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Subject:	Substantiating Child Abuse and Neglect	Page 1 of 14
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Purpose

To guide case determinations regarding valid allegations of child maltreatment in cases assigned for an investigation response.

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Definitions

A ***person who is responsible for the child's welfare*** means the child's parent, guardian, foster parent or any other adult residing in the child's home who serves in a parental role; an employee of a public or private home, institution or agency; or other person responsible for the child's welfare while in a residential, educational or day care setting, including any staff person.

The division will assume that any adult residing in the child's home serves in a parental role unless there is evidence to the contrary that is discovered prior to intake acceptance or case determination.

Redacted Investigation File means the intake report, the investigation activities summary, and case determination report or equivalent documents that are amended in accordance with confidentiality requirements set forth in subsection 4913(d) of 33 V.S.A.

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 (see also Policy No. 51 Screening Reports of Child Abuse or Neglect)


Policy

At the conclusion of an investigation of alleged child maltreatment, the department has a statutory responsibility to determine if the allegation is substantiated or unsubstantiated.

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,

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2. unless the substantiated maltreatment is sexual abuse, a person responsible the child’s welfare is the perpetrator.

Ideally this determination is made *jointly* by the investigating worker and his or her supervisor. When the worker and the supervisor disagree, the supervisor will make the decision. The rationale for the case determination will be outlined in the case determination tool. Upon review, the district director or other person in the supervisor’s chain of command may change the supervisor’s case determination.


In addition to determining whether the allegation of child maltreatment is consistent with the statutory definition of harm, the judgment of the worker regarding the following issues, as applicable, enter into the decision to substantiate:

- If the allegation is not sexual abuse, is the person alleged to have abused or neglected the child a person responsible for the child’s well-being? (See definition.)
- Did harm (physical injury or emotional maltreatment, neglect or abandonment or sexual abuse) occur?
- Was there intent to cause harm?
- Would a reasonable person have predicted that harm would occur to the child?
- Would a reasonable person see the harm as abuse or neglect?

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 for the child’s welfare,” the record should reflect substantiation, with “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.

When documenting information regarding domestic violence, the social worker should avoid language that blames the adult victim for the batterer’s abusive behavior.

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Department Interpretation of Statutes

In addition to the statute, departmental regulations provide the following guidance about substantiation of child abuse or neglect:

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.

Emotional Maltreatment


Emotional maltreatment will be substantiated only when the person responsible for the child's welfare has emotionally maltreated the child, that is, 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, if necessary.

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.

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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. **(See also Policy 53: Investigating Allegations of Inadequate Health Care of Infants with Disabilities).**

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.

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.

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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

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 plan approved by the department that adequately addresses and ensures child safety.

Sexual Abuse

Any person may be substantiated for sexually abusing a child. 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:

- The contact was incestuous;

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- 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 ;
- the child is being exploited, or prostitution is involved;
- a significant difference in age, size or developmental level is used to victimize the child; and/or
- 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.

Case Determination when the Perpetrator Has Not Been Interviewed

When the interview with the perpetrator was waived (using guidance provided in Policy 52a) abuse or neglect may still be substantiated. However, in the case of a perpetrator who could not be located, the worker will first wait two weeks after sending the alleged perpetrator a registered letter at his or her last known address:

- Informing him or her that he or she is the subject of a child abuse/neglect investigation and
- Requesting that he or she contact the investigator immediately.

Determining Level Assignment on Child Protection Registry

The names of substantiated perpetrators will be placed on the Child Protection Registry, on Level 1 or Level 2. The levels reflect on an identification of risk of future harm to children and apply to substantiated perpetrators of all ages.

The supervisor will make the level determination. The Child Protection Registry Level Determination Form (FSD-503) guides and documents the decision.

The supervisor will assign a substantiation of a person responsible for a child's welfare to Level 1 if it:

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1. involves substantial child endangerment (see definition);
2. there are court adjudications for related conduct; or
3. there is a high risk of future harm based on the assessment of risk.

For other substantiations, risk will be assessed using the Family Risk Assessment. Very high and high risk cases will be assigned to Level 1.

