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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation(s)	22VAC40-705
Regulation title(s)	Child Protective Services
Action title	Review and Amend CPS Regulation
Date this document prepared	August 17, 2016

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulatory action serves as a comprehensive review of the agency's child protective services (CPS) regulations. The action repeals 22VAC40-700 (Child Protective Services Central Registry Information) and 22VAC40-720 (Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces), and incorporates those provisions into 22VAC40-705 (Child Protective Services). This regulation establishes the regulatory framework for protecting children from abuse and neglect. The regulation provides direction for how to best protect children while balancing the rights of parents and family integrity.

Substantive changes add or revise definitions used throughout the regulation; add requirements to comply with federal and state statutes, which will strengthen existing CPS guidance and enhance child safety; and add training requirements for all CPS staff. Substantive changes include clarification of procedures involving substance exposed infants and release of information.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- Board- State Board of Social Services
- CPS- Child Protective Services
- DSS- Department of Social Services
- LDSS- Local department of social services
- CAPTA- Child Abuse Prevention and Treatment Act

Statement of final agency action

Please provide a statement of the final action taken by the agency including:1) the date the action was taken;2) the name of the agency taking the action; and 3) the title of the regulation.

The State Board of Social Services took final action on 22VAC40-705, Child Protective Services, August 19, 2016.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

Section § 63.2-217 of the Code of Virginia gives the Board the responsibility to make rules and regulations to carry out the purposes of social services. Section § 63.2-1501 et seq. provides the authority for the CPS program.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

This regulatory action is essential to protect the health, safety and welfare of children at risk for child abuse or neglect. Periodic review is required by §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia. The goal of this regulatory action is to:

- 1) conduct a review of 22VAC40-705;
- 2) amend existing CPS requirements and add new requirements to make the CPS regulation consistent with the Code of Virginia and CAPTA;

- 3) clarify and strengthen the CPS program while balancing the rights of alleged abusers with protecting children and families; and
- 4) reduce the number of regulations the public may have to review to find CPS information.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The provisions of the repealed regulations will be incorporated into 22VAC40-705. The two repealed regulations include requirements for reporting to the family advocacy representatives of the United States Armed Forces and retention time of names of abusers and victims involved in founded investigations within the Central Registry for child abuse and neglect. This action will reduce the total number of regulations for the CPS program from four to two. A separate regulation, 22VAC40-730, provides requirements specific to conducting investigations of child abuse and neglect in an out of family setting by a non-familial caretaker.

Statutory changes made in 2013 necessitate additions and amendments to the regulation. These include provisions for (1) suspending sexual abuse and child death investigations if reports generated outside the local agency are necessary to make a disposition and (2) notification to local school boards for all founded investigations that involve any school employee.

Other additions and changes are in response to changes in the federal laws governing child welfare, a decision made in 2014 by the Virginia Court of Appeals and comments received during the public comment period.

Substantive changes include adding:

- definitions for near fatality, response time, and sex trafficking;
- sex trafficking to the definition of sexual abuse;
- requirement for reports to be acted upon and the victim child to be interviewed within the determined response time;
- federal requirement to notify relatives within 30 days of removal;
- requirement to interview and observe all children residing in the home with parental permission;
- requirement for a risk assessment to be completed for all investigations;
- provision for suspending certain investigations;
- retention requirements for serious sexual abuse records;
- requirement to notify school boards for all employees in founded investigations and notify the individual of this action; and
- additional training requirements for all CPS staff.

Proposed amendments clarify: definitions of caretaker, preponderance of evidence and mental abuse or neglect; responsibilities for mandated reporting of and LDSS response to substance exposed newborns; right of subjects in false reports to receive written verification that records have been purged; release of information while there is a pending criminal investigation; and information to be released in non-caretaker sexual abuse reports. Additionally, this action will delete: the definition of substance abuse counseling; the reference to “72-96 hours” for authority of CPS to remove a child; information regarding a local conference for investigations with a founded disposition which is included in 22VAC40-730;

General changes were made to improve the consistency of terminology used within this regulation, such as the use of the term “electronic recording” versus “audio taping”, replacing and/or with “or”, correcting grammatical errors and spelling out acronyms, such as CPS (child protective services).

Changes were made within sections relative to numbering, ordering and formatting to improve the organization and flow of requirements.

Technical changes were made to statutory and regulatory references to ensure the most current and accurate citation.

