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# A. Summary of statutory requirements regarding CPS investigations[1]

Section 424 of the Social Services Law (SSL) enumerates the duties of child protective services (CPS) concerning reports of child abuse and/or maltreatment. Among the duties that CPS must fulfill are the following. (Please note that Title Six of Article Six of the SSL is the Title that sets forth the statutory requirements for child protective services.)

**Section 424(1)**

CPS must receive on a twenty-four hour, seven day a week basis all reports of suspected child abuse or maltreatment.

**SSL Section 424(3)**

Not later than seven days after receipt of the initial report, CPS must send a preliminary written report of the initial investigation, including evaluation and actions taken or contemplated, to the Statewide Central Register of Child Abuse and Maltreatment (SCR) in the form or manner prescribed by the New York State Office of Children and Family Services (OCFS). This requirement is fulfilled by completing the seven-day safety assessment.

**SSL Section 424(4)**

CPS must provide telephone notice and immediately forward a copy of a report alleging child abuse or maltreatment to the appropriate district attorney for the following categories of reports:

Any report involving the death of a child.

A report containing any allegations specified in a prior written request to the CPS from the district attorney for notice and copies of reports. The written request must specify the kinds of allegations for which the district attorney requires such notice and copies and must include a copy of the relevant provisions of the law.

**SSL Sections 424(5-a)**

CPS must immediately give telephone notice and forward a copy of the report to the appropriate local law enforcement agency when CPS receives a report that contains any of the following:

Allegations of suspected physical injury by other than accidental means which causes or creates a substantial risk of death, serious or protracted disfigurement, protracted impairment of physical or emotional health, or protracted loss or impairment of the function of any bodily organ;

Allegations of sexual abuse of a child; or

Allegations of the death of a child.

Investigations of these reports must be conducted by an approved multi-disciplinary team (MDT), where one exists.[2] In counties without an MDT, investigations of these reports must be conducted jointly by local child protective services and local law enforcement. CPS and law enforcement should develop a joint protocol detailing the procedures to be followed for the investigation of reports that are subject to the joint investigations. If such a protocol exists, CPS would follow the protocol and is not required to provide a separate notification to law enforcement. If the LDSS and law enforcement

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[1] Note: These legal requirements apply to those reports that are addressed by an investigation. There are separate requirements that apply to those CPS reports that are addressed by a family assessment response (FAR), which are described in Chapter 5.

[2] See SSL §423(6) for information about MDTs.

develop such a protocol, the LDSS must submit the protocol to OCFS for approval, and OCFS must approve or disapprove it within thirty days of submission. Regardless of the existence or absence of such a protocol, CPS may consult with law enforcement on any report where CPS determines that it is necessary to do so.

**SSL Section 424(5-b)**

CPS must assess in a timely manner whether it is necessary to give notice of a report to the appropriate local law enforcement entity when it receives a report meeting the following criteria:

1. The report contains an allegation of maltreatment that includes physical harm; and
2. The report was made by a mandated reporter; and
3. There are two or more other indicated or open reports within the last six months that involve the same child, sibling, or other children in the household, or the same subject of the report.[3]

Again, nothing prohibits CPS from consulting with local law enforcement on any child abuse or maltreatment report where CPS determines that such consultation is necessary.

**Section 424(6)(a)**

Upon receipt of a report, CPS must commence, within 24 hours, an appropriate investigation. An investigation must include:

- An evaluation of the environment of the child named in the report.
- An evaluation of the environment of any other children in the same home.
- A determination of the risk to such children if they continue to remain in the existing home environment.
- A determination of the nature, extent and cause of any condition enumerated in such report.
- A determination of the name, age and condition of the children in the home.
- Seeing to the safety of the child or children.
- Notification in writing to the subjects of the report and other persons named in the report of the existence of the report and of their respective rights pursuant to Title Six of Article Six of the Social Services Law in regard to amendment of the report. (Those rights are set forth in SSL §422(8).)

**SSL §424(7)**

CPS must determine, within 60 days, whether a report is “indicated” or “unfounded.”

**SSL §424(8)**

CPS must refer suspected cases of falsely reporting child abuse and maltreatment, in violation of Penal Law § 240.50(4), to the appropriate law enforcement agency or district attorney.

**SSL §424(9)**

CPS must take a child into protective custody to protect the child from further abuse or maltreatment when appropriate and in accordance with the provisions of the Family Court Act.

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[3] For determining whether there have been two or more such reports, duplicate reports are treated as one report. However, each separate intake report “consolidated” into one investigation stage is to be counted individually for this purpose.

**SSL §424(10)**

Based on the investigation and evaluation conducted pursuant to Title Six of Article Six of the Social Services Law (i.e., a CPS investigation), CPS must offer to the family of any child believed to be suffering from abuse or maltreatment such services as appear appropriate for either the child or the family or both.

Prior to offering such services to a family, a worker must explain that CPS has no legal authority to compel the family to receive said services, but may inform the family of the obligations and authority of the child protective service to petition the Family Court for a determination that a child needs care and protection.

**SSL §424(11)**

In those cases in which an appropriate offer of service is refused and CPS determines, for that or any other appropriate reason, that the best interests of the child require Family Court or criminal court action, CPS must initiate the appropriate Family Court proceeding or make a referral to the appropriate district attorney, or both.

**SSL §424(12)**

CPS must assist the Family Court or criminal court during all stages of the court proceeding in accordance with the purposes of Title Six of Article Six of the Social Services Law and the Family Court Act.

**SSL §424(13)**

CPS must coordinate, provide, or arrange for and monitor rehabilitative services for children and their families on a voluntary basis or under a final or intermediate order of the Family Court.

# B. Summary of regulatory requirements for addressing CPS reports and investigations

## 1. Initiation of the investigation

CPS must initiate a child protective investigation or Family Assessment Response[4] (FAR) within 24 hours after receiving a report. An investigation is initiated in the following manner [18 NYCRR 432.2(b)(3)(i)].

**Within 24 hours of receiving a child abuse and/or maltreatment report**, CPS must conduct face-to-face contact or telephone contact with the subject(s) and/or other persons named in the report (which may include children), or other persons - including the source of the report, if known — who may be able to provide information about whether the child may be in immediate danger of serious harm. The initial contacts must be sufficient to determine whether the child may be in immediate danger of serious harm.

**Within one business day of the oral report date**, CPS must:

- Review all prior SCR records in which one or more family members are named, including any legally sealed reports (unfounded or family assessment response reports) where the current report involves a subject of the legally sealed report, a child named in the legally sealed report, or a sibling of a child named in the legally sealed report.
- Request copies of materials in the case records of other districts that are not part of the CONNECTIONS (CONNX) record (e.g., medical reports). The district maintaining the case record must provide the requested pertinent portions of their records to the inquiring CPS within five business days of receiving such request.

**Within five business days of receipt of the report**, CPS must review its own CPS records that apply to the prior SCR reports referenced above, including legally sealed unfounded and family assessment response reports, where the current report involves a subject, a child, or a child's sibling named in the prior report. Also, CPS may review the LDSS records on closed and open services cases. This step alone does not, however, constitute initiation of the investigation.

> The content of the new report must be evaluated to establish the immediacy with which the child and family should be seen. The steps taken during the first 24 hours may differ depending upon the allegations contained in the report, the information found in the record review, and the information received from the initial contact(s).

All casework contacts and related case activities conducted in the first 24 hours of the investigation must be documented in a timely manner in case progress notes [18 NYCRR 428.5(c)(2)].

[4] See **Chapter 5,** *Family Assessment Response (FAR)*

## 2. Full investigation

A full child protective investigation must include the following activities [18 NYCRR 432.2(b)(3)(ii)]:

1. Conducting face-to-face interviews with subjects of the report and family members of such subjects, including children named in the report. If at any time CPS is refused access to the home and/or to observe or talk to any child in the household, or if a child in the household cannot be located, the CPS worker, in consultation with a CPS supervisor, must assess within 24 hours of the refusal whether it is necessary to seek a court order to obtain access. The assessment and the decision must be clearly documented in progress notes for the investigation.
2. Obtaining information from the reporting sources and other collateral contacts, such as hospitals, family medical providers, schools, police, social service agencies and other agencies providing services to the family, relatives, extended family members, neighbors and other persons who may have information relevant to the allegations in the report and to the safety of the children.
3. Information identifying the reporter and/or source of a report of suspected child abuse or maltreatment, as well as the agency, institution, organization, and/or program with which such person(s) is associated, is confidential and may not be disclosed to any person not authorized by law to have access to such information.
4. Conducting a preliminary assessment of safety within seven days of receipt of the report. The safety assessment is used to determine if the child named in the report and any other children in the household may be in immediate danger of serious harm. If any child is assessed to be unsafe, CPS must immediately take appropriate controlling interventions to protect the child(ren). The results of each safety assessment must be documented in the case record in the form and manner required by OCFS. (This requirement is fulfilled by completing the seven-day safety assessment in CONNX.)
5. Determining the nature, extent and cause of any condition enumerated in the CPS report and of any other condition that may constitute abuse or maltreatment.
6. Obtaining the name, age, gender, ethnicity and condition of each child in the home.
7. Notifying the subjects and other persons named in the report (except children under the age of 18 years), in writing, no later than seven days after receipt of the oral report, of the existence of the report and the subject's rights pursuant to Title 6 of Article 6 of the Social Services Law concerning amendment or expungement of the report.

If there are children named in the report who do not live in the household or whose parent or legal guardian is not listed in the report, the child's parent(s) or legal guardian must be listed as an "other person" so that the children's parents or legal guardians can be notified about the existence of the report.

Within seven days of receiving the report, if the LDSS is approved to provide Family Assessment Response (FAR), the report meets the criteria for FAR, and that response effectively supports the safety of children named in the report and meets the family's needs, CPS may assign the report to family assessment response [18 NYCRR 432.13(c)]. See **Chapter 7,** *Family Assessment Response (FAR)*, for information about that alternative response.

Prior to making a determination of whether to either indicate or unfound the report, the investigation must include, but is not limited to [18 NYCRR 432.2(b)(3)(iii) 18 NYCRR 432.2(b)(3)(ii)]:

- One home visit with one face-to-face contact with the subjects and other persons named in the report to evaluate the environment of the child named in the report as well as other children in the same home.
  - Note: If not identified by the SCR, and if known, CPS must add any non-custodial parent as an "other person named in the report".
  - As an "other person named in the report", a Notice of Existence for CPS Investigations must be sent to the non-custodial parent.
  - If a child has contact with the non-custodial parent in the non-custodial parent's home, reasonable efforts must be made to have a face-to face contact with the non-custodial parent in the non-custodial parent's home.
  - The efforts to make face-to-face contact must be documented in CONNX, and if not achieved, the reasons such contact was not achieved must also be documented.
  - If CPS is unable to make face-to face contact, they must make reasonable efforts to achieve another type of contact (i.e. telephone, video conference, in writing).
  - These additional efforts to contact the non-custodial parent must be documented in CONNX.
- An assessment of the current safety of all children in the home or named in the report
- An assessment of the risk of future abuse and maltreatment of the child(ren)
- Documentation of such assessments in the form and manner specified by OCFS
- A determination of the nature, extent and cause of any condition cited in the report

## 3. Other Investigative Activities

CPS has the sole responsibility for making a determination within 60 days after receiving a report whether there is some credible evidence of child abuse or maltreatment so as to either indicate or unfound the report [18 NYCRR 432.2(b)(3)(iv)]. A CPS supervisor must review and approve the decision to either indicate or unfound the allegation(s) of child abuse and/or maltreatment [18 NYCRR 432.2(b)(3)(v)].

CPS must conduct a risk assessment for all children named in a report when making key case decisions including, but not limited to, whether any controlling interventions are needed to provide safety for the child(ren) [18 NYCRR 432.2(d)].

CPS must assess whether the best interests of the child require Family Court or Criminal Court action, and must initiate such action, whenever necessary [18 NYCRR 432.2(b)(3)(vi)]. See **Chapter 9,** *Family Court Proceedings***,** for information about Family Court and **Section H** of this chapter**,** *Evaluation of need for protective removal*, for information about interactions with law enforcement and the criminal justice system.

Where appropriate, CPS is responsible for providing and coordinating, or arranging for the provision and coordination of rehabilitative and foster care services [18 NYCRR 432.2(b)(4)(i)], and is responsible for monitoring the provision of services, including foster care services, to children named in an open indicated report, when CPS is not the primary service provider [18 NYCRR 432.2(b)(5)(i)]. See **Chapter 8**, *Service provision and development of a FASP with a*

*protective program choice*, for information about services provision and **Chapter 9**, *Family Court Proceedings*, for information about interactions with Family Court.

Case progress notes must begin upon receipt of a report of suspected child abuse or maltreatment and must continue until the case is closed to all services. Progress notes must be made as contemporaneously as possible with the occurrence of the event or the receipt of the information that is to be recorded [18 NYCRR §428.5(a)]. See **Section I** of this chapter**,** *CPS investigation progress notes,* for additional information.

# C. Intake of reports by the LDSS

New York State mandates that each local CPS be capable of receiving reports of suspected child abuse or maltreatment twenty-four hours a day, seven days a week [SSL §424(1); 18 NYCRR 432.2(b)(2)]. Reports are transmitted to CPS by the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) [SSL §422(2)(a)], which is part of the Office of Children and Family Services (OCFS).

## 1. Procedures for receiving reports from the SCR

Reports are sent via CONNX directly to the CPS unit of the local department of social services (LDSS). There, a "noisy alert" signals that a CPS caseworker needs to sign on and retrieve the report from the CONNX system. CPS must acknowledge receipt of each report within fifteen minutes of the noisy alert.

During non-business hours (evenings, weekends, holidays), the SCR notifies an on-call person at the LDSS that a report has been assigned. The on-call person *must* have access to CONNX, and must access the report electronically upon notification and determine whether the report will be accepted. If the district does not accept the report within 30 minutes, the on-call person will receive a call from the SCR. If widespread power outages or other problems impact the functionality of CONNX, the SCR will use alternative transmission methods, such as verbal transmission.[5] District by district exceptions to the direct notification of an LDSS staff person during non-business hours will be considered by OCFS. Any requests for an exception must be made to the SCR in writing by the local commissioner.

An LDSS receiving a new report of suspected child abuse or maltreatment must immediately verify that the address on the report is within the jurisdiction of that LDSS. If the worker is certain that the report is not within the LDSS's jurisdiction, he or she must immediately reject the report on the Oral Report Acknowledgment screen and explain to the SCR in the Comments section the reason that the report was rejected. If the worker is not certain if the report is within the district's jurisdiction, CPS should accept the report and begin the investigation.

If CPS realizes that a case is not within its jurisdiction only after it has begun an investigation (i.e., after it has stage progressed the report to INV or FAR), CPS should immediately begin the process of transferring jurisdiction for the case to CPS in the appropriate LDSS. CPS may also find that it is appropriate to assign secondary jurisdictional responsibility to a CPS in another LDSS. In any instance in which CPS determines that it should transfer jurisdictional responsibility or assign secondary jurisdiction for a report, it should first engage in direct communication with the LDSS involved before assigning responsibility to that LDSS. (See **Chapter 4, Section D,** *Guidelines for case transfers*.) These principles also apply when the report has been assigned to a family assessment response (FAR), but there are specific considerations if the LDSS that should have responsibility for the report does not use family assessment response. (See **Chapter 5,** *Family Assessment Response (FAR)*.)

## 2. Procedures for CPS workers making reports to the SCR

If a caller contacts CPS directly to report suspected child abuse or maltreatment, CPS should encourage the caller to contact the SCR at **1-800-342-3720** (Mandated Reporters at **1-800-635-**

[5] OCFS. (2017). *After-Hours Transmission Procedure for Reports of Suspected Child Abuse and Maltreatment Registered by the New York Statewide Central Register of Child Abuse and Maltreatment* (17-OCFS-LCM-02)

**1522**). If the caller indicates a reluctance to call the SCR, CPS should attempt to interview the caller, taking down as much information as possible, including obtaining the name and contact number for the source of the information, if possible.

If the information provided by the caller provides reasonable cause to suspect child abuse or maltreatment, CPS must then contact the SCR and relay the information to SCR hotline staff. Mandated reporters who are social services workers — a category that includes CPS and other child welfare workers — have a responsibility going beyond that of other mandated reporters; they must make a report to the SCR whenever *any* person comes before them in their professional or official capacity giving them reasonable cause to suspect abuse or maltreatment. For other mandated reporters, the mandated reporter responsibility is triggered only when a potentially abused or maltreated child or person legally responsible for such a child comes before the mandated reporter in his/her professional or official capacity (See **Chapter 2,** *Mandated Reporters*.) [SSL §413(1)(a) & (d)].[6] SCR staff will determine if there is sufficient information to register a report of suspected child abuse or maltreatment.

If someone calls the LDSS stating that they have information about a family already under investigation, the caller may be connected with the CPS worker conducting that investigation, if available. Otherwise that person should be directed to the SCR.

If a caller contacting CPS directly provides information indicating an immediate threat to a child's life or safety, CPS should instruct the caller to immediately report the matter to the police and should themselves contact the police if there is sufficient location information. If any report warrants immediate attention, CPS should commence an investigation immediately when it receives the report from the SCR.

## 3. Checking information received from the SCR

### a. *Demographic information*

When the SCR registers a report, it conducts a database search for any previous CPS history for each person listed in the report. In the new report, the SCR notifies the receiving CPS of all previous reports to the SCR involving any of the following:

- The subject of the report
- The child alleged to be abused or maltreated
- A sibling of the child
- Other children in the household
- Other persons named in the report
- Other pertinent information [SSL §422(2)(a)]

CPS should also review demographic information for the correct spelling of addresses and other information that may have been entered into the record incorrectly. If a worker identifies an issue that may warrant coding the report as "sensitive," that should be addressed with a CPS supervisor (see **Chapter 3**, *Statewide Central Register Responsibilities*, for information on sensitive cases).

The SCR immediately makes CONNX records available to CPS from all previous reports involving the subject(s) of the report or any child named in the report. Caseworkers should

[6] See "Xctasy's Law; Chapter 513 of the Laws of 2007" (07-OCFS-ADM-15).

check the Person Identification number (PID) for each person named in the report and merge PIDs if individuals have been assigned more than one PID. CPS should also perform its own second person search on the subject(s) and all other persons named in the report to identify any prior case history information that may not have been identified at the SCR because of misspellings or other errors.

### b. *Person reported in error*

During an investigation, if CPS determines that a person should never have been associated with the investigation stage in CONNECTIONS, the individual may be deemed "reported in error." If a person listed on the report is not a Person Legally Responsible (PLR), had no role in the events that led to the report being made by the source, and does not live in the home, they may have been reported in error.

It must be documented in the case record when a person was reported in error. In CONNECTIONS, CPS can change the role of the person to "Reported in Error." CPS must document in Progress Notes why the role was changed.

For example, the source tells the SCR intake worker that four children reside in the household, including a teenager named Nicky and a child named Sara. The source has never seen Sara but has heard the mother yelling at her and threatening to beat her. When CPS visits the home during the investigation, they learn that only two children reside in the household. Nicky is the 18-year-old delivery boy for the local grocery store and Sara is the family's dog. Both Sara and Nicky would be considered "Reported in Error."

In another instance, a father and his 15-year-old son Brian visit and stay over at the paternal uncle's home for one night. The father and Brian get into a physical altercation where the father punches Brian in the face, causing a bruise. The uncle calls the police and the police make an SCR report. The uncle and his son Tommy are listed on the SCR report with no roles. After the caseworker determines that the uncle and Tommy do not live with the father and Brian, had no roles in the altercation, and were not PLRs, CPS may change the uncle and Tommy's role in CONNECTIONS to reported in error. CPS must then document in the progress notes the reason for reporting them in error.

A person reported in error may receive a Notice of Existence letter prior to the correction in CONNECTIONS. The generation of the letter does not prohibit changing the role in CONNECTIONS to person reported in error. The LDSS is responsible for sending a letter notifying the person of the role change.

Further information can be found in the CONNECTIONS Data Maintenance Step-by-Step Guide, *Training for CPS Caseworkers*.[7]

### c. *The need to contact law enforcement*

If the SCR receives a report involving any of the allegations or situations listed below, the SCR flags the report for CPS. CPS must inform law enforcement of all reports that involve any of the following:

1. An allegation of serious abuse where a child has been physically or emotionally injured or is at substantial risk of injury

[7] http://ocfs.state.nyenet/connect/jobaides/Data%20Maintenance%20for%20CPS%20Workers%20Step-by-Step%20Guide%20v1%201%20(rev%20June%202006)_webversion5.pdf (Module 1: Person Maintenance)

2. An allegation of sexual abuse of a child
3. An allegation of the death of a child [SSL §424(5-a)]

The CPS must assess whether to inform law enforcement when there is an allegation of maltreatment resulting in physical harm, when the report is made by a mandated reporter and there have been two other indicated or pending reports made within the last six months that involve the same child, sibling, or other children in the household, or the subject of the report [SSL §424(5-b)].[8]

**Safety** – A child is **safe** when there is no immediate or impending danger of serious harm to a child's life or health as a result of acts of commission or omission (actions or inactions) by the child's parent(s) and/or caretaker(s).

**Risk** – The likelihood that a child may be abused or maltreated in the future.

In other words, "safety" refers to the condition of a child at the moment or in the immediate future. "Risk" refers to the likelihood that a child will not be safe in the future because of a problem that is likely to occur, continue, or worsen in the future.

[8] OCFS. (2006). *CPS Investigations with Multi-Disciplinary Teams/Law Enforcement, Chapter 494 of the Laws of 2006* (06-OCFS-ADM-08)

# D. Preliminary and ongoing safety assessments

## 1. Preliminary safety assessment

"Preliminary assessment of safety" means an evaluation of safety factors to determine whether the child(ren) named in the report and any other child(ren) in the household may be in immediate danger of serious harm, and, if any child is assessed to be unsafe, undertaking immediate and appropriate interventions to protect the child(ren) [18 NYCRR 432.1(aa)].

The preliminary, or seven-day, assessment of safety begins with CPS's first review of a report of suspected child abuse or maltreatment and the first contact with persons relevant to the intake information, including the source of the report [18 NYCRR 432.2(b)(3)(i)].

The investigation (or family assessment response) must begin within 24 hours of receipt of the report. Within this 24-hour period, CPS must conduct a face-to-face contact or a telephone contact with the subject(s) or other person(s) named in the report, the source of the report, and/or other persons in a position to provide information about whether the child may be in immediate danger of serious harm [18 NYCRR 432.2(b)(3)(i)].

The preliminary safety assessment must be completed and documented within seven days of the receipt of a report of suspected child abuse or maltreatment [18 NYCRR 432.2(b)(3)(ii)(c)].

### *Timeframes for conducting safety assessments*

CPS must conduct formal safety assessments and document them in CONNX at the following intervals and under the following circumstances:

Within seven days of the receipt of an Initial or Subsequent report of suspected child abuse or maltreatment

Within the seven days prior to completing an investigation and submitting the conclusion for approval (in a fatality report, the safety assessment is only required if there are surviving children)

As part of the Family Assessment and Service Plan (FASP) for all "Protective" cases, or whenever ongoing child welfare issues warrant the continued assessment of safety

For an individual Child Fatality report - additional safety assessments must be conducted at the following intervals where there are surviving siblings or other children present in the household. If there are none, the CPS worker must check the box in CONNX for "No surviving children" to disable these and other safety assessments:

- Within 24 hours of the receipt of the fatality report
- Within 30 days of the receipt of the fatality report

In addition to completing the preliminary safety assessment, CPS must continuously assess safety throughout the life of an open "Protective" child welfare case. Child safety must be assessed with each caseworker contact and home visit. While there is no requirement to complete the safety assessment template in CONNX each time, CPS should record ongoing assessments in progress notes.

