

# **Child Protection Services** **Service Chapter 640-01**

**North Dakota Department of Human Services  
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Bismarck, ND 58505-0250**

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## **Intake of Reports of Suspected Child Abuse and Neglect 640-01-01**

### **Introduction 640-01-01-01**

(NEW 12/14/2020 ML 3603)

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Child Protection Services Intake is the gatekeeping process for the child welfare system. A well-functioning Intake process helps assure that children who are maltreated or unsafe and in need of protection and services receive a safety response. Quality Child Protection Intake also assures that children and families do not enter the child welfare system unnecessarily. A standardized CPS Intake process assures mandated reporters and the public that delivery of CPS Intake Services are uniform across the state and delivered by professional intake staff.

The intake process is a standardized application of procedures for collecting consistent information to respond to reports of suspected child abuse and/or neglect in a timely manner.

Intake decision-making is influenced by the information obtained from a reporter. Structuring intake information collection contributes to more efficient practice and results in better quality of information to reach response decisions.

The purpose of CPS Intake is to identify children who are in present and impending danger as well as children who have been victims of maltreatment.

Objectives of the Intake Assessment:

- Assisting individuals who are reporting their concerns to provide behaviorally specific, detailed information.
- Determining if the reported concerns include the identification of child abuse or neglect as defined by North Dakota state law.

- Determining if the reported concerns include the identification of present or impending danger and diminished caregiver protective capacities.
- Identifying whether the concerns being reported must be referred to law enforcement.
- Providing information to reporters about other community resources that are of assistance when the reported information indicates the children are not subjected to maltreatment and may need prevention service referrals.

The critical activities of Child Protection Services Intake (CPS Intake) are:

- Receive information about suspected child abuse and neglect from a reporter which is complete and accurate
- Prepare a "full kit" of information regarding the information obtained from a reporter to enable a correct child protection response
- Correctly triage reports that do not meet the legal requirements for a report of suspected child abuse or neglect and reports that are outside the jurisdiction of North Dakota CPS
- Correctly identify reports that meet the criteria for child protection assessment and transmit those reports to a CPS Supervisor in a timely manner consistent with child safety.

## **Receiving a Report of Suspected Child Abuse and Neglect 640-01-01-05**

(NEW 12/14/2020 ML 3603)

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- North Dakota Century Code 50-25.1-04 mandates that all persons mandated or permitted to report cases of known or suspected child abuse or neglect shall cause oral or written reports to be made.
- A report of suspected child abuse or neglect may come to the attention of Child Protection Services by phone, mail, electronic mail, facsimile transmission, in person, or by other means.
- When a report is received verbally (by phone or in person) the Intake worker will complete the Child Protection Services Intake Form, which is then considered to be a report of suspected child abuse or neglect.
- Recording information provided by an individual making an oral report by an intake worker does not identify the intake worker as “the reporter”. The reporter is the person who provides the information to the CPS Intake Worker.
- Reports received verbally shall be accepted the same as reports received in writing.
- When reports which are initially received by phone are followed by a subsequent written report, the written report will be combined with the completed Child Protection Services Intake Form and treated as a single report.
- When reports are received in writing, the reporter will be contacted by a CPS Intake Worker within 24 hours and an intake interview completed and documented on the Intake form. The Child Protection Services Intake Form will be attached to the written report and treated as a single report.
- Any report which indicates present danger to a child must be forwarded to an Intake Supervisor or CPS Supervisor immediately with additional Intake tasks to follow
  - If the reporter cannot be reached within 24 hours and the information in the report indicates impending danger to the child, the written report should be referred to the Intake supervisor to discuss with the CPS supervisor.

- If the reporter can't be reached within 24 hours, and it is not clear whether the written report contains sufficient information to determine whether criteria for a report of suspected child abuse or neglect is met, the report must be staffed with the Intake Supervisor, who may consult the CPS Supervisor or Field Service Specialist to determine whether the report is sent for assignment or held until the reporter can be contacted.
- When a reporter is not able to be contacted within 24 hours, contact will be attempted each 24 hours for three days regardless of whether the report has been sent for assignment. If a reporter cannot be contacted within 3 days, the report will be processed according to policies contained in this section and further attempts to contact the reporter will be made by the assigned CPS Worker.
  - The assessment process shall not be delayed waiting to secure a written report on a SFN 960 Form or due to inability to contact the reporter.
- North Dakota law NDCC 50-25.1—05 requires that an assessment or alternative response assessment be initiated concerning "... any report of child abuse or neglect...". For this reason, it is not allowed to "screen out" any reports of suspected child abuse or neglect at intake. Reports determined not appropriate under NDCC 50-25.1 for a full assessment for a child abuse and/or neglect determination will be processed according to the procedure for administrative assessments or administrative referrals.
- Reporters submitting a report of suspected child abuse and neglect concerning a person who is not responsible for a child's welfare should not be re-directed to law enforcement or any other entity. The Intake Worker should complete the Child Protection Services Intake Form and process the report according to policies for administrative assessments and referrals.
- It is important to differentiate between a report of suspected child abuse and neglect and other types of information or concerns a caller or reporter might submit.
- If a reporter makes an oral report which is determined during the intake not to fall within the scope of the definition of abused child, sexually abused child as stated in NDCC 50-25.1 or the definition

of neglected child as stated in NDCC 50-25.1-02(14), the process for administrative assessments should be explained to the reporter.