Issues

Please identify the issues associated with the proposed regulatory action, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

One of the primary advantages to the public and individual private citizens will be a clearer understanding of the processes involved when making a report to CPS and the actions that are taken by CPS. The public will benefit from having CPS staff receiving current, best practice training annually. LDSS will benefit from amendments to the regulation which provide clarity and enhance existing requirements. The public, the Commonwealth and LDSS will benefit from having fewer regulations.

There are no disadvantages to the Commonwealth. LDSS will need to support the training of local staff when the revised regulation becomes effective.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no requirements more restrictive than any applicable federal requirements. The added provision to notify relatives within 30 days of a removal is the federal requirement and is not more restrictive.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

All localities are affected equally; no one locality would be negatively affected by this regulation.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulatory action primarily clarifies instructions to LDSS regarding CPS procedures and incorporates three existing regulations into a single, comprehensive regulation. This regulatory action is not likely to impact the institution of the family and rights of parents in the education, nurturing and supervision of their children, except to the extent the regulation protects children from abuse or neglect. This regulatory action does not directly impact economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children. This action does not directly impact marital commitment nor does it decrease disposable family income.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
All Sections		Throughout entire regulation, changed all use of “and/or” to “or”.	Subdivision 5 of 1VAC7-10-30 allows the word “or” to mean any one or all of the items listed or any combination thereof.
*10	Defines “caretaker”.	Redefined caretaker to include persons who by law, social custom, expressed or implied acquiescence, collective agreement, or any other legally recognizable basis has an obligation to look after a child left in their care. Deleted part of definition regarding adult persons residing in the home with the child.	The 2014 Virginia Court of Appeals decision in Moore v. Brown changed the definition of caretaker.
*10	Defines “preponderance of evidence”.	Redefined preponderance of evidence to mean just enough evidence to make it more likely than not that the asserted facts are true.	Suggested by the Office of the Attorney General.
*10	Defines “response time”.	Redefined response time to mean a reasonable time for the local department to initiate a valid report of suspected child abuse or neglect based upon the facts and	Suggested by the Office of the Attorney General.

		circumstances presented at the time the complaint or report is received.	
*10		Added definition of sex trafficking for use in 22VAC40-705-30.	Required by CAPTA.
*10	Defines “substance abuse counseling or treatment services”.	Deleted definition.	This is described within subdivision A6 of 22VAC40-705-40.
30 C2	Adds requirement of professional documentation to support mental abuse or neglect.	Deleted “professional” description of documentation.	The term professional did not add to the definition.
30 D	Defines sexual abuse.	Added that sexual exploitation by a caretaker includes sex trafficking as defined in 22VAC-40-705-10.	CAPTA requires sex trafficking to be included in a state’s definition of abuse.
40 A1	Requires mandated reporters to report suspected abuse or neglect immediately.	Added “or official” capacity in addition to professional capacity of learning about abuse or neglect.	Further clarified when mandated reporters are required to report.
40 A2	Clarifies responsibilities of some mandated reporters.	Added the statutory language into this subdivision.	Suggested by the Office of the Attorney General.
40 A5	Paraphrases statutory language regarding failure to report.	Added the statutory language into this subdivision.	Improved accuracy and clarity of language.
*40 A6	States the response to complaints or reports involving substance exposed newborns and mothers who sought counseling while pregnant.	Several requirements removed in the proposed stage were rewritten to clarify the response and actions to be taken for substance exposed newborns and their mothers. Replaced “infant” with “child”. Clarified that substance abuse counseling or treatment information pertains only to this section of this regulation. Technical and grammatical changes were also made in this section.	Suggested through public comment in order to clarify the regulation.
*40 E	States the name of complainant shall not be disclosed.	Added an exception to release of the name of complainant if there is court order or required under subsection D of §63.2-1503.	Suggested through public comment in order to clarify the regulation.
40 G4	States making false complaints and consequences.	Added statutory requirement to notify a subject that records have been purged.	Required by § 63.2-1513.
40 H5	Adds statutory requirement for joint investigations in out of family reports.	Clarified that regulations covering out of family joint investigations can be found in 22VAC40-730.	Suggested by the Office of the Attorney General.
50 A	States retention time for screened out referrals.	Clarified that reports will purge after one year unless a subsequent report is received.	Clarified that records are destroyed as appropriate.
50 B	States criteria for a valid report.	Clarified jurisdiction of the local department receiving the report.	Suggested by the Office of the Attorney General.
50 H	States that reports are responded to immediately.	Clarified that local departments must respond within determined	Suggested by the Office of the Attorney General.

