

GARDEN STATE CLE

Defending a Child Services Case

1.5 credit course

FREE DOWNLOAD
LESSON PLAN AND EVALUATION FORM

Featuring
Robert Ramsey, Esq.
Garden State CLE Senior Instructor

And

Michael R. Ascher, Esq.
Attorney

Child Protection and Permanency

Child Protection and Permanency, CP&P (formerly the Division of Youth and Family Services, DYFS), is New Jersey's child protection and child welfare agency within the Department of Children and Families. Its mission is to ensure the safety, permanency and well-being of children and to support families.

CP&P is responsible for investigating allegations of child abuse and neglect and, if necessary, arranging for the child's protection and the family's treatment.

Title 9 - CHILDREN/JUVENILE AND DOMESTIC RELATIONS COURTS

N.J.S.A. 9:6-1. Abuse, abandonment, cruelty and neglect of child; what constitutes:

Abuse of a child shall consist in any of the following acts: (a) disposing of the custody of a child contrary to law; (b) employing or permitting a child to be employed in any vocation or employment injurious to its health or dangerous to its life or limb, or contrary to the laws of this State; (c) employing or permitting a child to be employed in any occupation, employment or vocation dangerous to the morals of such child; (d) the habitual use by the parent or by a person having the custody and control of a child, in the hearing of such child, of profane, indecent or obscene language; (e) the performing of any indecent, immoral or unlawful act or deed, in the presence of a child, that may tend to debauch or endanger or degrade the morals of the child; (f) permitting or allowing any other person to perform any indecent, immoral or unlawful act in the presence of the child that may tend to debauch or endanger the morals of such child; (g) using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h) in an institution as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), willfully isolating the child from ordinary social contact under circumstances which indicate emotional or social deprivation.

Abandonment of a child shall consist in any of the following acts by anyone having the custody or control of the child: (a) willfully forsaking a child; (b) failing to care for and keep the control and custody of a child so that the child shall be exposed to physical or moral risk without proper and sufficient protection; (c) failing to care for and keep the control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

Cruelty to a child shall consist in any of the following acts: (a) inflicting unnecessarily severe corporal punishment upon a child; (b) inflicting upon a child unnecessary suffering or pain, either mental or physical; (c) habitually tormenting, vexing or afflicting a child; (d) any willful act of omission or commission whereby unnecessary pain and suffering, whether mental or physical, is caused or permitted to be inflicted on a child; (e) or exposing a child to unnecessary hardship, fatigue or mental or physical strains that may tend to injure the health or physical or moral well-being of such child.

Neglect of a child shall consist in any of the following acts, by anyone having the custody or control of the child: (a) willfully failing to provide proper and sufficient food, clothing, maintenance, regular school education as required by law, medical attendance or surgical treatment, and a clean and proper home, or (b) failure to do or permit to be done any act necessary for the child's physical or moral well-being. Neglect also means the continued inappropriate placement of a child in an institution, as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21), with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being.

The abuse and neglect standard from the New Jersey Supreme Court is to show present and future harm.

Threshold is by preponderance of the evidence

NJ Dept. of Children v. AL, 213 NJ 1 (2013)

To meet that threshold, the New Jersey Division of Child Protection and Permanency (Division)[1] must present sufficient proof of harm at a fact-finding hearing in contested cases. In this case, the Division conceded that there was no evidence of actual harm to the newborn. To show risk of harm, the Division presented a series of documents but no testimony. The critical documents revealed that the mother tested positive for cocaine upon admission to the hospital. They also showed the presence of cocaine metabolites in the baby's meconium, or first stool. The baby's health was otherwise normal, and he was discharged from the hospital after two days.

There is no doubt that the presence of cocaine metabolites in the meconium of a newborn child should trigger a report to the Division and prompt an investigation. Title 9 requires "[a]ny person having reasonable cause to believe" that a child has been abused to report that information immediately to the Division. N.J.S.A. 9:6-8.10. Anyone who knowingly violates that requirement is a disorderly person. N.J.S.A. 9:6-8.14.

In response to a report of abuse, the Division's obligation is clear: it "shall immediately take such action as shall be necessary to insure the safety of the child." N.J.S.A. 9:6-8.11. The Division must begin an investigation within twenty-four hours, unless a delay is authorized based on a request from a law enforcement official. Ibid.

Depending on the proofs the Division uncovers, there may be enough evidence to sustain an abuse and neglect complaint. Here, however, the record does not contain the required level of proof. Because the evidence presented did not establish actual harm or imminent danger to A.D., the finding of abuse and neglect against A.L. under Title 9 cannot be sustained.

CORPORAL PUNISHMENT UNDER NJ LAW

The issue of child spanking currently falls into a gray area of the law. While spanking or corporal punishment is not illegal in New Jersey, if it is excessive and leaves marks, bruises or injuries, the adult issuing the punishment could be charged with a crime, according to New Jersey Department of Child Protection & Permanency (formerly DYFS) standards.

DIV. OF YOUTH & FAMILY v. PWR, 205 NJ 17 (2011)

Although no parenting awards are to be won on this record, neither was actionable abuse or neglect proven. As stated at the outset, DYFS has many serious cases, and even more numerous referrals that necessitate investigations requiring the agency to wade into difficult family problems in order to protect children. Its task is hard and it must be vigilant, but it must be vigilant within the limitations of the law that empowers the agency's actions. The record here simply did not demonstrate proof of actionable abuse or neglect of A by P. It was an error for the courts below to have sustained the findings of abuse and neglect entered against P.

See also:

N.J.S.A. 2C:25-17
Prevention of Domestic
Violence Act of 1991

Allegations of Abuse and Expert Analysis

By Michael R. Ascher, Esq.

Allegations of sexual abuse upon children are far more powerful than any other criminal accusation. They evoke instant revulsion and sympathy. The younger the child, the greater the adverse reaction by prosecutors, judges and more importantly, jurors. Many jurors may initially tend to disbelieve that such offenses occur, but invariably they ask themselves two critical questions: (1) Why is this child coming forward; and (2) Where did he or she gain knowledge about such sordid sexual details.[1] Unfortunately, for the defense attorney, this scenario creates what is tantamount to a shift in the burden of persuasion. The State may technically have the burden of proof, but the jury will filter its consideration of the case based upon the these two questions. Therefore, the usual approach must be discarded and pre-trial discovery becomes more important and extensive. Similarly, pre-trial motion practice and **R.104 hearings** become critical tools in preparing an effective defense. The following is an approach to preparing for trial in this category of cases which involve either a very young witness or an older witness who was abused at a younger age.

DEVELOPING YOUR THEME

The thematic approach must focus primarily on the two questions. It requires exhaustive examination of the following issues which surround the initial and any subsequent disclosure of abuse:

1. When the disclosure was made;
2. To whom it was made;
3. How it was made;
4. What was described; and
5. Why would the accusation burden the particular time.

The answer to these questions provides the framework for the entire case, including discovery, pre-trial motions, motions in limine and overall trial strategy and tactics.

DISCOVERY

The State will never provide all necessary information. The defense of sexual abuse cases requires extensive discovery motions and independent investigation. The life of the accuser and his/her family must also be examined to determine if there is an explanation for the accusations other than the "truth".

see:

State v. Michaels, 136 NJ 299 (1994)

[The infamous McMartin Trial in California parallels the Michaels case.]

The following documents (in order) are addressed in the CLE and are provided in their entirety:

1. Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings
2. New Jersey Parents' Handbook
3. Family Law/DYFS (DCPP) Overlap: "What Every Family Lawyer Needs to Know"
4. 10/60 Form: Allegations of Harm document

New Jersey Department of Children and Families

**Guidelines for Expert Evaluations in
Child Abuse/Neglect Proceedings (Mental Health)**

November 8, 2012

Commissioner Allison Blake, PhD LSW

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

Child Abuse and Neglect Mental Health Evaluation and Treatment Advisory Group Member List

Chair: Debra Lancaster

Director
Office of Child and Family Health
NJ Department of Children and Families

Karen Baldoni

Director
Office of Contract Administration
NJ Department of Children and Families

Mary Beirne, MS, EdD, MD

Chief Child/Adolescent Psychiatrist
NJ Department of Children and Families

Lauren Carlton

Assistant Attorney General
NJ Division of Law

Nancy Carre-Lee

Assistant Director
Division of Child Protection & Permanency
NJ Department of Children and Families

Anthony V. D'Urso, Psy.D.

Section Chief and Supervising Psychologist
Audrey Hepburn Children's House
Associate Professor - Graduate Clinical Psychology
Montclair State University

John Esmerado

Assistant Prosecutor
Union County Child Advocacy Center

Amanda Farley

Program Support Specialist
Office of Child and Family Health
NJ Department of Children and Families

Jeffrey Guenzel

Deputy Commissioner
NJ Department of Children and Families

Kristin Huddy

Program Support Specialist
Office of Contract Administration
NJ Department of Children and Families

Adrienne Jackson, MSW

Executive Coordinator
NJ Task Force on Child Abuse & Neglect

Walter Kalman, MSW, LSW

Executive Director
National Association of Social Workers, NJ Chapter

Barry A. Katz, Ph.D.

NJ Psychological Association

Anthony P. Kearns, III

Prosecutor
Hunterdon County Prosecutor's Office

Julie Lippman, Psy.D.

Evaluation Services Director
CARES Institute

Keri Logosso-Misurell, Esq.

Board Member
New Jersey Children's Alliance

Joseph Ribsam Jr., Esq.

Assistant Commissioner
NJ Department of Children and Families

Brian Ross, Esq.

Assistant Director
Office of Policy and Regulatory Development
NJ Department of Children and Families

Aileen Torres, Ph.D.

