

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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2008 APR -7 PM 2:20

SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: West Virginia State Police TITLE NUMBER: 81

CITE AUTHORITY: 15-2-15 and 15-2-25

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO

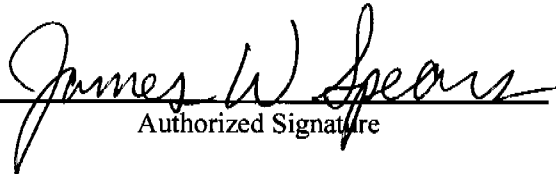
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 17

TITLE OF RULE BEING PROPOSED: Regulations and Procedures Pertaining to the West Virginia Child Abuse and Neglect Investigations Unit

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 15, 2008


Authorized Signature

**West Virginia State Police
Title 81
Series 17**

Response to Comments Received

The West Virginia State Police received no comments during the comment period that commenced February 28, 2008 and ended March 31, 2008. The rule is final filed as originally filed for public comment.

FILED

**TITLE 81
PROCEDURAL RULE
WEST VIRGINIA STATE POLICE**

2008 APR -7 PM 2: 20

**SERIES 17
REGULATIONS AND PROCEDURES PERTAINING TO THE WEST VIRGINIA
CHILD ABUSE AND NEGLECT INVESTIGATIONS UNIT**

§81-17-1. General.

1.1. Scope. -- This procedural rule explains the responsibilities and the administration of the Child Abuse and Neglect Investigations Unit and the responsibility of the Department of Health and Human Resources, Child Protective Services (CPS), the West Virginia State Police, other law enforcement officers, prosecuting attorneys, circuit clerks and parole officers within the state as designated by the Child Protection Act of 2006.

1.2. Authority. -- This rule is issued under authority of W. Va. Code §§15-2-15 et. seq. and §15-2-25.

1.3. Filing Date. -- February 28, 2008

1.4. Effective Date. -- May 15, 2008

§81-17-2. Definitions.

As used in this rule, unless in a context that clearly requires a different meaning the following terms are defined as such:

2.1. "Child Abuse and Neglect Registry" – the registry of offenders of child abuse or neglect upon conviction or when found not guilty by reason of mental illness, mental retardation or addiction. These offenses include, but are not limited to, §61-8D-2, 61-8D-2a, 61-8D-3, 61-8D-3a, 61-8D-4 or 61-8D-4a. These also include, but are not limited to, offenses with similar provisions in another state, federal or military jurisdiction or municipal ordinances which possess the same elements of the qualifying offenses. Also included are those offenses in which a person upon conviction of a criminal offense(s) against a child in his

or her household or in which the person convicted has custodial responsibility, the sentencing judge makes a written finding that there is a continued likelihood that the person convicted will continue to have regular contact with that child or other children and that as such it is in the best interest of the child or children for that person to be monitored. This registry is maintained by the West Virginia State Police and housed in the Criminal Records Section.

2.2. "Child Protection Act" - herein known as the Act. Article 15-11-1 et. seq. of the West Virginia Criminal Code, that sets forth the creation of the Child Abuse and Neglect Investigations Unit within the West Virginia State Police particularizing in child abuse and neglect investigations, the requirement that state and local entities report information to the unit, and for the provision for the creation and maintenance of statistical indexes of child abuse and neglect allegations and convictions.

2.3. "Child Protective Services" - herein know as CPS. A specialized component of the broader public system of services to children and families, known as West Virginia Department of Health and Human Resources (DHHR), Bureau for Children and Families (BCF) which is a system of Risk and Safety Based Decision-Making Model. This model is adapted from the Child at Risk Field system developed by ACTION for Child Protection, a non-profit child welfare agency. CPS intervention is to be for the purpose of protecting and controlling the safety of children who are at risk of maltreatment and to provide services to alter the conditions which created the risk of maltreatment.

2.4 "Child Abuse and Neglect Investigations Unit" – also known as the Child Protection Unit within the West Virginia State Police specializing in child abuse and neglect investigations consisting of a minimum of six members charged with the assistance of CPS workers and State Police members across the state in such matters, the provision of training, technical expertise and coordination of services for other law enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys, multi-disciplinary investigative teams and the maintenance of the statistical index of child abuse and neglect allegations and conviction.

