

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

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Form #6

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE**

AGENCY: Governor's Committee on Crime, Delinquency, and Correction TITLE NUMBER: 149

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: Series 8

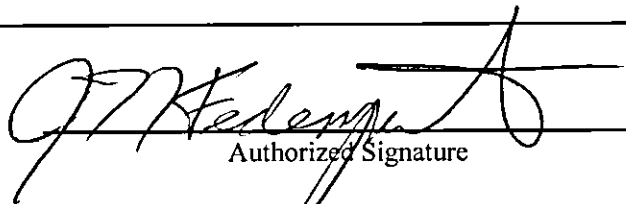
TITLE OF RULE BEING PROPOSED: Protocol for Law Enforcement Response to Child  
Abuse and Neglect

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2626

SECTION §64-6-3(a), PASSED ON April 12, 2013

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE  
FOLLOWING DATE: July 1, 2013

  
Authorized Signature

J. Norbert Federspiel

Executive Director

TITLE 149  
LEGISLATIVE RULE  
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION

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SERIES 8  
PROTOCOL FOR LAW ENFORCEMENT RESPONSE  
TO CHILD ABUSE AND NEGLECT

**§149-8-1. General.**

1.1. Scope. -- This legislative rule establishes law enforcement response to child abuse and neglect by providing guidelines and establishing uniform standards for responding to circumstances involving possible child abuse and neglect. It will also be used as a means by which law enforcement agencies can develop training curricula on responding to circumstances involving possible child abuse and neglect.

1.2. Authority. -- §15-9-5.

1.3 Filing Date. -- May 3, 2013

1.4 Effective Date. -- July 1, 2013

**§149-8-2. Purposes.**

2.1. The principal purpose of this rule is to establish guidelines and procedures in compliance with state and federal law to be followed by all West Virginia law enforcement officers as defined herein and other personnel involved in police response to circumstances involving possible child abuse and neglect.

2.2. Other purposes and goals of this rule are:

2.2.a. To reduce the incidence and severity of child abuse and neglect by establishing a framework for early detection and intervention and establishing uniform standards for the investigation of child abuse and neglect.

2.2.b. To afford maximum protection and support to victims of child abuse and neglect through a coordinated response of dispatch, law enforcement, Child Protective Services (CPS), Child Advocacy Centers (CAC), prosecution and other applicable agencies.

2.2.c. To promote best practices and ensure that law enforcement services are as available in circumstances of child abuse and neglect as they are in other criminal cases.

2.2.d. To promote the safety of all individuals involved in circumstances of child abuse and neglect.

2.2.e. To promote a safe and appropriate response to circumstances involving victims with special needs including but not limited to developmental, mental health,

behavioral and/or physical disabilities.

**§149-8-3. Definitions.**

3.1. "Abandoned" means to be without supervision or shelter for any unreasonable period of time in light of the child's age and the ability to care for him/herself in circumstances presenting an immediate threat of serious harm to such child (W.V. Code §49-6-9(g)(1)).

3.2. "Child" means any person under eighteen years of age not otherwise emancipated by law (W.V. Code §61-8D-1(2)).

3.3. "Child abuse" and/or "Child neglect" may be defined as either criminal behavior and/or behavior violating the civil code. Criminal violations can be found in Chapter 61 and civil violations found in Chapter 49.

3.4. "Child abuse and neglect services" or "CPS" means social services which are defined in W.V. Code §49-1-3.

3.5. "Child Advocacy Center" (CAC) means a community-based organization that is a member in good-standing with the West Virginia Child Abuse Network, Inc., and is working to implement the program components as defined in W.V. Code §49-1-3.

3.6. "County" means any one of the fifty-five major political subdivisions of the state.

3.7. "Custodian" means a person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian (W.V. Code §61-8D-1(4)).

3.8. "Deadly weapon" means an instrument that is designed to be used to produce serious bodily injury or death, or is readily adaptable to that use. The term "deadly weapon" shall include, but is not limited to, a blackjack, a gravity knife, a knife, a switchblade knife, a nunchuka, metallic or false knuckles, and firearms, or other deadly weapons of like kind or character which may be easily concealed on or about the person (W.V. Code §61-7-2(9)).

3.9. "Department of Health and Human Resources" (DHHR) is the state agency charged with the administration of the child welfare service of the state of West Virginia in accordance with W.V. Code §49-1-1(c).

3.10. "Dispatcher" means a telecommunicator who receives calls from individuals who need assistance from firefighters, law enforcement officers, and emergency medical services. Once information is obtained from the caller, telecommunicators activate the services necessary to respond to the nature of the call for help and maintain close contact with field units to monitor response and needed support requirements.

3.11. "Emergency service personnel" means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof (W.V. Code §61-2-10b(3)).

3.12. "Family or household member" means current or former spouses, persons living as spouses, persons who formerly resided as spouses, parents, children and stepchildren, current or former sexual or intimate partners, other persons related by blood or marriage, persons who are presently or in the past have resided or cohabited together or a person with whom the victim has a child in common (W.V. Code §48-27-204).

3.13. "Family violence" or "domestic violence" means the occurrence of one or more of the following acts between family or household members:

3.13.a. Attempting to cause or intentionally, knowingly, or recklessly causing physical harm to another person with or without dangerous or deadly weapons;

3.13.b. Placing another person in reasonable apprehension of physical harm;

3.13.c. Creating fear of physical harm by harassment, stalking, psychological abuse, or threatening acts;

3.13.d. Committing either sexual assault or sexual abuse as those terms are defined in W.V. Code §61-88-1 et. seq. and 61-80-1 et seq.; or

3.13.e. Holding, confining, detaining, or abducting another person against that person's will.

