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2000 Purpose and Statutory Authority

The broad purpose of these regulations is to:

1. Protect children whose health and welfare may be adversely affected through abuse or neglect;
2. Strengthen the family and make the home safe for children whenever possible;
3. Provide a temporary or permanent nurturing and safe environment for children when necessary; and,
4. Establish a range of responses to child abuse and neglect that take into account different degrees of child abuse or neglect and which recognize that child offenders should be treated differently from adults.

Specifically, the section sets forth:

1. Criteria for determining whether to conduct an assessment or an investigation.
2. Procedures for assessment and service delivery.
3. Procedures for investigations.

The statutory authority for these regulations can be found at 33 V.S.A. §4922.

2001 Definitions

The following terms, defined in statute, are used in this section of rules:

1. "Abandonment of the child" means the parent or the person responsible for the child's welfare has ceased to provide for the needs of the child and has not made arrangements for the child's care.
2. An "abused or neglected child" means a child:
 - a. whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare; or
 - b. who is sexually abuse or at substantial risk of sexual abuse by any person.

3. "Assessment" means a response to a report of child abuse or neglect that focuses on the identification of the strengths and support needs of the child and the family, and any services they may require to improve or restore their well-being and to reduce the risk of future harm. The assessment does not result in a formal determination as to whether the reported abuse or neglect has occurred.
4. "Child" means an individual under the age of majority.
5. "Domestic Violence" means a pattern of assaultive and coercive behaviors including physical, sexual, psychological, emotional, and economic coercion that an adult or adolescent uses to obtain and maintain control over an intimate partner.
6. "Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development.
7. "Harm" can occur by:
 - a. Physical injury or emotional maltreatment.
 - b. Failure to supply the child with adequate food, clothing, shelter or health care. For the purposes of this subchapter, "adequate health care" includes any medical or nonmedical remedial health care permitted or authorized under state law. Notwithstanding that a child might be found to be without proper parental care under chapter 55 of Title 33, a parent or other person responsible for a child's care legitimately practicing his or her religious beliefs who thereby does not provide specified medical treatment for a child shall not be considered neglectful for that reason alone.
 - c. Abandonment of the child.
8. "Incest" means sexual relations between a man and his mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister or mother's sister or a woman and her father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother or mother's brother. (Note: Sexual relations between first cousins is not incest in Vermont.)

9. "Investigation" means a response to a report of child abuse or neglect that begins with the systematic gathering of information to determine whether the abuse or neglect has occurred and, if so, the appropriate response. An investigation shall result in a formal determination as to whether the reported abuse or neglect has occurred.
10. "Medical Neglect" means the failure to provide adequate healthcare, including necessary medical or nonmedical remedial health care permitted or authorized under state law.
11. "Neglect" means the failure to supply the child with adequate food, clothing or shelter.
12. "Person responsible for a child's welfare" includes the child's parent; guardian; foster parent; any other adult residing in the child's home who serves in a parental role; an employee of a public or private residential home, institution or agency; or other person responsible for the child's welfare while in a residential, educational, or child care setting, including any staff person.
13. "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.
14. "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.
15. "Serious physical injury" means any intentional or malicious conduct by an adult that leaves a child with an injury or injuries that leave significant and/or permanent bodily or psychological damage or disfigurement, or that leaves a child without the ability to perform normal functions of daily living.
16. "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition,

show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

17. "Substantial child endangerment" means conduct by an adult involving or resulting in sexual abuse, and conduct by a person responsible for a child's welfare involving or resulting in abandonment, child fatality, malicious punishment, or abuse or neglect that causes serious physical injury.
18. "Substantiated report" means that the commissioner or the commissioner's designee has determined after investigation that a report is based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected.
19. "Valid Allegation" means a report of child abuse or neglect that has been accepted for either an investigation or an assessment.

2002 Receiving and Evaluating Reports of Child Abuse or Neglect

The division shall have qualified staff available at all times to receive reports of suspected child abuse and neglect from mandated and non-mandated reporters.

Division staff shall evaluate each report to determine if it is a valid allegation of child abuse or neglect.

2002.01 *Determining the Validity of a Report*

The division shall determine the validity of reports promptly as soon as sufficient information is available to make that determination. A report shall be considered valid when the division suspects that:

1. The person responsible for the child's welfare has harmed or is harming the child by :
 - a. physical injury;
 - b. neglect;
 - c. medical neglect;

- d. emotional maltreatment; and/or.
- e. abandonment of the child.
2. The person responsible for the child's welfare has, by acts or omissions, placed the child at significant risk of serious physical harm.
3. Any person who, by acts or omissions, placed the child at significant risk of sexual abuse.
4. Any person has sexually abused a child.