		response time.	
50 H5	States procedures when LDSS cannot locate victim child.	Added local department must exercise reasonable diligence to locate child and deleted reference to specific 45-60 day timeframe.	Revised to be consistent with § 63.2-1505.
*60 3	Requires contact of relatives within 30 days of removal of a child.	Added federal requirement to notify the parents of siblings of the removal child unless there is an exception due to family or domestic violence. Also clarified this is the responsibility of the LDSS, not the CPS worker.	This is required by a revision to the Social Security Act, Title IV, effective 2014.
*80 A3		Added requirement to interview and observe all other children residing in the home with parental permission	Suggested by the Office of the Attorney General.
*80 B3		Added requirement to interview and observe all other children residing in the home with parental permission.	Suggested by the Office of the Attorney General.
80 B6	Requires observation of home environment.	Clarified exception to observe the environment for out of family reports and revised name of child care centers to child day centers.	Provides clarification for observing the home environment when abuse occurs in an out of family setting and terms updated to be consistent with § 63.2-1515.
80 B9	Requires LDSS to obtain criminal record checks on subjects of CPS reports and where child visits.	Added obtaining a Central Registry search in addition to criminal record checks.	Changed to be consistent with § 63.2-1505.
90 C	Addresses transporting a child without parental consent.	Deleted reference to specific timeframe of 72-96 hours for emergency removal.	Revised to be consistent with § 63.2-1517 and Title 16.1.
110 C	Addresses making a dispositional assessment in an investigation.	Clarified that the disposition will be founded or unfounded as defined in 22VAC40-705-10.	Provided a reference to section 10 of this regulation.
*120 D	States information gathered during a joint investigation with law enforcement cannot be released without permission.	Clarified that pursuant to § 63.2-1516.1 B, the timeframe for restriction of releasing information of joint criminal investigations is prior to the conclusion of the criminal investigation.	Suggested through public comment in order to clarify the regulation.
120 E	Describes local conference procedures.	Deleted subdivision regarding holding a local conference.	This is covered in 22VAC40-190.
140 C3	States permission is needed to register a victim child's name in out of family investigations.	Revised terms "child day care center" to "child day center"; "regulated" to licensed, registered or approved"; deleted "child-caring institution"; added "children's" residential facility; and deleted "for juveniles".	Consistent with § 63.2-1515 of the Code of Virginia.
160 A3	Describes the Government Data Collection and Dissemination Practices	Clarified there are rights "under" the act.	Suggested by the Office of the Attorney General.

	Act.		
*160 D	Addresses the release of: 1) Name of complainant, and 2) Information gathered during joint investigation with law enforcement.	1) Added an exception to release of the name of complainant as required under subsection D of § 63.2-1503. 2) Clarified that the timeframe for restriction of releasing information of joint criminal investigations is prior to the conclusion of the criminal investigation.	Suggested through public comment in order to clarify the regulation.
180	States the annual training requirements.	Deleted reference to timeframes for annual training.	No longer applicable.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
<p>Lisa Burns-Brown Family Services Supervisor Mathews Dept. of Social Services</p> <p>Gretchen Brown CPS Supervisor Henrico Dept. of Social Services</p>	<p>22VAC40-705-80 A1 and B1 Received directly by email:</p> <p>Expressed concerns about interviewing a victim child within the response time. Concern is there are some unavoidable circumstances that may make this difficult to achieve.</p>	<p>This is a valid concern, however, the regulation also states that if any contact cannot be made the reason should be documented in the record. DSS does not agree a change is needed.</p>