## 2. The safety assessment process[9]

A safety assessment is a process in which CPS:

*Identifies the presence of safety factors.* CPS does this by gathering information on the presence of safety factors. A safety factor is a behavior, condition, or circumstance *that has the potential to place* a child in immediate or impending danger of serious harm. These include specific parent/caretaker behaviors, conditions in the home, family dynamics, history, and other circumstances. This process includes gathering specific information from interviews and observations as well as a review of family history to determine the presence or absence of *each* safety factor listed in the next section.

*Determines if, alone or in combination, the safety factors identified place the child(ren) in immediate or impending danger of serious harm*, considering these safety criteria:

- The seriousness of behaviors/circumstances reflected by the safety factor
- The number of safety factors identified
- The degree of the child's vulnerability and need for protection
- The age of the child

*Makes a safety decision* based on the child's safety status and the need for protective action.

*Develops and implements a safety plan* if a child is in immediate or impending danger of serious harm. The plan should, to the extent that is feasible, control the danger and protect the child from what is placing him/her in immediate or impending danger of serious harm for as long as the danger exists. (This is known as managing safety.)

A safety plan:

- Is a clearly identified set of actions, including controlling interventions when necessary, that have been, or will be taken without delay, to protect the child(ren) from immediate or impending danger of serious harm. Controlling interventions are activities or arrangements that are intended to protect a child from situations, behaviors, or conditions which are associated with immediate or impending danger of serious harm, and without which the dangerous situations, behaviors, or conditions would still be present, would emerge, or would in all likelihood immediately return.
- Addresses all of the known behaviors, conditions, or circumstances that create the immediate or impending danger of serious harm to the child(ren).
- Specifies the tasks and responsibilities of all persons (parent/caretaker, household/family members, caseworker, or other service providers) who have a role in protecting the child(ren).
- Delineates the timeframes associated with each action or task in the plan that must be implemented.
- Identifies how the necessary actions and tasks in the plan will be managed and by whom.
- Must be modified in response to changes in the family's circumstances, as necessary, to continually protect the child(ren) throughout the life of the case.
- Is necessary until the protective capacity of the parent/caretaker is sufficient to eliminate immediate or impending danger of serious harm to the child(ren) in the absence of any

[9] Information in this section is taken from OCFS Child Protective Services Response Training curriculum.

controlling interventions; and is monitored by CPS until the child(ren) are no longer in immediate or impending danger of serious harm.

A safety plan is *not* a set of educational, rehabilitative or supportive activities or services intended to reduce risk, address underlying conditions and contributing factors, or to bring about long-term and lasting change within a family.

CPS or LDSS must continue to gather information to reassess safety of the child(ren), throughout the time child welfare staff are involved with the family and until the case is closed, because safety is not static.

## 3. Safety Factors

To conduct a safety assessment, CPS assesses for the presence of specified safety factors. The Safety Factors are listed in CONNX. Below are some expanded definitions of each factor, to be used when determining the existence and the importance of each factor in each situation. The CPS worker checks each factor that applies and describes the behaviors and circumstances that are applicable to the selected safety factor, or checks that "No safety factors are present at this time."

The following definitions and examples of the 18 safety factors included in the CPS Safety Assessment are provided for the purpose of assisting CPS workers to establish parameters for reviewing or examining the safety factors. The examples should not be considered a list of all possible circumstances, conditions or behaviors related to each safety factor.

CPS workers also should always consider whether the circumstance, behavior, or condition is currently present, is likely to occur in the immediate future, or has occurred in the recent past. The identification of safety factors should not automatically be equated with the presence of an immediate danger of serious harm. Rather, the safety factors should be viewed as "red flag alerts: that the child may be in immediate danger of serious harm due to present identified circumstances, conditions or behaviors. Once safety factors have been identified, another level of decision-making occurs that guides the worker in the identification of "immediate danger of serious harm."

**Safety Factor Definitions and Expanded Definitions**

1. Based on your present assessment and review of prior history of abuse and maltreatment, the Parent(s)/Caretaker(s) is unable or unwilling to protect the child(ren).
    - Prior abuse or maltreatment (may include non-reported accounts of abuse or maltreatment) was serious enough to have caused or could have caused serious injury or harm to the child(ren).
    - Parent(s)/Caretaker(s) current behavior demonstrates an inability to protect the child(ren) because they lack the capacity to understand the need for protection and/or they lack the ability to follow through with protective actions.
    - Parent(s)/Caretaker(s) current behavior demonstrates an unwillingness to protect children because they minimize the child(ren)'s need for protection and/or are hostile to, passive about, or opposed to keeping the child(ren) safe.
    - Parent(s)/Caretaker(s) has retaliated or threatened retribution against child(ren) for involving the family in a CPS investigation or child welfare services, either in regard to past incident(s) of abuse or maltreatment or a current situation.
    - Escalating pattern of harmful behavior or abuse or maltreatment.

- Parent(s)/Caretaker(s) does not acknowledge or take responsibility for prior inflicted harm to the child(ren) or explains incident(s) as not deliberate, or minimizes the seriousness of the actual or potential harm to the child(ren).

2. **Parent(s)/Caretaker(s) currently uses alcohol to the extent that it negatively impacts his/her ability to supervise, protect and/or care for the child(ren).**

   Parent(s) Caretaker(s) has a recent incident of or a current pattern of alcohol use that negatively impacts their decisions and behaviors. and their ability to supervise, protect and care for the child. As a result, the caretaker(s) is;

   - unable to care for the child;
   - likely to become unable to care for the child;
   - has harmed the child;
   - has allowed harm to come to the child; or
   - is likely to harm the child.
   - newborn child with positive toxicology for alcohol in its bloodstream or urine and/or was born with fetal alcohol effect or fetal alcohol syndrome.

3. **Parent(s)/Caretaker(s) currently uses illicit drugs or misuses prescription medication to the extent that it negatively impacts his/her ability to supervise, protect and/or care for the child (ren).**

   Parent(s) Caretaker(s) has a recently used, or has a pattern of using illegal and/or prescription drugs that negatively impacts their decisions and behaviors and their ability to supervise, protect and care for the child. As a result, the parents(s)/caretaker(s) is:

   - unable to care for the child;
   - likely to become unable to care for the child;
   - has harmed the child;
   - has allowed harm to come to the child;
   - is likely to harm the child; or
   - newborn child with positive toxicology for illegal drugs in its bloodstream or urine and/or was born dependent on drugs or with drug withdrawal symptoms.

4. **Child(ren) has experienced or is likely to experience physical or psychological harm as a result of domestic violence in the household.**

   **Examples of direct threats to child(ren):**

   - Observed or alleged batterer is confronting and/or stalking the caretaker/victim and child (ren) and has threatened to kill, injure, or abduct either or both.
   - Observed or alleged batterer has had recent violent outbursts that have resulted in injury or threat of injury to the child (ren) or the other caretaker/ victim.
   - Parent/Caretaker/victim is forced, to participate in or witness serious abuse or maltreatment of the child (ren).
   - Child(ren) is forced, to participate in or witness abuse of the caretaker/victim.

**Other examples of Domestic Violence:**

- Caretaker/victim appears unable to provide basic care and/or supervision for the child because of fear, intimidation, injury, incapacitation, forced isolation, fear or other controlling behavior of the observed or alleged batterer.

5. **Parent(s)'/Caretaker(s)' apparent or diagnosed medical or mental health status or developmental disability negatively impacts his/her ability to supervise, protect, and/ or care for the child (ren).**
   - Parent(s)/Caretaker(s) exhibits behavior that seems out of touch with reality, fanatical, bizarre, and/or extremely irrational.
   - Parent(s)/Caretaker(s) diagnosed mental illness does not appear to be controlled by prescribed medication or they have discontinued prescribed medication without medical oversight and the parent/caretaker's reasoning, ability to supervise and protect the child appear to be seriously impaired.
   - The parent(s)/caretaker(s) lacks or fails to utilize the necessary supports related to his/her developmental disability, which has resulted in serious harm to the child or is likely to seriously harm the child in the very near future.
6. **Parent(s)/Caretaker(s) has a recent history of violence and/or is currently violent and out of control.**
   - Extreme physical and/or verbal abuse, angry or hostile outbursts of anger or hostility aimed at the child(ren) that are recent and/or show a pattern of violent behavior.
   - A recent history of excessive, brutal or bizarre punishment of child (ren), i.e. scalding with hot water, burning with cigarettes, forced feeding.
   - Threatens, brandishes or uses guns, knives or other weapons against or in the presence of other household members.
   - Violently shakes or chokes baby or young child(ren) to stop a particular behavior.
   - Currently exhibiting, or has a recent history or pattern of behavior that is reckless, unstable, raving, or explosive.
7. **Parent(s)/Caretaker(s) is unable and/or unwilling to meet the child(ren)'s needs for food, clothing, shelter, medical or mental health care and/or control child's behavior.**
   - No food provided or available to child, or child starved or deprived of food or drink for prolonged periods.
   - Child appears malnourished.
   - Child without minimally warm clothing in cold months; clothing extremely dirty.
   - No housing or emergency shelter; child must or is forced to sleep in street, car, etc.
   - Housing is unsafe, without heat, sanitation, windows, etc. or presence of vermin, uncontrolled/excessive number of animals and animal waste.
   - Parent/Caretaker does not seek treatment for child's immediate and dangerous medical condition(s) or does not follow prescribed treatment for such condition(s).
   - Child(ren)'s behavior is dangerous and may put them in immediate or impending danger of serious harm, and the parent/caretaker is not taking sufficient steps to control that behavior and/or protect the child(ren) from the dangerous consequences of that behavior.

8. **Parent(s)/Caretaker(s) is unable and/or unwilling to provide adequate supervision of the child(ren).**
   - Parent/Caretaker does not attend to child to the extent that need for adequate care goes unnoticed or unmet (i.e., although caretaker present, child can wander outdoors alone, play with dangerous objects, play on unprotected window ledge or be exposed to other serious hazards).
   - Parent/Caretaker leaves child alone (time period varies with age and developmental stage).
   - Parent/Caretaker makes inadequate and/or inappropriate child care arrangements or demonstrates very poor planning for child's care.
   - Parent/Caretaker routinely fails to attempt to provide guidance and set limits, thereby permitting a child to engage in dangerous behaviors.
9. **Child(ren) has experienced serious and/or repeated physical harm or injury and/or the Parent(s)/Caretaker(s) has made a plausible threat of serious harm or injury to the child(ren).**
   - Child(ren) has a history of injuries, excluding common childhood cuts and scrapes.
   - Other than accidental, parent/caretaker likely caused serious abuse or physical injury, i.e. fractures, poisoning, suffocating, shooting, burns, bruises/welts, bite marks, choke marks, etc.
   - Parent/Caretaker, directly or indirectly, makes a believable threat to cause serious harm, i.e. kill, starve, lock out of home, etc.
   - Parent/Caretaker plans to retaliate against child for CPS investigation or disclosure of abuse or maltreatment.
   - Parent/Caretaker has used torture or physical force that bears no resemblance to reasonable discipline, or punished child beyond the duration of the child's endurance.
10. **Parent(s)/Caretaker(s) views, describes or acts toward the child(ren) in predominantly negative terms and/or has extremely unrealistic expectations of the child(ren).**
    - Describes child as evil, possessed, stupid, ugly or in some other demeaning or degrading manner.
    - Curses and/or repeatedly puts child down.
    - Scapegoats a particular child in the family.
    - Expects a child to perform or act in a way that is impossible or improbable for the child's age (i.e. babies and young children expected not to cry, expected to be still for extended periods, be toilet trained or eat neatly).
11. **Child(ren)'s current whereabouts cannot be ascertained and/or there is reason to believe that the family is about to flee or refuses access to the child(ren).**
    - Family has previously fled in response to a CPS investigation.
    - Family has removed child from a hospital against medical advice.
    - Family has history of keeping child at home, away from peers, school, or others for extended periods.
    - Family could not be located despite appropriate diligent efforts.

12. **Child(ren) has been or is suspected of being sexually abused or exploited and the Parent(s)/Caretaker(s) is unable or unwilling to provide adequate protection of the child(ren).**
    - It appears that parent/caretaker has committed rape, sodomy or has had other sexual contact with child.
    - Child may have been forced or encouraged to sexually gratify caretaker or others, or engage in sexual performances or activities.
    - Access by possible or confirmed sexual abuser to child continues to exist.
    - Child may be sexually exploited online and parent(s)/caretaker(s) may take no action(s) to protect the child.
13. **The physical condition of the home is hazardous to the safety of children.**
    - Leaking gas from stove or heating unit.
    - Dangerous substances or objects accessible to children.
    - Peeling lead base paint accessible to young children.
    - Hot water/steam leaks from radiator or exposed electrical wiring.
    - No guards or open windows/broken/missing windows.
    - Health hazards such as exposed rotting garbage, food, human or animal waste throughout the living quarters.
    - Home hazards are easily accessible to children and would pose a danger to them if they are in contact with the hazard(s).
14. **Child(ren) expresses or exhibits fear of being in the home due to current behaviors of Parent(s)/Caretaker's or other persons living in, or frequenting the household.**
    - Child cries, cowers, cringes, trembles or otherwise exhibits fear in the presence of certain individuals or verbalizes such fear.
    - Child exhibits severe anxiety related to situation associated with a person(s) in the home, i.e. nightmares, insomnia.
    - Child reasonably expects retribution or retaliation from caretakers.
    - Child states that he/she is fearful of individual(s) in the home.
15. **Child(ren) has a positive toxicology for drugs and/or alcohol.** Child(ren) (0-6 mos.) is born with a positive toxicology for drugs and/or alcohol.
16. **Child(ren) has significant vulnerability, is developmentally delayed, or medically fragile (e.g. on Apnea Monitor) and the Parent(s)/ Caretaker(s) is unable and or unwilling to provide adequate care and/or protection of the child(ren).**
    - Child(ren) is required to be on a sleep apnea monitor, or to use other specialized medical equipment essential to their health and well-being, and the parent/caretaker is unable to unwilling to consistently and appropriately use or maintain the equipment.
    - Child(ren) has significant disabilities such as autism, Down Syndrome, hearing or visual impairment, cerebral palsy, etc., or other vulnerabilities, and the parent(s)/caretaker(s) is either unable or unwilling to provide care essential to needs of the child(ren)'s condition(s).

17. **Weapon noted in CPS report or found in home and Parent(s)/ Caretaker(s) is unable and/or unwilling to protect the child (ren) from potential harm.**
    - A firearm, such as a gun, rifle or pistol is in the home and may be used as a weapon.
    - A firearm and ammunition are accessible to child (ren).
    - A firearm is kept loaded and parent(s)/caretaker(s) are unwilling to separate the firearm and the ammunition.
18. **Criminal activity in the home negatively impacts Parent(s)/ Caretaker(s) ability to supervise, protect and/or care for the child(ren).**
    - Criminal behavior (e.g. drug production, trafficking, and prostitution) occurs in the presence of the child(ren).
    - The child(ren) is forced to commit a crime(s) or engage in criminal behavior.
    - Child(ren) exposed to dangerous substances used in the production or use of illegal drugs, e.g. Methamphetamines.
    - Child(ren) exposed to danger of harm from people with violent tendencies, criminal records, people under the influence of drugs.

## 4. Safety decision

The safety decision is a statement of the current safety status of the child(ren) and the actions that are needed to protect the child(ren) from immediate or impending danger of serious harm.

### *Immediate danger vs. impending danger*

A child is in **immediate danger** when he/she is currently exposed to serious harm

A child is in **impending danger** when exposure to serious harm is emerging, about to happen, or is a reasonably foreseeable consequence in the near future of current circumstances.

In deciding whether a child is in immediate or impending danger, consider the following:

- The seriousness of the behaviors/circumstances reflected in the safety factor
- The number of safety factors present
- The degree of the child's vulnerability and need for protection; and
- The age of the child.

The decision takes into consideration the ability of the family to offset the identified safety factors. Are there any specific strengths or circumstances and/or family, neighborhood or community resources available that might lessen or mitigate the identified safety concerns for the child(ren)? Strengths and resources must be specifically identifiable or quantifiable. Unless there are mitigating strengths, resources or circumstances present that will directly support the parent's or caretaker's ability to address child safety needs within the home, protective safety interventions are required for those safety factors that pose an immediate or impending danger of serious harm.

CPS must use currently available information to select the safety decision that most accurately reflects case circumstances. The worker must choose from the following safety decisions.

**Safety Decision 1:** No Safety Factors were identified at this time. Based on currently available information, there is no child(ren) likely to be in immediate or impending danger of serious harm. No Safety Plan/Controlling Interventions are necessary at this time.

**Safety Decision 2:** Safety Factors exist, but do not rise to the level of immediate or impending danger of serious harm. No Safety Plan/Controlling Interventions are necessary at this time. However, identified Safety Factors have been/will be addressed with the Parent(s)/Caretaker(s) and reassessed.

**Safety Decision 3:** One or more Safety Factors are present that place the child(ren) in immediate or impending danger of serious harm. A Safety Plan is necessary and has been implemented/maintained through the actions of the Parent(s)/Caretaker(s) and/or either CPS or Child Welfare staff. The child(ren) will remain in the care of the Parent(s)/Caretaker(s).

**Safety Decision 4:** One or more Safety Factors are present that place the child(ren) in immediate or impending danger of serious harm. Removal to, or continued placement in, foster care or an alternative placement setting is necessary as a Controlling Intervention to protect the child(ren).

**Safety Decision 5:** One or more Safety Factors are present that place or may place the child(ren) in immediate or impending danger of serious harm, but Parent(s)/Caretaker(s) has refused access to the child(ren) or fled, or the child(ren)'s whereabouts are unknown.

# E. CPS Risk Assessment Profile (RAP) and services

In New York State CPS practice, "risk" is defined as the likelihood that a child may be abused or maltreated in the future[10], while "safety" refers to whether there is immediate or impending danger of serious harm to a child's life or health.

Risk assessment must be employed by CPS when key case decisions are made concerning a child named in a child abuse or maltreatment report including, but not limited to:

- Determining whether it is immediately necessary to institute controlling interventions to provide for safety and protection of the child, such as home-based services or foster care
- Deciding whether an indicated case should be kept open for the provision of services
- Identify outcomes of interventions (e.g., behavior changes or changes in the family's conditions) that would reduce risk to the children
- Deciding whether there is a need to reassess a family's progress
- Determining whether it is appropriate to close the case [18 NYCRR 432.2(d)(1)]

## 1. The Risk Assessment Profile

The Risk Assessment Profile (RAP) is an evidence-based assessment instrument that classifies cases into four risk categories based upon the probability of future abuse or maltreatment. CPS workers must complete at least one RAP in CONNX during each CPS report investigation, regardless of whether the report is indicated or unfounded.

While there is no statewide requirement to complete a RAP in cases that are assigned to the FAR track, an individual LDSS may require CPS to complete a RAP for FAR reports, and the RAP is always available in CONNX in FAR cases. Whether they use the RAP or not, CPS must continually assess risk in FAR cases and are urged to make those assessments along with the family.

> ***Risk assessment in day care***
>
> The RAP is not used for CPS reports that are coded as "Day Care." This is because most of the elements evaluated in the RAP pertain to family interactions that are not applicable in day care settings. Furthermore, CPS cannot keep a day care case open after a determination for protective services. See **Chapter 7**, *Investigations in foster boarding homes and day care programs*.

CPS must complete a RAP prior to concluding each investigation but only after CPS has thoroughly assessed current safety and met the safety needs of the children. During the investigation, CPS should thoroughly gather and assess information regarding risk elements and document that information in the RAP. When all information has been entered, CONNX software generates the RAP risk rating, which indicates the level of future risk of child abuse or maltreatment within the family.

As an assessment tool, the RAP assists CPS and supervisors in deciding whether services are necessary to reduce the level of risk for children in the family. However, the RAP rating should not substitute for CPS's experience and expertise in evaluating family issues. There may be instances in which a RAP rating is low, but CPS identifies a serious need for services; and there may be instances in which the rating is high, but services may not address the underlying issues. CPS workers and supervisors should address each case on its merits.

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[10] New York State Child Protective Services Response Training Curriculum, Module 1, slide 69, Office of Children and Family Services.

The RAP directs CPS to consider numerous elements that can affect the risk to children. These factors are reflected in the risk elements evaluated in the RAP, and include, but are not limited to:

- Previous family history of abuse or maltreatment
- Previous history of out-of-home placement
- The presence of an infant in the home
- Current or recent problems with housing, financial resources, mental or physical health, alcohol or drugs
- History of threats or violence
- The parent's/caretaker's expectations of children and attitudes regarding children.

**Key concepts and protocols for the RAP**

The RAP requires CPS to identify the existence or absence of specific behaviors, conditions, or sets of circumstances that are defined for each specific risk element. Once the worker enters these into CONNX, software for the RAP calculates the level of risk, thus supporting the CPS's ability to act upon that information.

The CPS worker should assess each risk element based on a full range of possible indicators, and should not narrowly interpret the elements. Comments should be recorded for each risk element, as applicable, and should clearly describe the worker's basis for the selected response for each risk element.

The interaction of the family members' existing behaviors, conditions, or circumstances and the weighted values assigned to each risk element determine the level of risk within a family. Treatment of an existing behavior or condition does not negate the existence of that condition. For example, an adult caretaker may be enrolled in a 30-day alcohol rehabilitation program. Participation in the program does not automatically negate the fact that the caretaker is an alcoholic, even though he/she is currently in treatment and alcohol-free.

When all the risk elements have been assessed and the risk level (risk rating) has been calculated, the worker must decide whether services are warranted to reduce the likelihood of future child abuse or maltreatment within the family.

## 2. Risk rating and the provision of services

When there is a high or very high RAP risk rating, CPS should provide services to decrease the risk of subsequent abuse or maltreatment. If a risk rating is high or very high and the CPS decides not to open the case for services, a CPS worker must document the reasons why services are not being provided to the family.

Families that have a moderate or low RAP risk rating may not have service needs, or their needs may be appropriately met by services within the community (i.e., family, neighborhood or community resources available to the family) rather than by services provided by CPS.

See **Chapter 8**, *Service Provision and Development of a Family Assessment and Service Plan*, for more information about providing service.

An LDSS must make core preventive services available to a child/youth and his/her family when there is a danger that the child may be removed or separated from his/her family and services may prevent such removal or separation [18 NYCRR Part 423, 18 NYCRR 430.9 and SSL §409-a].

## 3. Risk rating and case determination

The risk level (risk rating) calculated with the RAP and the decision about whether to provide on-going services to the family are not directly linked to the investigation determination. An investigation may be unfounded even though the risk level within the family is high or very high, supporting the need for services. Conversely, an investigation may yield evidence supporting an indication even when the level of future risk is low.

There may be valid reasons to open a protective or preventive services case for a family with low or moderate risk. The RAP does not replace sound decision-making and casework judgment; it is an evidence-based assessment tool that supports decision-making by helping to identify and evaluate risk factors.

## 4. Referrals for early intervention services

Pursuant to federal requirements[11] and OCFS policy,[12] the LDSS must inform parents of children under the age of three who are subjects in an indicated report of child abuse or maltreatment about the Early Intervention Program and refer them to the county's Early Intervention Program. This program is a valuable resource for families with young children with disabling conditions. It is a voluntary, free program that determines whether an infant or toddler has a disabling condition, evaluates the child's needs for a range of early intervention services, and develops individualized family service plans to address such needs. While this referral is a requirement when a report is indicated, there is nothing to prevent CPS from making such a referral when a report is unfounded.