Past-President
Latino Psychological Association of New Jersey

Kara Wood

Director
Division of Child Protection & Permanency
NJ Department of Children and Families

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

Table of Contents

I. Introduction	4
II. Definition/Application	4
III. General Principles and Guidelines	5
1. The Role and Function of Forensic Evaluation in Child Welfare Matters.....	5
2. General Competencies of Expert Evaluators.....	6
3. Procedural Guidelines: Conducting an Evaluation.....	7
IV. Best Practices for Expert Forensic Evaluations	9
1. During an Investigation.....	9
2. During Permanency Planning/Hearings.....	11
3. During Litigation of Guardianship Complaints.....	14

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

I. Introduction

This is the Department's first comprehensive effort to address the use of expert evaluations in child welfare and child protective services proceedings. These guidelines lay out best practices for forensic evaluations and assessments that may be needed during child welfare investigations, to assist with permanency planning, or during litigation of guardianship complaints.

Child abuse and neglect cases are often complex. Expert consultants are frequently used to assist caseworkers, attorneys, law guardians, judges, and parents in making determinations, case planning, and decision making. The experts' services are often in the form of forensic evaluations of the mental health status and/or capabilities of the parents of dependent children. In addition, an evaluator may assess a child's behavioral functioning or developmental status as well. CP&P and the courts often rely on these evaluations and recommendations for effective case planning and to guide the court's decision making process.

In developing the guidelines that follow, the Department reviewed and analyzed professional guidelines and the work of other states, and convened an interdisciplinary group of experts to form DCF's Advisory Group on Child Abuse and Neglect Mental Health Evaluation and Treatment.

The role of the Advisory Group was to assist in formulating a framework that is flexible enough to accommodate differences in disciplines while providing clear practice guidelines that address the questions to be asked, the information required, the tools necessary to inform the evaluation, the credentials and qualifications of the evaluator, and the essential components of the evaluation itself.

The guidelines that follow are intended to improve the quality of expert forensic evaluations provided for CP&P and the courts, as well as the ability of stakeholders involved in child welfare proceedings and child protective service matters to make better use of them. It is clear that representatives of different disciplines with differing philosophical orientations will have varying approaches to the task of providing a forensic assessment. Each unique discipline will organize their work in a way that reflects their individual expertise. These guidelines are not meant to supplant the professional judgment of evaluators regarding their response to the unique features of each case.

The first sections of this document are general guidelines, followed by more specific recommended practices.

II. Definition/Application

For the purpose of these guidelines, a forensic evaluation in child welfare proceedings and child protective service matters is an evaluation necessary to assist the court and/or CP&P in case planning, or to resolve a case. A forensic evaluation may be requested by CP&P, by another party to a proceeding, or the court. Any evaluation that may reasonably be expected to be submitted to the court is termed forensic. Although forensic evaluations may contain treatment

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

recommendations, the primary function of the forensic evaluation is to inform the parties and to assist the court in rendering decisions in child welfare cases.

These guidelines do not cover evaluations or assessments obtained primarily for mental health treatment purposes, substance abuse, anger management, psycho-sexual evaluation, or domestic violence, although any or all of these issues may be addressed in a forensic evaluation.

These guidelines recognize that, in child welfare cases, the emphasis is on the safety, permanency, and well-being of the child.

III. General Principles and Guidelines¹

1. The Role and Function of Forensic Evaluations in Child Welfare Matters

The primary function of an evaluation is to provide a report that contains relevant, professionally sound observations, results and opinions in matters where a child's health and welfare may have been harmed or placed at risk of harm. To ensure the reliability of the evaluator's conclusions all opinions that are rendered must be given within a reasonable degree of medical/psychological/clinical certainty. The specific purposes of the evaluation generally will be determined by the referral questions and/or concerns provided to the evaluator by the referring party or parties. When the child already has been found by the court to be at risk of harm, the evaluation of the parent(s) generally identifies interventions intended to reduce future risk to the child, and often focuses on rehabilitation recommendations designed to protect the child and help the family. An additional purpose of such an evaluation may be to make recommendations for interventions that promote the psychological and physical well-being of the child, and, when appropriate, facilitate the safe reunification of the child with the parent. Consistent with State law, evaluators appreciate the value of expediting family reunification, when possible and safe, while they also understand the value of other permanent plans when reunification is not possible.

The evaluation addresses the particular psychological, behavioral, and developmental needs of the child and/or parent(s). Relevant issues may include, but are not limited to, abuse or neglect of the child, safety, parental capabilities, or reunification or other permanency plans. In considering psychological factors affecting the health and welfare of the child, evaluators may focus on caregiver capacities in the context of the psychological and developmental needs of the child. This may involve an assessment of:

- The adult's capacities for parenting, including those attributes, skills, strengths and abilities most relevant to abuse and/or neglect concerns;

¹ Washington State Supreme Court Commission on Children in Foster Care. "Guidelines for Expert Evaluations in Child Welfare Proceedings." Washington, 2007. Available online at, [http://www.courts.wa.gov/committee/pdf/Guidelines%20for%20Expert%20Evaluations%20in%20Child%20Welfare%20Proceedings%20\(2007\).pdf](http://www.courts.wa.gov/committee/pdf/Guidelines%20for%20Expert%20Evaluations%20in%20Child%20Welfare%20Proceedings%20(2007).pdf)

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

- The psychological functioning, behavioral, and developmental needs of the child, particularly with regard to vulnerabilities and special needs of the child, as well as the quality of the child's attachment to the parent(s) and the possible developmental and emotional effects of separation from the parent(s), siblings, extended family members, and other caregivers;
- The current and potential functional abilities of the parent(s) and, when necessary for resolution of the case, other relatives, to meet the needs of the child; and/or
- The need for and likelihood of success of clinical or other interventions for identified problems, which may include recommendations regarding treatment modalities and objectives, frequency of services, specialized interventions, parent education, and the child's placement.

2. General Competencies of Expert Evaluators

Evaluators should gain and maintain specialized competence. Expert evaluators in child protection matters are aware that special competencies and knowledge are necessary for the undertaking of such evaluations. Competence in performing expert evaluations of children, adults and families is necessary but not sufficient. Education, training, experience and/or supervision in the areas of forensic practice, child and family development, child and adult psychopathology, the impact of separation on the child, the nature and consequences of different types of child abuse and neglect, and the significance of human differences may help to prepare evaluators to participate competently in expert evaluations in child protection matters.

Evaluators:

- Use current knowledge of scholarly and professional developments, consistent with generally accepted clinical and scientific practice, in selecting evaluation methods and procedures² and are aware of evidence-based practices.
- Strive to become familiar with applicable legal and regulatory standards and procedures, including local State and Federal laws governing child protection issues. These may include laws and regulations addressing child abuse, neglect, and termination of parental rights.
- Describe the scientific basis for their judgments or recommendations, and state when their judgments or recommendations may expand on, or not be fully supported by, currently accepted clinical and scientific practice.
- Are aware of, and develop their knowledge and special competencies for, evaluation of specific populations including, but not limited to, issues related to literacy, the needs of persons who do not speak English, sensory impairment, psychological disorders, and developmental impairments.
- Should be fluent in the child's/parent's native language, when possible (have experience using a court appointed interpreter, if language presents a difficulty).

² Note: Examples of standard setting organizations include American Psychological Association, the National Association of Family and Conciliation Courts, The American Academy of Child and Adolescent Psychiatry and others.

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

- Have appropriate qualifications to conduct an evaluation and/or to testify at court, including language, cultural competency, and other qualifications specified in CP&P contracts.
- Should be competent in the cultural norms of the child/parent being evaluated.
- Utilize language and culturally correct testing.
- Have expertise in working with relevant clinical populations, including:
 - Children;
 - Sex offenders;
 - Domestic violence victims and batterers;
 - Persons with developmental disabilities; and,
 - Persons with psychiatric/neurological/neuropsychiatric diagnosis.
- Have expertise with the instruments employed, including psychological and intellectual tests that will need to be interpreted by a licensed psychologist, who is familiar with the norms and the uses of that test with the relevant population.
- Are experts in the use of appropriate interview techniques.
- Must not serve as an expert evaluator if they are the treating professional.

Evaluators must be aware of personal and societal biases and engage in nondiscriminatory practice. Evaluators engaging in expert evaluations in child protection matters consider how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations. Evaluators should be aware of the potential for defensiveness on the part of participants, given the circumstances, and must take this into account when conducting the evaluation and upon making recommendations. Evaluators recognize and strive to overcome any such biases. If unable to overcome his or her own biases, the evaluator will either withdraw from the evaluation or seek assistance in completing the evaluation. When interpreting evaluation results, evaluators must be aware that there are diverse cultural and community methods of child rearing, and consider these in the context of the existing local State and Federal laws. Also, evaluators should use, whenever available, tests validated with populations similar to those being evaluated.

Evaluators avoid multiple relationships to maintain objectivity. In conducting expert evaluations in child protective matters, evaluators avoid multiple role relationships. Evaluators generally do not conduct forensic evaluations in child protection matters in which they have provided clinical services for the child or the immediate family, or have had other involvement that may compromise their objectivity. Providing clinical services to the child or other participants following an expert evaluation is discouraged. A treating professional can be called to testify, but should NOT recommend a permanency plan.

3. Procedural Guidelines: Conducting an Evaluation

Evaluators and referring parties understand that forensic evaluations in child welfare and child protection matters may present a wide variety of legal and/or ethical considerations. Evaluators and all parties appreciate the need for timeliness in child protection matters (e.g., response to evaluation referral, scheduling appointments, completion of reports).

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

The purpose of the evaluation should be clear upon referral and should outline the specific questions to be addressed by the evaluation. In all cases, the referring party or parties should clearly state the purpose of the evaluation in writing and pose specific questions to be addressed in the evaluation.

