

PROPOSED RULEMAKING

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 3480 AND 3490]

Protective Services

The Department of Public Welfare (Department) under the authority of Articles VII and IX of the Public Welfare Code (62 P.S. §§ 701—704 and 901—922); 42 Pa.C.S. §§ 6301—6365 (relating to Juvenile Act); section 2168 of the County Code (16 P.S. § 2168); section 405 of the County Institution District Law (62 P.S. § 2305); and of 23 Pa.C.S. §§ 6301—6385 (relating to the Child Protective Services Law) (CPSL), proposes to amend Chapter 3490 (relating to protective services) to read as set forth in Annex A.

Purpose

It is the purpose of Chapter 3490 to encourage more complete reporting of suspected child abuse; to the extent permitted by this chapter, to involve law enforcement agencies, as permitted by this chapter, in responding to child abuse; and to establish in each county, protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services for neglected children with policies and procedures to assess the risk of harm to a child and with the capabilities to respond adequately to meet the needs of families and children who may be at risk and to prioritize the response and services to children most at risk.

It is also the purpose of this chapter to provide for investigations of reports of suspected abuse of students by school employes and screen applicants for employment in schools to determine whether or not the applicant has a prior history of abusing children. It is also the purpose of this chapter to establish a training and certification program for all county children and youth agency staff who provide direct services to abused and neglected children.

Need for the Proposed Amendments

These proposed amendments are needed to implement the act of December 16, 1994 (P. L. 1286, No. 151) (Act 151) and Act 10 of 1995 (Special Session), clarify existing regulations that need to be changed and delete Chapter 3480.

Children deserve to grow up in safe, nurturing homes. Sadly, many are victims of child abuse and neglect. It is a problem that has devastating effects on children, families and our Commonwealth. In 1995, over 6,000 children in this Commonwealth were abused by their parents or other individuals responsible for their care and 33 died from abuse. These proposed amendments will improve the ability to protect children from abuse and neglect.

Requirements

a. Section 3490.4 (relating to definitions). The definition of "child abuse" has been amended to:

1. Require the county children and youth agencies to investigate only those reports of suspected serious physical injury that are reported within 2 years of the date the alleged abuse occurred. It is reasoned that if a child has not been abused within 2 years that further abuse is unlikely. This amendment allows the county agencies to concentrate their efforts on preventing reabuse of children who have been abused and are more likely to be abused than on children who have not been abused within 2 years.

2. Include situations of imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child. This proposed amendment would prevent the abuse of children when there is a high probability of abuse.

3. Require mandated reporters to make a report of suspected child abuse when they have reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child. The standard of when they are mandated to report has been changed from "reasonable cause to believe" to "reasonable cause to suspect." This should result in protection for more children and a slight increase in the number of reports of suspected child abuse.

b. Section 3490.39 (relating to expunction from the Statewide Central Register) requires the Department to establish a subfile of the names of perpetrators of indicated and founded reports of child abuse and student abuse in the Statewide Central Register when the Social Security number or date of birth of the person responsible for the abuse is known. These reports will remain on file indefinitely. This will aid the county agencies in protecting future children who are abused by a perpetrator known to have abused a child previously and after the rest of the record of the previous abuse has been expunged.

c. Section 3490.56 (relating to the county agency or Department's investigation of suspected child abuse perpetrated by persons employed or supervised by child caring agencies and residential facilities) requires child care agencies and residential facilities to develop and implement a plan of supervision or alternative arrangements for the individual under investigation as the alleged perpetrator when the child is allegedly abused by an employe of the agency or facility. The plan must be approved by the county agency. This will protect the child reported as abused and other children in the care of the agency or facility until the investigation is completed and a decision is made regarding the future employment status of the employe.

d. Sections 3490.61 and 3490.235 (relating to supervisory review and child contacts; and services available through the county agency for neglected children) require the county agency supervisor to review reports of suspected abuse that are under investigation and reports of suspected neglect that are being assessed on an ongoing and regular basis to ensure the safety of the child and the progress made toward reaching a status determination. These sections also require the county agency to assure that contacts are made with the child and parents as often as necessary for the protection of the child but no less often than once a week when the child is at high risk of abuse or neglect. These changes are proposed as a result of the Department's experience in reviewing county agency performance relating to case planning and client contacts.

e. Section 3490.105(a) (relating to request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995) requires perpetrators of indicated reports of child abuse who seek to have the report amended or expunged to request the Secretary of the Department to amend or expunge the report within 45-calendar days of the mailing date of the letter from ChildLine. This protects the child from having to testify at a hearing about something that may have happened a long time ago and that the child may have forgotten.

f. Section 3490.108 (relating to cooperation of county agencies and law enforcement agencies) requires the county agencies and law enforcement officials to cooperate and coordinate their investigations of reports of suspected child abuse to the extent permitted by law. The law was amended in 1982 to require reporting of certain types of child abuse to law enforcement officials but did not provide for cooperation between the two agencies. This proposed amendment builds on this change by requiring closer cooperation and coordination of these two agencies which will help to reduce the trauma to children of having to repeat what happened to them numerous times to numerous people. The Office of Children, Youth and Families in the Department and the Pennsylvania District Attorneys Association have formed a workgroup to foster better working relationships between the two agencies. It will also provide greater protection for abused and neglected children because of the possibility of criminal prosecution and incarceration.

The proposed amendment does not provide specific requirements relating to when or how coordination should occur, because there will be occasions when cooperation and coordination will be difficult because of the circumstances of the abuse.

g. Section 3490.109 (relating to report from law enforcement agencies) requires law enforcement agencies to notify the county agency if a criminal investigation has been undertaken and the results of the investigation and prosecution on child abuse reports referred to them by the county agency. Prior to Act 151, county agencies were required to notify law enforcement officials of certain instances of suspected child abuse. However, there was not a requirement for law enforcement officials to notify the county agency of the results of the referrals. There is no statistical data on the disposition of referral made by county agencies to law enforcement officials. This change will provide necessary information on criminal justice outcomes from law enforcement referrals by county agency staff.

h. Sections 3490.131—3490.137, under the center heading "Verification of Existence of Child Abuse and Student Abuse Records for School Employes," require administrators of schools to require all applicants for position as school employes, including independent contractors and their employes who work directly with children, to submit a clearance statement from the Statewide Central Register which is the State repository of all founded and indicated reports of child abuse and student abuse. A clearance determines if the applicant's name is on file as a perpetrator of child abuse or student abuse. An administrator or independent contractor may not hire an applicant if the applicant is a perpetrator of a founded report of child abuse or student abuse. This prevents persons who have abused a child in the past from working in a school where they may abuse a child in the future. While the law does not prohibit an administrator or contractor from hiring a perpetrator of an indicated report of child

abuse or student abuse, it encourages the administrator to request the applicant for additional information, thereby, allowing the administrator to make an informed decision based on information obtained from the Statewide Central Register.

i. Subchapter B (relating to students in public and private schools) provides for reporting and investigating reports of suspected serious bodily injury or sexual abuse or sexual exploitation of a student by a school employe. School administrators are required to report suspected student abuse to the district attorney and local law enforcement officials. The law enforcement official is required to investigate the allegation and to report the suspected student abuse to the county agency if the official has reasonable cause to suspect that the child was abused by a school employe. The county agency is required to investigate the report to determine whether the report is a founded, indicated or unfounded report of student abuse. Unfounded reports are expunged from the State and county files within 120-calendar days of when the report was received at ChildLine. Founded and indicated reports are expunged from the Statewide Central Register when the child turns 23 years of age. However, except for the identity of the child, information on founded and indicated reports of student abuse are maintained indefinitely when the Social Security number or date of birth of the school employe who abused the student is known. A person responsible for the abuse in an indicated report of student abuse has the right to request the Secretary of the Department to amend or expunge the report. Subchapter B will provide protection for children who are abused by a school employe and prevent perpetrators of child abuse and student abuse from being employed in positions where they may abuse another child.

j. Subchapter C (relating to general protective services) requires each county agency to administer a program of general protective services for neglected children who have been assessed as needing protective services to prevent abuse, neglect and exploitation; keep children in their own homes when possible; overcome problems that result in dependency; provide temporary substitute care; reunite families when children have been placed in out-of-home care; provide permanent legally assured care for children who cannot return home; and provide services for children adjudicated dependent by a court. "Neglect" is defined as: acts or omissions by a parent or the primary person responsible for the care of a child which result in a failure to provide the essentials of life and which create a potential for harm to the child's safety, functioning or development. A child may not be considered neglected based solely on environmental factors that are beyond the control of the parent or the primary person responsible for the child's care including inadequate housing, furnishings, income, clothing and medical care. For purposes of the definition of "neglect," the following terms have the following definitions:

(i) "Essentials of life"—Food, shelter, clothing, health care, personal care, education as required by law, proper supervision and protection from physical, sexual or emotional injury.

(ii) "Primary person who is responsible for the care of a child"—A person who provides or arranges ongoing care and supervision to a child in lieu of parental care and supervision.

(iii) "Potential for harm"—Likely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning. The term does not include

imminent risk as defined in the definition of "child abuse" in § 3490.4 (relating to definitions).

This subchapter establishes provisions for county agencies to receive and assess reports of suspected child neglect. The subchapter establishes those services that county agencies must have available for neglected children and their families both during and after the assessment. It establishes recordkeeping procedures for county agencies for general protective services. This subchapter defines what neglect is and establishes the requirements for general protective services. The purposes of the subchapter are to protect children who are neglected and protect neglected children from being abused. The county agencies are currently providing general protective services under Chapter 3480.

k. Subchapter D (relating to staff orientation, training and certification requirements) provides that the Department, in conjunction with a steering committee cochaired by a representative of the Department and a representative from the Pennsylvania Children and Youth Administrators, Inc., establish a training and certification program for county agency staff who provide direct services. County staff who had regular employment status on June 30, 1996, were certified and not required to complete any of the required training courses. Staff hired on or after July 1, 1996, will be required to complete 120 hours of CORE training and be recommended by the person's supervisor for certification. Staff who are not certified as direct service workers may not provide protective services. The proposed amendments also require annual training for direct service workers. The certification requirements will insure that all direct service workers have met minimum training requirements and have been approved by the county agency as certified direct service workers. This will result in better services to children and their families and aid in recruiting and retaining staff who will be better qualified to provide services.

l. Subchapter D (relating to risk assessment) requires that the Department and the county agencies establish a State-approved risk assessment process to aid in determining the amount of risk to a child if the child remains in the child's own home or is returned home from placement. The county agencies are using a State-approved risk assessment process. Risk assessment is a valuable tool for staff to help to determine the risk of harm to a child and to determine what services are necessary to protect the child until agency involvement is no longer needed.

m. Section 3490.331 (relating to annual report on required activities) requires the Department to include in the annual report to the Governor and General Assembly the number of reports of suspected child abuse and neglect, student abuse, the number of children the county agency is providing services to, the cost to implement the CPSL, the number of reports made to law enforcement officials and any recommendations for Legislative change. This report will provide more complete information on the scope of the problem of abuse and neglect, the number of children receiving services from the county agencies, the cost to implement the law and changes needed to provide even service improvement to abused and neglected children.

n. Section 3490.361 (relating to requirements for agencies providing protective services) requires private agencies providing protective services arranged by the county agency to comply with §§ 3130.21(4), 3130.39 and 3130.40 (relating to responsibilities of county executive

officers; services and facilities which may be used; and delivery of services through other service providers).

o. Section 3490.362 (relating to requirements for persons providing services arranged or provided by the county agency) requires professional persons providing services to abused and neglected children to have a valid license issued by the Department of State when their profession is subject to mandatory licensure. This will insure that services to abused and neglected children and their families are provided by qualified staff.

p. Section 3490.401 (relating to intercounty transfer of cases) proposes requirements relating to the transfer of information from one county to another county when the child or parent moves to another county and the case is being investigated for suspected child abuse, being assessed for suspected child neglect or was accepted by the county agency for protective services. These revisions are proposed as a result of the Department's experience in reviewing county agency performance relating to this issue.

Affected Individuals and Organizations

The proposed amendments will affect children and youth and their families. It will also affect public and private children and youth agencies, law enforcement officials, school employes and persons whose employment, occupation or practice of their profession bring them into direct contact with children.

Fiscal Impact

(a) *Public Sector*

(1) The cost for FY 1997—98 is in the appropriation for payments to counties for child welfare services and is based on information provided to the Department through the needs-based budgeting process.

(2) The estimate for FY 1998—99 is based on previous spending patterns of the county agencies.

(3) The estimate for FYs 1999—00 through 2000—02 includes an annual increase of 3%.

Year	1997-98	1998-99	1999-00	2000-01	2001-02
State	\$853	\$878	\$904	\$931	\$958
Counties	213	219	226	233	239
Total	\$1,066	\$1,097	\$1,130	\$1,164	\$1,197

(The figures are in thousands)

(b) Estimated savings to the State and counties as a result of the proposed amendments.

Any savings were factored into the estimated budgets that counties submitted to the Department.

Private Sector

These proposed amendments require an applicant for employment in a school to pay up to \$10 to the Department to verify whether or not the applicant's name is on file in the Statewide Central Register of founded and indicated reports of child abuse and student abuse. In Calendar Year 1996, ChildLine received 192,149 requests for clearance statements from applicants for employment where the applicants have direct contact with children. Of these 192,149, 88,000 were as a result of the amendment that requires applicants for employment in schools to receive a clearance statement from ChildLine. We estimate the number of requests will increase by 5% a year.

	1997	1998	1999	2000	2001
Total	\$924	\$970	\$1,018	\$1,069	\$1,123

(c) *General Public*

There will be no costs to the general public, except for persons applying for employment in a school who are required to pay a \$10 fee to verify whether or not the person's name is on file in the Statewide Central Register of founded and indicated reports of child abuse and student abuse.

Paperwork Requirements

School administrators will be required to complete a portion of a form and send it to the district attorney and law enforcement officials when making a report of suspected student abuse. It will take approximately 15 minutes to complete this form.

Law enforcement officials will be required to complete the other portion of the form and send it to the county agency when the law enforcement official receives a report of suspected student abuse. It will take approximately 15 minutes to complete this form.

It is estimated that the costs to complete the form for reporting suspected student abuse will be nominal.

Law enforcement officials will also complete a brief form and send it to the county agency advising it of the status of a referral of suspected child abuse or student abuse that was made to law enforcement. This is a new requirement. It will take approximately 10 minutes to complete this form. While approximately 8,000 reports of suspected child abuse are made to law enforcement officials annually, it is not anticipated that this will impact in any significant way on the budgets of law enforcement agencies.

County agencies are required to assess the risk to an abused or neglected child and complete a risk assessment process. It is estimated that it takes approximately 20 minutes to complete the risk assessment process.

Protective service supervisors are required to complete an Individual Training Needs Assessment (ITNA) annually for each of their staff. The ITNA is a component of the certification and training program and is used to determine the training needs of a protective service worker. It takes approximately 45 minutes to complete an ITNA.

Effective Dates

These proposed amendments become effective upon publication in the *Pennsylvania Bulletin* as final rule-making.

Sunset Date

No sunset date has been established for these proposed amendments. The Secretary of the Department is required by the law and these proposed amendments to submit an annual report to the Governor and the General Assembly on the implementation of the law. The report must include recommendations to amend the law, thus, the Department is continuously evaluating the effectiveness of the law and the need for amendments.

Public Comment Period

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to the Department of Public Welfare, Joseph L. Spear, P. O. Box 2675, Harrisburg, PA 17105-2675, (717) 787-3986, fax (717) 787-0414 within 30-calendar

days after the date of publication in the *Pennsylvania Bulletin*. All comments received within 30-calendar days will be reviewed and considered in the preparation of the final-form regulations. Comments received after the 30-day comment period will be considered for any subsequent revisions of these amendments.

Regulatory Review Act

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 10, 1998, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Aging and Youth and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed amendments, the Department has provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Department within 10 days of the close of the Committees' comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication, of the amendments of objections raised, by the Department, the General Assembly and the Governor.

FEATHER O. HOUSTOUN,
Secretary

Fiscal Note: 14-441. (1) General Fund;

	State	County
(2) Implementing Year		
1997-98 is	\$853,000	\$213,000
(3) 1st Succeeding Year		
1998-99 is	\$878,000	\$219,000
2nd Succeeding Year		
1999-00 is	\$904,000	\$226,000
3rd Succeeding Year		
2000-01 is	\$931,000	\$233,000
4th Succeeding Year		
2001-02 is	\$958,000	\$239,000
5th Succeeding Year		
2002-03 is	\$1,008,000	\$252,000
(4) FY 1996-97	\$354,863,000	\$163,757,000
FY 1995-96	\$264,743,000	\$142,988,000
FY 1994-95	\$309,561,000	\$149,347,000

(7) Department of Public Welfare County Child Welfare; (8) recommends adoption. The State will pay the counties through the needs based budget for county services to children and youth. The counties are responsible for a portion of the cost of these services.