[11] Part C of the Individuals with Disabilities Act (20 U.S.C. 1431 et seq.) and Section 106(b)(2)(B)(xii) of the Child Abuse Prevention and Treatment Act (CAPTA).

[12] "Referrals of Young Children in Indicated CPS Cases to Early Intervention Services" (04-OCFS-LCM-04)

# F. Interviews

## 1. Interviewing the source of the report

As part of a CPS investigation, CPS must contact the source of the report, unless the report is anonymous [18 NYCRR 432.2(b)(3)(ii)(b)]. The source's knowledge of, and relationship to, the situation can provide valuable information.

CPS should make efforts to contact the source, especially when the source is a mandated reporter, within 24 hours of receiving CPS report. This will help in determining whether the child is in immediate danger of serious harm. Deciding whether to contact the source before or after contacting the family should be based on the nature of the allegations, the apparent need to contact the child or subject immediately, how much clarification is needed concerning the report itself, and the availability of the source.

Mandated reporters should provide the SCR with their contact information. Sometimes the mandated reporter will only provide the SCR with the contact information related to his or her employment. This can affect the ability of CPS to contact the mandated reporter before contacting the family.

CPS workers need not limit their contact with mandated reporters to the initial stages of an investigation. Mandated reporters (e.g., doctors, teachers, and police officers) and other people in the facilities where they work are often important sources of information with whom CPS should engage throughout the investigation to obtain a thorough assessment of the safety of and risk to the child.

It can be equally valuable to interview sources who are not mandated reporters (public reporters). Where identifying information is available, CPS should contact the public reporter, who may be able to provide CPS with useful information initially and throughout the life of the investigation regarding the ongoing interaction between the child and the subject of the report.

CPS should contact the source to:

- Clarify information contained in the report and to enhance the caseworker's understanding of the situation
- Obtain additional information about the child(ren), his/her condition, whereabouts, safety, etc.
- Assist the caseworker in establishing a helpful relationship with the family
- Clarify the source's view of the role and purpose of CPS
- Encourage ongoing communication between the source and CPS
- Encourage mandated reporters to complete form LDSS-2221-A, if they have not already done so.

A mandated reporter should retain a copy of the LDSS-2221-A for his/her records. CPS should advise the mandated reporter that the SCR report and CPS information are confidential and that, consistent with the spirit of the law, the mandated reporter may want to be careful about disclosing information in the report to anyone other than CPS and other sources of the report. Upon receiving the LDSS-2221-A, CPS should note it in the progress notes and include the form in the case record.

When interviewing a source, CPS should inform that person that the identity of the source is confidential under the law, and CPS should explain what that means, including the following.

CPS may not reveal the identity of the source of the report without the source's express written permission. However, in certain circumstances (e.g., court orders, requests from law enforcement), the identity of the source may be revealed. The identity of the source is never disclosed to the subject of the report or any other persons named in the report and is not included in any copies of the report provided to the subject or other person named in the report, unless the source gives written permission or a court orders release of the source information to the subject.

## 2. Interviewing the family

Although interviewing the subject(s), child(ren), and other household members is an ongoing process throughout the investigation, the initial interview with the family must be conducted as soon as possible after CPS receives a report from the SCR. Depending on the circumstances surrounding the report, the initial interview may be with either the parent(s) or the child(ren), or they may be seen together. CPS must try to quickly determine whether any children in the household may be in immediate danger of serious harm.

See **Section F.6,** *Uncooperative subjects,* for information on what to do if CPS is denied access to the child or home. Refer to **Section N,** *Domestic violence,* if domestic violence is suspected.

### a. *Addressing Limited English Proficiency*

If the subject or other family members have been identified in the report or in another manner as having Limited English Proficiency (LEP), CPS must take reasonable actions to engage appropriate language services so the worker can serve the family effectively. CPS must be able to interview family members in a manner that allows for clear and accurate communication. Similarly, if anyone in the family is deaf, CPS must obtain a sign language interpreter or make other arrangements that will facilitate clear and accurate communication with that person. See **Chapter 1, Section H** of this manual for more information on Limited English Proficiency.

### b. *Providing the notice of existence*

Under most circumstances, the CPS worker should give the initial notification letter (Notice of Existence) to the subject and other persons named in the report at the first interview. If the CPS worker does not hand deliver the notification(s) at an interview, the worker must mail the Notice of Existence to the subject and any other adult(s) named in the report, including the parents of children named in the report, within seven days of receipt of the report. The CPS worker should check that the subject understands the contents of the notification letter and explain any aspects of the information in it that the subject does not understand. CPS must document the manner in which the letter was delivered (hand-delivery or mail) and the date on which it was delivered. For more information, see **Chapter 12,** *Notifications*.

### c. *Maintaining source confidentiality*

CPS must not disclose the identity of the person who made the report or the source of the report to the parents or other persons named in the report unless the source of the report has provided written authorization to release his or her name. Families should also not be informed that the source is anonymous. Without the written authorization of the source, CPS may not confirm or reveal the identity of the source of the report to the subject of the report, even if the source has informed the subject that they made the report or given verbal permission to CPS to disclose the identity. (See **Chapter 14, Section B.4,** *Mandatory reporter consent to release identifying information*.)

**Conducting the first interview with the subject**

At the first interview with parents or other persons legally responsible for the child[13] who are the subjects of CPS reports, CPS workers should describe to them the process and the focus of the investigation and what they can expect regarding the workers' contact with them during that process. The worker should clearly communicate that the investigation of the allegations contained in the report may be only one component of CPS's contact with the family. It is important to describe the entire investigation process, including CPS's authority to conduct the investigation.

During the interview, the worker should explain that CPS has a responsibility to:

- Focus on the safety of and risk to the child named in the report and any other children in the environment
- Conduct a thorough, ongoing assessment of the child's environment, which will include a wider range of focus and inquiry than the specifically alleged abuse or maltreatment
- Identify and factor relevant family strengths into the overall assessment, as well as the family members' perspectives of strengths and problems
- Provide an explanation of each allegation in the report and give the subject of the report should be given an opportunity to respond to the allegations
- Explain that if it is found that the children are at risk of future abuse or maltreatment, CPS will establish a service plan aimed at outcomes linked to those factors assessed to be causing risk of future abuse or maltreatment

The first interview with the family is the time for a CPS worker to initiate the process of family engagement. While the initial visit with a family is often difficult and stressful for the family, the CPS worker's initial approach may help mitigate those stresses and engage the family, resulting in a more cooperative and productive relationship. The first steps toward family engagement can include listening to and addressing issues that concern the family; sharing openly with the family about what to expect regarding such things as timelines, future collateral contacts, court issues, if applicable, and helping families with their needs.

The focus of the initial interview should also be on gathering information regarding the welfare of the children and on obtaining information needed to complete the initial safety assessment.

The CPS worker also may begin to gather background information necessary to understand the family's issues, assess risk, determine the need for services during the investigation, and complete the RAP. Collecting information about potential risk factors early in the investigation is necessary both to monitor safety and risk and to obtain sufficient information with which to complete the RAP. The RAP is most effective and useful when accurate and complete information has been entered.

The worker must make an effort to observe the condition of the home, interactions between adults and children, and interactions between the adults. The worker may share his/her tentative impressions with the family after the first contact, if it is appropriate, given the nature of the situation and the information available at the time. It is good practice to conclude the

[13] Throughout this section, when the term parent is used, it is intended to also include persons legally responsible for the care of the child (PLR), where there is such a person in place of or in addition to a parent.

initial interview with a "road map," describing to family members the steps that CPS is likely to take in the coming days and weeks. The worker should not provide that information, however, if he/she reasonably believes that revealing such information will be detrimental to the progress of the investigation or to the safety or well-being of anyone involved in the investigative process.

When working with the family, it is important to begin inquiring about any additional family, relatives, close friends or others who could be a potential resource or support. These resources could help with child care, connecting the parent/caretaker to community resources, offering emotional support, or in the event of imminent danger to a child, they might be an appropriate placement resource for the child(ren).

**Obtaining Criminal History Records**

[SSL 424(6)(c)] CPS units of LDSSs in New York State can apply to be able to obtain criminal history record information of persons eighteen years of age or older who are named in a CPS report or who reside in the residence of a child named in a CPS report. CPS can use this information to assess caseworker safety prior to visiting a home for an investigation, and can also use it as part of the assessments of safety and risk for children named in a report.

To access the secure website where such information is available, an LDSS must first apply to the Division of Criminal Justice Services (DCJS) and obtain their approval (See the OCFS policy, 09-OCFS-LCM-10, *Child Protective Services Access to Criminal History Records,* for information on how an LDSS applies, requirements for users, and considerations regarding the use of the information found.) Any LDSS may apply to use DCJS's electronic system to obtain information, but no LDSS is required to do so.

The criminal history records information obtained is not based on fingerprints. It is obtained by matching identifying information about an individual with criminal history records held by DCJS. The completeness of the information is therefore limited because, without the use of a *unique* identifier, there is no assurance that the information yielded pertains to the individual for whom the searcher is requesting information. *The information is confidential and may not be shared, except when necessary for child protective purposes*. CPS are advised to try to corroborate information they obtain from criminal history record checks through other sources, such as law enforcement agencies, courts, family members, and/or other collateral contacts. They may be able to share this information obtained from other sources more freely.

Nevertheless, accessing the DCJS database provides one more piece of information, which can be used for several purposes. At the start of the investigation, information can alert investigators to the possibility that someone in the home may be dangerous, and they may plan accordingly. The information can also alert CPS to possible concerns regarding the immediate safety of children and can be used in assessing future risk. Criminal history record information obtained through this method may also be used to support a determination to indicate a subject, but cannot be used as the only evidence on which to base that determination unless that information has been verified through another source.

## 3. Interviews with children

Any child named in a new or subsequent report should be seen face-to-face before closing the investigation. Generally, the victim child and every other child in the household should be seen and interviewed, when competent to do so. All children in the household should be included in the case composition.

Children should be interviewed in a sensitive manner, due to the fact that they may have experienced trauma, and efforts should be made to minimize any additional trauma.

In some cases, interviewing a child will not provide useful information about the condition of the child, the safety of the child, or the risk to that child (e.g. the child is too young to effectively communicate). In those situations, it is not necessary to interview the child, but it is nevertheless important to interact with and observe the child, because the investigator can still obtain information through that interaction.

Each child named in a CPS report must be screened to determine if the child is a sex trafficking victim. Using the CONNX screen labeled "Sex Trafficking Screening," the worker must document that the screening was done and provide the results of the screening. If a child is determined to be a sex trafficking victim, the LDSS must report the victimization to law enforcement immediately, but never later than 24 hours after the child is identified as a victim. See **Section M.2** of this chapter, *Child Welfare requirement to screen for sex trafficking***,** for detailed information on sex trafficking screening.

### a. *Determining who is present during a child interview*

It is good practice to interview the child outside the presence of the subject of the report or the parent, when the parent is not the subject, although this option may not be available in every case. Interviewing children during the investigative phase without parents or other people present can serve several purposes, such as:

- Enabling the child to provide his/her impressions free from the influence the child may feel from another person, particularly a person who may be an interested party
- Assisting the worker in assessing the child's level of safety and determining whether the child may be in imminent danger
- Providing first-hand information about whether there was abuse or maltreatment and, if so, who perpetrated it
- Providing useful information for assessing the risk of future abuse or maltreatment

> ***Domestic violence***
>
> When responding to a report that suggests there is domestic violence involved, it is best practice to speak with the victim parent alone and away from the subject, whenever possible, *prior to* interviewing the children. See **Section I,** *CPS investigation progress notes***,** of this chapter for more information on addressing cases with domestic violence.

CPS workers are not prohibited from speaking with children prior to speaking with parents, or from speaking to children without the permission of their parents. CPS staff and supervisors must determine when this is appropriate, with the understanding that it may result in increased polarization between CPS and the parent(s). It may be preferable to speak with the child first when the allegations are particularly serious, there is a preliminary

assessment that the child may be in imminent danger, or if there is reason to believe that the child may be fearful of speaking honestly in the presence of the parent(s). These interviews can potentially occur at any location, but will most likely take place in the setting where the child is at the time in which CPS initiates the investigation (e.g., school or child care setting).

Other than when there are allegations of sex abuse or severe physical abuse, it is impossible to be prescriptive about when a child should be interviewed separately from the subject or parent. This decision should be made on a case-by-case basis by the CPS worker with the assistance of the worker's supervisor. The following factors should be weighed in making this decision:

- Is there reason to be concerned about the child's immediate or short term safety?
- How serious are the allegations? Do they appear to be credible?
- Has previous involvement or the initial contact with the family led CPS to believe that the parent(s) is failing to be forthcoming with information, or is being dishonest?
- If the parent(s) was present at the initial contact with the child, did the child seem uneasy, fearful, silent, or at conflict with the parent(s)?
- Is the parent(s) mentally unstable or enraged? Is there a likelihood that the parent(s) might attempt to retaliate against the child because of a perception that the child revealed something? Can the child be immediately protected from such retaliation?
- Is the child willing to be interviewed?

The worker should consider whether to allow "third parties" to participate when the child is interviewed apart from his/her parent(s). This might be helpful if it would put the child more at ease. Such individuals could include, but are not limited to, an older sibling, a teacher, or a trusted relative. There also are instances in which an investigation is conducted by a multi-disciplinary team (MDT), or there is a joint investigation by CPS and an authorized law enforcement agency. In these cases, CPS and a law enforcement officer often will jointly interview children, and other professionals may participate as well (See **Section F,** *Interviews*.) These interviews often take place at a Child Advocacy Center.

### b. *Location of the interview with the child*

Most interviews with children will, by necessity, occur in the child's home. In most instances, in-home interviews occur after initial contact with the parent(s). During the interview with the parent(s), the worker should inform the parent of the need to speak privately with the child. The worker should stress that this is a normal part of the CPS process, and that it is not done because there is a reason to distrust the parent's statements. It is done because it allows CPS to collect information from all potentially knowledgeable persons, which is necessary for conducting a complete investigation of the allegations in the report, as required by law. CPS should ask the parent(s) to help arrange for a private location in the home where the child(ren) can be interviewed. When the report contains allegations that are considered serious, it may be preferable to interview the child at a neutral and safe location, such as a Child Advocacy Center.

New York State law aims to minimize the number of times that a child victim is required to recite traumatic events by requiring that, wherever there is a Multidisciplinary Team (MDT) (See **Section L.5,** *Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs)*), the MDT should be used for the investigation and prosecution of child abuse cases [Executive Law §642-a(1)]. The MDT, CPS, and other partners in the MDT should develop protocols for

conducting interviews of children that allow all the interested parties to be involved in the interview, observe the interview, or have ready access to the results of the interview [SSL §423(6)].

It may not be necessary for CPS to interview a child in situations where other investigative agencies, such as the district attorney's office or law enforcement, have already conducted an interview. In some instances, another interview could cause additional trauma to the child. Whenever possible, CPS should sit in on or witness these interviews.

Where there is a CAC available to CPS and law enforcement, the CAC facility should provide an appropriate atmosphere for conducting sensitive interviews [SSL §423-a]. CPS should always consider using this facility for interviewing children, particularly in cases in of sexual abuse or other severe abuse. Joint investigation agreements between law enforcement and local CPS should address this subject.

See **Section L.5,** *Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs),* for more information about the role of MDTs and CACs in CPS investigations.

### c. *Interviewing the child at school*

It may be advisable to interview children at school in cases where:

- Information from the source establishes a need to confirm that the child will be safe when he/she returns home
- There are allegations of sex abuse or other serious abuse
- There are other reasons for making use of a separate interview setting (e.g., the child needs to talk privately with CPS or the child is not willing to disclose information when the subject is nearby)

The school setting may also provide an opportunity for CPS to observe and/or photograph a child. This contact can be made either before or after an interview with the parents.

Interviewing children in the school setting requires ongoing cooperation and dialogue with school authorities so that both CPS and the school authorities understand each other's policies, responsibilities, and procedures. If school officials either are not aware of New York State Education Department (NYSED) policies or they provide little cooperation with the local CPS regarding interviewing children for CPS investigations, the matter should be referred by appropriate agency personnel to the NYSED Office of Early, Middle, Secondary Education, Bureau of Pupil Services.

The circumstances or allegations that *may* prompt a decision to interview a child at school include, but are not limited to:

- Bruises inflicted by parents
- Unusual punishments
- Unattended illness
- Child fearful of returning home
- Sexual abuse

It should be kept in mind, however, that interviewing a child in school may have negative consequences, such as:

- Disrupting the child's school routine

- Increased attention to an allegation about a problem at home which, in fact, may not be a problem or may not be sufficiently significant to warrant extraordinary attention
- Alienation of the parent(s) to the extent that communication with CPS, and possibly with school personnel, will become extremely guarded or cut off completely.

Departments, boards, bureaus or other agencies of the state, or any of its political subdivisions are required to provide OCFS and LDSSs with such assistance and data as are necessary to enable them to fulfill their CPS responsibilities [SSL §425(1)]. CPS caseworker should therefore expect the cooperation of most governmental collateral contacts throughout the CPS process.

***NYSED policy***

New York State Education Department (NYSED) policy allows CPS to interview children at school, whether or not the school is the source of the report. NYSED and OCFS agree that the presence of a school official during the interview is desirable, because it often lessens the child's fear of discussing a threatening home situation with the CPS caseworker. Including a school official also may facilitate involving the school in the initial formation of a plan of protection for the child and a treatment plan for the family.

A school official should not be present during the interview, however, if it is determined by CPS, and agreed upon by the school official, that the presence of a school official would be detrimental to the child's emotional condition, or the child expressly indicates that he/she would prefer that a school representative not be present.

If a school official and CPS disagree about whether a school representative should be present at the interview, the interview should take place at an alternative location, such as a Child Advocacy Center.

Regardless of the location, the CPS worker must provide a comfortable interview setting. The worker should establish rapport with the child by asking him/her some general questions about him/herself and by explaining the purpose of the interview in a manner appropriate to the child's ability to understand. Throughout the interview, CPS caseworker should ask questions in a non-judgmental and supportive way to elicit information concerning the allegations. The child needs to be reassured that he/she is not bad, is not in trouble, and is not at fault. At the end of the interview, the CPS worker should explain to the child what will happen next.

**Interviewing a child at school without parental consent**

Children who are alleged to have been abused or maltreated can be interviewed at school without parental permission in appropriate circumstances. The first duty of the CPS in conducting an investigation is to assess the child's safety and, as noted above, it may be advisable to interview the child at school without parental permission.

A CPS worker or an MDT member can interview a child in a public school without the consent of a parent if the CPS or MDT member has either probable cause or good reason to believe that child abuse or maltreatment occurred.[14]

This leads to the question of what constitutes a reasonable basis to believe that questioning the child without parental permission is necessary, or what constitutes good reason to

[14] "Phillips v. Orange County – Considerations for Child Protective Services Investigations" (16-OCFS-LCM-05)

believe that child abuse or maltreatment occurred. Determining whether the child may be interviewed at school without parental permission will involve an evaluation of several factors, such as:

- *Whether a parent is the subject of the report.* The primary reason to interview a child at school is to have the opportunity to interview the child outside the presence of the parents where a parent is a subject of the report. If the subject of the report is not a parent, there may be less need to interview the child outside the direct influence of the parent.
- *The apparent reliability of the source of the report and/or the information in the report.* If the report is from (a) a source who does not have direct knowledge of the alleged abuse or maltreatment, (b) an anonymous source, or (c) a source who on the face of the report may have a motivation to fabricate or exaggerate information, additional consideration should be given to the reliability of the information in the report in determining whether interviewing the child at school without parental permission is appropriate.
- *Whether the source of the report is a mandated reporter.* Many mandated reporters have received some level of training in their legal responsibilities, and by the nature of their positions are more often in a position to observe signs of possible abuse and maltreatment than are members of the general public. The indication rates for reports from mandated reporters are historically higher than the indication rates for reports from non-mandated reporters. Accordingly, a report from a mandated reporter could be considered more reliable than a report from a non-mandated reporter.
- *Other factors, depending on the circumstances of the report.* The view of OCFS is that if there is a question of the safety of a child, and interviewing a child at school without parental permission is deemed necessary to protect the safety of a child, CPS should conduct the interview at school without parental permission. A question about the safety of the child would constitute reasonable cause to believe that there may have been child abuse or maltreatment.

## 4. Interviews with collateral contacts

It is a good practice to ask subjects for the names of individuals who could help CPS determine the validity of the allegations stated in the report and also provide information concerning the child's safety and risk. This will enable CPS to better assess both whether the child is in immediate danger and whether there is risk of future abuse or maltreatment. It also may be helpful to ask the source of the report for suggestions regarding collateral contacts.

Collateral contacts can be made through letters, telephone calls, and personal interviews. CPS should make contacts with relatives, neighbors, physicians, school personnel, social service agencies, law enforcement agencies, hospitals, and any others who might be able to clarify and supplement the information contained in the report from the SCR and provide a better understanding of the child's condition and/or the family's functioning. This information should be gathered throughout the investigation, as circumstances require.

When appropriate, CPS should involve subjects in the process of gathering information from collateral contacts. It can be especially helpful to ask the subject or other family members for the names of people who know the most about the family’s daily life. While subjects and children

have a right to confidentiality, CPS also has an obligation to conduct a thorough and complete investigation (See **Chapter 13,** *Confidentiality and legal sealing*.)

In general, CPS workers should attempt to obtain *signed* consent forms (i.e., release of information) from parents before securing information from collateral contacts who will be contacted because of their professional positions, such as medical providers. In addition, it is usually good practice to inform parents that their relatives, neighbors, and other non-professional sources may be contacted, and to seek the parents' understanding, if not agreement.

If the subject does not provide consent, CPS nevertheless has an obligation to attempt to secure information from collateral sources thought to have relevant information. Relevant information is any information that will inform decision-making regarding the determination of the report, child safety, and child risk.

Given requirements regarding the confidentiality of information in CPS reports [SSL §422(4) and 18 NYCRR 432.3(i)], CPS must not reveal information from the report to collateral sources. However, it is necessary to provide the collateral source with general information to obtain the source's cooperation (e.g., that CPS works in CPS and is looking for information regarding X person or family due to some concerns about child safety and well-being.)

The Social Services Law requires that "departments, boards, bureaus or other agencies of the state, or any of its political subdivisions" provide New York State Office of Children and Family Services and local departments of social services with such assistance and data as are necessary to enable them to fulfill their child protective services responsibilities SSL §425.

CPS should therefore expect the cooperation of most governmental collateral contacts throughout CPS process.

## 5. Follow-up contacts with household members

Throughout the duration of the investigation of a report of suspected child abuse or maltreatment, the CPS worker should conduct regular visits, particularly in the home, to:

- Assess any changes in the environment
- Assess the child's condition
- Assess the family's functioning
- Assess the viability of any safety plan that was developed and/or put in place
- Assess the risk of future abuse or maltreatment through the collection of sufficient information to adequately complete the Risk Assessment Profile, as well as identify new safety issues
- Better understand the family's perspective regarding its functioning and needs
- Learn the strengths of the family members as individuals and as a unit

The circumstances of the case will help CPS to determine the appropriate frequency of the visits and whether they will be announced or unannounced. Regardless, CPS should in every case attempt to schedule some home visits at a time when the children living in the home can be observed. This is especially crucial when there are preschool-age children who may not be seen regularly by professionals or others who might recognize if the child was being abused or maltreated. Regulations require that, before making a determination, the CPS make a minimum of one home visit with face-to-face contact with subjects and other persons named in the report [18 NYCRR 432.2(b)(3)(iii)(a)].