Based on the nature of the referral issues and questions, the scope of the evaluation is determined in the referral or by the court, in consultation with the evaluator. Once the referral questions and scope of the evaluation have been accepted by the evaluator, the expert evaluator chooses appropriate methods with which to address the questions. Evaluators may also identify relevant issues not anticipated in the referral questions that could enlarge the scope of the evaluation; these should be conveyed to the parties as early as possible. For issues outside the scope of the evaluator's competency, the evaluator considers recommending additional services or evaluations.

Evaluators inform participants about the disclosure of information and the limits of confidentiality.

- When an evaluation is court ordered, it is not privileged and the evaluator informs the individuals of the nature of the evaluation and that the evaluation will be distributed to other parties as provided by court order. Evaluators conducting an evaluation in child protection matters ensure that the participants, including the child (to the extent feasible), are aware of the limits of confidentiality for the evaluation results. If the public agency or court is paying for the evaluation, the evaluator so informs the individual.
- When an evaluation is not court ordered, evaluators performing evaluations in child protection matters should obtain informed consent from all adult participants, and children and youth consistent with their developmental capacity to understand.
- When an evaluation is obtained by a party in an abuse/neglect or termination proceeding without the apparent knowledge or consent of the child welfare agency, guardian ad litem, and/or the court, the evaluator should advise the party being evaluated of the need to obtain and review appropriate and relevant information from the child welfare agency, guardian ad litem, and/or the court.

Evaluators use multiple methods of data gathering. Evaluators generally use multiple methods of data gathering, including, but not limited to, clinical interviews, observation, and/or psychological testing that are sufficient to provide appropriate substantiation for their findings. Evaluators should review relevant reports (e.g., information from child protection agencies, social service providers, law enforcement agencies, health care providers, child care providers, schools, and institutions). In evaluating parental capacity to care for a particular child or the quality of the parent-child interaction, evaluators should make reasonable efforts to perform formal observations of the child together with the parent, unless such observation is not necessary to respond to the questions posed in the evaluation or to support the recommendations and conclusions of the evaluator. Evaluators in some circumstances may rely on formal observations conducted by other neutral and competent professionals. It is recognized that in some circumstances, parent-child observations may not be necessary. Also, in some

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

circumstances, it may not be advisable to require parent-child contact for purposes of the evaluation. For example, in cases where the safety or well-being of the child is clearly in jeopardy or parental contact with the child has been prohibited by the court. In such cases, the evaluator should note explicitly the reason(s) that a parent-child observation was not included. Evaluators may also interview extended family members and other individuals, when appropriate (e.g., caregivers, grandparents, and teachers). However, these should not be considered as substitutes for formal observation.

Evaluators are able to provide clarification and answer questions relating to the evaluation(s) completed. Once an evaluation is completed, the evaluator must be available to speak with CP&P staff such as the assigned caseworker if there are any questions or concerns regarding the evaluation.

IV. Best Practices for Expert Forensic Evaluations

Forensic evaluations may be needed at any point in time during the lifespan of a child protective services case. The need for a forensic evaluation may emerge during the course of an investigation to assist with developing understanding or seeking clarity around the allegations of child abuse/neglect. More commonly, mental health evaluations may be required to contribute to the decisions by the court of the Division made about placement, reunification, permanency, and visitation. Finally, forensic evaluations are typically required for guardianship (termination of parental rights) litigation.

1. During an Investigation

The Role and Function of Forensic Evaluations during an Investigation

During an investigation, evaluations may be needed to assist CP&P and the Courts in assessing whether abuse and/or neglect occurred. These evaluations are meant to assist in clarifying or gathering additional information for investigative purposes with the lens of an expert. When sufficient evidence or clarity about the case has been achieved through the investigative work of the CP&P caseworker via interviews and collateral review, or teamed efforts with law enforcement or others involved in the investigative process, it is often not necessary to engage the services of an expert for an evaluation during an investigation.

Forensic evaluations during the investigatory phase of the case may be warranted as part of the investigative efforts conducted by CP&P (and law enforcement). These situations most often include allegations of sexual abuse and emotional abuse/neglect. In addition, an evaluation during the initial involvement with a child may assist CP&P in determining the impact of an event on a child's psychological functioning.

Evaluations that may be required during the course of an investigation are almost always time sensitive matters. Thus, it is recommended that referrals be made as close to the point in time of the allegation or the occurrence of the alleged incident as possible:

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

- Evaluators should receive referrals within 10 working days of the report.
- An appointment by the evaluator should be granted within 10 working days of the referral.
- CP&P shall provide available background materials by the time of the evaluation.
- Evaluators should complete their reports and provide them to CP&P within 10 working days following completion of the evaluation.

These guidelines recommend that no more than 45 days pass between the initial referral to a provider for an assessment, to the date the written report, with recommendations, is provided to CP&P for review.

The Forensic Evaluation Process during an Investigation

In consultation with supervisory staff, and the DAG if litigation is contemplated or a complaint has been filed, CP&P caseworkers should select a provider who has the appropriate credentials to perform the evaluation. In many cases, child protection staff should access their Regional Diagnostic Treatment Center to conduct these evaluations. CP&P requires licensed individuals to conduct evaluations. In most cases, these will be licensed psychologists. When the impact of physiological factors, medical illness, medication, neurological, or psychiatric disorder is complex, an evaluation by a psychiatrist or physician may be necessary. In limited circumstances, an assessment by a LCSW may be appropriate.

The purpose of the evaluation during the investigatory phase of a case must be clear and should outline the specific questions to be addressed by the evaluator. Confirm with the evaluator the purpose of the evaluation. It is particularly important to limit the number of interviews or evaluations a child experiences for both validity reasons and to avoid re-traumatizing a child.

Investigation Evaluation Referral Questions:

- Is this child's presentation consistent with the allegation?
- To what degree has the child been harmed or traumatized by the event?
- Is this child able to participate in court proceedings?
- Other questions relevant to the specific case.

Evaluators should use multiple methods of data gathering.

The evaluator should be provided with certain background information, which includes:

- CP&P investigation report (or summary report) that is current/up to date;
- Existing prior psychological and psychiatric evaluations of the child and biological parent(s);
- Available law enforcement records including police reports; criminal charges and convictions; taped interviews, if available; and Promis/Gavel history of offenses;

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

- Prior CP&P history, including all prior referrals, with a finding for each allegation/investigation; investigative summaries;
- Complaint filed in court; and,
- Known mental health, substance abuse, or domestic violence history.

If a child is to be evaluated, the CP&P caseworker assigned to the case should accompany the child to the evaluation to support the child, to be available to provide any additional information and to hear directly from the evaluator any initial findings or recommendations. Whenever possible so as to best inform the evaluation, the investigative worker should accompany the child. Whenever possible a trusted adult should also accompany the child.

During the clinical interview, an evaluator:

- Establishes “Ground Rules” between the evaluator and the child.
- Explains to the child, in age appropriate and developmentally appropriate terms, the nature and the scope of the evaluation.
- Establishes the child’s developmental and cognitive ability to participate in the evaluation.
- Establishes the child’s competency. Does the child know the difference between the truth and a lie, real or pretend?
- Obtains the child’s version of the incident.
- Notes the child’s affect upon describing the incident.
- Asks questions to gather past history.
- Determines family relationships.
- Determines peer relationships.

Once the evaluation has been completed, the summary and report should include:

- Reason for the report – summary background;
- Nature of the allegation;
- Prior history;
- Documentation including a summary of the interview and direct quotes by the person being interviewed;
- Clinical finding and explanation;
- Any formal diagnosis;
- Clinical determination – indicate whether supported/not supported; and,
- Recommendations.

2. During Permanency Planning/Hearings

The Role and Function of Forensic Evaluations during Permanency Planning/Hearings

At the time of referral and over the course of a child or adolescent’s time under CP&P custody, mental health evaluations may be required to contribute to the decisions made about placement,

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

permanency, and parental rights. During permanency planning and hearings, evaluations are often used for:

- Interim Evaluation: The interim evaluation is meant to guide reasonable efforts for reunification.
- Ten Month Conference: The ten month conference is used to prepare a permanency plan for the child or youth in out-of-home placement. Before moving forward, any previous reports should be reviewed. It would be useful if the evaluator from the interim evaluation was also utilized at this point.
- Periodic Evaluation – Evaluation of Imminent Concerns Arising during Placement: An evaluation of imminent concerns is used to assess any risks or challenges that the child may incur during the course of the protective services or guardianship litigation. Examples include:
 - Disruption of the current placement;
 - Acute crisis (e.g., psychiatric hospitalization, severe medical illness, runaway, arrest, school disruption); and
 - Significant change in response to visitation.

Forensic Evaluation Process during Permanency Planning/Hearings

The purpose of the evaluation should be clear and should outline the specific questions to be addressed by the evaluation. The following referral questions should help to guide forensic evaluations at each of the stages identified for permanency planning/hearings:

Interim Evaluations Referral Questions:

- What services are needed for reunification?
- What impact has the abuse/neglect history had on the child?
- What are the risks that need to be addressed?
- Is the parent fit and able to parent the child?
- What actions are recommended to address the risks?
- What are the strengths that can be built upon?
- What visitation can be safely afforded between parents and their child(ren)?

Ten Month Conference Referral Questions:

- What progress has been made towards eliminating the harm?
- What still needs to be done?
- Are there any new areas of need?
- If a home other than the child(ren)'s current placement is being considered, is it in the best interest of the child(ren) to move to another placement if proposed by the parents, or to stay permanently where he or she is residing?

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

- Can this child transition back to the biological parents, without experiencing more harm than good?
 - If bonding and attachment are issues, an evaluation by a psychologist is necessary. A psychiatrist may contribute information within his or her area of expertise.
- Have the correct services been provided so far, and is there a need for a reduction, modification, or expansion of services?

It may be necessary to reevaluate the permanency plan. All of the questions above would apply to any such reevaluations.

Evaluators should use multiple methods of data gathering.

