-0188). The report should be

printed from FACTS and mailed promptly to the appropriate agencies. If the report is being accepted by CPS for Family Functioning Assessment, the report should be sent prior to contact with the family if possible. A copy of the report should be filed within the FACTS file cabinet in order to document whether DHHR fulfilled its duty.

- Make a report to the Multi-disciplinary Investigative Team, as established by Chapter 49-2-403(d), per the local protocol for MDT'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 twenty-four (24) hours per day, seven (7) days a week, including weekends and holidays. Reports made to 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 Recurrent Referrals (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 to the pending assessment. If allegations are different from the initial referral and meets 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 re-consideration process.
If a referral is received on an open CPS case, those referrals are to be accepted and assigned to the district. All referrals on critical incidents that meet West Virginia State code will be accepted and assigned to the district.

If allegations are identical in 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 him, 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.

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 a family functioning 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 entered into FACTS.

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 Intake 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 a family functioning 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 manner in which to conduct the assessment. The most important aspect will be the communication between the two supervisors in planning how to complete the family functioning 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 CPS Social Worker.
- If the parents live in separate counties, the county where the maltreating caretaker resides/county where abuse occurred would be the primary CPS Social 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 neglected by the mother and stepfather while on a weekend visit, the report is completed on the mother and stepfathers 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 West Virginia Code Chapter 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 Family Functioning Assessment and transmitting the report to the Family Functioning Assessment Supervisor for assignment to a worker

3.11 Reports Made by the Court during Infant Guardianship Proceedings

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.

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 Family Functioning Assessment. CPS will then have not more than forty-five (45) days to submit a report regarding the findings of the Family Functioning Assessment or appear before the circuit court to show cause why the report has not been submitted. 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 Purpose:

The purpose of the Critical Incident Review process is to review cases to determine if something could have been done differently to prevent the fatality or near fatality of a child. The review process will focus on children that are “known” to our Child Welfare System, this means any child or family that we have had prior contact with, either through Child Protective Services (CPS), a Youth Services (YS) Intake Assessment, or an open case within the last sixty (60) months. The review process will look at practice, policy, and training to see if there are areas that, if improved, could have prevented the death or severe injury to the child. Recommendations will be made from the review team for a Plan of Action.

3.12.2 Definitions:

Annual Report: Report required by the Performance Evaluation Research Division (PERD) audit to be submitted to the West Virginia Legislature on an annual basis.

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 within the last sixty (60) months, or whom CPS or YS assessed within the last twelve (12) months.

Plan for Action: A plan developed as a result of the reviews to improve practice.

3.12.3 Procedures:

3.12.4 Initiating the Field Review Process

The step-by-step process can be viewed in a flowchart format. **See Attachment A**.

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 Family & Children's Tracking System (FACTS). (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, the policy staff will review the intake assessment to ensure it was an appropriate screen;
6. If it is determined the intake needs 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. **See Attachment B**;
8. 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, the Community Services Manager, Regional Director, 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 the Director of Social Service Programs (SSP);
9. If a critical incident review is required, the field review team will be determined by the Director of SSP, Director of CAS, and the Director of the DPQI;
10. The review team will conduct a review of the case with DPQI staff as the team lead;

11. The review team will present the findings at the quarterly meetings using the approved PowerPoint Template as the media. **See Attachment C**;
12. The CPS Program Specialist staff will assist the DPQI staff on the Annual Report.

3.12.5 Critical Incident Review Team Membership

The Critical Incident Review Team will be chaired by the Director of DPQI and consist of the Commissioner of the Bureau for Children and Families (BCF), the Deputy Commissioner over Programs and Resource Development, the Deputy Commissioners over Field Operations and the Assistant Commissioner over the Office of Planning, Research and Evaluation (OPRE). Additional State level staff include; the Director of Training and the Director of CAS. The staff representing field practice in each region includes the four Regional Directors, and the four Regional Program Managers.

3.12.6 Procedure for Conducting the Field Review

A DPQI staff member will lead the Field Review Team. The Team will involve the CPS or YS worker, the CPS or YS Supervisor, and the Community Services Manager (CSM). The Field Review Team will perform a detailed review of the facts and circumstances surrounding the critical incident involving a child alleged to have been critically injured or died because of abuse and/or neglect. This includes, but is not limited to, a review of current CPS, child and family history of abuse and/or neglect, and a review of the department interventions and services from external providers. Interviews will be conducted with staff and external providers. A search of FACTS is conducted to identify the CPS or YS history of the family. All Intake Assessments are reviewed to determine if the screening decision follows code and policy. All assessments are read to determine if the findings are correct and procedures for completing the assessment adhere to policy. Case plans and safety plans are reviewed to determine if the plans appropriately address the identified problems in the home.
All case contacts are read to determine caseworker interaction with the family. The Field Review Team reviews all services to be sure requests were made in a timely manner and the provider delivered the requested services. All review findings and supporting data are entered on the approved PowerPoint Template. The findings are reviewed at the quarterly critical incident review meeting.

3.12.7 Procedure for Completing the PowerPoint Template

1. CPS Program Specialist Staff will enter initial demographic information onto the first slide of the approved PowerPoint Template based on the Critical Incident Form.
2. CPS Program Specialist Staff will then send the partially completed PowerPoint Template to the review team leader for further completion.
3. The review team leader will enter all remaining information onto the appropriate slides after the review process is complete.
4. The template will be sent to the Director of DPQI for the quarterly meeting.

3.13 Quarterly Meeting Procedure:

The Critical Incident Review Team will meet on a quarterly basis in February, May, August, and November of each year. Two (2) days will be set aside for each of these meetings, which will be on the 1st Wednesday and Thursday of the month. The lead reviewer from DPQI will present the findings at the quarterly meetings. The Critical Incident Review Team will discuss each case and make recommendations for improvement. The decision will be documented on the PowerPoint review tool for each child reviewed. A decision will also be made on each case if child abuse and neglect contributed or lead to the critical incident.

If additional information is needed to make a decision, the case will be pended to the next quarterly meeting and the regional program managers will be responsible for obtaining the additional information. Once the determination is made on the abuse and neglect finding, the PowerPoint information will be updated to reflect the decision. DPQI will collect the information from the quarterly meetings for the annual report. If there is a conflict within the group on the determination of abuse or/or neglect, the CPS Program Specialist will make the final determination.

Recommendations for enhancements to practice, policy and/or training will be listed at the end of each case on the PowerPoint and a plan for action will be developed and maintained from meeting to meeting.

3.13.1 Case Review Schedule

- Cases received in the months of October, November, and December will be reviewed at the February team meeting.
- Cases received in the months of January, February, and March will be reviewed at the May team meeting.
- Cases received in the months of April, May, and June will be reviewed at the August team meeting.

- Cases received in the months of July, August, and September will be reviewed at the November team meeting.
- The reason for this schedule is to allow the field staff time to complete their assessment prior to the Field Review.

3.14 Annual Report to the Legislature

Annually on the first day of December, the review team will submit a report to the Commissioner of the Bureau for Children and Families to present to the state legislature.

3.15 Reports Involving DHHR Employees 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 Community Services Manager or designee to discuss the report and to determine how it may best be handled. Under no circumstances should a CPS worker be assigned to the report if the worker is a relative of the alleged maltreater, the child or the families involved. (49-2-802(b)). Reports involving DHHR employees should not be handled by the Community Services 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 Community Services Manager and a determination made about how to best handle the family functioning assessment. If there is any doubt as to whether the family functioning assessment may be compromised by a conflict of interest, the report should be transferred to another Community Services District for family functioning assessment;
- Take appropriate action within FACTS to have access to the case restricted.

The Community Services Manager or designee will:

- Review the report and determine whether it is necessary to transfer the report to another Community Services District;
- Contact the Regional Director or designee to make arrangements for the report to be transferred to another Community Services District for family functioning assessment

when necessary;
- Contact the Community Services Manager and CPS Supervisor in the other District to notify them of the transferred family functioning assessment.

3.16 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 as a result 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;
- The name and address of the hospital where the child is being treated;
- The condition of the child, and in particular, 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 his or her 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:

- Transmit this information 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 immediate for all accepted reports;
- If accepted, transmit the report to the Family Functioning Assessment Supervisor for assignment to a worker.

3.17 Reports Involving Domestic Violence

Domestic Violence is included in the statutory definition of an abused child. The term Domestic Violence is defined in WV 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 include 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 referent about the presence of power and control displayed in the behavior of one individual in the adult relationship. If power and control appears to be present, it is imperative that the adult victim be documented as such which will allow the CPS Social Worker to be better able to prepare for the first steps of intervention. Intra-familial violence caused by substance abuse, 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:

- 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 referent 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.

3.18 Reports Made by the Court during Domestic Violence Protective Order Proceedings

Rule 47 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 investigation and a report back within forty-five (45) days (or less if the allegations involve imminent danger). The Circuit Court will also set a date for a hearing regarding the investigation report. DHHR can avoid this hearing if (a) the CPS worker/supervisor files the report within forty-five (45) days or less if the allegations involve imminent danger, or (b) files a petition.

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

3.19 Reports Involving Parents Knowingly Allowing Abuse and/or Neglect

There have been multiple Supreme Court of Appeals decisions over the past 20 years that have helped define the standard for parental responsibility when their children are abused and/or neglected at the hands of others. The statutory abuse and neglect definition for this is "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 a child in the home." This language replaces the old concept of "failure to protect" which is nebulous and does not capture the full intent, nor does it adequately identify the actions, or inactions, of a parent.

Generally, "knowingly allows" does not necessarily require actual knowledge of the abuse. If the circumstances are such that the parent knew or should have known, the standard is met.

One of these Supreme Court decisions, *In Betty J.W.*, (1988), added a clarification of the "knowingly allows…" standard for parents who are victims of domestic violence. Specifically, the court found that when an adult victim takes "steps to protect" his or her children that are reasonable in light of the threat posed by the batterer to the adult victim and "does not defend the abuser or condone the abusive conduct", then the individual "does not 'knowingly allow' the abuse".

It is important that workers, when completing referrals, guide the interview with the referent to gather as much information as possible about the abuse dynamics. Direct questions should probe the referent about the non-abusive parent's knowledge of the abuse and any action or inaction about which the referent is aware, as well as thoroughly screen for any indications of domestic violence. **It is imperative** that an adult victim be documented as such in order to better prepare the CPS Social Worker's approach to the first steps of intervention. Knowing whether or not the non-abusive parent is also an adult victim will script the very nature of the initial contacts with the family, and help preliminarily determine if a parent is "knowingly allowing" his or her child to be abused.

For reports alleging that a parent or guardian knowingly allowed abuse to occur, the worker 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 by state code;

- Complete demographic screen “Role in Intake” picklists 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 Maltreater**” should be used to identify the parent who is abusing or neglecting the children;
  2. “**Non-maltreating Parent**” should be used to identify the individual who is not abusing or neglecting the children. This value is replacing the “Protective Parent” picklist value;
  3. “**Parent Knowingly Allows Abuse/Neglect**” should be used to identify the parent who is not the maltreater of the acts of abuse but appears to be “knowingly allowing abuse and/or neglect”;
  4. “**Adult Victim of Domestic Violence**” should be used to identify the individual who is a victim of domestic violence (see CPS policy Section 3.17 *Reports Regarding Domestic Violence.)*

3.20 Reports Involving Allegations Made During Divorce/Custody Proceedings

Rule 47 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 investigation 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 investigation report. DHHR can avoid this hearing if (a) the CPS worker/supervisor files the report within forty-five (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.

3.21 Reports Involving Substance Use or Abuse

When a report is received alleging caregiver substance use, 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** use or abuse of substances (legal or illegal) by the parents, **the report must be accepted and assigned**.

For reports of suspected child abuse or neglect involving parental substance use, 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 child protective services. This legislation requires that child protective services and other community service providers address the needs of new-born infants who have been identified as being exposed by alcohol, legal and/or illegal substance use/abuse **or** experiencing withdrawal symptoms resulting from prenatal drug exposure. Health care providers who are involved in the delivery or care of such infants are required to make a report to child protective services. The facility or hospital where the mother and exposed infant are being cared for is not considered a protective caregiver.

All newborns are extremely vulnerable as 100% of their livelihood is dependent upon their care givers. Infants who test positive for prescribed, non-prescribed or illegal drugs, present with withdrawal symptoms, or are diagnosed with fetal alcohol spectrum disorder, are even more vulnerable due to their medical condition. When a mother discloses substance use or tests positive for substances (legal or illegal), or if a child is born with prescribed or non-prescribed drugs in their system, it is often impossible to know based upon the intake assessment if the parent is actively involved in a treatment program or if the parent is abusing the prescribed drugs, such as Suboxone or Methadone, and is unable to properly care for a newborn.

For reports of drug-affected infants and/or infants born ***exposed*** to legal or illegal substances or alcohol or prescribed medication used inappropriately or Methadone, Suboxone, Subutex or any other medication used to treat addiction, 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 results if applicable, including type of drug for which the infant tested positive;
- The birth mother's drug test results if applicable, including type of drug for which she tested positive;
- Information from the delivering obstetrician, nurse practitioner, mid-wife 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 drug 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;
- 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:

- Follow the same rules and procedures for entering intakes as other reports of suspected child abuse and neglect into FACTS;
- The referral is accepted anytime a newborn child has been ***exposed*** to alcohol or legal and/or illegal substances in utero, if the infant tests positive for legal and/or illegal substances or has been diagnosed with fetal alcohol spectrum disorder or if the mother discloses drug use or tests positive for substances during pregnancy or during delivery, indicating that the allegations of maltreatment are "Abuse" and the type is "Physical injury".

The supervisor will:

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

3.22 Reports Involving Informal, Unlicensed/Unregistered Child Care Settings

Informal, unlicensed/unregistered child care settings are investigated by Child Protective Services staff using the IIU format. For reports of suspected child abuse or neglect involving these settings, the worker will attempt to gather the following information and will use the IIU format in FACTS:

- 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 at this time;
- 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 FACTS;
- 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 FACTS as a childcare provider. If the provider is not listed in FACTS, forward the referral to the CPS Supervisor. If the childcare setting is listed in FACTS as a registered/licensed setting, forward to the IIU supervisor;
- Transmit report to the CPS intake supervisor.

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 foster family settings and child care center settings, please refer to the IIU Policy Sections 3.27 Reports Involving Institutional Investigative Unit (IIU) and Child Maltreatment in Group Residential and Foster Family Settings.

3.23 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 Multi-Disciplinary Investigative team. CPS workers may assist the MDT 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 Community Services Manager;

3.24 Reports Involving Sexual or 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 parent'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 take action to ensure their child's safety.

The supervisor will:

- Consider whether the incident may be a result of abuse or neglect by the parent;
- Consider the appropriateness of the parent's response to the incident and his/her 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 parent to community services which may be of assistance to the family, if indicated;
- Refer the parent to the Juvenile Probation Office or appropriate Law Enforcement

Agency, if indicated;

- Accept the referral and transmit it to the Family Functioning 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 parent 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.

3.25 Reports Involving Registered Child Sex Offenders

West Virginia State Code section 15-12, Sex Offender Registration Act, requires that certain sex offenders register demographic information about themselves in order that citizens may take 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 eighteen (18).

In order 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 eighteen (18). An example of unlimited and/or unrestricted access would be if the biological parent co-habitates 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 located on the internet, at https://apps.wv.gov/StatePolice/SexOffender/Disclaimer, 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 eighteen (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.

3.26 Reports Involving Individuals on the Child Abuse and Neglect Registry

WV 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 family functioning assessments when appropriate. This protocol will outline the steps necessary to satisfy the legislative requirements.

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 (2) 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 districts jurisdiction, the following must occur:

- Within three (3) 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 (3) 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 districts jurisdiction, the following must occur:

- Within three (3) 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 (3) 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 FACTS due to the children being subject to conditions that are likely to result in abuse or neglect. A Family Functioning Assessment must be completed on the family unless:

- A Family Functioning 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 family functioning assessment, a new family functioning assessment should be completed.

3.27 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 can educate the woman on the available services.
- Centralized Intake Supervisor will screen out the referral for Child Protective Services due to the allegation not meeting the legal definition of abused or neglected child found in Chapter 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 her of resources available to assist her. 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 FACTS.

3.28 Reports Involving Educational Neglect

While it is a parent's responsibility to ensure that their child receives an education regardless of their child's age, it is recognized that parents should have more control, influence and responsibility for children between five (5) and eleven (11) years of age. When a referral alleging a child is being neglected due to lack of education, Child Protective Services should examine the referral to determine if it is appropriate to for Child Protective Services intervention. Issues to consider prior to accepting the referral for educational neglect:

- The schools efforts to address the child's absences or educational needs with the caregiver;
- The caregivers' responses to the schools 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 Child Protective Services 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 parent's lack of cooperation with the school, or if there is

any other allegations that would indicate the child is abused or neglected or subject to conditions where abuse or neglect is likely to occur.

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

Pre-Investigation-Introduction

Reports of suspected child abuse or neglect in group residential or foster 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 foster 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 of the child, determination of whether the incident occurred, whether maltreatment (child abuse or neglect) occurred, the culpability of the agency/provider and areas of concern identified during the investigation that may indicate non-compliance. Non-compliance violations will be determined by the Residential Child Care Licensing Specialist or Regional Home Finding Supervisor. When non-compliance violations are determined a Corrective Action Plan will be required.

Institutional Investigative Unit Intake Protocol

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.

1. For reports of suspected child abuse or neglect involving a group residential facility or foster family care home the 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 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 FACTS;
   - 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.

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 Community 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 Regional Home Finding Supervisor 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: Regional Home Finding Staff should also refer to Foster Care Provider (Home Finding Policy) Section 14.8, 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 Regional Home Finding Supervisor or Residential Licensing Supervisor 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 referents receive verbal notification if the reported suspected abuse or neglect has been screened out. Document the notification in FACTS on the Contact screen identifying "reporter" as the Non-Client/Non-Collateral Participant.

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 family functioning 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 family functioning 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.

Institutional Investigative Unit Intake Protocol

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.

(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 parents;
   - 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 referent is (name, address, phone);
- How the referent came to know about the concerns;
- Why the referent is referring the situation at this time;
- Whether the maltreater knows the report is being made;
- The referent'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 FACTS;
   - 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;*
- *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 referents receive verbal notification if the reported suspected abuse or neglect has been screened out. Document the notification in FACTS 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, the culpability of the agency/provider, and areas of concern identified during the investigation that may indicate non-compliance. Non-compliance violations will be determined by the Child Care Licensing Specialist or Child Care Regulatory Specialist. When non-compliance violations are determined a Corrective Action Plan will be required.

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.

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 FACTS;
   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 of abuse and/or neglect are determined to be of a serious nature, 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:

    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 child 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;
    c. Ensure that all mandated referents receive verbal notification if the reported suspected abuse or neglect has been screened out... Document the notification in FACTS on the Contact screen identifying "reporter" as the Non-Client/Non-Collateral Participant.

3.32 Reports Involving Children Found at Clandestine Drug Laboratories and/or Exposed to Methamphetamine Residue Contamination

The abuse and manufacture of methamphetamine is a pronounced and growing problem in West Virginia. Clandestine methamphetamine laboratory law enforcement seizures reached an all-time record of 561 in 2013.

The chemicals used to manufacture methamphetamine, the production process, and the waste generated as a result 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. West

Virginia Code Chapter 60A-11 "Clandestine Drug Laboratory Remediation Act" and West Virginia Code of State Regulations 64-92 "Clandestine Drug Laboratory Remediation Rule" regulates 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 drugs. West Virginia Code Chapter 60A-10-12 "Exposure of children to methamphetamine manufacturing" defines penalties associated with individuals exposing children to known methamphetamine laboratories. ***Reminder: Smoking methamphetamine can cause the same residual methamphetamine contamination as manufacturing.***

SECTION 4 FAMILY FUNCTIONING ASSESSMENT

4.1 Purpose of the Family Functioning Assessment

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

The purpose of the Family Functioning 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 Family Functioning 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.

4.2 Family Functioning Assessment Protocol

The Family Functioning 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 Family Functioning Assessment begins with the preparation phase and continues until sufficient information is collected to make the necessary Family Functioning 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 Family Functioning Assessment and Safety Evaluation are:
- Preparation
- Initial Family Contact Requirements
- Information collection
- Present danger 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 CPS Social Worker Preparation

Upon assignment of a report for Family Functioning Assessment, the CPS Social 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 Family Functioning Assessment, taking into account 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 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 he or she would be more comfortable with a teacher, counselor or other person present during an interview, then the worker can include that person, as long as the person is **not** the alleged maltreater. The alleged maltreater or non-maltreating parent may also indicate that he or she would like to have an advocate, counselor, attorney or 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/family 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 family functioning assessment. The failure of law enforcement or the multi-disciplinary investigative team to conduct an investigation of 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 multi-disciplinary investigative team according to the protocol established in collaboration with the prosecuting attorney and local law enforcement. A multi-disciplinary investigative team should be established in each county and should be headed and directed by the prosecuting attorney, pursuant to Chapter 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... (49-4-402(c)).

Supervisor Duties:

- Review the referral and if necessary provide guidance on completing the Family Functioning 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 FACTS. The response time is the maximum amount of time that is allowed to contact the victim child; however it is best practice to contact the victim child, other children and caregivers as soon as possible;

- Identify him/herself as a Child Protective Service Social Worker from the WV Department of Health 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 Family Functioning Assessment. If permission to conduct interviews with the child is denied, then the worker will explain to the family that s/he 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 CPS Social 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 CPS Social 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 CPS Social Worker will place his/her 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 s/he 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 attorney for consultation on how to gain access so that the child/family may be interviewed;

- If at all 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 multiple families reside in a household and maltreatment is suspected in the home, then two referrals should be entered and both families assessed;

  For example: Family A has two (2) children ages six (6) years old and eight years old with grandmother and grandfather residing in the home. Family B has three (3) children ages six (6) months old, two (2) years old and six (6) years old. Grandmother and Grandfather are the same as family A. Two (2) separate referrals should be entered and both families assessed, and the grandmother and grandfather's information should be included in both assessments.
- Assess for Present Dangers and implement a protection plan if necessary;
- Consult with the CPS Social Worker Supervisor within twenty-four (24) hours of contact with the identified child unless a present danger is identified. See policy section 4.7 Present Danger Assessment for more information.

4.5 Notification of Parent's 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 law makers and social workers as well as community stake holders 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 Family Functioning Assessment. It is also important to keep in mind that the way in which information is disclosed is important. The CPS 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. Some of the rights shared by our clients about whom we must inform them include:

- 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 WV Code 49-5-501(a).
- The right to be allowed access to one's personal file in accordance with WV Code 49-5-501(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.
- 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 CPS Social Worker must apply a child centered and family focused approach when collecting information during the Family Functioning Assessment. This approach seeks to support and involve children, caregivers/parents, and other individuals in CPS intervention. The CPS Social 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 Family Functioning Assessment.

Detailed information must be collected through interviews, observations, and written materials provided by knowledgeable individuals. The CPS Social Worker must conduct sufficient numbers of 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 CPS Social 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. In order 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.
   - 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 CPS Social 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 CPS Social 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.

2. Parents/Caregivers
   - Seek the parents' and caregivers' assistance with completing the Family Functioning Assessment. The parents' and caregivers should be interviewed separately with the non-maltreating parent being interviewed first. The CPS Social Worker must also encourage and support parents/caregivers to ask questions and express their concerns about the Family Functioning 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 Family Functioning Assessment Areas.
   - The CPS Social Worker must be alert to evidence of other safety threats or present dangers that were unreported or unidentified during the intake assessment.
   - If necessary, the CPS Social Worker must gather specific information concerning parents not subject to the Family Functioning Assessment in order to notify the parent if their child has been abused, neglected, unsafe and to make reasonable efforts to prevent removal.
   - The CPS Social Worker must provide information about the Family Functioning Assessment status and progress with the parents/caregivers as the Family Functioning Assessment continues including:
     - Concerns about child safety;
     - Status and oversight of the protective plan (if one is in place) including parents/caregivers continuing attitudes, willfulness and concerns;
     - General observations and impressions emerging from the Family Functioning Assessment process; and
     - Specifics about any court activity, evaluation appointments; service provision issues that are a part of the Family Functioning 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 CPS Social 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 Family Functioning Assessment. When interviewing collaterals stress the confidential nature of the Family Functioning Assessment.

4.6.1 Family Functioning Assessment Areas

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

The Family Functioning Assessment Areas are:

1. *Maltreatment*: The types of maltreatment apparent; this includes all types of 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 on a daily basis, 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 drugs 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 Present Danger 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 begin focusing on whether there are present danger threats to a vulnerable child's safety. Present Dangers can be identified **at any time** during the Family Functioning Assessment or On-Going CPS and if identified, a protection plan must be implemented prior to leaving the family or situation.

Present Dangers are immediate, significant and clearly observable family condition (or threat to child safety) that is actively occurring or "in process" of occurring and will likely result in severe (serious) harm to a child. Present Dangers 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 present danger.

- **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 his hand and his 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 as a result of child maltreatment by a caregiver. Injuries to the face and head which may have occurred last week or month are not Present Danger.
- **Serious Injury**
  Refers to injuries that are consistent with bone breaks, deep lacerations, burns, malnutrition, etc. as a result 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's important to keep in mind that several children who are being chronically neglected do not meet the standard of Present Danger 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 his/her 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**
  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, serious emotional abuse. This qualifies the nature of identified maltreatment and requires interpretation to determine that abuse meets the definition of present danger.