## 6. Uncooperative subjects[15]

Although the law requires CPS to evaluate the child's living environment of the child and to assess the current safety and the risk of future abuse and maltreatment to the child and other children in the home, the law does not require the parents to consent to a home visit or to permit access to their child. In some cases, CPS workers investigating reports of child abuse or maltreatment are unable to obtain the cooperation of the subjects and are denied access to the home and/or access to the child.

When this occurs, the worker must assess whether the denial of access creates a sufficient potential danger to the child to necessitate seeking a court order to obtain access to the child or the home or to compel the production of the child, or to take other emergency actions. A decision to seek a court order *must be made no later than 24 hours after being denied access*, and must be made in consultation with the CPS worker's supervisor and with legal staff.

### a. *Pre-petition court orders for access*

The law enables CPS to obtain a court order from Family Court for access to a child or the home in certain instances when the worker is denied access to a named child, denied entry to the child's home, denied access to other children believed to be living in the home but not named in CPS report, or if the child is not found on the premises [SSL §424(6-a and 6-b)]. The law provides for two types of orders, both of which can be issued only if there is no existing abuse or neglect (Article 10) petition before the court applicable to the family [FCA §1034(2)]. The court applies a different standard in determining whether to issue each of these types of orders:

- An order mandating access to a *child* (or children) named in a CPS report or living in the same home as a child named in the report
- If access is insufficient to be able to determine safety, or if a child cannot be located, CPS staff must provide evidence that there is a "*reasonable cause to suspect that a child or children's life or health may be in danger*."
- An order mandating access to the *home* of a child or children named in a CPS report
- If CPS staff has been denied access to the home of the child to evaluate the home environment, CPS must provide evidence that there is "*probable cause to believe that an abused or neglected child may be found on the premises.*"

In order to obtain a court order to obtain access to a child or to a child's home, a CPS worker must have immediately advised the parent or person legally responsible for the child's care or person with whom the child is residing that CPS may contact the family court seek an immediate court order to obtain access to the home and/or to the child or children without further notice. In addition, the CPS worker must have advised the person that if they continue to deny access to the child sufficient to allow the CPS worker to determine the child's safety and CPS seeks a court order, while the request is being made to the court, law enforcement may be contacted and, if contacted, will respond and remain where the child or children are or are believed to be.

[15] "Obtaining Court Orders When Denied Access in CPS Investigations" (07-OCFS-ADM-07)

Any court order issued should be tailored to the needs of the investigation and the conditions of the family. The order may:

- Require the parent or person legally responsible to produce the child or children at a specific site, which may be a child advocacy center, for an interview of the child or children and for observation of the condition of the child outside the presence of the parent or other legally responsible person;
- Require the parent or person legally responsible to produce a child or children to a specific person for interview and for observation of the condition of the child outside of the presence of the parent or other legally responsible person
- Authorize the person(s) conducting CPS investigation to enter the home in order to determine whether a child or children named in a CPS report are present
- Authorize the CPS to conduct a home visit and evaluate the home environment of the child or children.

### b. *Protocols when considering seeking a court order for access*

When a CPS worker conducting an investigation is denied access to a child or children or to the home of a child named in a report, immediate consideration should be given to whether the situation warrants seeking a court order to obtain the needed access. The CPS should take the following steps. [SSL 424.6-a and 424.6-b; 18 NYCRR 432.2(b)(3)(ii)(a)]:

1. *Immediately* advise the adult who has denied access that CPS may seek to immediately obtain a court order to gain access. This can be done without prior consultation, as it does not commit CPS to a course of action.
2. *Immediately* notify the adult who has denied access that law enforcement may be called to the site and, if called, will remain where the child or children are believed to be present while the request for a court order is made. This can be done without prior consultation, as it does not commit CPS to a course of action.
3. Determine whether a court order is needed. This should be based on a review of all evidence. Keep in mind that, in deciding whether to issue an order, the *court* must consider, at a minimum [FCA §1034(2)(d)]:
    - The nature and seriousness of the allegations made in CPS report
    - The age and vulnerability of the child or children
    - The potential harm to the child or children if a full investigation is not completed
    - The relationship of the source of the report to the family, including the source's ability to observe that which has been alleged
    - The child protective or criminal history, if any, of the family
4. Determine the level and likelihood of possible harm to children. CPS must evaluate whether potential safety concerns for children are serious enough to warrant seeking a court order. Should CPS bring an application for a court order before the Family Court, the court will apply different standards of proof for access to the child and access to the home.
5. Act quickly. The request for a court order must be made no more than 24 hours after their refusal.

6. Consult with a supervisor. OCFS regulations require that the decision to seek a court order must be made, at a minimum, in consultation with a CPS supervisor [18 NYCRR 432.2(b)(3)(ii)(a)].
7. Consult with a lawyer, if possible. OCFS regulations require that, when they have decided to seek a court order, CPS staff must consult, whenever possible, with a member of the legal staff who represents CPS [18 NYCRR 432.2(b)(3)(ii)(a)].

If the CPS makes the decision to seek a court order to obtain access to the child(ren) and/or home, it should proceed with the following actions:

1. Determine whether to call in law enforcement. This may depend on the assessment of the possibility of immediate danger to one or more children, the perceived likelihood that the child might be moved while CPS is seeking the court order, or any other factor that CPS considers pertinent. The law requires law enforcement to respond to any such request and to remain where the children are believed to be while CPS requests the court order [SSL §§424(6-a and 6-b)].
2. Determine the appropriate remedy to request of the court, remembering there is a requirement for the "least intrusive action" [FCA §1034(2)(e)].
3. Request the court order from a Family Court. CPS should use OCA Form 10-29a to make the request. If CPS needs to make an off-hour request and no judge is available, CPS should call 1-800-430-8457 to reach an OCA employee who will conference in the on-call judge. CPS should not call a local judge.
4. Keep progress notes of all actions taken.
5. Complete a follow-up report to Family Court. CPS must prepare a report within three business days of the court order issuance, detailing the findings of the investigation and any actions taken regarding the children named in the court order. OCA form 10-29b is used for this report. OCA child protective forms can be accessed at https://www.nycourts.gov/forms/familycourt/childprotective.shtml.

If a determination is made that no special actions are necessary, the supervisor, CPS worker and legal staff (when involved in the consultation) should discuss and document the reason behind the decision and the required "next steps" in the investigation. They should also discuss and clarify what case circumstances should prompt the CPS worker to raise the issue of outside intervention with his/her supervisor or legal staff again.

Regardless of the outcome of this assessment, CPS must still proceed with the investigation. Over the course of the investigation, if access to the child or the child's environment is ever again denied or confounded, there should be a reassessment of the need to seek a court order.

If the CPS does not request or obtain a court order, CPS workers should persist in their attempts to gain cooperation from the reported family. Repeat visits, telephone calls or explanatory letters from CPS may be instrumental in achieving future access and cooperation.

# G. Obtaining information about physical injuries and health

## 1. Observation of physical injuries

When a CPS worker observes injuries on a child's body, the worker should document their size, location on the body, shape, and configuration.

If the injuries are severe, or potentially serious, or if emergency medical attention is indicated, the child should be seen by a doctor and the results of that examination should be documented (See **Section G.2,** *Medical examinations and evaluations*.) By law, a child cannot consent to a medical examination of himself or herself unless the child is married or a parent [Public Health Law 2504]. Medical consent of the child, parent, or other authorized person is not required in emergency situations, but a non-emergency medical examination requires parental consent. An LDSS commissioner may give consent for medical, dental, health, or hospital services for any child who has been found by the Family Court to be an abused or neglected child, has been taken into or kept in protective custody, has been removed from his/her residence, or has been placed into the custody of the LDSS commissioner.

Photographs of visible physical injuries should be taken or arranged for whenever necessary and appropriate (See **Section G.3**, *Photographs*).

*In cases of suspected sexual abuse, a medical care professional (i.e. physician, nurse, physician's assistant, nurse practitioner) should be the only person to conduct an internal examination.*

Alleged injuries to the child must be both observed and photographed. The CPS worker should do this in a comforting, non-threatening way. Even if photographs are taken of the injuries, the progress notes must include a description of the injuries that were observed. CPS must clearly describe the location on the body, size, shape, color, and any other noteworthy characteristics of the injuries Photographs of an injury that were taken or obtained by CPS must be included in the permanent record of the report. (See **Section G.3**, *Photographs.*)

### a. *Observation of normally clothed areas of a child's body*

When a CPS receives allegations that a child has injuries on those parts of his or her body normally covered by clothing (usually the torso/trunk and upper thighs), then it must consider whether to have the child undress to allow for a visual confirmation of any injuries.

Depending on the allegations, this action may be necessary to enable CPS to fulfill its statutory mandate to determine if the child is in immediate danger and/or to reach a determination about the accuracy of the allegations of injury. CPS workers are encouraged to confer with a supervisor whenever conducting an investigation of a report in which there are allegations of injuries to areas of the child's body that are normally covered by clothing.

The policy considerations discussed below are not intended to affect the usual manner in which a CPS worker assesses a child's condition, the home environment, or the family's functioning. In most cases, the CPS worker observes the child's overall physical appearance, observing those areas of the body not normally clothed (e.g., face, arms, or neck) as part of assessing the current safety of the child and the risk of future abuse or maltreatment, and then documents the findings.

### b. *Is it necessary to observe normally clothed areas of the child's body?*

Consideration of the following factors may help caseworkers determine whether it is reasonable to observe normally clothed parts of a child's body. All of these factors should be considered and weighed together when deciding whether a physical inspection is necessary.

- Do the case circumstances or history indicate that observation of the clothed part(s) of the child's body is required to determine whether the child is in imminent danger of harm?
- Is it necessary to immediately see and document the injuries to decide whether the child needs immediate protection? Such a visual inspection may help the caseworker reach a conclusion about the child's immediate safety.
- Does the allegation that the child has bruises or injuries on a clothed part of the body seem to be credible? Whenever possible, the credibility of the allegations should be determined through discussions with the source or collateral contacts, or from statements by the child indicating that he or she is being abused. The credibility of the allegations may be enhanced if the explanation provided by the subject or parent concerning the allegations is inadequate, implausible, or controverted by a medical practitioner who has previously seen the child.
- Are there other signs of physical harm to a child, such as visible marks on uncovered areas of the child's body, or find other evidence of violence occurring in the home that may affect CPS's assessment of the credibility of the allegation?
- Does the child object to or indicate great discomfort regarding the visual inspection of his or her clothed areas? How much weight should be given to such a reaction in assessing whether to proceed with an inspection?
- Does the child seem embarrassed by the plan to disrobe? Might the child's upbringing or cultural background cause the child to become particularly disturbed by having to disrobe in front of a caseworker, medical professional, or other available objective party? Or, is the child simply embarrassed by having bruises or other injuries, and doesn't want them observed?
- Is the child perhaps trying to protect his/her parent or, by extension, protecting him/herself from future physical punishment)? Does the child flinch or cower in the presence of the alleged subject? Does the child offer other nonverbal indications that abuse or maltreatment is likely to have taken place?
- Although the allegation(s) relate to the child having bruises or injuries on an area of the body normally covered by clothing, does the worker have reasonable cause to believe that the child is in imminent danger without having the child physically inspected?

### c. *Parent/child consent for observation of a child's body*

Once it has been determined that a visual inspection of a normally clothed portion of a child's body is advisable under the case circumstances, the worker must next consider when, where, and how the inspection should occur. An initial step in this process is deciding whether to seek a parent's consent to the inspection of the child. This decision should be guided by the case circumstances.

In most instances (when there is no suspicion of imminent danger, the child does not seem to need immediate protection, and it is possible to communicate with the parent), the worker

should ask the parent's consent before proceeding with a visual observation of the child's body. Requesting consent to observe the child is more likely to limit the adversarial repercussions of this necessary, but intrusive, investigative function. In most such situations, it is better to try to work cooperatively with the parent(s) than to compel behaviors. Also, as a practical matter, parental consent is necessary unless CPS has taken protective custody of the child.

If the parent gives his/her consent, the parent should be given options for how the inspection will be done. Such options may include:

- The parent takes the child to a physician for a physical examination (See **Section G.2** of this chapter, *Medical examinations and evaluations*)
- The parent gives CPS permission to take a child to a physician for a physical examination (See **Section G.2**, *Medical examinations and evaluations*
- The parent unclothes the child and remains present while the worker observes the child
- A school nurse inspects the child

Generally, if there is no concern that the child is in immediate danger, CPS should strongly consider waiting until the child can be seen by a medical professional who can observe and assess any injuries.

There are also circumstances where good practice dictates that a parent's consent be sought, but where CPS is unable to obtain consent or to obtain it in a timely manner. It is OCFS's position that a parent's inability (e.g., he/she cannot be located) or unwillingness to provide consent should not necessarily prevent an inspection from occurring.

CPS should *not* seek a parent's consent for a visual inspection of the child's body if there is reason to believe that the child is in imminent danger of abuse or maltreatment, and especially should not seek consent if there is reason to believe that informing the parent of the existence of the report and seeking the parent's consent for an inspection may create or exacerbate imminent danger for the child. This situation is more likely to exist when a child is in a school, day care, or other out-of-home location.

In circumstances where it is not good practice to seek a parent's consent or where a parent's consent was sought but not obtained, it may still be possible for CPS to conduct a visual inspection. *A child who has the capacity to give voluntary and knowledgeable consent may consent to the visual inspection.* Any child who has the capacity to give consent should be asked to give his or her consent, regardless of whether the parent has given consent.

"Capacity to consent" refers in such a case to an individual's ability, determined without regard to the to the individual's age, to understand and appreciate the nature and consequences of a proposed visual observation of the body and to make an informed decision concerning the visual inspection. If a child with the capacity to give voluntary and knowledgeable consent refuses to give consent, the inspection should not occur unless the child is put in protective custody pursuant to the provisions of Article 10 of the Family Court Act.

A child who does not have the capacity to give voluntary and knowledgeable consent to a visual inspection may nevertheless have a portion of his/her body inspected without parental consent if it is believed that the child is in imminent danger or would be in imminent danger if parental consent was requested. An example of such a circumstance would be a seriously bruised toddler in a day care setting, where there is reason to believe that the parent caused the injury.

Where a child's body has been inspected without the consent of the parent, CPS must notify the parent about the inspection as soon as is reasonably possible.

### d. *Conducting an observation of normally clothed areas of a child' body*

To minimize any potential negative impact on the child, CPS should consider engaging in the following actions when observing normally clothed parts of a child's body:

- Before the observation, CPS should explain to the child what will be happening and why, and ask for the child's cooperation. The worker must recognize and respect that children's attitudes may vary greatly due to their age, maturity, personality and culture, and children have differing expectations of privacy. Generally, the older and more mature the child, the more deference CPS should afford to the child's expectation of privacy.
- The visual observation should be conducted in an environment that supports the child's privacy and dignity, such as a school nurse's office. By-passers should not be able to observe what is occurring and no intruders should be allowed into the room during the observation.
- Usually, the observation of the child's body is conducted by CPS. However, CPS should try to present the child with options regarding with whom he or she would be most comfortable performing the observation. The options presented could include CPS, school nurse, family physician, or another medical provider whom CPS has found reliable. The child's choice must be respected whenever practical and consistent with the responsibilities of CPS.
- Except for very young children (under the age of 5), CPS who conducts the observation should be the same gender as the child.
- The parent(s) should be given a reasonable opportunity to be present when a physical inspection is conducted, unless the parent poses a threat to the health or safety of the child.
- The number of persons located in the room during an observation should be kept at a minimum. When possible, a support person of the child's choosing should be present during an observation of normally clothed areas of the child's body.
- If the child is unable to undress himself or herself, CPS should ask the parent to undress the child.

## 2. Medical examinations and evaluations

A complete medical examination is sometimes an essential component of the investigative process for cases of suspected child abuse or maltreatment. A medical examination can:

- help to confirm whether there are non-accidental injuries or substantial physical neglect;
- provide the basis for planning treatment for injuries or for the neglected state of the child; and
- identify if there are medical problems of which CPS was unaware.

When CPS suspects that a child named in a report has been physically abused or neglected, CPS should evaluate whether a medical exam is needed. If there are allegations or observations by CPS that suggest a failure to thrive or lack of necessary medical care, it may be necessary to obtain a medical assessment to determine if either of those conditions

exist. if the worker finds the child has been injured to an extent that requires immediate medical treatment, then the worker should immediately make arrangements for the child to be treated. CPS should consider if a child has any of the following conditions when determining if immediate attention is necessary:

- Any type of fracture in a child
- Head Injuries
- Serious Infections
- Serious Burns
- Severe Bruises/Lacerations/Welts
- Bites
- Sexual Abuse
- Failure to Thrive
- Malnutrition
- Internal Injuries
- Unattended medical problems, for example, high fever, difficulty in breathing

If the worker believes that a child named in a report needs immediate medical care, the worker must discuss this assessment with the child's parent. CPS should emphasize that it is imperative for the parent to act immediately and should also offer his or her assistance in securing medical care. CPS should, when possible, use the child's physician or the clinic where the child normally is treated. If this is not possible, then to CPS should consider using physicians who are knowledgeable about and cooperative in seeing abused and neglected children, and who have experience in dealing with non-accidental trauma, and are willing to participate in all aspects of CPS process (e.g., testifying at fair hearings and in court). Also, CPS should consider using hospitals and medical facilities where the staff has experience and expertise in coping with trauma. Where there is a Child Advocacy Center (CAC) available to CPS, the CAC most likely has medical staff affiliated with it who are experienced working with abused and maltreated children who may be able to examine the child, and the CAC may also have facilities for conducting a medical examination. Similarly, if CPS participates in a multidisciplinary team (MDT), there may be medical professionals affiliated with the MDT who can fulfill this role.

When immediate medical attention is necessary and the child's parents decide to obtain that care on their own, CPS should accompany the parent(s) and the child to the doctor's office or medical facility. If the parents are unable to accompany the worker and child, CPS should suggest that the parents allow the worker to take the child to the doctor's office or medical facility. However, if the parents refuse to obtain the necessary care for the child themselves or to allow CPS take the child to the doctor's office or medical facility, then CPS should consider temporarily removing the child from the care and custody of the parents. If the parents are willing to consent to the child's temporary removal pursuant to FCA §1021, that should be the legal mechanism CPS uses to assume temporary custody. If the parents do not consent, and there is insufficient time to file an abuse or neglect petition or to seek an *ex parte* removal order pursuant to FCA §1022 because of the immediate danger to the child's life or health, it may be necessary to remove the child on an emergency basis without a court order, pursuant to FCA §1024. (For more information on removals and placements, see **Chapter 9,** *Family Court Proceedings***.**)

Please note: the local commissioner of social services may give effective consent for medical, dental, health and hospital services for any child who has been taken into or kept in protective custody or who has been placed in the custody of such commissioner but for whom a court determination of abuse or neglect has not yet been made. The local commissioner may also give effective consent for a child who has been found by the Family Court to be an abused or neglected child.

In some situations, where there is no necessity for immediate medical examination and treatment, it may still be prudent to consider the need for a medical examination for investigative purposes. There are situations where information from an examination is crucial for completing an investigation, where is necessary to make informed decisions about the risk to the child in the future and/or whether the child has been abused or neglected. In situations where the child has not been taken into protective custody, but CPS believes that an examination is necessary to conduct an appropriately thorough investigation, he or she should attempt to gain the cooperation of the parent in having the child examined. If the worker is unsuccessful in his or her attempts to gain the family's cooperation, then the worker must determine whether it is necessary to file a neglect or abuse petition. If the child wishes to be examined for investigative purposes and has the capacity to give informed consent, it may not be necessary to obtain a court order.

In a situation where the child has been removed on an emergency basis without a court order, if CPS wants the child to be examined for investigative purposes, it must first seek court approval by filing a neglect or abuse petition. However, if the child is in the commissioner's custody, it is not necessary to obtain a court order for any necessary medical, dental, health, or hospital care.) In all cases where an Article 10 petition is filed alleging abuse, the law requires the Family Court to order a medical examination, including photographs and x-rays or other radiological examination, where medically indicated; in cases where an Article 10 petition alleges neglect, the Family Court *may* order an examination of the child.

CPS should feel free to confer with the physician during an examination. They should raise questions and provide any information known regarding the possible basis for an injury. Further, workers should request the physician to provide, in writing, his or her best possible medical judgment of each of the following:

- the precise nature of any injuries noted;
- the probable age of the injury;
- the most likely cause(s) of the injuries; and
- any needed appropriate future care of the injury. This information can help guide the formation of plans for services and any other related needs of the child or family. Additionally, it will assist CPS in providing clear guidance for the caretakers.

CPS should also take the steps necessary to secure a psychiatric or psychological evaluation when it appears a child's mental or emotional condition or mental health has been impaired, i.e., when the child appears to have substantially diminished psychological or intellectual functioning in relation to, but not limited to, the following:

- control of aggressive or self-destructive behaviors;
- ability to think, remember, and communicate;
- ability to interpret reality; and/or
- control of obsessional or compulsive thoughts or behaviors.

The evaluation should be aimed at ascertaining, to a reasonable medical or psychological certainty, the severity of the child's condition, the risk of future harm and the cause of the condition. Such an evaluation may serve three important purposes. First, it is a means of obtaining emergency mental health services when the child's condition necessitates such services. Second, the evaluation may provide relevant and important information necessary to establish harm or imminent danger of harm to the child's mental or emotional condition or mental health which is attributable to the parent's conduct. The determination of the investigation must be based on both whether there was harm or imminent risk of harm to the child and on whether the subject of the report was responsible for that harm. Third, the evaluation may be valuable in determining the level of risk for possible abuse or maltreatment of the child in the future.

At the conclusion of a medical or psychological examination, CPS, examining physician, and parent(s), if present, should make plans for follow-up treatment for the child's medical or psychological problems. It is important that CPS's focus on the identification of abuse or maltreatment or on the need for the immediate treatment of an injury does not result in the worker overlooking the need for necessary follow-up treatment.

There are times when, as part of CPS's assessment of the children, CPS learns of a possible health concern pertaining to a child that is unrelated to allegations of abuse or maltreatment. CPS should attempt to discuss the concern with the parents, and should make any referrals and facilitate any evaluations or health services that are appropriate.

## 3. Photographs

Photographs can be an important source of evidence in a child abuse or neglect investigation.[16] They provide information for CPS staff to consider, weigh and evaluate when determining whether to indicate or unfound a report. Further, photographs graphically preserve visible evidence and accurately document the child's condition. This is important not only for documenting the reasons for CPS' decisions and actions, but can also be essential when presenting a case at a fair hearing or in Family Court.

Photographs of children who may be victims of abuse or maltreatment should be taken or arranged for whenever there are visible physical injuries or trauma. CPS staff should always have ready access to a camera.

Under certain circumstances, mandated reporters are required to take photographs. When a case is reported by a mandated reporter who is employed by an agency or institution that has the capacity to take high quality photographs of injuries or trauma, CPS may choose to use the agency's or institution's photographs when CPS knows that it can have access to such photographs as needed. (See **Chapter 2, Section A.5,** *Photographs and x-rays.*)

[16] See the OCFS/OTDA Local Commissioners Memorandum 17-OCFS-LCM-14, *Establishing a Policy for the Use and Management of Mobile Devices by Local Departments of Social Services,* for information on maintaining privacy of photographs and other CPS information on mobile devices. Also, see the following policies form the New York State Office of Information Technology Services: NYS S14 009, NYS S14 011.