3.14. "Firearm" means any weapon that will expel a projectile by action of an explosion (W.V. Code §61-7-2(11)).

3.15. "Guardian" means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding (W.V. Code §49-1-4(8)).

3.16. "Imminent danger" means an emergency situation in which the welfare or the life of the child is threatened. Such emergency exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited or reasonable cause to believe that one or more of the following conditions threaten the health or life of any child in the home:

3.16.a. Non accidental trauma inflicted by a parent, guardian, sibling or a babysitter or other caretaker; or

3.17.b. A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome; or

3.17.c. Nutritional deprivation; or

3.16.d. Abandonment by the parent, guardian or custodian; or

3.16.e. Inadequate treatment of serious illness or disease; or

3.16.f. Substantial emotional injury inflicted by a parent, guardian or custodian; or

3.16.g. Sale or attempted sale of the child by the parent, guardian or custodian; or

3.16.h. The parent, guardian or custodian's abuse of alcohol, or drugs or other controlled substance as defined in section one-hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child's health or safety (W.V. Code §49-1-3(6)).

3.17. "Law enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality of this state.

3.18. "Law enforcement officer" means any duly authorized member of a law enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, other than parking ordinances, including persons employed as campus police officers at state institutions of higher education and those persons employed as campus police officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreational Authority. The term "law enforcement officer" does not apply to the chief executive of any West Virginia law enforcement agency or any watchman or special conservation officer.

3.19. "Law enforcement official" means the duly appointed chief administrator of a designated law enforcement agency or a duly authorized designee.

3.20. "Multidisciplinary Investigative Team" (MDIT) means a team 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 that makes a recommendation to the county prosecuting attorney as to the initiation or commencement of a civil petition and/or criminal prosecution. The MDIT shall be headed and directed by the prosecuting attorney or his or her designee and shall include as permanent members the prosecuting attorney or his or her designee, a local CPS caseworker from the West Virginia Department of Health and Human Resources; a local law enforcement officer employed by a law enforcement agency in the county; a CAC representative, where available; a health care provider with pediatric and child abuse expertise, where available; a mental health professional with pediatric and child abuse expertise, where available; an educator and a representative from a licensed domestic violence program serving the county (W.V. Code §49-5D-2)).

3.21. "Municipality" means any incorporated village, town or city whose boundaries lie within the geographic boundaries of the state.

3.22. "Neglected child," means a child whose physical or mental health is harmed or

threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or guardian (W.V Code §49-1-3).

3.23. "Protective Order" means an injunction or other order, issued under domestic violence, family violence, anti-stalking, or similar domestic relations laws. A protective order is issued to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to a protected individual. A protective order must be issued by a court; agency or other entity authorized by law to issue or modify a protective order. Protective Orders include out-of-state orders and are entitled to full faith and credit (W.V. Code §48-28-2(6)).

3.24. "Personal Safety Order" means an injunction or other order, issued under sexual assault, attempted sexual assault, stalking, or similar laws. A personal safety order may include any or all of the following relief: order the respondent to refrain from committing or threatening to commit an act specified in subsection (a), of West Virginia Code 53-8-4 against the petitioner; order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order; order the respondent to refrain from entering the residence of the petitioner; order the respondent to remain away from the place of employment, school or residence of the petitioner; order the respondent not to visit, assault, molest, or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner; order either party to pay filing fees and costs. A personal safety order must be issued by a court; agency or other entity authorized by law to issue or modify a personal safety order. Personal Safety Orders include out-of-state orders and are entitled to full faith and credit (W.V. Code §53-8-1, et sea, Personal Safety Order Act).

3.25. "Serious bodily injury" means injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ (W.V. Code §61-8B-1(10)).

#### **§149-8-4. Dispatcher Responsibilities.**

4.1. Dispatchers under the supervision of police department and communications and emergency operations centers which dispatch the law enforcement officer shall dispatch child abuse and/or neglect calls in the same manner as any other call for police assistance, in accordance with the priority criteria prescribed by generally applicable department procedures. Whenever possible, the dispatcher should assign a back-up unit.

4.2. The dispatcher receiving allegations of a child abuse and/or neglect call should attempt to elicit from the caller, and should communicate to the responding law enforcement officer, as much of the following information, in the following order of importance, as time and emergencies of the reported incident allow:

4.2.a. The address of the incident, including the apartment number or the name of the business, as appropriate;

- 4.2.b. The nature of the incident;
- 4.2.c. Establish caller's name whether they are the victim, and a telephone number where the caller can be called back;
- 4.2.d. Whether or not there are any injuries and whether an ambulance is needed;
- 4.2.e. Whether weapons are involved or present and if so, where they are located;
- 4.2.f. A description of the accused and whether or not the accused is present and, if not, the most likely location, direction of flight, and mode of travel of the accused;
- 4.2.g. Whether a protective order is in effect and if it includes consent to enter the residence to enforce the protective order;
- 4.2.h. Whether a personal safety order is in effect;
- 4.2.i. Whether other individuals, including children, are at the scene;
- 4.2.j. Whether any party is using or is under the influence of alcohol or drugs;
- 4.2.k. If the caller is the victim, in the residence, and is capable of giving consent, would they consent to entry;
- 4.2.l. Whether a criminal warrant is outstanding on the accused;
- 4.2.m. Whether the accused has been released on bail on a charge of a crime against a family or household member, including a family or household member who is a child, with any conditions on bail regarding contact with the victim or complainant; and
- 4.2.n. Whether a registered sex offender resides in the home;
- 4.2.o. Best practice is to not provide information that may identify a child over the radio, but to follow-up by telephone.