The following factors will also enter into the assessment of risk:

1. The person's response to the investigation, acceptance of responsibility for the conduct, ability and willingness to engage in recommended services;
2. the person's prior history of child abuse or neglect as either a victim or perpetrator;
3. the nature of the conduct and the extent of the child's injury, if any ; and,
4. the person's age (adult or juvenile) and developmental maturity, as those factors relate to the individual's ability to take responsibility for behavior and to govern his or her future behavior. In assessing these factors the department will, when requested by an individual who identifies themselves as having a disability, seek consultation from individuals with relevant expertise.

The substantiation letter will inform the substantiated perpetrator of the number of years which must elapse before they may request an expungement review, as follows:


- Level 1, Adult Perpetrator – 7 years
- Level 2, Adult Perpetrator – 3 years
- Perpetrator under Age 18, Level 1 or 2 – 3 years

Entries in the SSMIS Child Abuse Report

The case determination and all required information will be entered into the SSMIS Child Abuse Report after a case determination has been made by the supervisor and the alleged perpetrator has been sent the determination letter. The information in the child abuse report is used to generate the state Child Protection Registry and the master index.

New fields have been added:

Field Label	Data Entry
Inv/Assess	I (for investigation)

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Tier	1 for this Level 1 2 for Level 2
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SSMIS entry is required at the time the determination letter is mailed, as follows:

Code	Definition
U	Unsubstantiated.
A	Substantiation is recommended and case is eligible for appeal
J	Judicial findings of CHINS (A) or CHINS (B) of abuse or neglect which would not be considered abuse or neglect as defined in Chapter 49.

The Commissioner’s Registry Review Unit (CRRU) or the Information Services Division will enter the following codes, as follows:

Code	Definition
S	Substantiation when the determination is upheld after review
O	Overturn after review by CRRU or Human Services Board. An overturn entry may also take place when, prior to a formal review, it has been determined by the Child Protection Director or Child Safety Assessment Manager that the investigation does not meet current substantiation standards.

The Commissioner’s Registry Review Unit will notify the district office of its decisions regarding substantiation and expungement reviews.

At times, the Commissioner can approve the immediate placement of a substantiation determination into the Child Abuse Report, causing immediate placement of the person’s name on the Child Protection Registry. Examples of situations that will be considered are:

- Serious physical abuse (broken bones, central nervous system trauma, serious burns, poisoning, etc.)
- Serious sexual abuse (examples might include penetration with a significant age, size, developmental difference)
- A pattern of sexual abuse and when the perpetrator has access to other children/vulnerable adults or seeks the same
- Indications of significant psychological impairment, substance abuse, developmental challenges or other obstacles which impair the perpetrator’s ability to control behavior and when the perpetrator has access to children/vulnerable adults or is known to be seeking access

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District Directors/SIU Chief should bring these requests to the attention of the Child Safety Assessment Manager or the Child Protection Director for immediate action.

The following information entered into the child abuse report is excluded from the Child Protection Registry:

Automatic Expungement of Registry Records – Child Protection Registry entries concerning a person who was substantiated for behavior occurring before the person reached 10 years of age shall be expunged when the person reaches the age of 18, provided that the person has had no additional substantiated registry entries.

Court Findings of Child Abuse or Neglect -- The juvenile court, at times, makes a CHINS(A) or CHINS(B) finding of abuse or neglect when that abuse or neglect *would not be considered abuse or neglect under Chapter 49*. In that case, information should be entered into the child abuse form. However, the code “J” (judicial finding) will be used instead of “S” for substantiation. Persons so coded will appear in the master index with a “J” next to their name. They will not be sent a substantiation letter, nor do they have appeal rights.

Notification of Case Determination

Reporter

Upon the request of a mandated reporter, the social worker shall inform him or her of the case determination. All such notifications will be documented in the case record.

Perpetrator or Alleged Perpetrator

The person alleged to have abused or neglected the child will be informed of the division’s determination verbally, whenever possible, and subsequently documented in the case file, and by the following letters.

Form#	Determination	In-home	Risk Level	To Whom	Service Recc.
306A	Unsubstantiated	In-home	Low/Mod	Parent/Caretaker	No
306B	Unsubstantiated	In-home	High/V. High	Parent/Caretaker	Yes

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306 C	Unsubstantiated	Out-of-home		Alleged Perpetrator	
306D	Unsubstantiated	Out-of-home	Low/Mod	Parent/Caretaker	
306E	Unsubstantiated	Out-of-home	High/V. High	Parent/Caretaker	
306 F	Substantiated	In-home		Parent/caretaker	Yes
306 G	Substantiated	Out-of-home		Parent/caretaker	Yes
306 H	Substantiated	Out-of-home		Parent/caretaker	No
306 I	Substantiated	Out-of-home		Parents of Minor Sexual Abuse Perpetrator	No

Notice will be sent at the conclusion of the investigation unless the district director approves an extension because notice will compromise an ongoing criminal investigation. In all cases, the perpetrator must be notified of the outcome and of appeal rights, when applicable. The notification letter in all cases except those outlined above must be sent on the date of the division's determination decision.