2.5. "Child" - any person under the age of eighteen who is not an emancipated minor.

2.6. "Critical incident" – a situation that leaves a child at risk for receiving a serious physical injury or has resulted in a child fatality.

2.7. "Law enforcement" - for the purposes of this rule, this definition applies to any police agency (state, county or municipal) located in the jurisdiction in which the incident in question occurred.

2.8. "Multi-Disciplinary Investigative Team" – herein known as MDIT. A team defined in §49-5D-2, headed and directed by the county prosecuting attorney including a CPS caseworker, a local law enforcement officer, and where appropriate, a child advocacy center representative and a representative from the licensed domestic violence program serving the county. The MDIT is responsible for coordinating or cooperating in the initial and ongoing investigation of all civil and criminal allegations pertinent to cases involving child sexual assault, child sexual abuse, child abuse and neglect, and shall make recommendation to the county prosecuting attorney as to the initiation of commencement of a civil petition and/or criminal prosecution. A MDIT is not the

same as a multi-disciplinary team as defined in §49-1-3(g) and commonly known as a "treatment team".

2.9. "Risk" – the likelihood that a child will be maltreated without intervention.

2.10. "Sexual abuse allegations" - assertions of any inappropriate contact between the perpetrator and the victim's genitals, mouth, anus or breast, that include, but are not limited to the following acts; sexually suggestive verbal remarks and/or requests, intimate kissing or touching, fondling of genitals or breasts, intercourse, digital penetration, sodomy, oral sex, exhibitionism, exploitative or sexual coercion through prostitution or the production of pornographic materials whether for money or not.

2.11. "Serious physical injury" - any injury(ies) which threaten the life or the developmental progress of a child. Examples of serious physical injury include, but are not limited to, spinal fractures, multiple broken bones, head trauma, severe bruising to the head and neck, and/or genital mutilation.

§81-17-3. Purposes.

3.1. The Child Protection Act of 2006 emphasizes the need for effective collaboration between CPS, the West Virginia State Police and local law enforcement in order to reduce the number of critical incidents to children and focus on identifying investigating and prosecuting criminal child abuse and neglect cases. The primary purpose of the Child Protection Unit is to promote the joining of the West Virginia State Police and CPS so to provide an effective governmental approach to reducing child fatalities and aid in the prosecution of perpetrators of child abuse and neglect.

3.2. Develop and maintain a statewide statistical index of child abuse and

neglect allegation and convictions for violations of §61-8D-2, 61-8D-2a, 61-8D-3, 61-8D-3a, 61-8D-4 or 61-8D-4a, so to monitor the timely and proper investigation and disposition of child abuse and neglect criminal cases.

3.3. Provide training, technical expertise and coordination of services for other law enforcement agencies, CPS caseworkers, prosecuting attorneys, and MDITs, as it pertains to the identification, investigation, reporting and prosecution of criminal child abuse and neglect cases.

3.4. Provide the legislative Joint Committee on Government and Finance an annual report that includes the statistical index described in state code §15-2-15(d) as well as recommendations for statutory or program reforms beneficial for the unit and its goals.

§81-17-4. Objectives

4.1. Concretize that the primary principle governing investigative and prosecutorial efforts is safeguarding the victim from further abuse from the perpetrator and from systemic abuse.

4.2. Develop and exercise a protocol for the interaction of the Child Protection Unit and CPS that compliments the mission of both parties and achieves more timely and effective management of criminal child abuse and neglect cases, ultimately resulting in improving the overall welfare of the child.

4.3. Promote the utilization of the West Virginia Child Abuse and Neglect Registry information in law enforcement investigations and in the monitoring of perpetrators.

4.4. Inform law enforcement and criminal justice organizations, governmental agencies and other entities within the child protection community as well as the general public of their rights and responsibilities as they pertain to the Act.

4.5. Prescribe the manner and form of how state and local law enforcement agencies, circuit clerks and parole officers are to report the charging and conviction of violations of child abuse and neglect statutes.