2002.02 *Additional Considerations for Determining if a Report of Physical Abuse is a Valid Allegation*

In determining whether a report of physical abuse is a valid allegation, the division shall consider whether the report alleges:

1. Death due to physical abuse;
2. permanent or temporary disfigurement; or
3. impairment of any bodily organ or function by other than accidental means.

When the sole allegation is that the child has a mark caused by a person responsible for the child's welfare, but no other injury, the allegation shall not be considered valid unless there is also information to indicate that the mark has lasted for or appears likely to last for more than twenty-four hours.

2002.03 *Additional Considerations for Determining if a Report of Sexual Abuse is a Valid Allegation*

In determining whether a report of sexual abuse is a valid allegation, the division shall consider whether:

1. The contact with the child was incestuous;
2. the alleged perpetrator was entrusted to care for the child by the authority of the law or the child is the perpetrator's child, grandchild, foster child, adopted child or stepchild ;
3. the child is being exploited, or prostitution is involved;
4. it appears that a significant difference in age, size or developmental level was

- used to victimize the child, or
5. it appears that force, threat, or coercion is used to victimize the child; or the victim did not have the ability or opportunity to consent.

Sexual abuse or sexual contact between a child age 16 or older and another person will not be accepted absent elements of threat, force, or coercion, or lack of opportunity or inability to consent unless:

1. The care of the child is entrusted by the authority of the law; or,
2. the child is the perpetrator's child, grandchild, foster child, adopted child or stepchild.

2002.04 Additional Considerations for Determining if a Report of Risk of Harm is a Valid Allegation

In determining whether a report of risk of physical harm is a valid allegation, the division shall consider whether the report alleges:

- a. The parent or caretaker has committed a single, egregious act that has caused the child to be at significant risk of serious physical injury.
- b. The parent or caretaker has failed to provide age-appropriate supervision for the child and as a result, the child is at significant risk of serious physical injury.
- c. The parent is incapable, due to a mental or physical illness/condition or developmental disability, of providing age-appropriate supervision, and no other person is available to assist.
- d. The reporter has observed or a professional reports that a parent or caretaker of a child under the age of six and has a current pattern of use of illegal substances or misuse of prescription drugs and the child lacks age-appropriate supervision as a result; or is regularly impaired by use of alcohol and the child lacks age-appropriate supervision as a result. A report will be accepted when the reporter has observed or a professional reports that a parent or caretaker has a current pattern of use of methamphetamine.
- e. There is specific information provided that alleges the parent or caretaker allowed a child to be exposed to methamphetamine production.

- f. There are allegations that there is significant risk of serious physical harm to a child due to domestic violence in the home. In considering whether a child is at significant risk, the following issues should be considered:
- Past history of substantiation(s) or conviction(s) or reported history of child maltreatment.
 - Criminal history of domestic-violence related crimes.
 - Proximity of the children to the domestic violence as well as the nature of the violence or crime; including when a child physically intervenes in a domestic assault or is forced to participate in a domestic assault.
 - Use of weapons or objects that could cause harm in the presence of children in the context of domestic violence. Issues related to who is the dominant aggressor and whether the person is acting in self defense will be taken into consideration as part of the case determination.
 - In the context of domestic violence, presence of direct threats (including verbal threats) of serious bodily injury or death to or regarding the child or other children of the family or in the household.

The division shall consider a report valid, regardless of the above issues, when:

- There is a death of a parent or caretaker as a result of domestic violence and the child was reported to have been in the home or on the property when the incident occurred, regardless of the child's exact location; and/or
- a gun is discharged inside a home when the child(ren) are also in the home regardless of where the child(ren) are physically in the home.

In determining whether a report of risk of sexual abuse is valid, the division shall consider whether the child has contact with a person with a past substantiation or conviction for sexual abuse and it appears that the child is at significant risk of sexual abuse.

2003 Jurisdiction to Respond to Alleged Child Abuse or Neglect

The department shall respond to reports of child abuse or neglect when:

1. The alleged abuse or neglect occurred in Vermont, or
2. the alleged abuse or neglect occurred out of state and the child is a resident of or is present in Vermont.

2004 Types of Responses

The department may respond in one of the following ways:

1. Open an investigation;
2. open an assessment; or
3. notify a child welfare system and/or law enforcement agency in another jurisdiction of the need to respond, including coordinating a joint response with the other jurisdiction when indicated.