Commenter	Comment	Agency response
<p>Elizabeth (nonregistered public user)</p>	<p>22VAC40-705-60 (3-i) Received through Town Hall:</p> <p>Expressed concern that the CPS investigation would have to remain open in order to make notifications to relatives and wait for responses when a child is removed and placed into foster care.</p>	<p>The CPS investigation does not need to remain open in order to make notifications to relatives when a child has been removed by the LDSS. Notification to relatives is a responsibility of the LDSS. Based on this comment, 22VAC40-705-60 (3-i) will be clarified.</p>
<p>Rebecca Morgan Director Middlesex Social Services</p> <p>Kimberly Irvine Director York-Poquoson Social Services</p>	<p>22VAC40-705-120 Received through Town Hall and directly by email:</p> <ol style="list-style-type: none"> 1) Expressed concern that the new addition to this section of the regulation regarding the restriction to release information gathered during a joint investigation with law enforcement is not clear about the timeframe for this restriction. Suggested the wording be changed to reflect no information can be released prior to the conclusion of the investigation and resolution of all criminal matters. 2) Additionally, questioned the applicability of § 63.2-21516.1B of the Code of Virginia to all joint investigations since it is contained in a section of the Code pertaining to Out of Family investigations. 	<ol style="list-style-type: none"> 1) Will amend the timeframe in 22VAC40-705-120 to clarify the release of information is prior to the conclusion of a criminal investigation. 2) Section 63.2-2516.1 part A refers to Out of Family investigations, however, part B pertains to all investigations. DSS does not agree a change is needed.
<p>Christie Marra Staff Attorney Virginia Poverty Law Center</p>	<p>22VAC40-705-40 Received directly by email:</p> <ol style="list-style-type: none"> 1) Concerned that removing the language in A6 and subsection d that a CPS response is not required for substance exposed infant if the mother sought treatment while pregnant is in conflict with §63.2-1505(B) of the Code of Virginia and that by removing this language it is possible for workers to lose sight of the importance of seeking substance abuse treatment. 	<ol style="list-style-type: none"> 1) Validity is defined in § 63.2-1508 of the Code of Virginia. LDSS are responsible for determining validity. Based on multiple comments received during public comment period, this section will be rewritten to clarify that the LDSS may determine no further action is required if a mother sought or received substance abuse counseling or treatment while pregnant.

Commenter	Comment	Agency response
	<p>2) Similarly, in subsection d concerns that deleting language that directs local departments to invalidate such reports may affect the importance of seeking substance abuse treatment.</p> <p>3) Concerns expressed that in subsection h the deleted language may allow CPS to make a finding for substance exposed newborns without any other evidence of abuse or neglect and that would be contrary to § 63.2-1509 (B) of the Code of Virginia.</p>	<p>2) Same as above.</p> <p>3) Based on multiple comments received during public comment period, this section will be rewritten to clarify that exposure to controlled substances prior to birth cannot result in a founded disposition in an investigation.</p>
<p>Doug Brown Family Services Manager Alexandria Dept. of Community and Human Services</p>	<p>Received through Town Hall:</p> <p>Recognized and acknowledged the numerous clarifications and improvements were made within the proposed regulation such as adding definitions for mental abuse/neglect and near fatalities and additional training requirements.</p> <p>22VAC40-705-40 (A)</p> <p>1) Agreed with removing the regulation that requires local agencies to invalidate responses to substance exposed infants if sought substance abuse treatment and states it will increase child safety by requiring a CPS response regardless.</p> <p>2) Recommend removing definitions in in 22VAC40-705-10 of terms used in the deleted language, specifically: certified substance abuse counselor; licensed substance abuse treatment practitioner; and substance abuse counseling or treatment services.</p>	<p>1) Validity is defined in § 63.2-1508 of the Code of Virginia. LDSS are responsible for determining validity. Based on multiple comments received during public comment period, this section will be rewritten to clarify that the LDSS may determine no further action is required if a mother sought or received substance abuse counseling or treatment while pregnant.</p> <p>2) The definitions for certified substance abuse counselor and licensed substance abuse treatment practitioner are needed because the terms are used in 22VAC40-705-40 (A)6g. DSS does not agree a change is needed. DSS does agree that the definition of substance abuse counseling or treatment services is not required in 22VAC40-705-10 because it is clearly explained in 22VAC40-705-40 (A)6e and f.</p>

Commenter	Comment	Agency response
	<p>22VAC40-705-40 (A) h 3) Expressed concerns that in subsection h the deleted language may allow CPS to make a finding for substance exposed newborns without any other evidence of abuse or neglect. This would create inconsistencies across agencies and the treatment of substance abusing mothers. Furthermore, by leaving this issue in CPS guidance only, changes could be made without formal review, public input and oversight of the Board.</p> <p>22VAC40-705-40 (E) 4) Proposed language is contradictory and not consistent with current CPS guidance which directs all information be disclosed to the Commonwealth Attorney and local law enforcement including the name of the complainant.</p> <p>22VAC40-705-80 (A) 5) Expressed concern that by requiring face to face contact with victim child within response time in a family assessment would hinder local agency efforts to engage families and build trusting relationships.</p>	<p>3) Based on multiple comments received during public comment period, this section will be rewritten to clarify that exposure to controlled substances prior to birth cannot result in a founded disposition in an investigation.</p> <p>4) Will add that the LDSS shall not release of the name of the complainant unless court ordered or required under subsection D of § 63.2-1503 of the Code of Virginia.</p> <p>5) Contact with a victim child within the response time ensures immediate assessment of child safety. Contact with the victim child and family can still be made with an engaging approach. DSS does not agree a change is needed.</p>