Certain guidelines should be followed to enhance the evidentiary value of investigative photographs:

- All photographs should be in color.
- Hard copy of photos should be obtained, especially when the photo is taken with a phone, tablet, or a digital camera. When another type of camera is used, the negatives should be saved with the case file. If CPS has the capacity to transfer images from the device used to take the photos to a thumb drive, memory card, or a computer disk (CD), that thumb drive, memory card, or CD should be kept in the case file as the digital "original" of the hard copy of the photos.
- The photographs should accurately represent the scene or object and be free of distortion. Different views of the same scene should be taken.
- A full-face photograph should be taken for identification purposes, even if trauma or injury does not appear in that area.
- A photograph showing the relationship between the traumatized or injured area and the general area of the child's body should be taken and then a close-up should be taken, which shows the traumatized or injured area in more detail.
- The photograph should be labeled with the date and time of the photo. Many cameras can automatically date/time stamp a photo. If the camera has this function, it should be used. Additionally, when a hard copy of the photo is obtained, CPS should label the back of the photo with a clear statement of the subject of the photo (e.g., Mr. Smith's living room at 123 Main St., Bob Smith's right arm, etc.).
- The photographer should be able to testify about the date and time each photograph was taken and the camera location and direction. However, it should be noted that it is not necessary for the photographer to appear in court for the photograph to be entered into evidence. If the camera does not have a date/time stamp, the photographer can make a sign identifying the child and the date and time, and then include this sign in the actual photograph. The photograph should be initialed by the person who took the photograph and any witnesses to the taking of the photograph.
- A neutral colored background and proper lighting is advisable.
- The photograph should not be "artistic" or strive to appeal to emotions. It is evidence and should display the scene or subject as objectively as possible.
- To the greatest extent possible, the photographer should photograph a child or a child's injuries in a comforting non-threatening manner. Keep in mind a child's potential to be fearful or embarrassed or have other negative emotional responses to the situation and the photograph.

Where photographs have been taken by a mandated reporter, CPS staff should try to obtain those photographs in conjunction with the mandated reporter's written report (Form LDSS-2221A) or as soon thereafter as possible. CPS is authorized to reimburse mandated reporters for expenses incurred in taking the photographs. (See **Chapter 2, Section A.5,** *Photographs and x-rays.*)

All photographs taken by CPS staff or by other photographers and provided to CPS are part of the case record and must be kept secure and confidential with the local case record. (See Case Record, X.A.1

The recently added **Uploads** function in CONNECTIONS enables users to upload digital photographs, documents or other relevant information to a central, secure database, and

link them to an appropriate stage, person, progress note, allegation or health record, thereby promoting an increased ability to exchange and store case-related information.

The Uploads function allows for the flexibility of each local district to determine how it can best support their own needs and enhance their casework practices, with the intent that uploaded files will be used to support the documentation already built into CONNECTIONS.

All files should be uploaded in a timely manner per NYS Regulation18 CRR-NY 428.5, which states: "Progress notes must be made as contemporaneously as possible with the occurrence of the event or the receipt of the information which is to be recorded."

Once a file has been uploaded to CONNECTIONS, it should be removed from the local device on which it was stored (agency-issued camera, cellphone, computer, etc.) as soon as possible. **Individuals must not use personal devices to take photographs**; there are specific requirements for the use of mobile devices as outlined in 17-OCFS-LCM-14.

**It is never acceptable to upload images of handwritten notes as a substitution for progress notes in CONNECTIONS.** Handwritten letters or documents from a child, client or other individuals related to the case are acceptable but should always be associated with a progress note that provides context to the photo or document.

Please consult your local district or agency protocol for additional guidance, rules and requirements pertaining to how your specific county or agency utilizes the Uploads function, as it may be different for individual organizations. For further guidance regarding the Uploads function in CONNECTIONS, please consult 19-OCFS-ADM-13.

# H. Evaluation of need for protective removal

Social Services Law mandates that all child protective investigations include a determination of the safety and risk to the child(ren) if they remain in the existing home environment. CPS may take protective custody of a child if CPS "has reasonable cause to believe that the circumstances or condition of the child are such that continuing in his place of residence or in the care and custody of the parent, guardian, custodian or other person responsible for the child's care presents an imminent danger to the child's life or health" [SSL §417(1)(a); FCA §1024(a)(i)].

Thus, where it is necessary, CPS has the authority under the Family Court Act (FCA) to remove the child. (See **Chapter 9**, *Family Court Proceedings*.)

However, when a child has been assessed to be in imminent danger (i.e. unsafe), CPS should also consider a broad range of safety oriented responses other than removal. These safety oriented responses may protect a child without requiring CPS to take protective custody. Of course, when in-home safety interventions are deemed to be insufficient, and all appropriate reasonable efforts have been made or considered and determined to be inadequate to protect the child's safety, out-of-home placement may be the necessary safety response.

Whether there is imminent danger to a child, it remains imperative that the LDSS have ongoing discussions—ideally from the first contact with the family—about friends and close family as potential resources for the child(ren) alleged to have been abused or maltreated. Though the care of the child(ren) might meet the minimum standard of care at that point in time, circumstances can often change very rapidly. Having knowledge of viable resources can prevent removal or the placement of child(ren) into foster care, promoting a partnership between the LDSS and the parent/caretaker and resulting in overall better outcomes for the child(ren) and family.

The safety factors (including the safety factor guidelines) and safety decision components of the safety assessment provide guidance concerning situations that present an imminent danger to child's life or health (See **Section D,** *Preliminary and ongoing safety assessments.*)

In certain cases, where removal of the child from the home is judged to be appropriate, filing an abuse or neglect petition in Family Court may be justified. In this circumstance, CPS should consider initiating Family Court proceedings under FCA §1031 et. seq. as a means of protecting children. (See **Chapter 9,** *Family Court Proceedings***.**)

# I. CPS investigation progress notes

(18 NYCRR §428.5) Case progress notes *must begin* upon receipt of a report of suspected child abuse or maltreatment and *must continue* until the case is closed to all services.

Progress notes are part of the official case record, and may subject to examination by the subject or other persons named in the report Progress notes may be entered into evidence in Family Court or Criminal Court, and CPS may be called upon to produce their progress notes in court or elsewhere as evidence and to support actions taken or not taken.

Progress notes provide a contemporaneous record of CPS's investigative, assessment, and intervention activities, and should be objective and behaviorally descriptive. The notes should support CPS's conclusions about safety, risk, family functioning, and should clearly document the evidence that exists to substantiate allegations of child abuse or maltreatment or the lack of such evidence to support unfounding the allegations in a report.

Progress notes serve the purpose of recording CPS(s)'s continuing work with a family, from the time of intake to closing the case. They provide CPS the opportunity to describe how the family functions, whether there are safety and/or risk factors present in the family, and what efforts CPS is making with the family to promote safety and reduce risk.

The notes must:

- state the actions taken in the investigation, including emergency and/or controlling interventions taken,
- describe all communications and interactions with the subject, children, other persons named in the report, source, and collateral contacts,
- describe any other activities undertaken to collect information needed to formulate an assessment or make a determination regarding the report of abuse or maltreatment, and
- document caseworker/supervisor conferences, including the matters discussed and any required follow-up activities.

Progress notes are to be recorded contemporaneously, as timely as possible after the events described, "Contemporaneously" is generally taken to be immediately, but no more than 30 days, after the event.

Progress notes are most useful when they contain the following qualities:

- The notes are specific about details such as date, time, location, and persons present at a given interaction with the family. Failing to be specific can lead to misunderstanding what the note is referring to, and CPS may not recall the information in the future.
  - Example:
    - Instead of: Mrs. Smith missed her appointment last week.
    - Use: CPS worker spoke to Mrs. Smith's mental health therapist, learning that Mrs. Smith missed her appointment that day at 2:00PM. CPS worker contacted Mrs. Smith and she said that she believed the appointment was on the 20th. Mrs. Smith said she would call the clinic and reschedule. CPS worker called the clinic at 4:30 PM and verified that Mrs. Smith had called to reschedule her appointment.

- The notes are descriptive, based on observation and not CPS's interpretation or impression.
  - Example:
    - Instead of: The house was really filthy.
    - Use: Upon entering the home, CPS noted a strong odor of urine and feces waste and observed cat feces on the floor. There were plates with food left out on the table that appeared several days old as they were encrusted with what appeared to be dried pasta and pasta sauce. There were ashtrays overflowing with cigarette butts and open beer cans on the coffee table.
- The notes contain behavioral language. That means that CPS must describe, as concretely as possible, what s/he observes rather than any opinion or inference about the behavior.
  - Example:
    - Instead of: Mr. Jones was very angry when Billy dropped his soda.
    - Use: When Billy dropped his soda, Mr. Jones stood up from his chair, pointed to the soda, and with a raised voice told Billy "I knew you'd drop that damn thing, give it to me!" His face was red and he took the soda from Billy's hand with a jerking motion. Billy began to cry.
- The notes include actual quotes, where appropriate, rather than CPS's interpretation of what was said.
  - Example:
    - Instead of: Thomas doesn't want to talk about what is happening in his family.
    - Use: When CPS worker asked Thomas what he thought about what was happening with his family, he stated "My parents can tell you what's going on. I'm not supposed to talk to anyone about my family except them."

As the examples illustrate, without sufficient detail, description, concrete behavioral language and quotes, each progress note could have been misunderstood, and incorrect conclusions could be drawn about the events described.

Taking contemporaneous notes while speaking with the family or other contacts is a difficult balancing act. Best practice, when available, is to have a second party from CPS take notes so that the CPS worker can devote full attention to the person being interviewed. Where this is not possible, each CPS worker should use whatever method works best for that individual to allow the worker to provide the attention needed to the person(s) to whom he or she is speaking and the environment being observed, while also taking sufficient notes that will enable the worker to fully document the interaction. Immediately after completing an interview or observation, the CPS worker should review and add to notes, as needed, while information is still fresh in the worker's mind.

Progress notes are used by CPS to document the efforts of both CPS and the family to promote safety and reduce risk. Good documentation can aid CPS and supervisor in case planning, providing the basis for making casework decisions.

CPS workers are permitted to have support staff enter data into CONNX from their contemporaneous notes, but should carefully review all data entered by support staff to check that the information was entered accurately and that there are no errors.

The LDSS should have local policies and protocols to assist CPS in understanding local record retention rules regarding handwritten notes and other such documentation.

**Reporter / Source information in progress notes**

CPS staff should record any identifying information related to contacts with the reporter or source of a CPS report in *investigation stage progress notes only*, selecting Reporter/Source in the Other Participant field. Child welfare staff, including CPS, must not include any identifying information regarding the reporter/source of CPS reports, including references to the institution, organization, etc. with which the person(s) is affiliated, in any narrative field in Safety Assessments, RAPs, Investigative Findings or Investigative Actions. (CONNX Case Management Step-By-Step Guide, Appendix C1, Progress Notes Guidelines) This requirement also applies to reports assigned to family assessment response.

If the source's information is relevant to case, CPS may note the information in a progress note, attributing it to a collateral contact, not identifying the contact as the source.

# J. Special considerations for cases with infants

## 1. Safe Sleep[17]

The risks of unsafe sleep conditions, especially for infants, are well documented both in New York State and across the nation. A significant number of the fatalities reviewed by OCFS each year involve unsafe sleep conditions. Child welfare workers, including CPS personnel, must observe the sleeping provisions for all children, including for infants. CPS are required to provide information about safe sleeping practices for infants, including on the dangers of bed-sharing, to all parents and soon-to-be parents of infants whom they encounter. They must also engage in controlling interventions, as necessary, when they find that an infant is not being put to sleep in a safe manner, including sometimes by assisting them to attain a crib (See the OCFS policy, 13-OCFS-ADM-02, *Safe Sleeping of Children in Child Welfare Cases*).

There are many conditions or practices related to sleeping that are dangerous, primarily for infants,[18] and have been associated with fatalities of infants — from SIDS, suffocation or sudden unexplained infant death (SUID) — while the infants are sleeping. Such conditions and practices include, but are not limited to, the following:

- Placing the infant to sleep on any surface where the infant's face could be wedged between two adjacent surfaces, such as on a couch, chair, or on a bed with a headboard or in a crib in which there are spaces between the mattress and frame.
- Placing the infant to sleep either on a soft surface, or with soft bedding such as pillows, blankets, crib bumpers, or with soft objects such as stuffed animals, or using an infant positioner. This includes placing an infant on a bed or crib with a soft mattress, and especially on a couch, armchair, cushion, waterbed, etc.
- Placing an infant to sleep in any position other than on the back.
- Allowing the infant to get too hot because of high room temperature (the temperature should be comfortable for a lightly clothed adult) or overdressing.
- Smoking in a room where an infant sleeps. Maternal smoking during or after pregnancy also increases the likelihood of a sleep-related fatality.
- Bed-sharing with an infant. Bed-sharing can also increase the likelihood of an infant death while sleeping, especially when accompanied by other risk factors. Bed-sharing refers to an infant and one or more adults or children sleeping together on any surface, not necessarily a bed; bed-sharing also refers to where the infant and another person share a surface such as a couch, chair or futon.
- A person sleeping with the infant is under the influence of alcohol or certain drugs (including legal, illegal, prescription, and over-the-counter drugs), or is overly exhausted.

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[17] Please see the following OCFS policies: 13-OCFS-ADM-02, *Safe Sleeping of Children in Child Welfare Cases*; 13-OCFS-LCM-01, *Investigation and Determination of Sleep-Related Fatality and Injury CPS Reports*; 10-OCFS-LCM-15, *Guidance for CPS Investigations of Infant Fatalities and Injuries Involving Unsafe Sleeping Conditions*.

[18] For the purposes of this document, the age range of "infants" is 0-12 months, which is the time frame in which children are most susceptible to Sudden Infant Death Syndrome (SIDS) and death by asphyxiation while sleeping.

These increase the likelihood that the person will not wake up during a dangerous situation (for example, rolling over on the infant).

There is evidence that most sleep-related deaths of infants are associated with the presence of more than one risk factor.

Some of the most common factors are: not placing an infant to sleep on his/her back (this is a factor in the largest percentage of infant deaths), smoking in the environment, the child has a respiratory infection, bed sharing, and soft bedding. The average age at which an infant is most likely to die while sleeping is approximately 2 to 4 months old.

Child welfare workers can play a role in helping parents to keep their babies safe by providing parents and caregivers with information on safe sleep environments. This enables the parents to make more informed choices concerning their children's sleep environments.

### a. *CPS responsibility for infant sleeping conditions assessment*

When a CPS investigates a report involving a family or home where there are children, the worker must always evaluate the environment of the home, including where the child or children sleep, and assess whether the environment, including the sleeping conditions, are adequate and safe. These evaluations and assessments must be noted in progress notes. In the instance in which there is an infant in the home, CPS must assess whether there is a safe sleeping space for the infant.

When conducting any CPS investigation in which there is an infant in the household, irrespective of the allegations or the role of the infant, CPS staff must provide the parent or caregiver with information about safe sleep, including the risks of bed-sharing. Whenever a caseworker encounters a household member who is identified as pregnant, the caseworker should also provide that person with the same information on safe sleep environments and the risks of bed-sharing. CPS can find appropriate information to provide on the OCFS website, but information is available from many other sources, including the New York City government, federal government, state Department of Health, and others.

If the parent or caregiver of an infant does not have a crib, cradle, bassinet, bedside co-sleeper (infant bed that attaches to an adult bed), or play yard (such as a Pack and Play) for the infant, CPS must undertake controlling interventions to provide for the safety of that infant. If the parent or caregiver does not have the financial means to obtain safe sleeping furniture and is not able to secure it privately, CPS must assist the parent or caregiver. The assistance may include referral of the parent or caregiver to a community agency or private source that will provide the parent or caretaker with sleeping furniture at no cost to the LDSS. If community resources are not available, the LDSS must purchase the sleeping furniture. CPS must document the assistance provided and, in any future encounters while the child is an infant, must check and document whether the furniture is being used.

### b. *Evaluating sleeping conditions for infants*

An evaluation of an infant's sleeping environment should include an evaluation of a variety of factors, only one of which is bed-sharing. Other factors are: whether there is safe sleep furniture available; whether the infant is placed to sleep on his or her back (not if the infant turns over from his or her back); whether the infant is placed to sleep on soft bedding, such as a couch, or with soft items, such as a comforter, pillow, or stuffed animals; the temperature in the room, etc.

While bed-sharing practices can be a safety factor and present a risk, bed-sharing is not, by itself, evidence of abuse or neglect. OCFS states in its policy, 13-OCFS-LCM-01, Investigation and Determination of Sleep-Related Fatality and Injury CPS Reports, "Bed Sharing by a parent or other person legally responsible with an infant, without an aggravating factor or proof of intentionally harming the infant, is not abuse or maltreatment, irrespective of whether the infant is harmed or not." (Guidance provided in this policy, which has the same title as the policy, ***Investigation and determination of sleep-related fatality and injury CPS reports***, is also in this manual, in **Chapter 14, Section L.**) While this policy specifically addresses the investigation of a case in which harm has already occurred, there is no reason that the standards established would be lower in instances in which there has not been any harm.

CPS should always approach the subject of sleep practices with sensitivity to people's cultural practices, personal preferences, and sometimes strongly held beliefs. The aim whenever there are possible sleep practices that may be harmful in the future is to help parents change their practices by providing information that increases their understanding of possible dangers.

## 2. Positive toxicology of newborns

The abuse of drugs or alcohol by parents of children, including newborn infants who present with a positive toxicology after birth, is one of the more difficult situations confronting CPS. The benefits of maintaining the parent-child bond must be weighed against the parent's ability to provide adequate care for the infant.

### a. *Addressing reports involving positive toxicology of infants*

The definition of "neglected child" in FCA §1012(f)(i)(B) includes failing to provide a minimum degree of care… by misusing a drug or drugs, or misusing alcoholic beverages to the extent that the person loses self-control of his or her actions "…provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired." [19]

The Statewide Central Register of Child Abuse and Maltreatment (SCR) should not register a report based on an infant's positive toxicology if the infant's mother is compliant with a drug treatment program and is demonstrating an ability to care for the infant. Also, in screening reports of the positive toxicology of an infant, the SCR does not differentiate whether a substance is legal or illegal.

If a report is registered, a parent or person legally responsible should not be indicated simply for participating in a substance abuse treatment program. To indicate the parent of a child - including a newborn with a positive toxicology — because of the parent's drug use or abuse, CPS must find that the child's physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired. Evidence that a newborn infant tested positive for a drug or alcohol in its bloodstream or urine; or is born dependent on drugs, or with drug withdrawal symptoms, fetal alcohol effect or fetal alcohol syndrome; or has been diagnosed

[19] FCA 1012 (f)(i)(B)

as having a condition that may be attributable to *in utero* exposure to drugs or alcohol is not sufficient, in and of itself, to support a determination that the child is abused or maltreated. In addition, such evidence alone is not sufficient for an LDSS to take protective custody of such a child.

After receiving a report in which parental drug or alcohol misuse is alleged, CPS must determine whether there was such misuse and, if so, whether the child's physical, mental or emotional condition was impaired or is imminent risk. To determine whether the parent's drug or alcohol use creates a condition that places the child's physical, mental or emotional condition in imminent danger of becoming impaired, CPS must assess the ability of the parent to care for the child, examining the parent's plans for the care of the child and his/her ability to follow through with those plans. In the case of a newborn infant born to a drug or alcohol abusing parent, any special needs of that infant should be considered in CPS's assessment of parental capability.

***Initiating a cps report***

- Health care providers are mandated reporters. If involved in the delivery or care of an infant who is affected by substance use disorder, exhibits withdrawal symptoms resulting from prenatal substance exposure, or is diagnosed with Fetal Alcohol Spectrum Disorder, the health care provider must report to the SCR if there is reasonable cause to suspect that the infant has been abused or maltreated. Most reports citing positive toxicology of an infant are made in this manner.
- A CPS addresses the report with an investigation or, where permitted, CPS may address it with a family assessment response.

***Supportive and rehabilitative services***

CPS must offer and/or make referrals for appropriate services in cases in which an infant has a positive toxicology screening.[20] Such services can be especially important in preventing the separation of mother and child. Referrals and services may include, but are not limited to, substance use disorder treatment services (both outpatient and inpatient), home visiting, and early intervention screening and services.

Depending on the determination of the report, the services offered could be either mandated or optional preventive services, offered directly by the LDSS and/or through a purchase of service agreement designed to prevent out-of-home placements.

## b. *Creating a plan of safe care*

The federal Comprehensive Addiction and Recovery Act of 2016 (CARA), which amended the Child Abuse Prevention and Treatment Act (CAPTA), tackles some of the complex issues surrounding the nation's prescription drug and opioid epidemic. CARA places a strong emphasis on a multi-agency approach to the problem of substance abuse. CARA changed some of the requirements for developing a **plan of safe care** for infants exposed to substances. These changes reflect a growing body of evidence that supports a collaborative approach between various agencies and providers when responding to the challenges and complexities of dealing with substance use disorders.

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[20] Core preventative services must be made available to a child/youth and his/her family when there is a danger that the child may be separated from his/her family and services may prevent such removal or separation, pursuant to OCFS regulations 18 NYCRR Part 423, 18 NYCRR 430.9 and SSL § 409-a.

The OCFS policy, 17-OCFS-LCM-03, *Amendments to the Federal Child Abuse Prevention and Treatment Act by the Federal Comprehensive Addiction and Recovery Act of 2016 and Corresponding State Requirements,* provides guidance to CPS on complying with the new requirements set forth in CARA for handling cases in which an infant has a positive toxicology or shows signs of withdrawal symptoms, or Fetal Alcohol Spectrum Disorder (FASD).

***Requirement to create a plan of safe care***

Under CARA, **whenever an infant is identified as being exposed to substances, the state must provide for the development of a plan of safe care** that addresses the health and substance use disorder treatment needs of both the infant and the affected family or caregiver. The plan of safe care must address not only the immediate safety needs of the affected infant, but also the health and substance use disorder needs of the affected family or caregiver. A plan of safe care should include referrals to appropriate services that support the affected infant and family or caregivers.

The plan of safe care should be developed with input from parents and caregivers, as well as from professionals and agencies involved in serving the affected infant and family. It may be written by a physician, other medical provider, CPS, social worker, or another entity.

***CPS documentation requirements for the plan of safe care***

Whenever a report of suspected abuse or maltreatment involves an infant exposed to substances, CPS must document the plan of safe care in its case records. In some instances, a plan of safe care may have been developed by medical professionals and/or substance abuse treatment providers prior to the involvement of CPS. The case file should clearly document the plan of safe care, whether developed by CPS or other professionals involved.[21]

***A plan of safe care is not the same thing as a Safety Plan***

A plan of safe care, as described above, is a document and plan that specifically addresses children affected by substance use and the parent/caregiver. A Safety Plan is a plan developed by an LDSS in partnership with the parent/caregiver that includes controlling interventions to address safety factors that would place a child in imminent danger of serious harm. A plan of safe care might be included as part of a Safety Plan, but is never a substitute for one. (See **Chapter 6, D.2**, *The safety assessment process*)

In 2018, OCFS issued OCFS-2196: Plan of Safe Care *(see* **Chapter 14***, Appendix),* which is the required form to be used when developing a plan of safe care with a family. Completion of the OCFS-2196 should be documented in Progress Notes, including a description of how the family was involved in the creation of the plan and how the plan will be monitored and adjusted as necessary. A paper copy of the plan must be maintained in the case file.

## 3. Early intervention referrals

The Early Intervention Program, which is a voluntary program that identifies infants and toddlers with disabling conditions, is a potentially valuable resource for families with young children. This is a free program in which professional staff evaluates the needs of young children for a range of early intervention services and develops individualized family service plans to address such needs.