4.3. If the caller is the victim, or if the caller is a witness to an abuse and/or neglect incident in progress, the dispatcher should keep the caller on the telephone and should relay ongoing information provided by the caller to the responding law enforcement officer. The dispatcher should tell the caller that help is on the way, if that is the case, and will arrive as quickly as possible.

4.4. If the dispatcher has ready access to police department records, all information relevant to the situation shall be relayed to the law enforcement officer. If the agency is capable, the dispatcher shall access the statewide domestic violence registry database to see if there is an active protective order. If so, is the box checked giving the officer consent to enter the residence to enforce the order. If the agency is capable and upon the law enforcement officer's request, the dispatcher shall access the National Crime Information Center (NCIC), and other criminal information databases to determine whether the parties involved in the incident have been involved previously in domestic incidents. All information received shall be relayed to the requesting law enforcement officer.

4.5. If the dispatcher has reason to believe that the accused is on bail for a crime against a family or household member, including family or household members who are children, and if the dispatcher has ready access to magistrate court records that show whether there are conditions of bail the dispatcher should consult the records and radio any relevant information to the responding law enforcement officer; including the existence of a protective order prohibiting the possession of firearms.

4.6. Dispatchers should notify law enforcement of any audible evidence that may be overheard during a call.

**§149-8-5. Law Enforcement Responsibilities.**

5.1. Responding to emergency reports of child abuse and/or neglect or other crimes in which children are present on the scene.

5.1.a. Approaching the scene.

5.1.a.1. Scenes may be classified in one of two manners: (A) Alleged criminal act involving children is in progress- an emergency situation- or (B) A complaint of alleged criminal acts involving children that occurred previously and has been reported after the incident has ended- a non-emergency situation.

5.1.a.2. In approaching a reported emergency situation, law enforcement officers should exercise standard precautionary measures, including but not limited to:

5.1.a.2.A. Discontinuing use of lights and sirens before arriving in proximity to the scene.

5.1.a.2.B. Parking at a distance from the scene and making the final approach on foot, in a discreet manner.

5.1.a.2.C. Maintaining awareness of any potential dangers or hazards outside of the immediate scene while approaching- e.g. perpetrator has left the scene but may be in the vicinity.

5.1.a.2.D. Maintaining awareness of potential evidence outside of the immediate scene while approaching- e.g. bloodstains, discarded weapons, shell casings, possible witnesses, vehicles parked near the scene that may have been used by alleged victims or perpetrators to travel to the scene.

5.1.a.3. In approaching a reported non-emergency situation, law enforcement officers should remain aware of potential evidence that may be located outside of the residence - e.g. bloodstains, broken toys, broken windows, accumulated trash around the residence, neglected or maltreated animals, or any indication that the residence would be unsafe or unsanitary for children. If such conditions are observed, the law enforcement officer should document such conditions through the use of photography.

### 5.1.b. Initial contact.

5.1.b.1. The responding law enforcement officer should identify themselves, explain the law enforcement presence, and request entry into the home or business. The law enforcement officer should ask to see the person who is the subject of the call. The law enforcement officer should not reveal the caller's name.

5.1.b.2. The law enforcement officer may enter and conduct a search of the premises relevant to the incident if written or verbal consent has been given to do so. If a domestic relations protective order is in effect, written consent to enter may have been given by the victim and be on file. The law enforcement officer shall limit the search to a search for other suspects, victims, witnesses, or evidence connected with the alleged domestic incident.

5.1.b.3. If refused entry, the law enforcement officer should be persistent about seeing and speaking alone with the subject of the call. If access to the subject is refused, the law enforcement officer should request the dispatcher to contact the caller, if the caller is the subject of the call, and communicate between the law enforcement officer and the caller. If sufficient probable cause exists, a law enforcement officer may elect to secure the scene pending the issuance of a search warrant for the premises. If the law enforcement officer leaves the scene, the law enforcement officer should drive by the premises and observe it frequently. If the law enforcement officer remains to observe the premises, the law enforcement officer should move to public property (the street) and observe the premises.

5.1.b.4. In some circumstances, forced entry is necessary and appropriate. Forced entry may be appropriate when the residence area shows signs of a fight or scuffle; or when a person from inside the residence calls for assistance or is yelling; or when a person from inside is visible and the law enforcement officer observes that the person is wounded, injured, or is otherwise in need of assistance.

### 5.1.c. Establishing control of the scene.

5.1.c.1. If the scene is established as an emergency situation- abuse and/or neglect of children in progress or just occurred- then the law enforcement officer shall undertake immediate action to secure the scene and protect all occupants of the residence.

5.1.c.1.A. Determine if anyone in the residence is armed or is in close proximity to dangerous and deadly weapons. Call for the assistance of other law enforcement officers as necessary to secure the scene.

5.1.c.1.B. Determine if anyone in the residence is in need of immediate medical attention and, if so, render such medical attention as is possible until emergency medical service personnel arrive at the scene.