4.6. Aid in the development and delivery of educational, informational and preventive programs directed to those in the child protection community, school systems, and the general public regarding their responsibilities regarding the detection and reporting of potential child abuse.

4.7. Participate in programs and projects that promote the interaction between law enforcement, county prosecutors, service providers and other involved bodies such as the West Virginia Fatality Review Team, the Child Advocacy Centers MDITs, Child Advocacy Centers, the WV Foundation for Rape Information Services (FRIS) and the West Virginia Coalition Against Domestic Violence (WVCADV).

4.8. Advance safe environments for children by effective involvement in the prosecution of persons alleged to have committed, aided, abetted and/or by way of omission the direct or potential mental, emotional, sexual and/or physical harm of a minor child.

4.9. Advise other law enforcement agencies, CPS caseworkers, prosecuting attorneys, and MDITs of the training, technical expertise and service coordination capabilities offered by the Child Protection Unit and provide such services, when requested.

4.10. The unit's contribution to the identification, investigation and prosecution of cases of child abuse and neglect is not limited to the offenses of §61-8D-2, 61-8D-2a, 61-8D-3, 61-8D-3a, 61-8D-4 or 61-8D-4a, but is to also extend to cases involving sexual assault, sexual abuse, sexual exploitation or physical injury of a child.

§81-17-5. Intent, Findings and Severability.

5.1. Legislative Intent and Findings: The intent of the West Virginia State Legislature's creation of the Child Abuse and Neglect Investigations Unit is to aid in providing an effective governmental approach to prosecuting child abuse and neglect cases by the provision of assistance to CPS, other State Police members, and other law enforcement agencies. The unit may broaden its effectiveness by the provision of training, technical expertise and coordination for other law enforcement agencies, CPS caseworkers, Prosecuting Attorneys and Multidisciplinary Investigative Teams (MDIT). The Legislature does not intend for the act to be construed to mean that the unit will assume the duties or assume management of ongoing investigations of other State Police members or other law enforcement officers.

§81-17-6. Composition of Child Abuse and Neglect Investigations Unit

6.1. The unit shall consist of a minimum of six State Police sworn members.

6.1.1. A Unit Director, appointed by the Superintendent, charged with the responsibility of overseeing the members and activities of the unit.

6.1.2. Five (5) Troop Coordinators, appointed by the Superintendent, charged with carrying out the unit's responsibilities within their assigned Troop area.

6.1.3. Additional Child Abuse and Neglect Investigations Unit Investigators may be assigned to the unit and would answer directly to a Troop Coordinator.

6.2. All members are to be specifically trained for and dedicated to the assistance of county CPS caseworkers in the investigation of suspected child abuse and

neglect and the coordination of these investigations with other law enforcement.

6.3. Unit Director's Duties and Responsibilities:

6.3.1. Act as immediate supervisor for the Troop Coordinators.

6.3.2. Oversee all State Police members assigned to the unit.

6.3.3. Coordinate activities of the Unit with CPS.

6.3.4. Assist CPS in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse and neglect.

6.3.5. Oversee the regulation and maintenance of the statewide statistical index on child abuse and neglect convictions resulting from convictions for violations of §61-8D-2, 61-8D-2a, 61-8D-3, 61-8D-3a, 61-8D-4 or 61-8D-4a.

6.3.5.1 Ensure that any statistical information released is of an aggregate nature and does not contain any information that may be construed to identify an individual case or persons within a case.

6.3.5.2. Oversee the provision of forms to law enforcement agencies, circuit clerks, and parole officers to facilitate submission of the appropriate information for the statistical index.

6.3.6. Submit an annual report to the Legislative Joint Committee on Government and Finance

6.3.6.1. The report is to be submitted before December 31st of every year.

6.3.6.2. The report is to contain the statistical index referred to in 6.3.5. of this Rule.

6.3.6.3. The report may include recommendations for statutory or program reforms that will assist the unit or further promote the goals of the unit.

6.3.6.4. The report shall not contain information of a specific nature that would identify individual cases or persons.

6.3.7. Actively promote the achievement of the objectives set forth in 4.1 through 4.10 of this Rule.

6.3.8. Provide the West Virginia State Police Communication Center with a list of all Troop Coordinators and Child Abuse and Neglect Investigations Unit Investigators, their respective areas of responsibility and their contact numbers. This list is to be updated with any changes of the above information.