[21] 18 NYCRR 428.3

Pursuant to federal requirements.[22] and OCFS policy,.[23] districts must inform all parents of a child under the age of three who are the subjects in an indicated report of child abuse or maltreatment about the Early Intervention Program and refer them to their county's Early Intervention Program.

Although there is no requirement to do so, CPS may, of course, provide a referral to any parent whom they encounter in their work, including those involved in cases that are unfounded, and should certainly do so in any case in which they encounter a child under the age of three whom they suspect may have a disability or developmental delay. Early intervention can sometimes have a significant impact on the effectiveness of treating certain conditions, such as autism.

[22] See Part C of the Individuals with Disabilities Act (20 U.S.C. 1431 et seq.) and Section 106(b)(2)(B)(xii) of the Child Abuse Prevention and Treatment Act (CAPTA).

[23] See 04-OCFS-LCM-04, *Referrals of Young Children In Indicated CPS Cases to Early Intervention Services.*

# K. Child fatalities

Whenever a child protective service worker (CPS worker) receives a report from the SCR in which there is a child fatality, CPS must implement additional processes and responses that go beyond those normally required in response to a child abuse or maltreatment report CPS must complete a 24-Hour Fatality Report and a 30-Day Fatality Report in CONNX. Also, unless there are no surviving siblings or other children in the household, CPS must complete a 24-hour safety assessment and a 30-day safety assessment, in addition to the required seven-day and investigation conclusion safety assessments.

## 1. 24-Hour Fatality Report and 24-Hour Safety Assessment

CPS must complete a 24-Hour Fatality Report within 24 hours of receipt of a report alleging the death of a child resulting from abuse or maltreatment. The template for this report is available in CONNX for all reports containing an allegation of a child fatality.

CPS must also complete a safety assessment within 24-hours of receipt of the fatality report. The 24-hour assessment does not replace, but is in addition to, the seven-day safety assessment.

The 24-Hour Fatality Report is used to record the initial investigative and assessment activities related to the death of a child. The 24-Hour safety assessment is used to record the assessment of safety of any surviving siblings or other children in the existing home environment.

***Elements of the 24-Hour Fatality Report***

When completing the 24-Hour Fatality Report, CPS must document all case information obtained in the initial 24 hours of the fatality investigation. Such information includes, but is not limited to, the following:

- ***Causes and Circumstances Surrounding the Death***

  Include a description of what is known about the cause of the child's death, the circumstances leading up to the death, and the basis of the suspicion that the child died as a result of abuse or maltreatment. Include any variations from the original explanation for the child's death, including how child injuries were incurred. It is important to include any known contact information for the medical examiner or coroner and the date the medical examiner or coroner was notified of the death of the child. Also, include any known information about the autopsy status and/or results. Record the child's legal status at the time of death.

- ***Living Arrangements and Status of Surviving Siblings***

  Include a description of the condition and location of any surviving child(ren). Include actions taken or pending to secure the safety of all surviving children. If the child(ren) have been placed outside the home, include the caretaker(s)' complete name(s) and address(es).

- ***Law Enforcement Involvement***

  Include all information regarding actions taken or planned by the police and/or the district attorney's office. Include the name of the police precinct, department or agency and the name, address and contact number of the investigating officer(s) Document the date the district attorney's office was notified of the child fatality and the contact information for the district attorney.

- ***Other Comments***

  Include the date and circumstances of the LDSS's last personal contact with the family, the nature of any casework interaction with the family prior to the fatality, if applicable, and any other pertinent case information relative to the investigation.

- ***Will Case Be Submitted to a Child Fatality Review Team?***

  Indicate the correct response in CONNX: Yes, No, Unknown, or No Team.

For technical instructions about entering the information in CONNX, refer to the CONNX Step-By-Step Guide, Training for CPS.

After all the necessary information is recorded in the 24-hour Fatality Report, the appropriate Regional Office is responsible for reviewing and monitoring the handling of the case. (See **Chapter 11,** *Child Fatality Reviews*.)

The 24-hour safety assessment is a requirement in CONNX unless there are *no* surviving siblings or children in the household. If there are no surviving siblings or other children in the home, CPS must check a box in the INV Conclusion screen in CONNX labelled "no surviving children" to disable the 24-hour and other safety assessments and allow the investigation to be closed without completing them.

## 2. 30-day fatality report and 30-day safety assessment

The 30-day Fatality Report is used by CPS to record pertinent information about a child fatality that is learned during the first half of the investigative period.

CPS must also complete a safety assessment at 30 days for reports of a child fatality, unless there are *no* surviving siblings or children in the household. This is in addition to the 24-hour assessment, the initial seven-day assessment and the conclusion safety assessment that must be completed within seven days prior to closing the case. If there are no surviving siblings or other children in the household, CPS must check a box labelled "no surviving children" in the INV Conclusion screen in CONNX to disable the 30-day and other safety assessments and allow the worker to close the investigation in CONNX without completing the safety assessments.

The 30-day Fatality Report must be documented in a template in CONNX within 30 days of the receipt of a report alleging the death of a child because of abuse or maltreatment. For complete instructions on how to enter the 30-day Fatality Report information, refer to the CONNX Step-By-Step Guide, Training for CPS, available to CPS on the OCFS *intranet* website.

To complete the 30-day Fatality Report, CPS must document all pertinent information about the case learned during the initial 30 days of its investigation. The 30-Day Fatality Report pre-fills with all information contained in the 24-hour Fatality Report. Pre-filled information should be updated as appropriate, and the 30-day Fatality Report should include information that was not known and is more current than the information entered at the time of the 24-hour Fatality Report.

Updated or new information documented in the 30-day Fatality Report must include, but is not limited to, the following:

- ***Causes and Circumstances Surrounding the Death***

  Include any new information regarding the child's cause of death and/or the circumstances leading up to the death. Document autopsy results contained in the coroner's or medical examiner's preliminary or final autopsy report and indicate which report was the source of the information.

- ***Living Arrangements and Status of Surviving Siblings***

  Include new or updated information concerning the condition and/or location of any surviving child(ren). Include actions taken or pending to secure the safety of any surviving children, including any related Family Court actions.

- ***Law Enforcement Involvement***

  Include new or updated information regarding actions taken or planned by the police and/or the district attorney's office. Include the status of any criminal charges that have been filed or are pending in the case. Indicate whether a multidisciplinary team is involved in the investigation and, if so, describe its activities and the roles of the participating individuals and agencies.

- ***Summary of Past Service History***

  Include any past local district child protective, child welfare, and/or family service involvement with the family.

- ***Actions Planned***

  Include a summary of child protective service activity to date and what plans, if any, there are for future activity with the family. Describe any non-CPS actions taken or planned by the local district and/or other service providers to secure the safety of any surviving child(ren) and to meet the overall service needs of the family.

- ***Other Comments***

  Include the date and circumstances of the last local district personal contact with the family and describe any new or updated case information pertinent to the investigation.

- *Will Case Be Submitted to Child Fatality Review Team?*

  Indicate the correct response: Yes, No, Unknown, or No Team.

As with the 24-hour Fatality report, the appropriate OCFS Regional Office is responsible for reviewing the 30-day Fatality Report and monitoring the fatality case activities. (See **Chapter 11,** *Child Fatality Reviews***.**)

## 3. Conclusion safety assessment

As with all CPS investigations, the CPS must complete a safety assessment for a fatality investigation no more than seven days prior to entering a conclusion of "indicated" or "unfounded," unless there are no surviving children. If there are no surviving siblings or other children in the household, CPS should check the box for "no surviving children" in CONNX, which will then allow CPS to enter a conclusion and to close the case without submitting a final safety assessment or a Risk Assessment Profile (RAP).

## 4. Investigation of re-reports of child fatalities

A re-reported fatality is a fatality that was previously investigated by CPS and closed, for which a new report of the fatality provides no new information and no new or different allegations than were included in the previous report and investigation.

The specific responsibilities of CPS regarding new reports of a previously investigated fatality are as follows:

1. CPS must provide notification letters, as is done upon the receipt of any report from the SCR.
2. When a new SCR report of a fatality appears to duplicate information from a previous SCR report of the same fatality, CPS must review the new report and contact the source of the new report to determine:
   - whether the new *report* contains any new information that was not previously reported or investigated; and
   - whether the *source* has any additional new information that was not previously reported or investigated.
3. CPS must conduct a safety check of the children named in the report and other children in the household.
4. CPS must check prior CPS records to see if anything has been documented since the last CPS report of the fatality that suggests there may be current safety concerns.
5. Having completed the above steps and finding no new safety concerns and no new information, CPS can use information gathered from the previous investigation to document the investigation of the new report.
6. If, upon contact with the source of the re-report, or any other collateral contacts, CPS learns new information or allegations regarding the fatality, or of allegations regarding any surviving children in the home, CPS must:
   - immediately conduct a new investigation of the death.
   - immediately investigate any safety concerns based on:
     a. contact with the source of the reporter-reported fatality, or
     b. a review of CPS history recorded in CONNX since the last CPS report, or on the safety check conducted of children currently living in the home.

## 5. LDSS responsibilities for reporting child fatalities

If an LDSS becomes aware of a child fatality that occurs in an open CPS, preventive, or foster care case, and no report of suspected child abuse or maltreatment regarding the fatality has been made to the SCR, the LDSS must implement these required actions:

- Notify the applicable Regional Office of the death by telephone within 24 hours of learning of the fatality.
- Submit form OCFS-7065 to the applicable Regional Office within 72 hours of learning of the fatality. The title of this form is “Agency Reporting Form for Serious Injuries, Accidents, or Deaths of Children in Foster Care and Deaths of Children in Open Child Protective or Preventive Cases.”
- Gather information (circumstances and facts) about the death, and determine whether there is reasonable cause to suspect that the death was the result of abuse or maltreatment by the caretaker(s). **If such reasonable cause to suspect abuse or maltreatment exists, an LDSS staff member must make a report to the SCR.**

# L. Collaborating with the Criminal Justice System

## 1. Overview

The New York Child Protective Services Act (1973), codified at Title 6, Article 6 of the Social Services Law, provided for intervention in families where child abuse and maltreatment occurs. The law emphasizes a social services approach to intervention and gives responsibility for investigating reports of suspected cases of abuse and maltreatment to local child protective services in order to provide protection for the child and rehabilitative services for the family. The law anticipates a role for law enforcement involvement in certain investigations of suspected cases of child abuse and maltreatment since many actions, such as sexual abuse, are also crimes as defined under the New York State Penal Law.

Both the police (State or Local) and the office of the district attorney can be of assistance to child protective services in certain situations. Through Multidisciplinary Investigative Teams, Child Advocacy Centers or joint investigation agreements, child protective services in New York are often working more closely with law enforcement. It is important that child protective services conduct an independent, thorough, and timely investigation while collaborating with law enforcement.

## 2. Communication with district attorney and police agencies

CPS information is confidential and cannot be revealed except as the law expressly authorizes. Under SSL §424(4), the local child protective service shall give immediate telephone notice to the district attorney of reports involving the death of a child and forward to the district attorney a copy of reports involving the death of a child made pursuant to Article 6, Title 6 of the Social Services Law. Further information may be obtained by the police and district attorneys pursuant to SSL §422(4)(A)(l). (See *Obtaining Access to CPS Information*, X.B.1)

### a. *Local agreements for information sharing*

The district attorney shall receive a copy of any or all reports if a prior written request is made to the local child protective service. SSL §424(4) requires local districts to provide telephone notice to district attorneys of any and all reports of child abuse and maltreatment if the district attorney has requested such notice in writing.

The request for copies of reports and telephone notice can be written in such a manner that it need only be made once to cover all future similar reports. Such requests must specify the categories of allegations as listed in the SCR system for which the district attorney requires notice and/or copies and should cite the relevant provisions of law authorizing disclosure. The district attorney may also request to receive copies of subsequent reports.

However, an LDSS may *not* provide a district attorney with a copy of a report or any information regarding a report that is assigned to the family assessment track (FAR). Because reports may not be assigned to FAR when the allegations in the report are exclude the use of FAR or there are safety concerns regarding children named in the report, it is unlikely that such reports would fall within the parameters of the types of reports that a district attorney wishes to see.

### b. *State-required information sharing*

In addition to the requirements for providing information to the district attorney, pursuant to SSL §424(5-a), CPS must provide telephone notice and immediately forward copies of reports to the appropriate local law enforcement entity if the report alleges: a) death of a child, b) sexual abuse of a child; or c) physical abuse of a child, pursuant to FCA §1012(e)(i). FCA §1012(e)(i) defines abuse as inflicted or allowed to be inflicted, as opposed to the subsequent sections where a substantial risk of abuse was created or allowed to be created. Investigations of reports including these allegations must be investigated by an MDT where an MDT exists. Should there be no MDT, but OCFS has approved a local protocol, that protocol will dictate what reports are to be forwarded to law enforcement and who conducts the investigations.

If CPS receives a report of suspected maltreatment that alleges any physical harm, *and* the report was made by a mandated reporter, *and* there have been two reports in the past six months that are either indicated or still pending involving the same subject, child, a sibling of the child or another child in the household, then CPS must make a timely assessment of whether it should provide notice to the appropriate local law enforcement entity. If CPS determines that law enforcement should be notified, it must give telephone notice and immediately forward a copy of the report to the law enforcement entity; then, the appropriate MDT (where an MDT exists) must complete the investigation. Where no MDT exists, the investigation would have to be conducted jointly by CPS and law enforcement. If there is an OCFS-approved local protocol on CPS/law enforcement joint investigations that doesn't necessitate such information sharing in all instances, then such information sharing need not occur, and the investigation would be conducted pursuant to the approved local protocol.

### c. *Suspected false reports*

Each local CPS is required by SSL §424(8) to refer to the appropriate law enforcement agency or district attorney any case where CPS suspects the reporter knowingly made a false report of child abuse or maltreatment. Any person making a child abuse or maltreatment report who knows the information reported to be false or baseless may be guilty of a class A misdemeanor.

In some cases, CPS becomes suspicious after starting an investigation that the report is an intentionally false report, or a subject of the report may express concerns that the report is purposely false, called into the SCR as an attempt to harass the individual or cause other difficulties. In these instances, the child protective service should decide, based on information available, whether it is appropriate to make a referral to law enforcement for intentional false reporting. CPS should ask the complainant to explain in writing, as clearly and completely as possible, the rationale for why he or she believes the reporting source knowingly made a false report. This must be done without informing the subject of the report of the identity of the source. CPS needs this statement to determine whether it has sufficient cause to refer the case to the appropriate law enforcement agency or district attorney. If CPS makes a referral to law enforcement of suspected intentional false reporting, it may provide identifying information concerning the source of the report to the law enforcement agency or district attorney.

When a local district develops a written understanding with the district attorney's office, they should include procedures regarding how false reporting of cases will be addressed by law enforcement personnel. (*See Development of Cooperative Investigative Procedures with the District Attorney*, IV.D.4.c)

### d. *Reporting crimes to law enforcement*

In cases in which CPS believes that a crime involving a child has been committed, the local CPS should make a referral to the district attorney. In this instance, only the information contained in the SCR report records should be shared with the district attorney. Further information may be shared pursuant to the requirements of SSL §422(4)(A)(l). (See *Access to CPS Information*, X.B.1)

### e. *Sharing CPS information for a law enforcement investigation*

SSL §422(4)(A)(l) requires a CPS to provide information from an **indicated** or **open** CPS report to a criminal justice agency, which includes: a district attorney, assistant district attorney or an investigator employed in the DA's office an officer of the state police, regional state park police, county department of parks, or city, county, town, or village police department, county sheriff's office, or Indian police officer, when the agency states the information is:

- necessary to conduct a criminal investigation or to criminally prosecute a person, and
- that there is reasonable to believe that such person is the subject of a CPS report, and
- that due to the nature of the crime under investigation or prosecution it is reasonable to believe that such records may be related to the criminal investigation or prosecution. (See *Access to CPS Information*, X. B.1)

### f. *Special procedures for when a child is missing*

There are specific requirements in the law that pertain only to those circumstances in which a criminal justice agency is conducting an investigation regarding a missing child and requests CPS information to assist in the investigation. The LDSS must provide the criminal justice agency with information from the records of any pertinent ***indicated*** CPS report or any CPS report that is ***under investigation*** at the time of the request. The district may also provide any ancillary information it may have about the family that pertains to those records but is not included in the records.

The standard to use for determining whether to provide the confidential information to the criminal justice agency is if such agency states that:

- it has reason to suspect that a parent, guardian or other person legally responsible for the child is or ***may*** be the subject of a report, or that the child or the child's sibling is or ***may*** be named in a report; and
- any such information is or ***may*** be needed for the investigation.

A district must ***not*** share information with a criminal justice agency from the record of any CPS report that was **unfounded** or assigned to **FAR**[24]. (See **Chapter 5, Section J,** *Confidentiality provisions*.)

If information in a CPS FAR record was added to a subsequent CPS report not assigned to FAR because it was relevant to the investigation of the subsequent report, the information in the subsequent report record may be shared with law enforcement.

[24] New York State SSL §427-a(5)(d).

Information may be withheld from law enforcement pursuant to the requirements contained in SSL §422(4)(B) If determined that release would be detrimental to the child named in the report. (See *Denial of Access by Local Districts*, X.B.5)

Access to information about pending or indicated reports which may not be shared pursuant to the authority referenced above may only be obtained by the district attorney pursuant to court order, a grand jury subpoena or with authorization of the subject of the report or other person named in the report. A grand jury may obtain information contained in the case record of an indicated or pending report upon a finding that the information is necessary for the determination of charges before it.

A decision to initiate criminal prosecution of a case of child abuse and maltreatment is the responsibility of the district attorney. The criminal investigation for such a prosecution may be conducted by the district attorney's office or by a police agency designated by the district attorney.

The local CPS should attempt to obtain the cooperation of the local police agencies and the district attorney's office in obtaining access to information contained in police records during investigations of child abuse and maltreatment. If criminal prosecution is initiated, CPS should ask to be informed of the significant decisions in the prosecution of the case. Agreements with police agencies and the district attorney concerning sharing of information should be contained in the summary of understanding with the district attorney's office. (See *Collaborating with the Criminal Justice System*, IV.D.4)

## 3. Development of cooperative investigative procedures with the district attorney

Each district must include in its Child and Family Services Plan (Plan) a summary of the understanding between the LDSS and the district attorney's office, which outlines the cooperative procedures to be followed by both parties in investigating incidents of child abuse and maltreatment, consistent with their respective obligations for the investigation or prosecution of such incidents, as otherwise required by law and consistent with the duties of CPS concerning intake, investigation, arranging services, and monitoring. **Chapter 14, Section K** contains a Model Memorandum of Understanding, which a district could choose to replicate. Alternatively, a district may develop another agreement that meets the needs of both the district attorney and the district.[25].

## 4. Coordinating CPS and criminal investigations

Both CPS and the district attorney's office, in conjunction with police agencies, have specific responsibilities when conducting investigations. CPS conducts civil investigations, which focus upon the protection of the child from abuse or maltreatment and, on the future rehabilitation of the family, where that is a concern, and on protecting the child from future abuse or maltreatment. Law enforcement is responsible for the criminal investigation, which focuses on the gathering of

[25] 18 NYCRR 432.2(f)(2) 18 NYCRR 432.2(f)(3) 18 NYCRR 432.2(f)

evidence, apprehension, prosecution and conviction of the offender. Since the disciplines have distinct responsibilities, CPS investigation cannot be delegated to the police or the District Attorney. Although CPS and law enforcement have their respective responsibilities, there are situations where they should be working closely together.

### a. *Cooperative efforts between CPS and law enforcement*

In counties where no approved MDT exists, CPS and local law enforcement must conduct investigation of certain reports jointly, unless the county has an OCFS — approved protocol between CPS and the local law enforcement entity that does not necessitate such joint response.

CPS cannot simply cede its responsibilities to conduct an investigation and facilitate child safety to law enforcement. While CPS needs to work in cooperation with law enforcement entities and should remain mindful of law enforcement's responsibility to collect possible evidence of a crime and build a case for possible prosecution, CPS also has its own statutory responsibilities. To the extent possible, CPS and law enforcement entities should discuss the types of case circumstances that might occur in a case where each would have responsibilities so that both CPS and law enforcement are able to fulfill their respective responsibilities with as little discord as possible when such a case occurs. For example, if law enforcement makes a strong argument that CPS not contact a subject for a time-limited period, it may be possible for CPS to continue to carry out its mandates by contacting the child(ren) and/or collateral contacts. This cannot continue indefinitely, however - to conduct a complete investigation, CPS must speak to the subject of the report. If law enforcement seeks to prevent CPS from carrying out its statutory responsibilities, it may be necessary to ask the county attorney or social services department attorney to contact the district attorney to resolve the issue.

In many situations, the police will be acting as agents of the District Attorney's office when conducting criminal investigations. SSL §422(4)(A)(l) permits access to CPS information regarding indicated or pending reports[26] by a sworn officer of the Division of State Police, of a city police department, or of a county, town or village police department or a county sheriff's office or department. Access to information is allowed when such officer requests such information stating that such information is necessary to conduct a criminal investigation or a criminal prosecution of a person, that there is reasonable cause to believe that such person is the subject of a report, and that it is reasonable to believe that, due to the nature of the crime under investigation or prosecution, such records may be related to the criminal investigation or prosecution. (See *Access to Information – CPS*, X.B.1)

### b. *Requesting police protection*

However, circumstances may arise where police may assist CPS staff in the civil investigation. Such circumstances would include situations where law enforcement presence is necessary to protect children, family members, CPS staff or others.

The child protective service should request the police to accompany workers under the following two general circumstances:

[26] Except for cases assigned to the Family Assessment Response (FAR) track, as per SSL §427-a(5)(d), already say indicated and pending. This is redundant.

- a child is in immediate danger or thought to be in immediate danger and the worker cannot enter the home or other place where the child is located; this may be necessary if, for example, forced entry is necessary to protect unsupervised children and/or a parent is denying access to the child or home;

  **Note:** As required by SSL §424(6-a) and 424(6-b), if the worker is unable to locate a child or has been denied access to the home or a child, and where the worker has reasonable cause to believe a child's life or health may be in danger, the worker should advise the parent or person legally responsible for the child's care or with whom the child is residing that, if denied sufficient access, the worker may contact the Family Court to seek an immediate court order to gain access to the home and/or the child, without further notice. In addition, the worker should inform the parent that law enforcement may be contacted and, if contacted, shall respond and shall remain where the child is believed to be present until such order to produce the child or gain access to the child is obtained.

- there is possible danger to CPS. Potentially dangerous situations may include the following: CPS has been threatened with violence; the parent's behavior is highly unpredictable due to drugs, alcohol, or mental illness; an electronic criminal record search indicates that there may be someone in the home who potentially has a violent criminal record; the investigation must be conducted in an excessively high crime neighborhood; the investigation must be conducted late at night; the home is believed or known to contain firearms; the family owns or keeps dogs that are known to be or reasonably suspected to be vicious.

CPS should notify the police that there is an immediate need for intervention in the following situations:

- in cases in which a crime is believed to be occurring;
- when the family makes itself inaccessible and there is reason to fear for the safety of the child; or
- when an immediate response is essential and police proximity to the child's location gives the police faster access than CPS has.

In the situations described above and in other emergency situations (e.g., a domestic violence call involving physical violence), the police may be the first officials to investigate an incident of child abuse and maltreatment. In such situations, SSL §417(1)(a) permits a law enforcement official to take a child into protective custody. (See *Protective Custody*, VII.E)

Whenever police escort/intervention has been requested or when the police have taken protective custody of the child, CPS may share information verbally with the police that will aid in providing emergency assistance to the child, i.e., nature and extent of injuries, family composition.