5.1.c.1.C. To the extent possible, the law enforcement officer should separate the involved parties at the emergency scene and attempt to interview all parties separately. The preferred method for documenting at-scene interviews shall be the use of digital audio and/or digital video recording devices. Even if there are no immediate allegations of child abuse, law enforcement officers shall interview any children present to determine what, if anything, the children within the residence may have heard, seen, or otherwise observed.

5.1.c.1.D. Law enforcement officers present at an emergency scene shall make note of factors within the scene consistent with the possible abuse and/or neglect of children, including but not limited to, dangers within the residence such as exposed wiring or open heating sources, chemicals or dangerous substances within reach of small children, rodent infestation, unsanitary living conditions, broken fixtures within the residence or other indications of inter-personal family violence, including but not limited to bloodstains or visible physical injuries to children or adults within the residence such as bruises, cuts, redness, bite marks, or other injuries. As soon as may be practical, the law enforcement officer should document any such observations through the use of digital photography.

5.1.c.1.E. The law enforcement officer at the scene shall determine if CPS shall be notified of the potential child abuse and/or neglect situation and shall maintain a presence at the scene until a CPS worker can arrive at the scene to assist with the investigation.

5.1.c.2. If the scene is classified as a non-emergency situation - no violence is in progress or has just occurred- then the law enforcement officer shall proceed to conduct the preliminary investigation using normal investigative protocols.

5.1.c.2.A. When possible, the law enforcement officer should attempt to have a CPS worker accompany them to the scene of any reported incident of child abuse and/or neglect.

5.1.c.2.B. Upon arriving at the scene of a reported incident that is no longer in progress, the law enforcement officer shall use routine precautions to insure that no one in the residence poses an immediate danger to anyone else present, including the law enforcement officer and/or the CPS worker.

5.1.c.2.C. To the extent possible, the law enforcement officer shall separate all involved parties or witnesses and shall conduct interviews with all involved parties or witnesses. The preferred method is to record all such interviews using digital audio and/or audio-video recording systems.

5.1.c.2.D. In any non-emergency situation the preferred method shall be for the law enforcement officer and/or CPS worker to interview any adult victims or witnesses first. If any adult present at the scene alleges the potential of child abuse and/or neglect the law enforcement officer and/or CPS worker shall attempt to schedule an appointment for the child or

children to undergo a forensic interview at the nearest CAC or another neutral setting by a trained forensic interviewer.

5.1.c.2.E. If, during a preliminary investigation, a child discloses allegations of physical abuse and/or sexual abuse, the law enforcement officer and/or CPS worker shall attempt to schedule a forensic interview with the child at the closest CAC as soon as possible. If no CAC is available, then the next best location shall be a neutral location, preferably in a child-friendly setting. If no such resources are available, then the law enforcement officer and/or CPS worker present at the scene shall conduct and record an interview with the child or children using appropriate forensic interviewing techniques.

5.1.c.3. The preferred and recommended method of conducting all non-emergency interviews with children who are the alleged victims of child abuse or neglect or child sexual abuse, shall be to schedule an interview with the child or children at the closest CAC by a neutral forensic interviewer at the earliest possible time, as appropriate to the county based protocols. When no CAC is available for use, the law enforcement officer and/or CPS worker shall undertake every effort to interview the child or children in the most effective manner possible consistent with the health, safety and well-being of the child.

## 5.2. Initial investigation.

### 5.2.a. Child abuse and/or neglect is alleged in the complaint (call).

5.2.a.1. Identify the alleged perpetrator and determine if the perpetrator is a family member or custodian.

#### 5.2.a.1.A. If CPS is on scene or arrives during the on scene investigation:

5.2.a.1.A.1. The law enforcement officer and CPS worker should work together in a manner to protect the alleged victim, other children, and adults in the residence.

5.2.a.1.A.2. Law enforcement may be contacted when CPS is already on scene, after they have been on the scene, or when they are in route to the scene.

5.2.a.1.A.3. Consult with the CPS worker so the law enforcement officer can determine how to intervene.

5.2.a.1.B. Keep children with known adults; whenever possible – identify someone at the scene who can take care of them.

5.2.a.1.C. Check the well-being of all children who reside in the home.

5.2.a.1.D. When applicable take color photos of the crime scene including any evidence of children's abuse and/or neglect, e.g. interior/exterior condition of the entire residence or facility where abuse occurred, child

injuries, parents (if involved).

5.2.a.1.E. List all children who reside in the home and/or all children the alleged perpetrator may have had access to, in the body of the report.

5.2.a.1.F. Avoid making an arrest in the children's presence whenever possible.

5.2.a.1.G. If the law enforcement officer suspects the child is subject to conditions where child abuse and/or neglect has or is likely to occur, make a mandatory referral to CPS. A child does not have to be directly physically injured, nor does a crime have to of occurred, to mandate a report to CPS.

5.2.a.1.H. All cases involving child death, unattended by a medical provider, must be reported to the appropriate medical examiner or coroner.

5.2.a.2. Interviewing alleged perpetrator.

5.2.a.2.A. Try not to interview the perpetrator in the children's presence. To the extent possible, the law enforcement officer should separate the involved parties at the emergency scene and attempt to interview all parties separately.

5.2.a.2.B. Apply Miranda warning as appropriate to the situation.

5.2.b. Observation/response to child abuse and/or neglect when responding to other alleged crimes.

5.2.b.1. Check for signs of children's presence when observing scene of all crimes.