Annex A

TITLE 55. PUBLIC WELFARE

**PART V. CHILDREN, YOUTH AND FAMILIES
MANUAL**

**Subpart D. NONRESIDENTIAL AGENCIES,
FACILITIES AND SERVICES**

ARTICLE III. COUNTY-ADMINISTERED SERVICES

**CHAPTER 3480. [CHILD PROTECTIVE
SERVICES—GENERAL] (Reserved)**

(Editor's Note: The Department proposes to delete Chapter 3480, 55 Pa. Code pages 3480-1 to 3480-5, serial pages (168951) to (168955).)

§§ 3480.1—3480.4 [Reserved].

§§ 3480.11—3480.17. [Reserved].

CHAPTER 3490. [CHILD] PROTECTIVE SERVICES
[— CHILD ABUSE]

INTRODUCTION

§ 3490.1. Applicability.

This chapter applies to the Department; other departments, boards, bureaus and agencies of the Commonwealth or any of its political subdivisions; county children and youth social service agencies and other agencies providing services to children and youth; law enforcement officials; county executive officers; auditors of the Federal government; **public and nonpublic schools; intermediate units; area vocational-technical schools; independent school contractors;** and persons who, in the course of their employment or occupation or in the practice of their profession, come into contact with children.

§ 3490.2. [Goals] Purposes.

The [goals] purposes of this [chapter] subchapter are to:

* * * * *

(4) Involve law enforcement agencies in responding to child abuse.

(5) Prioritize the response and services to children most at risk.

(6) Encourage more complete reporting of suspected child abuse.

§ 3490.4. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Accept for service—The county agency decides on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under the Juvenile Act.

Agent of the county agency—A person who provides a children and youth social service either directly or under contract or through agreement with a county agency.

(i) An agent of the county agency includes, [but is not limited to]:

* * * * *

(H) A school employe of a facility or agency that is an agent of a county agency.

* * * * *

Arrange—Make a service available to a client accepted for service through another agency or service provider which is not paid for by the county agency.

[**CPS**—Child Protective Services. The section of each children and youth social service agency required to be established by section 16 of the CPSL.

CPS plan—A component of the services plan and budget estimate of county children and youth social service agencies which meets the requirements of section 16 of the CPSL.]

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Certified medical practitioner—A licensed physician, a physician's assistant or a certified registered nurse practitioner.

Child—A person [17 years of age or younger] under 18 years of age.

Child abuse—[Serious physical or mental injury which is not explained by the available medical history as being accidental, or sexual abuse or sexual exploitation, or serious physical neglect of a child under 18 years of age if the injury, abuse or neglect has been caused by the acts or omissions of the child's parents, or by a person responsible for the child's welfare, or an individual residing in the same home as the child, or a paramour of a child's parent. No child may be deemed to be physically or mentally abused for the sole reason that he is in good faith being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof or is not provided specified medical treatment in the practice of religious beliefs, or solely on the grounds of environmental factors which are beyond the control of the person responsible for the child's welfare such as inadequate housing, furnishings, income, clothing and medical care.]

(i) The term means any of the following:

(A) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child.

(B) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child.

(C) A recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child.

(D) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

(ii) No child will be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(iii) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child will not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department and the county agency may not reference "child abuse" and shall acknowledge the religious

basis for the child's condition, and the family shall be referred for general protective services, under Subchapter C (relating to general protective services), if appropriate.

ChildLine—An organizational unit of the Department which operates a Statewide toll-free system for receiving reports of suspected child abuse established [by] under section [14(c)] 6332 of the CPSL (relating to establishment of Statewide toll-free telephone number), refers the reports for investigation, and maintains the reports in the appropriate file. In addition, it also receives reports of student abuse under Subchapter B (relating to abuse of students in school).

County agency—[The county children and youth social service agency as required by Chapter 3130 (relating to administration of county children and youth social service programs).] The county children and youth social service agency established under section 405 of the act of June 24, 1937 (P. L. 2017, No. 396), known as the County Institution District Law, or its successor, and supervised by the Department under Article IV of the Public Welfare Code (62 P. S. §§ 401—403). It also includes the Department's Office of Children, Youth and Families' regional offices when the report of suspected child abuse or student abuse involves an agent of the county agency.

County plan—A needs-based plan and budget estimate which serves as the basis for administration of the county children and youth social services program required by Chapter 3140 (relating to planning and financial reimbursement requirements for county children and youth social service programs).

* * * * *

Deviate sexual intercourse—Sexual intercourse by mouth or anus or with an animal. The term also includes penetration, however slight, of the genitals or anus of a child with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.

Director of a hospital or other medical facility—The director or a person specifically designated in writing by the director to perform [his] the functions under section 6315 of the CPSL (relating to taking child into protective custody) and this chapter.

* * * * *

Forcible compulsion—Compulsion by use of physical, intellectual, moral, emotional or psychological force, either expressed or implied.

Foreign object—The term includes any physical object not part of the perpetrator's body.

Founded report—A child abuse report made under the CPSL and this chapter if there has been a judicial adjudication based on a finding that a child who is a subject of the report has been abused including the entry of a plea of guilty or nolo contendere and after the court has accepted the defendant's plea of guilty or nolo contendere and imposed sentence or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

Indecent contact—Any touching of the sexual or other intimate parts of a child for the purpose of arousing or gratifying sexual desire in either person.

Indicated report—A child abuse report made under the CPSL and this chapter if an investigation by the [CPS] county agency determines that substantial evidence of the alleged abuse exists based on one of the following:

* * * * *

(ii) The [CPS] county agency investigation.

* * * * *

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child alleged to be abused.

Juvenile Act—42 Pa.C.S. Chapter 63.

* * * * *

Pending criminal court action—The status assigned to a report when the county agency cannot complete the investigation within 30 calendar days because criminal court action has been initiated.

Pending juvenile court action—The status assigned to a report when the [CPS] county agency cannot complete the investigation within 30 calendar days because juvenile court action has been initiated.

* * * * *

Perpetrator—A person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as the child [,] or a paramour of the child's parent [who has committed child abuse as defined in section 3 of the CPSL and this chapter].

Person responsible for the child's welfare—A person, such as a babysitter, stepparent, day care staff person or residential child care staff person, who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control either by legal authorization or consent of the parent. The term does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school.

* * * * *

Protective services—Services and activities provided by the Department and each county agency for children who are alleged or actually abused under this subchapter or alleged or actually neglected under Subchapter C (relating to general protective services).

Provide—To perform an activity directly through county agency staff or ensure the performance of an activity through a purchase of service agreement with another agency or individual.

Recent act or failure to act—An act or failure to act committed within 2 years of the date of the report of suspected child abuse to the Department or county agency.

[*Recognized church or religious denomination*—A religious organization so recognized for tax purposes by the United States Internal Revenue Service.]

* * * * *

Required reporters—(i) Persons who, in the course of their employment, occupation or practice of their profession come into contact with children and have [reason to believe] reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Except with respect to confidential communications made to an ordained member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), the privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required by this subchapter.

(ii) Persons required to report include [, but are not limited to, a] the following:

(A) A licensed physician, medical examiner, coroner, funeral director, dentist, osteopath, chiropractor, psychologist, podiatrist, intern, registered nurse, licensed practical nurse [; hospital].

(B) Hospital personnel engaged in the admission, examination, care or treatment of persons [; a]

(C) A Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day care center worker or another child care or foster care worker, mental health professional, peace officer or law enforcement official.

Secretary—The Secretary of the Department or a person specifically designated in writing by the Secretary to perform [his] the Secretary's functions under the CPSL and this chapter.

* * * * *

Serious mental injury—A psychological condition as diagnosed by a physician or licensed psychologist caused by the [acts] act or [omissions] failure to act—including the refusal of appropriate treatment—of the perpetrator which does one of the following:

(i) Renders the child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that [his] the child's life or safety is threatened.

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Serious physical injury—An injury caused by the [acts] act or [omissions] failure to act of a perpetrator which does one of the following:

* * * * *

[(iii) Is accompanied by physical evidence of a continuous pattern of separate, unexplained injuries to the child.]

Serious physical neglect—A physical condition caused by the [acts] act or [omissions] failure to act of a perpetrator which endangers the child's life or development or impairs [his] the child's functioning and is the result of one of the following:

* * * * *

(ii) Failure to provide essentials of life, including adequate medical and dental care.

Sexual abuse—[Any of the following when committed on a child by a perpetrator:

(i) Statutory rape—Sexual intercourse with a child who is less than 14 years of age by a person 18 years of age or older.

(ii) Involuntary or voluntary deviate sexual intercourse—Intercourse by mouth or rectum or with an animal.

(iii) Sexual assault—Sexual involvement, including the touching or exposing of the sexual or other intimate parts of a person, for the purpose of arousing or gratifying sexual desire in either the perpetrator or subject child.

(iv) Incest—Sexual intercourse with an ancestor or descendant—by blood or adoption—brother or sister of the whole or half blood, or an uncle, aunt, nephew or niece of the whole blood.

(v) Promoting prostitution—Inducing or encouraging a child to engage in prostitution.

(vi) Rape—Sexual intercourse by force or compulsion.

(vii) Pornography—Includes one of the following:

(A) The obscene photographing, filming or depiction of children for commercial purposes.

(B) The obscene filming or photographing of children or showing of obscene films or photographs to arouse or gratify sexual desire in either the perpetrator, subject child or viewing audience.]

Any of the following if committed on a child by a perpetrator:

(i) Aggravated indecent assault—Penetration, however slight, of the genitals or anus of a child with a part of the perpetrator's body for any purpose other than good faith medical, hygienic or law enforcement procedures as follows:

(A) By forcible compulsion.

(B) If the child is under 13 years of age.

(C) If the child is under 16 years of age and the perpetrator is 4 or more years older than the child and they are not married to each other.

(ii) Incest—Sexual intercourse with an ancestor or descendant—by blood or adoption—brother or sister of the whole or half blood, or an uncle, aunt, nephew or niece of the whole blood.

(iii) Indecent assault—Indecent contact with a child or causing the child to have indecent contact with the perpetrator as follows:

(A) Without the child's consent.

(B) By forcible compulsion.

(iv) Indecent exposure—Exposing one's genitals to a child.

(v) Involuntary deviate sexual intercourse—Deviate sexual intercourse with a child as follows:

(A) By forcible compulsion.

(B) If the child is under 13 years of age.

(C) If the child under than 16 years of age and the perpetrator is 4 or more years older than the child and they are not married to each other.

(vi) *Molestation*—Indecent contact, including:

(A) Looking at the sexual or other intimate parts of a child for the purpose of arousing or gratifying sexual desire in either person.

(B) Requiring the child to look at the sexual or other intimate parts of another person for the purpose of arousing or gratifying sexual desire in any person involved.

(C) Showing of pornographic material to a child.

(vii) *Pornography*—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist a perpetrator to engage in sexually explicit conduct or simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming of sexually explicit conduct.

(viii) *Promoting prostitution*—Inducing or encouraging a child to engage in prostitution.

(ix) *Rape*—Sexual intercourse by force or compulsion.

(x) *Sexual assault*—Sexual intercourse or deviate sexual intercourse with a child without the child's consent.

(xi) *Statutory sexual assault*—Sexual intercourse with a child who is under 16 years of age and the perpetrator is 4 or more years older than the child and they are not married to each other.

Sexual intercourse—In addition to its ordinary meaning, the term includes intercourse by mouth or anus, with some penetration, however slight; emission is not required.

Statewide Central Register—A register of child abuse and student abuse, established in the Department, which consists of founded and indicated reports of child abuse and student abuse.

Status determination—The decision made by the [CPS] county agency that a child abuse or student abuse report is founded, indicated, unfounded [or], pending juvenile court action or pending criminal court action.

Subjects of the report—A child [reported to ChildLine and his parent, guardian, other person responsible or other perpetrator also named in the report], parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator named in a report made to the Department or county agency under this subchapter.

Substantial evidence—Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

Unfounded report—A report made under the CPSL and this chapter unless the report is a founded report or [unless an investigation by the appropriate CPS determines that the report is] an indicated report of child abuse.

§ 3490.5. Waivers.

(a) A waiver of a requirement of this chapter may be requested as specified in procedures published by the Department.

(b) A waiver may be granted by the Department if the waiver:

(1) Does not alter the applicability, scope or purpose of this chapter.

(2) Is based on evidence, supplied by the requesting agency, that the objective of the requirement will be achieved in another way.

(3) Is based on evidence, supplied by the requesting agency, that a waiver will have no adverse effect on the health, safety and rights of children.

(4) Does not violate or condone noncompliance with Federal statutes or regulations, State statutes or regulations other than the requirement of this chapter for which the waiver is approved.

(5) Does not jeopardize receipt of Federal monies.

(c) Except as provided in section 6361 of the CPSL (relating to organization for child protective services), the Department may not waive the requirement that the county agency is the sole civil agency responsible to receive and investigate reports of suspected child abuse and receive and assess reports of suspected neglect.

(d) An agency requesting a waiver shall continue to comply with the requirements of this chapter unless a waiver is granted.

REPORTERS

§ 3490.11. Reporting suspected child abuse.

A person may make a report of suspected child abuse to ChildLine or a [CPS] county agency if the person has reasonable cause to suspect that a child has been abused. Reports shall be accepted by ChildLine or the [CPS] county agency regardless of whether the person identifies himself.

§ 3490.13. Reports by employees who are required reporters.

(a) Required reporters who work in an institution, school, facility or agency shall immediately notify the person in charge of the institution, school, facility or agency or [his] a designee of suspected abuse. The person in charge, or [his] the designee, shall be responsible and have the obligation to make a report of the suspected child abuse to ChildLine immediately.

(b) [The person in charge or his designee shall make a report of suspected child abuse immediately to ChildLine. He] The person in charge or the designee may not make an independent determination of whether to report. The person in charge or [his] the designee shall notify the employe when the report was made to ChildLine.

* * * * *

§ 3490.14. Privileged communication.

The privileged communication between a professional person required to report and [his] the person's patient or client does not apply to situations involving child abuse and may not constitute grounds for failure to report as required by section 6311 of the CPSL (relating to persons required to report suspected child abuse) and this chapter.

§ 3490.15. Taking a child into protective custody.

(a) The following persons may take a child into protective custody:

* * * * *

(2) The director of a hospital or other medical facility or a physician examining or treating a child under [the requirements of] section [8] 6315 of the CPSL (relating to taking child into protective custody) [(11 P. S. § 2208)] and subsection (b).

(b) The director or physician may take a child into protective custody if [he determines that] protective custody is immediately necessary in the director's or physician's judgment to protect the child from further serious physical injury, sexual abuse[,] or serious physical neglect—as indicated by the following examples:

* * * * *

(3) The parents, guardians or other custodians, after being advised that the child's physical condition constitutes a medical emergency will make no immediate arrangements for medically adequate alternative treatment.

(c) A child may not be held in protective custody for more than 24 hours unless the appropriate [CPS] county agency is immediately notified that the child has been taken into protective custody and the [CPS] county agency obtains a court order permitting the child to be held in protective custody for a longer period of time.

§ 3490.16. Notifying the [CPS] county agency.

If a person takes a child suspected of being abused into protective custody, the person shall immediately notify the [CPS] county agency in the county where the child is being held that the child is in protective custody.

§ 3490.17. Notifying the child's parents, guardians or other custodians.

If a person takes a child into protective custody, the person shall [orally] verbally notify the child's parents, guardians or other custodians immediately and in writing within 24 hours, of the following:

(1) The child's whereabouts unless prohibited by a court order.

* * * * *

(3) The telephone number of the local [CPS] county agency.

§ 3490.18. Filing of a written report by a required reporter.

Within 48 hours of reporting to ChildLine, a required reporter shall make a written report on forms provided by the Department to the [CPS] county agency in the county where the suspected abuse occurred. The written report shall include the following information, if available:

(1) The names and addresses of the child and the parents or other persons responsible for the care of the child.

* * * * *

(3) The [child's] age and sex of the subjects of the report.

* * * * *

(6) The name of the alleged [perpetrator] perpetrators of the suspected abuse and any evidence of prior abuse by those persons.

* * * * *

§ 3490.19. Reporting to the coroner.

A required reporter who suspects that a child died as a result of child abuse shall send a duplicate of the report sent to the [CPS] county agency to the coroner of the county in which the death occurred.

§ 3490.20. Other medical information.

A required reporter may photograph [areas of trauma visible on] a child who is the subject of a report and, if [medically] clinically indicated, ensure that a radiological examination and other medical tests of the child [is] are performed. A medical summary or report of photographs or X-rays taken shall be sent to the [CPS] county agency at the time the written report is sent, or as soon thereafter as possible. The [CPS] county agency shall be provided access to the actual photographs and X-rays and may obtain them or duplicates upon request.