2005 Response Timeframes

If the report is determined to be valid, the division shall determine the time frame for response. If the information indicates that a child is in immediate danger, law enforcement shall be notified. The division shall commence an investigation or assessment within 72 hours.

The commissioner or designee may waive the 72-hour requirement only when necessary to locate the child who is the subject of the allegation or to ensure the safety of the child or the department worker.

2006 Criteria for Deciding Upon Investigation vs. Assessment

The division shall consider the following factors when determining whether to respond with an investigation or an assessment response:

1. The nature of the abuse and extent of a child's injury, if any.
2. The alleged perpetrator's prior history of child abuse or neglect.

3. To the extent known by the reporter, the alleged perpetrator's willingness and capability to accept responsibility for the conduct and engage in a plan of services.
4. Any strengths and formal and informal supports and/or resources that are available or exist within the family and community, including resources and supports for people with disabilities if relevant.

2006.01 Situations Requiring an Investigative Response

The department's initial response shall be an investigation of a valid allegation of substantial child endangerment, including allegations that:

1. Any adult sexually abused a child.
2. The acts or omissions of a person responsible for a child's welfare resulted in child fatality.
3. A person responsible for a child's welfare:
 - a. abandoned the child;
 - b. maliciously punished the child;
 - c. physically abused a child under the age of 3;
 - d. physically abused a child of any age who is non-verbal or non-ambulatory;
 - e. allowed a child to be exposed to methamphetamine production.

The department may conduct an investigation of any report.

2007 Investigation Procedures

2007.01 Joint response with Law Enforcement

The department shall report to and request assistance from law enforcement at all times when:

1. Conducting an investigation of:
 - a. child sexual abuse by an alleged perpetrator age 10 or older; or
 - b. serious physical abuse or neglect likely to result in criminal charges or requiring emergency medical care.

2. Situations potentially dangerous to the child.
3. Situations potentially dangerous to a department worker.

2007.02 *Commencing an Investigation*

Commencing an investigation requires that division staff interview the child, or if the child is non-verbal, observe the child.

If necessary to assure safety of all children in the home, the alleged victim or another child in the home may be interviewed without the permission of the child's parents, guardian, or custodian. This interview must take place in the presence of a disinterested adult, such as a teacher, nurse, member of the clergy, etc.

When an interview occurs without parental permission, the division shall inform the parent as soon as is reasonable and safe.

The division will inform any person to be interviewed that if they identify themselves as having a disability and needing an accommodation to participate in the interview, the division will provide reasonable accommodation.

2007.03 *Other Required Interviews*

The Division staff shall interview the following:

1. The person responsible for the child's welfare unless he or she refuses to be interviewed or cannot be located;
2. the alleged perpetrator, unless he or she refuses to be interviewed or cannot be located; or
 1. is a minor and his/her parents refuse to give permission;
 2. is not the child's parent or caretaker and has been interviewed by the police in the context of a joint investigation;
 3. is not residing in the home and has been interviewed by the police in the context of a joint investigation.

At the time of the division's initial contact with the alleged perpetrator, the division will inform the alleged perpetrator of the complaint or allegation made against the individual.

The division will inform any person to be interviewed that if they identify themselves as having a disability and needing an accommodation to participate in the interview, the division will provide reasonable accommodation.

2008 Photographs and X-Rays

If trauma to the child is visible, the division may take photographs of the injuries without parental permission. If the child's medical provider determines that x-rays or other medical imaging is indicated, and parental permission cannot or should not be obtained the division may authorize the procedures.

2009 Other Investigation Procedures

During the investigation, to the extent reasonable, the division shall:

1. visit the child's residence or place of custody;
2. visit the location of the alleged abuse or neglect;

The division shall also, to the extent reasonable, determine:

1. The nature, extent and cause of the abuse or neglect.
2. The identity of the person responsible for the abuse or neglect.
3. The names and conditions of any other children living in the same home environment.
4. The immediate and long term risk to each child if that child remains in the existing home environment.
5. The environment and the relationship of any children in the home to the person responsible for the reported abuse or neglect.

2010 Making the Substantiation Decision

The decision to substantiate a report of child maltreatment shall be based on accurate and reliable information. The decision shall be based on pertinent information gathered

during an investigation. Hearsay information from a reliable source may be considered. All information shall be weighed with other supporting or conflicting data. A statement or disclosure from the child that he or she was abused or neglected is not required.

In order to substantiate an allegation of child abuse or neglect, the division must determine that a reasonable person would conclude that:

1. The child is an abused or neglected child as defined in 33 V. S. A. 4912(2); and,
2. unless the substantiated maltreatment is sexual abuse, a person responsible for the child's welfare is the perpetrator.