Child

- **Parent's Viewpoint of Child Is Bizarre**
  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 danger to that child. It is consistent with the level of seeing the child as demon possessed.
- **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. In order to qualify as a present danger, 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 a present danger threat of harm.
- **Child Needs Medical Attention**
  Refers to emergency medical care that is needed immediately for a child of any age. To be a present danger 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 a present danger threat. It should have an emergent quality.
- **Child Is Fearful or Anxious**
  Refers to children who are described as being 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 drugs)**
  Refers to a caregiver who is currently drunk or high on illegal drugs and unable to provide basic care and supervision to a child right now. In order to qualify as present danger, it must be evident that a caregiver who is primarily responsible for child care is unable to provide care for his/her child right now due to his/her 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 drugs as compared to being incapacitated by the drugs); 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 present danger, it must be determined that due to a caregiver's state of mind, uncontrolled behavior and/or emotions, he/she is unable to provide basic care and supervision to his/her 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 present danger, 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

- **Spouse Abuse Present**
  Refers to family situations in which the alleged child maltreatment is accompanied by spouse abuse. To qualify as present danger, there must be an indication that the family violence associated with the allegations of maltreatment continues to be in process of occurring. 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 the assessment process. It is important to also take into account if the child and spouse are being abused at the same time as a result of how the violence is occurring.
- **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 a Present Danger 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 Present Danger, it is the CPS Social Worker's responsibility to assure that children are safe while the Family Functioning Assessment continues by establishing a protection plan. Temporary Protection Plans are a specific and concrete

strategy implemented the same day a Present Danger is identified, if at all possible before leaving the family or situation.

A Temporary Protection Plan must meet the demand for **immediate** action to control Present Danger 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 FACTS.

1. What are the options for the Temporary Protection Plan?
2. What is the parent's/caregivers' willingness to 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 take responsibility to protect the child?
5. Are roles and responsibilities clear and well defined for the parents/caregivers and 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. times, transportation, etc.)?

In some situations, Temporary Protection Plans may be implemented when a Present Danger 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 in order to confirm Impending Danger;
2. To complete documentation and decision making justification when Impending Danger has been identified; or
3. To complete rigorous safety analysis and planning when Impending Danger 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 supervisor, insofar as possible, to determine the best course of action.
3. **Identify with the caregivers** what Temporary Protection Plan options are available and acceptable in order to ensure child safety;
4. Attempt to use resources within the family network to form the Temporary Protection Plan;
5. Confirm that there is agreement by caregivers and safety resources;
6. Verify that the safety resources are responsible, available, capable, trustworthy and able to sufficiently protect;
7. Put the Temporary Protection Plan in place prior to leaving the family or situation;
8. Consult with the supervisor, preferably before leaving the family but at a maximum within twenty-four (24) hours of the implementation of the Temporary Protection Plan;
9. Attempt to gain legal custody as the Temporary Protection Plan when present

danger exists; and there are no family network resources available; and/or parents/primary caregivers are unwilling to permit the CPS Social Worker to deploy a Temporary Protection Plan. If the Temporary Protection Plan includes legal custody, supervisor consultation should occur prior to court intervention if at all possible as required by the Gibson Decree. (see the Gibson vs. Ginsberg Decree and Policy Section 4.18 Statutory Remedies for Protecting Children for more information);

10. Complete the Family Functioning Assessment within seven (7) days. In limited circumstances the Temporary Protection Plan can be reauthorized. A reauthorization can be granted in order to collect more information to correctly determine if a child is in impending danger 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 in order to determine if the reauthorization is appropriate and to assist the supervisor and worker in clearly identifying the additional information required to make the necessary decisions;
11. Document all information, supervisory consultation and approval and action taken on the appropriate family functioning assessment screens within FACTS.

The supervisor will:

1. Be available or arrange for availability of supervisory consultation for emergency situations;
2. Review all information available relevant to the Imminent Danger 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 FACTS.

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

1. A maltreating or threatening person **voluntarily** agrees to leave and remain away from the home and child until such time as the Family Functioning Assessment is completed.
2. A responsible, suitable person agrees to reside in the household and supervise the child at all times or as needed to assure protection until the Family Functioning Assessment is complete. If this is part of the protection plan, visit the residence and complete a Safety Check.

3. The child is cared for part or all of the time outside the child's home by a friend, neighbor, or relative until the Family Functioning Assessment is complete (maximum of seven (7) days.)
4. The child is legally placed in out-of-home care pending the completion of the Family Functioning Assessment.

A Temporary Protection Plan contains specific information that must be documented and clearly defined in the case record. This includes a description of the:

1. Identified Present Danger including the circumstances in which the assessment of Present Danger 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 protection (e.g. *trustworthiness, reliability, commitment, availability);*
5. Details of the Temporary Protection Plan (e.g., *how it will work, specific provisions, time frames, activities, child location, caregiver access*.), the plan to communicate with the family and safety resources, and how the CPS Social Worker will oversee/manage the protection plan;
6. Arrangements for visitation and contact with children **must** be described when the Temporary Protection Plan involves parent/caregiver – child separation.

The CPS Social Worker must oversee the Temporary Protection Plan as the Family Functioning Assessment continues by seeing children and by having personal contact with those responsible for carrying out the Temporary Protection Plan. The purposes of oversight is 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 access and contact between parents/caregivers and children are 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 Family Functioning Assessment areas to determine if the child is living in impending danger.

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

Impending Danger is often not immediately apparent and may not be active or "in process" and threatening child safety upon initial contact with a family. Impending Danger is often subtle and can be more challenging to detect without sufficient assessment and evaluation. Identifying Impending Danger requires thorough

information collection regarding family/ caregiver functioning to sufficiently assess and understand how family conditions occur.

Impending Danger and the Danger Threshold Criteria

The Danger Threshold Criteria **must be applied** when considering and identifying any of the Impending Danger threats. In other words, the specific justification for identifying any Impending Danger 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 Danger Threats, are in essence negative circumstances and/or caregiver behaviors, emotions, etc. that 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 she or he is powerless to manage, and susceptible, accessible, and available to a threatening person and/or persons 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 0 – 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 severe 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 severe harm. Severe 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 Danger Threats

There are eleven (11) standardized Impending Danger Threats that are used to assess child safety. The identification of any one of the eleven (11) Impending Danger Threats means that a child is in a state of danger. If an Impending Danger Threat has been identified the child is unsafe. The following list of Impending Danger Threats may be associated with a child being in danger of severe 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.

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 Danger 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, drugs, 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.
- Drug production; drug 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 Danger threat there must be specific information to suggest that a family is consistently unable to meet basic needs on a daily basis. 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 Danger 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.
- 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 drugs) 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 results 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 Danger 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 Danger 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 or 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 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 in order 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 Danger threat there must be specific information to suggest that a caregiver's negative perception of his or her 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 severely 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 considered to be 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 Danger 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, clothing, shelter, and supervision would fit this impending danger threat. This impending danger 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 Danger 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 have to fend for him/herself; 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 (drugs, 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 Danger 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 Danger 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 he or she feels 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 Danger 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 he or she will lash out at the child.
- 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 Danger 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 danger to child safety.

Examples of this Impending Danger 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).
- 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 him or herself 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 and / or abuse that significantly impacts family functioning and caregiver performance. To identify this Impending Danger threat there must be specific information to suggest that caregiver(s)' substance use is a consuming aspect of their life style. The substance usage is occurring to the degree and frequency that it is having a prohibitive impact on a caregiver's ability to provide of the basic care and safety of the child.

Examples of this Impending Danger 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 his or her life; substance usage is the defining characteristic of a caregiver's lifestyle;
- Caregiver's lifestyle results in drugs and/or drug paraphernalia being accessible to a child; caregiver allows and/or encourages the child to use and/or sell drugs.
- Child is fearful of home environment due to drug 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 abuse or misuse.

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 Danger threat there must be specific information to suggest that a caregiver's volatile emotions and tendency toward violence is a defining characteristic of how he or she often behaves and/or reacts toward others. The caregiver exhibits violence that is unmanaged; unpredictable and/or highly consistent.

Examples of this Impending Danger 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 his or her 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. drugs, 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 severe harm to a child. To identify this impending danger 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 result in the inability or unwillingness of the caregiver to provide for the basic needs and safety of the child.

Examples of this Impending Danger 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 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 unable to functioning adequate to performance caregiver responsibilities.
- Caregiver addiction is all consuming and results in his/her 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 ahead 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 basic 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 the child being in a state of danger.

To identify this Impending Danger threat there must be specific information that identified a child's exceptional condition and a caregiver's inability to meet or address that condition. This Impending Danger 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 Danger 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 take action.
- 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 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 virtue of 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 Family Functioning Assessment, the CPS Social Worker gathers information in Family Functioning Assessment Areas related to child safety, including Maltreatment and Nature. The specific, detailed information in the Maltreatment and Nature Assessment Areas must be analyzed in order 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 Family Functioning Assessment would lead the CPS Social 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 Child Protective Services 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 WV Code 49-1-201 as well as CPS Policy Section 2.1 Terms Defined by Statute. (See CPS Policy Section Referrals for information concerning referrals to that program when maltreatment is substantiated)

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 Family Functioning Assessments. The safety decision must be based upon a consideration for impending danger 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 Dangers were identified. Based on currently available information, there is no child (ren) likely to be in danger of serious harm. No Temporary Protection Plan or 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 Danger threats were identified which threaten the safety of a vulnerable child and there are not sufficient caregiver protective capacities to assure that Impending Danger can be offset, mitigated and controlled. The case must be opened for Ongoing CPS. Proceed to Safety Analysis and Planning.

Family Functioning 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 FACTS field. Specify in detail any immediate needs that were addressed during or at the conclusion of the Family Functioning Assessment (if applicable). If a case is to be closed at the conclusion of the Family Functioning 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 Family Functioning 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 will 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 WV Code 49-1-201. WV Code 49-4-408 mandates that a plan be implemented where every abused or neglected child in the state is provided an environment free from abuse or neglect. For this reason the case will be open for CPS Ongoing Services. Complete an ASO referral for Case Management, Needs Assessment and Support Case Services Plan. See Policy Memo concerning CPS Ongoing Services when children are safe but have been maltreated for more information.
- Ongoing CPS is court ordered.

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

4.12 Case Transfer Conference

During the Safety Analysis and Safety Planning process, it is necessary for the Family Functioning Assessment Worker to meet with the family. This meeting should occur the same day children are identified as living in impending danger unless there are extenuating circumstances. The following must occur during the Case Transfer Conference:

- Thoroughly explain the safety decision and impending danger(s) that must be addressed in order to appropriately plan for the child(s) safety;
- Listen to the caregivers concerns, answer their questions and allow the caregivers to be an intricate 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 deploy the appropriate safety plan;
- Explain the purpose of Ongoing Child Protective Services.

4.13 Safety Analysis and Safety Planning

Safety Analysis and Planning must be completed on 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 Danger and assure child safety. Safety Analysis results in the development and implementation of sufficient safety plans (In-home Safety Plans or Out-of-home Safety Plans which require court intervention) to manage identified Impending Danger. The appropriate Safety Plan must be deployed the same day that children were identified as in need of protection as a result of the Safety Evaluation Conclusion.

If the answer is "NO" to any of the safety analysis questions below then the determination is that an in-home safety plan CANNOT sufficiently control Impending Danger and assure child safety. Any NO response indicates the need to pursue the use of an Out-of-home Safety Plan (legal custody and placement) and/or the determination that child(ren) must remain in placement. If the answers are all "YES", proceed with implementing an In-home Safety Plan. The Safety Analysis questions are as follows:

- The caregivers are willing for an In-home Safety Plan to be developed and implemented and have demonstrated that they will cooperate with all identified safety service providers.
- The home environment is calm and consistent enough for an In-home Safety Plan to be implemented and for safety service providers to be in the home safety.
- Safety services are available at a sufficient level and to the degree necessary in order to manage the way in which Impending Danger is manifested in the home.
- An In-home Safety Plan and the use of In-home Safety Services can sufficiently manage Impending Danger without the results of scheduled professional evaluations.
- The caregivers have a residence in which to implement and In-home Safety Plan.
- An implemented In-home Safety Plan in an open On-going CPS case continues to sufficiently control Impending Danger.
- Conditions for return have been met in an open On-going CPS case and caregiver protective capacities have been sufficiently enhanced to allow for reunification to occur with the implementation of an In-home Safety Plan.

If an In-home Safety Plan cannot be implemented and the Prosecuting Attorney will not assist the DHHR in filing a petition to implement an Out-of-home Safety Plan, the DHHR **must** initiate the provision for Dispute Resolution, pursuant to WV Code 49-4-501(c).

(Please Review CPS Policy Section 7.9 Role of Prosecuting Attorney for additional information)

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

- Thoroughly explain the safety decision and Impending Danger(s) that must be addressed in order to appropriately plan for the child(s) safety;
- Listen to the caregivers concerns, answer their questions and allow the caregivers to be an intricate 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 deploy the appropriate safety plan;
- Explain the purpose of On-going Child Protective Services.

Safety Planning

Safety Plans are a written arrangement between caregivers and CPS that establishes how Impending Danger threats will be managed. The safety plan is implemented and active as long as Impending Danger threats exist and Caregiver Protective Capacities are insufficient to assure a child is protected. The Safety Plan specifies what Impending Dangers exist, how Impending Danger will be managed using what safety services; who will participate in those safety services; under what circumstances and agreements and in accordance with specification of time requirements, availability, accessibility and suitability of those involved.

4.14 In-home Safety Plan

The In-home Safety Plan refers to safety services, actions, and responses that assure a child can be kept safe in their own home and with their parents/caregivers. In-home Safety Plans include activities and services that may occur within the home or outside the home, but contribute to the child remaining primarily in their home. People participating in In-home Safety Plans may be responsible for what they do inside or outside the child's home. An In-home Safety Plan primarily involves the home setting and the child's location within the home as central to the safety plan. Depending on how Impending Danger threats are occurring within a family, separation may be necessary periodically, at certain times during a day or week or for blocks of time (e.g. day care, staying with grandma on weekends). This is different than the department requiring that the child and parent be separated due to Impending Dangers. (See WV Code 49-4-601, 49-4-602, and 49-4-604 for more information)

The In-home Safety Plan must:

- Be a written document between the parent or caregiver and the Department;
- Specify the Impending Danger threats;
- Specify the names of formal and informal safety resources that will provide safety services;
- The roles and responsibilities of the safety resources (in-formal and formal) including a description of the availability, accessibility and suitability of those involved, the action/services including frequency and duration;
- Re-confirm commitments with all safety resources used in the Temporary Protection Plan if they will be participants in the Safety Plan;
- Explain how CPS will manage/oversee the Safety Plan, including communication with the family and providers;
- Be approved by the CPS Social Worker Supervisor.

CPS should inform parents/caregivers about their rights related to accepting/cooperating with the In-home Safety Plan as well as any alternatives or consequences. In order to develop an In-home Safety Plan that uses the least intrusive means possible, CPS should:

- Work to engage parent/caregiver in understanding and accepting the need for a Safety Plan;
- Enlist the parent/caregiver in a process of identifying and fully considering available formal and informal safety resources and options.

4.15 Reasonable Efforts to Prevent Removal

The right of a parent to the custody of his or her 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)].

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 Family Functioning 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. (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 (49-4-602(d)(1));
- The parent has:
  - Committed murder of another child of the parent;
  - Committed voluntary manslaughter of another child of the parent;
  - Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or
  - Committed a felonious assault that results in serious bodily injury to the child or to another child of the parent; or
  - The parental rights of the parent to a sibling have been terminated involuntarily (49-4-602(d)(3));
  - Committed murder of the child's other parent; or
  - Committed voluntary manslaughter of the child's other 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; or
  - Committed unlawful or malicious wounding that results in serious bodily injury to the child or the child's other parent.

For information see CPS Policy Section 4.26 Completing Family Functioning 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).)

4.16 Safety Services

Safety Services refers to actions identified as part of a Safety Plan occurring specifically for controlling or managing Impending Danger threats. Safety services must control the Impending Danger threats immediately upon being put in place: safety services must have an immediate effect whenever they are delivered; safety services must do immediately what they are intended to do. Safety services are categorized according to the objective they seek to address within a safety plan.

When developing an In-home Safety Plan, Safety Services must be deployed which mitigate the impending danger and in turn allows the child to remain in their home and under the care, custody and control of their parents/caregivers. Safety services differ from long-term treatment responses in that they are short-term and strictly for the purpose of controlling for safety. Safety Services can be "formal" or "in-formal" but **must** work in conjunction to ensure safety. Some Safety Services 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 resources 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 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 Services would control the impending danger and allow the child to remain safely in their home while treatment services were being established based upon the Family Assessment and Treatment Plan.

Formal and Informal Safety Services 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 action. The emphasis here is that the provision of supervision will assist in controlling one or more of the identified Impending Dangers. The identified child or family requiring supervision must be within the defined boundary in which the provider can intervene immediately if needed to ensure safety, permanency and well-being. The service 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:** Direct face-to-face services to assist 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 services must have an immediate effect on controlling the Impending Dangers. The service is different than parenting education in that it is strictly for controlling impending danger.
- **Family Crisis Response:** Family crisis response is a face-to-face intervention in the consumer's natural environment to assess and de-escalate a family crisis which affects child safety and controls the Impending Danger. This service 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. This service may target dysfunctional family interactions or environmental situations that have escalated to a point that affects the safety of child and has resulted in an inability to adequately function and problem solve.

- **Crisis Home Management:** Service to provide assistance 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 Danger.
- **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 service 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 of time. Service 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 Impending Danger.
- **Respite:** Planned 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 of time to control Impending Danger. Service may be provided in or out of the natural home or on an hourly/daily basis. Service may also be utilized if the caregiver has a scheduled inpatient medical procedure.
- **Child Oriented Activity:** Structured activities, conducted under adult supervision, that are designed to provide a safe place for the child that controls the Impending Danger.
- **Private Transportation:** Provision of transportation services in a personal vehicle to obtain goods or services provided to control Impending Danger.
- **Public Transportation:** Provision of transportation on buses, planes, and/or trains to obtain goods or services provided to control Impending Danger.
- **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.
- **Routine/emergency medical care:** Provision of medical care for a caregiver and/or a child. This medical service will assist in controlling one or more of the identified and described dangers which place the child's safety in the home in question.
- **Routine/emergency mental health care:** Provision of mental health care (outpatient) for a caregiver and/or a child. This mental health service will help to control one or more of the identified and described dangers which place the child's safety in the home in question.
- **Routine/emergency alcohol or drug abuse services**: Provision of inpatient or outpatient services for the treatment of alcohol or drug abuse. This service should be indicated for situations in which the alcohol or drug abuse affects the safety of the

child. This should not be indicated if an alcohol or drug evaluation is needed.

- **In-home health care**: Health related service which is provided in the home of the family. The service provided in the home must assist in controlling one or more of the identified and described dangers which place the child's safety in the home in question.
- **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 service**: 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** service (must specify): any other service which may directly relate to controlling the immediate safety of the child, and has not otherwise been listed.

Safety Services 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 CPS social worker.

The CPS social 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
- 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 6.3 for more information.

4.16.1 Safety Services and Socially Necessary Services

Socially Necessary services are interventions necessary to improve relationships and social functioning, with the goal of preserving the individual's tenure in the community or the integrity of the family or social system. Socially necessary services assist in achieving the child welfare goals of safety, permanency and well-being.

The Bureau for Children and Families administers the provision of some Socially Necessary Services through an Administrative Services Organization (ASO) which is managed by APS Health Care.

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 Dangers identified during the CPS Family Functioning Assessment (FFA). The bundled services must be carefully coordinated by the CPS social worker with any other formal or informal safety services that are put in place. The safety services bundle is available twenty-four (24) hours, seven (7) days a week and must commence within twenty-four (24) hours of referral. The provider must be available to respond to crisis within the family during business and non-business hours. Eighty (80) 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 ninety-two (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 CPS social 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 CPS social worker in the Safety Plan, also. All services in the bundle do not have to be provided to every family, but may be provided. The services must be apportioned according to the need to control Impending Danger 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

- Child Oriented Activity

The CPS social worker must develop the safety plan and make the referrals to the necessary Safety Services as needed.

(For more information about Social Necessary Services, the Utilization Management Guidelines Manual can be located at http://www.dhhr.wv.gov/bcf/Providers/Pages/Social-Services.aspx)

4.17 Out-of-Home Safety plan

An Out-of-Home Safety Plan refers to safety management that primarily depends on separation of a child from his home and separation from parents/caregivers who lack sufficient protective capacities to assure the child will be protected from the Impending Danger threats. Court oversight is required due to CPS requiring the child be separated from their home and parent/caregiver.

Cases involving an Out-of-Home Safety plan (the child has been determined to be unsafe and an In-home Safety Plan will not assure the child's safety), requires a petition to be filed with the Circuit Court alleging that the child is abused or neglected, that continuation in the home is contrary to the best interests of the child and why this is so (child is unsafe), whether or not the DHHR made a reasonable effort to prevent removal(considered In-home Safety Plan 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 an In-home Safety Plan) and whether or not there are Aggravated Circumstances or other circumstances present and Reasonable Efforts are not required.

In developing an Out-of-Home Safety Plan, the CPS Social Worker will:

- Identify the family/client conditions that confirm the need for out-of-home placement;
- Consult with the CPS Supervisor and County Prosecuting Attorney;
- Identify the placement conditions;
- Select and identify the services and providers that best match with existing conditions;
- Determine and identify the length of placement;
- Select and identify the home or facility in which the child will be placed;
- Indicate why placement with the provider or relative is appropriate and how proper care will occur;
- Describe how parent's' rights regarding removal were safeguarded;
- Identify and describe family/parent strengths which facilitate and support the Safety Plan;
- Seek the parent's signatures on the Safety Plan as evidence of their involvement in the development of the plan, their understanding of the plan, and their agreement or lack of agreement with the plan;
- Document how the case will be transferred to an on-going worker (if this will occur) in terms of any staffing which will occur, when these are scheduled, who will

participate, etc. and identify next steps to proceed with the family assessment;

- Document the contacts and process followed to develop the safety plan;
- Provide a copy of the safety plan to the parents, providers and Multi-Disciplinary Team;

Regardless of how a family comes to the attention to the Department , the DHHR has identified youth considered appropriate to begin the wraparound process as having:

- Youth, ages twelve (12) to seventeen (17) (up to the youth's 17th birthday) with a diagnosis of a severe emotional or behavioral disturbance that impedes his or her daily functioning (according to a standardized diagnostic criteria) currently in out-of-state residential placement and cannot return successfully without extra support, linkage and services provided by wrap-around;

- Youth, ages twelve (12) to seventeen (17) (up to the youth's 17th birthday) with a diagnosis of a severe emotional or behavioral disturbance that impedes his or her daily functioning (according to a standardized diagnostic criteria) currently in in-state residential placement and cannot be reunified successfully without extra support, linkage and services provided by wrap-around;
- Youth, ages twelve (12) to seventeen (17) (up to the youth's 17th birthday) with a diagnosis of a severe emotional or behavioral disturbance that impedes his or her daily functioning (according to a standardized diagnostic criteria) at risk of out-of-state residential placement and utilization of wrap-around can safely prevent the placement;
- Youth, ages twelve (12) to seventeen (17) (up to the age of the youth's 17th birthday) with a diagnosis of a severe emotional or behavioral disturbance that impedes his or her daily functioning (according to a standardized diagnostic criteria) at risk of in-state level 1, 2, 3 or PRTF residential placement and they can be safely served at home by utilizing wrap-around;

After a family has been identified as potentially appropriate for wraparound, the worker should then initiate the referral process. Please refer to Safe at Home, WV wrap around policy.

If an In-home Safety Plan cannot be implemented and the Prosecuting Attorney will not assist the DHHR in filing a petition to implement an Out-of-home Safety Plan, the DHHR **must** initiate the provision for Dispute Resolution, pursuant to WV Code 49-4-501(c). (Please Review CPS Policy Section 7.9 Role of Prosecuting Attorney for additional information)

4.18 Statutory Remedies for Protecting Children

Chapter 49 of the West Virginia Code provides a number of 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, CPS Social 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 CPS Social Worker and Supervisor, and, as necessary, consultation with the Prosecuting Attorney and/or Regional Attorney.

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 in order 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 present or imminent danger exists and there are no safety resources available and/or the primary caregivers are unwilling to permit the CPS Social Worker to deploy a protection plan. The relief that could be sought would be a petition to the court seeking legal and physical custody in order to place the child in a safe environment;
3. When a child is unsafe and the Safety Analysis and Planning determines that an Out-of-home Safety Plan is required. The relief that could be sought would be a petition to the court seeking legal and physical custody in order to place the child in a safe environment.
4. When aggravated or other circumstances exist as described in WV Statute 49-4-602(d). (see policy section 4.26 Completing Family Functioning Assessments in which reasonable efforts to prevent the child from removal of the home is not required)
5. If appropriate, a co-petition with the non-offending parent may be filed with the circuit court. 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.