5.2.b.2. If children were on the scene at the time of the alleged crime, or personally witnessed the crime, make sure to list them on the incident report as witnesses or in the body of the report. If a child is a victim of any crime, including such crimes as child abuse and/or neglect, list the child as a victim in the report or write a separate report.

5.2.b.3. When taking color photos of the crime scene include any evidence of children's exposure to violence or evidence of child abuse and/or neglect, e.g. crib/child's bed in room where victim was injured, toys broken and thrown around room, interior/exterior condition of the entire residence or facility where abuse occurred, child injuries, parents (if involved).

5.2.b.4. Avoid making an arrest in the children's presence whenever possible.

5.2.b.5. If the officer(s) suspects the child is subject to conditions where child abuse and/or neglect has or is likely to occur, make a mandatory referral to CPS. A child does not have to be directly physically injured, nor does a crime have to have occurred, to mandate a report to CPS.

5.2.b.5.A. Child abuse and/or neglect when domestic violence is present. In addition to procedures outlined in the Protocol for Law Enforcement Response to Domestic Violence (149CSR3), the following describes some of the responsibilities of the responding law enforcement officer when children are exposed to a domestic violence incident, or reside in the home.

5.2.b.5.A.1. List all children who reside in the home who were not present during the domestic violence incident in the body of the report.

5.2.b.5.A.2. When taking color photos of the crime scene include any evidence of children's exposure to violence, e.g. crib/child's bed in room where victim was injured, toys broken and thrown around room.

5.2.b.5.A.3. When interviewing parents/custodians, keep in mind that child abuse can be perpetrated by either the suspect or victim of domestic violence or both parties. However, a victim of domestic violence should not be treated as a suspect of child abuse unless there is reasonable cause to believe that the victim has perpetrated some type of abuse upon a child. Treating the victim as a suspect will place the victim in a guarded and defensive state which may impede an investigation and cause further trauma to the victim and child.

5.2.b.5.A.4. When interviewing parents/custodians, ask about the children and their location during the incident.

5.2.b.5.B. Child abuse and/or neglect with drug endangerment by parent/custodian. In addition to procedures outlined in these rules and existing or established department procedures for responding to calls when substance abuse/illegal use of substances is present, the following describes some of the responsibilities of the responding law enforcement officer when children are exposed to substance abuse/illegal use, or reside in the home.

5.2.b.5.B.1. Observe for access to controlled substances by children and/or manufacture of controlled substances with children present.

5.2.b.5.B.2. When taking color photos of the crime scene include any evidence of children's access to or ingestion of controlled substances, e.g. crib/child's bed in room where controlled substances are found or manufactured, or drug paraphernalia within reach of children.

5.2.b.5.B.3. If the law enforcement officer suspects the child is subject to conditions where child abuse and/or neglect has or is likely to occur, make a mandatory referral to CPS. A child does not have to be directly physically injured, nor does a crime have to have occurred, to mandate a report to CPS.

5.2.c. Do not use children present on scene as non-English speaking or sign language interpreters. To do so will increase their trauma. It puts them in a situation of divided loyalty, and they may fear repercussions from the aggressor in the incident. Their translation may also be unreliable, because it is affected by their own emotional state. Some jurisdictions require that no family members be used to translate interviews.

5.2.d. Taking emergency custody without a court order.

5.2.d.1. A law enforcement officer may take emergency custody of a child believed to be abused and/or neglected without a court order if (1) the child is abandoned or (2) the law enforcement officer determines that a child is in a condition requiring emergency medical treatment by a physician and the child's parents, parent, guardian or custodian refuses to permit such treatment, or is unavailable for consent (W.Va. Code §49-6-9)).

5.2.d.1.A. If the law enforcement officer discovers an abandoned child, the law enforcement officer cannot remove the child as abandoned from a place until all reasonable efforts to make inquiries and arrangements with neighbors, relatives and friends have been exhausted. No child may be considered abandoned, and custody withheld from the child's parent(s), guardian or custodian if they present themselves in a fit and proper condition and request physical custody of such child. Prior to taking a child into protective custody as abandoned, the law enforcement officer shall post a typed or legibly handwritten notice at the place the child is found, informing the parent(s), guardian or custodian that the child was taken by a law-enforcement officer, the name, address and office telephone number of the law enforcement officer, the place and telephone number where information can continuously be obtained as to the child or children's whereabouts, and if known, the CPS worker for the state department having responsibility for the child.

5.2.d.1.B. A law enforcement officer may take emergency custody of a child without a court order for conditions requiring emergency medical treatment. A condition requiring emergency medical treatment means a condition which, if left untreated for a period of a few hours, may result in permanent physical damage. Such conditions include, but are not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness and/or evidence of ingestion of significant amounts of a dangerous substance. When a law enforcement officer takes custody of a child due to the child requiring emergency medical treatment, the law enforcement officer must assure that the child is taken directly to an appropriate medical facility. The law enforcement officer must provide the child's parent(s), guardian or custodian the name and location of the medical facility to which the child is being taken.

5.2.d.2. When transferring emergency custody to a physician or worker from the West Virginia DHHR, the law enforcement officer must provide a typed or legibly handwritten statement identifying the law enforcement officer's name, address

and office telephone number and specifying all the facts upon which the decision to take the child into protective custody was based, the date, time and place of the taking. If custody is being transferred to CPS, the CPS worker may provide the law enforcement officer an emergency placement contract that would meet these requirements.