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Throughout this regulatory action, several technical changes were made to include:

- General changes were made to improve the consistency or terminology used within this regulation, such as the use of the term “electronic recording” versus “audio taping”, correcting grammatical errors and spelling out acronyms, such as CPS (child protective services).
- Changes were made within sections relative to numbering, ordering and formatting to improve the organization and flow of the requirements.
- Technical changes were made to statutory and regulatory references to ensure the most current and accurate citation.
- Replacing “and/or” with “or” because recent addition of 1VAC7-10-30 which states that the word “or” means any one or all of the items listed or any combination thereof.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		Provides definitions used in CPS.	<p>Redefine caretaker definition to include persons who by law, social custom, expressed or implied acquiescence, collective agreement, or any other legally recognizable basis has an obligation to look after a child left in their care. Delete part of definition regarding adult persons residing in the home with the child. This was in response to a 2014 decision of the Virginia Court of Appeals.</p> <p>Add definition for "near fatality". This term is defined in 22VAC40-910-10, and is used in 22VAC40-705-160.</p> <p>Revise definition of preponderance of evidence for clarity.</p> <p>Add definition for "response time." This term is added into sections 22VAC40-705-50 and 22VAC40-705-80 to provide clarity for LDSS on timeframes for responding to valid reports of child abuse and neglect</p> <p>Added definition of sex trafficking for use in 22VAC40-705-30. Term is defined in response to adding into 22VAC40-705-30 that sexual exploitation includes sex trafficking, which is due to changes made to CAPTA which became effective in 2014.</p> <p>Delete definition of substance abuse counseling or treatment services. This term is described within 22VAC40-705-40 (A6).</p>
30		Describes types of abuse and neglect.	<p>Restructure the section to incorporate failure to provide necessary medical treatment within other types of physical neglect.</p> <p>Medical neglect is an act of omission and by including it with other acts of omission</p>

			<p>provides for clarity and understanding.</p> <p>Add a new subdivision that is consistent with existing subdivisions which states that physical neglect may include medical neglect.</p> <p>Expand definition of mental abuse or neglect to include clarification that these acts result in harm to a child's psychological or emotional health or development. This will strengthen existing CPS guidance.</p> <p>Add requirement for documentation prior to determining a report to be founded for mental abuse or neglect. This will strengthen the existing requirement in CPS guidance.</p> <p>Clarify that sexual abuse must be committed by the child's caretaker and add that sexual exploitation includes sex trafficking as defined in 22VAC40-705-10 in response to changes that were made to CAPTA that became effective in 2014.</p>
40		<p>Describes mandated reporting for suspicions of child abuse and neglect, reporting of substance exposed newborns, other persons who report, anonymous reporters, immunity of reporters, confidentiality of reporters, reports made in bad faith, making a false report, and jurisdiction of local departments.</p>	<p>In response to exempt regulatory action in 2012 after major changes in § 63.2-1509 of the Code of Virginia, this section is being amended to provide clarity and better understanding of mandated reporting in general and issues related specifically to substance exposed newborns.</p> <p>Clarify mandated reporter must report suspicions of abuse or neglect if they learn of it while in their official capacity and they do not need to make a report if they have actual knowledge a report has already been made to CPS.</p> <p>Amend section specific to substance exposed newborns to include: clarify that certain facts that a child was exposed to controlled substances prior to birth constitute a reason to suspect a child has been abused or neglected; clarify actions to be taken when a report indicates the mother sought or received substance abuse counseling or treatment during pregnancy pursuant to § 63.2-1505; and clarify instructions for rendering a founded disposition in substance exposed newborn investigations.</p> <p>Amend the LDSS "shall complete an investigation or assessment if valid" instead of "may initiate." This is based on the fact</p>