§ 3490.21. Release of information on prior abuse reports.

(a) A physician or director of a hospital or other medical facility may request information from the [CPS] county agency on prior abuse involving [a] the child being examined or treated by the physician or director of the hospital or other medical facility.

(b) The [CPS] county agency shall provide the physician or director treating or examining the child with the requested information on prior abuse involving the child.

DEPARTMENTAL RESPONSIBILITIES

§ 3490.31. Receipt of reports.

The Department will establish a single Statewide toll-free telephone number (800) 932-0313—referred to as ChildLine—available at all times to receive reports of suspected child abuse. ChildLine shall only accept for investigation reports of suspected child abuse when the child is under 18 years of age at the time of the report.

§ 3490.32. ChildLine reporting to [CPS] the county agency.

(a) ChildLine shall immediately transmit reports of suspected child abuse [orally] verbally to the [CPS] county agency of the county where the suspected abuse occurred. If the child resides in a different county, ChildLine will notify that county also.

(b) If the child was allegedly abused in more than one county or on an ongoing basis, ChildLine will assign the report to the county where the most recent alleged abuse occurred.

(c) The county agency which receives the report initially is responsible to contact the other counties as set forth in subsections (a) and (b) in conducting the investigation. If it appears that a county other than the one to which the report was referred should conduct the investigation, the agencies shall decide between themselves which one is responsible for the report. The county which received the

report initially shall notify ChildLine of any change so that ChildLine's records are accurate and up-to-date.

(d) If the counties are unable to agree about which one is responsible to conduct the investigation and make the status determination, the county to which the report was assigned shall contact its regional children and youth office. The region will resolve the difference.

(e) The report of the investigation shall be submitted to ChildLine within 30 calendar days of when the report was received at ChildLine.

(f) The ChildLine report to the [CPS] county agency shall contain [:

(1) The substance of the allegations of abuse.

(2) The number, status, nature and extent of reports of child abuse under investigation in the pending complaint file and Statewide Central Register concerning any subject of the current report.

(3) The county in which the prior alleged—or actual—abuse was investigated] all of the information on the current report of suspected abuse and all information on file at ChildLine on previous reports except for information obtained by the Department as a result of a request to expunge an indicated or founded report of child abuse or an indicated report of student abuse.

[(b)] (g) * * *

§ 3490.33. Files.

ChildLine will establish and maintain files [, under section 14 of the CPSL (11 P. S. § 2214)] the following files for reports of child abuse:

(1) A pending complaint file which contains reports of child abuse that are one of the following:

* * * * *

(ii) Pending juvenile or criminal court action.

[(iii) Unfounded awaiting expunction.]

(2) A Statewide Central Register which contains [copies] the following:

(i) Copies of founded and indicated reports of child abuse.

(ii) A subfile of the names of perpetrators of indicated and founded reports of child abuse if the individual's Social Security number or date of birth is known to the Department. The subfile shall be retained indefinitely.

(3) A statistical file which contains copies of reports of suspected, indicated and founded reports of child abuse after information which could directly or indirectly identify a subject of a report has been expunged.

(4) A file of unfounded reports awaiting expunction.

§ 3490.34. Pending complaint file.

(a) Upon receipt of a report of suspected child abuse, ChildLine will enter the information specified in section [14(i)] 6336 of the CPSL [(11 P. S. § 2214(i))] (relating to information in Statewide Central Register) into the pending complaint file.

(b) Notwithstanding subsection (c), reports which are determined pending juvenile or criminal court action shall be maintained in the pending complaint file until the [CPS] county agency notifies ChildLine of the final status.

(c) If within 60 calendar days from the date of the initial report of suspected child abuse a status determination has not been received at ChildLine, the report shall be considered unfounded.

(d) Unfounded reports shall be expunged at ChildLine within [12 months] 120 calendar days after the date of the initial report to ChildLine.

(e) Reports which are unfounded awaiting expunction may not be released from the pending complaint file except to a subject of a report upon written request, employes of the Department under this subchapter and employes of the Office of Attorney General under section 6345 of the CPSL (relating to audits by Attorney General).

§ 3490.35. Statewide Central Register.

When a report of suspected child abuse is determined founded or indicated, ChildLine shall enter the report in the Statewide Central Register, if there is sufficient documentation to justify entry into the Statewide Central Register, and expunge the report from the pending complaint file.

§ 3490.36. Providing information to the [CPS] county agency.

(a) ChildLine shall release information to a [CPS orally] county agency verbally only when both of the following [exist] apply:

(1) The [CPS] county agency is making a report of suspected child abuse.

(2) ChildLine has identified that the person is a representative of the [CPS] county agency.

(b) When ChildLine receives [an oral] a verbal request from a [CPS] county agency, only the information specified in § 3490.32 [(a)(2)] (f) (relating to ChildLine reporting to [CPS] the county agency) may be released from the pending complaint file and Statewide Central Register.

(c) Upon receipt of a written request from the [CPS] county agency for information regarding a subject of a report, ChildLine will forward copies of all reports on file which are under investigation, founded or indicated involving that subject to the [CPS] county agency, except information obtained by the Department in response to a request to amend or expunge an indicated or founded report of child abuse.

§ 3490.37. Release of information: Statewide Central Register [and], pending complaint file and file of unfounded reports.

(a) A request for information from the Statewide Central Register [or], pending complaint file or file of unfounded reports by persons permitted access to this information, other than the [CPS] county agency, shall be in writing and signed by the person requesting the information.

* * * * *

§ 3490.38. Authorized studies of child abuse data.

The Department may conduct or authorize studies of the data contained in the pending complaint file, the Statewide Central Register, the statistical file[,] and [CPS] the county agency files and distribute the results of the studies if no study contains the name of a subject or other information by which a subject of a report can be directly or indirectly identified. Requests to conduct studies shall be made to the Deputy Secretary, Office of Children, Youth and Families of the Department. The researcher shall secure the concurrence of the appropriate county agency administrator to use the [CPS] county agency files.

§ 3490.39. Expunction from the Statewide Central Register.

(a) Except as provided in subsection (b), ChildLine shall expunge founded and indicated reports when a subject child reaches [age 18 under section 14(n) of the CPSL (11 P. S. § 2214(n))] 23 years of age.

(b) If [another abuse report involving the same child, his sibling or offspring or another child in the care of the person responsible for the child's welfare has been received, ChildLine shall expunge founded and indicated reports when each of the children involved reaches age 23] the Social Security number or date of birth of the perpetrator is known in founded or indicated reports of child abuse, the following information shall be maintained:

- (1) The name, Social Security number, date of birth and sex of the perpetrator.
- (2) The date of birth and sex of the child.
- (3) The date and the nature and extent of the abuse.
- (4) The county in which the abuse occurred.
- (5) The relationship of the perpetrator to the child.
- (6) Whether the report was a founded or indicated report.
- (7) The results of any criminal prosecution.

(c) The information in subsection (b) shall remain in the subfile under § 3490.33(2)(relating to files).

§ 3490.40. Notifications regarding indicated reports.

(a) When [founded and] indicated reports of child abuse are entered into the Statewide Central Register, ChildLine will notify all subjects by first class mail, other than the [victim] subject child, of:

* * * * *

(2) [Their] The perpetrator's right to request the Secretary to amend [, seal] or expunge the report.

* * * * *

(4) [Their right to services] Services available from the county agency.

(5) The effect of the report upon future employment opportunities in a child care service [under section 23.1 of the CPSL (11 P. S. § 2223.1)].

(6) The fact that the name of the perpetrator and nature of the abuse will be kept on file indefinitely if the Social Security number or date of birth of the perpetrator is known.

(b) ChildLine will notify the [CPS] county agency and the perpetrator of any expunction of a report of child abuse, except when the expunction is the result of the Secretary's decision, in which case the [CPS] county agency and all subjects shall be notified.

(c) ChildLine will notify the [CPS] county agency and all subjects of the Secretary's decision to amend or seal a report of child abuse.

§ 3490.40a. Notifications regarding founded reports.

When founded reports of child abuse are entered into the Statewide Central Register, ChildLine will notify all subjects by first class mail, other than the subject child, of the:

- (1) Status of the report.
- (2) Effect of the report upon future employment opportunities in a child care service and a school.
- (3) Fact that the name of the perpetrator or school employe and nature of the abuse will be kept on file indefinitely if the Social Security number or date of birth of the perpetrator or school employe is known.

§ 3490.41. Determination of time.

ChildLine will use the United States Postal Service postmark to determine when the Department is informed by the [CPS] county agency of the status determination of a report.

§ 3490.42. Performance audit and reviews.

(a) The Secretary may direct that a performance audit be conducted of any activity related to the implementation of the CPSL and this chapter.

(b) The Department will determine in its annual licensing and inspection process whether the county agency has sufficiently documented reasons why, if applicable, all child abuse investigations have not been completed within the 30-day period.

(c) The Department will provide the results of performance audits and reviews to the affected agencies consistent with the confidentiality provisions of this chapter. Information provided will include an assessment of compliance with the provisions of this chapter and recommendations relating to practice issues, if appropriate.

§ 3490.43. Issuance of bulletins.

The Department may periodically issue bulletins for the purpose of clarifying and interpreting this chapter and for the dissemination of practice standards as identified in performance audits and reviews or other activities of the Department in implementing this chapter.

COUNTY RESPONSIBILITIES

§ 3490.51. [Child protective services] (Reserved).

[Except as provided in section 16(a) and (e) of the CPSL (11 P. S. § 2216(a) and (e)), a county shall establish a CPS within the county agency. The CPS shall perform those functions specifically assigned to it by the CPSL and this chapter.]

§ 3490.52. Receipt of reports.

The county agency shall provide [24-hour] 24-hours-per-day/7-days-per-week telephone access for persons to report suspected child abuse.

§ 3490.53. Functions of the [CPS] county agency for child protective services.

(a) The [CPS] county agency is the sole civil agency responsible for receiving and investigating reports of child abuse except reports of abuse allegedly perpetrated by an agent. The [CPS] county agency shall investigate allegations of abuse of children residing in facilities operated directly by the Department.

(b) The [CPS] county agency shall protect the safety of the subject child and other children in the home or facility.

(c) The [CPS] county agency shall determine the status of reports of suspected child abuse.

(d) The county agency may not determine a child to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

[(d)] (e) If the [CPS] county agency concludes that the child is in danger of further abuse, the [CPS] county agency shall do the following:

* * * * *

[(e)] (f) The [CPS] county agency shall provide direct case management of services provided to abused children and their families until the [CPS] county agency is reasonably assured that the child is no longer in danger of abuse. The reasons for termination of [CPS] the county agency involvement shall be recorded in the case record.

§ 3490.54. Independent investigation of reports.

Except for reports investigated by the Department, the [CPS] county agency shall investigate and make independent determinations on reports of suspected child abuse, regardless of another investigation conducted by another agency, the court or the police and regardless of whether or not the person making the report identified himself. A county agency may rely on an investigation of substantially the same allegations by a law enforcement agency to support the county agency's finding regarding a child abuse report.

§ 3490.55. Investigation of reports of suspected child abuse.

(a) Except as provided in subsection (b), the [CPS] county agency shall begin its investigation within 24 hours of receiving a report of suspected child abuse. Upon beginning its investigation, the [CPS] county agency shall see the child [as soon as possible] within 24 hours of receipt of the report.

(b) The [CPS] county agency shall begin the investigation immediately upon receipt of a report of suspected child abuse and see the child immediately if one of the following applies:

(1) Emergency protective custody has been [or shall be] taken or is needed.

* * * * *

(c) After ensuring the immediate safety of the child and other children in the home, the [CPS] county agency shall [orally] verbally notify ChildLine of the receipt of the report, if it was not received initially from ChildLine.

(d) When conducting its investigation, the [CPS] county agency shall, if possible, conduct an interview with those persons who are known to have or may reasonably be expected to have, information relating to the incident of suspected child abuse including [, but not limited to, all of] the following:

* * * * *

(6) Neighbors and relatives who may have knowledge of the abuse.

(7) Day care providers or school personnel, or both, if appropriate.

(e) The [CPS] county agency shall record in writing the facts obtained as a result of the [interview] interviews conducted under subsection (d) and any other [interview] interviews it conducts.

(1) When conducting its investigation, the [CPS] county agency shall maintain a written record of the facts obtained from each interview it conducts.

(2) At the conclusion of its investigation, when the report is determined indicated [or], founded [,] or unfounded and accepted for services, under § 3490.59 (relating to action by the county agency after determining the status of the report), the [CPS] county agency shall enter a written summary of the facts obtained from each interview in the case record.

(f) When investigating a report of suspected child abuse in which a child has sustained visible injury, the [CPS] county agency shall, whenever possible and appropriate, take, cause to be taken [,] or obtain a color photograph of the injury.

* * * * *

(2) The [CPS] county agency shall maintain photographs it secures in the case record. Photographs shall be identified by [all of] the following:

* * * * *

(g) When investigating a report of suspected [child abuse] serious mental injury, sexual abuse or sexual exploitation or serious physical neglect, the [CPS] county agency shall, whenever appropriate, obtain medical evidence or expert consultation, or both. The [CPS] county agency shall maintain a record of medical evidence or expert consultation, or both, obtained during its investigation including one of the following:

* * * * *

(h) If the investigation indicates serious physical injury, a medical examination shall be performed on the subject child by a certified medical practitioner. If there is reasonable cause to suspect there is a history of prior or current abuse, the medical practitioner has the authority to arrange for further medical tests or the county agency has the authority to request further medical tests.

§ 3490.56. [CPS] County agency investigation of suspected child abuse perpetrated by persons employed or supervised by child [caring agencies] care services and residential facilities.

(a) In addition to complying with other applicable sections of the CPSL and this chapter, when investigating a report of suspected child abuse perpetrated by a person who operates, is employed by or acting as a volunteer for a child care [agency] service, including a child day care center, a group or family day care home or a residential facility, the [CPS] county agency, shall, within 24 hours of receipt of the report, [orally] verbally notify the following of the content of the report:

(1) The person in charge of the facility or [agency] child care service where the alleged abuse occurred.

* * * * *

(3) The person in charge of the county agency with custody or supervision of the child.

(4) The regional office of the Department that is responsible to license, register or approve the child care service or residential facility.

(b) The person in charge of the child care service or residential facility shall implement a plan of supervision or alternative arrangements to ensure the safety of the child and other children who are in the care of the child care service or facility during the investigation. The plan of supervision or alternative arrangements shall be in writing, approved by the county agency and kept on file by the county agency until the investigation is completed. When the plan is approved by the county agency, the county agency shall immediately send a copy of the approved plan to the appropriate regional licensing director or designee.

[(b)] (c) The [CPS] county agency shall inform the persons listed in subsection (a) in writing of the results of the investigation.

[(c)] (d) The [CPS] county agency shall develop or revise the family service plan as required by Chapter 3130 (relating to administration of county children and youth social service programs) for the child and perpetrator if the report is founded or indicated and the case has been accepted for service.

[(d)] (e) If the report is founded or indicated, the [CPS] county agency shall request a written statement from the person in charge of the [agency] child care service or facility regarding the steps planned and taken to ensure the future safety of the subject child and other children in the care of the [agency] child care service or facility. The request shall be made within 5 calendar days of when the status determination was made. The person in charge of the child care service or facility shall submit a written response to the county agency within 10 calendar days of the mailing date of the county agency's letter. If the plan is unacceptable to the county agency, the county agency shall take appropriate action to ensure the safety of the children in the child care service or facility.

[(e)] (f) If the facility or [agency] child care service is operated, registered, licensed or approved by the Department, the [CPS] county agency shall send a copy of the completed form required by § 3490.67

(relating to written reports to ChildLine)—filed with ChildLine—and a copy of the written statement required by subsection [(d)] (e) to the regional [staff] director or the director's designee in the region where the founded or indicated abuse occurred.

§ 3490.57. Protective custody.

(a) The [CPS] county agency shall comply with [42 Pa.C.S. Chapter 63 (relating to) the Juvenile Act()], the CPSL and this chapter when taking a child into custody. Protective custody under this chapter may not be maintained longer than 72 hours without an informal hearing under section 6332 of the Juvenile Act (relating to informal hearing). If, at the informal hearing, it is determined that protective custody shall be continued and the child is alleged to be a dependent child under section 6302 of the Juvenile Act (relating to definitions), the county agency shall within 48 hours of the determination file a petition with the court under the Juvenile Act alleging that the child is a dependent child.

(b) The [CPS] county agency shall request protective custody only if the [child is at risk of immediate abuse and the] immediate safety and well-being of the child requires removal from the setting in which the alleged abuse or neglect occurred.

(c) A [CPS] county agency worker may take a child into protective custody only under a specific court order naming the individual child. [CPS] The county agency staff may not be deputized or use blanket [or vacant] court orders to take children into protective custody.