4.19 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 his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety. (49-1-201).

If a child or children in the presence of a CPS Social Worker be in an **emergency** situation which constitutes an imminent danger to the physical well-being of the child or children **and** if the CPS Social 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 CPS Social Worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: After taking custody of such child or children prior to the filing of a petition, the CPS Social 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.

4.20 Completion of the Family Functioning Assessment

To conclude the Family Functioning Assessment, the worker will:
- Complete the documentation of the Family Functioning Assessment when enough information has been gathered to make the decisions in the Safety Assessment and Family Evaluation. This must occur as soon as sufficient information has been collected to make the necessary decisions in the Family Functioning Assessment. The maximum timeframe for completion of the Family Functioning Assessment is within thirty (30) days from receipt of the report. If extenuating circumstances have prevented the completion of the Family Functioning 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 Family Functioning 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 a Socially Necessary Safety Services Case Management if the child is safe **but** maltreatment occurred. Review the Policy Memo concerning this case type for more information;
- 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 family functioning 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, paper work 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 Family Functioning Assessment as well as any safety plans for thoroughness and completeness;
- Review the procedure followed by the worker in completing the Family Functioning 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 Family Functioning 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 multi-disciplinary investigative team was involved as appropriate;
- Review whether the analysis of the presence of maltreatment is documented and correct;
- Review whether impending danger 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 Family Functioning 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;
- Assure that either an in-home or out-of-home 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 FACTS;
- Assure that mandated referents receive notification at the conclusion of the Family Functioning Assessment.

If the Family Functioning 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 Family Functioning Assessment and Safety Plan.

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

The FFA 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 FFA worker.

Within five (5) days of the transfer staffing the FFA and PCFA workers will complete a home visit together to complete a CANS assessment with the family. The FFA worker should take the lead due to their knowledge and existing relationship with the family. The PCFA worker will cover the results of the CANS assessment during their first home visit.

4.21 Notification to individual's subject of the Family Functioning Assessment. *Note: Pilot Counties refer to special instructions regarding notification letters*

Upon Supervisor approval of the Family Functioning Assessment a notification letter is electronically generated and automatically mailed to the parties provided the correct name and mailing address is documented in FACTS. If the necessary information is not correctly documented a notification letter will not be automatically mailed. Each week FACTS generates a Fredi report titled "CPS Letters Exception Report". The report indicates the county, worker name, case number, client number and why a notification letter was not mailed the previous week. The report is located at www.wvfacts.org/fredi and should be reviewed weekly to determine if any of your clients were not mailed the notification letter. The letters will mention that the maltreatment findings could affect employment in the future. The letter will also notify the family of their right to appeal and the process to request a grievance. A copy of the letter can be found on the intra-net for your review. (Please see CPS policy 6.1 and Common Chapters, Chapter 700, Appendix C. concerning the Grievance Process)

If you discover one of your clients did not receive their notification letter, it is your obligation to mail the appropriate notification letter as soon as possible. **Each adult** and **alleged maltreater** subject of the Family Functioning Assessment gets their own letter addressed to them. A copy of the letters can be found on the intranet at http://intranet.wvdhhr.org/bcf/cps_letters.asp

4.21.1 Notification to parents who are not subject of the Family Functioning Assessment

In most instances, parents who are not the subject of the Family Functioning 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 Family Functioning 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 Family Functioning 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 Family Functioning Assessment. This notification cannot be automated in FACTS due to the complexity of the decision to notify.

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

4.21.2 Mandatory reporter notification

WV Statute 49-2-804 requires mandatory reporters 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 Family Functioning 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 reporter~~s~~ received the notification letter.

4.22 Diligent Efforts to locate children who are reportedly abused or neglected

CPS Social 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 his/her family. CPS Social 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 you when attempting to locate a family or relocate 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 forwarding address.

4.22.1 Administrative Subpoena

WV 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 that you are seeking is not readily available from secondary sources;
3. In the event that primary and secondary sources are not fruitful, you will have to consider issuing an administrative subpoena directly to the entity or individual. In order to facilitate this option, you should first contact your CSM for assistance. Delivery of the administrative subpoena by certified mail or personal service, or both, should be under the name of the CSM. Personal service~~s~~ should not be attempted by any DHHR employee, but rather personal service should be perfected 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 CSM 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 CSM is designated, the CSM should contact the county prosecutor and request that they file a petition before the appropriate circuit court in order to compel the information sought.

In the event that county prosecutor is unable or unwilling to assist you in compelling the information before the circuit court, you should illicit the aid of your regional assistant

attorney general or the assistant attorney generals assigned to the Bureau for Children and Families.

4.23 Incomplete Family Functioning Assessments

All Family Functioning 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 Family Functioning Assessment through to completion.
- **Child Turned Eighteen (18) During Family Functioning Assessment**: This would apply to situations in which the identified child turned 18 during the course of the Family Functioning Assessment and there are no other siblings/children under eighteen (18) years of age in the home.
- **Death of a Child:** This would apply to situations in which the identified child dies during the course of the Family Functioning Assessment and there are no other siblings/children under 18 years of age in the home. In this situation, information learned during the Family Functioning Assessment must be documented in FACTS.
- **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 intakes should be transferred to the new county. If a family moves to another state the intake should be transferred to the other state. Prior to concluding a Family Functioning 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 a Family Functioning 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 day care center that a child is malnourished. The report is accepted for a Family Functioning 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 a Family Functioning Assessment only to discover they are working the same case. The second Family Functioning 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 a Family Functioning Assessment.

4.24 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 (3) 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 FACTS system. Send a copy to the WV Birth to Three Regional Administrative Unit in which the child resides, file in the FACTS file cabinet and provide the family with a copy;
- When appropriate, request the family's written consent for release of information to share pertinent information in regards to 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 (3) when abuse or neglect was not substantiated but through the Family Functioning 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.

4.25 Personal Safety

Within the scope of your duties, CPS Social Workers and other DHHR employees must take precautions in an attempt to prevent harm to themselves. Before making client contact, CPS Social 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 abuse, 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 CPS Social 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;
- Conduct a criminal history check 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 you must:

- Always notify your supervisor where you are going and how long you anticipate being there through your districts sign out protocol;
- Avoid wearing or carrying valuables into homes;
- Take only what is necessary into the home;
- Park in an area that would allow you to leave the residence quickly if necessary;
- Be cautious entering homes with large groups of people;
- Do not invade the individuals personal space and never touch them;
- Be aware of your surroundings and identify potential safety risks;
- Do not allow a client to get between you and the door;
- Maintain your car in good mechanical condition;
- If you feel unsafe, end the visit immediately and seek assistance. Leave immediately.

In spite of precautions, threats and other incidents may occur. CPS Social 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 CSM;

- Any CPS Social 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 (2) hours of exposure.

4.26 Family Functioning Assessments where children are determined to be abused or neglected but safe

Once the Supervisor reviews the Family Functioning Assessment and/or consults with the CPS Social Worker and agrees that there is abuse or neglect but not impending danger in the home, the following must occur by either the CPS Social Worker or Supervisor:

- Contact the family to discuss the findings from the Family Functioning Assessment;
- Explain to the family that due to a finding that abuse or neglect occurred, either a Child Protective Service Social 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 as well as the expectations of Child Protective Services, 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 5.25 Ongoing Services to children abused or neglected but not unsafe for additional information).*

4.27 Completing Family Functioning Assessments in which reasonable efforts to prevent the child from removal of the home is not required (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, 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, 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 such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or
- Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, 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; or
- The parental rights of the parent to another child have been terminated involuntarily.

Note: the CPS Social 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 Family Functioning Assessment on referrals alleging aggravated circumstances or other situations not requiring reasonable efforts to prevent removal, the CPS Social Worker must:

- Follow the same rules and procedures for Family Functioning 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 Family Functioning Assessment and Safety Evaluation;
- If the results of the Family Functioning Assessment indicate that the child/children are safe but the Judge orders Ongoing CPS Involvement, contact your Child Welfare Consultant or Regional Program Manager in order to proceed with the case.

4.28 Family Functioning Assessments Involving another Jurisdiction

For Family Functioning Assessments involving another state, the worker will:

- Follow the same rules and procedures for Family Functioning 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 FACTS 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 family functioning assessment.

The supervisor will:

- Follow the same rules and procedure for Family Functioning Assessment as other assessments of suspected child abuse or neglect, insofar as possible, documenting any reason for not following the established protocol;
- Assure that the plan that was established by the two (2) 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 assure that a referral to community services was completed.

For Family Functioning Assessment involving another county, the CPS Social Worker will:

- follow the same rules and procedures for Family Functioning 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 a Family Functioning 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 Ahome@ county 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 primary investigator;
- If the parents live in separate counties, the county where the abusive caretaker resides/county where abuse occurred would be the primary investigator;

- 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.

4.29 Family Functioning Assessments Involving Certain Abandoned Children (Safe Haven)

The West Virginia Code Chapter 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.

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

- Not attempt to identify or contact the parent;
- Follow the same rules and procedures for Family Functioning Assessment as other assessments of suspected child abuse or neglect;
- Initiate the filing of a petition alleging child abandonment pursuant to 49-4-601 and 49-4-602;
- 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 Family Functioning Assessment Areas.

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

4.30 Family Functioning 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. They may also request that a written report be submitted of the family functioning assessment. WV Chapter 49-2-802(c)(5) states that ...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 investigation of the allegations as defined by this chapter and require the local child protective service to submit a written report of the investigation to the referring circuit court or family court judge within the time frames set forth by the circuit court or family court judge.

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

For family assessments and safety evaluations involving child custody, the worker will:

- Establish a plan to complete the Family Functioning Assessment within the time frames set forth by the reporter;
- Follow the same rules and procedures for Family Functioning Assessment as other assessments of suspected child abuse or neglect;
- prepare a written report as requested by the reporter outlining the identifying information concerning the family, the allegations of maltreatment, the findings of maltreatment, the surrounding circumstances which accompany the maltreatment, how the child functions on a daily basis, the disciplinary approaches used by the parent, the overall parenting practices used by the parent, daily mental health functioning and substance use by the parent and general adult functioning of the parent. The report should indicate whether or not 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 or family law master within the specified time frames;
- Import the report/document from Word Perfect into FACTS and file 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 Family Functioning Assessment as other assessments of suspected child abuse or neglect;
- Assure that the Family Functioning Assessment is completed within the specified time frames;
- Assure that a written report is prepared and submitted to the Circuit Court or Family Court judge within the specified time frame;
- Assure that the report is filed within FACTS.

4.31 Family Functioning Assessments Involving Allegations Made During Infant Guardianship Proceedings

WV 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 (discretionary with the court) enter an administrative order for the Department to conduct a CPS investigation whereby CPS will then have not more than 45 days to submit a report regarding the findings of the investigation or appear before the circuit court to show cause why the report has not been submitted. 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 investigation was completed within 30-45 days of when this referral is received, which contains the exact same allegations, a report on the prior referral/investigation can be made to the court and the new referral screened as duplicate.

For Family Functioning Assessments involving Infant Guardianship proceedings, the worker will:

- Follow the same rules and procedures for Family Functioning 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 Family Functioning 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:

- Assure that the worker provides a copy of the Disposition of CPS Investigation Report for Family and Circuit Court form and a copy of the family functioning 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 West Virginia 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 West Virginia Code 49-4-604(b)(7)(A) (aggravated circumstances), then the court will consider whether CPS has acted arbitrarily and capriciously in deciding not to file a petition.

If, when the Circuit Court compares the referral to the investigation 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 Community Services Manager. It will require the worker to appear to show cause why he or she has decided not to file a petition in view of substantiated allegations that come within West Virginia Code 49-4-604(c) or 49-4-604(b)(7)(A)

4.32 Family Functioning Assessments Involving Critical Incidents

Whenever a deceased or severely injured child has siblings, and the cause for the death or injury of said child is suspected abuse and/or neglect, a Family Functioning Assessment must occur. For these Family Functioning Assessments, the worker will:

- 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 multi-disciplinary investigative team to investigate a report of suspected child abuse or neglect **does not** relieve the DHHR from its responsibilities to protect children;
- Begin a Family Functioning 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 multi-disciplinary investigative team. If so, the worker will complete the maltreatment and nature Family Functioning Assessment areas only. The reason for the incomplete assessment will be indicated within FACTS as child is deceased, unable to complete family functioning assessment;
- Refer any inquiries from the news media to the **Regional Director** 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 Family Functioning Assessments as other assessments of suspected child abuse or neglect, insofar as possible.

The supervisor will:

- Complete the Critical Incident Final Report when the investigation has been completed. The report should be directed through the Field Operations Chain of Command using the revised Critical Incident Final Report Form (SS-CPS-5A). The report will be directed to the Community Services Manager to the Regional Director. The Regional Director will share the report with the Regional Program Manager before forwarding it to the Deputy Commissioner of Field Operations and the Commissioner.

In all incidents of a child fatality where the Department has been involved, either through a Family Functioning 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. It shall be the decision of the Deputy Commissioner and the Commissioner to institute an internal Critical Incident Review. If a Critical Incident Review is initiated, the Assistant Commissioner of the Office of Planning and Quality Improvement shall initiate the following procedure:

- The Assistant Commissioner of Planning and Quality Improvement will name a team of experts to assist in the review. The team shall consist of: Assistant Commissioner of Planning and Quality Improvement; one Regional Program Manager who is NOT from the region involved in the review; one Program Manager or designee from the Office of Children and Adult Services Policy Unit; the Director of RAPIDS; at least two Social Services Program Review staff from the Office of Planning and Quality Improvement;
- The **Deputy Commissioner** will notify the affected District of the intent to review;
- A record review of the case will be conducted in FACTS;
- 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 Office of Planning and Quality Improvement will conduct the interviews and gather other significant documentation;
- Staff from the Office of Planning and Quality Improvement will meet to debrief the findings of the review;

- A written report will be submitted to the Deputy Commissioner and the 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.
A database of all child fatalities will be maintained by the Office of Planning and Quality Improvement.

When a child dies due to alleged maltreatment and there are no other children in the household, the CPS caseworker gathers information related to the maltreatment and surrounding circumstances. 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 deaths due to maltreatment and alleged maltreater should be recorded in FACTS. Again, Maltreatment findings should be documented in FACTS in the event a parent/caregiver applies for licensure of a day care or foster care facility or has future children.

If there is sufficient information that a child has died due to an accident or natural causes, only the maltreatment and nature sections need to be completed. The worker must document contacts as well as any supporting documentation.

4.33 Family Functioning Assessments Medical Neglect of a Disabled Child (Baby Doe)

For family functioning 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 Family Functioning 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 or not 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.

The supervisor will:

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

4.34 Family Functioning Assessments Involving Domestic Violence

For family functioning assessments when domestic violence is reported or when domestic violence is identified during the completion of the Family Functioning Assessment, the CPS Social Worker will:

- Plan for his/her own safety; (i.e. when interviewing the alleged maltreater/ batterer, have another child welfare worker or police present. See 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;
- Gather information about the domestic violence and its association to present or impending danger 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 present dangers exist, 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, then it should not be done until safety can be achieved. Safety always comes first;

- If present danger exists due to domestic violence, begin protection planning immediately.
- If domestic violence is occurring in the family, provide the adult victim with written information about his/her 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 her/his 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 shelter and outreach programs). Involve an advocate from the domestic violence program as soon as possible.
- CPS Social Workers must be careful to not confuse violence caused by substance abuse, drug manufacturing/sales or mental illness as domestic violence; however both types of violence can result in a child being in present or impending danger. The CPS Social Worker should consult the "Power and Control Wheel" for clarification, as well as the operational definition of domestic violence.
- Remember that the adult victim is often more afraid of the batterer than of anything else. 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 guarantee safety. **A non-maltreating parent/ adult victim's willingness to seek a protective order in no way relieves the worker of his/her responsibility for protecting children under the language of Chapter 49.**

- If obtaining a domestic violence protective order is included in the temporary protection plan or in-home safety plan, the CPS Social 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 in-home safety plan and/or protection plan;
  - Mail a copy of the protection plan and/or in-home 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, as long as 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 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. In order for the worker to file a co-petition, the worker must consult with the Prosecuting Attorney to ensure this is the best approach. In order for co-petitions to work effectively, it is best that both the Department and the co-petitioner are in agreement regarding the approach to be taken. The language of the co-petition should employee specific language to preclude the maltreating parent from living in the home or having contact with the child. (See WV 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 WV Code 49-4-602, separate from the prosecuting attorney."
- If a co-petition is not feasible, but an abuse/neglect petition is filed in circuit court by the CPS Social 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 WV 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 CPS Social 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 CPS Social Workers.
- If the adult victim presents as severely depressed, assess carefully for suicidal ideation. Does s/he 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 Family Functioning Assessments in FACTS, the worker must:

- Document the presence of domestic violence in the maltreatment, nature and adult general functioning in the Family Functioning 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 Family Functioning Assessments as other assessments of suspected child abuse or neglect.

The supervisor will:

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

4.35 Family Functioning Assessments Involving Allegations Made During Domestic Violence Protective Order Proceedings

For Family Functioning Assessments involving allegations made during domestic violence protective order proceedings, the CPS Social Worker will:

- Establish a plan to complete the Family Functioning Assessment;
- follow the same rules and procedures for Family Functioning Assessment as outlined in CPS policy section *4.32 Family Functioning 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 Family Functioning Assessment to the Circuit Court within forty-five (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 forty-five (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 investigation findings and why a report was not made to the court within the forty-five (45) day (or less) time period.**

The supervisor will:

- Follow the same rules and procedures for Family Functioning Assessment as outlined in CPS policy section *4.33 Family Functioning Assessments Involving Domestic Violence;*
- Assure that the Family Functioning Assessment is completed within the specified time frames;
- Assure that the worker provides a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Family Functioning Assessment to the Family and Circuit Court within forty-five (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 within forty-five (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 investigation findings and why a report was not made to the court within the forty-five (45) day (or less) time period**;

- If a Family Functioning 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/investigation 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 investigation 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 West Virginia Code 49-604(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 West Virginia Code 49-4-604(b)(7)(A) (aggravated circumstances), then the court will consider whether CPS has acted arbitrarily and capriciously in deciding not to file a petition.

If, when the Circuit Court compares the referral to the investigation 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 Community Services Manager. It will require the worker to appear to provide show cause why he or she decided not to file a petition in view of substantiated allegations that come within West Virginia Code 49-604(c) or 49-4-604(b)(7)(A).

4.36 Family Functioning Assessments Involving Parents Knowingly Allowing Abuse and/or Neglect

In years past, many child welfare professionals have used the term "failure to protect" as a catch-all phrase to describe parents whose children were abused by other individuals, regardless of actions that may or may not have been taken; regardless of whether the parent knew or didn't know the abuse was occurring; regardless of whether that parent was a victim of domestic violence or not. The legal standard for this concept, however, is "Knowingly Allows" and was written into statute in order to better define an omission of parental protective action.

When staff encounters parents who are not the actual maltreater, but are perhaps the spouse, paramour or neighbor of the abusive individual, there may be an immediate

inclination to place blame on the “non-abusive” parent. Sometimes this assignment of culpability is accurate, but other times it is not. There are specific criteria that must be used when determining whether or not a parent is responsible for abuse that is perpetrated against his or her child by another person. The CPS worker must use direct interviewing questions during the Family Functioning Assessment in order to determine the family dynamics at play.

For Family Functioning Assessments involving parents who knowingly allow abuse and/or neglect, the worker will:

- Follow the same rules and procedures for Family Functioning Assessments as other assessments of abuse and/or neglect;
- Determine whether or not there is domestic violence within the family dynamics. If the worker finds the presence of domestic violence, s/he cannot find that the non-abusive parent “knowingly allowed” the abusive behavior unless the non-abusing parent did not take any steps to protect the child that were reasonable given the threat posed by the batterer to the non-abusing parent. The worker must approach completing the Family Functioning Assessment as outlined in CPS policy section *4.33 Family Functioning Assessments Involving Domestic Violence*. *(See* Supreme Court of Appeals Decision *In Regarding Betty J.W., 1988);*
- In non-domestic violence cases, consider the following when assigning a maltreatment rating of “knowingly allows abuse and/or neglect”. At least one must be present in order to make a finding of abuse or neglect;
- A parent should have known his or child was being abused and/or neglected-It may be difficult, at first, for staff to determine whether a parent could have known that his or her child was being abused or neglected. In order to use this finding, the worker must find sufficient evidence that the parent was presented with information that would have led him or her to know. For example: A parent tells the worker that s/he didn’t know his/her son was being sexually abused by an older sibling, yet the children disappeared for several hours at a time; the abused child told his mother that he hated his older sibling and wished he 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. For example: A child is routinely spanked with a belt, leaving marks. When the non-maltreating parent is questioned, s/he states that the child does not respond to verbal correction and is out-of-control; that this form of discipline is the only thing that works;
- The parent supports the maltreating parent’s 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 parents’ explanation. *For*

example: A child is presented at the ER with a broken arm. The father states that the child fell out of bed while he was reading a bedtime story. However, the attending physician states that the injury is a spiral fracture and could not have occurred in any other way than a twisting motion. The mother is and remains adamant that her husband could not have injured their son.;

- Both parents refuse to identify the abuser and/or both deny that the abuse has occurred- The worker must determine if the parents really do not know what has occurred (see section a- Parent should have known) 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 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.

4.37 Family Functioning Assessments Involving Allegations Made During Divorce/Custody Proceedings

Rule 47 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 investigation and a report back within forty-five (45) days (or less if the allegations involve imminent danger). The Circuit Court will also set a date for a hearing regarding the investigation report. DHHR can avoid this hearing if (a) the CPS worker/supervisor files the report within forty-five (45) days (or less if the allegations involve imminent danger, or (b) the CPS worker/supervisor files a petition.

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

- Establish a plan to complete the Family Functioning Assessment;

- Follow the same rules and procedures for Family Functioning 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 Family Functioning Assessment to the Family and Circuit Court within forty-five (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 within forty-five (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 family functioning assessment findings and why a report was not made to the court within the forty-five (45) day (or less) time period**;
- If a Family Functioning 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/Family Functioning Assessment can be made to the court and the new referral screened as duplicate.

The supervisor will:

- Follow the same rules and procedures for Family Functioning Assessment as other assessments of suspected child abuse or neglect;
- Assure that the Family Functioning Assessment is completed within the specified time frames;
- Assure that the worker is prepared for the court appearance and that proper ASO referrals have been made, if necessary;
- Assure that the worker provides a copy of the *Disposition of CPS Investigation Report for Family and Circuit Court* form and a copy of the Family Functioning Assessment to the Circuit Court within forty-five (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 forty-five (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 forty-five (45) day (or less) time period.**

After submission of the *Disposition of CPS Investigation Report for Family and Circuit Court, the* Circuit Court Judge will review the investigation 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 West Virginia Code 49-604(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 West Virginia Code 49-4-604(b)(7)(A) (Aggravated Circumstances), then the court will consider whether CPS has acted arbitrarily and capriciously in deciding not to file a petition.

If, when the Circuit Court compares the referral to the investigation 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 Community Services Manager. It will require the worker to appear to provide show cause why he or she decided not to file a petition in view of substantiated allegations that come within West Virginia Code 49-604(c) or 49-4-604(b)(7)(A).

4.38 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 Family Functioning 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. Family Functioning Assessments involving private family child care settings are not focused on family functioning and family preservation and for that reason; the Family Functioning Assessment process are not used for assessing suspected child abuse and neglect in these “out-of-home” settings. The worker will not complete the family functioning assessment. 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, taking into account 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 multi-disciplinary 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 FACTS;
- 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 attorney 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 or video taped. However, some local multi-disciplinary investigative teams 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 MDT's 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 MDT 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 family functioning 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 thirty (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);
- Assure that the informal child care provider's notification letter is imported into the FACTS 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 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 foster family settings and **child care center** settings, please refer to the IIU policies INVESTIGATIONS INVOLVING INSTITUTIONAL INVESTIGATIVE UNIT (IIU) AND CHILD MALTREATMENT IN GROUP RESIDENTIAL AND FOSTER FAMILY SETTINGS and INVESTIGATIONS INVOLVING INSTITUTIONAL INVESTIGATIVE UNIT (IIU) AND CHILD CARE CENTER SETTINGS.

4.39 Family Functioning Assessments Involving Non-Custodial Parents

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

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

4.40 Family Functioning Assessments Involving Substance Use or Abuse.

For family assessments and safety evaluations involving parents who are using legal or illegal substances, alcohol or prescribed medication inappropriately. This includes Methadone, Suboxone, Subutex or any other medication used to treat addiction 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, drug paraphernalia, abundance of prescribed medications;
- Talk with additional collaterals such as extended family, neighbors, and LE;
- 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 abuse referral;
- Educate the family about safe sleep practices for infants and children and document in FACTS.
- Follow the same rules and procedures for Family Functioning Assessments as other assessments of suspected abuse or neglect.

For assessments involving newborns and infants with substance using parents;

Substance abuse may be identified at various stages throughout a Child Protective Service case process and can affect safety in a various ways. However, the purpose of this section will include a focus on infants born ***exposed*** to legal or illegal substances or alcohol or prescribed medication used inappropriately or Methadone, Suboxone, Subutex or any other medication used to treat addiction.