			<p>that all valid reports shall receive either an investigation or family assessment pursuant to § 63.2-1505 and § 63.2-1506.</p> <p>Delete provision that an anonymous complaint, standing alone, cannot be the basis for a founded investigation. This is redundant, as it is included within the definition of founded in 22VAC40-705-10.</p> <p>Amend “court decides” if a person acted in bad faith or with malicious intent to say unless “it is proven” as some legal decisions are reached by a jury, not a judge.</p> <p>Clarify that the identity of any reporter shall not be disclosed pursuant to § 63.2-1514 (C) unless it is court ordered or required under subsection D of § 63.2-1503 as this information may be needed for criminal prosecution.</p> <p>Clarify that the proof required to have records purged if falsely made must be a certified copy of a conviction for that offense.</p> <p>Add requirement included in § 63.2-1513 which requires a subject be notified in writing when records of false reports have been purged.</p> <p>Add clarification that a judge may ask the court services unit to evaluate a report if the report involves an employee of a local department pursuant to § 63.2-1509.</p> <p>Add instructions for local departments to request the assistance of the Department and the institutions involved in an out of family investigation. This is included in 22VAC40-730 and completes this subdivision regarding the jurisdiction of local departments.</p>
50		Describes actions to be taken when a report is received by CPS.	<p>Delete five day timeframe to determine validity. This is problematic when determining response time based on safety concerns. Validity must be determined upon receipt by the LDSS.</p> <p>Add requirement for reports to be acted upon within the determined response time which is defined in 22VAC40-705-10.</p> <p>Clarify that all reports, determined to be valid or not, shall be retained longer if there is a</p>

			<p>subsequent report. This will allow for history to be preserved for all reports made to CPS.</p> <p>Clarify that the LDSS shall respond within the determined response time.</p> <p>Eliminate reference to either immediate or longer term risk of future harm. Risk of harm refers to the future and safety assessment refers to immediate needs. This adds clarity to the differences between safety and risk.</p> <p>Clarify that reasonable diligence must be made to locate a missing child when a report is validated and also when the whereabouts of the subjects are unknown.</p> <p>Delete reference to 45-60 day timeframe for completing an investigation as there are additional exceptions and extensions to this timeframe which can go beyond 60 days. All timeframes are referenced in § 63.2-1505 B5.</p>
60		Describes the authorities of LDSS in CPS	<p>Delete timeframe reference for emergency removal. The term “up to 72-96 hours” is not as clear as the actual code, § 63.2-1517 (B). The exceptions to the 72 hours are explained further in CPS guidance manual.</p> <p>Add requirement for LDSS to exercise due diligence when a child has been removed to identify and notify maternal and paternal grandparents and also parents who have legal custody of any siblings of the removal child. These notifications are subject to exceptions due to family or domestic violence. Notice to these relatives is required by the Social Security Act, Title IV, §471 (a) (29) [42 USC 671].</p> <p>Add requirement for the LDSS to document notifications to relatives and the reasons when these notifications are not made.</p>
70		Describes what information is collected by CPS.	<p>Clarify that all information collected for either an investigation or a family assessment must be documented. This provides clarity for LDSS.</p>

80		Describes required contacts for CPS.	<p>Changes below are in both the section about contacts in a family assessment and contacts in an investigation:</p> <p>Replace antiquated wording regarding documentation of contacts and observations and add that if a contact is not made, the reason shall be documented.</p> <p>Add clarification for interviewing or observing the victim child within the determined response time.</p> <p>Add clarification that all minor siblings residing in the home must be interviewed and observed.</p> <p>Add requirement that other children residing in the home must be interviewed and observed with parental permission.</p> <p>Clarify requirement to observe the environment where the victim child lives if the abuse or neglect occurs in an out of family setting and the abuser is employed or volunteers at the out of family setting.</p> <p>Add ability to obtain Central Registry information on subjects of CPS investigations or any adults where the child lives or visits. This is allowed by § 63.2-1505.</p>
90		Describes family assessment and investigative protocols	Delete timeframe reference for emergency removal. The term “up to 72-96 hours” is not as clear as the actual code, § 63.2-1517 (B). The exceptions to the 72 hours are explained further in CPS guidance manual.
110		Describes safety, risk and dispositional assessments made in CPS.	<p>Clarify that the initial assessment is regarding the safety of a child.</p> <p>Add that in all completed family assessments and investigations, not just founded investigations, a risk assessment will be completed. This is necessary because the actuarial risk assessment tool used by CPS has been validated to assess risk of future maltreatment, regardless of disposition, outcome of allegations or type of response.</p> <p>Clarify that the disposition of an investigation is either founded or unfounded, which are defined in 22VAC40-705-10.</p> <p>Incorporate 22VAC40-700-20 regarding assessing levels for founded investigations.</p>

