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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 perpetrators should be treated differently from adult perpetrators.

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. More detailed guidance to division staff is also provided in division policy and practice guidance.

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 failed to or ceased to provide for the needs of the child and has not made adequate arrangements for the child's care. The situation must exist beyond a reasonable time, based on the child's developmental level.
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, including with death resulting; or
 - b. who is sexually abused 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. "Disfigurement" means that which impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner.
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 chapters ~~55~~ 51 and 53 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. "Impair" means to weaken, make worse, lessen in power, diminish, or otherwise affect in an injurious manner. Impairment means the state of being impaired. See also Physical Injury and Serious Physical Injury.

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. "Malicious Punishment" includes but is not limited to throwing, kicking, burning, biting or cutting a child or striking a child with a closed fist or an object; interfering with a child's breathing; threatening a child with a weapon; purposely giving a child poison, alcohol, or dangerous, harmful or controlled substances not prescribed for the child by a practitioner, in order to control or punish the child; purposefully giving a child a substance that substantially affects the child's behavior, motor coordination, or judgment or that results in sickness or internal injury, or subjects the child to medical procedures that would be unnecessary if the child were not exposed to the substances; unreasonable physical confinement or restraint including tying, caging, or chaining; physically abusing a child under the age of 3, including shaking; physically abusing a child of any age who is non-verbal or non-ambulatory.

11. "Neglect" means the failure to supply the child with adequate food, clothing or shelter or the failure to provide adequate healthcare, including necessary 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 chapters 51 and 53 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. See also "Harm".

12. "Perpetrator" means an individual of any age who is determined to have committed child abuse or neglect.
13. "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.
14. "Physical abuse" means the infliction of physical injury or serious physical injury by a person responsible for the child's welfare, including with death resulting.
15. "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.
16. "Reasonable" means just, proper, ordinary or usual, fit and appropriate to the desired outcome.
17. "Report" means a concern about suspected child abuse or neglect, as communicated to the Department in-person, by telephone, or by written communication by any person.
18. "Risk of harm" means a significant danger that a child will suffer serious harm by other than accidental means, which harm would be likely to cause physical injury, or sexual abuse, including but not limited to as the result of:
 - a. a single, egregious act that has caused the child to be at significant risk of serious physical injury;
 - b. the production or reproduction of methamphetamines when a child is actually present;
 - c. failing to provide supervision or care appropriate for the child's age or development and, as a result, the child is at significant risk of serious physical injury;
 - d. failing to provide supervision or care appropriate for the child's age or development due to use of illegal substances, or misuse of prescription drugs or alcohol;
 - e. failing to supervise appropriately a child in a situation in which drugs, alcohol, or drug paraphernalia are accessible to the child; and
 - f. a registered sex offender, person convicted for a sexual offense, person substantiated for sexually abusing a child or vulnerable adult, or a person with a

sexual offending history residing with or spending unsupervised time with a child.

19. "Serious physical injury" means, by other than accidental means:

- a. physical injury that creates any of the following:
 - i. a substantial risk of death;
 - ii. a substantial loss or impairment of the function of any bodily member or organ;
 - iii. a substantial impairment of health; or
 - iv. substantial disfigurement; or
- b. strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

Serious physical injury may occur as a result of physical abuse, risk of harm, or neglect. Examples of serious physical injury include, but are not limited to, actual or substantial risk of serious physical injury or death caused by or presenting with:

- Abusive head trauma (previously referred to as Shaken Baby Syndrome);
- Unexplained or inadequately explained fractures;
- Unexplained or inadequately explained injuries requiring medical treatment;
- Inflicted burn;
- Internal injury;
- Poisoning resulting in any type of injury requiring medical treatment;
- Central nervous system (CNS) injury;
- Injuries consistent with strangling;
- Retinal hemorrhages;
- Head or brain injury with or without fracture (brain bleeding, brain bruising, subdural hematoma, etc.);
- Medical child abuse (previously referred to as Munchausen by Proxy Syndrome and Factitious Disorder by Proxy);
- Nonorganic failure to thrive;
- Malnutrition; or
- Designation as serious physical injury by pediatric consultant or pediatric intensive care specialist.