- Once the referral is assigned to the district, the Child Protective Services 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 if a child is born and identified as being affected by substance abuse or withdrawal symptoms or a Fetal Alcohol Spectrum Disorder may not leave the hospital without a plan of care, which begins with a Protection Plan or Safety Plan put in place by the worker. Since most children are released within 24 hours of birth, the Child Protective Services Worker must conduct a face to face with the family immediately;
- CPS Social 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 report, contact must be made within the same day

while the child is still under the care of that protective caregiver. The hospital or facility should not be considered a protective caregiver;

- Child Protective Service Worker should obtain identifying information about the father. Hospital Staff should be asked if paternity declaration was established;
- **The Child Protective Services 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, drug counselors, therapist and teachers. Both, mother and child(ren) records from the hospital should be obtained. This could include toxicology reports and withdrawal scores of the infant, and nurses/doctors progress notes. A case will be opened and services put in place to address the drug use and/or any other contributing factors;**
- It is important for the worker to obtain information about the parent's 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(ren) discharge from the hospital the Child Protective Services Worker should visit the family's home assessing the total home environment and what safety concerns if any are in the home. The Child Protective Service Worker should assess the parent's preparedness for the child(ren) as evidenced by the presence of adequate baby supplies. Sleeping arrangements and what intentions/beliefs the parents have in regards to sleeping arrangements should also be discussed with all caregivers;
- Child Protective Service Worker should assess the parent's ability to parent the infant and any other children in the home identifying any safety concerns in the home;
- During the assessment process it is important to assess the caretakers/parents ability to parent the child(ren), and if the caretakers/parents have made strides to correct the substance abuse issues. This could include what methods of treatment intervention the parent chose, and compliance with those treatments.

In situations where the mother has been prescribed medication due to a physical illness or mental illness it is very important for the Child Protective Service Worker to:

- Obtain documentation from the prescribing physician about the mother's illness and maintenance of the medication;
- Obtain records from the Obstetrician to determine the mother's cooperation with pre-natal appointments and to determine if the mother consulted about the effects of the medications. This will help to determine if the mother did what was in the best interest of her child;
- It is important to assess if the mother has taken the medication as advised by a physician.

> *For Example: A mother is in a severe car wreck while pregnant and has several surgeries due to injuries. She takes medication as prescribed by her physician. Upon delivery, a safety plan/protection plan* ***may not*** *need to be developed. A full assessment should be completed to determine her ability to parent is not compromised.*

In situations where the Department has knowledge of drug affected/exposed infants a referral to **Birth to Three** must be initiated and clearly documented.

4.41 Family Functioning Assessments Involving Children found at Clandestine Drug Laboratories and/or Exposed to Methamphetamine residue contamination.

If a Child Protective Services Worker (CPSW) 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 foster home or medical facility for evaluation – Child's personal items (clothes, toys, book bags, etc.) need to remain at the drug lab site due to they are presumed to be contaminated;
- If emergency medical examination is required – the medical 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 foster parents or relative placement of the immediate needs of the child as a result 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 Child Protective Services regarding children located during a methamphetamine lab seizure and is in need of 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 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;
- Advise foster parents or relative placement of the immediate needs of the child as a result of the meth contamination;
- Follow medical care needs to be scheduled and maintained;
- Follow up with court proceedings on behalf of the child.

4.42 Family Functioning Assessments Involving Sexual or Abusive Interactions between Children

For family assessments and safety evaluations involving sexual or abusive interactions between children the worker and supervisor will:

- Follow the same rules and procedures for Family Functioning 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 same age children. 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.

4.43 Family Functioning Assessments Involving Registered Child Sex Offenders

For family functioning assessments concerning registered child sex offenders who are on probation or parole, the worker and supervisor will:

- Follow the same rules and procedures for family functioning 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 eighteen (18) during his or her 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 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 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 eighteen (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 him or her from being around children under the age of eighteen (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 his or her 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;
- If a petition is denied, the worker and supervisor must consult with the Community 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 family functioning assessments involving registered child sex offenders who are not on probation or parole, the worker and supervisor will:

- Follow the same rules and procedures for family functioning assessment as other assessments of child abuse and neglect. If the child is unsafe then proceed to safety analysis and planning.

4.44 Family Functioning Assessments Involving Registered Child Abusers

For Family Functioning Assessments involving individuals on the Child Abuse and Neglect Registry who reside with children, the worker shall:

- Follow the same rules and procedures for Family Functioning 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 4.26 Completing Family Functioning Assessments in which reasonable efforts to prevent the child from removal of the home is not required, as well as WV Code 49-4-

604(b)(7)(A).

4.45 Family Functioning 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 CPS Social Worker must interview the child or children, parent(s)/caregiver(s), school officials as well as other collaterals who may know 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 Child Protective Services 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.

In order to determine if a child is educationally neglected, the following must be considered by the CPS Social Worker and Supervisor:

- the child's caregivers are getting the child's school work and is the child turning in the school work;
- 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;
- the reason for the absences in order 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 <u>is able</u> 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 <u>is unable</u> 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 CPS Social 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 CPS Social 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 Protective Services 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 Child Protective Services 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, long term Child Protective Services, or referring the family to appropriate community based resources.

4.46 Investigations Involving Institutional Investigative Unit (IIU) and Child Maltreatment in Group Residential and Foster 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 foster family care home the IIU Worker will:

- 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 Community Services Manager and the Residential Licensing Specialist or Regional Home Finding Supervisor by e-mail that a report has been received and will be investigated, providing their name and contact information;
- Notify the 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 worker (depending upon whereabouts of the child) to verify current safety and well-being;
- Verify whether the agency and/or 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;
- 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 3.4 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 WV Code 49-6A-5;
- Ensure that all mandated referents receive verbal notification if an investigation into the reported suspected abuse or neglect has been initiated. Document the notification in FACTS on the Contact screen identifying "reporter" as the Non-Client/Non-Collateral Participant.

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Note: If the agency and/or foster family refuse to participate in an investigation, the IIU will immediately notify the Residential Licensing Specialist or the Regional Home Finding Supervisor for further regulatory action. If the investigation involves a foster family home, the IIU Worker will send written notification to the foster 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 foster parents and children.

- Review agency or provider records;
- Conduct exit interview;
- Document the interviews and other appropriate information within FACTS 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;
- Determine culpability of the maltreater and/or agency if maltreatment is found to have occurred;
- 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.

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 FACTS 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 agency or Regional Home Finding Supervisor;
- Notify the Regional Program Manager for Social Services, the Community Services Manager and the Residential Licensing Specialist (when involving a licensed agency) by e-mail of the findings of the investigation;

- The Regional Home Finding Supervisor or Residential Licensing Specialist will determine policy or licensing violations based on the information provided within the IIU/CPS Summary Report;
- If noncompliance is identified in group residential facilities or specialized foster care agencies the Residential Child Care Licensing Specialist will direct the specialized foster care agency or group residential facility to develop a time limited Corrective Action Plan. For DHHR Foster Family Homes the Regional Home Finding Supervisor will direct the Home Finder to develop a time limited Corrective Action Plan. The development of all Corrective Action Plans must not exceed thirty (30) days;
- Notify the foster 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 foster family home, per WV Code 49-4-111(a);
- Ensure that all mandated referents receive written notification of when the investigation has been completed. Document the notification in FACTS by saving the written notification to the file cabinet.

Note: Upon closure of the investigation, an automatic 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 Residential Licensing Unit or Regional 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.

4.47 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 him/her 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 4.4 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 WV Code 49-2-809(b);
- Forward a copy of the report to the Multi-Disciplinary Investigative Team

Ensure that all mandated referents receive verbal notification if an investigation into the reported suspected abuse or neglect has been initiated. Document the notification in FACTS 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.
- Conduct exit interview.
- Document the interviews and other appropriate information within FACTS 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.

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 FACTS 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 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 referents receive written notification of when the investigation has been completed. Document the notification in FACTS 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, an automatic 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.

4.48 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 Regional Child Care Supervisor and Child Care Regulatory Specialist or Child Care Licensing Program Manager and Child Care Licensing Specialist and by e-mail that a report has been received and will

be investigated, providing the IIU 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 particular 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 3.4 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 WV Code 49-2-809(b);
- Forward a copy of the report to the Multi-disciplinary Investigative Team;
- Ensure that all mandated referents receive notification if an investigation into the reported suspected abuse or neglect has been initiated. Document the notification in FACTS on the Contact screen identifying "reporter" as the Non-Client/Non-Collateral Participant.

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 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.
- Conduct exit interview.
- Document the interviews and other appropriate information within FACTS 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.
- Determine culpability of the maltreater and/or center/facility if maltreatment is found to have occurred.
- Take appropriate action at any point in the process to assure the safety of the child, pending the final 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 FACTS 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 Regional Child Care Supervisor;
- Notify the Child Care Licensing Program Director 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 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;
- Ensure that all mandated referents receive written notification of when the investigation has been completed. Document the notification in FACTS by saving the written notification to the file cabinet.

Note: Upon closure of the investigation, an automatic 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.

4.49 Family Functioning Assessments on Recurrent Referrals

In matters where districts are receiving multiple referrals on open assessments there will be a Master referral that is to include all information gathered on the

family. The first referral received will serve as this **Master referral**. Each referral after the master referral shall reference the Master referral in each content box.
In matters where districts receive multiple referrals on an open assessment the following must occur:

- Assign subsequent assessments to the same worker.
- Make face to face contact as required in the new intake.
- Document contacts in all assessments providing information gathered from the parents and target children.
- Workers will document nature and maltreatment screens in all assessments.
- Workers shall document in the Master assessment justification on how impending dangers exist, or how the caretakers have protective capacities to rule out impending dangers.
- Each assessment must reference the assessment number of the Master Assessment and the Master Assessment must reference the assessment number of other pending assessments.
- Impending dangers shall be marked in all assessments, as applicable.
- Workers will make a finding in FACTS in all assessments, as applicable, and not just the Master Assessment.
- Safety plans shall be completed in the Master Assessment.
- New cases should be opened from the Master Assessment, and safety plans completed out of the Master Assessment. If older cases exist those cases shall be linked from the Master Assessment.
- If impending dangers are identified in multiple assessments, they will be case connected back to the Master Assessment/case. This is to clear the safety plan validation.

When workers are documenting in assessments other than the master assessment; a statement such as “See Master Assessment”, and provide the FACTS number as a reference shall be put in all boxes that require a validation. This is to clear any remaining validations.

SECTION 5 CPS ONGOING SERVICES

5.1 Introduction

The Protective Capacity Family Assessment and Family Case Plan continues West Virginia’s Safety Assessment and Management System process and occurs immediately following the determination that a family is in need of ongoing CPS interventions. The Protective Capacity Family Assessment is a structured

interactive process that is intended to build partnerships with caregivers in order to identify and seek agreement regarding what must change related to child safety and to develop family case plans that will effectively address caregiver protective capacities and meet child needs.

There may be situations where a child has been abused or neglected but is not in impending danger. In those instances, completing a Protective Capacities Family Assessment is not feasible as there being no capacities diminished to the point that a child is unsafe. Although no child in the home was identified as unsafe by Child Protective Services, Ongoing Child Protective Services must be provided to assist the family in identifying and resolving the issues that led to the incident of abuse and/or neglect. For more information regarding CPS Ongoing Services in these instances, see CPS Policy Section 5.25.

5.2 Purpose of the Protective Capacities Family Assessment and Family Case Plan

The primary purpose of the Protective Capacities Family Assessment and Family Case Plan is to identify the caregiver behavior that must change and to restore the caregiver to independence in protecting their children.
The purposes of the Protective Capacities Family Assessment are:

- To engage caregivers in a collaborative partnership for change;
- To facilitate caregivers in identifying their own needs in relationship to their capacity to protect;
- To facilitate caregivers in identifying the needs of their children and in committing to meet those needs;
- To facilitate caregiver self-awareness and mutual worker-caregiver agreement regarding what must change to return caregivers to their protective role and to create a safe home;
- To facilitate involvement of caregivers and children (as appropriate) in the development and implementation of change strategies (family case plans).

5.3 Protective Capacity Family Assessment Concepts

There are several concepts that form the basis for the design of the Protective Capacity Family Assessment. They must be well understood by ongoing CPS Social Workers if they are to be effectively applied in the Family Case Planning process. It is through the use of key concepts that the purposes of Protective Capacity Family Assessment are achieved.

The Protective Capacity Family Assessment Concepts are:

5.3.1 Caregiver Protective Capacities

The concept of caregiver protective capacities is central to the design of the Protective Capacity Family Assessment. It is through the understanding and use of the concept of caregiver protective capacities that ongoing CPS social workers and caregivers can formulate Family Case Plans that enhance family/family member functioning and caregiver role performance and, in doing so, reduce impending danger.

Caregiver protective capacities are personal and parenting behavior, cognitive and emotional characteristics that specifically and directly can be associated with being protective of one's children. Caregiver protective capacities are "strengths" that are specifically associated with one's ability to perform effectively as a caregiver/ parent in order to provide and assure a safe environment.

When families are opened for ongoing CPS, the Protective Capacity Family Assessment takes into account caregiver protective capacities that exist and considers how those capacities or strengths might be utilized in change strategies. On the other hand, the presence of impending danger in a family is an indication of caregiver protective capacities that are significantly diminished or essentially non-existent. The Protective Capacity Family Assessment is designed to produce Family Case Plans that in effect will result in child safety by sufficiently enhancing diminished caregiver protective capacities which, in turn, eliminate or reduce impending danger to the point where a family can adequately manage child protection.

There are criteria for determining protective capacities.

1. The characteristic prepares the person to be protective;
2. The characteristic enables or empowers the person to be protective;
3. The characteristic is necessary or fundamental to being protective;
4. The characteristic must exist prior to being protective;
5. The characteristic can be related to acting or being able to act on behalf of a child.

The following definitions and examples should be used to assist the CPS Social Worker in identifying the specific protective capacities that must be enhanced in the Family Case Plan.

Cognitive Protective Capacities

The caregiver plans and articulates a plan to protect the child.
This refers to the thinking ability that is evidenced in a reasonable, well thought out plan.

- People who are realistic in their idea and arrangements about what is needed to protect a child.

- People whose awareness of the plan is best illustrated by their ability to explain it and reason out why it is sufficient.

The caregiver is aligned with the child.
This refers to a mental state or an identity with a child.

- People who think that they are highly connected to a child and therefore responsible for a child's well-being and safety.
- People who consider their relationship with a child as the highest priority.

The caregiver has adequate knowledge to fulfill caretaking responsibilities and tasks.
This refers to information and personal knowledge that is specific to caretaking that is associated with protection.

- People who have information related to what is needed to keep a child safe.
- People who know how to provide basic care which assures that children are safe.

The caregiver is reality oriented; perceives reality accurately.
This refers to mental awareness and accuracy about one's surroundings; correct perceptions of what is happening; and the viability and appropriateness of responses to what is real and factual.

- People who describe life circumstances accurately and operate in realistic ways.
- People who alert to, recognize, and respond to threatening situations and people.

The caregiver has accurate perceptions of the child.
This refers to seeing and understanding a child's capabilities, needs, and limitations correctly.

- People who recognize the child's needs, strengths, and limitations. People who can explain what a child requires, generally, for protection and why.
- People who are accepting and understanding of the capabilities of a child.

The caregiver understands his/her protective role.
This refers to knowing that there are certain responsibilities and obligations that are specific to protecting a child.

- People who value and believe it is her/his primary responsibility to protect the child.
- People who can explain what the "protective role" means and involves and why it is so important.

The caregiver is self-aware.
This refers to caregiver sensitivity to one's thinking and actions and their effects on others – on a child.

- People who understand the cause – effect relationship between their own actions and results for their children.
- People who understand that their role as a caregiver is unique and requires specific responses for their children.

Emotional Protective Capacities

The caregiver is able to meet own emotional needs.
This refers to satisfying how one feels in reasonable, appropriate ways that are not dependent on or take advantage of others, in particular, children.

- People who use reasonable, appropriate, and mature/adult-like ways of satisfying their feelings and emotional needs.

The caregiver is emotionally able to intervene to protect the child.
This refers to mental health, emotional energy, and emotional stability.

- People who are doing well enough emotionally that their needs and feelings don't immobilize them or reduce their ability to act promptly and appropriately with respect to protectiveness.

The caregiver is resilient
This refers to responsiveness and being able and ready to act promptly as a caregiver.

- People who recover quickly from setbacks or being upset.
- People who are effective at coping as a caregiver.

The caregiver is tolerant
This refers to acceptance, understanding, and respect in their caregiver role.

- People who have a big picture attitude, who don't over react to mistakes and accidents.
- People who value how others feel and what they think.

The caregiver displays concern for the child and the child's experience and is intent on emotionally protecting the child.
This refers to a sensitivity to understand and feel some sense of responsibility for a child and what the child is going through in such a manner to compel one to comfort and reassure.

- People who show compassion through sheltering and soothing a child.
- People who calm, pacify, and appease a child.

The caregiver and child have a strong bond and the caregiver is clear that the number one priority is the child.
This refers to a strong attachment that places a child's interest above all else.

- People who act on behalf of a child because of the closeness and identity the person feels for the child.

- People who order their lives according to what is best for their children because of the special connection and attachment that exists between them.

The caregiver expresses love, empathy, and sensitivity toward the child.
This refers to active affection, compassion, warmth, and sympathy.

- People who relate to, can explain, and feel what a child feels, thinks and goes through.

Behavioral Protective Capacities

The caregiver has a history of protecting
This refers to a person with many experiences and events in which they have demonstrated clear and reportable evidence of having been protective.

- People who have protected their children in demonstrative ways by separating them from danger; seeking assistance from others; or similar clear evidence.
- Caregivers and other reliable people who can describe various events and experiences where protectiveness was evident.

The caregiver takes action.
This refers to a person who is action-oriented in all aspects of their life.

- People who proceed with a positive course of action in resolving issues.
- People who take necessary steps to complete tasks.

The caregiver demonstrates impulse control.
This refers to a person who is deliberate and careful; who acts in managed and self-controlled ways.

- People who think about consequences and act accordingly.
- People who are able to plan.

The caregiver is physically able and has adequate energy.
This refers to people who are sufficiently healthy, mobile and strong.

- People with physical abilities to effectively deal with dangers like fires or physical threats.
- People who have the personal sustenance necessary to be ready and on the job of being protective.

The caregiver has/demonstrates adequate skill to fulfill responsibilities.
This refers to the possession and use of skills that are related to being protective as a caregiver.

- People who can care for, feed, supervise, etc. their children according to their basic needs.
- People who can handle and manage their caretaking responsibilities.

The caregiver sets aside her/his needs in favor of a child.
This refers to people who can delay gratifying their own needs, who accept their children's needs as a priority over their own.

- People who do for themselves after they've done for their children.
- People who seek ways to satisfy their children's needs as the priority.

The caregiver is adaptive as a caregiver.
This refers to people who adjust and make the best of whatever caretaking situation occurs.

- People who are flexible and adjustable.
- People who accept things and can be creative about caretaking resulting in positive solutions.

The caregiver is assertive as a caregiver.
This refers to being positive and persistent.

- People who advocate for their child.
- People who are self-confident and self-assured.

The caregiver uses resources necessary to meet the child's basic needs.
This refers to knowing what is needed, getting it, and using it to keep a child safe.

- People who use community public and private organizations.
- People who will call on police or access the courts to help them.

The caregiver supports the child.
This refers to actual and observable acts of sustaining, encouraging, and maintaining a child's psychological, physical and social well-being.

- People who spend considerable time with a child and respond to them in a positive manner.
- People who demonstrate actions that assure that their child is encouraged and reassured.

5.3.2 Safe Home Environment

The prime mission and goal of ongoing CPS is that children are protected from impending danger by enabling caregivers to provide for a safe environment. A safe home environment is the absence of threats to child safety. A safe home environment provides a child with a place of refuge and a perceived and felt sense of security and consistency. The Protective Capacity Family Assessment is the first step toward establishing a safe home environment for children by attempting to produce Family Case Plans that are "family owned" and focused on decreasing impending danger and enhancing protective capacities.

5.3.3 Family Centered Practice

The Protective Capacity Family Assessment is designed to focus intervention on family engagement, the family's perspective and "world-view," family needs,

family strengths and collaborative problem solving. The belief that families are involved with ongoing CPS social workers as a full partnership is a central practice tenet. When children are identified as unsafe, the ability to create safe home environments exists within the family. Necessary change and sustainable change in caregivers and children are more likely to occur when families are involved, invested and able to maintain self-determination and personal choice. Family agreement with needed change is assertively pursued during the Protective Capacity Family Assessment. Family Case Plans that are created as a result of the assessment process are intended to be collaborative change strategies and are specifically tailored to the uniqueness of each family.

5.3.4 Solution Based Intervention

This is a methodology associated with family based services. The principal philosophy of this approach is that the best way to help people is through strengthening and empowering the family (Berg, 1994). The source or answer to problems is viewed as being present within the family. The intent of the ongoing CPS worker when collaborating with the family is to "spring loose" the solutions that are embedded within the family. This intervention provides a practice mentality and specific techniques that are useful in facilitating people through the stages of change. The CPS-family relationship serves as the catalyst for change and, therefore, this is an essential facilitative objective throughout the Protective Capacity Family Assessment.

5.3.5 The Involuntary Client

The reality faced by ongoing CPS social workers is that they are often attempting to provide services to an involuntary client. The Protective Capacity Family Assessment takes into account ideas concerned with working with involuntary clients. The following definition of the involuntary client is consistent with the vast majority of those served by CPS: “one who feels forced to remain in the (CPS) relationship; coerced or constrained choices are made because the costs of leaving the (CPS) relationship are too high; a person who feels disadvantaged in the current (CPS) relationship” (Rooney, 1992). Families often transfer to ongoing CPS and begin the Protective Capacity Family Assessment as involuntary clients. These families can be divided between those that are mandated clients because of a court order or some legal restraint and non-voluntary clients who feel pressured by the agency or others to stay in the relationship.

Intervention related to the involuntary client points out, particularly in reference to CPS, how crucial power, control and choice are in facilitating change. The CPS intervention, in and of itself, establishes and can perpetuate a sense of loss of autonomy and power. Thus, working with the involuntary client requires a re-establishment of a person's self-determination and reclaiming of personal choice. This can be the essence of facilitating change and include the interpretation of

consequences related to personal choice. The Protective Capacity Family Assessment acknowledges the reality of where families are at the point they are transferring to ongoing CPS and attempts to increase motivation to change by focusing and clarifying intervention; encouraging personal choices and sense of control; empowering with information by educating and socializing people to necessary roles, expectations and tasks; and involving families (caregivers) in goal and activity/service selection.

(Adapted from the work of Ron Rooney, The Involuntary Client)

5.3.6 Motivation and Readiness

Motivation and Readiness are related concepts associated with the stages of change and the involuntary client. Motivation and readiness are important to the Protective Capacity Family Assessment in the sense that the perspective that the ongoing CPS social worker has regarding client/ caregiver motivation and readiness will influence his/her approaches to intervention. Often it is merely the ongoing CPS social worker's intervention approach that will result in a more or less effective assessment with a family and development of a case plan.

Motivation refers to the causes, considerations, reasons and intentions that influence individuals to behave in a certain way (Di Clemente, 1999). This definition reframes motivation in such a way that the notion that someone is unmotivated is not necessarily accurate. In other words, all individuals are motivated to do something or to behave a certain way; it just may not be a behavior that everyone agrees is acceptable or adaptive. This means that all individuals proceeding into ongoing CPS are motivated.

When conducting a Protective Capacity Family Assessment and considering what must change, it is helpful to be prepared for determining what family members are motivated toward and what they are motivated against. Motivational readiness refers to a person's position in relationship to the stages of change and the ability or readiness to move through a particular stage of change. Individuals who engage in the Protective Capacity Family Assessment process and who begin to acknowledge the need to address what must change are demonstrating increased readiness. Readiness to change refers to the current state of mind of a caregiver who has resolved denial, resistance and ambivalence and is inclined to change.

Ongoing CPS social workers routinely experience family members who are not ready to change and are, in fact, resistant or highly motivated against the idea of change. When attempting to engage seemingly resistant family members during the Protective Capacity Family Assessment process, it is necessary to consider why someone would present themselves as not wanting to change. Miller and Rollnick (1991) indicate that there are four reasons: reluctance, rebellion, resignation and rationalization.

1. Reluctance-When assessing for the presence of reluctance as an explanation for remaining in pre-contemplation, the ongoing CPS social worker should look for those with a lack of knowledge or inertia. These people are uncertain about their problems because information has not been available to them or they haven't fully processed the information about the problems, or the impact of the problems has not become fully conscious. These clients are not resistant but indecisive, hesitant or disinclined.
2. Rebellion-These clients have a heavy investment in the problem behavior. Additionally, they are highly motivated toward independence and making their own decisions. They are resistant to being told what to do. They may be afraid and therefore defensive. They are argumentative.
3. Resigned-Resigned pre-contemplators lack energy and investment. They are emotionally tired. This may also include depressed people and those who hold a fatalistic world view. They may feel overwhelmed by the problem.
4. Rationalizing-This person has all the answers about why problems are not problems and why there is no need for change. They know the odds for personal risk and loss related to change leading to a conclusion not to even get started. "Yes-But" discussions, debates and intellectualization are examples of styles of communication among individuals who rationalize behavior.