(d) A child taken into protective custody may be placed only in the following locations:

* * * * *

(2) A home of a relative of the child or [nonrelated family home] other individual who has a significant relationship with the child or the child's family. The home shall be approved by the [CPS] county agency for this purpose.

* * * * *

(e) If the [CPS] county agency initiates emergency protective custody, it shall notify the child's parents as required by § 3490.17 (relating to notifying the child's parents).

(f) Within 48 hours of taking a child into protective custody, the [CPS] county agency shall do the following:

* * * * *

(5) Meet with the parents to advise them of the decision to do one of the following:

* * * * *

(ii) Explain to the parents the reasons why the child will continue to be held in protective custody and the nature of future legal proceedings including the rights under sections 6337 and 6338 of the Juvenile Act (relating to right to counsel; and other basic rights) which are:

(A) The right to counsel.

(B) The right to introduce evidence and cross examine witnesses at the Juvenile Court hearing.

§ 3490.58. Notifications.

(a) Except for the subject child, the [CPS shall notify all subjects of the report of the following within 72 hours of receipt of a report of suspected child abuse:

- (1) The existence of the report.
- (2) The right to do the following:
 - (i) Obtain a copy of the report.
 - (ii) Request that indicated and founded reports be amended, sealed or expunged.
- (3) The fact that the report, if determined unfounded, will be expunged within 12 months.
- (4) The purpose of the law, the implications of the status determination of the report and the services available through the CPS.
- (5) The effect that a founded or indicated report of child abuse will have on a person seeking employment in a child care service under section 23.1 of the CPSL (11 P. S. § 2223.1).

(b) Except for the subject child, the CPS shall notify all subjects if it determines that the report is unfounded. The CPS shall provide this notification when it notifies ChildLine of the status of the report.

(c) The notifications required by subsections (a) and (b) shall be in writing and shall be made regardless of where the persons live] county agency shall notify the subject who is about to be interviewed of:

- (1) The existence of the report including the nature and allegations of the suspected abuse.
- (2) The subject's rights under sections 6337 and 6338 of the Juvenile Act (relating to right to counsel; and other basic rights) when a case goes to Juvenile Court. Those rights are:

- (i) The right to counsel.
 - (ii) The right to introduce evidence and cross examine witnesses.
- (3) The perpetrator's rights regarding amendment and expunction.
- (b) Within 72 hours of interviewing the subject, the county agency shall notify the subject in writing of:

- (1) The existence of the report and kind of alleged abuse.
- (2) The rights under sections 6337 and 6338 of the Juvenile Act when a case goes to Juvenile Court. Those rights are:
 - (i) The right to counsel.
 - (ii) The right to introduce evidence and cross examine witnesses.
- (3) The perpetrator's rights regarding amendment and expunction.
- (4) The right to obtain a copy of the report from the Statewide Central Register or the county agency.
- (5) The fact that the report, if determined unfounded, will be expunged from the pending complaint file within 120 calendar days from the date the report was received at ChildLine.

(6) The purpose of the law, the implications of the status determination of the report and the services available through the county agency.

(7) The effect that a founded or indicated report of child abuse will have on a person seeking employment in a child care service or in a school.

(8) That the agency has, will or may make a report to law enforcement officials.

(c) The written notice required by subsection (b) may be reasonably delayed if notification is likely to threaten the safety of the victim, the safety of a nonperpetrator subject or the safety of an investigating county agency worker, to cause the perpetrator to abscond or to significantly interfere with the conduct of a criminal investigation. The written notice shall be provided to all subjects prior to the county agency determining the status of the report and regardless of where the person lives.

(d) Except for the subject child, the county agency shall notify all subjects in writing of one of the following when the county agency determines that the report is unfounded:

(1) That the information will be kept on file at the county agency and clearly identified as an unfounded report of suspected child abuse when the family has been accepted for services.

(2) That the report is unfounded and because the family has not been accepted for services that all information will be expunged at the county agency upon notification from ChildLine and that the report will be expunged from the pending complaint file within 120 calendar days of receipt of the report at ChildLine.

(e) The county agency shall provide the notification required under subsection (d) when it notifies ChildLine of the status of the report.

§ 3490.59. Action by [CPS] the county agency after determining the status of the report.

(a) If the report is determined founded [or], indicated or unfounded and the family has been accepted for service, the [CPS] county agency shall develop and implement a family service plan and conduct plan reviews under Chapter 3130 (relating to administration of county children and youth social service programs).

(b) If the report is unfounded and [if] not accepted for services but the family is in need of services, the [CPS] county agency shall advise the subjects of the social services available [from the county agency and in the community].

§ 3490.60. Services available through the [CPS] county agency.

In addition to those services required in Chapter 3130 (relating to administration of county children and youth social service programs), the county agency shall provide, arrange or otherwise make available the following services for the prevention and treatment of child abuse:

(1) Emergency medical services which include appropriate emergency medical care for examination, evaluation and treatment of children suspected of being abused.

(2) Self-help groups [organized by former abusing parents] to encourage [self-reporting and] self-treatment of present and potential abusers.

(3) Multidisciplinary teams composed of professionals from a variety of disciplines who are consultants to the county agency in its case management responsibilities as required by Chapter 3130 who perform one of the following functions:

(i) Pool their knowledge and skills to assist the [CPS] county agency in diagnosing child abuse.

* * * * *

§ 3490.61. Supervisory review and child contacts.

(a) [Within 10 calendar days of the receipt of the initial report, the CPS] The county agency supervisor shall review each report of suspected child abuse which is under investigation on a regular and ongoing basis to determine the safety of the child and the progress made toward reaching a status determination. The supervisor shall maintain a log of these reviews.

(b) When a case has been accepted for service [, a CPS worker shall see the child as often as necessary but not less often than:

(1) Once a month for 6 months, if the child remains in or returns to the home in which the abuse occurred.

(2) Once a month until the next case review as required by Chapter 3130 (relating to administration of county children and youth social service programs) when the child is either:

(i) Placed out of the home or setting in which the abuse occurred.

(ii) Remains in the same foster family home or residential facility in which the abuse occurred.] and a family service plan has been developed under Chapter 3130 (relating to the administration of county children and youth social service programs), the county agency supervisor shall, within 10 calendar days of the completion of the family service plan, review the plan to assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family which are contained in the plan, are consistent with the level of risk determined by the county agency for the case. Documentation of this review shall be in the case record.

(c) When a case has been accepted for service, the county agency shall monitor the safety of the child and assure that contacts are made with the child, parents and service providers. The contacts may occur by phone or in person but face-to-face contacts with the parent and the child shall occur as often as necessary for the protection of the child but no less often than:

(1) Once a week until the case is no longer designated as high risk by the county agency, if the child remains in or returns to the home in which the abuse occurred and the county agency has determined a high level of risk exists for the case.

(2) Once a month for 6 months or case closure when the child is either:

(i) Placed out of the home or setting in which the abuse occurred.

(ii) Not at a high risk of abuse or neglect.

§ 3490.62. Repeated child abuse.

(a) The [CPS] county agency worker shall inform the county agency administrator or the [CPS] county agency supervisor, as determined by the administrator, if a child is the victim of a second indicated or founded case of child abuse. The administrator or supervisor shall determine the appropriateness of the family service plan and the completeness of its implementation and whether additional or different services are required to protect the child from continued harm. The [CPS] county agency shall modify the family service plan, if necessary.

(b) If the child is a victim of three or more substantiated incidents of abuse, the county agency administrator or [CPS] supervisor shall arrange for a review by the multidisciplinary team as required by § 3490.60 (relating to services available through the [CPS] county agency). The [CPS] county agency shall modify the family service plan, if necessary and appropriate, to reflect the recommendations of the multidisciplinary team and implement action necessary to fulfill the recommendations.

§ 3490.63. [Waiver of CPS unit] (Reserved).

[(a) County executive officers may request the Department to waive the requirement to establish a separate CPS. The request for waiver shall be included in the CPS plan and demonstrate that the following apply:

(1) A separate CPS would not be conducive to the best interests of children within the county who need children and youth social services.

(2) A separate CPS would not be feasible or economical.

(3) The goals and objectives of the CPSL and this chapter will continue to be met if a waiver is granted.

(b) Counties granted waivers of a separate CPS are responsible for implementing other provisions of the CPSL and this chapter.]

§ 3490.64. [CPS plan] (Reserved).

[The county shall comply with Chapter 3140 (relating to planning and financial reimbursement requirements for county children and youth social service programs) regarding the development and submission of a plan for the provision of child protective services.]

§ 3490.65. Staffing and staff qualifications.

A [CPS] county agency shall have sufficient, qualified staff and be organized to perform the functions required by the CPSL and this chapter. [The CPS shall comply with staffing ratios under Chapter 3130 (relating to administration of county children and youth social service programs).]

§ 3490.66. [Staff orientation and training] (Reserved).

[(a) A staff person performing the functions required by the CPSL and this chapter shall be oriented and trained under Chapter 3130 (relating to administration of county children and youth social service programs). The orientation of new and reassigned staff shall include a review of the following:

(1) The authority and policies of the county agency regarding child protective services.

(2) The provisions of State statutes and regulations governing the county agency and child protective services.

(b) The county agency shall provide or arrange at least 20 hours of training annually for an employe performing the functions required by the CPSL and this chapter. The training shall relate to the employe's needs and functions under the CPSL and this chapter.

(c) The county agency shall maintain a record in an employe's personnel file of the orientation and training provided under subsections (a) and (b).]

§ 3490.67. Written reports to ChildLine.

(a) [The CPS investigation report shall be sent to ChildLine within 30 days of receipt of the report of suspected child abuse.

(b) If the investigation cannot be completed within 30 days and the CPS has petitioned the court, the CPS shall send a copy of the CPS investigation report form to ChildLine with a status determination of pending juvenile court action. The CPS shall submit a new CPS investigation report form to ChildLine as required in subsection (a) when a final status determination is made.

(c) A supplemental child abuse report form shall be submitted to ChildLine on founded and indicated reports when there is a change in the status determination of the report.]

The county agency shall send the Child Protective Service Investigation Report form (CY-48) to ChildLine within 30 calendar days of the receipt of the report of suspected child abuse.

(b) If the investigation cannot be completed within 30 calendar days and the county agency has petitioned the Juvenile Court, the county agency shall send a copy of the CY-48 to ChildLine with one of the following status determinations:

(1) Pending juvenile court action.

(2) Indicated, when there is substantial evidence that the child was abused.

(c) If the investigation cannot be completed within 30 calendar days because an arrest has been made or there is criminal court action pending, the county agency shall send the CY-48 to ChildLine with one of the following status determinations:

(1) Pending criminal court action.

(2) Indicated, when there is substantial evidence that the child was abused.

(d) The county agency shall submit a new CY-48 to ChildLine as required in subsection (a) when a final status determination is made under subsections (b) and (c).

(e) A supplemental child abuse report form shall be submitted to ChildLine on founded and indicated reports when additional case information is obtained including dates of birth, identity of the subjects, additional information about the nature of the abuse or the case is presented before a court and there is a change in the status of the report.

§ 3490.68. Retention of information on unfounded reports.

(a) [If a subject of an unfounded report needs and voluntarily accepts services, the county agency may retain those portions of its records which do not indicate that services are needed as a result of a report of alleged child abuse or identify the person who made the report or a person who cooperated in the investigation.] When the county agency accepts an unfounded report of suspected child abuse for services, the agency shall maintain the records under Chapter 3130 (relating to administration of county children and youth social service programs).

(b) If the [CPS] county agency has determined that a report is unfounded, the status of the report may not be changed subsequently to founded or indicated. If additional information surrounding the incident becomes available, the [CPS] county agency shall file a new report with ChildLine.

§ 3490.69. Reports not received within 60 calendar days.

When the [CPS investigation report] Child Protection Services Investigative Report CY 48 form is not filed with ChildLine within 60 calendar days of receipt of the report by ChildLine, the report shall be unfounded.

§ 3490.70. Expunction, sealing and amendment of report by the [CPS] county agency.

The [CPS] county agency shall amend, seal or expunge a record of child abuse upon notification from ChildLine. The county agency shall expunge all information in its possession in unfounded, founded and indicated reports of child abuse upon notification from ChildLine. The [CPS] county agency shall notify those to whom they gave information to take similar action.

§ 3490.71. Guardian ad litem or court designated advocate.

The [CPS] county agency shall cooperate with and provide information to a guardian ad litem appointed under [23 Pa.C.S. §] section 6382 of the CPSL (relating to guardian ad litem for child in court proceedings) or the court designated advocate. When appropriate, because of the age or mental and emotional condition of the child, the guardian ad litem in addition to representing the best interests of the child shall also determine the wishes of the child concerning the proceedings and shall communicate this information to the court.

§ 3490.72. [Availability of an attorney for the CPS] (Reserved).

[The county agency shall retain or ensure the availability of an attorney for consultation with and representation of the CPS.]

§ 3490.73. Petitioning the court.

The [CPS] county agency shall petition the court if one of the following applies:

* * * * *

(2) A subject of the report of suspected child abuse refuses to cooperate with the [CPS] county agency in

an investigation, and the [CPS] county agency is unable to determine whether the child is at risk.

(3) The parents refuse services, and [CPS] the county agency determines that services are in the best interests of the child.

CHILD ABUSE BY AGENTS OF THE COUNTY AGENCY

§ 3490.81. Responsibilities of the Department and the county agency.

(a) When the suspected abuse has been committed by an agent of the county agency, the regional staff shall investigate the report under section [16(a)] 6362 of the CPSL (relating to responsibilities of county agency for child protective services) [(11 P. S. § 2216(a))] and this chapter. The regional staff may not do any of the following:

* * * * *

CONFIDENTIALITY

§ 3490.91. Persons to whom child abuse information shall be made available.

(a) Reports, report summaries and other accompanying information obtained under the CPSL and this chapter in the possession of the Department [,] and a county agency [and a CPS] are confidential. Except for the subject of a report, persons who receive information under this section shall be advised that they are subject to the confidentiality provisions of the CPSL and this chapter, that they are required to insure the confidentiality and security of the information and that they are liable for civil and criminal penalties for releasing information to persons who are not permitted access to this information. This material shall only be released under the CPSL and this chapter and be made available only to the following:

(1) An authorized official of a [CPS in the course of official duties] county agency or of an agency of another state that performs protective services analogous to those services performed by county agencies or the Department in the course of the official's duties, multidisciplinary team members assigned to the case, and authorized persons providing services by referral or under section [17(8)] 6364 of the CPSL (relating to purchasing services of other agencies) [(11 P. S. § 2217(8))]. The name of the person who made the report or cooperated in the investigation may be released to county agencies in this Commonwealth and out-of-State agencies providing protective services if they have a legitimate need to know this information and they can assure the confidentiality of the identity of the person who made the report or cooperated in the investigation.

* * * * *

(3) A guardian ad litem or court designated advocate for the child.

(4) An authorized official or agent of the Department including the following:

* * * * *

(iv) Authorized officials or agents of the Department who are conducting a performance audit as authorized [by] of the CPSL under section 6343 (relating to investigating performance of county agency) and this chapter.

(5) A court of competent jurisdiction under a court order or a court of common pleas upon written request from a judge in connection with any matter involving custody of a child.

(i) When the Department receives a written request under this subsection, ChildLine will send to the court copies of the following:

(A) The Report of Suspected Child Abuse (CY 47).

(B) The ChildLine Report of Suspected Child Abuse and Neglect For ChildLine Use Only (CY 47C).

(C) The Child Protective Service Investigation Report (CY 48).

(D) The Child Protective Service Supplemental Report (CY 49) on file at ChildLine involving the subject child, the child's siblings and their parents.

(ii) If the court requests specific files or information that is not on file at ChildLine, ChildLine will notify the county agency administrator to provide the information directly to the court. The information provided by the county agency is limited to child abuse information from when the report of suspected abuse was made to when the county agency determined the status of the report.

(6) A standing committee of the General Assembly, under section [24] 6384 of the CPSL (relating to legislative oversight) [(11 P. S. § 2224)].

* * * * *

(8) Federal auditors, if required for Federal financial participation in funding of agencies, but Federal auditors may not [have access to identifying information] remove identifiable reports or copies of them from the Department or county agencies.

(9) Law enforcement officials of any jurisdiction inside or outside of this Commonwealth if the information is relevant in the course of investigating cases of [the following]:

* * * * *

(iv) A report of a missing child when the child or the child's sibling is the subject of a report on file at ChildLine.

(10) Law enforcement officials who shall receive reports of suspected child abuse from the [CPS] county agency, when the initial report or initial review by the [CPS] county agency gives evidence that the alleged abuse is one of the following:

* * * * *

(11) [County executive officers, to whom the Department will forward specific files, upon request, for review if investigating the competence of county children and youth employes.] Designated county officials in reviewing the competence of the county agency or its employes under the CPSL and this chapter. Officials under this paragraph are limited to the following:

(i) The board of commissioners in counties other than counties of the first class.