If the division cannot determine the specific perpetrator, but determines that a reasonable person would conclude that the child was abused or neglected by a parent or "other person responsible," the record should reflect substantiation by a "perpetrator unknown".

In all cases where the policy requirements for substantiation have been met and the supervisor recommends unsubstantiation, the Child Protection Director or Child Safety Assessment Manager will make the final determination.

2010.01 *Substantiating Abandonment*

Abandonment is substantiated only when the parent or the person responsible for the child's welfare has ceased to provide for the needs of the child and has not made arrangements for the child's care. The situation must exist beyond a reasonable time, based on the child's developmental level.

2010.02 *Substantiating Emotional Maltreatment*

Emotional maltreatment is substantiated when:

- A pattern of behavior is present. The pattern does not have to be of the same behavior for the purpose of substantiating the report;
- the behavior is malicious, that is, cruel behavior intended to induce suffering, including torturing which does not result in physical harm; and,

- the behavior resulted in impaired psychological growth and development. In making this last decision, the worker may seek the advice of a medical, mental health or other professional.

2010.03 *Substantiating Neglect*

Neglect is substantiated when a person responsible for the child's welfare demonstrates a pattern of failing to provide or maintain one or more of the following:

- Adequate nutritious food needed to maintain age-appropriate physical and social activities and prevent nutritional deficiencies, illness, or impairment of physical and mental functioning. A medical and/or nutritional practitioner must support this finding.
- Clothing and footwear appropriate to the environmental conditions;
- Adequate shelter and protection from weather and hazards in the dwelling or on the property; or
- Adequate medical, dental, or mental health care for a health problem which, in the opinion of a medical or mental health professional, has or may result in risk of physical or mental limitation or incapacity if untreated.

The steps taken by the individual to reduce or eliminate the neglect shall be taken into consideration in making the decision to substantiate. If the neglect is solely the result of the parent or caretaker's lack of financial means, neglect shall not be substantiated. Substantiation will not be based solely on an individual's disability.

Also, if a parent or caretaker is legitimately practicing his or her religious beliefs by not providing specific medical treatment, neglect shall not be substantiated for that reason alone. In this case, court action may be initiated under 33 V. S. A. Chapter 53, if necessary, to assure the child's well-being.

2010.04 *Substantiating Physical Abuse*

Physical abuse is substantiated when the person responsible for the child's welfare caused physical injury of the child, by other than accidental means, causing:

- Death; or,
- permanent or temporary disfigurement or impairment of any bodily organ or

function. Visible bruises are not required in order to substantiate. Physical injury is abuse when the injury occurred non-accidentally, or there was intent to cause harm, or a reasonable person could have predicted the harm.

2010.05 *Substantiating Sexual Abuse*

Sexual abuse is substantiated when a reasonable person would believe that one of the following has occurred: sexual molestation or exploitation of a child including, but not limited to, incest, prostitution, rape, sodomy, any lewd and lascivious conduct involving a child or the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

Sexual abuse by a person age 18 or older can be substantiated if:

1. The contact was incestuous;
2. the perpetrator was entrusted to care for the child by the authority of the law or the child is the perpetrator's child, grandchild, foster child, adopted child or stepchild ;
3. the child is being exploited, or prostitution is involved;
4. a significant difference in age, size or developmental level is used to victimize the child; and/or
5. force, threat, or coercion is involved; or the victim did not have the ability or opportunity to consent.

Sexual abuse by one child on another child is substantiated when:

1. The victim is being exploited, or prostitution is involved;
2. force, coercion or threat is used to sexually victimize the child, or the victim did not have the ability or opportunity to consent; or,
3. a significant difference in age, size or developmental level is used to sexually victimize the child.

2010.06 *Substantiating Risk of Harm*

Risk of harm is substantiated when the person responsible for the child's welfare:

1. Engaged in a single, egregious act that resulted in significant risk that the child could have been seriously physically injured.
2. Was absent and did not arrange for the child to be supervised in a manner appropriate to the child's age and circumstances.
3. Due to drug or alcohol use, did not provide age appropriate supervision for the child.
4. Did not appropriately supervise the child in a situation in which drugs, alcohol or drug paraphernalia are accessible to the child.
5. Is incapable, due to a mental or physical illness/condition or developmental disability, of providing age-appropriate supervision, and no other person is available to assist. The department recognizes that persons with a disability can be successful parents.

Unless the risk of harm is due to a single, egregious act, the steps taken by the individual to reduce or eliminate the risk shall be taken into consideration in making the decision to substantiate. Substantiation will not be based solely on an individual's disability.