For these evaluations, the evaluator should be provided with certain background information, which includes:

- Existing prior psychological and psychiatric evaluations of the child and biological parent(s);
- Existing treatment reports for biological parents and child;
- Known mental health, substance abuse, or domestic violence history;
- Visitation reports;
- Complaint for guardianship, if filed;
- CP&P investigation report (or summary report) that is current/up to date;
- Prior CP&P history, including all prior referrals, with a finding for each allegation/investigation; investigative summaries;
- Most recent CP&P court report;
- Important selected contact sheets from the CP&P case record;
- Available law enforcement records including police reports; criminal charges and convictions; taped interviews, if available; and Promis/Gavel history of offenses;
- Additional information the parent wants to share with the evaluator; and,
- Any further available information requested by the evaluator.

All evaluations should include a review of comprehensive, accurate background information; a clinical interview; and the use of an appropriate assessment tool.

The evaluator should have access to all information he or she deems necessary in order to respond to the questions posed.

Periodic Evaluation – Evaluation of Imminent Concerns Arising during Placement Referral Questions:

- Identify impact of presenting problem.
- What are the recommended services or actions to address the problem?
- Should the permanency plan change?

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

For Periodic Evaluations of Imminent Concerns Arising during Placement, documented relevant information is needed as well as all available relevant reports, such as:

- Medical reports;
- Police reports;
- School reports;
- Psychiatric reports; and
- Relevant contact sheets.

3. During Litigation for Guardianship Complaints

The Role and Function of Forensic Evaluations during Litigation for Guardianship Complaints

Guardianship evaluations consist of fitness and bonding assessments during trial preparation after a guardianship complaint has been filed. Ideally, both the fitness and bonding assessments are completed by the same psychologist.

The presumption is that fitness and bonding assessments are required for guardianship litigation. It is recognized that in some circumstances, parent-child observations may not be necessary or advisable for purposes of the evaluation. For example, in cases where the safety or well-being of the child is clearly in jeopardy or parental contact with the child has been prohibited by a prior fitness and bonding assessment, parent-child observations may be bypassed. In such cases, the evaluator should note explicitly the reason(s) that a parent-child observation was not included.

A bonding evaluation assesses the relationship between the child(ren) and the proposed caregivers and other household members as appropriate.

Forensic Evaluation Process during Litigation of Guardianship Complaints

Guardianship Evaluation Referral Questions:

- What progress has been made towards eliminating the harm?
- What still needs to be done?
- Are there any new areas of need?
- If a home other than the child(ren)'s current placement is being considered, is it in the best interest of the child(ren) to move to another placement if proposed by the parents, or to stay permanently where he or she is residing?
- Can this child transition back to the biological parents, without experiencing more harm than good?
 - If bonding and attachment are issues, a psychological evaluation is necessary. A psychiatrist may contribute information within their area of expertise.
- Assess the child's bond and attachment to the biological parent(s).
- What harm, if any, will result if parental rights are terminated?

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

- Can the resource family parents mitigate the harm?
- Assess the child's bond and attachment to any proposed adoptive resource parent(s).
- Would severe and enduring harm occur if the child is removed from the proposed adoptive resource parents?
 - Can the biological parents mitigate the harm?

Guardianship evaluations call for specific competencies³ that are referred to in this section.

The evaluator at this stage in most circumstances will be a *licensed psychologist* or a psychiatrist. The licensed professional must be qualified to perform custody/parenting time evaluations and/or termination of parental rights evaluations through education, training, and/or supervision in all of the following categories:

1. Child growth and development;
2. Psychological testing;
3. Parent-child bonding;
4. Parenting skills;
5. Adult development and psychopathology;
6. Family functioning;
7. Child and family development;
8. Child and family psychopathology;
9. The impact of divorce or family dissolution on children; and,
10. The impact of age, gender, race, ethnicity, national origin, language, culture, religion, sexual orientation/identity, disability, and socioeconomic status on custody/parenting time evaluations.

When the following topics are involved, the licensed psychologist or psychiatrist shall have specialized education, training, and/or supervision in the specific topic, or the licensee shall refer to a licensed mental health care provider who has that education, experience, training, and/or supervision. The topic areas include:

1. Physical, sexual, or psychological abuse of spouse or children;
2. Physical and emotional neglect of children;
3. Alcohol or substance abuse that impairs the ability to parent;
4. Medical/physical/neurological impairment that affects the ability to parent; or
5. Other areas beyond the licensee's expertise that are relevant to the custody/parenting time evaluation.

Evaluators may identify relevant issues not anticipated in the referral questions that could enlarge the scope of the evaluation. At this stage, it is important to consider some relevant factors or issues in responding to the bonding and attachment referral questions.

These factors include:

³ N.J.A.C. 13:42-12.2. Available online at, http://www.njconsumeraffairs.gov/adoption/psychado_090710.HTM

Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings

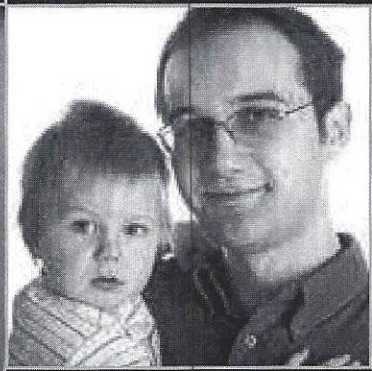
1. Age of the child;
2. The developmental stage of the child;
3. Child's history of abuse and/or neglect;
4. Child's resiliency;
5. Any special needs - medical or emotional - of the child or biological parents;
6. Parenting skills of both sets of parents;
7. Length of time in biological parents' care;
8. Number of placements;
9. Length of time in each placement;
10. Previous failed reunification attempts;
11. Child's wishes, weighted in accordance with developmental functioning;
12. Demonstrated willingness and ability of both biological parents and proposed adoptive resource parents to comply with services;
13. Demonstrated willingness and ability of both biological parents and proposed adoptive resource parents to recognize and meet the child's needs, including issues relating to reunification or adoption;
14. History of child's interaction with both biological parents and proposed adoptive resource parents;
15. Issues that may affect child's behavior during a bonding evaluation; and,
16. Sibling bonds/other attachments.

Evaluators should use multiple methods of data gathering.

Evaluators should be provided with the same background information listed under *Section 2: During Permanency Planning/Hearings*.

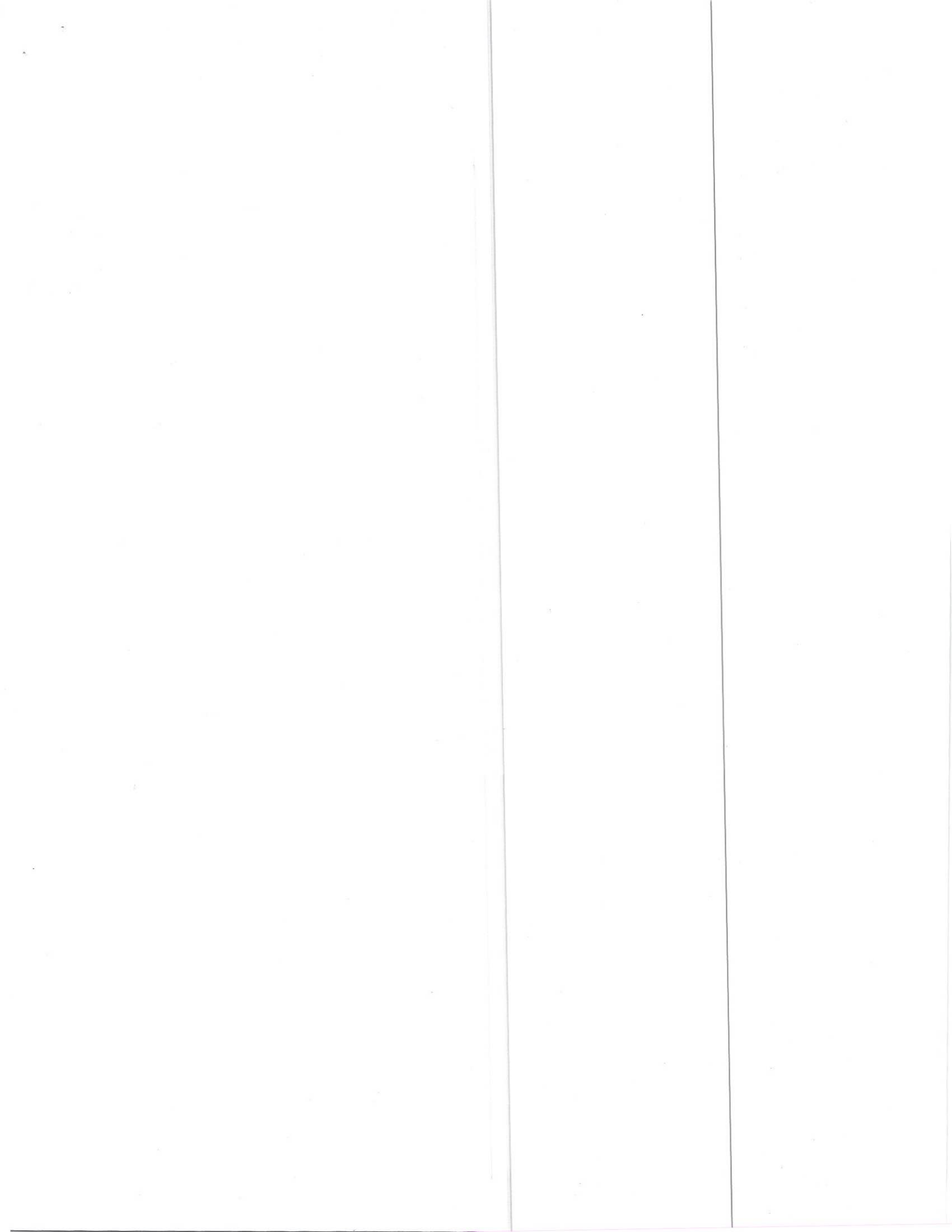
All evaluations should include a review of comprehensive, accurate background information; a clinical interview; and the use of an appropriate assessment tool.