5.3.7 Active Efforts

The Protective Capacity Family Assessment provides an organized process for ongoing CPS intervention that promotes active and intentional efforts when working with families. The Protective Capacity Family Assessment is the first essential step in assuring that families are provided with individualized, culturally responsive and appropriately matched treatment services intended to enhance caregiver protective capacities. While the law does not specify the delineation of active efforts, the Protective Capacity Family Assessment uses practice methods consistent with the “spirit” of active efforts. These include:

1. Utilizing family input and perspective when identifying needs, concerns and strengths;
2. Timely response and facilitation of case movement through the CPS intervention process;
3. Consistent, structured and focused assessment and case planning;
4. Collaborative development of case plans that are relevant to family/family member needs;
5. Approaching intervention from a family centered/family system orientation; and
6. Facilitating the access and use of effective and culturally responsive case plan services and service providers.

5.4 Ongoing CPS Social Workers Responsibilities

When the Family Functioning Assessment determines that a child is unsafe, it is the responsibility of CPS to assure a child is safe and protected. CPS must actively engage caregivers and families in developing and implementing safety plans, but, ultimately, the responsibility for child safety rests with CPS. This means that CPS is expected to proceed with the development of safety plans regardless of caregiver cooperation and willingness to be involved. While caregivers and family members should have the opportunity to participate and be informed about safety planning, CPS maintains the responsibility for deciding about the level of effort required to assure child safety; verifying the sufficiency of safety plans and regulating and overseeing the implementation of safety services.

Ongoing CPS Social Workers are accountable for assessing and analyzing threats to child safety (present and impending danger); safety planning; and the management of in-home and out-of-home safety plans. Ongoing CPS Social Workers must possess knowledge and a thorough understanding of essential safety concepts and criteria. Ongoing CPS Social Workers must have the ability to apply safety related concepts and criteria to the following safety intervention responsibilities:

- Analyze impending danger and evaluate and confirm the sufficiency of safety plans developed during the Family Functioning Assessment;
- Oversee and manage the provision of safety services used in in-home and out-of-home safety plans;
- Continually reassess impending danger and the sufficiency of safety plans, and make immediate adjustments to safety plans as indicated to assure that safety services are most appropriate and least intrusive to the family;
- Engage caregivers and children in the Protective Capacity Family Assessment (PCFA) and Family Case Planning to identify treatment outcomes and services that will address impending danger by enhancing diminished caregiver protective capacities; and
- Formally conduct Case Plan Evaluations to measure progress and change related to enhancing caregiver protective capacities and decreasing impending danger to children.

5.5 Safety Intervention Competencies

Effective Ongoing CPS safety intervention requires CPS Supervisors and Ongoing CPS Social Workers to possess the following key fundamental competencies:

<u>An extensive knowledge of:</u>

- The information collection standard necessary for assessing threats to child

safety and caregiver protective capacities (i.e. extent of maltreatment; nature of maltreatment; child functioning; adult general functioning; parenting discipline; and general parenting practices);

- The definitional standard for an unsafe child and a safe child (see CPS Policy Section 2.3 and 4.9 for more information);

- The danger threshold criteria for impending danger (see CPS Policy Section 4.9 for more information);
- The concept of caregiver protective capacities in relationship to addressing impending danger;
- The criteria used to determine the sufficiency of safety plans and the concept of provisional protection and reasonable/ active efforts (see CPS Policy Section 4.13 and 5.3.7 for more information);
- The PCFA practice policies with respect to how they related to practice and decision-making;
- The development of a family case plan with behaviorally specific goals designed to enhanced diminished protective capacities; and
- The Case Plan Evaluation approach and measurement criteria within the context of a comprehensive assessment process and integrated safety intervention system.

Skills and Ability to:

- Engage and involve caregivers in safety planning and the family case planning process;
- Conduct conversations with caregivers and children to assess Impending danger, evaluate safety plan sufficiency, determine what must change for children to be safe and measure progress toward achieving change;
- Analyze the meaning and the relationship in information collected from children, caregivers and families;
- Evaluate and apply caregiver protective capacities in family case planning and service provision; and
- Apply practice principles and intervention techniques necessary for facilitating change with caregivers.

Professional Perspective

- The value of caregiver and family involvement during the family case planning process;
- The individualization of case plan outcomes based on family strengths; existing caregiver protective capacities; impending danger; and diminished caregiver protective capacities;
- The caregivers' right to self-determination and personal choice;
- An outcome oriented and change based perspective related to case planning, service provision and the measurement of progress; and
- The value of demonstrating genuineness, respect, empathy; and partnering when interacting with caregivers and families.

5.6 The Ongoing CPS Social Worker's Role during the Protective Capacity Family Assessment and Family Case Plan

The ongoing CPS social worker-caregiver collaboration that occurs during Protective Capacity Family Assessment requires workers to be versatile and competent as a facilitator. The Protective Capacity Family Assessment is an activity that cannot be effectively completed in the absence of an ongoing worker actively facilitating the assessment process. The Protective Capacity Family Assessment is the fundamental ongoing CPS intervention with families and, as such, it relies heavily on the ongoing social worker's mentality, skills, techniques and direction.

Facilitation/Case Management

Ongoing CPS social worker/ case manager facilitation in the context of the Protective Capacity Family Assessment refers to the interpersonal, guiding, educating, problem solving, planning and brokering activities necessary to enable a family to proceed through the assessment process resulting in the development of a change strategy that can be formalized in an Family Case Plan.

A CPS social worker's primary objectives for facilitating the Protective Capacity Family Assessment include:

- Building a collaborative working relationship with family members;
- Engaging the caregivers in the assessment process;
- Simplifying the assessment process for the family;
- Focusing the assessment on what is essential to child protection and safe home environment;
- Learning from caregiver and children what must change to create a safe home environment;
- Seeking areas of agreement regarding what must change to create a safe home environment;
- Stimulating ideas and solutions for addressing what must change; and
- Developing strategies for change that can be implemented in a Family Case Plan.

Facilitation in the Protective Capacity Family Assessment involves four roles and several related responsibilities. The four facilitative roles within the Protective Capacity Family Assessment are: guide, educator, evaluator and broker. (Adapted from Techniques and Guidelines for Social Work Practice 4th ed. - Sheafor, B.W., Horejsi, C.R. and Horejsi, G.A. 1997)

Guide

The role of the guide involves planning and directing efforts to navigate families through the assessment process by coordinating and regulating the approach to the intervention and focusing the interactions with families to assure that assessment objectives and decisions are reached.

- Engage family members in the assessment process and change;
- Establish a partnership with caregivers;
- Assure that caregivers are fully informed of the assessment process, objectives and decisions;
- Adequately prepare for each series of interviews; be clear about what needs to be accomplished by the conclusion of each of your series of interviews;
- Consider how best to structure the interviews in order to achieve facilitative objectives;
- Focus interviews on the specific facilitative objectives for each intervention stage;
- Redirect conversations as needed;
- Effectively manage the use of time both in terms of the individual series of interviews and also the assessment process at large.

Educator

The role of the educator involves empowering families by providing relevant information about their case or about "the system," offering suggestions, identifying options and alternatives, clarifying perceptions and providing feedback that might be used to raise self-awareness regarding what must change.

- Engage family members in the assessment process;
- Be open to answering questions regarding CPS involvement, safety issues, practice requirements, expectations, court, etc.;
- Support client self-determination and right to choose;
- Inform caregivers of options as well as potential consequences;
- Promote problem solving among caregivers;
- Provide feedback, observations and/or insights regarding family strengths, motivation, safety concerns and what must change.

Evaluator

The role of the evaluator involves learning and understanding family member motivations, strengths, capacities and needs and then discerning what is significant with respect to what must change to create a safe home environment.

- Engage family members in the assessment process;
- Explore a caregiver's perspective regarding strengths, capacities, needs and safety threats;

- Consider how existing family/family member strengths might be utilized to enhance protective capacities;
- Focus on impending danger (safety threats) and diminished protective capacities as the highest priority for change;
- Clearly understand how impending danger is manifested in a family and determine the principal threat to child safety;
- Identify the protective capacities that must be enhanced that are essential to reducing impending danger;
- Seek to understand family member motivation; identify the stage(s) of change for caregivers related to what must change to address child safety.

Broker

The role of the broker involves identifying, linking, matching or accessing appropriate services for caregivers and children as needed related to what must change to create a safe environment.

- Engage the family in the Family Case Planning process;
- Promote problem solving among caregivers;
- Seek areas of agreement from caregivers regarding what must change;
- Consider caregiver motivation for change;
- Collaborate and build common ground regarding what needs to be worked on and how change might be achieved;
- Brainstorm solutions for addressing impending danger and caregiver protective capacities;
- Have knowledge of services and resources and their availability;
- Provide options for service provision based on family member needs;
- Create change strategies with families and establish Individualized Service Plans that support the achievement of the change strategy.

5.7 SAMS Ongoing Case Management Responsibilities

SAMS provides a structured approach for managing and serving all family situations when children are found to be unsafe at the conclusion of the Family Functioning Assessment. The structured approach includes:

Case Transfer-Initiating the Protective Capacities Family Assessment

- Safety Management

Completing the Protective Capacities Family Assessment

- Assessment of Children's Needs
- Developing the Family Case Plan

Managing the Family Case Plan and Service Provision

- Safety Management

Family Case Plan Evaluation

- Progress Measurement
- Safety Management
- Conditions for Return and Reunification
- Case Closure

5.8 Case Transfer-Preparing for the Protective Capacities Family Assessment

If the Social Worker who completed the FFA **is not** going to be the Ongoing CPS Social Worker, preparation will be essential to assuring sufficient safety plans and effectively and efficiently completing the PCFA. Adequate preparation begins with a thorough understanding regarding the status of a case and decisions that were reached by the CPS Social Worker who completed the FFA. The Ongoing CPS Social Worker must begin preparation for completing the PCFA by reviewing all relevant and available information collected by the FFA Social Worker

5.8.1 Documentation Review

The Ongoing CPS Social Worker, if different from the FFA Social Worker, must review FFA documentation and case decision-making prior to the case transfer staffing. FFA information collection and documentation related to family functioning, child functioning, adult functioning, and caregiver performance inform FFA decision-making and serve as the fundamental basis for discussions during the PCFA process.

Documentation that must be reviewed prior to contact with children and caregivers include the following:

- The Family Functioning Assessment;
- The safety analysis;
- The in-home or out of home safety plan;
- Enhanced and diminished protective capacities identified in family functioning assessment;
- Previous history with CPS (i.e. previously completed Family Functioning Assessments or Initial Assessments; previous safety plans; previous case plans; previous family case plan evaluations);
- Any evaluations conducted (i.e. mental health, substance abuse, physical exams etc.) (if applicable);
- Police reports (if applicable);

When reviewing FFA documentation, the Ongoing CPS Social Worker must seek to identify and understand the following:

- The extent to which there is sufficient information collected and documented related to the six fundamental elements of the family functioning assessment associated with evaluating impending danger and caregiver protective capacities: maltreatment, surrounding circumstances, child functioning, adult functioning, parenting discipline and general parenting practices;
- Selected impending danger threats are supported and justified in the documentation;
- FFA information confirms the safety decision;
- FFA information confirms the need for Ongoing CPS involvement;
- Safety analysis confirms the appropriate use of an in-home safety plan to control threats to child safety or the need for an out-of-home safety plan; and
- The safety plan is appropriate in controlling how the impending danger is manifested in the family.

Supervisor Consultation and Oversight of Case Transfer

Following the review of FFA documentation and prior to the case transfer staffing, the Ongoing CPS Social Worker should consult with their supervisor to discuss:

- FFA information collection and decision-making;
- Gaps in information; and
- Whether there are critical unanswered questions that will need to be reconciled during the case transfer staffing in order to prepare for initiating the PCFA.

In certain circumstances the FFA supervisor (if applicable) or FFA Social Worker may need to be contacted prior to the case transfer staffing to reconcile significant questions regarding case information and/or FFA decision-making including but not limited to:

- Quality and quantity of FFA information;
- Clarity and justification of FFA decision making;
- Clarity regarding impending danger;
- Basis for safety decisions;
- Safety plan approach; rationale; responsibilities;
- Rationale for the decision to open the case for ongoing services; and
- Nature and quality of client response to CPS.

5.8.2 Case Transfer Staffing

The intent of the case transfer meeting is to ensure that there is adequate attention to child safety at the initiation of ongoing CPS, and to prepare the Ongoing CPS Social Worker for completing the PCFA case planning process.

A. Case Transfer Timeframe

- The supervisor must make arrangements for scheduling the case transfer meeting within three (3) calendar days of a case being assigned to the ongoing CPS Social Worker;
- The case transfer meeting must occur within seven (7) calendar days of the disposition of the FFA but can occur during the implementation of the Safety Plan during the Safety Planning Process in the FFA;
- The case transfer meeting must occur as a face to face contact between the FFA Social Worker and Ongoing CPS Social Worker. The FFA supervisor and the Ongoing Supervisor should attend and participate in the case transfer meeting.

B. Case Transfer Meeting Content

Content to be addressed during the case transfer meeting between workers and supervisors must include:

- Significant information collected during the FFA and the meaning and relationship between pieces of information;
- Gaps in information in the FFA and rationale for decision-making;
- Clarification regarding the justification for identified impending safety threats;
- Thorough review of safety analysis and safety plan if the CPS Ongoing Social Worker was not involving in the case during the safety planning process, with emphasis on how identified safety services match up with impending danger and a clear understanding regarding the specific role of safety service providers; including verification of who is responsible for managing safety plans;
- Discuss existing caregiver protective capacities and general family strengths;
- Status of caregiver involvement with CPS; anticipation of how caregivers will react to ongoing CPS and likelihood to participate in the PCFA process; and perception regarding caregivers' motivational readiness to change;
- Review of child needs, including summary of medical, mental health, and school information as available;
- Implications for how to best proceed in completing the PCFA 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.

5.8.3 Safety Management Responsibilities

Safety planning must be understood as dynamic and provisional. While safety plans that were developed during the FFA 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 an in-home safety plan ineffective.

As the Ongoing CPS Social 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 or to identify potential issues or concerns associated with the implementation of a safety plan that will need to be addressed during the initiation of the PCFA process.

Responsibility for Safety Management at Case Transfer

- FFA Social Worker and Supervisor must determine that a safety plan is sufficient prior to a case being transferred and assigned to an Ongoing CPS Social Worker.
- The FFA Social Worker must maintain responsibility for managing the safety plan (i.e. in-home or out-of-home safety plan) until the case transfer staffing occurs with the Ongoing CPS Social Worker.
- If as a result of reviewing the FFA documentation and information shared during the case transfer meeting it is determined that a safety plan is not sufficiently managing and controlling impending danger to a child, the FFA Supervisor and the Ongoing Supervisor involved in the case must make an immediate judgment about who is responsible for responding to assure child safety. This will also require a formal evaluation of safety and safety analysis. (For more information about the continuing formal evaluation of safety, see CPS Policy Section 5.10)

Determining Safety Plan Sufficiency at Case Transfer

By the conclusion of the case transfer staffing it must be reconfirmed that a safety plan is sufficient. Confirmation of safety plan sufficiency must include a consideration of the following:

- Safety analysis documentation supports the decision to place a child out of the home;
- Safety analysis documentation clearly supports the decision to use an in-home safety plan;
- The safety plan is the least intrusive means possible for controlling and managing child safety based on the results of the safety analysis (i.e. stability of home environment, willingness of caregivers, clear understanding of how safety threats exist; availability and accessibility of safety service resources);
- Identified safety actions match up with how impending danger is occurring

in the family;
- Clarity regarding who is responsible for each of the identified safety actions; and
- Safety actions are implemented at the frequency and level of effort required to control impending danger.

Modifying the Safety Plan at Case Transfer

- If a child is in placement at the time of the case transfer staffing and it is determined that a less intrusive in-home safety plan can be implemented prior to the completion of the PCFA, a new formal safety evaluation and analysis must be completed to justify the decision to reunify with the implementation of an in-home safety plan. The Prosecuting Attorney must be consulted and if already convened the MDT must be advised of the results of the formal safety evaluation and safety analysis. (See CPS Policy Section 5.10 for more information concerning the formal safety evaluation)
- The determination of the safety analysis and supervisor consultation associated with the decision to reunify and implement an in-home safety plan must be documented in the PCFA contact section.

Contact with Safety Service Providers during Case Transfer

The CPS Social Worker who will be providing and/or arranging ongoing services must attempt to contact safety service providers (formal and informal) who are participating in in-home safety plans prior to case transfer. The safety services providers should also attend the case transfer staffing. If this cannot occur, contact must be made as soon as possible but no later than three (3) days after case transfer. The purposes for the contact with safety services providers are:

- To elicit their understanding regarding the reason for the safety plan;
- To clarify their role in the safety plan with respect to assuring child safety; and
- To reconfirm their continued commitment and ability to remain actively involved in meeting the expectations of the safety plan.

5.8.4 Case Transfer meeting with the family

The Family Functioning Assessment Social Worker and the Ongoing CPS Social Worker should meet with the family upon case transfer. The following must occur during the Case Transfer meeting with the family:

- Introduce the Ongoing CPS Social Worker to the family;
- Explain the purpose of Ongoing Child Protective Services;
- Thoroughly explain the safety decision and impending danger(s) that must be addressed;
- Listen to the caregivers concerns, answer their questions and allow the caregivers to be an intricate 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 in order to ensure their reliability and understanding of their roles in safety planning;
- Begin the Protective Capacities Family Assessment.

5.9 Ongoing Safety Management

It is the responsibility of the Ongoing CPS Social Worker to actively manage the safety plan (in-home or out of home). Effective ongoing safety management requires constant attentiveness to changes in family circumstance or in placement settings that may compromise the sufficiency of a safety plan. Diligence in ongoing safety management comes as a result of maintaining routine and timely contact with caregivers, children, in-home formal and informal safety service providers, placement settings, and responding immediately when information suggests a safety plan is not keeping a child safe.

General Requirements for Managing Sufficient Safety Plans

- Coordinating and guiding formal and informal safety service activities;
- Generating formal and informal safety service resources;
- Evaluating the sufficiency of safety services;
- Evaluating impending danger;
- Revising safety plans if indicated; and
- Facilitating communication and assist to resolve conflict.

5.9.1 Managing the In-Home Safety Plan

The Ongoing CPS Social Worker must continually evaluate the sufficiency of an in-home safety as long as threats to child safety exist, which require the need for a safety plan. In order to do this the Ongoing CPS Social Worker must:

- Contact with caregivers, children and safety services providers must be based upon the safety plan and the family circumstances. The supervisor should be involved in making this determination, but in no case should face to face contact be less than once a month;
- The Ongoing CPS Social Worker must make immediate contact with caregivers and children if information from the family, safety service providers or collaterals indicates that impending danger is not being sufficiently controlled and managed;
- The Ongoing CPS Social Worker must have a minimum one phone or face to face contact per week with in-home safety service providers listed on the safety plan, unless additional contacts are necessary based on family circumstance and/or supervisor’s request.

The purpose of contacts related to In-Home Safety Planning with the family, providers and collaterals includes:

- Evaluation for status of the impending danger;
- Changes in individual or family circumstances that may require a formal reevaluation of safety;
- Review safety service actions and timeframes, and resolve issues related to safety service providers (as indicated);
- Consider necessary adjustments to the safety plan.
- Review and verification that the expectations for safety service actions are being met;
- Evaluation family circumstances; impending danger and the continued safety of children; and
- Commitment from safety service providers to remain involved in the safety plan.

Based on discussions with caregivers and in-home safety service providers, the Ongoing CPS Social Worker must make a determination regarding the appropriateness of the level of intrusiveness needed to assure child safety. If changes in case circumstance indicate that a less intrusive in-home safety plan can assure child safety, the Ongoing CPS Social Worker must consult with a supervisor prior to proceeding in modifying and/or reducing the provision of the in-home safety plan. A Formal Evaluation of Safety as described in CPS Policy Section 5.10 must be completed, which includes a Safety analysis.

5.9.2 Managing the Out-of-Home Safety Plan

The standard for managing safety in placement is consistent with requirements set forth in the Adoption and Safe Families Act. When the implemented safety plan involves the placement of children out of the home, CPS maintains the responsibility to assure that children are placed into a safe environment. CPS requirements for establishing and managing safety in placement include placement with relatives, other natural supports, foster homes and institutions. The Ongoing CPS Social Worker is responsible for a child's safety by assuring the absence of present danger; impending danger; or indications of maltreatment in the placement setting.

A. Contact with Placement Providers to Determine the Sufficiency of an Out-of-Home Safety Plan

The Ongoing CPS Social Worker must evaluate the sufficiency of an out of home safety plan at the point a child is placed and continuously throughout ongoing CPS involvement and until reunification occurs.

The evaluation of child safety in placement includes the following:

- When placement occurs during ongoing CPS, the CPS Social Worker must evaluate whether a placement setting is a safe environment at the time of placement. *Please Review Foster Care Policy for more information concerning placing with kinship relatives.*

B. Timeframes and Contact Requirements for Confirming a Safe Environment of the Placement Setting

- Contact with children and placement providers must be based upon the child's needs, behaviors and other circumstances. 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;
- The Ongoing CPS Social Worker must formally evaluate the provision and sufficiency of the out of home safety plan every ninety (90) days by formally completing the Family Case Plan review and the Continuing Safety Evaluation.

Safety management of out of home safety plans (placements) during contacts must include consideration for the following:

- Child's adjustment to the placement setting;
- 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 that require a prompt response and/or additional support for the placement;
- If the placement setting is a certified foster home or non-certified placement and general concerns or issues arise, the Ongoing CPS Social Worker should address this with the foster 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;
- Issues that violate one or more residential licensing regulations as outlined in 78CSR 2 (child placing) and 78 CSR 3 (residential group care) may be reported to the Residential Child Care Licensing Unit Program Manager.

C. Requirements for Immediate Contact with a Child in the Placement Setting

- Ongoing CPS Social Workers must make immediate contact with caregivers and children in the placement setting if there is an indication of maltreatment and/or present or impending danger in the placement setting. A referral for CPS must be made in these situations.

D. Visitation Plans

- If the child is in out-of-home care, with relatives or foster parents, a visitation plan must be established for face to face caregiver and child visitation. If visitation will compromise child safety, the plan could possibly be that no visitation should occur.

Supervisor Consultation

Supervisor consultation and approval of placements must include the following:

- Anytime a safety decision is being made supervisor consultation is required and minimally supervisory consultation related to ongoing safety management must occur monthly;
- Confirm the continued need for placement;
- The potential use of a less intrusive in-home safety plan;
- Reconfirm that the placement setting continues to be a safe environment.
- Supervisory approval of a placement must occur every 90 days (following placement) as part of the Family Case Plan Evaluation and Formal Continuing Safety Evaluation;
- Supervisor consultation must also occur at any time concerns for child safety emerged in the placement setting.

5.10 Continuing Formal Evaluation of Child Safety

Although child safety is evaluated at each contact with the family and collaterals, there may be times when the safety of the children must be formally evaluated and recorded in the case record. A formal evaluation of safety must occur when a significant change in family circumstances occurs, at CPS Ongoing Case Reviews and prior to reunification. In some instances it is appropriate to complete a formal evaluation of safety rather than a full Family Functioning Assessment when a new referral is received on a CPS Ongoing case.

During the Ongoing CPS case there will be times when a significant change in family circumstances occurs, such as a formal/informal safety service becomes ineffective or a caregiver moves in or out of the residence. In these situations a formalized evaluation of safety must occur to determine if impending danger continues to exist and ensure that the appropriate safety plan is in place. When

a significant event or change in circumstances occurs, the CPS Social Worker must:

- Examine and analyze the change in family circumstances to determine the appropriate manner to complete the evaluation of safety. Consult with a CPS Supervisor if necessary to make this determination;
- Collect all information concerning the significant event or change in circumstances, how child safety may be impacted and any new information not known during the Family Functioning Assessment or Ongoing CPS Case relating to the six areas of Family Functioning found in Policy Section 4.6.1 and document the information on the Continuing Safety Evaluation;
- Determine if impending danger exists by referring to and following the applicable SAMS FFA policy concerning impending danger and the danger threshold criteria;
- If impending danger exists, complete the safety analysis to determine the appropriate safety plan always referring to and following the applicable SAMS policies and procedures concerning safety analysis and safety planning;
- If impending danger does not exist begin the process of case closure with the family considering any current safety or treatment focused services; and the family's need for case closure to proceed in an orderly manner.