5.3. Responding to non-emergency reports of crimes against children or conducting an on-going investigation after establishing control of an emergency situation.

5.3.a. Reports may be received from the following entities: CPS, any mandated reporter, the general public, a CAC, another law enforcement agency, or the prosecuting attorney's office.

5.3.b. Case assignment.

5.3.b.1. Upon receipt of a report, case assignment for investigation should be made immediately, not exceeding 24 hours. Cases should be assigned by the law enforcement official of the agency or by the prosecuting attorney.

5.3.b.2. The following criteria are considered best practice when determining case assignment:

5.3.b.2.A. The law enforcement officer should have training specific to child abuse and/or neglect and experience in child abuse and/or neglect investigations.

5.3.b.2.B. The law enforcement officer must collaborate with members of the MDIT.

5.3.b.2.C. The law enforcement officer must be personally present or provide updates through a formal mechanism to the MDIT case reviews or monthly meetings.

5.3.c. Victim Interview.

5.3.c.1. Pre-interview.

5.3.c.1.A. The law enforcement officer should observe, inquire, and report the evidence of any special needs of the allegedly abused child. This may include, but is not limited to: physical and/or developmental disability and communication issues such as language, speech, or deafness. Information related to special needs of the child should be provided to the CAC or forensic interviewer.

5.3.c.1.B. The law enforcement officer should make the necessary referral for the forensic interview as soon as possible, not exceeding 72 hours, as appropriate to the needs of the case.

5.3.c.1.C. The law enforcement officer should review information concerning this allegation and the background of the alleged victim or perpetrator, as reasonably available.

5.3.c.2. During the interview.

5.3.c.2.A. The investigating law enforcement officer should be present at the time of the interview, although not present in the interview room unless the law enforcement officer is conducting the forensic interview.

5.3.c.2.B. The best practice model for a forensic interview shall be for the investigating law enforcement officer or interviewer to address the recording prior to the initiation of the actual forensic interview, for the purpose of recording the date, time, and location of the forensic interview, the name and contact information of the child being interviewed, the person conducting the forensic interview, and all persons present and observing the forensic interview.

5.3.c.2.C. All interviews shall be conducted by a trained forensic interviewer in a neutral location, preferably in a child-friendly setting. Interviews must be conducted at a CAC, if available, and appropriate to county-based protocols.

5.3.c.2.D. Interviews are recorded pursuant to the protocol of the local CAC and DHHR. It is advisable for law enforcement to ensure that an additional digital recording device is used for back-up during any forensic interview.

5.3.c.3. Post-interview.

5.3.c.3.A. The law enforcement officer should collaborate with appropriate MDIT members for investigative coordination.

5.3.c.3.B. The law enforcement officer should make a referral to an appropriate member of the MDIT to ensure the alleged victim is connected to appropriate services.

5.3.c.3.C. The law enforcement officer should advise parties of the availability of domestic violence protective order or personal safety orders through magistrate court as appropriate to the needs of the case.

5.3.d. Alleged perpetrator interview.

5.3.d.1. The law enforcement officer should conduct the interview of the alleged perpetrator as soon as possible when there is sufficient evidence to warrant the interview or, in no case to exceed 72 hours following child interview without documented reasonable cause. If the interview will not occur within the 72 hour window, the law enforcement officer must report to the prosecuting attorney's office and seek consultation.

5.3.d.2. The interview of the alleged perpetrator should be video recorded, if available; if video recording is not available, the interview must be audio recorded at a minimum.

5.3.d.3. The law enforcement officer shall apply Miranda warnings as necessary and appropriate.

5.3.e. Evidence Collection.

5.3.e.1. The law enforcement officer should regularly consult with the prosecuting attorney, as warranted by circumstances of the case.

5.3.e.2. The law enforcement officer should check with MDIT members for evidence. This may include, but is not limited to: CAC records, CPS records, medical records, and mental health records.

5.3.e.3. The law enforcement officer should look for credible evidence, which means evidence of the victim's condition which may include, but is not limited to, physical injury, evidence of malnutrition, untreated injury or disease, lack of proper hygiene, bite marks, or evidence of sexual abuse.

5.3.e.3.A. Credible evidence of the condition of the accused may include, but is not limited to, physical injury, sexually transmitted diseases, or behaviors inconsistent with providing a minimal degree of care and supervision for a minor child.

5.3.e.3.B. Credible evidence of the condition of the scene may include, but is not limited to, lack of adequate food, clothing, or shelter, lack of heating, cooling, or ventilation, conditions which could reasonably pose a hazard to children such as uncontrolled access to hot surfaces or open flames, exposed wiring, insect or rodent infestation, manufacture or distribution of controlled substances, or a general deficiency of commonly accepted sanitary standards.

5.3.e.3.C. Other credible evidence may include, but is not limited to, medical records of the child, school attendance records, statements of uninvolved witnesses including but not limited to teachers or other mandated reporters, statements by the accused admitting one or more elements of the offense, or threats made by the accused in the presence of a law enforcement officer, audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for law enforcement assistance; or written statements by witnesses.

5.3.e.3.D. The recorded and documented statement of a child victim alone may serve as credible evidence for the basis of investigation and prosecution.

5.3.e.4 The law enforcement officer should look for credible corroborative

evidence, which means evidence that is worthy of belief and corresponds with the allegations of one or more elements of the offense and may include, but is not limited to, the condition of the victim, the accused, and the scene.