6.3.9. Ensure that all other directives and responsibilities of the unit are fulfilled.

6.4. Troop Coordinator Duties and Responsibilities:

6.4.1. Troop Coordinators answer to their immediate supervisor, the Unit Director.

6.4.2. The Troop Coordinator's foremost task is the timely and effective investigation of criminal allegations involving child abuse, neglect, sexual assault and sexual abuse.

6.4.3. Determine the appropriate response when contacted by the WVSP Communications Center, upon the request of a CPS caseworker.

6.4.4. Determine the appropriate response when receiving the following allegations from CPS through the *CPS-State Police GroupWise Account* or through other approved means:

6.4.4.1. Allegations of serious physical injury, sexual abuse and sexual assault received pursuant to §49-6A-2, Persons Mandated to Report Suspected Abuse and Neglect are to be investigated.

6.4.4.2. Credible child abuse or neglect allegations are to be investigated.

6.4.4.3. Reports of critical incidents to children resulting from abuse or neglect are to be investigated.

6.4.5. Coordination of criminal investigations, within their assigned Troop, involving the efforts of the West Virginia State Police and CPS.

6.4.6. Receiving, organizing and utilization of the information obtained from DHHR, the county prosecuting attorney's office, MDIT and other law enforcement agencies to ensure a proper, complete and timely investigation to prevent the duplication of actions within the investigation.

6.4.7. Upon approval of the Unit Director, combine investigative efforts with other law enforcement agencies with regard to child abuse, neglect, sexual assault and abuse.

6.4.8. The Troop Coordinator is responsible for the scope, security and completeness of assigned investigations and will periodically inform the Unit Director of the investigations' progress.

6.4.9. Contact the County Supervisors of the DHHR for the purpose of problem solving in an effort to enhance cooperation with CPS and to further promote the abilities to thoroughly investigate complaints/allegations of child abuse and neglect.

6.4.10. Participate in local programs and projects that promote the interaction between law enforcement,

county prosecutors, service providers and other involved bodies such as the county MDIT, local Violence Against Women Act (VAWA) funded STOP Teams and local task forces or workgroups.

6.4.11. Act as immediate supervisor for any assigned Child Abuse and Neglect Investigations Unit Investigators.

6.4.11.1. Assign duties to, oversee and coordinate actions of Child Abuse and Neglect Investigations Unit Investigators assigned to the Coordinator's specific Troop.

6.4.12. Actively participate in all law enforcement duties, including the investigation of criminal complaints and motor vehicle crashes, patrol of state roads and all other duties and responsibilities as legally required of, and permitted to, members of the State Police.

6.4.13. Perform all other duties assigned by the Unit Director.

6.5. Child Abuse and Neglect Investigations Unit Investigator Duties and Responsibilities:

6.5.1. The Child Abuse and Neglect Investigations Unit Investigator answers to their immediate supervisor, the Troop Coordinator.

6.5.2. The Child Abuse and Neglect Investigations Unit Investigator's foremost task is the timely and effective investigation of criminal allegations involving child abuse, neglect, sexual assault and sexual abuse as assigned to the Investigator by the Troop Coordinator.

6.5.3. The Child Abuse and Neglect Investigations Unit Investigator is responsible for the scope, security and completeness of assigned investigations and will periodically inform the Troop Coordinator of the investigations' progress.

6.5.4. Participate, as assigned, in local programs and projects that promote the interaction between law enforcement, county prosecutors, service providers and other involved bodies, the county MDIT, local VAWA funded STOP Teams and local task forces or workgroups.

6.5.5. Actively participate in all law enforcement duties, including the investigation of criminal complaints and motor vehicle crashes, patrol of state roads and all other duties and responsibilities as legally required of, and permitted to, members of the State Police.

6.5.6. Perform all other duties assigned by the Troop Coordinator.

§18-17-7 Responsibilities of CPS

7.1. With the formation of the special investigations unit within the State Police, the Legislature emphasized the need for law enforcement and CPS to work cooperatively towards a single goal of improving the welfare of the State's children. This intent involves the sharing of vital information so to make the combined efforts timely, streamlined, and unduplicated.