When a new referral is received alleging behaviors indicative of abuse or neglect, or conditions where abuse or neglect is likely to occur in an Ongoing CPS Case or when a Family Functioning Assessment has been approved but the Ongoing CPS Case has not been assigned, the following must occur:

- Examine and follow Policy Section 3.7 to determine if a new Family Functioning Assessment must be completed or if a formal evaluation of safety is appropriate. This includes the steps outlining the appropriate manner to merge and association that occurs in FACTS, if appropriate;
- If a Family Functioning Assessment must be completed, follow all the applicable policies and procedures found in Policy Section 4;
- If a formal safety evaluation will be completed due to the referral containing the same family issues or patterns of behavior already known, consult with a CPS Supervisor to determine the appropriate manner to complete the safety evaluation taking into consideration the information alleged and what is already known about the family. The appropriate manner for completing the evaluation of safety may include following information collection protocol found in Section 4.6. Response to the referral must minimally meet the Policy Section 3.4 regarding;
- Collect any new information concerning the Six Areas of Family Functioning found in Policy 4.6.1 as well as any other concern for the children's safety;
- If impending danger exists, complete the safety analysis and planning to determine the appropriate safety plan always referring to and following the applicable policies and procedures concerning safety analysis and safety planning. As part of this process, determine if the current safety plan is

appropriate or should be dismissed and a new safety plan deployed;

- If impending danger does not exist begin the process of case closure with the family considering any current safety or treatment focused services; and the family's need for case closure to proceed in an orderly manner taking into consideration the supports the family is currently receiving and develop a case closure strategy with the family;

If safety is formally being evaluated due to case plan evaluation/review or prior to reunification, the following must occur:

- Consider the caregivers progress with the treatment plan/family case plan in determining if the children would be in impending danger if the safety plan was discontinued or if the children were reunited;
- If impending continues to exist complete the safety analysis and planning to determine the appropriate safety plan always referring to and following the applicable policies and procedures concerning safety analysis and safety planning;
- If impending danger does not exist begin the process of case closure with the family considering any current safety or treatment focused services; and the family's need for case closure to proceed in an orderly manner;
- If the family is in court due to an out of home safety plan, inform the MDT and court the results of the safety evaluation as part of the regular casework process;
- If an Out-of-home Safety Plan has been in place but the safety evaluation and safety analysis determines an in home safety plan is the least intrusive approach to keeping the children safe, the following must occur: consult with your supervisor and Prosecuting Attorney as soon as possible, advise the Prosecuting Attorney the results of the safety evaluation and safety analysis explaining the rationale for requesting the dismissal of the out of home safety plan and implementation of an in home safety plan, request the Prosecuting Attorney represent the Departments position in court, schedule an MDT and court hearing date as soon as possible;
- If an Out-of-home Safety Plan has been in place but the safety evaluation indicates no safety plan is required, the following must occur: Consult with your supervisor and Prosecuting Attorney as soon as possible, advise the Prosecuting Attorney the results of the safety evaluation and safety analysis explaining the rationale for requesting the dismissal of the out of home safety plan, request the Prosecuting Attorney represent the Departments position in court, schedule an MDT and court hearing date as soon as possible, explore with the family and MDT an appropriate return of the children and case closure strategy that would transition the children home in an appropriate, beneficial, and safe manner taking into consideration the supports the family is currently receiving.

5.11 Conducting the Protective Capacities Family Assessment

The Protective Capacities Family Assessment (PCFA) adheres to the requirements set forth in the Adoption Safe Families Act for addressing threats to child safety in case plans. The PCFA applies the concept of caregiver protective capacities as the basis for establishing case plan goals that are individualized to caregivers and families and target behavioral change. The PCFA process is fundamental to ongoing safety intervention with respect to both safety management and remediation. The Protective Capacities Family Assessment has three (3) distinct stages of intervention:

1. Introductory
2. Discovery
3. Family Case Planning-Change Strategy

The Ongoing CPS Social Worker must include the following in the approaches to conducting the PCFA:

- Use interpersonal techniques that are intended to engage caregivers in developing individualized case plans;
- Use active efforts to seek mutual agreement regarding what must change to create a safe home, selection of case plans services and the prioritization of service delivery;
- Interact with caregivers in a way that recognizes and demonstrates respect for caregiver self-determination and personal choice; and
- Use interpersonal techniques that are intended to help facilitate caregiver change associated with family case plan outcomes.

5.11.1 PCFA Decisions

The Ongoing CPS Social Worker must make the following decisions by the conclusion of the PCFA:

- Are safety threats being sufficiently managed and controlled?
- How can existing enhanced parent/caregiver protective capacities be used to help increase parent/caregiver protectiveness?
- What is fundamental impending danger to the child based on how impending danger threats are manifested in the family?
- What parent/caregiver protective capacities are diminished and therefore resulting in impending danger to the child?
- How ready, willing and able are parents/caregivers to address impending danger and diminished protective capacities, and what are the implications for continued CPS Social Worker engagement and facilitation with the family?
- What change strategy (family case plan) will most likely enhance parent/caregiver protective capacities and decrease impending danger?

5.11.2 The Trans-Theoretical Model (TTM)

Trans-Theoretical Model (TTM) provides a way to understand and intervene in human change. The premise of (TTM) is that human change occurs as a matter of choice and intention and that intervention can facilitate the process. The Protective Capacity Family Assessment is the first structured intervention with families once a case has been transferred to ongoing CPS and, as such, it provides ongoing CPS social workers with the initial opportunity to begin engaging family members in a process whereby the facilitation of client change can occur. There is one systematized concept of TTM that the CPS Social Worker must be familiar with when intervening with families during the Protective Capacity Family Assessment: The Stages of Change.

Stages of Change

The stages of change represent the dynamic and motivational aspects of the process of change. They are a way of dividing up the process of change into discrete segments that can be associated with where people are with respect to change. There are five sequential steps that people move through during change and also move back and forth within during change. In other words, people may progress through one stage after another until change is complete or they may revert back to previous stages as they move forward some, back some, forward some and so on. The stages of change are:

Pre-Contemplation (Not Ready to Change)-The person is yet to consider the possibility of change. The person does not actively pursue help. Problems are often identified by others. Concerning their situation and change, people are reluctant, resigned, rationalizing or rebelling. Denial and blaming are common.

Contemplation (Thinking about Change)-The person is ambivalent and both considers change and rejects it. The person might bring up the issue or ask for consultation on his or her own. The person considers concerns and thoughts but no commitment to change.

Preparation (Getting Ready to Make a Change)-This stage represents a period of time when a window of opportunity to move into change opens. The person may be modifying current behavior in preparation for further change. A near term plan to change begins to form.

Action (Ready to Make a Change)-The person engages in particular actions intended to bring about change. There is continued commitment and effort.

Maintenance (Continuing to Support the Behavior Change)-The person has successfully changed behavior for at least 6 months. He or she may still be using active steps to sustain behavior change and may require different skills and

strategies from those initially needed to change behavior. The person may begin resolving associated problems.

(The material on the stages of change is paraphrased from the work of Carlo Di Clemente and J. Prochaska.)

5.12 Initiation of the PCFA-Introductory Stage

During the Initiation of the PCFA, it is imperative that the CPS Social Worker begins the process of understanding the caregiver's perspective regarding CPS involvement. The CPS Social Worker must discuss the reason for Ongoing CPS involvement with the caregivers. Clearly defined roles and expectation of CPS Staff, Safety Resources and Caregivers must be understood. CPS Social Workers must continually reexamine the caregiver's attitudes and motivation as it relates to the stages of change. The CPS Social Worker must explain the differentiation between the FFA Process and Ongoing CPS. The PCFA should also begin to be discussed and explained to the caregivers. As in all contact with caregivers, safety resources and collaterals, the safety plan should be examined to determine its sufficiency to control impending dangers.

- Within five (5) calendar days following the case transfer staffing, the Ongoing CPS Social Worker must have face to face contact with caregivers and all children who are present in the home at the commencement of the PCFA.
- All children who were not present at the initial PCFA Introduction meeting must be seen within ten (10) days following the case transfer meeting, this includes children in placement.
- Face to face contact with caregivers and children must occur immediately if information regarding case circumstances indicates that an in-home safety plan is not sufficiently managing safety influences.

5.12.1 Foster Care Candidacy

In 2006 the definition of who qualifies as a foster care candidate was narrowed, as well as the documentation requirements pertaining to those children. The Administration for Children Youth and Families (ACYF) issued the following policy, ACYF-CB-IM-06-02, dated June 9, 2006, which states: "New section 472(i)… permits a State to claim Federal reimbursement for allowable administrative costs for a potentially title IV-E eligible child who is at imminent risk of removal from the home if: reasonable efforts are being made to prevent the removal of the child from the home or, if necessary, to pursue the removal, and the State agency has made, at least every six (6)months, a determination or redetermination that the child remains at imminent risk of removal from the home."

Foster Care Candidates are 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.

The Child Protective Service Worker will:

- Thoroughly explain that should the family not be able to comply with the service plan and meet the goals laid out in it, their child(ren) may be removed from the home;
- The Worker will print the names of those children who are at imminent risk of removal from the home on the Family Service Plan, under the statement on the form “Identify the child(ren) or youth who are at imminent risk of foster care placement if the preventative services outlined in the case plan are not provided.” The parent(s) and caregiver(s) in the home will sign the Family Service Plan, acknowledging that they understand that should the family not be able to comply with the service plan and meet the goals laid out in it, their child(ren) may be removed from the home.

5.13 Completing the Protective Capacities Family Assessment-Discovery Stage

During the Protective Capacities Family Assessment (PCFA), the CPS Social Worker must thoroughly understand how the caregivers diminished protective capacities result in the children being in impending danger. The CPS Social Worker is responsible for engaging the caregiver in an attempt to assist the caregiver in raising self-awareness and understanding regarding what behavior must change in order for their children to be safe. A fundamental objective of the PCFA Discovery stage is to seek mutual understanding and agreement between the worker and caregivers regarding what must change related to diminished caregiver protective capacities. During contact with the family, formal/informal providers and collaterals, the following must be discussed and examined in order to facilitate the caregiver’s progression through the stages of change.

- Identify family strengths and existing caregiver protective capacities that can be utilized to promote change to create safety and permanence for children;
- The relationship between diminished caregiver protective and impending danger;
- The needs of children and identify ways in which caregivers can be fully involved and support meeting the needs of their children;
- Determine whether any professional evaluations (i.e. mental health; medical; educational) are indicated to inform treatment service needs for children; and
- Consider areas of agreement and disagreement regarding impending danger, and identify caregiver stages of change related to addressing diminished caregiver protective capacities.

The level of effort required to complete the PCFA is determined by the number, frequency and length of case contacts with caregivers and children necessary to achieve the facilitative objectives and decisions of the PCFA. When determining the level of effort, the following must be considered:

- The Ongoing CPS Social Worker must conduct an adequate number of face to face contacts with caregivers (individually; jointly; or group meetings) necessary to complete the PCFA;
- Contacts with caregivers and children during the PCFA process must be focused on engaging the caregivers and children in the PCFA process and result in the ability to make key PCFA decisions;
- The judgment concerning sufficient level of effort and achievement of objectives of the PCFA must be determined through supervisory consultation;
- The PCFA must be completed within 45 days of the approval of the FFA.
- The Ongoing CPS Social Worker must complete the PCFA with caregivers and produce a documented family case plan within 45 days of approval of the FFA;
- If at the conclusion of the PCFA process there is no agreement from the caregiver regarding what must change, the Ongoing CPS Social Worker must proceed in selecting case plan goals for change;
- In the event that the caregiver becomes involved following the completion of the Family Case Plan, a Family Case Plan Evaluation must be completed to determine the sufficiency of the description of impending danger and the accuracy of case plan goals;
- For situations when the caregiver location or identity of absent parent is unknown, diligent attempts to identify and/or locate the absent parent must be clearly documented. If the caregiver is located, the Ongoing CPS Social Worker would proceed with the PCFA process and case plan.

In the event that the child primarily lives with the non-maltreating/non-threatening parent, the following situations need to be considered to determine what is completed with the family:

- When the threatening parent has access to the child but is not the primary custodian, the Protective Capacities Family Assessment and Family Case Plan must be developed with the threatening parent in an attempt to eliminate impending danger. The assessment of children's needs should occur by engaging both parents in the process;
- If the threatening parent is unable to change the threatening behavior, CPS and the non-threatening parent may file a co-petition in order to provide a safe and permanent home for the child if appropriate.

5.14 Assessment of the Children's Needs in Ongoing CPS

Although CPS seeks to serve children who are unsafe and will begin the case

closure process once safety can be maintained in a permanent living situation, CPS believes that every child that becomes involved with our program has the right to have their needs assessed. It is important that a child have a thorough assessment of needs in order for CPS to help the parents meet the needs of each child.

The assessment of needs may take on different forms. Children's needs can be assessed through observation, a formal evaluation conducted by another agency, or through a contracted provider. Assessment may also be done through an informal process by conducting interviews with the child, family and service providers. Medical records, school records and mental health records should be requested when needs are observed in one of these areas and the caregiver is willing to sign a release for the records. Discussion with the caregiver about the release of records related to needs must be included in the narrative. The starting point to begin gathering assessment information is through the Family Functioning Assessment (FFA) child functioning element.

It is important that throughout the life of the case that the assessment process continues. Thorough assessments that define the child's strengths and needs are necessary for the development of a case plan. The following are areas to be considered based on the individual family and child circumstances. The areas below are suggestions for ongoing dialogues with the family regarding the children's development. All of the areas below are not appropriate for all children and it is not expected that these points be discussed during one visit, rather the following areas are expected to be considered as a component of an ongoing assessment of child functioning.

Assessing Child Needs

Development

- Are there current services? What are they and for what purpose?
- An assessment of:, Gross motor skills, Fine motor skills, Cognitive, Expressive and receptive language, Social interactions, Age-appropriate activities of daily living
- Are there concerns?
- Services in the past, needs?
- Document and refer to services, if needed.
- Substantiated cases-require Birth to 3 referral (Federal mandate)

Medical

- Names and addresses of the child's health and medical provider(s), with details of illnesses, accidents, and previous hospitalizations, including psychiatric hospitalizations. Can the parent give you information that will assist you in assessing medical?
- Prior and current illnesses or health concerns.
- Immunization history.
- Medications (prescription and over-the-counter).

- Allergies (food, medication, and environmental).
- Durable medical equipment/adaptive devices currently used or required by the child (e.g., wheelchair, feeding pump, glasses).
- Needed follow-up or ongoing treatment for active problems.
- Request records and review.
- Overweight children obesity, nutrition- any concerns? Refer if needed?
- Eating disorder concerns?
- What medical concerns do you have with your children?
- Does your child require any special medical care?
- Birth Defects? Special Needs? What care do they require or need?
- When was the last time your child was seen? Next appointment?
- Baby and Well Child check? Are they being done?
- Pregnancy, concerns, did they get pre-natal care? Birth issues? Use of alcohol or drugs?
- Nursing? Bottle Feeding?
- Are they on Medicaid? Private insurance? If needed refer family to Medicaid/CHIPS/WIC.
- Birth to Three? Refer as needed.
- Child's growth and nutrition-ask what they weigh, height.
- Review with parent(s) Prevention and Risks: SIDs/positional affixation, Shaken Baby Syndrome information.

Vision

- Vision concerns?
- Who is the physician? What clinic?
- Last appointment and when are the next appointments? Why seen? Refer if needed.
- Do they have glasses? Contacts?

Dental

- Who is the child's dentist? When seen last? For what? Next appointment? Refer if needed.
- Are there any dental concerns?
- Teeth brushing and care?

Hearing

- Any concerns with child?
- Seen by whom? When? Needs? Follow-up?
- Any concerns with speech or chronic ear infections?
- Any services for hearing? Speech? ENT?
- Refer if needed.

Mental Health

- Is the child being seen? By who? Name of Dr. and or therapist and clinic?

- When was last appointment and next?
- What special care do they need or receive?
- What is the mental health treatment plan for the child?
- Are they on medications, who prescribed it? What is the Dr.'s name?
- Has the child had a psychological evaluation, when, where and what was diagnosis? Who conducted it?
- Talk with therapist, psychologist and psychiatrist.

Observations

- Risks for suicide, self-mutilating behaviors, and/or violence.
- Substance exposure, misuse, abuse, and addiction.
- Risky sexual behavior.
- Risk of antisocial behavior.
- Angry outbursts.
- Excessive sadness and crying.
- Withdrawal.
- Lying or stealing.
- Defiance.
- Unusual eating habits, such as hoarding food or loss of appetite.
- Sleep disturbances.
- Change in behavior at school, including truancy.

Education

- What grade are they in?
- What school?
- Who is the teacher or counselor?
- IEP? For what? Do parents have a copy? Attend meetings?
- Attendance/attitude concerns?
- Grades?
- Attending parent conferences?
- Any issues with education needs met?
- Special Ed needs?
- Pre-school?
- IFSP?
- Education-School- History or performance, IEP attendance? What is the parent involvement?

Drug and Alcohol/Substance Abuse

- Any issues with child with drug and alcohol? When? Who seen? Refer if needed?
- Is there an alcohol assessment? Who completed it? Results?
- Has child been in treatment or is currently in treatment? Where?
- Last drug screen.

Sexuality

- Is child sexually active or promiscuous?
- Is child on contraceptives, what, who prescribed?
- Has the child had any pregnancies? What happened?
- Does the child have any sexualized history and what has been done to help them work through that?
- Has the child ever been sexually abused?

Legal

- Has the child been involved with DOC, Court Services or the Juvenile Court System? Where and what for?
- Does the child receive child support?
- Is the child a Legal Immigrant?

Cultural Connections

- Does the child have specific cultural activities that they attend or practice?
- Are there any traditional foods that your family eats?
- What are family traditions that are important to the child?
- Do you practice a certain faith, if so, what faith and does your child practice it?

Social/Other Needs

- Extracurricular activities
- Social clubs
- Boys Club/Girls Club
- 4-H
- Mentoring programs Big Brother/Big Sister
- Destination Imagination
- Sports
- YMCA
- Transportation
- Church Groups
- Child Care Needs
- Employment
- Faith Youth Groups

5.15 Caregivers who refuse to cooperate with the PCFA

When children are in impending danger AND caregivers refuse to cooperate with CPS in completing the PCFA or Family Case Plan, CPS must take the following immediate steps:

- Consult with a supervisor to identify immediate response.
- Thoroughly document all efforts to engage the caregiver and the caregivers response/actions

- Consult with the Prosecuting Attorney

In relation to the consultation with the Prosecuting Attorney, the following must be discussed and must occur:

- Thoroughly explain the FFA information and decisions concerning impending danger. This includes but is not limited to discussing the 6 areas of Family Functioning, the identified impending danger and how the impending danger met the danger threshold criteria.
- Thoroughly explain all efforts used to engage the caregiver and the caregivers response.
- Determine through Supervisor consultation and if necessary through consultation with Child Welfare Consultants, Regional Program Managers or Department Attorney's what relief should be requested from the courts.
- File a petition with the court asking for either a court order requiring caregiver cooperation or involvement with the PCFA or legal custody and removal of the children.

5.16 Family Case Plan-Change Strategy Stage

The Family Case Plan is an organized, written agreement between the social worker and the caregivers, and children when appropriate. The Family Case Plan is a deliberate, reasonable, mutually agreed upon strategy to enhance diminished protective capacities and in turn eliminating or reducing impending danger. It involves planned action to support a family and its members toward the desired and prescribed goals. The goals, if achieved, will enhance the diminished protective capacities identified during the FFA and PCFA. 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 Family Case Planning. The most difficult and most critical aspect of Family Case Planning involves seeking agreement from caregivers regarding the identification of goals for change. The Family Case Plan is the Caregiver's plan which emerges from the PCFA, rather than the CPS Ongoing Social Workers plan. Family Case Plans will likely not work if Caregiver's are not invested in them. Caregiver's must be actively involved in the PCFA Family Case Planning process if change is to occur.

5.17 Documenting the Family Case Plan

To document the Family Case Plan, the CPS Social Worker will:

- Develop the plan based upon enhancing the diminished protective capacities identified in the family functioning assessment as well as any newly discovered diminished protective capacities confirmed as a result of the PCFA;
- Based on what was discovered and agreed to about what must change, document behavioral goals that are designed to enhance the diminished protective capacities and reduce or eliminate impending danger including

identification of the person for whom the goal is established;

- Document a comprehensive family case plan which represents what the worker and the family agree is required to enhance protective capacities and therefore eliminate impending danger;
- Prioritize; with the family and providers, what will be worked on, when and for how long;
- Establish the length of service expected in the case and identify the estimated date for closure. This is an estimation of the date that the worker and the family expect that the children can be maintained safely in their home, not whether or not all the child's well-being needs are met;
- Identify when the plan is to be initiated, which is the date that the family members and providers will actually commence activity (e.g., counseling, training, skill development, etc.);
- Based on the PCFA family member's' acceptance of the plan. This should include consideration and description of how family members participated.
- Consider and document agreement or disagreement with the plan, levels of motivation and potential or actual resistance;
- If at the conclusion of the PCFA process there is no agreement from the caregiver regarding what must change, the Ongoing CPS Social Worker must proceed in selecting Family Case Plan behavior goals in order to achieve the desired Ongoing CPS Intervention outcomes;
- In the event that the caregiver becomes involved following the completion of the Family Case Plan, a Family Case Plan Evaluation must be completed to determine the sufficiency of the description of impending danger and the accuracy of case plan Goals;
- For situations when the caregiver location or identity of absent parent is unknown, diligent attempts to identify and/or locate the absent parent must be clearly documented in the child narrative. If the caregiver is located, the Ongoing CPS Social Worker would proceed with completing the Protective Capacities Family Assessment and Family Case Plan;
- Complete one (1) Protective Capacities Family Assessment and Family Case Plan for all primary caregivers who are living together in one residence;
- Caregivers who separate or divorce following the completion of the Family Case Plan, complete a separate Family Case Plan Evaluation for each of the caregivers if both are/were a threat to child safety ; and
- If there is more than one caregiver involved on a case living in separate residence and each having indications of impending danger, a separate Family Case Plan must completed with each of the caregivers;
- When the maltreating/threatening parent has no access to child due to a temporary court order, and the children are residing with the non-threatening parent, the PCFA is completed with the maltreating parent and the child's plan is completed with the non-threatening parent and children to address needs of children;
- When the threatening parent has access to the child, but does not live with child, and the children are living with the non-threatening parent, PCFA

completed with maltreating parent and child's plan is completed with the children and non-maltreating caregiver;
- For children who are residing in the home at the conclusion of the PCFA process, all identified treatment/ service needs of the children must be documented in the Child's Need Section of the Family Case Plan.

In completing the Family Case Plan the worker will also:

- Identify Case Management Tasks which are the tasks the CPS Social Worker must carry out in the next ninety (90) days to facilitate the implementation of the family case plan;
- Establish and document a family case plan evaluation date@ which must not be more than ninety (90) days from the date the family case plan is initiated;
- Evaluate and document the sufficiency and need for any existing safety plan;
- Develop and document behavioral goals which are designed to help the family member progress toward enhancing the diminished protective capacities that resulted in the child being in impending danger. These tasks or activities should be very specific, behavioral assignments which a client and provider agree will be helpful in facilitating change. These mini service objectives are an informal part of the treatment process and plan. They are typically short-term and operate within the service context on a week-to-week basis. Client tasks are established and monitored during service provision sessions;
- Seek parent signatures on the family case plan to signify agreement or disagreement with the plan.

Supervisor Consultation during the Protective Capacities Family Assessment and Family Case Plan process:

- Supervisory consultation must support the Ongoing CPS Social Workers approach and involvement with caregivers, strategizing around interpersonal practice issues and reviewing decision making;
- Supervisors must plan and provide consultation to Ongoing CPS Social Workers focusing on assisting Ongoing CPS Social Worker in achieving the specific facilitative objectives of the Protective Capacities Family Assessment and Family Case Planning process.

5.18 Family Case Plan Components

The Family Case Plan is developed around four (4) specific components:

1. **Outcome:** The caregiver/parent will demonstrate enhanced behavioral, emotional and/or cognitive protective capacities which will ensure their child's safety or the child will be safe as demonstrated by the caregiver/parent's enhanced protective capacity which will eliminate or reduce the impending danger threat to the child.

2. **Goals:** Goals are individualized behaviorally specific statements that described what must change associated with the enhancement of diminished caregiver protective capacities. The achievement of goals will result in elimination of impending danger and the achievement of the intervention outcome.
3. **Services:** those actions which are implemented by the CPS agency or other agencies which will assist caregivers and children in accomplishing specific goals. Service Providers can be either formal or informal.
4. **Time Frame:** indicates how often and for how long services will be provided, when goals are to be reached, and when review of progress is to occur.

5.19 Conclusion of the PCFA and Family Case Plan

To conclude the PCFA and Family Case Plan, the worker will:

- Complete and document the PCFA and Family Case Plan within forty-five (45) days of the date the Family Functioning Assessment was completed;
- Transmit the case to the supervisor for review and approval.

The supervisor will:

- Review the PCFA and Family Case Plan for general thoroughness and completeness;
- Review the procedure the CPS Social Worker followed in completing the PCFA. If the appropriate procedures were not followed, determine the reason;
- Review any revisions to an established safety plan at the initiation of the treatment plan and assure that a safety plan is in place, if indicated;
- Review whether the documented PCFA reflects the worker and caregiver understanding of diminished caregiver protective capacities and what must change;
- Review the adequacy and the specific details of the family case plan in terms of identified outcomes, goals, measures- and services initiated.
- Review whether caregivers were effectively involved in the PCFA and formulating the Family Case Plan;

- Review whether the multi-disciplinary treatment team, if indicated or other parties relevant to the case were involved in the family assessment and development of the Family Case Plan;
- Review whether there is evidence of relationship building by the CPS Social Worker with the caregivers;

- Review whether clear expectations were established with service providers;
- Document supervisory consultation and approval within the appropriate

screens within FACTS.