5.3.e.5. Other evidence may include, but is not limited to:

5.3.e.5.A. Medical or mental health records of the alleged perpetrator or alleged victim, to be secured by appropriate subpoena and/or release, as may be necessary;

5.3.e.5.B. Criminal background check of the alleged perpetrator;

5.3.e.5.C. School records;

5.3.e.5.D. Information technology records, including but not limited to: phone records, computer hard drives, internet communications, and text messages;

5.3.e.5.E. 911 recordings;

5.3.e.5.F. Witness interviews;

5.3.e.5.G. Jail telephone recordings and communication logs;

5.3.e.5.H. Surveillance video; and

5.3.e.5.I. Threatening communications with the alleged victim and/or family members.

5.3.e.6. The law enforcement officer should obtain a search warrant or signed voluntary consent to search for the premises where the alleged incident is reported to have occurred and for other premises or vehicles, as deemed relevant to the investigation.

5.3.f. Arrest/Prosecution.

5.3.f.1. The arrest decision should be made on a case by case basis in consultation with the prosecuting attorney, considering the child's safety and facts of the case.

5.3.f.2. The investigating law enforcement officer shall consult with the prosecuting attorney to deem the appropriate time for presentation to a grand jury and, in anticipation of the grand jury presentation, the law enforcement officer shall prepare an investigation report that may include but not be limited to:

5.3.f.2.A. Completion of the report format utilized by his or her agency;

5.3.f.2.B. Narrative of the circumstances of the crime alleged;

5.3.f.2.C. List of witnesses, including full names, addresses, and telephone numbers;

5.3.f.2.D. Recorded statements of the alleged perpetrator and other witnesses;

5.3.f.2.E. Recorded forensic interview of the alleged victim;

5.3.f.2.F. All medical and mental health records secured as a part of the investigation;

5.3.f.2.G. Any forensic or medical tests for which results remain pending;

5.3.f.2.H. Any documentary evidence secured by subpoenas or search warrants;

5.3.f.2.I. Inventory of physical evidence and its location.

5.3.f.3. The investigation report shall be delivered to the prosecuting attorney in accordance with the instructions provided by the prosecuting attorney.

5.3.f.4. Separate and apart from the investigation report, all other notes or documents prepared by the law enforcement officer as a part of the law enforcement officer's work product in conducting the investigation shall be delivered to the prosecuting attorney apart from, but simultaneously with the investigation report.

#### **§149-8-6. Child Protective Services Responsibilities.**

6.1. Child Protective Services is provided by the West Virginia DHHR. CPS is not a punitive intervention but rather helping in nature. Although CPS and law enforcement have different duties and responsibilities, through collaboration and partnership both entities can maintain their own organizational integrity and meet their professional obligations to protect children.

6.2. Child Protective Services must assess families when a child is abused and/or neglected, or when a child is subject to conditions where abuse and/or neglect is likely to occur. Child Protective Services must respond in a timely manner in order to ensure child safety based upon the alleged child maltreatment and family conditions.

6.3. The CPS assessment seeks to determine if a child in the residence requires protection from their parents, guardians or custodians. If a child in the residence requires protection, CPS then provides ongoing services to the family to change the behavior.

6.4. Child Protective Services may be required to seek judicial authorization to remove a child from their home in order to assure protection. This decision is not strictly dependent upon whether or not a crime has occurred and should not deter law enforcement officers from pursuing criminal charges when appropriate.

6.5. Child Protective Services must cooperate, to the extent possible, with law enforcement officers when conducting joint assessments/investigations. When working with officers, CPS workers must adhere to applicable state statutes, federal statutes, local MDIT procedures and CPS policies.

**§149-8-7. Mandated Reporting of Suspected Child Abuse or Neglect.**

7.1. The following individuals are mandated reporters of child abuse and/or neglect, as outlined in W.V. Code §49-6A-2:

7.1.a. Medical, dental, and mental health professionals

7.1.b. Christian Science practitioners, religious healers, and members of the clergy

7.1.c. School teachers and other school personnel

7.1.d. Social service, child care, and foster care workers

7.1.e. Emergency medical service personnel

7.1.f. Law enforcement officials and peace officers

7.1.g. Humane officers

7.1.h. Circuit court judges, family court judges, and magistrates

7.1.i. Division of Juvenile Services employees

7.1.j. Youth camp administrators

7.1.k. Counselors, employees, coaches or volunteers of an entity that provides organized activities for children

7.1.l. Commercial film or photographic print processors

7.1.m. In specific cases, all persons over the age of 18 (see 7.2.a.)

7.2. The standards for reporting child abuse and/or neglect as a mandatory reporter are as follows:

7.2.a. Receipt of a disclosure from a credible witness or observation of any sexual abuse or sexual assault of a child (this applies to all persons over the age of 18).

7.2.b. Reasonable cause to suspect that a child is abused and/or neglected (applies to 7.1.a. through 7.1.m.).

7.2.c. Observation of a child being subjected to conditions that are likely to result in abuse and/or neglect (applies to 7.1.a. through 7.1.m.).

7.2.d. The mandated reporter is not required to be certain that abuse/neglect has occurred or to investigate independently the suspicion/observation. The facts of the case may not rise to the level of a criminal charge, but may meet the standard for an abused and/or neglected child as defined in the section of code that governs civil child abuse and neglect proceedings.

7.2.e. The reporter may take photographs of visible trauma or cause x-rays to be taken, if medically indicated, at public expense, to be shared with the report.