It is essential that CPS and law enforcement investigations be coordinated and procedures be clearly stated in the written understanding between CPS and the District Attorney's office. Such procedures will enhance communication between agencies, reduce the likelihood of confusion as to the roles and responsibilities of each agency and reduce the amount of trauma experienced by the child and family because of the investigations. Where consistent with confidentiality constraints, informing each other of actions taken during their respective civil and criminal investigations allows CPS and police officer to make decisions in concert

that provide protection for the child. A team creates a coordinated approach and facilitates accomplishment of both the child protective and law enforcement tasks. Communication will assist in avoiding possible conflict between law enforcement and child protection. It is important that law enforcement and CPS inform each other of their involvement in the case, what their respective duties include and when significant decisions are made. If questions arise concerning the team approach, confidentiality, case decisions, or the respective duties of CPS and law enforcement officers, districts should consult with their County Attorney or the Office of Legal Affairs of OCFS.

## 5. Multidisciplinary Teams (MDT) and Child Advocacy Centers (CACs)

### a. *Multidisciplinary Teams (MDT)*

Many districts have developed multidisciplinary investigative teams (MDTs), which may work with or be part of a Child Advocacy Center (CAC), for the purpose of investigating certain reports of suspected child abuse or maltreatment. MDTs must include, but are not limited to, members who are from: CPS; law enforcement; the district attorney's office; a physician or medical provider trained in forensic pediatrics; mental health professional; victim advocacy personnel; and, if one exists, a child advocacy center. The purpose of MDTs is to coordinate the responses of all the agencies involved in the investigation, prosecution and case management of child abuse and maltreatment cases, primarily those cases where prosecution may be a component. From a child well-being perspective, MDTs, especially when they are operating out of child advocacy centers (CACs), help to reduce trauma to a child by reducing the number of interviews for the child and providing a safe and comfortable place for such interview(s).

Counties with approved MDTs are required to use such teams in the investigation of sexual abuse reports; abuse reports, as described in FCA §1012(e); and reports involving child fatalities. Additionally, CPS must evaluate whether to forward a maltreatment report alleging physical harm to local law enforcement to be investigated by the MDT when the report is made by a mandated reporter and there have also been two or more indicated or pending reports received in the past six months concerning that child, the child's siblings, other children in the household or the subject of the report.

Not every member is required to participate in each investigation. However, members of the MDT primarily responsible for the investigation of child abuse reports, including CPS, law enforcement and the district attorney's office, must participate in joint interviews and conduct investigative functions consistent with the mission of the specific agency member involved. All members are expected to facilitate the efficient delivery of services to victims. MDT members may share client-identifiable information with one another to facilitate the investigation of child abuse and maltreatment.

### b. *Child Advocacy Centers (CAC)*

In addition to MDTs, many communities have established Child Advocacy Centers (CACs). OCFS facilitates the establishment of CACs so that child victims of sexual abuse or serious physical abuse have reasonable access to such a center and so that their cases are handled in an expert and timely manner, by a coordinated and cooperative effort that minimizes trauma to the children and their non-offending family members. CACs can be established by either a governmental entity or a private, nonprofit incorporated agency and must meet OCFS standards. CACs support multi-disciplinary investigations and the impact such intervention has on children and families. Some of the minimum requirements of a CAC include:

- a comfortable and private setting that is both physically and psychologically safe for children
- culturally competent policies, practices and procedures
- forensic interviews to be conducted in a manner that is neutral and fact-finding, and is coordinated to avoid duplicative interviewing
- specialized medical evaluation and treatment either at the center or through a coordinated referral process
- specialized mental health services either at the center or through a coordinated referral process
- victim support and advocacy as part of the MDT response
- An established MDT
- A written set of interagency protocols

## 6. Missing or abducted children[27]

The federal Preventing Sex Trafficking and Strengthening Families Act (the Act) [P.L. 113-183] set forth requirements regarding the response to children who are missing or abducted[28] from home and who part of an open child protective services case.

CPS caseworker may have been informed by the parents during a home visit that they have not heard from the child in days, or someone may have called the LDSS to report that they are concerned about the child because he or she has not been home in days. No matter how the information comes to CPS caseworker, it must be acted upon within 24 hours of the child being reported as missing or abducted.

CPS caseworker must report the child to law enforcement as missing or abducted for entry into the National Crime Information Center (NCIC) database, and must also report to National Center for Missing and Exploited Children (NCMEC.) Whenever possible, the caseworker should work with the parent/guardian in competing this required reporting. This report must be made in no case later than 24 hours of receiving such information. CPS staff must remember that they are mandated reporters and must act accordingly if they have reasonable cause to suspect that the parent's refusal to report the child as missing constitutes abuse or maltreatment.

[27] 16-OCFS-ADM-09, *Protocols and Procedures for Locating and Responding to Children and Youth Missing From Foster Care and Non-Foster Care*

[28] The terms "absent" and "missing" refer to children and youth who are voluntarily absent (have run away), are missing (whereabouts are unknown), or have been abducted.

# M. Commercial sexual exploitation of children and human trafficking[29]

## 1. Overview of sex trafficking

In 2014, the United States government enacted the *Preventing Sex Trafficking and Strengthening Families Act,* which had among its aims to protect and prevent at-risk children and youth from becoming victims of sex trafficking. Though any child or youth can be a victim of sex trafficking, there are certain populations that are more vulnerable, including children who are named in child protective cases.

"Sex trafficking'" is defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act" and "severe forms of trafficking in persons" is defined as: "sex trafficking in which the commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform such act has not attained 18 years of age." ***This means that any child under age 18 who is induced to perform a commercial sex act is considered a sex trafficking victim, regardless of whether force, fraud or coercion is present.*** A commercial sex act is one where something of value — money, food, clothing, drugs, shelter, protection, or other consideration — is provided in exchange for a sex act. Commercial sex may include a child being prostituted, child pornography, exotic dancing, private sex parties, and other sexual exploitation.

New York State requires that child welfare staff should be aware of potential red flags that may indicate that a child is a sex trafficking victim. The presence of a red flag does not mean the child is a victim; rather workers should look for a pattern of red flags when identifying youth who may be a trafficking victim, or at risk of being a victim. Key red flags and vulnerabilities for child sex trafficking include, but are not limited to:

- History of sex abuse
- History of running away or current status as a runaway
- Signs of current physical abuse and/or multiple sexually transmitted diseases
- Unstable home life (youth living with an unstably housed family member)
- Youth with involvement with the child welfare or foster care system
- Inexplicable gifts, getting hair/nails done, clothing, or electronics, such as cell phones, that do not fit the youth's situation
- Presence of, or communication with, an older controlling boyfriend/girlfriend
- Youth with significant substance abuse (youth with drug addictions are sometimes targeted because they can be easily controlled using drugs)
- Withdrawal or lack of interest with previous activities (depression or being forced to spend time with traffickers)
- Gang involvement, especially among girls
- Travel to other states or staying at hotels during a runaway incident

[29] See 15-OCFS-ADM-16, *Requirements to Identify, Document, Report, and Provide Services to Child Sex Trafficking Victims.*

Identification of victims and those at higher risk is important for several reasons. First, and foremost, once identified, a victim can receive services that are responsive to his or her needs. For those identified as at risk prior to a trafficking incident, services and supports can be put in place to help prevent victimization.

## 2. Child Welfare requirement to screen for sex trafficking

CPS are required to screen all children whom they encounter as to whether the child is a child sex trafficking victim or at risk of being a child sex trafficking victim.

OCFS has developed two tools to screen or assess for sex trafficking victimization or risk level, which can be used by CPS (available on the OCFS website.)

- *Rapid Indicator Tool to Identify Children Who May Be Sex Trafficking Victims or At Risk of Being a Sex Trafficking Victim*
- *Child Sex Trafficking Indicators Tool*

## 3. Requirement to report sex trafficking

The first tool, is used to determine if a child is at risk and needs a more comprehensive screening. This tool must be completed prior to the closing of the investigation. As a rule, CPS should not ask children the questions on this tool directly. Some of the questions could embarrass, confuse, or antagonize many children. Rather, the questions should be used to direct CPS's thinking; where necessary, the worker may direct conversation in such a way that the worker can assess the answers to each of the question. The results of the quick screening must be documented in CONNX on the "sex trafficking screening" screen.

If the quick screening found that the child is a victim or at risk of being a sex trafficking victim, a comprehensive screening must be done within 30 days. **It is recommended that CPS reach out to the Safe Harbour project's LDSS lead in his or her county, if the county is participating in the project, for assistance with the comprehensive screening.**

If a child is determined to be a sex trafficking victim, the district is required to report the victimization to law enforcement immediately, in no case later than 24 hours after the child is identified as a victim. A worker must document in the CONNX "sex trafficking screening" screen that the child is a victim. If the child is in immediate danger or at risk of harm, the worker should immediately call 911. The worker should document this call, and the police report number for reference.

# N. Domestic violence

For the purposes of this section, “domestic violence” refers to a pattern of coercive tactics, which can include physical, psychological, sexual, economic, and/or emotional abuse, perpetrated by one person against an adult intimate partner with the goal of establishing and maintaining power and control over the partner. Importantly, not all domestic violence involves physical violence, although there may be an implied threat of physical violence. A violent argument between adult partners does not automatically equate to an imbalance of power between the partners, although it would certainly raise concerns.

Domestic violence can occur in all types of families. Domestic violence cuts across all socio-economic levels in society and can be present in homosexual as well as heterosexual relationships.

There is significant overlap between the abuse and maltreatment of children and the presence of domestic violence in the caretaker’s relationship. Various studies have found that in 30-60% of families where there is child abuse or maltreatment, there is also domestic violence.

While the presence of domestic violence in a household does not mean that the children in the home have been maltreated or abused, domestic violence is a risk element for maltreatment and abuse. Therefore, CPS staff need to consider any domestic violence in their assessment of risk, and, if necessary, address it in some manner to sufficiently reduce overall risk to children in the home. To that end, it is important that CPS staff be knowledgeable about the dynamics of domestic violence, as well as adept at identifying its presence.

There are specific effects of domestic violence that may result from a child’s exposure to it. These include:

- Increase in the risk of physical, emotional, and psychological harm
- Aggression and anti-social behaviors
- Fearful and intimidated behaviors
- Lower social competence
- Poor academic performance

Some factors that influence the impact of domestic violence on children are:

- The frequency and severity of the violence
- Proximity to the violence
- Whether the violence was recent or in the past
- Exposure to multiple forms of violence
- Age of the child
- Developmental stage when violence began
- Gender of the child
- Relationship with the offending adult

For a general overview of domestic violence, indicators, and strategies for investigating CPS cases involving DV, see the video entitled "Domestic Violence: An Overview" (http://ocfs.ny.gov/main/dv/child_welfare.asp).

## 1. Indicators of domestic violence

Domestic violence is not an allegation of abuse or neglect. Rather, domestic violence is a risk factor, one that is present in a significant percentage of CPS reports. Therefore, whenever CPS worker respond to a report of suspected child abuse or maltreatment, they must be alert to and sensitive to the presence of domestic violence. There may be indicators of domestic violence specified in the information contained in the Narrative of the Intake Report of suspected child abuse or maltreatment received from the SCR or found in a review of prior SCR history. However, in many cases, the first indicators of domestic violence reveal themselves during the initial contact with either the reported family members or with other individuals who are in a position to assess the immediate risk to the children (See *Investigation/Assessment*, IV.D.1 – IV.D.3). In other cases, indicators of domestic violence may only be identified through a child welfare worker's ongoing contact with and assessment of the family during the provision of protective, preventive or foster care services, as the worker develops a better understanding of the family dynamics.

The most important source of information about suspected domestic violence in a CPS case is the non-offending parent (NOP). However, the non-offending parent may not be ready or able to discuss the existence of domestic violence because of the non-offending parent's fear of the DV offender, possible trepidation about how CPS staff might react regarding the non-offending parent's children, and/or possible shame of being a victim of domestic violence. It may take quite a long time for the non-offending parent to develop a trusting relationship with child welfare staff.

One strategy for developing a more trusting relationship with a non-offending parent s to display concern for the non-offending parent's safety and well-being along with the required CPS focus on the safety of the children in the home and their level of risk of harm.

A CPS caseworker may find one or more of the following indicators of domestic violence when visiting a home:

- The person suspected of being a victim of domestic violence offers inconsistent explanations for bruises, fractures, or other injuries on his or her body that are in various stages of healing. Common sites of injury include the face, head, chest, and abdomen.
- The person suspected of being a victim of domestic violence has "accidents" during a pregnancy. Domestic violence sometimes begins or increases when a woman is pregnant.
- The person suspected of being a victim of domestic violence substantially delays seeking needed medical treatment.
- The person suspected of being a victim of domestic violence has a history of repeated accidents and emergency room visits. Emergency room visits are often made at different hospitals.
- The person suspected of being a victim of domestic violence feels sad, lethargic, or depressed and/or admits having thoughts of suicide.
- The person suspected of being a victim of domestic reports psychosomatic and emotional complaints (e.g., chest pain, choking sensation, hyperventilation, sleep, or eating disorders).

- The person suspected of being a victim of domestic is embarrassed and/or evasive when asked questions about an injury or abuse.
- The person suspected of being a victim of domestic violence exhibits anxiety and fear in the presence of his/her partner.
- The person suspected of being a victim of domestic violence offers apologies or explanations for his/her partner's behavior.

## 2. Considerations for conducting a CPS investigation when there is domestic violence

CPS reports in which domestic violence is an element in the family home require CPS to use of their critical thinking. CPS should try to recognize any biases that they may have regarding domestic violence and to set them aside. It is important that they suspend judgment, try to develop as many hypotheses as possible, understand that the simplest solutions such as leaving the situation are not always the safest strategies for the non-offending parent or the children, and try to view the situation from the point of view of the family members. It is important that CPS recognize the limitations of their knowledge and draw upon available resources, as needed, such as a supervisor, a DV advocate, materials from CPS training on domestic violence such as a list of questions for Identifying DV, or some other resource.

Where there is a domestic violence expert co-located at CPS offices, CPS should always consult with such an expert when domestic violence is, is thought to be a factor in the family. Where the LDSS does not a have a DV co-location program, CPS should consider consulting with staff from a Domestic Violence program in the community if domestic violence is a factor in a case.

***Conducting interviews***

Domestic violence is an issue of power and control. Consequently, the DV offender may try to prevent the non-offending parent from speaking with CPS. The non-offending parent may be fearful of disclosing any acts that the DV offender may have taken against either children in the home or the victim.

It is commonly accepted best practice for CPS to complete an interview with the non-offending parent before speaking to children or the DV offender, if possible. This enables CPS to better engage and engender the trust of the non-offending parent and to assess and plan for danger and risks. All interviews conducted with the adults during an investigation should be conducted separately.

When working with non-offending parents, CPS may find it helpful to reference the OCFS document, *Helpful Things to Say to or Ask a Non-Offending Parent (NOP)*, which can be found on the OCFS website at: http://ocfs.ny.gov/main/dv/child_welfare.asp.

***Including the DV offender***

CPS may be reluctant to engage the DV offender during a CPS investigation. However, to effectively assess safety and risk to children, it is necessary to view the family holistically. It is not possible to achieve meaningful change in a family if one member of the family is excluded from the process.

There are ways to effectively engage the DV offender in a domestic violence situation. It requires finding a fine balance between engaging the DV offender while attending carefully to the safety of the children and the non-offending parent. In some cases, it may be possible to leverage the DV offender's concern for his children to motivate the DV offender to change his behavior.

When the DV offender is a person legally responsible for the child(ren) named in the report, the DV offender must be part of the investigative process and CPS must work to engage and interview the DV offender. Caseworkers may wish to refer to information provided by OCFS regarding working with DV offenders for more details and strategies:

- *Helpful Things to Say or Ask an Offending Parent,* which can be found on the OCFS website at http://ocfs.ny.gov/main/dv/child_welfare.asp. Direct access at: http://ocfs.ny.gov/main/dv/Helpful%20Things%20to%20Say%20or%20Ask%20a%20DV%20Offender.pdf
- *Practice Considerations for Locating and Engaging Fathers in Domestic Violence Situations* http://ocfs.ny.gov/main/dv/Locating%20and%20Engaginng%20Fathers.pdf

CPS should also refer to **Section H** of this chapter, which addresses working with law enforcement, if they have concerns about criminality or safety.

***Cultural considerations***

Victims of domestic violence who are undocumented face unique barriers, especially if their partner is a U.S. citizen or has some sort of legal status here. Often DV offenders use the non-offending parent's undocumented status as a way to threaten her, e.g., "You will be deported. You will never see the children again." They may also use her status to isolate her by making her afraid to talk to other people, or give her inaccurate information about what she can expect from police or others who might help her. Women who are undocumented may be eligible for a visa that will enable them to remain in this country. Such women MUST be referred to DV agencies for help getting connected to an immigration attorney who can help them through the process of applying for a U-Visa or with help for any kind of immigration issue.

When any family members in a family where there is domestic violence have Limited English Proficiency, it is especially important to obtain language assistance services to enable CPS to communicate with those individuals. People from different cultures sometimes have culturally-based ideas that are integral to the existence of domestic violence in the family, and these and all other aspects of a CPS case cannot be addressed effectively by CPS without clear communication between CPS and family members.

## 3. CPS interventions when there is domestic violence

CPS is required to investigate reports of suspected abuse or maltreatment swiftly, to assess the safety of and risk to the child(ren) in the home, to identify existing impediments to safety and also strengths that may mitigate the safety deficits, and to provide rehabilitative services to the child(ren) and the adults legally responsible for such child(ren) in order to prevent future abuse or maltreatment.

When domestic violence is present in a child abuse or maltreatment case, CPS must take into account the existence of such violence in order to develop intervention strategies that will adequately protect the child(ren) in the home. Domestic violence may well affect the non-offending parent's ability to parent and protect the child(ren) in the home. Consequently, CPS may need to use intervention strategies for families afflicted by domestic violence that are different from the intervention strategies used in cases where domestic violence is not a factor

Whether there is domestic violence in the home or not, if CPS determines that the children in the home have been abused or maltreated, or are at risk of abuse or maltreatment CPS must assess the risk to the children and develop an intervention plan for the safety of the children. The intervention plan will be case specific and consider the resources that are available locally.

Where there is domestic violence, the non-offending parent may have previously developed and instituted safety strategies. He/she should be used as a resource in a formulating a CPS safety plan. CPS should also work with the non-offending parent on a DV safety plan. The non-offending parent may not only be able to provide important knowledge that can strengthen such a plan, but may also be more likely to implement a plan the she or he helped to design than one that is imposed. Where there is domestic violence in the home, to achieve safety for the children, it may be necessary for CPS to also work with the police and local domestic violence programs to address the child protective and domestic violence issues.

The intervention plan should be designed to eliminate the abuse or maltreatment of the children and include services aimed at addressing the conditions, including violence against the adult victims, that are jeopardizing the safety of the child(ren). Intervention plans must consider the non-offending parent's capacity to protect the child(ren) from the perpetrator, while respecting, as much as possible, the choices that the non-offending parent makes on behalf of herself and the child(ren) in the home. It is best practice to explore with the non-offending parent any strategies she/he used to protect the children prior to child protective involvement. CPS intervention strategy should strive to both protect the child(ren) *and* to protect and assist the abused adult.

It is important for CPS to realize that the non-offending parent's strategies may not make logical sense to CPS or be what CPS think should be done, but should not be rejected outright because of that. CPS needs to maintain an open dialogue with the non-offending parent as a safety plan is developed. The non-offending parent is the expert in the situation and her/his knowledge of the perpetrator's triggers and patterns of violence are critical to formulating a safety plan that helps keep the children safe.

In some cases, an appropriate intervention plan may include offering the family various prevention services; however, services that do not recognize the power imbalance between the adults may be ineffective and possibly dangerous to the adult victim. For example, standard marriage or couple counseling is not considered appropriate or safe as treatment for a domestic violence perpetrator and his victim. Treatment that consists of generalized anger management is also not appropriate for a DV offender.

***Orders of Protection***

If the domestic violence perpetrator poses an immediate risk to the child(ren) and the non-offending parent is willing to have the perpetrator removed from the home, the intervention strategy may involve helping the non-offending parent to initiate proceedings against the perpetrator in Family Court under Article 8 of the Family Court Act or to press criminal charges against the perpetrator. The non-offending parent may seek a temporary order of protection requiring the DV offender to remain away from the home or from the individuals in the family. If the non-offending parent does not want to or does not feel safe in pursuing such actions, but nonetheless is willing to have the perpetrator removed from the home, CPS itself could seek such a temporary order of protection from the Family Court under Article 10 of the Family Court Act (See *Family Court Proceedings*, IV.J.1 – IV.J.6). In fact, it is often a better idea for CPS to ask for a court order to remove the DV offender from the home than to have the non-offending parent request such an order. This strategy often focusses the DV offender's anger on CPS rather than on the non-offending parent, reducing the danger to the non-offending parent and other family members. Removing the abusive adult from the home will usually be less disruptive to the child(ren) than placing the child(ren) in foster care. Before taking this action, however, CPS should assess with the non-offending parent whether this course of action could place the non-offending parent and/or the children at an increased risk of harm.

The non-offending parent cannot be held responsible for enforcing an order of protection against the offender. If the non-offending parent and/or CPS believes that a temporary order of protection would not be effective in barring the perpetrator from the home, then the proposed intervention plan could involve an immediate referral of the non-offending parent and the child(ren) to a residential program for victims of domestic violence. However, non-offending parents should never be *forced* to leave, as this can increase the danger to children and to the non-offending parent. If the non-offending parent is resistant to leaving, CPS must try to initiate a discussion about the non-offending parent's thinking about it. CPS should try to address the non-offending parent's reasons, such as loss of income or needing transportation to a job if she would be leaving a vehicle behind, by working with the non-offending parent to develop strategies that may make leaving an option. If it is not safe to leave, other options should be investigated. It has been well established that, in situations of domestic violence, non-offending parents and their families are at the greatest risk while in the process of leaving an offender and immediately after leaving. In order to offer the intervention strategy of leaving to the non-offending parent, CPS needs to know what shelter services are available in the community and the LDSS's policies and procedures are for referring a non-offending parent to such services. If appropriate, a DV Safety plan can be developed with a non-offending parent so as to reduce risk to the child(ren) while the family remains intact. Please be aware that residential (and non-residential) domestic violence services are only provided on a voluntary basis, and such service providers will only serve the non-offending parent and the non-offending parent's children if the non-offending parent is voluntarily seeking such service.

It may be necessary to remove children from a parent, guardian, or other person legally responsible who is not actually inflicting harm on the children if that parent or other caregiver cannot, or will not, take appropriate action to protect the children from another person who is inflicting harm to the children. A removal may also be necessary if the risk of harm to the children is so immediate that CPS cannot, at the time, provide the non-offending parent any time to work on the his or her own plan to separate the children from the abusive adult. If possible, and if it is consistent with protecting the safety of the children, CPS should not remove the child(ren) until the non-offending parent has been informed of the risk to the child(ren) caused by their remaining in the home under the present circumstances. CPS should also inform the non-offending parent that the primary role of CPS is to protect the child(ren). If the children are removed, CPS must also consider that the removal may create a threat to the non-offending parent's safety and work with that parent to address any such danger.

Whenever possible, and taking into consideration the non-offending parent's preferred safety plan and reasons for that plan, CPS should explain to the non-offending parent the possible implications of actions that she or he may take, including the implications of the actions that the person may be unwilling or unable to take. If the child(ren) are removed from the home, that should not preclude CPS from maintaining involvement with the non-offending parent in an effort to develop a permanent safety plan for the child(ren) and the non-offending parent.