20. "Sexual Abuse" means any act or acts by any person involving sexual molestation or exploitation of a child. In the context of this definition:

- "Any person" includes "a person responsible to care for a child" (see that definition) or any other person, whether an adult or a minor;

- “Molestation” means to maltreat a child in a sexual way;
- “Exploitation” means to take unjust advantage of a child for one’s own gain or gratification.

Act or acts which comprise child sexual abuse include but are not limited to:

(A)	Incest – A sexual act or lewd and lascivious conduct between a child and his or her parent, step-parent, grandparent, sibling or half-sibling, aunt, uncle, niece or nephew.
(B)	Prostitution – (Sex Trafficking of Minors)
(C)	Rape – (Sexual Assault)
(D)	Sodomy – (Sexual Assault)
(E)	Lewd and Lascivious Conduct – Committing a lewd or lascivious act upon or with any part of the body of a child or in the presence of the child when such conduct violates community standards of morality and decency. This definition only applies when there is (1) a significant difference in age, size or development or (2) a lack of opportunity or ability to consent and the behavior would not be considered developmentally normal during childhood or adolescence. For children over the age of 16 who have been subjected to this conduct, this is limited to conduct which is forced, threatened or coerced, or the victim lacked the opportunity or ability to consent.
(F)	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. (Child Pornography)
(G)	Viewing, possessing, or transmitting child pornography, with the exclusion of the exchange of images between mutually consenting minors, including the minor whose image is exchanged. (Child Pornography)
(H)	Human Trafficking (Sex Trafficking of Minors) – A range of crimes committed against children and adolescents, including but not limited to: <ul style="list-style-type: none"> • sexually exploiting a minor; • recruiting, enticing, harboring, transporting, providing, or obtaining minors by any means for the purpose of sexual exploitation; • exploiting a minor through survival sex (exchanging sex or sexual acts for money or something of value, such as shelter, food, or drugs); • using a minor in child pornography; • exploiting a minor through sex tourism, mail order bride trade, or early marriage; or, • exploiting a minor by having her/him perform in sexual venues (e.g., peep shows or strip clubs).
(I)	Sexual Assault – Engaging in a sexual act with:

	<p>(A) a child under the age of 16, except where: (i.) the persons are married to each other and the sexual act is consensual; (ii.) alleged perpetrator is less than 19 years old, the alleged victim is at least 15 years old, the sexual act is consensual and the alleged perpetrator is not a person responsible for the child's welfare; (iii.) both persons are under 18 years of age and the contact is mutually agreeable and there is no information to suggest use of force, threat or coercion, lack of opportunity or ability to consent, or significant age, size or developmental differences between the involved persons. Conduct that would be considered developmentally normal during childhood or adolescence is not sexual assault.</p> <p>(B) a child over the age of 16, if the sexual act is forced, threatened or coerced, or the child lacked the opportunity or ability to consent.</p>
(J)	<p>Voyeurism – To view, photograph, film, or record in any format the intimate areas of a child naked or undergarment-clad, including genitals, pubic area, buttocks, or female breast of a child that is unrelated to a legitimate professional or caretaker purpose and the conduct violates community standards of morality and decency.</p>
(K)	<p>Luring (a child) – To solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act or engage in lewd and lascivious conduct. Luring includes solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication. This definition only applies when there is (1) a significant difference in age, size or development and (2) the behavior would not be considered developmentally normal during childhood or adolescence.; or</p>
(L)	<p>Obscenity – To sell, lend, distribute, give away, or show to a child or cause a child to be shown, any visual representation of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to children. Obscenity does not include conduct that would be considered developmentally normal during childhood or adolescence or to the exchange of images between mutually consenting minors, including the minor whose image is being exchanged.</p>

21. "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 or death.
22. "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.

23. "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.

The division shall determine whether to accept a report as a valid allegation as soon as sufficient information is available to make that determination. Decisions are based on the information provided, regardless of who provided the information and whether their identity is known.