The evaluator should have access to all information he or she deems necessary in order to respond to the questions posed.



Parents' Handbook





Parents' Handbook

Child Protection and Permanency (CP&P) is New Jersey's child protection and child welfare agency within the Department of Children and Families (DCF). Its mission is to ensure the safety, permanency, and well-being of children and to support families. As mandated by state law (Title 9 and Title 30), CP&P is required to investigate all reports of child abuse and child neglect.

Parenting is rewarding, but it is not always easy. When problems arise in a family, it is often the children who are emotionally or physically affected. Unfortunately, some parents do not know where to turn to get help for their children or themselves. This handbook was written to explain the role of CP&P workers and other staff who work together to serve you and your family. CP&P recognizes this can be a very difficult time for you and your family. You may have many questions along the way, so feel free to speak to your worker about your concerns at anytime.

Please remember our goal is to help you ensure the safety and well-being of your child.

Your Local Office Information:

Worker's Name: _____

Phone: _____

Supervisor's Name: _____

Phone: _____

Local Office Address: _____

Phone: _____

Why has a worker from CP&P come to my home?

A worker has come to your home because CP&P received a report that your child may have been abused or neglected, or may be at risk of abuse or neglect. State law requires any person having reasonable cause to believe a child has been abused or neglected must report this to CP&P. A report is made on behalf of a child; it is not made against a parent or a family.

What is child abuse and neglect?

Child abuse or neglect is serious harm or a risk of serious harm to a child caused or allowed by a parent, caregiver, or any person responsible for the welfare of a child.

What if I don't want a worker to investigate my family?

In most cases, families cooperate with CP&P during the investigation process. However, there are times when a family is not willing to talk with a worker. Please understand we came out of concern for your child and your family. During an investigation, CP&P is required to meet with parents and all children in the household. If a family refuses to allow a home visit or otherwise prevents the worker from seeing a child, CP&P may seek help from the police or the courts.

Who filed the report?

By law, CP&P cannot tell you who made the report. The worker will be as specific as possible in relating the details of the report. Remember, the worker has come to your home to ensure the safety and well-being of your child. Once the worker completes the investigation, you will receive a letter notifying you of the findings of the investigation.

Will my child be taken away?

In the vast majority of cases, NO. In fact, the majority of the children served by CP&P remain in their homes. Our goal is to ensure children's health and safety needs are met and to help parents care for their children in their own home. Unless your child is at risk of harm, we will work with your family to make a plan to keep your family together.

If your child must be removed from your home, CP&P may ask you to identify family members or friends who can care for your child. In the small number of cases in which CP&P determines a child is at immediate risk or harm, we will ask the court for permission to remove a child and provide an immediate placement either with family members or a foster home. In an emergency, CP&P can remove a child before getting the court's permission, but is required to appear in court to request approval within two court days of the child's removal. Remember, if your child is removed from your home to ensure his or her safety and well-being, our goal is to return your child as soon as it is safe to do so.

Does CP&P file criminal charges?

NO. CP&P does not file criminal charges and does not have the authority to arrest. However, in certain situations, such as a report of sexual abuse, serious physical injury, or death of a child, the law requires CP&P to notify the County Prosecutor's Office who has the authority to file criminal charges.

What happens during an investigation?

The worker gathers information about the report of abuse or neglect by speaking to you and members of your household. The worker must see all of the children who reside in your home, particularly the child on whose behalf the report was filed. The

Parents' Handbook

worker may also want to speak to your child's school teacher, pediatrician, school counselor, or other persons who may have relevant information. You may also want to provide the worker with the names of other people who know you, such as a member of the clergy or a neighbor. These interviews with your family and other significant people form the basis of the worker's investigation.

During the first contact with you and throughout your involvement with CP&P, the worker will assess the safety of the child in your care. If the worker identifies safety factors, you will be asked to take steps to ensure the child's safety and to sign a Safety Protection Plan.

All families have strengths. If CP&P becomes involved with your family, you and your worker will identify yours. Together, you will create a plan building upon your strengths by using available services and supports to ensure your family is safe and stable. Your family's active participation in developing the case plan helps you talk about the steps and solutions that will best meet your family's needs. The case plan is reviewed any time a family's needs have changed or every six months at a minimum.

What kind of services/help does CP&P provide to families?

CP&P offers a variety of services either directly or through other agencies. Your worker will explain these and other specific services available in your community, which may include:

- ▶ Case Management
- ▶ Family support services such as parenting skill training, counseling, child care, and other therapeutic services
- ▶ Child behavioral health services
- ▶ Mental health services

- ▶ Domestic violence services
- ▶ Substance abuse treatment
- ▶ Information and referral to other state and community agencies
- ▶ Foster and residential care
- ▶ Adoption and kinship legal guardianship

Parents may be responsible for contributing toward the cost of services and will be asked to provide information about income. **Services needed will not be denied if parents cannot afford to pay for them.** Many families have been found eligible for free services.

What are my responsibilities and rights?

Your responsibilities are to:

- ▶ Provide a safe and loving home for your child
- ▶ Support your child financially. (If your child enters foster placement, a referral for child support will be made)
- ▶ Tell your worker what you see as your family's strengths and also help to identify resources that may be sources of strength and support to your family
- ▶ Tell your worker what you see as your family's challenges and how you would like to solve them
- ▶ Work in partnership with CP&P staff on the plans and tasks necessary to strengthen your family
- ▶ Tell your worker about major changes in your life (within seven days) such as changes of address, telephone number, people who live with your family, marital or civil union status, and any other changes that may affect your family or your case plan
- ▶ Provide necessary information to receive appropriate services, including financial information

Parents' Handbook

Your rights include, but are not limited to, the following:

- ▶ Know why CP&P is involved with your family (full disclosure)
- ▶ Know what CP&P expects from you and your child
- ▶ Accept or refuse services which are not court ordered
- ▶ Know what services CP&P can and will provide to your family
- ▶ Request the services of a professional interpreter (if the CP&P worker speaks a language in which you are not fluent) at no cost to you
- ▶ Consult with a lawyer at your own expense at any time and to be represented by a lawyer who is either of your own choosing or appointed by the court when you appear in court on actions concerning your child or your parental rights
- ▶ Request dispute resolution when you are not satisfied with decisions made by CP&P (court-ordered decisions are not subject to dispute resolution)

What happens after an investigation?

On April 1, 2013, new regulations took effect modifying DCF's findings following child abuse and neglect investigations. Previously, the Department of Children and Families' had two categories, Unfounded and Substantiated.

This new system is designed to allow DCF more specific findings categories to more appropriately reflect the particular circumstances present in each investigation, allowing for better partnership with families and better outcomes for children. This change also provides fairness in the operation of the Child Abuse Record Information system and allows DCF to better protect children by requiring the maintenance of all records where children were harmed or exposed to risk of harm, even where the statutory definition of child abuse or neglect could not be met.



Substantiated

A preponderance of the evidence establishes that a child is an abused or neglected child as defined by statute; and either the investigation indicates the existence of any of the absolute conditions; or substantiation is warranted based on consideration of the aggravating and mitigating factors.

Substantiated findings are disclosed for a Child Abuse Record Information (CARI) check.

Established

A preponderance of the evidence establishes that a child is an abused or neglected child as defined by statute; but the act or acts committed or omitted do not warrant a finding of substantiation upon consideration of aggravating and mitigating factors.

Established findings are not disclosed upon a CARI request but are maintained in agency records.

Not Established

There is not a preponderance of the evidence that the child is an abused or neglected child as defined by statute, but evidence indicates that the child was harmed or placed at risk of harm.

Not Established findings are not disclosed upon a CARI request but are maintained in agency records.

Unfounded

There is not a preponderance of the evidence indicating that a child is an abused or neglected child as defined by statute, and the evidence indicates that a child was not harmed or placed at risk of harm.

Unfounded findings are not disclosed upon a CARI request and are eligible to be expunged if certain criteria are met.

Parents' Handbook

Absolutely Substantiating Circumstances

- ▶ The death or near death of a child as a result of abuse or neglect;
- ▶ Subjecting a child to sexual activity or exposure to inappropriate sexual activity or materials;
- ▶ The infliction of injury or creation of a condition requiring a child to be hospitalized or to receive significant medical attention;
- ▶ Repeated instances of physical abuse committed by the perpetrator against any child;
- ▶ Failure to take reasonable action to protect a child from sexual abuse or repeated instances of physical abuse under circumstances where the parent or guardian knew or should have known that such abuse was occurring; or
- ▶ Depriving a child of necessary care which either caused serious harm or created a substantial risk of serious harm.

Aggravating Factors

- ▶ Institutional abuse or neglect;
- ▶ The perpetrator's failure to comply with court orders or clearly established or agreed-upon conditions designed to ensure the child's safety, such as a child safety plan or case plan;
- ▶ The tender age, delayed developmental status or other vulnerability of the child;
- ▶ Any significant or lasting physical, psychological, or emotional impact on the child;
- ▶ An attempt to inflict any significant or lasting physical, psychological, or emotional harm on the child;
- ▶ Evidence suggesting a repetition or pattern of abuse or neglect, including multiple instances in which abuse or neglect was substantiated or established; and
- ▶ The child's safety requires separation of the child from the perpetrator.

Parents' Handbook

Mitigating Factors

- ▶ Remedial actions taken by the alleged perpetrator before the investigation was concluded;
- ▶ Extraordinary, situational, or temporary stressors that caused the parent or guardian to act in an uncharacteristic abusive or neglectful manner;
- ▶ The isolated or aberrational nature of the abuse or neglect; and
- ▶ The limited, minor, or negligible physical, psychological, or emotional impact of the abuse or neglect on the child.