(ii) The mayor of a city of the first class under the First Class City Home Rule Act (53 P. S. §§ 13101—13157).

(iii) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government.

(12) A subject of the report [as required by § 3490.104 (relating to release of information to a subject of a report)].

(13) A person, agency or institution, upon written consent of all subjects of the report may receive a copy of the reports on file with the county agency and ChildLine.

* * * * *

(15) Required reporters of suspected child abuse whose access to information is limited to the following:

* * * * *

(ii) Services provided [,] or arranged [for or to be provided] by the [CPS] county agency to protect the child from further abuse. This information may be released to the required reporter at any time after the report of suspected child abuse has been made.

(16) A prospective adoptive parent, approved by an adoption agency, when considering adopting an abused child in the custody of a county agency. The adoption agency and the county agency having custody of the child shall determine the scope and detail of information which must be provided so that the prospective parent may make an informed decision to adopt.

(b) [Effective January 1, 1986, prospective] Prospective child care service employe applicants, prospective adoptive and foster parents, prospective administrators and prospective operators of child care services, and [persons] any person seeking voluntary certification may request and receive information concerning whether there exists on file in the Statewide Central Register indicated or founded reports of child abuse naming the person as perpetrator of child abuse under section [23.1] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [(11 P. S. § 2223.1)].

(c) Information on file at the Statewide Central Register as a result of a request to amend, seal or expunge a founded or indicated report of child abuse under §§ 3490.105 and 3490.105a (relating to request by the subject of a founded or indicated report for expunction, amendment or sealing of an abuse report filed with ChildLine prior to July 1, 1995; and request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995) may only be released to the Secretary or the Secretary's designees in the course of their official duties and the Attorney General when conducting an audit under section 6345 of the CPSL (relating to audits by Attorney General).

(d) A person, including a law enforcement official, who willfully breaches the confidentiality or security of information that the person received under this section, in addition to other civil or criminal penalties provided by law, shall be denied access to any confidential child abuse information in the future.

§ 3490.92. Requests by and referrals to law enforcement officials.

(a) Requests for child abuse information by law enforcement officials under § 3490.91(a)(9) (relating to persons to whom child abuse information shall be made available) shall be made with the following requirements:

* * * * *

(2) Requests shall indicate that the child abuse information is needed by the law enforcement official in the course of investigating a case of the following:

* * * * *

(iv) A missing child report.

(3) The information shall include the name of the persons who made the report and who cooperated in the investigation when requested by the law enforcement official.

(b) Referrals to law enforcement officials required by § 3490.91(a)(10) shall be made with the following requirements:

(1) Referrals shall be made by the [CPS] county agency to the district attorney or other appropriate law enforcement official [on forms provided by the Department].

(2) Referrals shall be made if the initial report to or initial review by the [CPS] county agency gives evidence that the alleged abuse perpetrated by persons whether or not related to the child is one of the following:

* * * * *

(3) Referrals shall be made if the initial report to or initial review by the [CPS] county agency give evidence that the alleged abuse is child abuse perpetrated by persons who are not family members.

(4) If during the course of investigating a report of suspected child abuse, the [CPS] county agency obtains evidence which indicates that referral to law enforcement officials is appropriate, the [CPS] county agency shall immediately refer the report to the law enforcement official.

(5) The [CPS] county agency [shall] may not refer to law enforcement officials reports of suspected child abuse which do not meet the requirements of paragraphs (2) and (3).

(6) Reports shall be made verbally under policies and procedures developed in conjunction with the district attorney and other law enforcement officials.

(7) Reports shall be made in writing on the next work day when the report is made verbally or within 24 hours of when the county agency determines that the report meets the criteria for making a report to law enforcement officials. Written reports shall be made on forms developed by the Department.

(8) The county agency shall release the names of the persons who made the report or cooperated in the investigation to law enforcement officials upon request.

(c) If the complaint of suspected abuse is determined to be one which cannot be investigated by the county agency because the person accused of the abuse is not a perpetrator, but does suggest the

need for investigation, the county agency shall immediately transmit the information to the appropriate authorities.

[(c)] (d) The **[CPS shall]** county agency may not provide information to a law enforcement official under this section, unless the law enforcement official **is known to or** has exhibited proper identification to the **[CPS]** county agency.

(e) Law enforcement officials shall treat all reporting sources and persons who cooperated in the investigation as confidential informants.

§ 3490.93. Requests by **designated** county **[executive officers]** officials.

Requests for child abuse information by **designated** county **[executive officers]** officials under § 3490.91(a)(11) (relating to persons to whom child abuse information shall be made available) shall be made under the following requirements:

(1) Requests shall be made in writing and addressed to **[the Deputy Secretary of the Office of Children, Youth and Families]** the county administrator.

(2) Requests shall be signed by **[a]**:

(i) A majority of the county **[executive officers]** commissioners.

(ii) The mayor of a city of the first class.

(iii) The county chief executive.

(3) Requests shall indicate that the information is needed by the **designated** county **[executive officers]** officials as part of an investigation of the competence of a county **[children and youth]** agency or county agency employe.

(4) Requests shall identify the specific files needed **[by the county executive officers]**.

(5) The county agency shall provide the requested information and inform the designated county officials that the information may not be released to anyone except those permitted access to this information under § 3490.91 (relating to persons to whom child abuse information shall be made available) and that they are subject to § 3490.102 (relating to criminal liability for breach of confidentiality).

§ 3490.94. Release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation.

(a) **[The]** Except for the release of the identity of the persons who made a report of suspected child abuse or cooperated in the investigation under §§ 3490.91(a)(9) and (10) and 3490.92(a)(3) (relating to persons to whom child abuse information shall be made available; and requests by and referrals to law enforcement officials), the release of data that would identify the person who made a report of suspected child abuse or person who cooperated in a subsequent investigation is prohibited, unless the Secretary finds that the release will not be detrimental to the safety of the person.

(b) Prior to releasing information under subsection (a) to anyone other than a law enforcement official under subsection (a), the Secretary will notify

the person whose identity would be released that **[he]** the person has **[45]** 30 calendar days to advise the Secretary why this anticipated release would be detrimental to **[his]** the person's safety.

§ 3490.95. Release of information to required reporters.

The release of information by the **[CPS]** county agency to required reporters under § 3490.91(a)(15) (relating to persons to whom child abuse information shall be made available) is subject to the following:

(1) The information released by the **[CPS]** county agency shall concern the same child who was the subject of the report made by the required reporter **[who is requesting the information]**.

(2) The required reporter shall request the information, either **[orally]** verbally or in writing.

(3) Before releasing the allowable information, the **[CPS]** county agency shall verify the identity of the required reporter in one of the following ways:

(i) The **[CPS]** county agency shall be able to recognize the voice of the required reporter when the request is made **[orally]** verbally by telephone.

(ii) If the **[CPS]** county agency is not familiar with the required reporter and does not recognize the reporter's voice, the **[CPS]** county agency may verify the request of the required reporter by returning the telephone call to the reporter's place of employment.

(iii) If the **[CPS]** county agency is unable to verify a telephone request for information from a required reporter under subparagraphs (i) and (ii), the **[CPS]** county agency shall obtain a written request for information from the required reporter.

(4) The **[CPS]** county agency shall release the information under § 3490.91(a)(15) when requested by a required reporter.

(5) The **[CPS]** county agency may release the information under § 3490.91(a)(15) either **[orally]** verbally or in writing, to the required reporter whether or not a request for information was received.

(6) The **[CPS]** county agency shall inform the required reporter of **[his]** the reporter's obligation to protect the confidentiality of information released as required under **[section 15]** sections 6339 and 6340 (relating to confidentiality of reports; and release of information in confidential reports) of the CPSL **[11 P. S. § 2215]**.

(7) The **[CPS]** county agency shall make an entry of the request made by the required reporter and the response given in the case record.

[(8)] This section applies to reports of suspected child abuse made on or after January 5, 1988.]

[OTHER] GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

§ 3490.102. Criminal liability for breach of confidentiality.

[Any] A person who willfully releases or permits the release of data or information contained in the pending complaint file, the Statewide Central Register, or the

county agency records, to persons or agencies not permitted by this chapter to receive this information shall be guilty of a misdemeanor of the third degree. **In addition, the person shall be denied access in the future to any information that the person would otherwise be entitled to receive under the CPSL and this chapter.**

§ 3490.103. Nonabuse reports received by the county agency or other public agency from ChildLine.

Public agencies, including county agencies, shall evaluate those referrals from ChildLine made under section [14(f)] 6334 of the CPSL (relating to disposition of reports) [(11 P. S. § 2214(f))] which have not been identified as reports of suspected child abuse. If, after the evaluation, the agency has reason to [believe] suspect that child abuse occurred, the agency shall make a report of suspected abuse to ChildLine.

§ 3490.104. Release of information to a subject of a report.

(a) Upon written request to a [CPS] county agency or ChildLine, a subject of a report may receive at any time a copy of the reports filed with the [CPS] county agency and ChildLine. The identity of the person who made the report or a person who cooperated in a subsequent investigation may be released only under § 3490.94 (relating to release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).

(b) **Upon written request, a defendant in a criminal proceeding is entitled to the child abuse information in the possession of a county agency in accordance with applicable law. The information is limited to the county agency record from the date the report was made to the date the county agency determined the status of the report. The county agency shall send the requested information to the district attorney, who will decide what information will be released. The information that is released to the district attorney may not contain the identity of the person who made the report or cooperated in the investigation.**

§ 3490.105. Request by the subject of a founded or indicated report for expunction, amendment or sealing of an abuse report received by ChildLine prior to July 1, 1995.

* * * * *

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30 days from the date the request is received. The Secretary will notify subjects of the report and the appropriate [CPS] county agency of [his] the decision by first-class mail.

§ 3490.105a. Request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995.

(a) **A perpetrator of an indicated report of child abuse may request the Secretary to amend or expunge the report on the grounds that it is inaccurate or is being maintained in a manner inconsistent with the CPSL and this chapter. The request shall be in writing and postmarked within 45 calen-**

dar days of the mailing date of the letter from ChildLine under §§ 3490.40 and 3490.40a (relating to notifications regarding indicated reports; and notifications regarding founded reports).

(b) **The Secretary will decide within 30 calendar days whether or not to grant the request. The Secretary will notify the perpetrator, the county agency and other subjects in writing under one of the following:**

(1) **Except the subject child, all other subjects of the report when the decision is to grant the request.**

(2) **Only the perpetrator when the decision is to deny the request.**

(c) **The notification from the Secretary will be sent by first-class mail.**

§ 3490.105b. Request by a nonperpetrator subject to amend an indicated report of child abuse received after June 30, 1996.

Except for the status of an indicated or founded report of child abuse, a nonperpetrator subject may request the Secretary to amend a report received at ChildLine on or after July 1, 1996, on the basis that the information in the report is inaccurate.

§ 3490.106. Hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995.

(a) A subject of the report and the appropriate [CPS] county agency have the right to appeal the Secretary's decision to grant or deny a subject's request to amend, seal or expunge an indicated or founded report by filing an appeal with the Secretary.

(b) Appeals shall be in writing to the Secretary and be postmarked [no later than] within 45 calendar days from the date of the Secretary's notification letter to either grant or deny the request.

(c) If a subject or [CPS] county agency files an appeal under § 3490.105(a) (relating to request by the subject of a founded or indicated report for expunction, amendment or sealing of an abuse report received by ChildLine prior to July 1 1995), the subject or [CPS] county agency has the right to a hearing before the Department's [Office] Bureau of Hearings and Appeals.

* * * * *

(f) **The burden of proof in hearings held under this section is as follows:**

(1) **If a subject or [CPS] county agency appeals the Secretary's decision to grant a request to amend, seal or expunge an indicated or founded report, the subject or [CPS] the county agency that filed the appeal bears the burden of proof.**

(2) **The [CPS] county agency bears the burden of proof if a subject appeals the Secretary's decision to deny the request to amend, seal or expunge a report of child abuse.**

(g) [**The fact of a**] A court finding of fact of child abuse is presumptive evidence that the report was substantiated.

(h) Parties to a hearing held under this section have 30 days from the date of the final order of the [**Office**] **Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or appeal the final order to Commonwealth Court.**

§ 3490.106a. Hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995.

(a) A perpetrator may appeal the Secretary's decision to deny the request to expunge an indicated report by filing an appeal with the Secretary.

(b) The other subjects of the report and the county agency may appeal the Secretary's decision to grant the request to expunge the report.

(c) The request shall be made to the Secretary and postmarked within 45 calendar days of the date of the notification letter from the Secretary to either grant or deny the request to expunge the report.

(d) If an appeal is taken, there is a hearing before the Department's Bureau of Hearings and Appeals.

(e) Except as provided in subsection (f), hearings will be conducted under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedures).

(f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures).

(g) The burden of proof in hearings held under this section is upon:

(1) The subject or county agency when the subject or county agency appeals the Secretary's decision to grant a request to expunge an indicated report.

(2) The perpetrator when the perpetrator appeals the Secretary's decision to deny the request to amend or expunge an indicated report of child abuse.

(h) Parties to a hearing held under this section have 15 days from the mailing date of the final order of the Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or 30 days to appeal the final order to Commonwealth Court.

(i) An administrative appeal proceeding will be automatically stayed upon notice to the Department by any subject or the county agency that there is a pending criminal proceeding or a dependency or delinquency proceeding under the Juvenile Act, including an appeal thereof, involving the same factual circumstances.

§ 3490.108. Cooperation of county agencies and law enforcement agencies.

Consistent with this chapter, the county agencies and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to reports of suspected child abuse.

§ 3490.109. Report from law enforcement agencies.

The law enforcement agency shall, as soon as possible and without jeopardizing the criminal investigation or prosecution, advise the county agency as to whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution in cases of suspected child abuse. The county agency shall ensure that the information is referred to ChildLine in a timely manner.

VERIFICATION OF THE EXISTENCE OF CHILD ABUSE AND STUDENT ABUSE RECORDS FOR CHILD CARE SERVICES

§ 3490.121. Definitions.

The following words and terms, when used in this section and §§ 3490.122—[**3490.126**] **3490.127 (relating to verification of existence of child abuse records for child care services)** have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Applicant—A person who will have direct contact with children in a child care service, who does one of the following:

* * * * *

(iv) Is a candidate for participation in the [**community work experience**] **workfare** program under sections 405.1 and 405.2 of the Public Welfare Code (62 P. S. §§ 405.1 and 405.2).

Child care service—Child day care centers, group and family day care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, **early intervention** and drug and alcohol services for children; and other child care services which are provided by or subject to approval, licensure, registration[,] or certification by the Department or a county social services agency or which are provided under a contract with the Department or which are provided under a contract with the Department or a county social services agency. The term does not include services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

Child caretaker—A person whether compensated or not who provides care for a child and who voluntarily solicits certification from the Department under section [**23.1(k)**] **6344** of the CPSL (relating to information relating to prospective child-care personnel) [**(11 P. S. § 2223.1(k))**]. The term includes [**but is not limited to**] a babysitter, scout leader or den mother.

Direct contact with children—[**Care, supervision, guidance or control of a child by a paid employe of or a person under contract with a child care service**] **Access to children by a paid employe of or person under contract with a child care service who has routine and unsupervised access to children in the course of carrying out the employe's responsibilities in a child care service.**

* * * * *

Request for verification—A request to the [**ChildLine and abuse registry**] **Statewide Central Register** from an applicant, operator of a child care service, foster parent or adoptive parent or a child caretaker seeking voluntary certification to determine

whether [he] the applicant is named as a perpetrator in an indicated or founded report of child abuse.

§ 3490.122. Responsibilities of an applicant, prospective operator or legal entity of a child care service.

(a) An applicant or prospective operator of a child care service shall submit a request for verification on forms provided by the Department. The request for verification shall include a check or money order for the fee charged by the Department, payable to the Department of Public Welfare, which will not exceed \$10. Prospective [community work experience] workfare program participants are exempt from payment of the fee.

* * * * *

(c) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the Department has verified that the applicant or prospective operator is named in the [central register] Statewide Central Register as the perpetrator of a founded report of child abuse committed within 5 years or less prior to the request for verification.

(d) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the applicant's criminal history record information dictates that the applicant or prospective operator has been convicted of a crime as specified in section [23.1(e)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [11 P. S. § 2223.1(e)], or an equivalent out-of-State crime as determined by the Department [, within 5 years or less prior to the request for criminal record history information].

* * * * *

(f) An applicant or prospective operator of a child care service located in this Commonwealth who is not a resident of this Commonwealth is required to obtain a report of criminal history record [history] from the Federal Bureau of Investigation according to procedures established by the Department and on forms provided by ChildLine.