A report will be considered a valid allegation if the information causes the division to suspect that the child may be an abused or neglected child. It is not necessary for all of the components required for substantiation to be present in a report for that report to be accepted.

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

1. The alleged abuse or neglect (including risk of harm) occurred or is occurring 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.

When the division has determined that a report is a valid allegation and the child or the alleged perpetrator or both do not live in Vermont, the division will respond in one of the following ways, as most appropriate to the situation:

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.

Allegations that a resident of Vermont sexually abused a child will always be accepted. If the division determines that an allegation is valid, the child welfare system and/or law enforcement agency in the relevant other jurisdiction(s) will be notified about the allegation.

When accepting these reports, if the child does not live in Vermont, the investigation will be assigned to the most appropriate district, based on:

1. Where the alleged perpetrator resides;
2. The law enforcement agency that is investigating; or,
3. If the child is temporarily in Vermont, his or her current location.

2003 Notification of and Collaboration with Law Enforcement

The Department shall report to and receive assistance from appropriate law enforcement in the following circumstances:

1. investigations of child sexual abuse by an alleged perpetrator 10 years of age or older;
2. investigations of serious physical abuse or neglect requiring emergency medical care, resulting in death, or likely to result in criminal charges;
3. situations potentially dangerous to the child or Department worker; and
4. accepted or non-accepted reports of serious physical abuse or neglect including those resulting in death. This includes reports not accepted because the alleged perpetrator is a non-caretaker.

When conducting joint investigations or assessments with law enforcement, the division may share information verbally and in writing with law enforcement.

2004 When Alleged Perpetrator is a Department Employee

When the division has determined the validity of an allegation of abuse or neglect, in which the alleged perpetrator is an employee of the Department of Children and Families, that report will be directed to the Secretary of Human Services.

The Secretary will determine which department or division within the Agency of Human Services should conduct the assessment or investigation.

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 of the date and time the division had sufficient information to determine the report would be accepted as a valid allegation.

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.

In determining whether a waiver should be granted to ensure the child's safety, the division will consider whether the child would be at imminent risk if the interview is delayed for any reason, including to avoid trauma caused by multiple interviews or interviews in an inappropriate setting.

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. There is reason to believe that a child's safety will be jeopardized if parental permission cannot be obtained to interview the child.
2. The nature and severity of the abuse and extent of a child's injury, if any.
3. The alleged perpetrator's prior history of child abuse or neglect, including history of past reports, investigations or assessments.
4. 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.
5. 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. caused serious physical injury to a child;
 - d. physically abused a child under the age of 3;
 - e. physically abused a child of any age who is non-verbal or non-ambulatory;
 - f. allowed a child to be exposed to methamphetamine production

The Department may conduct an investigation of any report.

2007 Investigation Procedures

Commencing an investigation requires that division staff interview any child who is the alleged victim of abuse or neglect, 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.

In some cases of child sexual abuse, the facts and circumstances make it unreasonable to interview the child, visit the child's home, or to identify other children who may be abused or at risk of abuse. This includes when an adult is posing as a child or the identity of the child is not known.

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.

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

1. visit the child's residence or place of custody; and,
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.

2008 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 of a reliable type 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 and this rule; and,
2. unless the substantiated maltreatment is sexual abuse, a person responsible for the child's welfare is the perpetrator.

When substantiating neglect or risk of harm, the steps taken by the individual to reduce or eliminate the neglect or risk of harm shall be taken into consideration in making the decision to substantiate.

If 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.

Visible bruises or marks are not required in order to substantiate physical abuse. 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.

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 individual(s) designated by division policy will make the final determination.

2009 Determining Service Need; Delivering Ongoing Services

When following an investigation, child abuse or neglect is substantiated, the division shall, to the extent that it is reasonable, 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 extent that it is reasonable, 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.

2010 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.

2010.01 Commencing an Assessment

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

The child shall always be seen as part of an assessment, unless that requirement is specifically waived by the Deputy Commissioner or designee. 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.

2010.02 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.

2010.03 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.

2011 Effective Date of Rule

This rule is effective March 1, 2019.