7.2. Upon receipt of *CPS Report for Law Enforcement* (CPS-0188) form, referrals shall be made to local law enforcement, other than the State Police, and the prosecuting attorney's office in the county where the abuse occurred for the following allegations:

7.2.1. Serious physical injury suspected to be inflicted by a caretaking adult.

7.2.2 Any sexual assault or abuse.

7.2.3. A critical incident as defined by 2.6 of this Rule.

7.3. Of the allegations listed in 7.2 of this Rule, the following require that information pertaining to these will be sent to the State Police within seven calendar (7) days;

7.3.1. Any complaints of serious physical injury, sexual abuse or sexual assault allegations received pursuant to §49-6A-2, Persons Mandated to Report Suspected Abuse and Neglect.

7.3.2. Serious physical injury suspected to be inflicted by a caretaker.

7.3.3. Any critical incident as defined by 2.6 of this Rule.

7.4. When sending records to the State Police reference the allegations stated in 7.3. of this Rule, the following information is to be included;

7.4.1. *CPS Report for Law Enforcement* (CPS-0188) and,

7.4.2. Any demographic information missing from the CPS-0188 and,

7.4.3. The law enforcement agency investigating the referral and,

7.4.4. County of the law enforcement agency investigating the referral and,

7.4.5. Date of referral to the investigating law enforcement agency and,

7.4.6. CPS caseworker and supervisor assigned to the referral and,

7.4.7. Contact numbers for the CPS caseworker and the supervisor assigned to the referral and,

7.4.8. If there were previous referrals on the maltreater, information on the previous referrals, including the

total number of referrals, and the number of referrals pertaining to this current victim(s) and,

7.4.9. If the referral is being tracked by a MDIT in the county and,

7.4.10. If available, the contact names and numbers for all medical providers involved in this case.

7.5. The information required in 7.4. of this rule may be forwarded to the local Troop Coordinator by utilization of the *CPS-State Police GroupWise Account* or another approved method of electronic submission.

7.5.1. The CPS-0188 plus the additional information listed in 7.4.2. through 7.4.10. shall be sent to the Child Abuse and Neglect Investigations Unit via GroupWise email at statepolice@wvhddr.org or by another approved method.

7.5.1.1. The subject title for the e-mail must list the date, CPS Referral, and the county where the incident occurred. (ex: 02 16 2008 CPS Intake Upshur County).

7.5.1.2. To ensure that the e-mails are directed to the appropriate Child Abuse and Neglect Investigations Unit member, the county name must be included in the subject title and must be spelled correctly. This is essential as the e-mails are filtered according to the name of the county.

7.6. If a CPS caseworker receives a referral or information on a case that requires an immediate response, such as a physical injury requiring hospitalization or for a critical incident, the CPS caseworker shall disregard the 7 calendar day reporting requirement and immediately contact their local law enforcement agency.

7.6.1. The CPS caseworker shall then contact the Communications Center of the State Police, located in South Charleston, WV, telephone number 304-746-2158 and request that the Child Abuse and Neglect Investigations Unit be contacted in their behalf.

7.6.2. As the State Police may not be able to respond to all serious injury and sexual assault or abuse referrals, it is essential that the CPS caseworker notify local law enforcement of the incident.

7.7. If contacted by a law enforcement officer requiring additional information or consultation, the county supervisor will be the point of contact and will aid in the coordination of information exchange or the scheduling and set-up of interviews.

7.8. Conducting Interviews

7.8.1. When dealing with investigations involving a referral to law enforcement, efforts shall be made to engage law enforcement in a joint investigation prior to conducting any interviews.

7.8.2. Law enforcement shall take the lead in the questioning of family members and collaterals.

7.8.3. CPS may take the lead in conducting the interview of any children, particularly child victim(s).

7.8.4. CPS must foremost keep to the mandated time deadlines for investigation and assessment.

7.8.5 Interviews shall occur in a neutral, child-friendly environment with video and sound recording capabilities, such a Child Advocacy Center, if available.