In cases where the alleged perpetrator is also a perpetrator of domestic violence, notification may cause risk to the child and adult victims. The social worker should attempt to contact the adult victim to inform her or him that the perpetrator is receiving notice.

When the alleged perpetrator is under age 18, notification should be made in care of the parents or in care of the social worker if the perpetrator is in custody.

Notice to Perpetrators Who Are Minors

If the person alleged to have abused or neglected a child is a minor, any substantiation notice shall be sent:

- (1) to the minor's parents or guardian; or
- (2) if the child is in the custody of the commissioner, to the social worker assigned to the child by the department **and** the child's counsel of record.

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We will inform the parents of a perpetrator of sexual abuse by letter that the child has engaged in inappropriate sexual activity and has been entered into the Child Abuse and Neglect Registry. The social worker should assist the family of the perpetrator in arranging treatment, where appropriate. If a family refuses treatment and there are concerns about ongoing risk to a child, a CHINS petition may be considered.

Investigations Involving Residential and Child Care Licensing

If, during the investigation, the worker learns that the perpetrator resides or receives services in a licensed or approved facility serving children, the residential licensing or Child Development Division and the SIU will be notified immediately.

Referral to Part C Services

For all children under the age of 3 years who are victims of substantiated child abuse or neglect, Family Services will refer the child to the Child Development Division for an initial screening to determine if further assessment for early intervention services is necessary. The referral will occur at the time of the division's determination by the investigator or supervisor.

If the child remains in the home, Family Services will include information about services available through the Family, Infant and Toddler Program (FITP) in the substantiation letter.

Disclosure of Registry Records

The department shall disclose the redacted investigation file (see definition) to the child's parents, foster parents, or guardian, absent good cause shown by the department, provided that the person(s) requesting the information are not the subject of the investigation. In cases involving domestic violence, the district should seek consultation before disclosing the record to the batterer.

A "good cause" may exist where the records are sought in connection with a legal proceeding. In such situations, the legal discovery process should be utilized for disclosure.

Upon request, investigation records shall be disclosed to:

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1. The court, parties to the juvenile proceeding and the child's guardian ad litem if there is a pending juvenile proceeding or if the child is in DCF custody;
2. The commissioner or person designated by the commissioner to receive such records;
3. Persons assigned by the commissioner to conduct investigations;
4. Law enforcement officers who are engaged in a joint investigation with the department;
5. Assistant attorneys general or a state's attorney;
6. Other state agencies conducting related inquiries or proceedings; and
7. Probate courts involved in guardianship proceedings.

If the district receives a subpoena or court order for release of the investigation record for use in a civil or criminal proceeding, the district director should consult with the Assistant Attorney General for DCF.

Social Worker Tasks

- Keeps family informed of the progress of the investigation as much as appropriate. Clearly explains the outcome of the investigation.
- Whenever possible, verbally informs the alleged perpetrator (or parents, if the alleged perpetrator is a minor) of the outcome of the investigation.
- Ensures that the victim's family is informed of the outcome of the investigation.
- Makes appropriate referrals and develops safety plans to reduce the likelihood that the child will be maltreated in the future.
- Completes necessary paperwork:
 - SDM Forms;
 - IA Summary, Case Determination, Safety Assessment
 - Child Abuse/Neglect Form (DCF-590);
 - Letters to caretaker and alleged perpetrators; referral to PART C Services if substantiated and victim is under 3.
 - Risk Assessment
 - Updated Face Sheet.
 - Completes all tasks within 60 days

Supervisor's Tasks

- Reviews Safety Assessment.

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- Makes substantiation decision, with worker whenever possible.
- If substantiated, reviews complete Risk Assessment, applying appropriate overrides to determine the final risk level.
- Assigns to ongoing worker if case will remain open for service.
- Reviews investigation file and signs Determination Letter.
- Completes all tasks within 60 days
- Assigns Child Protection Level after conclusion of independent review, if any.