



Practice Guidance on Applying a “Preponderance of the Evidence” Evidentiary Standard to Substantiation Decisions

Introduction

For any Family Services Division staff confused or worried about the change in standard of evidence from “reasonable person” to “preponderance of the evidence”, please don’t panic! **A quality investigation is a quality investigation**, and this is where we intend to focus our efforts.

“Reasonable person” is a subjective term, and it will be helpful to have a standard of evidence with a universally understood definition. As of 2021, according to the [SCAN \(State Child Abuse & Neglect\) Policies Database](#), at least 35 other state child protection systems utilize a preponderance of the evidence standard for abuse and neglect substantiation decisions.

Additionally, “preponderance of the evidence” is currently the standard of evidence applied at Human Services Board (HSB) appeals to FSD’s existing decisions. In this sense, it may be helpful to have consistency in standards from the beginning of our work. We do not view this as reflecting a significant shift in our practice.

It is most important to focus on:

- evidence gathering during investigations,
- weighing evidence, and
- considerations related to the credibility of evidence.

Preponderance of the Evidence

[Act 154 \(H.661\) of 2024](#) raises the legal standard of proof that is required from “reasonable person” to “preponderance of the evidence.” For a preponderance of the evidence, **the evidence shows that the underlying claim is more likely than not to be true (i.e., 51% or more)**.

The preponderance standard applies to the quality and weight of the totality of evidence and is not specifically related to the quantity of evidence. Under the preponderance of the evidence standard, the burden of proof is met when the fact finder is convinced that a fact is more likely true, than not true.

As defined in the [Vermont Rules of Evidence \(Rule 401\)](#), “relevant evidence” means “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action **more probable** or **less probable** than it would be without the evidence”.

There are differences between evidence requirements within criminal investigations and administrative procedures such as this one. While FSD staff often work alongside law enforcement in their criminal investigations, our role is child safety and remains unchanged.

Types of Evidence

Direct evidence is personal knowledge that can be used to prove a fact, while circumstantial evidence is indirect evidence that requires an inference to be made. A concrete example unrelated to our work:

Direct Evidence	A witness states it was raining outside. They know this because they were standing outside, saw and felt the rain coming down, and are now wet. This is direct evidence because it's based on the witness's personal knowledge and experience.
Circumstantial Evidence	A witness states they were inside a building with no windows for the last hour. They exit the building and observe everything outside to be wet and they see people wearing raincoats or carrying umbrellas. They assume it has just rained. This is circumstantial evidence because it requires the fact finder to infer that it was raining outside.

Examples of **direct evidence** include:

- A child's statement detailing abuse by a caretaker
- Injuries and any documentation of them
- Medical records, including diagnostic imaging
- Videotapes (security cameras, nearby Ring cameras, hotel security, etc.)
- Photographic evidence of the environment where the injury was alleged to have occurred
- Admissions by the alleged perpetrator of the abuse
- Eyewitness accounts and statements
- Other physical evidence or items/weapons involved in the abuse

Examples of **circumstantial evidence** include:

- A caretaker was in the home alone with the child at the time the abuse is suspected to have occurred
- Timeline of events 24 hours prior to the accident or injury, as well as the timeline of the day
- Alleged perpetrator's availability based on time and schedule (Were they in the location or was being there even feasible? If yes, why were they there?)
- Cell phone records of the people involved (requires a law enforcement search warrant) – including text message, calls, location information, etc.
- Other corroborating facts to the event (items left behind, residue, etc.)
- Hearsay – statements of other people, family members, and other child or adult collateral sources
- Consideration of other facts we should find if the child's version of events is accurate
- Consideration of other facts we should find if the alleged perpetrator's account of events is accurate

Circumstantial evidence is valid information, but it is part of the investigative process – not the end of it.

Gathering & Weighing Evidence

In our efforts to protect children from abuse and neglect, the statute also tasks us with ensuring that investigations are thorough, unbiased, based on accurate and reliable information, weighed against other supporting or conflicting information, and adhere to due process requirements.