Is there an opportunity to disagree with a CP&P decision?

YES. If you disagree with a decision, you should first notify your worker and his or her supervisor of your disagreement. If your disagreement cannot be resolved, notify the Casework Supervisor, then the Local Office Manager, and lastly the Area Director. If you are still unable to resolve a problem you may contact the Department of Children and Families' Office of Advocacy at:

1-877-543-7864

You may have a right to appeal certain decisions made by CP&P within 20 days of receiving written notification. (You would not have to go through the CP&P Local Office first.) Examples of such a decision would include a substantiated or established finding of abuse against you or a decision about services provided through CP&P. You can appeal and request an administrative hearing which an Office of Administrative Law Judge conducts.

To request a hearing contact, in writing:

*New Jersey Department of Children and Families
Administrative Hearings Unit
PO Box 717
Trenton, NJ 08625-0717*

Parents' Handbook

If you believe CP&P has discriminated against you because of a disability, please speak with CP&P supervisory staff. You may also file a grievance with:

*New Jersey Department of Children and Families
Legal Affairs
Americans with Disabilities Act Coordinator
PO Box 717
Trenton, NJ 08625-0717*

How can I get in touch with CP&P?

On the first page of this handbook your worker has provided the address and phone number of the local office that will serve your family. Your local office is open from 9:00 a.m. to 5:00 p.m. each working day.

After 5:00 p.m. and on weekends and holidays, if you have concerns about a child's safety or other emergency, you can call the Child Abuse/Neglect Hotline at **1-877 NJ ABUSE**

Are there other agencies or hotlines to help families in need?

In addition to CP&P, there are other organizations to provide assistance to your family. Your worker will help identify resources in your community.

The following page lists a few telephone numbers that can provide help.

Many thanks to the Massachusetts Department of Social Services for sharing ideas from their Parents Guide to Child Protective Services.

Important Numbers

Child Abuse Hotline
1-877 NJ ABUSE
(1-877-652-2873)
TTY 1-800-835-5510

Any person with reasonable cause to believe a child has been abused or neglected has a legal responsibility to report it to CP&P. Calls may be made anonymously.

Family Helpline
1-800- THE KIDS
(1-800-843-5437)

If you are feeling stressed out, call to speak to a trained volunteer of Parents Anonymous who can provide support and refer you to resources in your community.

Children's System of Care
1-877-652-7624

Call this number to find out about services for children and teens with emotional and behavioral health care challenges and their

Domestic Violence Hotline
1-800- 572 SAFE (7233)

Call this number for information about domestic violence services in your local area.

Addictions Hotline of NJ
1-800- 238-2333

Call this number for information and treatment referrals for substance abuse.

Statewide Parent Advocacy Network (SPAN)
1-800- 654-SPAN (7726)

This organization provides support to parents and caregivers and advocates for their rights.

NJ State Bar Association Automated Helpline
732-249-5000

If you need to find a lawyer, your County Bar Association can help. The State Bar Association can give you the phone number in your area.

Legal Services of New Jersey
1-888-LSNJ-LAW
(1-888-576-5529)

Contact this hotline for information, advice, and referrals for low-income people with civil legal problems.

2-1-1 (www.nj211.org)

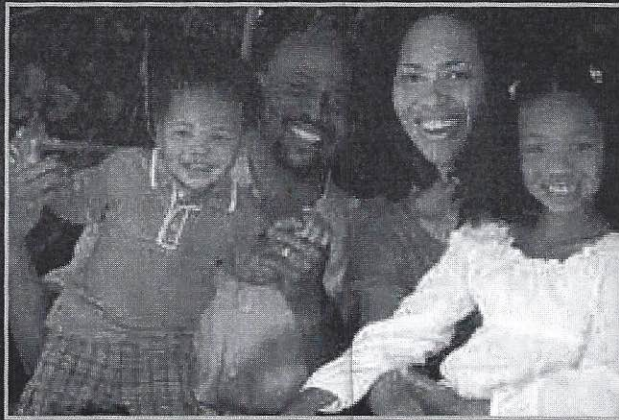
This phone number refers callers to various human services in their community.

NJ Helps (www.njhelps.org)

At this web site you can find out about programs for children, families, and individuals. You can also prescreen for eligibility for Food Stamps, Medicaid, and other programs.

If you are deaf or hard of hearing, please call 1-877-294-4356 TTY to access any hotline.

Our goal is to help you ensure
the safety and well-being of your child.





EINHORN HARRIS
ASCHER BARBARITO
& FROST, PC

T.S.
C.S.
J.M.H.

The Family Law/DYFS Overlap: "What Every Family Lawyer Needs to Know"

An NJICLE Seminar Presented by Michael R. Ascher, Esq.
Einhorn Harris Ascher Barbarito & Frost, PC
SEPTEMBER, 22, 2011

The New Jersey Child Abuse Statute (N.J.S.A. 9:6-1, et seq.), contains provisions which create a multitude of issues impacting parents, attorneys, physicians and mental health care providers. The statute's definitions of abuse or neglect are quite expansive and extend far beyond actual physical or emotional abuse or failure to provide proper care or supervision. An exhaustive analysis of the definitions are set forth in G.S. v. The Department of Human Services, 157 N.J. 161 (1999). The statute presents issues which impact the DYFS proceedings as well as effecting Family Part matters (dissolution and non-dissolution), Criminal Matters and Domestic Violence cases. The Statute creates an absolute obligation on behalf of all individuals to report instances of child abuse. N.J.S.A. 9:6-8.10. Thus, any person having reasonable cause to believe that a child has been subjected to abuse or neglect is duty bound to report the same immediately to the Division of Youth and Family Services on a confidential basis. N.J.S.A. 9:6-8.10a. Failure to make a report constitutes a disorderly person offense. The reporting requirement extends to all persons including those covered by evidential privileges.

After instances of child abuse or neglect are reported to the Division, N.J.S.A. 9:6-8.36a requires the Division to transmit the allegations to the County Prosecutor's Office for its review. The Division then undertakes a Child Protection Investigation governed by the provisions of the Administrative Code N.J.A.C. 10:129-1.1, et seq., which defines when an investigation is required, timeframes, necessary evidence and related



EINHORN HARRIS
ASCHER BARBARITO
& FROST, PC

issues. It also contemplates the potential implementation of an emergency (DODD) removal. During the investigation, a determination is made whether or not the allegations are substantiated or unfounded. Any unfounded allegations must be expunged from the Division's records. N.J.S.A. 9:6-8.40a, N.J.A.C. 10:129-6.1, *et seq.* If the allegations are substantiated, the offender's name is placed in a central registry. An appeal from a substantiation must be filed within twenty (20) days of the notice.

If the allegations are substantiated, the Division may employ a broad array of remedial plans including an important but rarely used, "preliminary procedure" mechanism. N.J.S.A. 9:6-8.35. There is great significance to that provision since any statement made by the client during a preliminary conference cannot be admitted into evidence either at a DYFS Fact Finding Hearing or in a Court of Criminal jurisdiction at any time prior to conviction. The usefulness of this provision cannot be overstated. It permits the client to provide information and engage in negotiations with the Division without those statements having evidential effect. It is especially important due to the required exchange of information between DYFS and Law Enforcement. It also creates a basis for entering into a Protective Order barring the later use of statements made to a DYFS worker or mental health professional/s. Every attempt should be made to implement the preliminary procedure protocol, or alternatively, to enter into a Protective Order during any pending DYFS proceeding.

Due to the inter-relationship between DYFS proceedings and other matters, the issue of dual representation may arise. Since allegations of child abuse or domestic violence are exchanged between the Division and Law Enforcement Agencies, the possibility of criminal charges necessarily arises. In the past, based upon the confidential nature of DYFS proceedings, there was a prohibition against a single attorney handling both the DYFS and the criminal matter. That issue was raised and considered in two (2) Trial Courts with different results. In DYFS v. J.C., 399 N.J. Super. 444 (Chan. Div. 2006), the Court concluded that as a matter of public policy, dual representation was prohibited. However, in DYFS v. V.J., 386 N.J. Super. 71 (Chan. Div. 2006), the Court rejected the contention that an attorney's representation of the Defendants in both the DYFS and criminal matters offended statutory confidentiality. The Appellate Division finally addressed the issue in DYFS v. N.S. and R.B., 412 N.J. Super. 593 (App. Div. 2010). There, the Court discussed the competing concerns and established a procedure allowing dual representations subject to Protective Orders



EINHORN HARRIS
ASCHER BARBARITO
& FROST, PC

preserving the confidentiality. The Court recognized that any authorization for criminal counsel to undertake representation in a parallel Title 9 case would be subject to the provisions of N.J.S.A. 9:6-8.10a, concerning the confidentiality of DYFS records and proceedings. It further recognized that confidentiality could be pierced in the criminal proceeding pursuant to the holding in State v. Cusick, 219 N.J. Super. 452 (App. Div.) *certif. denied*. 109 N.J. 54 (1987). It therefore held that no automatic disqualifying conflict exists when an attorney assumes the tandem roles of counsel for the same Defendant in both the Title 9 actions.

Apart from the dual representation arising from parallel Title 9/criminal proceedings, dual representation can occur when parents are involved in domestic violence litigation. Instances of domestic violence which occur in the presence of children are reported by law enforcement to the Division which then implements an investigation. Moreover, the same issue surrounding dual representation would arise and would be subject to the rationale espoused in G.S., *supra*.