§ 3490.123. Responsibilities of [a] prospective adoptive [parent] parents, prospective foster [parent] parents, foster family care agencies and adoption investigators.

(a) A prospective adoptive parent or a prospective foster parent shall submit a request for verification on [properly prepared] forms provided by the Department. The request for verification shall include a check or money order for the fee charged by the Department, payable to the Department of Public Welfare, which will not exceed \$10.

(b) In the course of causing an investigation to be made under 23 Pa.C.S. § 2535(a) (relating to investigation), an agency or person designated by the court to conduct the investigation shall require prospective adoptive parents to submit the information in section [23.1(b)(1)—(3)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [([11 P. S. § 2223.1(b)(1)—(3)])] for review under subsection (d).

(c) In the course of approving a prospective foster parent, a foster family care agency shall require prospective foster parents to submit the information in section [23.1(b)(1)—(3)] 6344 of the CPSL [(11 P. S. § 2223.1(b)(1)—(3))] for review by the foster family care agency under subsection (d).

(d) A prospective adoptive parent or prospective foster parent may not be approved by a foster family care agency, an adoption agency, or a person designated by the court under 23 Pa.C.S. § 2535(a) when any of the following circumstances apply:

* * * * *

(2) The parent has been convicted of a crime under section [23.1(e)] 6344 of the CPSL [(11 P. S. § 2223.1(e))] or an equivalent out-of-State crime as determined by the Department [within 5 years or less prior to the request for criminal record history information].

* * * * *

§ 3490.124. Departmental procedures for replying to a request for verification [from an applicant, prospective operator of a child care service, prospective adoptive parent or prospective foster parent].

(a) Requests for verification received on [properly prepared Departmental forms] forms provided by the Department with a check or money order payable to the Department of Public Welfare in the amount charged by the Department will be processed. Prospective [community work experience program] workfare participants are exempt from payment of the fee. Others will be returned with instruction for resubmitting the request.

(b) The Department will advise the person seeking verification in writing whether or not [he] the person is named as a perpetrator of an indicated or founded report of child abuse or an indicated or founded report for a school employe in the [ChildLine and central registry] Statewide Central Register. If the person is named as a perpetrator of an indicated or founded report of child abuse or indicated or founded report for a school employe, the response will include the following information:

(1) The number of indicated or founded reports of child abuse and indicated or founded reports for a school employe in which the applicant is named as the perpetrator of child abuse or school employe responsible for student abuse.

(2) The date of the incidents of indicated or founded reports of child abuse and indicated or founded reports for a school employe.

§ 3490.125. Voluntary certification of child caretakers.

(a) A child caretaker may request certification from the Department that the requirements of section [23.1] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [(11 P. S. § 2223.1(b))] have been met.

(b) A child caretaker requesting voluntary certification who is a resident of this Commonwealth shall obtain a report of criminal history from the Pennsylvania State Police and submit it to the Department with the request for verification on [properly prepared] forms provided by the Department.

* * * * *

(d) The Department will reply to requests for voluntary certification by providing the following:

(1) A copy of the report of criminal history record information from the Pennsylvania State Police.

(2) A report of child abuse and student abuse history record information under § 3490.124 (relating to Departmental procedures for replying to a request for verification [from an applicant, prospective operator of a child care service, prospective adoptive parent or prospective foster parent]).

* * * * *

(f) [Requests for voluntary certification received on properly prepared Departmental forms with a check or money order payable to the Department in the amount charged by the Department will be processed.] The Department will process requests for voluntary certification it receives on the forms developed by the Department. The request shall include a check or money order payable to the Department of Public Welfare in the amount charged by the Department.

§ 3490.126. Sanctions.

(a) An administrator, or other person responsible for employment decisions in a child care facility or program who willfully fails to comply with section [23.1] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [(11 P. S. § 2223.1)] is subject to civil penalty not to exceed \$2,500.

(b) Information received by a legal entity, an administrator, the Department or the Department of Health under § 3490.124 (relating to Departmental procedures for replying to a request for verification [from an applicant, prospective operator of a child care service, prospective adoptive parent or prospective foster parent] is confidential and the legal entity, administrator, the Department and the Department of Health are subject to § 3490.102 (relating to criminal liability for breach of confidentiality).

§ 3490.127. Information relating to prospective child care personnel.

(a) The administrator of a child care service may employ applicants on a provisional basis for a single period of employment pending the receipt of the required clearances in accordance with section [23.1(d) or (e)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [(11 P. S. § 2223.1(d) or (e))].

* * * * *

(c) The administrator may employ an applicant on a provisional basis if the administrator has no knowledge or information that would disqualify the applicant from employment in accordance with section [23.1(d) or (e)] 6344 of the CPSL and if the applicant has complied with each of the following:

* * * * *

(3) Sworn or affirmed in writing that he was not disqualified from employment under section [23.1(d) or (e)] 6344 of the CPSL.

* * * * *

(e) If the provisional employe does not submit the required clearances within 30 or 90 calendar days of employment, whichever is applicable, the administrator shall do one of the following:

* * * * *

(2) Lay off or place the provisional employe on leave with or without pay [status] until the clearances are received.

* * * * *

(f) A provisional employe shall be immediately dismissed from employment if he is disqualified from employment under section [23.1(d) or (e)] 6344 of the CPSL.

VERIFICATION OF THE EXISTENCE OF CHILD ABUSE AND STUDENT ABUSE RECORDS FOR SCHOOL EMPLOYEES

§ 3490.131. Definitions.

The following words and terms, when used in this section and §§ 3490.132—3490.137, have the following meanings, unless the context clearly indicates otherwise:

Administrator—The person, including an independent contractor, responsible for employment decisions in a school.

Applicant—An individual who applies for employment as a school employe. The term includes an individual who transfers from one position as a school employe to another position as a school employe.

Clearance statement—An official clearance statement from the Department on whether an applicant's name is on file in the Statewide Central Register as a perpetrator in an indicated or founded report of child abuse or an indicated or founded report of student abuse.

Direct contact with students—Access to children by a school employe who has routine and unsupervised access to children in the course of carrying out the employe's responsibilities in a school.

Independent contractor and the contractor's employes—A person employed in a position on a contractual basis with a school who has direct contact with students.

Position—The job classification of a school employe as defined and determined by existing law, State regulation or the school board or governing authority including administrative and supervisory staff, teachers, paraprofessionals, support staff or others.

School—All schools including public and nonpublic schools as defined in the Public School Code (24 P. S. §§ 1-101—27-2702) and private academic schools as defined in 22 Pa. Code Part II (relating to State Board of Private Academic Schools), as follows:

(i) Public—School districts, intermediate units and area vocational-technical schools.

(ii) Registered—Nonpublic (religiously affiliated schools).

(iii) Licensed—Private academic schools that are licensed by the Department of Education (including residential facilities that hire their own staff to teach residents of the facility).

(iv) *Accredited*—Accredited by an accreditation association or organization.

(v) *State-owned*—Scotland School and Scranton School for the Deaf.

School employe—An individual employed in a position by a school. The term includes independent contractors and their employes. The term does not include individuals who have no direct contact with students.

Substitute list—A list, approved by the hiring authority of a school, containing the names of persons eligible to serve the school as substitute teachers or temporary replacements for other employes.

Transfer—A change from one position to another.

§ 3490.132. Responsibilities of an administrator.

(a) An administrator shall require each applicant to submit a clearance statement obtained from the Department within the immediately preceding year as to whether the applicant is named as the perpetrator of an indicated or founded report of child abuse or the individual responsible for an indicated or founded report of student abuse.

(b) A clearance statement shall be required for an applicant who transfers from one position to another position in the same school building or school district or organization and prior to the transfer has not obtained a clearance statement under subsection (a).

(c) A clearance statement is not required for an employe who moves within a school building or from one school to another school within the same school district or organization but does not change position.

(d) Except as provided in § 3490.134 (relating to information relating to prospective school employes), an administrator may not hire an applicant if the applicant is the perpetrator of a founded report of child abuse or the individual responsible for a founded report of student abuse.

(e) An administrator may not hire an applicant if the clearance statement is more than 1 year old as determined by the date on the clearance statement.

(f) School administrators shall, in their contracts with independent contractors and their employes who have direct contact with students, require contractors to include provisions for a clearance statement as required by this chapter.

(g) A clearance statement is required only prior to the initial hiring of a substitute and remains in effect as long as the substitute continues to be employed by the same school. When a substitute seeks to have his name added to another school's substitute list, the substitute shall provide a current clearance statement to the additional school. The fact that a substitute appears on one school's substitute list is not sufficient evidence to allow another school to add his name to its substitute list.

(h) The administrator shall make a copy of the clearance statement and place it in the employe's personnel record.

§ 3490.133. Responsibilities of an applicant.

(a) An applicant shall submit a request for a clearance statement to the Department on the form

provided by the Department. The request shall include a check or money order payable to the Department of Public Welfare. The fee may not exceed \$10.

(b) An applicant shall show the original clearance statement to the administrator and permit a copy to be made.

§ 3490.134. Information relating to prospective school employes.

(a) Section 3490.132 (relating to responsibilities of an administrator) does not apply to a person working in a school who is:

(1) Under 21 years of age.

(2) Participating in a job development or job training program.

(3) Employed for not more than 90 calendar days.

(b) An administrator may employ an applicant on a provisional basis if the following apply:

(1) The applicant attests in writing by oath or affirmation that he has submitted or will submit within 24 hours a request for a clearance statement and is not disqualified under § 3490.132.

(2) The administrator has no knowledge of information which would disqualify the applicant under § 3490.132.

(c) The provisional period may not exceed:

(1) Thirty calendar days for residents of this Commonwealth.

(2) Ninety calendar days for residents of another state.

(d) An administrator may not hire an applicant on a provisional basis during a strike under the Public Employe Relations Act (43 P. S. §§ 1101.201—1101.2301).

(e) If the applicant does not submit the clearance statement within 30 or 90 calendar days, whichever is applicable, the administrator shall do one of the following:

(1) Dismiss the provisional employe until the required clearance statement is received.

(2) Lay off or place the provisional employe on leave with or without pay until the clearance statement is received.

(3) Retain and reassign the provisional employe to a position that does not involve direct contact with children.

(f) An administrator shall immediately dismiss a provisional employe if the employe is the perpetrator of a founded report of child abuse or the individual responsible for causing serious bodily injury to or sexually abusing or sexually exploiting a student in a founded report of student abuse.

§ 3490.135. Responsibilities of the Department.

(a) Requests for clearance statements received on forms provided by the Department with a check or money order payable to the Department of Public Welfare in the amount charged by the Department will be processed. The Department will return the forms that are not completed properly with instructions for resubmitting the request.

(b) The Department will advise the person seeking a clearance statement in writing whether or not he is named as a perpetrator of an indicated or founded report of child abuse or an indicated or founded report for a school employe in the State-wide Central Register. If the person is named as a perpetrator of an indicated or founded report of child abuse or indicated or founded report for a school employe, the response will include the following information:

(1) The number of indicated or founded reports of child abuse and indicated or founded reports for a school employe in which the applicant is named as a perpetrator of child abuse or a school employe responsible for student abuse.

(2) The date of the incidents of indicated or founded reports of child abuse or indicated or founded reports for a school employe.

(c) The Department will comply with the request for an official clearance statement within 14 days of receipt of the request by the Department.

§ 3490.136. Sanctions.

An administrator who willfully violates section 6355 of the CPSL (relating to requirement) shall be subject to an administrative penalty of \$2,500. An action under section 6355 of the CPSL is governed by 2 Pa.C.S. Chapter 5, Subchapter A (relating to practice and procedure of Commonwealth agencies) and Chapter 7, Subchapter A (relating to judicial review of Commonwealth Department action).

§ 3490.137. Forms.

To obtain a form for the Clearance Statement, call the ChildLine Verification Unit at (717) 783-6211 and ask for a Pennsylvania Child Abuse History Clearance form.

(Editor's Note: Subchapter B is new and is printed in regular typeface to enhance readability.)

Subchapter B. ABUSE OF STUDENTS IN SCHOOL

INTRODUCTION

- Sec.
- 3490.141. Applicability.
- 3490.142. Purpose.
- 3490.143. Definitions.

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- 3490.151. Required reporting.
- 3490.152. Responsibilities of administrators and certain school employes.
- 3490.153. Information provided to the district attorney and law enforcement officials.
- 3490.154. Release of information by a school employe including an administrator.

LAW ENFORCEMENT RESPONSIBILITIES

- 3490.161. Responsibilities of law enforcement officials.

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- 3490.171. Receipt and investigation of reports of suspected student abuse.
- 3490.172. Coordination of an investigation.
- 3490.173. Notifications by the county agency.
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GENERAL REQUIREMENTS FOR STUDENT ABUSE

- 3490.191. Request by a school employe to amend or expunge an indicated report of student abuse.

- 3490.192. Request for a hearing by a school employe for indicated reports of student abuse.
- 3490.193. Other provisions.

INTRODUCTION

§ 3490.141. Applicability.

This subchapter applies to the Department, county agencies, law enforcement officials and schools.

§ 3490.142. Purpose.

The purpose of this subchapter is to implement the provisions of the CPSL that relate to student abuse.

§ 3490.143. Definitions.

In addition to the definitions in § 3490.4 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Administrator—The person, commonly referred to as the principal, responsible for the administration of a school. The term includes an independent contractor of a school.

Founded report for a school employe—A report of student abuse if there is any judicial adjudication based on a finding that the student suffered serious bodily injury or sexual abuse or exploitation, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegations of student abuse.

Indicated report for a school employe—A report of student abuse if an investigation by the county agency determines that substantial evidence of serious bodily injury or sexual abuse or exploitation exists based on one or more of the following:

- (i) Available medical evidence.
- (ii) The county agency's investigation.
- (iii) An admission of causing serious bodily injury to a student or sexually abusing or sexually exploiting a student by the school employe.

School—All schools including public and private schools as defined in the Public School Code (24 P. S. §§ 1-101—27-2702) and private academic schools as defined in 22 Pa. Code Part II (relating to State Board of Private Academic Schools).

School employe—A person employed by or under contract with a school.

Student—An individual enrolled in a school who is under 18 years of age.

Student abuse—One or more of the following:

- (i) Serious bodily injury.
- (ii) Sexual abuse or sexual exploitation when committed by a school employe against a student.

Subjects of a report—The child, parent, guardian or other person responsible for the welfare of the child and the school employe named in a report of suspected student abuse.

Unfounded report for a school employe—Any report of student abuse. The term does not include a founded report for a school employe or an indicated report for a school employe.

SCHOOL RESPONSIBILITIES

§ 3490.151. Required reporting.

- (a) A school employe who has reasonable cause to suspect, on the basis of professional or other training and

experience, that a student coming before the school employe in the employe's professional or official capacity is a victim of serious bodily injury or sexual abuse or sexual exploitation by another school employe, shall immediately notify the administrator of the alleged abuse or injury.

(b) When a school employe learns of suspected student abuse from another person, the school employe shall notify the administrator of the alleged student abuse if the school employe has reasonable cause to suspect, on the basis of professional or other training and experience, that the student is a victim of serious bodily injury or sexual abuse or sexual exploitation by a school employe.

(c) If an administrator learns of suspected student abuse from another person, the administrator shall make a report of suspected student abuse as required by this subchapter.

§ 3490.152. Responsibilities of administrators and school employes.

(a) An administrator, and in certain cases a school employe, shall report immediately to law enforcement officials and the appropriate district attorney a report of abuse or injury alleged to have been committed by a school employe against a student. If an administrator is the school employe who suspects injury or abuse, the administrator shall make a report to law enforcement officials and the appropriate district attorney.

(b) If the administrator is the employe suspected of abusing the student, the school employe who suspects the abuse shall immediately report that information to law enforcement officials and the appropriate district attorney.

(c) The verbal report shall be followed up with a written report on a form provided by the Department.

§ 3490.153. Information provided to the district attorney and law enforcement officials.

The school official shall provide the following information to the district attorney and law enforcement officials on a form provided by the Department:

- (1) The name, age and home address of the student.
- (2) The name and address of the school.
- (3) The name and address of the student's parent or guardian.
- (4) The name and address of the administrator or school employe who made the report.
- (5) The name, work and home address of the school employe suspected of abusing the student.
- (6) The nature of the alleged offense.
- (7) Specific comments or observations that are directly related to the alleged incident and the individuals involved.

§ 3490.154. Release of information by a school employe including an administrator.

(a) **Information in a student abuse report is confidential and may only be released by a school employe who made a report of suspected student abuse to:**

- (1) The administrator.
- (2) A law enforcement official in the course of investigating the allegation of suspected student abuse.
- (3) A county agency worker.

(4) A school official in the course of conducting an internal investigation of the allegation of suspected student abuse.

(5) The appropriate persons in a licensing proceeding, disciplinary action, appeal proceeding, civil or criminal proceeding.