7.8.6. If law enforcement is not immediately available to assist in the interview process and time is a priority, CPS may proceed with the interview of children and the non-maltreating parent.

7.8.6.1 Ensure needed safety responses are in place before conducting the interview(s).

7.8.6.2 Immediately contact law enforcement to establish a date and time for the interview of the alleged maltreater that is within 72 hours for critical incidents and incidents of sexual abuse.

7.8.6.3. If a joint interview cannot occur within 72 hours, CPS shall continue with their initial assessment in order to assure child safety and report the content of any interview to the appropriate law enforcement agency(ies) and the prosecuting attorney.

7.8.7. When conducting courtesy interviews, the worker will adhere to CPS policy section 2.2 "*Reports involving Requests from Law Enforcement*".

7.9. At the conclusion of an investigation that was referred to law enforcement, the caseworker will send a copy of the completed investigation to the investigating law enforcement agency, the State Police and the appropriate prosecuting attorney.

7.9.1. Safety assessments or safety plans are not to be included unless requested.

7.10. CPS and law enforcement that also participate in locally established MDIT meetings can continue to exchange information already established during the course of a joint investigation.

§18-17-8 Responsibilities of State Police Communications

8.1. The Unit Director will provide the State Police Communication Center in South Charleston with a current and accurate list of all Troop Coordinators, Child Abuse and Neglect Investigations Unit Investigators, their respective areas of responsibility and their contact numbers. The Communications Center will refer to this list when contacted by a CPS caseworker reference a case that requires an immediate response.

8.2. When contacted by a CPS caseworker concerning a case that requires an immediate response, the Communications Center staff person shall ascertain what county the incident occurred.

8.3. The Communications Center staff person shall advise the CPS worker that although they will attempt to contact a Child Abuse and Neglect Investigations Unit member, State Police may not be able to respond to all serious injury and sexual assault or abuse referrals and that it essential that the CPS caseworker notify local law enforcement of the incident.

8.4. The Communications Center staff person shall refer to the list of Child Abuse and Neglect Investigations Unit members and attempt to contact members within the county where the incident occurred, first attempting to contact the Troop Coordinator.

8.5. If unable to contact a Child Abuse and Neglect Investigations Unit member, the Communications Center staff person will periodically attempt to contact a member of the unit or a Trooper assigned to the county in which the incident occurred, until successful.

§18-17-9 Responsibilities of Reporting Parties in Regard to the Statistical Index

9.1 §15-2-15(f) states that every state law enforcement agency within the state shall periodically provide statistical information regarding child abuse and

neglect cases investigated and prosecuted by their agency to the Child Abuse and Neglect Investigations Unit.

9.2. Forms for the collection of this information, WVSP 169, are to be provided by the West Virginia State Police to law enforcement agencies, circuit clerks and parole officers.

9.3. The forms are to be submitted to the Child Abuse and Neglect Investigations Unit on a monthly basis and received by the 10th day of the following month.

9.3.1. The forms may be mailed, faxed or scanned and electronically submitted to the email address: childprotection@wvsp.state.wv.us.

9.4. The information on the forms is to be an accurate account of current investigations or active cases regarding the crimes listed in 3.2 of this rule.

9.5. The information to be reported includes:

9.5.1. The submitting agency or detachment and,

9.5.2. The county in which the cases occurred and,

9.5.3. The month in which the investigations were initiated or a final disposition was obtained and,

9.5.4. The date submitted and,

9.5.5. The name of the accused or suspect and,

9.5.6. The code for the crime committed, listed in 3.2 of this rule which carries the severest penalties and,

9.5.7. Case or incident number assigned by the agency or detachment and,

9.5.8. If an initial or pending investigation, the total number of victims and,

9.5.9. If an initial or pending investigation, the age(s) of the victim(s) and,

9.5.10. If a final disposition was obtained, the number of counts for which the accused was indicted or arrested.

9.5.11. If a final disposition was obtained, the disposition for the case or if the case was determined to be unfounded.

9.6. If no pertinent child abuse and neglect information is available for a submitting month, the form is still to be submitted to the Child Abuse and Neglect Investigations Unit with a notation that no activity had occurred.