Once an attorney undertakes DYFS representation, either on a dual or individual basis, it is absolutely necessary to understand the provisions of Title 9. The Division undertakes litigation under the statute and the Administrative Code. Therefore, it is essential for practitioners to be totally conversant with DYFS' own requirements for justifying interference with parental rights. The DYFS realm is different than other aspects of law. DYFS possesses an extraordinary advantage since it can present hearsay evidence pursuant to statute and Court Rule. However, there are constraints limiting how far the Division can make use of hearsay. A finding of abuse or neglect must be based upon a preponderance of the evidence and only upon competent material and relevant evidence. N.J.S.A. 9:6-8.46(b)(2); R. 5:12-4d; DYFS v. M.C., 201 N.J. 328 (2010). Whatever the potential outcome in the DYFS proceedings, counsel must be aware of the potential pitfalls arising from parallel proceedings in either Criminal and Family Courts or Domestic Violence Court. If dual representation is inappropriate based on expertise factors, then a team approach should be implemented.

ICLE SEMINAR

The New Jersey Child Abuse Statute (N.J.S.A. 9:6-1, et seq.), contains provisions which create a multitude of issues impacting parents, attorneys, physicians and mental health care providers. The statute's definitions of abuse or neglect are quite expansive and extend far beyond actual physical or emotional abuse or failure to provide proper care or supervision. An exhaustive analysis of the definitions are set forth in G.S. v. The Department of Human Services, 157 N.J. 161 (1999). The statute presents issues which impact the DYFS proceedings as well as effecting Family Part matters (dissolution and non-dissolution), Criminal Matters and Domestic Violence cases. The Statute creates an absolute obligation on behalf of all individuals to report instances of child abuse. N.J.S.A. 9:6-8.10. Thus, any person having reasonable cause to believe that a child has been subjected to abuse or neglect is duty bound to report the same immediately to the Division of Youth and Family Services on a confidential basis. N.J.S.A. 9:6-8.10a. Failure to make a report constitutes a disorderly person offense. The reporting requirement extends to all persons including those covered by evidential privileges.

After instances of child abuse or neglect are reported to the Division, N.J.S.A. 9:6-8.36a requires the Division to transmit the allegations to the County Prosecutor's Office for its review. The Division then undertakes a Child Protection Investigation governed by the provisions of the Administrative Code N.J.A.C. 10:129-1.1, et seq., which defines when an investigation is required, timeframes, necessary evidence and related issues. It also contemplates the potential implementation of an emergency (DODD) removal. During the investigation, a determination is made whether or not the allegations are substantiated or unfounded. Any unfounded allegations must be expunged from the Division's records. N.J.S.A. 9:6-8.40a, N.J.A.C. 10:129-6.1, et seq. If the allegations are substantiated, the offender's name is placed in a central registry. An appeal from a substantiation must be filed within twenty (20) days of the notice.

If the allegations are substantiated, the Division may employ a broad array of remedial plans including an important but rarely used, "preliminary procedure" mechanism. N.J.S.A. 9:6-8.35. There

is great significance to that provision since any statement made by the client during a preliminary conference cannot be admitted into evidence either at a DYFS Fact Finding Hearing or in a Court of Criminal jurisdiction at any time prior to conviction. The usefulness of this provision cannot be overstated. It permits the client to provide information and engage in negotiations with the Division without those statements having evidential effect. It is especially important due to the required exchange of information between DYFS and Law Enforcement. It also creates a basis for entering into a Protective Order barring the later use of statements made to a DYFS worker or mental health professional/s. Every attempt should be made to implement the preliminary procedure protocol, or alternatively, to enter into a Protective Order during any pending DYFS proceeding.

Due to the inter-relationship between DYFS proceedings and other matters, the issue of dual representation may arise. Since allegations of child abuse or domestic violence are exchanged between the Division and Law Enforcement Agencies, the possibility of criminal charges necessarily arises. In the past, based upon the confidential nature of DYFS proceedings, there was a prohibition against a single attorney handling both the DYFS and the criminal matter. That issue was raised and considered in two (2) Trial Courts with different results. In DYFS v. J.C., 399 N.J. Super. 444 (Chan. Div. 2006), the Court concluded that as a matter of public policy, dual representation was prohibited. However, in DYFS v. V.J., 386 N.J. Super. 71 (Chan. Div. 2006), the Court rejected the contention that an attorney's representation of the Defendants in both the DYFS and criminal matters offended statutory confidentiality. The Appellate Division finally addressed the issue in DYFS v. N.S. and R.B., 412 N.J. Super. 593 (App. Div. 2010). There, the Court discussed the competing concerns and established a procedure allowing dual representations subject to Protective Orders preserving the confidentiality. The Court recognized that any authorization for criminal counsel to undertake representation in a parallel Title 9 case would be subject to the provisions of N.J.S.A. 9:6-8.10a, concerning the confidentiality of DYFS records and proceedings. It further recognized that confidentiality could be pierced in the criminal proceeding pursuant to the holding in State v. Cusick, 219 N.J. Super. 452 (App. Div.) *certif. denied*. 109 N.J. 54 (1987). It therefore held that no automatic disqualifying conflict

exists when an attorney assumes the tandem roles of counsel for the same Defendant in both the Title 9 actions.

Apart from the dual representation arising from parallel Title 9/criminal proceedings, dual representation can occur when parents are involved in domestic violence litigation. Instances of domestic violence which occur in the presence of children are reported by law enforcement to the Division which then implements an investigation. Moreover, the same issue surrounding dual representation would arise and would be subject to the rationale espoused in G.S., *supra*.

Once an attorney undertakes DYFS representation, either on a dual or individual basis, it is absolutely necessary to understand the provisions of Title 9. The Division undertakes litigation under the statute and the Administrative Code. Therefore, it is essential for practitioners to be totally conversant with DYFS' own requirements for justifying interference with parental rights. The DYFS realm is different than other aspects of law. DYFS possesses an extraordinary advantage since it can present hearsay evidence pursuant to statute and Court Rule. However, there are constraints limiting how far the Division can make use of hearsay. A finding of abuse or neglect must be based upon a preponderance of the evidence and only upon competent material and relevant evidence. N.J.S.A. 9:6-8.46(b)(2); R. 5:12-4d; DYFS v. M.C., 201 N.J. 328 (2010). Whatever the potential outcome in the DYFS proceedings, counsel must be aware of the potential pitfalls arising from parallel proceedings in either Criminal and Family Courts or Domestic Violence Court. If dual representation is inappropriate based on expertise factors, then a team approach should be implemented.

II – Findings of Abuse or Neglect

STANDARD OF CARE

Under N.J.S.A. 9:6-8.21, a parent or guardian has committed an act of child abuse or neglect where the guardian has failed to exercise a minimum degree of care by being aware of an inherent danger in a situation and failing to adequately supervise the child or recklessly creating a risk of serious injury to the child. The question of whether child is abused or neglected should focus on the harm to the child and whether that harm could have been prevented had the guardian performed some act to remedy the situation or remove the danger. *N.J. Div. of Youth & Family Serv's v. N.S.*, 412 N.J.Super. 593, 616 (App.Div.2010) (quoting *G.S. v. Dep't of Human Serv's*, 157 N.J. 161 (1999)).

The standard in deciding whether a guardian has failed to exercise a minimum degree of care is one of **gross negligence**. *G.S. v. Dep't of Human Serv's*, 157 N.J. 161, 178 (1999). In *G.S.*, the New Jersey Supreme Court established and discussed the standard of care in child abuse and neglect cases in holding that where a guardian had given a child an entire bottle of pills under the false impression that she was administering one dose, the guardian was grossly negligent because she “utterly disregarded the substantial probability that harm would result from her actions.” *Id.* at 183.

Under this standard, **accidentally caused injuries may nonetheless form the basis for a finding of abuse or neglect**. *Id.* at 172-76. In addressing the purpose of the statute, which aims to protect children harmed by other than accidental means,¹ the court in *G.S.* interpreted the “accidental” language to refer to the means of the injury, and where only the result is accidental, the injury is not one of accident. *Id.* at 176.

FINDINGS OF NEGLECT

In order to be considered a neglected child, the child must suffer as a result of his or her parents' failure to exercise a minimum degree of care causing or creating a substantial risk of physical, emotional, or mental impairment. A neglected child is one who's physical, mental, or emotional condition was impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or in providing the child with proper supervision or guardianship N.J.S.A. 9:6-8.21(c)(4)(a)-(b). This minimum degree of care is a standard of gross negligence, as outlined in *G.S.*

N.J. Div. of Youth and Family Serv's v. T.B., 207 N.J. 294, (2011). The New Jersey Supreme Court recently revisited and reaffirmed the interpretation of the statute set forth in *G.S.*, noting that a decade has passed since the *G.S.* decision and the legislature has not amended or altered the language of the statute. *Id.* at 307-8. In *T.B.*, a mother dropped her four-year old son off at home and went out for the evening under the mistaken belief that the child's grandmother was there to watch him, as the grandmother lived in the home with them and her

N.J.S.A. 9:6-8.8(a) Purpose reads, in part: “[t]he purpose of this act is to provide for the protection of children under 18 years of age who have had serious injury inflicted upon them by other than accidental means.” N.J.S.A.9:6-8.8.

SUBSTANTIAL RISK OF PHYSICAL INJURY ENVIRONMENTAL INJURIOUS TO HEALTH AND WELFARE

Allegation of Harm #10/60

a) DEFINITION

Substantial risk of physical injury means that the parent, caregiver, immediate family member, or the parent's paramour has created a **REAL AND SIGNIFICANT DANGER** of physical injury which would likely cause disfigurement, death or impairment of physical health or loss or impairment of bodily functions. (ABUSE)

This allegation of harm is to be used when the type or extent of harm is undefined but the total circumstances lead a reasonable person to believe that the child is in substantial risk of physical injury. This allegation of harm also includes incidents of violence or intimidation directed toward the child which have not yet resulted in injury or impairment but which clearly threaten such injury or impairment (ABUSE); or placing a child in an environment which is injurious to their health and welfare. (NEGLECT)

NOTE: If, during the course of the investigation, a specific allegation of harm is identified, the appropriate allegation shall be added and a determination made on all of the allegations. If another allegation is determined to be more appropriate, that allegation should be utilized and the risk unfounded.