If the PCFA and Family Case Plan is unsatisfactory for any reason, the supervisor will:

- Meet with the CPS Social 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 PCFA and Family Case Plan.

Cases involving children in custody or under court jurisdiction:

- If a caregiver chooses to not cooperate or participate in the PCFA process, the Ongoing CPS Social Worker must document their level of effort in attempting to engage the caregiver in the Contact/ Process section of the PCFA.

5.20 Managing the Family Case Plan and Service Provision

The Ongoing CPS Social Worker is responsible for overseeing the implementation of the case plan and working with caregivers to facilitate change. Managing the Family Case Plan and service provision primarily involves assuring that case plan services are targeting case plan outcomes associated with enhancing diminished caregiver protective capacities.

Contact with Caregivers and Children Related to Family Case Plan Service Provision

- Contact caregivers, children and safety services providers must be based upon the safety plan and the family circumstances. The supervisor should be involved in making this determination, but in no case should face to face contact be less than once a month.
- Discussions with case plan service providers must consider efforts being made to address case plan outcomes and evaluate caregiver participation in case plan services.
- During monthly contacts with service providers, Ongoing CPS Social Workers must focus discussions on the status of change related to enhancing diminished protective capacities.

5.20.1 Role of the CPS Social Worker in Family Case Plan Service Provision

The Ongoing CPS Social Worker's perception of his/her role in facilitating change is critical to the effectiveness of the Family Case Plan and family success. The

nature of the “working relationship” between the Ongoing CPS Social Worker and caregivers is significantly important to enhancing caregiver protective capacities.

- When interacting with caregivers, the Ongoing CPS Social Worker must continually attempt to raise caregiver self-awareness regarding problems and issues affecting child safety, while concurrently seeking to facilitate motivation readiness necessary to promote change (enhancing caregiver protective capacities).
- Contacts with caregivers associated with the Family Case Plan service provision must continue to respect and reinforce self-determination and personal choice.
- The interpersonal approach of the CPS Social Worker when engaging caregivers must reflect a recognition and understanding that change occurs as a result of an internalized process that involves caregivers thinking about the need to change; deciding to change; investing in change; taking actions to change; and maintaining change.
- When having contact with caregivers, CPS Social Worker must apply a style of intervention and interpersonal techniques that are most likely to assist caregivers in moving through the stages of change.

The content for discussions with caregivers, providers and collaterals related to facilitating successful implementation of the family case plan must focus on the following:

- Progress being made toward addressing what must change associated with enhancing diminished caregiver protective capacities;
- Internal and external barriers to change;
- Caregiver motivational readiness to participate in case plan services and to make necessary changes;
- Clarification and/or adjustment to Family Case Plan outcomes or behavioral goals;
- Use of existing caregiver protective capacities to support change;
- Relationship between caregivers and CPS and caregiver and case plan service providers;
- Family Case Plan effectiveness; and
- Needs of children (in-home and in placement) and caregiver involvement in addressing the needs of children.

5.21 Family Case Plan Evaluation

The Family Case Plan Evaluation is a formal decision making point in the safety intervention process, which requires involvement from caregivers and children; Family Case Plan service providers; and safety service providers.

5.21.1 The purposes of the Family Case Plan Evaluation are:

1. To measure progress toward achieving the goals in the Family Case Plan associated with enhancing diminished caregiver protective capacities; and
2. To re-evaluate the status of impending danger and analyze the sufficiency of safety plans and safety management using the Formal Safety Evaluation as outlined in CPS Policy Section 5.10.
3. If appropriate, adjust the safety plan to ensure child safety in the least intrusive manner.
4. To re-evaluate the status of the children's needs; this includes an assessment and description of previously identified needs and new needs, determination regarding success of identified child activities, and a summary of progress.

The Ongoing CPS Social Worker must formally measure progress in achieving Family Case Plan outcomes and analyze safety plan sufficiency every ninety (90) days following the date of the implementation of the case plan. Case Plan Evaluation may need to be completed prior to the ninety (90) day minimum standard. Circumstances that may require a Case Plan Evaluation to be completed prior to ninety (90) days include:

- Significant change in family circumstances; family dynamics;
- Possible change in family circumstances which affect impending danger ;
- When considering reunification;
- When immediate change in the Family Case Plan seems indicated; and/or
- When considering case closure.

5.21.2 Completing the Family Case Plan Evaluation

When completing the Family Case Plan Evaluation, the Ongoing CPS Social Worker must determine:

- Status of impending danger;
- Progress in enhancing caregiver protective capacities;
- Specific indicators for measuring observable behavioral change;
- Progress in achieving conditions for reunification if applicable;
- Safety planning and analysis related to the least intrusive provision of protection and the sufficiency of safety plans;
- Caregiver motivational readiness;
- Caregiver participation in case plan service delivery;
- Use of existing enhanced caregiver protective capacities
- Addressing child needs; and
- Effectiveness of Family Case Planning services and verification that case plan services are occurring as directed;
- Revise the Family Case Plan based upon the results of the Family Case Plan Evaluation and formal evaluation of safety if indicated.

The Ongoing CPS Social Worker must consider the following information sources and general areas of evaluation when completing a Family Case Plan Evaluation:

1. Caregivers, children and the family: Progress toward achieving change;
2. Family Case Plan Service Providers: Effectiveness in service delivery related to achieving case plan outcomes;
3. Safety Service Providers: Least intrusive safety plans that are effectively controlling impending danger; and
4. Ongoing CPS: Active/ reasonable efforts to engage caregivers and facilitate change.

Supervisory Consultation and Approval Related to the Protective Capacity Case Plan Evaluation

Supervisor Consultation must involve discussions related to:

- The status of impending danger;
- The evaluation and analysis pertaining to caregiver change and Family Case Plan outcome achievement;
- The effectiveness of Family Case Plan activities/ services and case plan service providers; and
- The provision of protection and sufficiency of safety plans;
- Supervisor consultation must occur as part of the Family Case Plan Evaluation. Supervisor consultation must occur prior to reviewing the Family Case Plan with caregivers and obtaining their signatures;
- The Family Case Plan must be reviewed and approved by a supervisor signature;
- The Ongoing CPS Social Worker must attempt to have the caregivers of the children sign the Protective Capacity Case Plan Evaluation form.

5.22 PCFA and Family Case Plan Change Strategy in relation to Foster Care Legal Requirements for a Child or Family Case Plan

When children are in out-of-home care, the PCFA policies and procedures must be followed unless the parent's attorneys do not allow contact and cooperation with the CPS Social Worker.
The CPS Social Worker must thoroughly explain the impending danger(s) identified, the PCFA process and the change strategy as a result of the PCFA to the MDT as well as all identified treatment/ services needs of the children in order to create an effective Child or Family Case Plan. When children are in out-of-home care, the Court Approved Unified Child and Families Case Plan should be completed with the MDT.

When a child is placed in the care, custody and control of the state as a result of child abuse and neglect proceedings, various federal and state statutory

requirements go into effect. The purpose of the requirements is to assure the child is safe, has a permanent placement and has their emotional, physical and educational needs met.

A Case Plan for Foster Care is required by federal statute. In order to comply with the federal statute, the Uniform Child or Family Case Plan must be completed within sixty (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.

The Uniform Child or Family Case Plan is an automated report (Case Plan Report or CPR) in FACTS. The report contains all of the information necessary to fulfill the federal requirements for foster care programs and case plans SEC. 475 (42U.S.C. 675) of the Social Security Act. and state requirements for the family case plan WV 49-4-408, and WV 49-4-604(d) the child's case plan WV 49-4-604(a) , Rules, 23,28 and 29 of the Rules of Procedure for Child Abuse and Neglect. It is one document that fulfills the requirements for one federal statute and two state statutes. The Case Plan Report can be printed whenever needed. The Case Plan Report may be found in FACTS under "CPPR" in the New Court area. FACTS will automatically populate some of the information to the report while, some information must be added manually.

Existing policies which address Case Planning can be found in Foster Care Policies for Case Planning; and Youth Services Policy 6.5. The new format was developed in collaboration between the Court Improvement Program, the WV Supreme Court of Appeals and the Bureau for Children and Families. The intent was to encourage consistency throughout the state and to assure that case planning and review was occurring as required by federal and state laws and regulations. Further planning and development is occurring to electronically exchange the information from the Case Plan and Progress Report with the Supreme Court's Unified Judicial Application (UJA).

The Uniform Child or Family Case Plan must be filed with the court in two stages of the legal proceedings:

1) Within thirty (30) days of the entry of an order granting an improvement period;
2) At least five (5) judicial days prior to the dispositional hearing.

An improvement period is not granted in every case, so in some cases, the Uniform Child or Family Case Plan will only be submitted one time, unless there is a need to revise or modify the plan.

The following steps will need to be completed to prepare and file the Uniform Child or Family Case Plan:

- Ensure all necessary demographic, assessment, placement, court. medical and mental health, relative, sibling, services, medical/mental health, educational, child support, protection and safety plan, treatment plan, visitation plan, independent living and permanency plan information is collected, analyzed and entered into FACTS in a timely manner, as required by CPS and Foster Care Policies;

- Complete the Protective Capacities Family Assessment with the involvement of the family (including the child when age appropriate) and the Multi-Disciplinary Treatment Team within forty-five (45) days of the completion of the Family Functioning Assessment. The Protective Capacities Family Assessment may have to be completed prior to the forty five day limit if the case proceeds to an improvement period or disposition more quickly than forty-five (45) days;

- The Protection Plan, Safety Plan, Family Functioning Assessment, and Protective Capacities Family Assessment can be copied and used as a "stand alone" document when needed. Those forms are not in FACTS at the current time;

- Utilize the information from the Protective Capacities Family Assessment to complete Section XV of the Uniform Child or Family Case Plan;

- The Protective Capacities Family Assessment information does not automatically populate to the CPR and must be entered manually. The reason it does not automatically populate is due to SAMS not being fully in the FACTS computer system. Once SAMS is fully implemented in the FACTS computer system, Section XV will be based upon the SAMS Case Plan and populated accordingly;

- Complete the Case Plan Report within sixty (60) days of the child entering care, custody and control of DHHR. The plan will be saved in FACTS and will guide the caseworker and the MDT, but may not have to be filed with the Court immediately;
- A Case Plan Report must be developed for each child, so that the plan can be individualized for each child's disposition, permanent plan, visitation schedule, placement, need for services, parents, etc.;

- Submit the Uniform Child or Family Case Plan to the parties, their counsel, counsel for the child, the Court, and persons entitled to notice and the opportunity to be heard at least five (5) judicial days prior to the dispositional hearing. The Uniform Child or Family Case Plan is submitted to the Court by filing it with the Circuit Clerk; or

Note: "persons entitled to notice and the opportunity to be heard" are persons other than parties who include the CASA when appointed, foster parents, pre-adoptive parents, or custodial relatives providing care for the child. Rule 3 of Rules of Procedure for Child Abuse and Neglect Proceedings.

- Submit the Uniform Child or Family Case Plan to the Court within thirty (30) days of an order granting an improvement period. The Uniform Child or Family Case Plan is submitted to the Court by filing it with the Circuit Clerk. Once the Court approves the Plan, a copy should be provided to the parties, counsel for the child and persons entitled to notice and the opportunity to be heard;

- A cover letter for submitting the plan to the required persons is included in FACTS reports;

- The Case Plan will be reviewed by the Judge. The Judge may or may not approve the Case Plan and could direct the caseworker to make changes to the Plan. If so, the original approved case plan should be copied in FACTS and the changes made as directed by the Judge. After approval by the supervisor, the second plan will be reflected in FACTS. The new approved Case Plan should be re submitted to the Court;

- Filing the Uniform Child or Family Case Plan with the Circuit Clerk means taking or sending an original plan with a cover letter to the Circuit Clerk and requesting that the Uniform Child or Family Case Plan be filed. Providing a copy to the Prosecuting Attorney does not suffice for filing;

- There may be times when the Uniform Child or Family Case Plan must be modified due to significant changes in the case. If so, a new case plan must be developed and filed with the Court and copies provided to the parties, their counsel and persons entitled to notice and the opportunity to be heard;

- "Significant changes" may include the birth of a new child to the family, additional respondents to the case, the change of a permanent plan or any other circumstance in which the Judge directs the modification of the plan;

- If there are not significant changes to the case, the Case Plan Progress Report must be completed, filed with the Court and submitted to the parties, their counsel, counsel for the child, the Court, and persons entitled to notice and the opportunity to be heard, prior to the judicial review or status conference;

- The new Case Plan Progress Report is not available in FACTS. It is under development. Until it is ready in FACTS, the existing "Case Plan Evaluation of Progress" (CPS-0014) in FACTS should be used for judicial foster care reviews and status conferences; see Rules 37, 44 and 47. This report is not converted to Microsoft Word, so it must be developed and printed on a computer that has Word Perfect installed;

- The Case Plan and Progress Report contain identifying information about the child's placement provider. If for any reason, the divulging of this information presents a threat of harm to someone (the provider or the child) the information should be redacted from the report prior to release;

- There are some sections of the CPR that may not be applicable to every child. For example, not all children have CASA representatives, may not be school age, may not have siblings, etc. Whenever that occurs, the caseworker should simply enter "Child not in School", "CASA not appointed", "Not Applicable", etc. on the CPR. Sections cannot be deleted or edited;

- A pre adjudicatory improvement period may be granted by the Court at any time prior to the final adjudicatory hearing; see Rule 23 and WV 49-4-604(d). A Uniform Child or Family Case Plan would not be filed with the Court prior to a pre adjudicatory improvement period. However, prior to the preliminary hearing, the caseworker should, according to CPS Policy 7.15:
    - 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; see CPS Policy 7.15;
    - There is a DDE Word report in FACTS for this purpose. It is "NOTIFICATION OF DHHR IMPROVEMENT PERIOD TERMS (CPS-0055)". The Improvement Period Terms on the Court Notify Screen in FACTS must be documented in order for the report to print.

5.23 Conditions for Reunification with Caregivers

Reunification is approached as a safety intervention decision and as such, the basis for reunification must be associated with the basis and reason for the decision to remove as well as impending dangers that may have been discovered after removal. Reunification must be based on the determination that there has been sufficient change related to caregiver behavior and/or adjustment or change in circumstances identified in the conditions for reunification that will allow for the effective implementation of an in-home safety plan. Conditions for

reunification which must be considered are the specific caregiver behavior and/or internal or external circumstances that must exist within a child's home in order for a child to be reunified. Statements of conditions for return must include:

Reunification represents a formalized process for decision making that applies safety intervention criteria. Prior to a child being reunified the following must occur:

1. The Ongoing CPS Social Worker must complete a Family Case Plan Evaluation;
    - Conditions for return established at the time of removal must be considered in relationship to the progress being made toward establishing circumstances required circumstances that must exist in the home to allow an in home safety plan; and
    - Safety analysis criteria must be applied to reasonably determine the viable use of an in-home safety plan to sufficiency manage child safety.
2. A Continuing Formal Evaluation of Safety must be completed to determine that an In-Home Safety Plan is appropriate;
3. An In-home Safety Plan must be developed with caregiver involvement and implemented prior to reunification;
4. The in-home safety plan must meet all criteria for In-home Safety Plan sufficiency (refer to CPS Policy Section 4.13, 4.14. and 4.16);
5. The MDT must be convened and the results of the Case Plan Evaluation and potential In-Home Safety Plan discussed. The CPS Social Worker must explain the reasoning behind the recommendations to the MDT. If the MDT does not agree with the decision to place the children back into the caregivers' home, the CPS Social Worker must present a minority report to the court outlining the conditions for return.

5.23.1 Contact with Caregivers and Children Following Reunification

When a child is reunified with his or her family the following must occur:

1. The Ongoing CPS Social Worker must have face to face contact with caregiver(s) and children within twenty-four (24) hours following reunification to assess child safety; respond to immediate needs; and evaluate and adjust the in-home safety plan as indicated;
    - The Ongoing CPS Social Worker must have immediate contact with caregivers and children in the home if there is any indication that an in-home safety plan may not be sufficiently managing child safety.
2. The Ongoing CPS Social Worker must have face to face contact with caregivers and children in the home minimally one time per week for the first thirty (30) days following reunification;
3. Once it has been determined by the Ongoing CPS Social Worker and confirmed by the supervisor that a child is safe (i.e. no impending danger

and/or sufficient caregiver protective capacities), an in-home safety plan may be dismissed and consideration should be given to proceed toward case closure.

5.23.2 Contact with Safety Service Providers Following Reunification

When a child has been reunified with his or her family the following must occur:

- The Ongoing CPS Social Worker must have contact with in-home safety service providers prior to or at the time of the reunification;
- Contact with in-home safety service providers must occur immediately if the CPS Social Worker information reveals that an in-home safety plan may not be sufficiently managing child safety.

5.23.3 Supervisory Consultation and Approval

Supervisor consultation occurs as part of the Case Plan Evaluation and prior to the decision to reunify. During Supervisor consultation related to the reunification decision, the following must be accomplished:

- A discussion regarding progress in establishing conditions for return;
- Determination that conditions for return have been met;
- Safety analysis confirms the use of an in-home safety plan; and
- Development and implementation of an in-home safety plan.

5.24 CPS Ongoing Case Closure

The case closure decision is based on the determination that children are safe, protected and in a permanent safe home. Child safety is determined as a result of case plan evaluation and formal safety evaluation that concludes that there are no impending danger threats and/or caregiver protective capacities have been sufficiently enhanced to assure the management of child safety.

Case Closure Criteria and Process

The child safety standard is applied at case closure, which indicates that the issues that brought the families to the attention of CPS and prompted the need for ongoing CPS involvement (impending danger and diminished caregiver protective capacities) have been addressed. To close a case ongoing CPS must make a definitive determination that a safe home exists.

In order for the Ongoing CPS Case to be closed, the Ongoing CPS Social Worker must complete a Protective Capacity Case Plan Evaluation and Formal Evaluation of Safety and conclude the following:

- Caregivers have made sufficient progress in addressing family case plan outcomes related to enhancing caregiver protective capacities;
- Caregivers can adequately meet the needs of their children; and

- Impending danger no longer exists or has been significantly marginalized and can be sufficiently managed by caregiver(s) and family.

Establishing Family Supports at Case Closure

- Prior to case closure, the Ongoing CPS Social Worker must engage the caregiver in identifying formal and informal supports that can remain involved with the family following CPS Ongoing Case closure.

Supervisory Consultation and Approval

- Supervisor consultation occurs as part of the Family Case Plan Evaluation and Formal Evaluation of Safety must include discussion regarding the status of impending danger and the achievement of case plan outcomes prompting the decision that a child is in a safe home and the case can be closed.
- The decision to close a case must be approved by a supervisor.

5.25 Ongoing Services to children abused or neglected but not unsafe

Following the completion of Family Functioning Assessment, certain cases may have a finding that child abuse or neglect occurred but there will be no identified impending danger. In those situations the case must be open for Ongoing CPS.

In instances where a child has been abused or neglected but safe and there is an identified Socially Necessary Services Provider who can complete the Needs Assessment and Service Plan, the CPS Social Worker must:

- Contact the family, letting them know the CPS Social Worker who will be assigned the case;
- Complete a referral to the ASO Services Provider for the Needs Assessment and Services Plan 110165;
- Thoroughly explain to the provider the reason for the referral and provide a copy of the Family Functioning Assessment.
- Explain to the provider at the time of the referral that the Service Provision will terminate in ninety (90) days;
- Remind the provider that during their casework process they are to attempt to identify resources and build upon the families strengths in order for the family to meet the identified needs at case closure and after case closure;
- Collect and review provider reports and contact the provider as necessary but minimally once per month to monitor the provision of services;

- Contact the provider at least five (5) working days prior to the ninetieth (90th) day of service provision reminding them the date that the services will end.
- If there is any indication that a child in the home may be unsafe or threatened with abuse or neglect, or if the provider discovers information related to unknown abusive or neglectful behaviors, a CPS referral must be made and a Family Functioning Assessment must occur to determine if any child in the home is in impending danger.

There may be instances when there is not an ASO provider to complete the Needs Assessment and Service Plan. In those situations the CPS Social Worker must:

- Thoroughly review the information collected during the Family Functioning Assessment to determine what family need may have contributed to substantiated maltreatment;
- Family needs may include but are not limited to issues concerning: housing, social, education, health, mental health, recreation, spiritual, legal, financial, and transportation;
- Make contact with the family within five (5) working days, explaining the purpose of the Service Plan and complete the Service Plan with the family based upon information collected during the Family Functioning Assessment as well as additional information provided by the family. *(note the Family Functioning Assessment will substitute for the Needs Assessment);*
- Complete the Service Plan within thirty (30) days of the finding of abuse or neglect;
- Make face-to-face with all household members at least monthly in order to assist the family in completing the services plan, monitor progress, address any issues with providers or within the home, and assist the family in gaining access to the specific services in their services plan;
- Through the casework process, attempt to identify resources and build upon the families strengths in order for the family to meet the identified needs at case closure;
- If a potential impending danger is discovered or a new incident of possible abuse or neglect occurs, a referral for CPS must be made;
- Close the case within ninety (90) days if there are no outstanding referrals for CPS or newly discovered impending dangers.

When Child Protective Services opens a family for Ongoing Child Protective Services due to abuse or neglect being, the Supervisor must:

- Discuss service provision with the assigned CPS Worker and ensure that the Socially Necessary Services Provider or Child Protective Services Social Worker is appropriately addressing the family's needs

and connecting the family with both formal and informal resources that can assist the family once the Child Protective Services Ongoing Case is closed;
- If there is indication that additional abuse or neglect in the home exists, or if a child may be in impending danger and threatened with harm, ensure that a child abuse and neglect referral is made and child safety addressed;
- Ensure that the case is closed within ninety (90) days unless there are outstanding CPS referrals or newly discovered information indicating that a child may be in impending danger.

Section 6 General Information

6.1 Appeals and Grievances

At any time that the DHHR is involved with a client, the client (adult or child), or the counsel for the client 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 CPS or expresses dissatisfaction with CPS, the worker will:

- Explain to the client the reason for the action taken or the position of the DHHR which may have resulted in the dissatisfaction of the client;
- If the situation cannot be resolved, explain to the client his/her 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, policy and guidelines for practice;
- Meet with the client;
- Consult with the Community Services Manager and Regional Program Manager or designee. If an agreement is made for revision to the case record, the supervisor will complete the “Override Request Form”. The form must be signed by both the Community Services Manager and the Regional Program Manager or designee, and then submitted to the FACTS Help Desk;
- If the problem cannot be resolved, or the client does not wish to attempt resolution, provide the client with the form, Client and Provider Grievance Hearing Request, SS-28;
- Assist the client with completing the SS-28, if requested;

- The supervisor completes the “Hearing/Grievance Record Information” form IG-BR-29;
- Submit both forms immediately to the Chairman, State Board of Review, DHHR, Building 3, Capitol Complex, Charleston, WV 25305.

Preparing for the Grievance Hearing

It is the responsibility of the supervisor and worker to represent their findings during the grievance hearing. The Hearings Officer, who is a DHHR employee, is not there to represent the agency’s position. The hearing should be treated much the same way as a court hearing; the worker will be defending him/herself and the actions taken during the casework process. The difference is that the worker and supervisor will not have the benefit of a prosecuting attorney to make the agency’s statements. Therefore, the worker and supervisor, who should both be in attendance unless other arrangements are made, must be prepared with the following:

- Copies for all parties (including grievant, grievant’s counsel and hearings officer) and attending the hearing of all of the investigation materials, including the safety assessments, initial assessment and contacts with the family subject to the investigation;
- Copies for all parties (including grievant, grievant’s counsel and hearings officer) attending the hearing of any family assessments and/or treatment plans that may be in question;
- Copies for all parties attending the hearing (including grievant, grievant’s counsel and hearings officer) of applicable state laws and CPS policies that were used to make the decisions during the investigation or casework process;
- Copies for all parties attending the hearing (including grievant, grievant’s counsel and hearings officer)of the anchors that were used when determining the rating for the maltreatment element.

(For more information on Grievance Procedures for Social Services, please see DHHR Common Chapter Manual, Chapter 700, Appendix C.)

6.2 Confidentiality

The confidential nature of child abuse and neglect records is governed by Chapter 49-5-101 of the Code of West Virginia. 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 multi-disciplinary investigative and treatment teams;
- To a grand jury, circuit court or family law master 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 in order 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 any medical condition of the child which is certified by the attending physician to be life-threatening. Any request for a public release of information under this provision must be referred to the Commissioner of the Bureau for Children and Families to determine what information may be released.

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 in 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 referent
- 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 whom 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 referent, or information which could lead to the identity of a referent, 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 maltreaters who are subject to a child protective services 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.

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 49-5-101. Consult with the regional attorney and/or prosecuting attorney, if necessary;
- Determine exactly what information is being requested. Is it the entire record or a specific piece of information?
- Make arrangements for the person requesting the information to come to the office at an appointed time, if possible;
- Review all information within FACTS and all written/paper records;

- Prepare the requested information that is contained in FACTS by printing the relevant DDE reports from FACTS, such as the Initial Assessment and Safety Evaluation, the Comprehensive Treatment Plan, etc.;
- Prepare the requested information that is contained in paper records, if any exists;
- Assure that there is no information concerning the identity of the referent 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 attorney and/or the prosecuting attorney at any time there is uncertainty about whether or not to proceed with a request for release of information.