Risk of sexual abuse substantiated when:

1. the alleged perpetrator's history of sexual abuse or offenses, the nature of the abuse or offense and the history of treatment indicate that he or she is still a substantial risk to the alleged victim; and/or,
2. the person responsible for the child's welfare is unable or unwilling to protect the child from harm.

The perpetrator is considered to be the person whose behavior or history poses a risk to the child. However, the person responsible for the child's welfare may also be substantiated as a perpetrator of risk of sexual abuse if through his or her acts or omissions he or she knowingly places the child at substantial risk of sexual abuse.

In a residential, educational, or child care setting, the person responsible for the child's welfare may include the hiring authority who knowingly maintains the employment of a

person who poses an ongoing risk of harm to children or who does not create a division approved plan to adequately address and ensure child safety.

2011 Determining Service Need; Delivering Ongoing Services

When following an investigation, child abuse or neglect is substantiated, the division shall provide assistance to the family to protect children whose health and welfare may be adversely affected through abuse or neglect.

When child abuse or neglect is not substantiated, the division may also provide assistance to the family to strengthen the family and make the home safe for children. This assistance may be provided directly by the division or through referrals.

The nature of the assistance will be based on an assessment of risk and the service needs of the family. When a parent, or other person responsible for the child's welfare, identifies as having a disability the assessment of service needs will be developed with input from and in cooperation with a person with relevant expertise.

The department recognizes that persons with a disability can be successful parents and may need reasonable accommodations, including adaptive equipment and supports. When this is the case, the department will make referrals as appropriate.

2012 Assessment Procedures

An assessment, to the extent reasonable, shall include the following:

1. An interview with the child's parent, guardian, foster parent or any other adult residing in the child's home who serves in a parental role. The interview will focus on ensuring immediate safety of the child and mitigating future risk of harm using an approach that engages the family in a collaborative process.
2. An evaluation of the safety of the subject child and any other children living in the same home. The evaluation may include an interview or observation of the

child(ren), and will occur with the permission of the child's parent, guardian or custodian.

3. In collaboration with the family, an identification of the family's unique strengths, resources and services needs and the development of a plan of services that reduces the risk of harm and improves or restores family well-being.
4. When a parent, or other person responsible for the child's welfare, identifies as having a disability the assessment of service needs will be developed with input from and in cooperation with a person with relevant expertise.

2012.01 *Commencing an Assessment*

Commencing an assessment requires that division staff make initial contact with person responsible for the child's welfare.

The child may not be interviewed or observed without permission of the child's parent, guardian or custodian. If the parent, guardian or custodian refuses permission, and the division has reason to believe that the child's safety cannot be assured, the division shall commence an investigation.

The child shall always be seen as part of an assessment. If the family refuses access to the child, the division shall commence an investigation.

2012.02 *Assessment Timeframe*

Assessments shall be completed within 45 days. An assessment timeframe may be extended with written justification and the approval of a supervisor, but not to exceed a total of 60 days. Within 45 days, or 60 days if extension is approved, the division shall determine if the family:

1. Needs services with an open family services case with the division;
2. Needs referrals to appropriate services in the community; or
3. Needs no services.

2012.03 *Determining Service Need; Delivering Ongoing Services*

At the conclusion of the assessment, the division shall determine whether, in order to improve or restore the family's well-being and to reduce the risk of future harm to the child, the family requires services. The division may determine if the family:

1. Needs services with an open family services case with the division;
2. Needs referrals to appropriate services in the community; or
3. Needs no services.

The department recognizes that persons with a disability can be successful parents and may need reasonable accommodations, including adaptive equipment and supports. When this is the case, the department will make referrals as appropriate.

Families have the option of declining services offered as a result of the assessment. If the family declines, the case shall be closed unless, based on current risk to the child, there is sufficient cause to:

1. Commence an investigation; or
2. Request the state's attorney commence proceedings under 33 VSA Chapter 53.

In no instance shall a case be investigated solely because the family declines services.

Closure of an assessment case shall not result in a finding of abuse or neglect and no indication of the intervention shall be placed in the child protection registry. The outcome of the assessment shall be documented in the department's secure and confidential files.

2012.04 *Changing from Assessment to Investigation*

The department shall begin an immediate investigation if, at any time during an assessment, it appears that an investigation is warranted.

2013 *Repeal of Existing Rule*

This rule replaces SRS Protective Services rule in its entirety. Therefore, the following provisions of the SRS policy manual, 2000-2999 Protective Services, last amended in July 1982, are hereby repealed.