NOTE: NEGLECT STATEMENT

If, during the course of the investigation, a specific allegation of harm is identified, the appropriate allegation shall be added and a determination made on all the allegations. If the living circumstances of the family lead the investigator to consider temporary protective custody, the Allegation #76 (Inadequate Food), #77 (Inadequate Shelter), #78 (Inadequate Clothing) or #82 (Environmental Neglect) must be added and a determination made as to whether services to meet these basic needs will alleviate the need for temporary protective custody.

Examples of incidents or circumstances that place a child at substantial risk of physical injury include, but are not limited to, the following:

Incidents of Maltreatment

- Choking the child. (ABUSE)
- Smothering the child. (ABUSE)
- Pulling the child's hair out. (ABUSE)
- Violently pushing or shoving the child into *fixed* or heavy objects. (ABUSE)
- Throwing or shaking a smaller child. (ABUSE)
- Other violent or intimidating acts directed toward the child that cause excessive pain or fear. (ABUSE)

- Situations that place a child at substantial risk of harm due to an injurious environment in the home. (NEGLECT)

Note: A specific incident must be specified and meet the real and significant danger criteria.

Circumstances

- Domestic violence in the home when the child's health or safety has been threatened, as evidenced by a past history of violence, or uncontrolled behavior. (NEGLECT)
- A perpetrator of child abuse who has been court ordered to remain out of the home returns home and has access to the abused child. (ABUSE)
- Anyone living in the home has a documented history of violence toward children.
- The circumstances surrounding the death of one child provides reason to believe that another child is at real and significant danger of physical injury. (NEGLECT)
- Anyone in the home exposes the child to an environment which significantly affects the health and safety based on the use, sale or manufacturing of illegal drugs. (NEGLECT)
- Parent's/caretaker's or anyone in the home whose mental illness and behavior pose a significant danger to the child's health and safety. (NEGLECT)
- A court has adjudicated a parent unfit and the parent has not completed services which would correct the conditions which led to the court finding.

INCIDENTS OR CIRCUMSTANCES THAT IN AND OF THEMSELVES DO NOT CONSTITUTE RISK OF HARM

Failure to follow a service plan does not in and of itself constitute an allegation of Substantial Risk.

- Use of physical corporal punishment in and of itself does not constitute an allegation of Substantial Risk.
- Birth of baby to families involved with the Division does not in and of itself constitute a significant risk of harm or the presence of a real and significant danger.

b) TAKING A REPORT

1) **Acceptable Reporter/Source**

Any person who has reason to believe that a child is at substantial risk of physical injury may be the Reporter/Source of a CA/N report.

2) **Usage**

The Reporter/Source must have reason to believe that the incident/circumstances, which create the risk of harm, resulted from the following:

- A) A direct action of the parent, caregiver, immediate family member, the parent's paramour, or other person responsible for the child's welfare. (ABUSE)
- B) The failure of the parent, caregiver, immediate family member, the parent's paramour, or other person responsible for the child's welfare to make reasonable efforts to stop an action by another person which resulted in substantial risk of harm to the child. (ABUSE)
- C) Placing a child in an environment that is injurious to their health and welfare. (NEGLECT)

3) Factors to Be Considered

Whether there is real and significant danger sufficient to justify the taking of a report is determined by any of the following factors (All factors need not be present to justify taking the report. One factor alone may present sufficient danger to justify taking the report):

- A) The child's age
- B) The child's medical condition, behavioral, mental or emotional problems, developmental disability, or physical handicap, particularly as it relates to his ability to protect himself.
- C) The severity of the occurrence.
- D) The frequency of the occurrence.
- E) The alleged perpetrator's physical, mental and/or emotional abilities, particularly as it relates to his or her ability to control his or her actions.
- F) The dynamics of the relationship between the household members and the child.
- G) The alleged perpetrator's access to the child.
- H) The previous history of indicated abuse or neglect.
- I) The current stresses/crisis in the home.
- J) The presence of other supporting persons in the home.

Note: The narrative of the intake form must document the real and significant danger which has been identified to justify the taking of the report as well as the factors that have a bearing on the decision.

e) INVESTIGATING A REPORT

1) Required Documentation/Evidence to Support Finding

- A) Secure evidence that a person responsible for a child's welfare has created a real and significant danger of physical harm which is likely to cause death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function. Or, evidence that incidents of violence or

intimidation have been directed toward the child which have not yet resulted in injury or impairment but which clearly threaten such injury or impairment, or placing a child in an environment which is injurious to their health and welfare. (NEGLECT) The specific incident or set of circumstances that created the risk must be documented along with a justification that the incident rose to the level of substantial risk. If sufficient evidence is present apply "Factors To Be Considered".

- B) If previous investigations are used to support current finding, the files must be read to insure evidentiary value.
- C) If police have conducted an investigation, the final finding must be obtained and documented. If the police report is not available, a case note must be included indicating the report has been requested along with documentation of the verbal statements. The supervisor must review the police report when it is received to ensure findings do not conflict with previously documented information received verbally.
- D) Apply and document the application of the "Factors to Be Considered". Each factor should be assessed as to relevance to the specific case and that assessment should be documented on a SACWIS Case Note or other form designed for this purpose.
- E) Waiver of any of the above must be given by the supervisor and documented on a SACWIS Case Note.

2) Requirements for Initial Investigation

- A) CARI checks of household members and other subjects regularly frequenting or living in the home.
- B) Thoroughly read and review prior investigations.
- C) Interview reporter, source and others identified in the current report or related information as having knowledge of the incident.
- D) In person, individual interview with alleged child victim(s) and completion of assessment.
- E) In person or phone interview with law enforcement, if police have had contact on current report.
- F) Interview caseworker if a service case is currently open.
- G) In person, individual interview with parent/caretakers. Parents should be contacted on the same day as contact with child victim(s) if at all possible. If the safety assessment is marked unsafe, parents must be interviewed immediately to ensure the child's safety, and the formal investigation must be commenced.
- H) Interview alleged perpetrator either in person or by phone.
- I) Waiver of any of the above contacts must be given by the supervisor and documented on a SACWIS Case Note.

3) Requirements for Proceeding to Formal Investigation

- A) A formal investigation must be commenced if:
 - i) the safety assessment is marked unsafe; or
 - ii) there is a determination that the child victim may have been placed in a situation which would lead a reasonable person to suspect that the child is in substantial risk of physical injury or in an environment which is injurious to their health and welfare; and
 - iii) the alleged victim is under the age of 18.
- B) Apply "Factors to be Considered" to determine if sufficient reasonable cause exists to move to a formal investigation.
- C) The decision to proceed to a formal investigation must be made within 14 days from the receipt of the report and documented on a SACWIS Case Note. Because the nature of investigations is intrusive to families, careful consideration should be given as to the necessity to move to a formal investigation. The use of corporal punishment in and of itself does not constitute the basis for investigation.

4) Requirements for Formal Investigation

- A) In person, individual interview with parents/caretakers.
- B) In person, individual interview with alleged perpetrators.
- C) In person, individual interview with all other adults and verbal children of the victim's household. Non-verbal children must be observed.
- D) In person, individual interview with all other adults and verbal children of the perpetrator's household. Non-verbal children must be observed.
- E) Observation of environment where maltreatment occurred.
- F) Interview physicians directly involved with the treatment of the reported incident.
- G) Interview all identified witnesses who are reported to have knowledge of the incident.
- H) If the family or the subjects identify two or more possible collateral contacts, at least two must be interviewed either by phone or in person. This includes character witnesses.
- I) Interview caseworker if service case is currently closed but has been open within the past two years.
- J) Interview other community professionals who have first hand knowledge of the incident or circumstances that created the substantial risk.
- K) For children 12 and under, interview school teacher or child care provider who has knowledge of the child and/or the level of care provided to the child.

- L) Interview primary care physician or physician who has seen the victim within the past six months if past history of maltreatment is alleged.
- M) Interview child protective services in other states in which the family members have resided in the previous five years.
- N) Waiver of any of the above contacts must be given by the supervisor and documented on a SACWIS Case Note.

5) Required Medical Information and/or Consultations

- A) Workers must ensure that the child victim receives an immediate medical exam if evidence exists the child is in need of urgent medical care.
- B) Medical records of current treatment/diagnosis and relevant past treatment.
- C) Clinical consultation to match potential risk with a potential cause (etiology) if nature of the potential harm is unknown or contested.

6) Law Enforcement/Prosecutor Notification and Involvement

- A) The Prosecutor shall be notified if the child is taken into protective custody or when the alleged perpetrator is a paramour.
- B) The Prosecutor shall be notified if the current report constitutes a second, or more, indicated report of abuse.

7) Assessment of "Factors to Be Considered" to Support Case Finding

- A) What are the ages of the involved children?
- B) Does the victim have a medical condition; behavioral, mental or emotional problem; or disability or handicap which impacts on his or her ability to seek help or herself or significantly increases the caretaker's stress level?
- C) Is there a pattern of similar instances with this child or other children for whom the caretaker has been responsible?
- D) What is the severity of the incident?
- E) What is the location of potential harm? Corporal punishment does not in and of itself constitute abuse.
- F) Was an instrument used on the victim? (The use of an instrument does not in and of itself constitute an indicated finding but must be considered with other factors.)
- G) Is there a previous history of abuse and/or neglect? The history shall be verifiable through official record documentation or substantial corroboration by other credible sources.
- H) What dynamics are present between the victim and the parent? (Identify the child's level of fear of the caretaker. Does the caretaker appear to be concerned about the child's welfare and protection? Is there an appropriate parent-child relationship?)