## 4. CPS determination decisions in relation to domestic violence

To make a determination that a parent or person legally responsible abused or maltreated his/her child, including in situations involving domestic violence:

- There must be impairment or immediate danger of impairment of a child's condition; *and*
- The parent must have failed to exercise a minimum degree of care; *and*

- There must be a link or causal connection between the failure to exercise a minimum degree of care and the impairment or the imminent danger of impairment of the child's condition.

The investigation of a report of suspected abuse or maltreatment involving a family with domestic violence issues must be conducted using the same standards and legal definitions as any other report of suspected child abuse and maltreatment.

***Nicholson, et al. v. Scoppetta, et al.***[30]

In the 2004 New York State Court of Appeals decision of *Nicholson, et al. v. Scoppetta, et al.*[31] (See **Chapter 14,** *Appendices*), the Court stated that ***when the sole allegation of neglect (i.e. maltreatment) is that the parent or other person legally responsible for a child allows the child to witness domestic violence against a child's caretaker, this alone does not constitute maltreatment and a report against a non-offending parent should not be indicated on this basis.*** The Court stated that for a finding of neglect, the following conditions must apply: there must be impairment of a child's condition, or imminent danger that the child will become impaired, *and* there must be a failure to provide a minimum degree of care, and these two circumstances must be connected.

- The Court wrote that impairment of mental or emotional condition means "a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy."
- The court also stated that imminent danger must be near or impending, not merely possible.
- The Court operationalized the term "minimum degree of care" by posing the question, "Would a reasonable and prudent parent have so acted under the circumstances then and there existing?" The Court concluded that, where there is domestic violence, a fact-based inquiry must be made based upon whether the non-offending parent exercised a minimum degree of care, acting in the manner of a reasonable and prudent parent. The inquiry must consider the severity and frequency of the violence and the resources and options available to the non-offending parent, and must include consideration of the risks attendant to leaving, risks attendant to staying and suffering continued abuse, the risks attendant to seeking assistance through government channels, or that might be created by criminal prosecution of the offending parent, or by relocation. Furthermore, when applying the minimum degree of care standard to a situation in which a child is harmed or is at imminent risk of being harmed because of an incident and/or pattern of domestic violence, it would generally be the case that the offending parent should be a subject of the report since the battering and other forms of domestic violence are not the actions of a "reasonable and prudent" parent.

The Court gave two examples where a non-offending parent could be found to have neglected his or her child: one where the non-offending parent acknowledged the child knew of repeated violence and had reason to be afraid of the DV offender, yet the parent allowed the DV offender

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[30] For a more complete explanation of the implications of this decision for CPS, see 04-OCFS-LCM-22, *Summary of New York State Court of Appeals Decision, Nicholson, et al. v. Scopetta, et al.*

[31] *Nicholson v Scopetta*. October 26, 2004. Court of Appeals of New York.

to return to their home several times; and another where the child was regularly or continuously exposed to extremely violent conduct between the parents and there was proof of the fear and distress felt by the child as a result of long exposure to the violence. However, the Court was clear that if the sole allegation is that the parent was abused (i.e., was a victim of domestic violence) and the child witnessed the abuse, but there is no evidence of impairment to the child, a determination of maltreatment could not be made.

## 5. Coordination in cases with domestic violence

### a. *Law enforcement*

New York State Law (Criminal Procedure Law 140.10) requires police to makes an arrest when they have reasonable cause to believe that an order of protection has been violated or a felony or family offense misdemeanor has been committed by one family or household member against another. Regardless of whether an arrest is made or not, when a police officer responds to an alleged domestic violence incident, the officer is legally required to complete a Domestic Violence Incident Report (DIR). The report must document the officer's investigation and the alleged victim's statement, and must immediately be given to the alleged victim. The police department is required to keep Domestic Violence Incident Reports for at least four years. CPS can access these from the police. Some LDSSs have direct access to a statewide register of all reports.

On April 1, 2019, New York State enacted criminal justice reform legislation that eliminates cash bail and pretrial detention for nearly all misdemeanors (except sex offense misdemeanors and criminal contempt) and nonviolent felony defendants. Part JJJ of Chapter 59 of the Laws of 2019, which amends various provisions of the Criminal Procedure Law, went into effect on January 1, 2020. This law will expedite the release of individuals that fit the criteria set forth by legislation.

Prior to this change in the law, after an arrest for crimes related to DV, a defendant was often taken into custody for the time between the arrest and arraignment. This is typically about 24 hours. In practice, the time spent in pretrial detention has served as a "cooling-off period" for the defendant and the DV victim. It also allowed DV advocates and child protective services (CPS) caseworkers a known length of time to assess risk and develop and implement safety plans with the DV victim and any children in the household. With the elimination of bail and pretrial detention in most misdemeanor and non-violent felony cases, the time to engage in safety planning for DV victims and the children in the household will be sharply reduced.

Bail and pretrial detention have been eliminated for many crimes related to DV; instead, officers will issue a desk appearance ticket to the defendant. The desk appearance ticket allows the defendant to be released quickly and to return to court at a later date. However, the officer is not required to utilize an appearance ticket when certain circumstances are presented as detailed in Section 150.20 of the Criminal Procedure Law. Such circumstances can include cases where the defendant is a family[32] or household member of the victim of the crime, sex offense cases, and cases where it is reasonably expected that an order of

[32] Family members can include parents, siblings, children, extended kin, married or formerly married individuals, those who share a child in common, and individuals who are or have been in an intimate relationship.

protection will be issued. If an order of protection is authorized by statute, that order can be issued even if the defendant is released without bail or other conditions.

With this streamlined time frame for release of defendants, there is a significant need for timely engagement with DV victims, including the provision of advocacy and safety planning services. Once the defendant is released back to the community, and potentially back to their home, there could be an increased safety risk for the DV victim and children.

Even when the children are not the intended victims, DV is a risk element for maltreatment and abuse. Therefore, CPS staff need to consider any DV in their assessment of risk, and if necessary, address it to sufficiently reduce overall risk to children in the home.

Caseworkers should provide the victim with information on how to locate a DV shelter and/or DV services such as counseling. For more information about this change in the law, see 20-OCFS-INF-01 at https://ocfs.ny.gov/main/policies/external/ocfs_2020/INF/20-OCFS-INF-01.pdf

### b. *Community resources / domestic violence programs*

To best assist non-offending parents, CPS should develop working relationships with the community's domestic violence programs. A staff person (advocate) from a residential domestic violence program is one of the best-trained persons in the community to help a non-offending parent obtain needed services. The advocate can assist the non-offending parent with legal, housing, and financial support needs.

It may be helpful for CPSs to enter into written interagency agreements with local domestic violence programs to establish the basis and conditions for coordinating the delivery of services to non-offending parents and their children in CPS cases who are affected by domestic violence. Such written agreements should include the following:

- the specific purposes, roles, and responsibilities of the cooperating agencies;
- procedures for referrals between agencies;
- procedures for conducting Child Protective Services interviews;
- establishment of channels of communication to facilitate the provision of needed services for family members and to maintain their safety;
- a requirement that each respective agency provide the other agency with timely training about, and copies of, agency policies, procedures, forms and regulations; and
- the confidentiality requirements pertaining to information regarding CPS reports and domestic violence program recipients. (See **Chapter 13, Section B,** *Access to CPS records.*)

Several LDSSs have entered into formal collaborations with domestic violence service providers wherein a domestic violence advocate(s) is co-located at the LDSS, usually within CPS unit. While each program differs somewhat, typically the advocate goes with CPS on home visits in cases where domestic violence is believed to be occurring. The advocate also is available CPS to consult with at any time and to support CPS in linking non-offending parents with appropriate residential and non-residential services in the community. Based on feedback from counties that have these formal collaborations, OCFS strongly recommends that LDSSs consider engaging in such collaborations., These collaborations build up CPS staff expertise in identifying domestic violence and in work with non-offending parents, and enable CPS to better support children and non-offending parents in securing safety.

### c. *Reports involving person(s) residing in residential programs for victims of domestic violence*

When a CPS receives a report from the SCR involving children or adults currently residing in a residential program for victims of domestic violence or a safe home, their access to the residential facility or safe home to communicate with those persons is subject to the regulations at 18 NYCRR 452.10(d). In any circumstance in which the *subject* of the report is residing in such a facility, the facility must allow CPS access to interview the subject of the report in the facility. A residential program for victims of domestic violence or a safe home must also provide access to CPS to interview a resident when the LDSS is authorized to do so by a court order. However, CPS should not visit a residential program for victims of domestic violence unannounced. Furthermore, they may only visit if they are investigating a report. Best practice is for CPS to develop a working agreement with any shelter it deals with that describes a procedure for visits that CPS and the program both agree to.

If CPS wishes to interview a resident who is not the subject of a report, CPS may only interview the person at the residential facility if the rules and procedures of the specific facility permit it *and* the individual to be interviewed agrees. However, there is no regulatory impediment to CPS interviewing residents of a residential program for victims of domestic violence at a location other than the facility or safe house.

CPS must not reveal the location of the residence. This includes be careful not to divulge the location in any part of the record that may be made available to the subject of the report or other persons named in the report if they request records of the report at a later date.

# O. Determinations / Investigation conclusions

## 1. Standards for making a determination

For each report it investigates, the CPS must determine within 60 days of the receipt of the report whether to indicate or unfound the report. If the investigation reveals some credible evidence that abuse or maltreatment exists, the report must be indicated. If the investigation does not find some credible evidence of abuse or maltreatment, the report is unfounded and sealed. (See **Chapter 14,** *Appendices*, XI.E)

When a CPS concludes its investigation, it considers, weighs and evaluates all the information that has been gathered and documented in the case record to determine whether or not to substantiate each allegation in the report. The information obtained should be applied to the operational definitions of child abuse and maltreatment (See **Chapter 14,** *Appendices***,** XI.D) to determine if some credible evidence exists as to whether a child has been or continues to be abused or maltreated/neglected, as defined in Section 1012 of the Family Court Act (FCA). When making a a determination, CPS must individually address all allegations in the report. If any allegation is substantiated, the report is determined to be "indicated". If no allegations are substantiated, the report is determined to be unfounded.

***"Maltreatment" and "Neglect"***

Please note that the Social Services Law uses the term "maltreatment" while the Family Court Act uses the term "neglect". Historically, the term "maltreatment" included both "neglect" as defined in the Family Court Act and "neglected child in residential care". The latter term was used until June 2013 to define maltreatment of children in certain types of residential facilities, and investigations of "neglected children in residential care" were conducted by state agencies (OCFS and the Commission on Quality for Care and Advocacy for Persons with Disabilities). In June 2013, the New York State Justice Center for the Protection of People with Special Needs started operating, and that agency then became responsible for all investigations that involve institutional residential care. Nevertheless, the term" maltreatment" continues to be used in CPS.

SSL §412(2) defines "maltreated child" as a child under eighteen years of age:

(a) defined as neglected by the Family Court Act; OR
(b) who has had serious physical injury inflicted upon him or her by other than accidental means.

### a. *Elements of neglect / maltreatment*

- To substantiate an allegation of the neglect of a child made against a parent or other person legally responsible for a child (i.e., to indicate the report of maltreatment), all three of the following elements of neglect/maltreatment must exist and be supported by at least some credible evidence (See **Chapter 14,** *Appendices***,** for guidance on what is meant by "some credible evidence."):
- the parent or other person legally responsible for the care of the child failed to exercise a minimum degree of care under the circumstances in question; and
- that failure on the part of the parent or other person legally responsible for the care of the child *caused;*
- the impairment of, or imminent danger of impairment of the child's physical, mental or emotional condition.

The failure to exercise a minimum degree of care refers to a failure:

- in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; OR
- in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired [as in (a) above.]
- In addition, a parent or other person legally responsible for a child should be found to have neglected the child if there is some credible evidence that the person has abandoned the child, in accordance with the definition and criteria set forth in SSL §384-b.

### b. *Elements of abuse*

For a parent or other person legally responsible for a child to be responsible for abuse of a child (i.e., to indicate the report), some credible evidence must exist that the parent or other person legally responsible for the child's care:

- inflicted or allowed to be inflicted upon such child physical injury by other than accidental means; or created or allowed to be created a substantial risk of physical injury to such child by other than accidental means; and
- such injury would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- sexually abused a child by: committing, or allowing to be committed against a child a sex offense as defined in several specified sections of the Penal Law, or incest; or using a child for the purpose of or permitting or encouraging such child to engage in prostitution or a sexual performance.

See FCA § 1012(e) and (f) for the exact definitions of child abuse and child neglect.

## 2. Indicated reports

***Notice of indication***

If the report is indicated, CPS must provide a Notice of Indication to each subject and any other adult person(s) named in the report within seven days of the date of determination. The Notice must include information about the outcome of the investigation and the subject's rights regarding amendment and to a fair hearing. The request for amendment must be received by the SCR within 90 days of the date of indication. If the SCR does not grant the request for

amendment within 90 days of receipt of the request, the matter will be forwarded for an administrative fair hearing.

The Notice of Indication must be system generated in CONNX and will be pre-filled with the name and address information recorded in the CONNX database. CPS must review and correct or confirm the name and address information before closing the case and sending it for supervisory approval. (See **Chapter 12,** *Notifications.*) The letters available in CONNX are specific to familial reports, foster care reports, or day care reports, and within those categories, there are different Notice of Indication letters for subjects and for other persons named in the report.

If an individual who is legally entitled to a letter has Limited English Proficiency, CPS must provide a Notice of Indication translated into a language that person speaks or otherwise inform the recipient that he or she can receive a written or oral translation of the letter at no charge. Notification letters are, however, available in Spanish in CONNX.

***Assessment of ongoing needs before making a determination***

Assessments for all indicated reports are required as follows:

- If the report is indicated, but is not being opened for services, the risk assessment must be documented through the Risk Assessment Profile (RAP) *before* the Investigation Conclusion is completed.

  **Note:** The decision to close an indicated case and not provide any on-going services must conform to regulatory requirements for case closing [18 NYCRR 432.2(c)].(See Case Closing, IV.I.1)
- If the report is indicated and is being opened for services, the Family Assessment and Service Plan (FASP) must be completed within 7 days of indication (if Case Indication Date (CIN) is the Date of Indication).
- If the report is indicated and a services case is already open, a Plan Amendment must be completed within 7 days.

***Informing the mandated reporter of the outcome***

If a mandated reporter was the source of a report and requested, at intake or any point thereafter, to be informed of the outcome of the investigation, CPS must notify the mandated reporter of the determination. CPS should advise the mandated reporter to place the notice of findings in his or her or the agency's paper record together with the written report prepared by the source of the report. CPS should also stress to the mandated reporter the confidential nature of such records.

## 3. Unfounded reports

If the report is unfounded, the SCR notifies the subject(s) and any other adult person named in the report of this determination by mail. As with indicated reports, the notification letter that a report has been unfounded is system generated and uses the name and address information provided in the case record. Because of this, it is crucial that CPS review and update all name and address information in the database before closing the report. (See **Chapter 12,** *Notifications***.**)

When determining that a report of suspected child abuse or maltreatment is unfounded, consideration should be given to the need for services other than CPS, particularly if the risk rating is high or very high. If specific services are appropriate and the family is willing to accept them, CPS should make appropriate referrals.

If any person or organization authorized to receive information from the record of an open CPS case [listed in Section 422(4)(A)] has received a copy of the now unfounded report while the investigation was pending, CPS should notify each individual, unit, organization or agency that received a copy of the report of the unfounded determination so they may update their own records.

## 4. Determining the investigation conclusion closure reason

Once the investigation has been determined as indicated or unfounded, CPS must decide whether to open the case for services or close the case. Consideration should always be given to the family's need for on-going services. The service options should be fully discussed with the family prior to completion of the investigation conclusion.

Services may be appropriate regardless of the outcome of the investigation (i.e., indicated or unfounded). However, services are deemed essential for cases with high or very high risk, to decrease the risk of subsequent child abuse or maltreatment.

The full range of services available include, but are not limited to, child protective and child preventive services. If protective and/or preventive services are not provided to high or very high risk cases, CPS must provide an explanation of why services are not being provided in the progress notes.

If specific services are appropriate and the family is accepting of such services, a service case should be opened. The service case may either be initiated by CPS or referred to another unit for opening. Referrals for community based services may also be made, either in conjunction with an open service case or independently. The decision to provide on-going services is made at the investigation conclusion and is reflected in the worker's selection of one of the following Investigation Conclusion Closure Reasons:

1. **Unfounded; Case open — Services**

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. However, preventive services are warranted and have been accepted by the family. Additionally, court-ordered preventive services, court-ordered preventive supervision or voluntary placement may exist.

2. **Unfounded; Closed** — No services required

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. Additionally, none of the following services are required or provided:

   - preventive
   - court-ordered services
   - court-ordered supervision
   - court-ordered placement
   - voluntary placement

3. **Unfounded; Closed — Refused services**

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. Preventive services were offered to the family and refused and there is not sufficient evidence to initiate or continue a Family Court action to compel involvement.

4. **Unfounded; Closed — Unable to contact/moved out of jurisdiction**

   You are unable to assess if serious safety factors or risk issues currently exist which warrant or require the provision of child protective services and services cannot be provided, due to one or more of the following circumstances:

   - The current whereabouts of the family are unknown and the family cannot be located.
   - The family has moved out of the current CPS jurisdiction and cannot be located.
   - The family has moved out of New York State.

5. **Unfounded; Closed – Referred to Community Based Services Only**

   You have assessed that no serious safety factors or risk issues currently exist which warrant or require the provision of child protective services. The family has been referred to community-based services only. No agency direct or purchase provided services or court ordered services are required or being provided at this time.

6. **Indicated; Case open — CPS required**

   You have assessed that serious safety factors and/or risk issues exist which require the on-going assessment of safety and risk and/or court-ordered CPS placement, court ordered services or supervision currently exist. In addition, preventive services, voluntary foster care placement or non-LDSS custody-relative/resource placement may be requested and provided to the family and/or a PINS/JD placement may exist.

7. **Indicated; Case open — CPS not required**

   You have assessed that no serious safety factors and/or risk issues exist that require an on-going assessment of safety and risk. Preventive services, voluntary foster care placement or non-LDSS custody-relative/resource placement may be requested and provided to the family and/or a PINS/JD placement may exist.

8. **Indicated; Closed — Services refused/unable to take or continue legal action**

   Current serious safety factors or risk issues may exist, however do not place the child(ren) in immediate danger. The family has been offered and subsequently refused appropriate services. Additionally, CPS has assessed that:

   - it would not be in the child's best interest or that there is insufficient evidence to initiate or continue a Family Court action to compel involvement; or
   - CPS sought a court order to compel the subject(s) of an indicated abuse and/or maltreatment report(s) to receive such services, but the court has dismissed the petition and it is not in the child's best interest to continue additional Family Court action.

9. **Indicated; Closed — No services required**

   You have assessed that no serious safety factors and/or risk issues exist that require the on-going assessment of safety and risk. Additionally, none of the following services are required or being provided:

   - preventive services
   - court-ordered services
   - court-ordered supervision
   - court-ordered placement
   - voluntary placement

10. **Indicated; Closed — Unable to contact/ moved out of jurisdiction**

    Serious safety factors and/or risk issues exist that require the on-going assessment of safety and risk. However, services cannot be provided, as one of the following circumstances exists:

    - The current whereabouts of the family are unknown and the family cannot be located.
    - The family has moved out of the current CPS jurisdiction and cannot be located.
    - The family has moved out of New York State.

11. **Indicated; Closed — No surviving children**

    All of the following circumstances must exist:

    - A DOA/Fatality allegation exists and is substantiated.
    - A DOD was entered for the AB child(ren) associated to the DOA/Fatality allegation.
    - There are no other persons younger than 18 years of age with a role of MA, AB or No Role in the case composition.

12. **Indicated; Closed — Referred to Community Based Services Only**

    You have assessed that no serious safety factors and/or risk issues exist that require the on-going assessment of safety and risk. The family has been referred to community-based services only. No agency direct or purchase provided services or court ordered services are required or being provided at this time.

# P. Case closing

## 1. Decision

Before deciding to close a child protective case, which would mean ceasing to provide child protective services, CPS must take the following steps:

- conduct a thorough review of the case record, including events, conversations and correspondence;
- review assessments of the family, including the Safety Assessment, Family Strengths, Needs and Risks Scales and the Risk Assessment, with particular emphasis on the overall case risk rating;
- review the family's accomplishments in achieving the outcomes set forth in the family/children's case record;
- discuss directly with the family and/or with other service providers, the family's response to the termination of protective services for children.

Additionally, before closing a child protective case, all case closing criteria must be met. There are general criteria for case closing that apply for all cases, and specific criteria that apply for cases involving continuing foster care services or mandated preventive services.

The **general criteria for case closing**, which apply to *all* case situations, are:

- the local child protective service can show that all children in the household are assessed to be safe despite the withdrawal of controlling interventions that may have been provided to protect the children and it is concluded that the risk of future abuse or maltreatment has decreased sufficiently; or
- the child protective service has offered rehabilitative services to the children named in indicated abuse and/or maltreatment reports and their families, but such services have been rejected, and the child protective service worker has assessed that it would not be in the best interest of the child to initiate a Family Court petition for a determination that a child is in need of care and protection; or
- the child protective service has sought a Family Court order but the court has dismissed such a petition, and it is not in the child's best interest to continue additional Family Court action.

It is permissible to close a protective case when foster care services are continuing if the general criteria can be met and if:

- all children are freed for adoption; or
- all children are continuing in out-of-home placement with a permanency planning goal of independent living or adult residential care; or
- it is documented in the family and children services plan that the necessity of foster care for all children who are named in the abuse and/or maltreatment report(s) is not presently attributable to the health and safety of the child or parent service needs as defined in 18 NYCRR 432.10(c)(1) and 18 NYCRR 430.10(c)(4).

It is permissible to close a protective services case when one or more children named in the abuse and/or maltreatment reports are receiving mandated preventive services, if all such children are presently at risk of foster care because of reasons that are unrelated to the health

and safety of the child or parental services needs as defined in 18 NYCRR §§ 430.9(c)(1), 430.9(c)(4) and 432.2(c)(iii).

## 2. Other considerations and procedures for closing a case

Before deciding to close a child protective case which would mean ceasing to provide child protective services, the local child protective service must provide documentation that all case closing requirements have been met.

A child protective services supervisor must approve in writing that the case closing decision has been made in accordance with the requirements of the regulations.

***Plan amendment for a case open for protective services***

When CPS caseworker decides to close a case that has been open for child protective services, the worker must complete a Plan Amendment.

- To complete the Plan Amendment, the status change "Case Open or Closed for Protective Services" must be selected.
- Additionally, workers must complete a safety assessment and the RAP before selecting this status change.
- Please note, if the risk rating is High or Very High, CPS must clearly explain the decision to remove protective services at this time.
- CPS should document any individual or family strengths and/or resources that support the removal of protective services.
- CPS must complete the Plan Amendment within seven (7) days of closing a case for protective services (i.e., deleting the program choice of "Protective").

The caseworker should inform those individuals who have been actively involved in the case (school personnel, service providers, courts, etc.) of CPS closing.

Caseworkers should adequately prepare the family for the termination of protective services prior to the status change update (i.e., closing date).

In preparing the family, the worker should fully explore and discuss with the family the possible need for services, other than those provided through protective services. Services should be continued or begun, based upon the worker's assessment and the family's acceptance of such services, as warranted.

Additionally, the family should be apprised of the fact that terminating the provision of protective services is not the equivalent of an unfounded investigation. CPS must inform the family that all CPS case records, open and closed, will remain in the SCR database and with the local district, pursuant to state regulations.