			<p>These levels are based on the severity of abuse or neglect and are directly correlated to name retention in the Central Registry.</p>
120		<p>Describes the ability to extend or suspend an investigation, the ability to change tracks and the right to a local appeals conference.</p>	<p>Change section title to accurately reflect the requirements contained, including deletion of local conference.</p> <p>Relocate requirement for notification of subjects of complaints, as it more appropriately fits into 22VAC40-705-140 B 5.</p> <p>Add new requirement pursuant to § 63.2-1505 B 5, which allows a sexual abuse investigation or a child death investigation to be suspended until such time that reports generated outside the LDSS are received. The reports must be necessary to make a final disposition. The time needed to receive such reports is not counted towards the 45 day timeframe to conduct the investigation. Parents and alleged abuser shall be notified if the investigation is suspended. Upon receipt of necessary records, the LDSS will complete the investigation.</p> <p>Clarify that prior to the conclusion of a criminal investigation, information gathered during the joint investigation may only be released by LDSS if authorized pursuant to § 63.2-1516.1B.</p> <p>Delete subdivision regarding holding a local conference. This is covered in 22VAC40-190, which covers all appeals.</p>
130		<p>Describes conclusions made in investigations and family assessments.</p>	<p>Reorganize section to reflect decisions and conclusions in three separate sections: unfounded investigations; founded investigations; and family assessments.</p> <p>Incorporate 22VAC40-700-30, name retention in the Central Registry, which is based on levels of founded investigations.</p> <p>Add requirement for level one sexual abuse investigations to be retained by the LDSS for 25 years pursuant to §63.2-1514 A. This specifically pertains to dispositions of investigations made after July 1, 2010.</p> <p>Incorporate 22VAC40-700-30, retention of all case information is affected by any subsequent complaints or reports.</p>

			<p>Clarify that a certified copy of a court order is required to purge a record which is found to have been made in bad faith or with malicious intent.</p>
140		<p>Describes the notifications that are made by CPS at the conclusion of an investigation or family assessment</p>	<p>Add clarification that notifications in this section include notifications for family assessments.</p> <p>Add requirement for any person who is the subject of a founded investigation and is employed by a school, the local school board shall be notified.</p> <p>Add requirement to notify the Superintendent of Public Instruction regarding any person who is the subject of a founded investigation and holds a license by the Board of Education.</p> <p>Add requirement to inform persons named in a family assessment that they are to be advised of their rights in § 63.2-1514 regarding reports made maliciously or in bad faith. This is the same requirement for an unfounded investigation.</p> <p>Change terms "complaint" and "case" to "disposition" for clarity.</p> <p>Revise terms "child day care center" to "child day center"; "regulated" to licensed, registered or approved"; deleted "child-caring institution"; added "children's" residential facility; and deleted "for juveniles". This is consistent with § 63.2-1515.</p> <p>Incorporate 22VAC40-720 into the section for notifications to Family Advocacy Program representatives of the United States Armed Forces.</p>
160		<p>Describes releasing CPS information.</p>	<p>Clarify that reports of child deaths are made to the regional medical examiner.</p> <p>Delete notification to the complainant for an unfounded investigation or family assessment, as it is redundant. This notification is covered in 22VAC40-705-140 D.</p> <p>Clarify that LDSS should consider certain factors to determine if a person has a legitimate interest and the ability to disclose information which is in the best interest of the child. Clarify that this list is not inclusive.</p>

			<p>Relocate requirement that the identity of any reporter shall not be disclosed pursuant to § 63.2-1514 (C) unless it is court ordered or required under subsection D of § 63.2-1503 as this information may be needed for criminal prosecution.</p> <p>Add that prior to the conclusion of a criminal investigation; information gathered during the joint investigation may only be released by LDSS if authorized.</p>
180		Describes training requirements for CPS staff.	<p>Add requirement for supervisors to complete skills and policy training.</p> <p>Add requirement for all CPS staff to complete a minimum of 24 hours of annual continuing education or training after completion of initial training mandates.</p>