6.3 Payment Guidelines

6.3.1 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 at a later date 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. With the adoption of the WV Child Protective Services System in 1992, the process for safety evaluation and planning and the provision of Ain-home safety services@ replaced the Gibson Policy.

As a result 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 particular service is not obtained, and;
- Their child has been removed, but will be returned home if a particular 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 Child Protective Services cases that will be opened for on-going services, or are already opened for on-going services. No other services shall be approved as a Gibson type payment.
Prior to requesting that the Department pay for the purchase of a particular 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 abuse services. Only in the event that the local behavioral health center cannot or will not provide services, shall Special Medical Cards be authorized for payment of mental health and substance abuse 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 particular service is not obtained or a child has been removed, but will be returned home if a particular 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 make arrangements to do so;
- Complete the necessary information within FACTS 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 an in-home 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 FACTS.

6.3.2 Medical and Mental Examinations

Medical and/or mental examinations may be ordered by the Court in two (2) situations concerning child abuse and neglect proceedings;

1. Pursuant to 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 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 FACTS 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 FACTS.

6.3.3 Photographs and X-rays

Pursuant to 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 a child protective services investigation has been photographed by a mandated reported, 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 a child protective services investigation 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 a child protective services investigation, the worker will:

- Complete the necessary information in FACTS 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 a child protective services investigation was photographed by a mandated reported;
- Approve the demand payment in FACTS.

For cases involving x-rays of a child who is the subject of a Child Protective Services investigation, 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 FACTS 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 a child protective services investigation.

6.3.4 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 a particular 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 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 Children and Families, Accounts Payable, 350 Capitol Street, Charleston, WV 25305. The rates of payments made will be according to those rates established by the legislature.

6.3.5 Special Medical Card (formerly known as Zero Recipient Medical Card)

The Special Medical Card may be provided to eligible clients to obtain services from a medical provider within a specified date range. 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);
- 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 in custody. All other;
- Resources must first be explored before authorizing a Special Medical Card.

Please refer to the version notes in FACTS for information about issuing a Special Medical Card.

Section 7 CPS Legal Requirements and Processes

Introduction and Overview

The legal requirements and processes applicable to Child Protective Services and Foster Care for children who come into custody as a result 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; the CPS decision making model known as The West Virginia Child Protective Services System (WVCPSS); 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. In order 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 insure that all applicable procedures are followed.

7.1 Voluntary Placement of a Child in the Custody of the Department

Statute

State statute, 49-4-116, permits the Department to accept the custody of a child from the child's parent or parents, guardian, custodian or relatives. The decision to accept custody is discretionary on the part of the Department. This statute also requires a review of all voluntary placements which will last for ninety (90) days or longer.

Purpose

The purposes of this statute are to empower the Department to accept the custody of a child so that the Department can provide care for the child when the child's caretakers are unable to do so; and, provide for the oversight of these placements by the Circuit Court.

When to Accept Custody of a Child

The voluntary acceptance of custody of a child should be used when: the temporary incapacity of a parent(s) or the problems of the parent(s) prevent them from caring for their child for a specific period of time; or, the child requires specialized care which the child's parents are unable to provide. The voluntary acceptance of custody of a child can also be used when a parent is considering relinquishment of their child. Under no circumstances is it permissible to accept the voluntary custody of a child when child abuse or child neglect is present.

Worker Conduct - Acceptance of Custody

When a parent requests that the Department voluntarily accept the custody of a child, the worker will:

- Determine the reasons for the request and discuss them with their supervisor. Voluntary custody can only be accepted with supervisor approval;
- Review the voluntary placement agreement (SS-FC-4) with the parents, pointing out the rights which the parents are transferring to the Department and the rights the parents retain;
- Review with the parents the responsibilities which they must exercise in regard to the child while the child is in placement;
- Obtain the parent(s) signature on three copies of the voluntary placement agreement;
- Have all three copies notarized and give one copy to the parents and file two copies in the case record, and;
- Make all appropriate entries and recordings in FACTS.

Worker Conduct-Petition for Review

When the worker determines that a voluntary placement will be in effect for ninety (90) days or longer then the worker will:

- Prepare a summary of the facts and items for inclusion in a petition;
- Prepare a uniform child or family case plan for inclusion with the petition;
- Submit the summary and uniform child or family case plan to their supervisor for review and approval;
- Submit the approved summary and case plan to the Prosecuting Attorney and request that a petition for review of the placement be filed with the Circuit Court; and;
- Attend the hearing to present a report on the placement and to answer any questions about the case.

Worker Conduct-Preparation of the Summary and Uniform Child or Family Case Plan

The bulk of the information which will be presented to the court will be contained in the uniform child or family Case Plan. Reference should be made to that section for specific instructions on the completion of that Plan.

The Summary should include a description of the reasons why the child came into care and a description of the efforts made to resolve the barriers to the return of the child to his home.

In addition the summary should include a request that the Court address the issue of child support (refer to the Section on Child Support) and that the Court make a finding on reasonable efforts.

Worker Conduct--Review and Signing of the Petition

Once the Prosecuting Attorney has prepared the petition, the worker will review it for accuracy and completeness. If the information in the petition is accurate and addresses all applicable items such as child support and reasonable efforts, then the worker will sign it and request that it be filed with the court and served on all appropriate parties.

Worker Conduct - Return of Custody

When the voluntary placement agreement has expired, or at any time the parent requests a return of custody, the worker will make the necessary arrangements to return the child to the child's parents.

If the agreement has expired and the parents are not prepared to care for the child, then they must sign a new agreement in order for the Department to continue to care for the child. If the new agreement will result in the child being in placement for ninety (90) days or longer then the worker must initiate the court review process. The worker should also inform the parent(s) of the review process and describe how it will be implemented.

7.2 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: 49-4-602, Temporary custody pending a hearing; 49-4-604, Dispositional hearing; and, 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 insure that the safety of the child will be maintained if the child is returned home.

Purpose

The purposes of the actions which constitute reasonable efforts are: to insure that a child is removed from the child's home only when there is no other method for insuring the safety of the child; and, to insure 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 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 insure 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 so 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.

7.3 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 49-4-604(b)(7)(A) of the Code.

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, 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 such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or,
- Committed -a felonious assault that results in serious bodily injury to the child, the child's other parent, 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;
- Has been required by state or federal law to register with a sex offender registry; 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 Child Protective Services 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.

7.4 Imminent Danger

Statute

Imminent danger to a child is defined in state statute. The definition is contained in 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) in order 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
- 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 his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety. 49-1-3(6)

7.5 Emergency Custody

7.5.1 Taking Custody of a Child in Imminent Danger without Prior Judicial Authorization

Statute

State statute, 49-4-303 authorizes Child Protective Services Workers to take a child into custody absent a court order and to remove that child from his 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 insuring 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 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 him or her, 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 his 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.

7.5.2 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 (10) 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 CPS Social 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 present danger assessment and protection plan, completing the family functioning 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 CPS Social 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 (3) 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 10 days of the removal.

7.5.3 Custody of a Child Taken by a Law Enforcement Officer

Statutes

State statute, 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, 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.
State statute, 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 Protective Services Worker

A worker at any point in the Family Functioning 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 his 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 as well as a the facts upon which the decision to take the child into protective custody was based, including the date, time and place of the taking; 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 his 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, 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 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 the worker will determine if the child and his family are known to the department. If the family is known to the department 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 his parents.
- If the family is not known to the department then the worker will:
- Ask the child, if appropriate, if he can provide the name and address of someone who has cared for him; 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 twelve (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 twelve (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 Protective Services Worker, to stay with the child;
- If the child's caretakers return before twelve (12) hours have elapsed

then staff may leave at that time;

- Before leaving staff must review the situation with the caretakers including whether or not there will be any follow-up activity on the part of the department; or, if at the end of twelve (12) hours the child's caretakers have not returned then the child may be placed in emergency shelter care or another suitable facility.

Exceptions

Whenever a child has been abandoned it will not be necessary to maintain the child in his 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 by the use of alcohol or other drugs and would pose a threat to the safety of department staff; or,
- The child cannot be maintained safely in his 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 ninety-six (96) hours if the physician considers it necessary to do so.

WV 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.

7.5.4 Family Courts ordering Children into Department Custody

Statute

State Statute 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 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 ninety-six (96) hours from the time the child was taken into custody, an investigative report to circuit and family court. The investigative report shall include a statement of whether the department intends to file a child abuse and neglect petition.

Purpose

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 CPS Social 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 Family Functioning Assessment Process;
- Within ninety-six (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 or not Child Protective Services intends to file a child abuse and neglect petition in Circuit Court and applicable information gathered up until that

point;

- Due to Family Court finding that a child was in imminent danger and the only safe solution was custody with the Department, a child abuse and neglect petition must be filed in Circuit Court unless Child Protective Services can clearly determine and document within ninety-six (96) hours that the child(ren) would be safe in their home with an in-home safety plan, or safe (no imminent, impending or present dangers) 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 ninety-six (96) hours from the time the child was placed in protective custody.
- If Child Protective Services is unable to clearly determine within ninety-six (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. If at the conclusion of the Family Functioning Assessment, Child Protective Services feels that the children are not required to be in states custody (an out of home safety plan is not required for protection), then Child Protective Services must motion the Circuit Court requesting that the child(ren) be returned to the custody of their parent(s).
- Complete the Family Functioning Assessment Process following all applicable policies and procedures including the court overlap procedures.

7.6 Multidisciplinary Investigative Teams

7.6.1 Multidisciplinary Investigative Process

Statute

State statute 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.

7.6.2 Multidisciplinary Investigative Team

Statute

State statute 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 protective 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 child protective services 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 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 a Family Functioning Assessment

Although child abuse and neglect cases should be investigated jointly by both law enforcement and child protective services staff, it may not always be possible for the initial investigation to be handled jointly. When circumstances require immediate initiation of a family functioning assessment and law enforcement

cannot respond immediately, the child protective services staff must begin the family functioning assessment by themselves.

7.7 Medical Examination of a Child for Evidentiary Purposes

Statute

State statute, 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 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 and the parents may accompany the officer to the examination;
- After the examination the officer may return the child to the custody of his parents, or the officer may retain custody himself, or the officer may give custody to the 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.

7.8 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 Protective Services and a non-offending parent or reputable person, may also file a co-petition jointly alleging a child is abused or neglect 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.

Both state statute, 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); insure that all required legal procedures are followed; and, insure 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:

- 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 WV Code 49-4-604(b)(7)(A); and,
- The child is unsafe, an in-home safety plan 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 his/her supervisor since no petition may be initiated without supervisory approval;
- If the worker is unable to contact his/her immediate supervisor then the worker will discuss the case with a supervisor in a related unit, the Community Services Manager or the Regional Director;
- 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 FACTS.

Whenever someone other than DHHR files a petition, the Circuit Court may order CPS to complete an investigation/Family Functioning Assessment or be a party to the petition. If an investigation is ordered, the CPS Social Worker and Supervisor must follow the same rules and procedures for Family Functioning Assessment as other assessments of suspected child abuse or neglect and adhere to the requirements of the court order. If an investigation is not ordered but the judge rules that CPS be a party to the proceeding, the CPS Social 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 FFA. If an order is not issued requiring the Department to conduct an investigation/FFA, the Department must commence an FFA immediately upon receiving notice of the preliminary hearing. The Department may also be required to provide services to the family by the court.

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.

Summary of the Facts and Items for Inclusion in the Petition

In order 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 particular 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 or not all or some of the children are threatened.

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 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 Family Functioning 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.

In addition, the worker should state the reason(s) why the supportive services were not successful in controlling the risk to the child.

Alternatives to Removal - If the worker has determined that the child cannot be safe in his 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 his home.

Alternative Placement - If the worker believes that the child cannot be protected in his 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 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 his 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 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 WV Code 49-4-

604(b)(7)(A) 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. In order to insure 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 his/her 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 he has 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 FACTS.

Note: A reasonable effort to notify means that the worker can inform the caretakers of his 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.

7.8.1 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 re-opened for the purpose of hearing evidence on the new allegations in the amended petition. If allegations arise against a co-petitioner during a 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 CPS Social Worker determines that a petition should be amended, the following must occur:

- The CPS Social Worker will discuss the case with their supervisor and request supervisory approval to proceed;
- If the Supervisor agrees, the CPS Social Worker or Supervisor will contact the Prosecuting Attorney advising why the Department is requesting the petition be amended;

- The CPS Social Worker will provide the Prosecuting Attorney with supportive documentation when applicable.

7.9 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 proceeding 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 to implement an out-of-home safety plan, the DHHR must initiate the provision for Dispute Resolution, pursuant to 49-4-501(c).

7.10 Temporary Custody Pending a Preliminary Hearing

Statute

Under certain circumstances a worker may determine that the implementation of a protection plan or out-of-home safety plan requires the immediate and involuntary removal of a child from the home. State statute, 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,
- 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.

7.11 Placement Requirements

When a Judge grants the Department temporary custody pending a hearing and the child is placed outside his home, the worker must insure 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 FACTS.

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.

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.

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 (5) 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 FACTS.

7.11.1 Placement of a Child Whose Siblings are Already in Foster Care

Statute

State statute, 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 subsequent to 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 foster or adoptive parents of the sibling(s) that this child is available for placement;
- Discuss with the foster or adoptive parents their interest in caring for this child;
- Refer the family to the Home Finding unit as soon as possible if the foster 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 his or her siblings. Whenever such a placement is not possible the worker must ask the court to approve the separate placement of the siblings.*

7.12 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 his caretakers have a right to be represented at every stage of the proceedings.

A child and his caretakers may not be represented by the same legal counsel. A legal counsel may represent all of 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 have 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 referent.

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 referent. Once that information has been removed, then the worker should notify counsel of the availability of the record for review.

7.13 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 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 of 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 referent.

7.14 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 transmittal to the caretakers' legal counsel rests with the worker who initiated the petition.

Within three (3) 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;

- 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;
- 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,

- 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.

Not less than five (5) days prior to the preliminary hearing, or any other hearing in which evidence will be introduced, the worker will provide the following to the prosecutor:

- A copy of any book, papers, documents, photographs, tangible objects, buildings, or places which will be introduced into evidence;
- A copy of the results and reports of physical and/or mental examinations and a copy of scientific tests and/or experiments made in conjunction with this particular case which will be used in evidence during the hearing or a copy of the same items prepared by any witness and which will be used in relation to the testimony of the witness; and,
- A written list of the names and addresses of the witnesses to be called during the hearing.

7.15 Preliminary Hearing

Statute

The state statute regulating the preliminary hearing is contained in 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 (10) 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 his or her 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 Family Functioning 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 family functioning 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 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 Family Functioning Assessment and Safety Analysis Process considering possible reunification if the child can be protected and safety can be maintained with an in-home safety plan;
- Obtain a copy of the parent(s) financial disclosure statement for child support to use during the hearing as needed.

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 effected through an in-home safety

plan, the safety services will be included in the terms recommended for the improvement period. This requires completion of the Family Functioning 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 family assessment/treatment plan identified through the Protective Capacities Family 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 sixty (60) days or within ninety (90) days of the granting of 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 Family Functioning 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 PCFA 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 PCFA and participating in the development of the treatment plan if the case was not active in On-Going 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 thirty (30) days of the receipt of custody.);
- File the uniform child or family case plan with the court within thirty (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 as long as safety and protection can be maintained with an in-home safety plan by completing the family functioning 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 a report to the Case Oversight Team containing the log with the participant list, the results of the MDT and any barriers to service provision to the family;
- Provide services and closely monitor the participation of the family with the terms of the improvement period and family case plan;
- Insure that the service providers of the uniform child or family case plan provide written reports every thirty (30) days and provide copies of the reports to each treatment team member;
- Complete the Safety Assessment and Management System family case plan evaluation;
- Convene the multidisciplinary treatment team to review the Safety Assessment and Management System 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 sixty (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 insure that the sixty (60) day or ninety (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 fifteen (15) days prior to the expiration of the improvement period to insure that the hearing is scheduled and on the court's docket;
- The adjudicatory hearing must take place no later than sixty (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 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 family functioning 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 with the WV SAMS 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 PCFA 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 thirty (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 an in-home safety plan by completing the family functioning 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 a report to the Case Oversight Team containing the log with the participant list, the results of the MDT, and any barriers to service provision to the family;
- Provide services and closely monitor the participation of the uniform child or family case plan;
- Insure that the service providers of the uniform child or family case plan provide written reports every thirty (30) days and provide copies of the reports to each treatment team member;
- Complete the SAMS family case plan evaluation process with the family;

- Convene the treatment multidisciplinary team to review the Safety Assessment and Management System family case plan evaluation and provide input for 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 prosecuting attorney to insure that the adjudicatory hearing is on the court's docket. (The adjudicatory hearing shall occur within thirty (30) days of the entering of the temporary custody order unless a pre-adjudicatory improvement period is granted,)

7.16 Child Support

Statute

State statute, 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 making a determination on the issue of the child support, the court has options which it may exercise. They are:

- 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 FACTS correctly and complete all necessary screens, including the Relationship Screens. FACTS 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 49-4-801, 48-11-101, 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 make a determination 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 or not 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);
- If the income is less than the threshold level, the worker will take no further action except to periodically check to insure 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.

7.17 Multidisciplinary Treatment Planning Process

Statute

State statute, 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;
- Recommend alternatives to the court; and,
- Coordinate evaluations and the provision of services.

7.17.1 Multidisciplinary Treatment Team

Statute

State statute, 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 twelve (12) and the child's participation is otherwise appropriate; the child if under the age of twelve (12) and when the team determines that the child's participation is appropriate; the guardian ad litem; the prosecuting attorney or his/her designee; a member of the child advocacy center when the child has been processed through the child advocacy center program(s); and, where appropriate to the particular case under consideration and available, a court-

appointed special advocate, a member of a child advocacy center, an appropriate school official, and any other person or an agency representative who may assist in providing recommendations for the particular needs of the child and family; and, any other agency, person or professional who may contribute to the teams 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 multi-disciplinary treatment team process and must offer to serve as the case manager during the operation of the team.

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 (3) months until the case is dismissed from the docket; and,
- Be available for status hearings and conferences as required by the circuit court.

7.18 Medical and Mental Examinations

State statute, 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.

7.19 Adjudicatory Hearing

Statute

The state statute regulating the adjudicatory hearing is contained in 49-4-601 of 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 in regard to 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 an out-of-home 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 of the SAMS process.*)

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 effected through an in-home safety plan, the 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 treatment plan identified through family 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 Children and Families, 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

Following the hearing, if a post-adjudicatory improvement period is granted, the worker will:

- Complete the protective capacities family 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;
- Provide a report to the Case Oversight Team containing the log with the participant list, the results of the MDT and any barriers to service provision to the family;
- File the uniform child or family case plan with the court within thirty (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;
- Insure that the service providers of the uniform child or family case plan provide written reports every thirty (30) days and provide copies of the report to each treatment team member;
- Prepare the Safety Assessment and Management System family case plan evaluation;
- Convene the MDT, provide copies of the Safety Assessment and Management System 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 sixty (60) days of the hearing granting the post-adjudicatory improvement period. (*In the SAMS process, case evaluation is to occur every ninety (90) days. The case evaluation date can be adjusted to occur prior to the hearing. The family case plan evaluation of progress will serve as the SAMS case evaluation and will comply with the administrative review requirements for children in placement.*);
- Contact the prosecuting attorney fifteen (15) days prior to the sixty (60) day or ninety (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 sixty (60) or ninety (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 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 (*In the SAMS process, case evaluation is to occur every ninety (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 PCFA 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 ninety (90) days (*The court may elect to schedule a status conference devoted to reviewing the parent's progress instead of a hearing.);*
- In the event that a foster care permanency review hearing has not been conducted within the first twelve (12) months or every twelve (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 WV Code 49-4-110 and 49-4-608 for judicial review and Title IV-E of the Social Security Act;
- Insure 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 fifteen (15) days prior to the expiration of the improvement period to insure that the hearing is

scheduled and on the court's docket (*The disposition hearing must take place no later than sixty (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 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 family functioning assessment and make arrangements for transferring the case to on-going CPS is 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 PCFA 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 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 an in-home safety plan through the SAMS Continuing Safety Evaluation process;
- Provide the record keeping for the treatment team meeting;
- Provide a report to the Case Oversight Team containing the log with the participant list, the results of the MDT and any barriers to service provision to the family;
- Continue the CPS process, provide services and closely monitor the participation of the family with the uniform child or family case plan;
- Insure that the service providers of the uniform child or family case plan provide written reports every thirty (30) days and provide copies of the reports to each treatment team member;
- Provide copies of the SAMS Continuing Safety Evaluation and SAMS 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 insure that the disposition hearing is on the court's docket (The disposition hearing shall occur within forty-five (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 (5) 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.*)

7.20 Dispositional Hearing

Statute

The statute regulating the dispositional hearing is contained in 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 himself/herself 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 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 SAMS continuing safety evaluation 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.

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 effected through an in-home safety plan, 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 treatment plan identified through family 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.

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;
- Provide a report to the Case Oversight Team containing the log with the participant list, the results of the MDT and any barriers to service provision to the family;
- File the family case plan with the court within thirty (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;
- Insure that the service providers of the uniform child or family case plan provide written reports every thirty (30) days and provide copies of the reports to each treatment team member;
- Prepare the SAMS family case plan evaluation;
- Convene the MDT, provide copies of the SAMS 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 sixty (60) days of the hearing granting the improvement period (*The family case plan evaluation of progress will serve as the PCFA case evaluation and will comply with the administrative review requirements for children in placement.*);
- Contact the prosecuting attorney fifteen (15) days prior to the sixty (60) or ninety (90) day hearing for review of the parent(s) progress to insure 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 sixty (60) or ninety (90) day hearing, request that a hearing be scheduled for a review of progress which must occur every three (3) 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 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 fifteen (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 (*In the SAMS process, case evaluation is to*

occur every ninety (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 SAMS PCFA 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 ninety (90) days (*The court may elect to schedule a status conference devoted to reviewing the parent's progress instead of a hearing. In the event that a hearing has not been conducted within the first twelve (12) months or every twelve (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 WV Code* 49-4-110 and 49-4-608 *for judicial reviews and Title IV-E of the Social Security Act);*
- Insure 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 (15) days prior to the expiration of the improvement period to insure that the Final Dispositional Hearing is scheduled and on the court docket (*The final disposition hearing must take place no later than sixty (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;
- 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 child protective services case.

Worker Conduct When Continuing Supervision is Ordered

Whenever the court orders the return of the child to his or her 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;
- Provide a report to the Case Oversight Team containing the log with the participant list, the results of the multidisciplinary team and any barriers to service provision to the family;
- 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 thirty (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 insure that the case is scheduled for the Permanency Placement Review hearing no later than ninety (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 placement review process.

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 thirty (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 thirty (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 insure that the Permanency Placement review is scheduled no later than ninety (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 parties, their counsel, and persons entitled to notice and the opportunity to be heard, at least five (5) judicial days prior to the disposition hearing.
- If the child(ren) continue to be placed out of home, determine if an in-home safety plan 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.)

7.21 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 sixty (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 WV CPSS or WV SAMS. Review CPS Policy Section

For more information, review CPS Policy Section 5.22 PCFA and Family Case Plan Change Strategy in relation to Foster Care Legal Requirements for a Child or Family Case Plan

7.22 Family Case Plan

Statute

State statute, 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.

7.23 Child's Case Plan

Statute

State statute, 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.

7.24 Time Limited Reunification Services

Statute

State statute, 49-1-201, contains definitions for a number of terms relating to abuse and neglect. One of these terms is time limited reunification services.

Definition

Time limited reunification services means individual, group, and family counseling, inpatient, residential or outpatient substance abuse 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 his or her caretakers should not, in general, extend beyond 15 months. This limitation, while not absolute, is a clear statement that the permanency needs of children should be met within a reasonable period of time.

7.25 Quarterly Status Reviews

State Statute 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.

7.26 Yearly Permanency Hearings and Permanency Hearing Reviews

The statute related to Permanency hearings is contained in 49-4-110 and 49-4-608 of the Code of West Virginia. 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.

7.27 Change in a Child's Placement - Report to the Court

Statute

State statute, 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.)*

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.

7.28 Circumstances Requiring Termination of Parental Rights

Statute

State statute, 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, 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, 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 such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime; or
- Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, 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,
- Been required by state or federal law to register with a sex offender registry; or
- The parental rights of the parent to another child have been terminated involuntarily.

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 7 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 his or her 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 his or her 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 fifteen (15) of the most recent twenty-two (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.

7.28.1 Compelling Reason to not Request Termination of Parental Rights

Statute

State Statute, 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 Article 5 of Chapter 49.

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 fifteen (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 49-4-605.

It is the policy of the Department that compelling reasons shall be limited to those cases described in 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 49-4-605, the Department will not exercise any discretion and will seek termination of parental rights.

7.29 Post-Termination Placement Plan

Child Abuse and Neglect Court Rules

Child Abuse and Neglect Court rule number forty-one (41), part (b) requires the development and submission by the Department of a post-termination placement plan within ninety (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.