(6) Any social services agency or person providing services to the child and the child's family.

(b) Subsection (a)(2)—(6) applies to an administrator when the administrator made the report of suspected student abuse.

LAW ENFORCEMENT RESPONSIBILITIES

§ 3490.161. Responsibilities of law enforcement officials.

(a) Law enforcement officials, in cooperation with the district attorney, shall accept the report of suspected student abuse for investigation and determine what criminal charges, if any, will be filed against the school employe.

(b) Law enforcement officials shall notify the county agency in the county where the alleged student abuse occurred when law enforcement officials have reasonable cause to suspect, on the basis of their initial review, that there is evidence of suspected student abuse.

COUNTY RESPONSIBILITIES

§ 3490.171. Receipt and investigation of reports of suspected student abuse.

(a) The county agency is the sole civil agency responsible for investigating reports of suspected student abuse. The investigation shall be conducted by a protective service worker.

(b) When a county agency receives a report of suspected student abuse, it shall immediately notify ChildLine of the receipt of the report and begin an investigation as soon as possible.

(c) At a minimum, the county agency shall have a face-to-face interview with the child, witnesses to the abuse and the school employe suspected of causing the abuse, unless the employe refuses to be interviewed.

(d) The county agency's investigation shall be completed within 60-calendar days of when the report was received by ChildLine. The county agency shall submit a Child Protective Service Investigation Report form to ChildLine with a status determination of founded, indicated, unfounded or pending criminal court action. If the Child Protective Service Investigation Report form is not received within 60-calendar days from the date the report was received by the county agency, the report shall be considered unfounded.

(e) If the investigation cannot be completed within 60-calendar days because an arrest has been made or there is criminal court action pending, the county agency shall send the County Agency Investigation Report to ChildLine with a status determination of one of the following:

- (1) Pending criminal court action.
- (2) Indicated, when there is substantial evidence that the child was abused.

(f) The county agency shall submit a new Child Protective Service Investigation Report form to ChildLine as required in subsection (a) when a final status determination is made.

§ 3490.172. Coordination of an investigation.

(a) The county agency and law enforcement officials shall coordinate their investigations to the fullest extent possible. Interviews with the student shall be conducted jointly. Law enforcement officials may interview the school employe prior to the county agency contacting the employe.

(b) The joint interview with the child may be waived on an individual case-by-case basis if both the county agency and law enforcement official agree that it is in the best interest of the child.

(c) The county agency and law enforcement officials shall keep each other informed of their respective investigations.

(d) The county agency and law enforcement officials shall avoid taking or arranging to have taken duplicate photographs, medical tests or X-rays of a student, whenever possible.

(e) The county agency may rely on a factual investigation of substantially the same allegation by a law enforcement official to support the agency's finding. This reliance does not relieve the county agency from conducting its own investigation.

§ 3490.173. Notifications by the county agency.

(a) Prior to the initial interview with a subject of a report of student abuse, the county agency shall verbally notify the subject of the existence of the report, the allegations of abuse and the school employe's rights regarding amendment and expunction.

(b) Within 72 hours of the initial interview, the county agency shall notify the subject in writing of the following:

- (1) The existence of the report.
- (2) The allegations of abuse.
- (3) The school employe's rights regarding amendment and expunction.
- (4) The right to obtain a copy of the report from ChildLine or the county agency.
- (5) The fact that unfounded reports are expunged within 120-calendar days of receipt of the report by ChildLine.

(6) The effect that a founded or indicated report of child abuse or student abuse has on a school employe responsible for student abuse seeking employment in a child care service or as a school employe.

(c) The written notice shall be given to all subjects before the status determination is submitted to ChildLine.

(d) The county agency shall notify, in writing, the district attorney and the law enforcement officials who conducted the investigation and the school administrator or employe, or both, who made the report to the district attorney and law enforcement officials of the status of the report when the county agency notifies ChildLine of the status of the report.

§ 3490.174. Services for students.

The county agency shall assist the student who was abused and the student's parents in locating services for the student, if necessary.

§ 3490.175. Expunction and amendment of reports of student abuse by the county agency.

The county agency shall amend a record of student abuse upon notification from ChildLine. The county

agency shall expunge all information in its possession in unfounded, indicated and founded reports of student abuse upon notification from ChildLine.

DEPARTMENTAL RESPONSIBILITIES**§ 3490.181. Agents of the county agency.**

The regional staff of the Department will investigate reports of suspected student abuse when the person alleged to have abused the student is an agent of the county agency.

§ 3490.182. ChildLine files.

ChildLine will establish three files for reports of student abuse as follows:

(1) The pending complaint file for reports under investigation which shall contain the following information:

- (i) The name and address of the student and the student's parents or guardians.
- (ii) Where the suspected abuse or injury occurred.
- (iii) The age and sex of the student.
- (iv) The nature and extent of the suspected abuse or injury.

(v) The name and home address of the school employe alleged to have committed the abuse or injury.

(vi) The relationship of the school employe alleged to have committed the abuse to the student who was allegedly abused by the school employe.

(vii) The source of the report (the name of the law enforcement official) to the county agency.

(viii) The actions taken by the county agency, law enforcement officials, parents, guardians, school officials or other persons, including the taking of photographs, medical tests and X-rays.

(2) The Statewide Central Register of indicated and founded reports for school employes which shall contain the following information:

- (i) The name, Social Security number, date of birth and sex of the subjects of the report.
- (ii) The home address of the subjects of the report.
- (iii) The date and the nature and extent of the abuse.
- (iv) The county in which the abuse occurred.
- (v) The factors contributing to the abuse.
- (vi) The relationship of the school employe who abused the student to the student.
- (vii) The source of the report (name of school administrator/school employe who made the report to a law enforcement official and the district attorney).
- (viii) Whether the report is a founded or indicated report.

(ix) Information obtained by the Department in relation to a school employe's request to release, amend or expunge information retained by the Department or the county agency.

(x) The progress of any administrative or civil legal proceedings brought on the basis of the report.

(xi) Whether a criminal investigation was done and the result of the investigation and of any criminal prosecution.

(3) The file of unfounded reports awaiting expunction which contains the same information that is in the Statewide Central Register.

GENERAL REQUIREMENTS FOR STUDENT ABUSE

§ 3490.191. Request from a school employe to amend or expunge an indicated report of student abuse.

(a) The school employe responsible for the student abuse may request the Secretary to amend or expunge an indicated report for a school employe on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter. The written request must be postmarked within 45-calendar days of the mailing date of the letter from the Statewide Central Register notifying the employe of the indicated status.

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30-calendar days from the date the request is received. The Secretary will notify all subjects of the report and the appropriate county agency of the decision by first-class mail.

§ 3490.192. Request for a hearing from a school employe for indicated reports of student abuse.

(a) The school employe responsible for the student abuse has the right to appeal the Secretary's decision to deny the request to amend or expunge an indicated report by filing an appeal with the Secretary.

(b) Any other subject of a report and the county agency have the right to appeal the Secretary's decision to grant the request.

(c) Appeals shall be in writing to the Secretary's designee, the Bureau of Hearings and Appeals, and be post-marked within 45-calendar days from the mailing date of the Secretary's notification letter.

(d) If an appeal is filed, a hearing shall be held before the Department's Bureau of Hearings and Appeals.

(e) Except as provided in subsection (f), hearings will be conducted under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

(f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in § 275.4(b) and (e)(1), (3) and (5) (relating to procedures).

(g) The burden of proof in hearings held under this section is as follows:

(1) If another subject or the county agency appeals the Secretary's decision to grant the request, the subject or the county agency who filed the appeal bears the burden of proof.

(2) The county agency bears the burden of proof if a school employe appeals the Secretary's decision to deny the request to amend or expunge a report of student abuse.

(h) Parties to a hearing held under this section have 15 days from the date of the final order of the Bureau of Hearings and Appeals to request the Secretary to reconsider the decision or 30 days to appeal the final order to Commonwealth Court.

(i) An administrative appeal proceeding will be automatically stayed upon notice to the Department by subject or the county agency that there is a pending criminal

proceeding or a dependency or delinquency proceeding under the Juvenile Act, including an appeal thereof, involving the same factual circumstances.

§ 3490.193. Other provisions.

The following sections apply to reports of student abuse to the extent that they are applicable:

(1) Section 3490.31 (relating to receipt of reports).

(2) Section 3490.35 (relating to Statewide Central Register).

(3) Section 3490.36 (relating to providing information to the county agency).

(4) Section 3490.37 (relating to release of information: Statewide Central Register, pending complaint file and file of unfounded reports).

(5) Section 3490.38 (relating to authorized studies of child abuse data).

(6) Section 3490.40 (relating to notifications regarding indicated reports).

(7) Section 3490.40a (relating to notifications regarding founded reports).

(8) Section 3490.41 (relating to determination of time).

(9) Section 3490.42 (relating to performance audit and reviews).

(10) Section 3490.54 (relating to independent investigation of reports).

(11) Section 3490.65 (relating to staffing and staff qualifications).

(12) Section 3490.91 (relating to persons to whom child abuse information shall be made available).

(13) Section 3490.93 (relating to requests by designated county officials).

(14) Section 3490.94 (relating to the release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).

(15) Section 3490.104 (relating to release of information to a subject of a report).

(Editor's Note: The Department is proposing to delete §§ 3490.201—3490.215 as they currently appear in the Pennsylvania Code at pages 3490-43—3490-46, serial pages (211753) to (211756). The proposed text for Subchapter C is being printed in regular typeface to enhance readability.)

§§ 3490.201—3490.215. (Reserved).

Subchapter C. GENERAL PROTECTIVE SERVICES

INTRODUCTION

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INTRODUCTION

§ 3490.221. Applicability.

This subchapter applies to the Department and county children and youth social service agencies.

§ 3490.222. Purposes.

The purposes of this subchapter are to:

- (1) Protect the rights and welfare of children so that they have an opportunity for healthy growth and development.
- (2) Assist parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties in a manner that does not put their children at risk.

§ 3490.223. Definitions.

In addition to the definitions in § 3490.4 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Assessment—An evaluation by the county agency to determine whether or not a child is neglected and in need of general protective services.

Custodial parent—The parent responsible for the day-to-day care and supervision of the child.

General protective services—Those activities and services arranged or provided, or both, by each county agency for neglected children and their families both during the assessment and while the case is open for services.

Neglect—An act or failure to act by a parent or the primary person responsible for the care of a child which results in a failure to provide the essentials of life and which creates a potential for harm to the child's safety, functioning or development. A child will not be considered neglected based solely on environmental factors that are beyond the control of the parent or the primary person responsible for the child's care including inadequate housing, furnishings, income, clothing and medical care. For purposes of the definition of "neglect," the following terms have the following definitions:

- (i) *Essentials of life*—Food, shelter, clothing, health care, personal care, education as required by law, proper supervision and protection from physical, sexual or emotional injury.
- (ii) *Primary person who is responsible for the care of a child*—A person who provides or arranges ongoing care and supervision to a child in lieu of parental care and supervision.
- (iii) *Potential for harm*—Likely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning. The term does not include imminent risk as defined in the definition of "child abuse" in § 3490.4 (relating to definitions).

Report—A verbal or written statement to the county agency from someone alleging that a child is neglected.

COUNTY RESPONSIBILITIES

§ 3490.231. Functions of the county agency for general protective services.

Each county agency is responsible for administering a program of general protective services to neglected children that is consistent with the Department's objectives to:

- (1) Keep children in their own homes, whenever possible.
- (2) Prevent abuse, neglect and exploitation of children.
- (3) Overcome problems that could result in dependency.
- (4) Provide temporary, substitute placement in a foster family home, the home of a relative or residential child-care facility for children in need of this care.
- (5) Reunite children and their families, whenever possible, when children are in temporary, substitute placement.
- (6) Provide a permanent, legally assured family for children in temporary, substitute care who cannot be returned to their own home.
- (7) Provide services and care ordered by the court for children who have been adjudicated dependent.

§ 3490.232. Receiving reports and assessing the need for services.

(a) The county agency shall be the sole civil agency responsible for receiving and assessing all reports of suspected neglect. This subchapter does not limit section 6304 of the Juvenile Act (relating to powers and duties of probation officers).

(b) The county agency shall provide 24-hours-per-day/7-days-per-week telephone access to receive reports of suspected neglect.

(c) Upon receipt of a report, the county agency shall make an initial determination whether or not to:

- (1) Accept the report for an assessment.
- (2) Refer the information for other services provided by the county agency.
- (3) Refer the person to another agency.

(d) When the county agency accepts the report for an assessment, the county agency shall see the child immediately if emergency protective custody has been taken, is needed, or if it cannot be determined from the report whether or not emergency protective custody is needed. Otherwise, the county agency shall prioritize the response time for an assessment to assure that children who are most at risk receive an assessment first.

(e) The county agency shall use a State-approved risk assessment process as required by § 3490.321 (relating to establishment of standards for a risk assessment process) to:

- (1) Aid in its assessment of whether to accept the family for services.
- (2) Insure that its assessment is comprehensive.
- (3) Help determine the need for general protective services.

(f) The county agency shall complete an assessment to determine whether or not the child is neglected and whether or not the family should be accepted for general protective services within 60-calendar days from the date the agency received the report and accepted the report for an assessment under subsection (c)(1).

(g) The county agency shall see the child and visit the child's home during the assessment period. The home visits shall occur as often as necessary to complete the assessment and insure the safety of the child. There shall be a least one home visit.

(h) The county agency shall interview the child, if age appropriate, and the custodial parent or the primary

person who is responsible for the care of the child. The county agency shall also conduct interviews with those persons who are known to have or may reasonably be expected to have information that would be helpful to the county agency in determining whether or not the child is neglected and in need of general protective services.

(i) The county agency may make unannounced home visits.

(j) The county agency shall provide or arrange appropriate services when necessary to protect the child during the assessment period.

(k) The county agency shall initiate the appropriate court proceedings and assist the court during all stages of the court proceedings if the county agency determines that an assessment or protective services, or both, are in the best interest of a child and if an offer of an assessment, a home visit or services is refused by the parent or the primary person who has responsibility for the care of the child.

§ 3490.233. Protective custody.

(a) A child suspected of being neglected may be taken into protective custody under §§ 3490.15—349.17 and 3490.57.

(b) The director or a hospital or other medical facility or a physician examining or treating a child may take a child into protective custody if protective custody is immediately necessary in the director's or physician's judgment to protect the child and as indicated by the following examples:

(1) Medical indications of prolonged neglect, the seriousness of the neglect, statements of the parents indicating they are unlikely to seek necessary treatment for the neglect, which if not treated would lead to serious physical neglect.

(2) There is medical evidence that the child's physical condition constitutes a medical emergency which requires immediate hospitalization to prevent more serious neglect or serious physical impairment.

(3) The parents, after being advised that the child's physical condition constitutes a medical emergency will make no immediate arrangement for medically adequate alternative treatment.

§ 3490.234. Notifications.

(a) The county agency shall notify the custodial parent or the primary person who is responsible for the care of the child of the receipt of the report and that the county agency will do an assessment to determine the need for general protective services. The notification shall be made verbally at the time of the initial interview.

(b) The county agency shall provide written notice to the parents of the child suspected of being neglected and the primary person who is responsible for the care of the child of the county agency's decision to accept the family for general protective services because of neglect within 7-calendar days of making the decision. If the Department accepts the family for services, it shall include in the notice:

(1) The reasons why the Department accepted the family for services.

(2) The right of the custodial parent or the primary person responsible for the care of the child to appeal the county agency's decision that the child is neglected and is in need of services.

(3) The request for an appeal shall be received by the county agency within 45-calendar days of the mailing date of the written notice in this subsection.

(4) How to appeal the county agency's decision that the child is neglected and is in need of services.

(5) The appeal request shall specify the reasons why the child is not neglected and services are not needed.

§ 3490.235. Services available through the county agency for neglected children.

(a) The county agency shall provide, arrange or otherwise make available the same services for neglected children as for abused children under § 3490.60 (relating to services available through the county agency).

(b) The county agency shall develop a family service plan as required by § 3130.61 (relating to family service plans) for each family accepted for general protective services.

(c) The county agency shall monitor the provision of services and evaluate the effectiveness of the services provided under the family service plan under § 3130.61 (relating to family service plans).

(d) The county agency may purchase and use the services of an appropriate public or private agency under Chapter 3130 (relating to the administration of county children and youth social service programs).

(e) The county agency supervisor shall review each report of suspected child neglect which is being assessed on a regular and ongoing basis to determine the safety of the child and the progress made toward reaching a determination on the need for protective services. The supervisor shall maintain a log of these reviews.

(f) When a case has been accepted for service and a family service plan has been developed under Chapter 3130, the county agency supervisor shall, within 10-calendar days of the completion of the family service plan, review the plan to assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family which are contained in the plan, are consistent with the level of risk determined by the county agency for the case. Documentation of this review shall be in the case record.