Curiosity, creativity, ability to follow logic, and abstract mental attributes are qualities of skilled investigators. These abilities are required to conceptually recreate events and to deduce probable truths. Investigative family services workers hold dual roles of both being compassionate and kind in work with families, while also dissecting and analyzing the information provided to them about abuse and injuries.

Every story or incident has a logical beginning, middle, and end. By building a timeline and exploring the context behind details, FSWs can often determine where gaps in the investigation exist, and quickly identify inconsistent information. Key aspects of investigative duties involve following up and unpacking explanations and stories that do not make logical sense.

All investigations must follow the facts, including alternate hypotheses and accounts provided to us. Division staff are obligated to follow-up on explanations and details provided to us. For example, if a parent indicates “*Those bruises are from the playground equipment at school*”, we then need to review the playground equipment at school, obtain photographs, or speak to the staff person responsible for monitoring recess. We must investigate whether the injury and described mechanism of injury are feasible. In some instances, in partnership with the medical community, we may determine it is medically impossible for injuries to occur in certain ways.

Credibility of Evidence

Credible evidence is evidence that is believable. Many factors affect the credibility of evidence. When making findings, the credibility of each piece of evidence must be evaluated by considering factors such as, but not limited to:

1. A child, caretaker, or witness’s ability and opportunity to observe or describe what they have claimed
2. The mannerisms, demeanor, or any noteworthy behavioral indicators of the child, caretaker, or witness while speaking
3. Any interest, motivation, bias, prejudice, or benefit individuals sharing information may have
4. Relationship dynamics between children and adults, caregivers, extended family, reporter, etc.
5. The reasonableness of someone’s statement, considered in light of all other evidence gathered and heard
6. The existence of corroborating evidence, which is information that supports someone’s prior statements or other evidence. This information makes the prior statement or other evidence it supports more credible than evidence that has not been verified or supported by independent sources.
7. Professional Sources: Medical providers, mental health professionals, and other credentialed experts can be valuable sources of information due to their knowledge, skill, experience, training, or education. Consider the following when deciding how much weight to give a professional source opinion:
 - a. Skill, experience, knowledge, and familiarity with the facts of this case;
 - b. The reliability of the information supporting the professional’s opinions; and
 - c. The reasons for the opinions.
8. Children: When evaluating the credibility of a child’s statement, staff must take into consideration several factors, including, but not limited to the influence of adults (e.g., pressure or coercion). Typically, a detailed description of a complex chain of events is beyond the capabilities of young children. However, young children can give plausible and specific descriptions of traumatic situations that would normally be beyond their experience (e.g., sexual acts) and such

statements should be taken seriously. Further, when children or siblings tell different accounts of what happened, age and developmental level should be considered. Older siblings understand consequences, prior actions taken, and retribution differently than young children.

Decision-Making

The decision to substantiate a report of child maltreatment is based on accurate, reliable, and pertinent evidence gathered during the investigation. Both direct and circumstantial evidence should be considered and weighed in the decision. Prior history of child maltreatment or criminal history that poses a significant risk to children may be considered. Hearsay information from a reliable source may be considered. A statement or disclosure from the child or youth indicating they were abused or neglected is not required. All information should be weighed and analyzed with other supporting, conflicting, or neutral data. For a preponderance of the evidence, the evidence must show that the underlying claim is more likely than not to be true (i.e., 51% or more).

Team decision-making and consultation with experts and designated central office consultants are recommended when weighing evidence and making substantiation recommendations, particularly in instances of disagreement amongst the team or in complex cases with mixed evidence and alternate hypotheses.

Case determinations should include a conclusory paragraph which lists the evidence supporting or conflicting with the decision to substantiate or unsubstantiate, and how evidence was weighed in making the decision.

Future Work

On or before 4/1/2026, DCF is required to file proposed rules related to when, whether, and how names are placed on the Child Protection Registry. This will incorporate principles of a centralized substantiation review process, a secondary layer of considerations prior to name placement on the registry, and involve revisions to [Rule 2000 - Response to Child Abuse and Neglect](#) and [Rule 3000 - Administrative Review Process](#).