7.3. Procedure for reporting suspected child abuse or neglect.

7.3.a. Report to the West Virginia DHHR immediately or within 48 hours

7.3.a.1. Call 24-hour hotline number (1-800-352-6513);

7.3.a.2. Contact County DHHR office;

7.3.a.3. Follow-up with a written report if requested by DHHR.

7.3.b. Additional reporting requirements for suspicion of serious physical abuse or sexual abuse/assault shall immediately be reported to the West Virginia State Police and any law enforcement agency having jurisdiction to investigate the complaint.

7.3.c. All cases involving death, unattended by a medical provider, must be reported to the appropriate medical examiner or coroner.

7.3.d. Reports made in good faith are confidential and immune from civil or criminal liability.

7.3.e. All privileged communication in regard to suspected or known child abuse and/or neglect is abrogated (e.g., husband and wife, professional and patient/client, etc.), except that between attorney and client.

#### **§149-8-8. Appendix**

8.1. West Virginia Criminal Code Sections to reference:

8.1.a. Abuse.

8.1.a.1. W.V. Code §61-2-28 Related to domestic violence offenses;

8.1.a.2. W.V. Code §61-8D-1 Definitions relating to child abuse and neglect;

8.1.a.3. W.V. Code §61-8D-2 Murder of a child by a parent, guardian or custodian;

8.1.a.4. W.V. Code §61-8D-2a Death of a child by parent, guardian or custodian;

8.1.a.5. W.V. Code §61-8D-3 Child abuse resulting in injury or creating risk of

injury;

8.1.a.6. W.V. Code §61-8D-3a Dealing with female genital mutilation.

8.1.b. General.

8.1.b.1. W.V. Code §61-8B-14 Limiting interviews of children under the age of eleven;

8.1.b.2. W.V. Code §61-7-7 Persons prohibited from possessing firearms;

8.1.b.3. W.V. Code §61-2-28 Related to domestic violence;

8.1.b.4. W.V. Code §61-2-9a Related to stalking;

8.1.b.5. W.V. Code §61-2-14 Related to kidnapping or child concealment;

8.1.b.6. W.V. Code §61-2-14d Related to concealment of a child from a custodian;

8.1.b.7. W.V. Code §61-2-17 Related to human trafficking.

8.1.c. Neglect.

8.1.c.1. W.V. Code §61-8D-1 Definitions relating to child abuse and neglect;

8.1.c.2. W.V. Code §61-8D-4 Child neglect resulting in injury or creating risk of injury;

8.1.c.3. W.V. Code §61-8D-4a Child neglect resulting in death;

8.1.c.4. W.V. Code §61-8D-7 Giving false information to medical personnel regarding a child's injuries;

8.1.c.5. W.V. Code §60a-10-12 Related to children being present during the manufacture of methamphetamine.

8.1.d. Possession, Distribution or Exhibition of Obscene Materials Involving Minors and Internet Crimes Against Children.

8.1.d.1. W.V. Code §61-8A-1 Definitions related to obscene matter;

8.1.d.2. W.V. Code §61-8A-2 Distributions and display of obscene matter;

8.1.d.3. W.V. Code §61-8A-4 Use of obscene matter with intent to seduce a minor;

8.1.d.4. W.V. Code §61-8A-5 Use of minor to produce obscene matter;

8.1.d.5. W.V. Code §61-3C-14b Soliciting a minor via computer;

- 8.1.d.6. W.V. Code §61-8C-1 Definitions relating to child pornography;
- 8.1.d.7. W.V. Code §61-8C-2 Use of minors in child pornography;
- 8.1.d.8. W.V. Code §61-8C-3 Possession or distribution of child pornography;
- 8.1.d.9. W.V. Code §61-8D-6 Possession or distribution of child pornography by parent, guardian or custodian;
- 8.1.d.10. W.V. Code §61-8C-3a Prohibiting child erotica.

8.1.e. Sexual Abuse.

- 8.1e.1. W.V. Code §61-8-28 Criminal invasion of privacy;
- 8.1.e.2. W.V. Code §61-8B-1 Definitions related to sexual offenses;
- 8.1.e.3. W.V. Code §61-8B-2 Definitions related to consent;
- 8.1.e.4. W.V. Code §61-8B-7, 8 and 9 Relating to the offense of sexual abuse;
- 8.1.e.5. W.V. Code §61-8D-5 Sexual abuse by parent, guardian or custodian.

8.1.f. Sexual Assault.

- 8.1.f.1. W.V. Code §61-8-28 Criminal invasion of privacy;
- 8.1.f.2. W.V. Code §61-8B-1 Definitions related to sexual offenses;
- 8.1.f.3. W.V. Code §61-8B-2 Definitions related to consent;
- 8.1.f.4. W.V. Code §61-8B-3, 4 and 5 Relating to the offense of sexual assault;
- 8.1.f.5. W.V. Code §61-8-12 Incest;
- 8.1.f.6. W.V. Code §61-8-8 Pimping and prostitution.

8.2. West Virginia Civil Code Sections to reference:

8.2.a. General.

- 8.2.a.1. W.V. Code §49-1-3 Definitions;
- 8.2.a.2. W.V. Code §49-6-9 Law enforcement officers taking emergency custody;
- 8.2.a.3. W.V. Code §49-6A-8 Misdemeanor offense of failing to report or preventing the reporting of suspected child abuse and/or child neglect;
- 8.2.a.4. W.V. Code §49-6E-4 Safe haven babies.