(g) When a case has been accepted for services, the county agency shall monitor the safety of the child and assure that contacts are made with the child, parents and service providers. The contacts may occur by phone or in person but face-to-face contacts with the parent and the child shall occur as often as necessary for the protection of the child but at least:

(1) Once a week until the case is no longer designated as high risk by the county agency, if the child remains in or returns to the home in which the neglect occurred and the county agency has determined a high level of risk exists for the case.

(2) Once a month for 6 months or case closure when the child is either of the following:

(i) Placed out of the home or setting in which the neglect occurred.

(ii) Not at a high risk of abuse or neglect.

(h) A periodic assessment of the risk of harm to the child shall be conducted as required by the State-approved risk assessment process.

(i) Except when ordered by the court in a proceeding brought under the Juvenile Act, a county agency is not required to duplicate services which are the statutory responsibility of another agency.

(j) The county agency shall aid the child and the family in obtaining benefits and services for which they may qualify under Federal, State and local programs.

§ 3490.236. General protective services records.

(a) Records for reports that are accepted for general protective services shall be maintained under § 3130.43 (relating to family case records). In addition to the information required by § 3130.43, the records shall contain the following information:

- (1) The nature of the neglect.
- (2) The date and source of the report.
- (3) The names and addresses of the persons interviewed in conducting the assessment.
- (4) The services provided by the county agency during the assessment.

(b) Records for reports that are not accepted for service shall be maintained for 5 years following the receipt of the latest report of suspected neglect. The following information shall be maintained:

- (1) The name and address of the child.
- (2) The names and addresses of the parents.
- (3) The name and address of the primary person who is responsible for the care of the child.
- (4) The allegations of neglect.
- (5) The date and source of the report.
- (6) The names and addresses of the persons interviewed in conducting the assessment.
- (7) The services provided by the county agency during the assessment.
- (8) Referral to other community agencies.
- (9) A summary of the assessment and reason for not accepting the family for general protective services.

GENERAL REQUIREMENTS FOR GENERAL PROTECTIVE SERVICES

§ 3490.241. Appeals with respect to general protective services.

(a) When a county agency accepts a case for services, the custodial parent or the primary person who is responsible for the care of the child may appeal that decision.

(b) The county agency shall establish policies and procedures for handling these appeals. The policies and procedures shall be in the agency's manual as required by § 3130.21(h)(4) (relating to responsibilities of county executive officers).

(c) An appeal from the custodial parent or the primary persons who are responsible for the care of the child shall be received by the county agency within 45-calendar days of the date of the letter from the county agency notifying the person of the Department's decision to accept the child and family for services. The written appeal request shall be made to the county agency administrator and specify the reasons why the child is not neglected and in need of services.

(d) The county agency shall review the request and issue a written decision to the person who made the

request within 45-calendar days of the receipt of the appeal. If the agency denies the request, the person who made the request shall be advised in writing of his right to a hearing before the Department's Bureau of Hearings and Appeals and that this request shall be made within 45-calendar days of the date of the letter from the county agency notifying the person of the agency's decision denying the request.

(e) If a hearing is requested, the Bureau of Hearings and Appeals will schedule a hearing under Article IV of the Public Welfare Code (62 P. S. §§ 401—493), and applicable Department regulations. The burden of proof in the hearing shall be on the county agency. The Department will assist the county agency as necessary.

(f) The Department is authorized and empowered to make an appropriate order regarding records to make them accurate or consistent with this chapter.

(g) Neither the county administrator nor the director of the Bureau of Hearings and Appeals may issue a ruling modifying the term of a service plan which has been specifically approved or ordered by a court of competent jurisdiction.

(h) Action by the custodial parent or the primary person who is responsible for the care of the child under this section does not preclude the custodial parent or the primary person who is responsible for the care of the child the right to exercise other appeals available through Department regulations or the courts.

§ 3490.242. Confidentiality.

(a) Information obtained by the county agency or Department in connection with general protective services may only be released:

- (1) Under § 3130.44 (relating to confidentiality of family case records).
- (2) To another county agency.
- (3) To an official of an agency of another state that performs general protective services analogous to those services performed by county agencies or the Department in the course of the official's duties.

Subchapter D. GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES AND GENERAL PROTECTIVE SERVICES

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3490.391. County agency plan.

TRANSFER OF CASES

3490.401. Intercounty transfer of cases.

INTRODUCTION**§ 3490.301. Applicability.**

This subchapter applies to county agencies and other agencies and persons who provide services to abused and neglected children.

§ 3490.302. Purpose.

The purpose of this subchapter is to consolidate regulations that apply to both child protective services and general protective services.

§ 3490.303. Definitions.

In addition to the definitions in § 3490.4 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

CORE—Training in foundation level skills which are needed by all direct service workers in county agencies to provide services to abused and neglected children and their families.

Risk assessment—A Department-approved systematic process that assesses a child's need for protection or services based on the risk of harm to the child.

Training program—The Pennsylvania Child Welfare Competency-Based Training and Certification Program.

STAFF ORIENTATION, TRAINING AND CERTIFICATION REQUIREMENTS**§ 3490.311. Establishment of a staff development process.**

(a) In fulfillment of the requirements of section 6383 of the CPSL (relating to education and training), the Department will implement an initial and ongoing training program for direct service workers and supervisors in county agencies.

(b) To implement the training program, the Department will establish a steering committee cochaired by a representative from the Department and a representative from the Pennsylvania Children and Youth Administrators, Inc.

(c) The steering committee shall provide recommendations to the Department for the establishment and implementation of policies and procedures relating to staff orientation, training and certification as required by the CPSL and this chapter and provide recommendations for overall staff development designed to improve the competency of the direct service workers and supervisors in county agencies.

(d) The steering committee shall include among its functions the evaluation of program effectiveness tested against measurable outcomes.

§ 3490.312. Training program requirements for direct service workers.

(a) The county agency shall establish and implement policies for orientation of direct service workers.

(b) The county agency shall establish and implement written policies on the assignment of cases to new staff and staff reassigned as direct service workers, including the criteria used to determine when a worker is prepared to assume responsibility for a full caseload.

(c) The county agency shall implement the supervisors' orientation, training and resource manual. A county agency may implement its own process or manual provided it addresses the objectives of the manual provided through the training program and is approved by the Department.

(d) The Department, with consultation from its steering committee, will establish standards, a process and a program for county agencies relating to the initial and ongoing certification of direct service workers including the following requirements:

(1) Direct service workers include all persons providing direct services to children and families and case management functions on a full-time or part-time basis.

(2) Direct service workers hired on or after July 1, 1996, shall be certified under the established standards within 18 months of their date of employment.

(3) Direct service workers who were not in a permanent employment status as of July 1, 1996, shall have been certified by December 31, 1997.

(4) Permanent direct service workers hired prior to July 1, 1996, are certified.

(5) Direct service workers hired after June 30, 1996, who are in the process of achieving initial certification may be assigned a caseload, up to the caseworker-to-family ratio of the county agency, based on the worker's ability to handle job duties as determined by the written policy of the county agency.

(6) Initial certification of direct service workers shall include the following components:

(i) A minimum of 120 hours of CORE training.

(A) The content of CORE training shall be determined by the Department in consultation with the steering committee.

(B) The content of CORE training shall be subject to periodic review by the Department and the steering committee for continued relevancy.

(C) An overview of CORE training shall be communicated by the Department to the county agencies and direct service workers through a Departmental bulletin.

(D) Upon request by a county agency and approval by the Department, a county agency may provide the CORE training developed by the training program to its direct service workers.

(E) The county agency shall maintain a record of CORE training completed for certification in the employee's personnel file.

(ii) A decision by the employing county agency that the worker is certified.

(A) The decision shall be based on an assessment of the worker's ability to apply the principles, concepts and content of CORE training, the supervisors' orientation, training and resource manual or its equivalent and other learning opportunities to on-the-job situations. The assessment shall conclude with a decision of whether or not the worker is certified.

(B) The assessment shall be in writing and reviewed with the employe. The employe shall be given a copy of the assessment. A copy of the assessment shall be maintained in the employe's personnel file.

(7) The county agency shall determine the county agency's training year.

(8) Ongoing certification of direct service workers shall include the following:

(i) Documentation of completion of a minimum of 20 hours of training annually. For direct service workers who complete the CORE training during the county agency's training year, the county agency shall pro rate the number of required training hours that a direct service worker shall take in the county agency's training year schedule. Training content shall be based on the annual administration of an assessment of individual training needs and the development of an individual training plan. Ongoing training, as identified in the individual training plan, may be obtained through the training program provided by a county agency or obtained through another provider.

(ii) Courses from an accredited school of social work which are successfully completed by a direct service worker shall be acceptable in meeting the ongoing certification requirements.

(iii) The county agency shall maintain a record of training required for ongoing certification, including the needs assessment, training plan and courses attended in the employe's personnel file.

(iv) The date of initial certification for grandfathered workers is June 30, 1996.

(9) The county agency shall provide its direct service workers the opportunity to obtain initial and ongoing certification status.

(10) The county agency may not allow an employe who fails to achieve or maintain certified status to perform direct service duties.

§ 3490.313. Direct service worker certification requirements for supervisors who supervise direct service workers.

(a) Supervisors who supervise direct service workers shall be certified as direct service worker. Supervisors with permanent status on June 30, 1996, and who supervise direct service workers are grandfathered as certified direct service workers. Supervisors hired, transferred or promoted after June 30, 1996, who are not certified, shall meet the certification requirements in the training program requirements for direct service workers within 12 months of employment or transfer.

(b) Supervisors who supervise direct service workers who fail to meet the requirement of subsection (a) may not be permitted by the county agency to supervise direct service workers.

§ 3490.314. Training and certification requirements for supervisors who supervise direct service workers.

Persons hired, transferred or promoted to supervise direct service workers after December 31, 1997, shall complete a supervisor's training program approved by the Department in consultation with the steering committee. The content of the training and certification requirements will be communicated by the Department to the county agencies and supervisors through a Departmental bulletin.

RISK ASSESSMENT

§ 3490.321. Establishment of standards for a risk assessment process.

(a) The Department and county agencies shall jointly establish standards for the implementation of the risk assessment process under sections 6362(e) and 6375(c)(2) of the CPSL (relating to responsibilities of county agency for child protective services; and county agency requirements for general protective services) and this chapter.

(b) The standards established for risk assessment shall include the following:

(1) A statement of purpose for the process.

(2) The core set of factors against which risk shall be assessed.

(3) The application of the process, including the points at which the process shall be applied and the periodicity of application.

(4) The recordkeeping requirements.

(5) The process for Commonwealth approval.

(c) The Department and counties shall review the implementation of the risk assessment process on an ongoing basis to ensure that the standards established are consistent with good practice and the results of research.

(d) The Department will publish in a Departmental bulletin the standards established under subsection (b). Any subsequent changes in these standards will be communicated by the Department to the county agencies through a Departmental bulletin.

(e) The standards established under subsection (b) apply to Subchapters A and C (relating to child protective services; and general protective services).

§ 3490.322. County agency compliance with risk assessment standards.

(a) Each county agency shall implement a State-approved risk assessment process in performance of its duties under sections 6362(e) and 6375(c)(2) of the CPSL (relating to responsibilities of county agency for child protective services; and county agency requirements for general protective services) and this chapter.

(b) Each county agency shall implement the State-approved risk assessment process approved by the Department on July 1, 1997.

(c) The county agency shall implement its risk assessment process in a way which supports its overall decisionmaking process for, and approach to, protective services.

(d) The county agency in developing and implementing the Family Service Plan and Placement Amendment as required by Chapter 3130 (relating to administration of county children and youth social service programs) shall

assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family are consistent with the level of risk as determined by the county agency for the case.

ANNUAL REPORT

§ 3490.331. Annual report on required activities.

(a) The Department will report annually to the Governor and General Assembly on the activities regulated by this chapter, including the operations of the Statewide Central Register and the protective services provided by the county agencies. The report shall contain a statistical analysis of the following:

- (1) The reports of suspected child abuse received by the Department.
- (2) The reports of suspected student abuse received by the Department.
- (3) The results of requests for child care clearances received by the Department.
- (4) The costs to implement the CPSL.
- (5) An evaluation of services offered in response to the CPSL.
- (6) The protective service referrals received and accepted by county agencies.
- (7) The children over whom the county agencies maintain continuing supervision.
- (8) The protective service cases closed by county agencies.
- (9) The services provided to children and their families.
- (10) Recommendations for Legislative changes and the estimated increase or decrease in cost.

(b) The data required in subsection (a)(6)—(9) shall be submitted by the county agencies through the Children and Youth Quarterly Aggregate Reporting System on Form CY-28 until the Department has implemented the child specific Adoption and Foster Care Analysis and Reporting System which will include information on protective services.

STAFF RATIOS

§ 3490.341. Staff-to-family ratios.

Staff-to-family ratios for protective service workers shall be in accordance with §§ 3130.32 and 3140.17 (relating to staffing requirements; and review of county plans and budgets).

FAILURE TO COOPERATE

§ 3490.351. Willful failure to cooperate.

An agency, school district or facility, or a person acting on behalf of an agency, school district or facility, that violates this chapter by willfully failing to cooperate with the Department or a county agency when investigating a report of suspected child abuse, suspected student abuse or suspected neglect commits a summary offense for a first violation and a misdemeanor of the third degree for subsequent violations under section 6346 of the CPSL (relating to cooperation of other agencies).

STANDARDS FOR STAFF

§ 3490.361. Requirements for agencies providing protective services.

The county agency shall arrange for or provide protective services for children and their families only through agencies that comply with §§ 3130.21(4), 3130.39 and

3130.40 (relating to responsibilities of county executive officers; services and facilities which may be used; and delivery of services through other service providers).

§ 3490.362. Licensure requirements for persons providing services arranged or provided by the county agency.

The county agency shall arrange for or provide services from persons who are not affiliated with an agency under § 3490.361 (relating to requirements for agencies providing services) only if the persons possess a valid license issued by the Department of State, if the profession is subject to mandatory licensure.

ATTORNEY FOR THE COUNTY AGENCY

§ 3490.371. Availability of an attorney for the county agency.

The county agency shall retain or ensure the availability of an attorney for consultation with and representation of the county agency in fulfilling its responsibilities under the CPSL and this chapter.

LAW ENFORCEMENT OFFICIALS

§ 3490.381. Law enforcement assistance.

A county agency staff member may request a law enforcement officer to be present at any time during the course of fulfilling the county agency's staff person's responsibilities under the CPSL and this chapter without violating the confidentiality provisions of the CPSL or this chapter when the worker fears for his own safety or the safety of anyone else involved.

ANNUAL PLAN

§ 3490.391. County agency plan.

The county agency shall comply with Chapter 3140 (relating to planning and financial reimbursement requirements for county children and youth social service programs) regarding the development and submission of a plan for the provisions of protective services required by the CPSL and this chapter.

TRANSFER OF CASES

§ 3490.401. Intercounty transfer of cases.

(a) County agencies shall share that information with each other which will assist them in providing services to children and parents in delivering protective services.

(b) When a report of suspected child abuse or neglect is under investigation or assessment or when a case has been accepted for protective services and the family moves to another county, and the address is known, the county shall:

(1) Immediately telephone the receiving county agency and tell them the name and address of the child and parents, the reason for agency involvement, the status of the case, the services that were being provided, the level of risk assigned to the case and any other information that would assist the receiving agency.

(2) Within 24 hours of the phone call, send a fax to the receiving agency to confirm the referral. The faxed information shall contain the name and address of the child and parents, the level of risk assigned to the case and the status of the case.

(c) The receiving agency shall accept the referral and determine what services are necessary to protect the child from abuse or neglect.

(d) When the case is a high risk case, the receiving county agency shall reassess the risk of abuse or neglect

to the child and see the child within 24 hours of receiving the telephone referral. The county agency worker shall see the child at the child's new address.

(e) Within 72 hours of the telephone referral, the referring agency shall fax or send to the receiving agency by overnight mail:

- (1) The family demographics.
- (2) The current family service plan and placement amendment.
- (3) The current risk assessment matrix and summary.
- (4) Court petitions and court orders.
- (5) A social summary, when available.
- (6) A copy of the CY-48 and other relevant ChildLine forms.
- (7) Other information that would assist the receiving agency in providing services to the child and parents.

(f) When a report of suspected child abuse or neglect is under investigation or assessment or when a case has been accepted for protective services and the family moves to another county, and the county where the child has moved to is known but not the street address, the referring county agency shall telephone the receiving county and give them the names and dates of birth of the child and parents. The receiving county shall accept and keep the information on file if the child or parents are subsequently referred to the receiving agency. If the family is referred to the receiving county agency, the receiving county agency shall contact the referring agency and follow the procedures under subsections (c) and (d) and request the referring agency to send the information under subsection (e).

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