- The Intake Worker may provide information about alternative solutions to counsel a caller away from the child welfare system.
- If the reporter affirms their intention to make a report after an explanation is given and counsel provided, the report shall be recorded on the Child Protection Services Intake Form and processed according to the appropriate policy and procedure.

**State Form Number (SFN) 640-01-01-05-01**

(NEW 12/14/2020 ML 3603)

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- The SFN 960 is a tool to facilitate the reporting of suspected child abuse or neglect. Reporters who wish to file a written report may be directed to the e-form at:  
<https://www.nd.gov/eforms/Doc/sfn00960.pdf>.
- It is not necessary to have a written signed SFN 960 from the reporter before beginning an assessment. Assessment of a report of suspected child abuse and neglect must not be delayed by waiting for a written SFN 960 form.
- Use of the SFN 960 is not required when reports are received verbally through CPS Intake. The Intake Form completed by a CPS Intake Worker serves as the original report of suspected child abuse and neglect.
- It is not necessary to attach the SFN 960 to a Child Protection Services Intake Form completed by a CPS Intake Worker. It is determined at the time of Intake that the reporter's intent is to report suspected child abuse and neglect.
- When a written report is received which is not recorded on a SFN 960 form, the CPS Worker will transfer the identifying information to an SFN 960 and attach the written report to the form.
  - An SFN 960 must be attached to written reports received (handwritten or typed letters, faxed reports, etc.) to indicate that the information is regarded as a report of suspected child abuse and neglect.
  
- The SFN 960, once signed by a reporter, should not be altered nor information added under the reporter's signature.
- Any notations on the form, other than the section labeled "Agency Use Only", should be dated and initialed by the individual making the notation.
- Any corrections to the form should be made by drawing a single line through the incorrect information and the corrected information dated and initialed by the individual making the corrections.

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- Any alterations to the SFN 960 after it is signed by a reporter which are not indicated by a date and initialed by the person making the alteration may be considered falsifying a record.
- The date and time the SFN 960 is received by any North Dakota child welfare agency is the "Date and time Received by Agency" in the SFN 960 field in the "agency use only" section of the SFN 960.
- The date of the initial report which is entered into the FRAME system is the date of "first notice" to the child welfare system, whether a report is received by a zone, by Central Intake or by the Department. The date written on the SFN 960 next to the reporter's signature is the date the reporter signed the written report.
- In no case should information on the SFN 960 be backdated as to the report received date/time.

## **Mandated Reporters 640-01-01-05-05**

(NEW 12/14/2020 ML 3603)

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- When a person who is required to report (mandated reporter) makes an oral report, the Child Protection Intake Worker should request a written report be sent within 48 hours (NDCC 50-25.1-04).
- Mandated reporters are required to provide all requested information they have reasonable access to. If the mandated reporter does not provide necessary information, re-contact the reporter and request the additional information, educating on mandated reporter responsibilities as necessary and referring them to the online mandated reporter training located on the Prevent Child Abuse North Dakota website.

## **Anonymous Reports 640-01-01-05-10**

(NEW 12/14/2020 ML 3603)

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- In order for a CPS report to be considered from an anonymous source, the name of the reporter must be unknown. If a reporter has provided his or her name, the reporter can no longer be considered anonymous. If the reporter self-identifies and asks to be anonymous, the reporter should be told that the name of the reporter is confidential, but is no longer anonymous, since the reporter has provided their name to the worker.
- Anonymous reports shall be accepted, and the fact of anonymity shall not serve as a barrier to an assessment. The fact that the report was anonymous shall be indicated on the Child Protection Services Intake Form and on any SFN 960 form which the Intake Worker will complete and sign.
- **It is not necessary to have a written signed SFN 960 from the reporter before beginning an assessment. Assessment of the report must not be delayed by waiting for a written report.**

## **Intake of a Report Involving a Conflict of Interest 640-01-01-05-15**

(NEW 12/14/2020 ML 3603)

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- For reports of suspected child abuse or neglect involving Zone or DHS employees or others who may present a conflict of interest for the CPS worker, Supervisor or Family Service Specialist, such as relatives of child welfare staff, the intake worker will follow the same procedures for intake as other reports of suspected child abuse or neglect, unless the report involves a relative, zone employee, intimate friend or close associate of the intake worker. If so, the intake worker should immediately refer the reporter to the Intake Supervisor or to another Intake Worker as designated by the Intake Supervisor to take the report.

## **Obtaining Information From a Reporter 640-01-01-10**

(NEW 12/14/2020 ML 3603)

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- Information to be obtained from a reporter must follow the format for the Child Protection Services Intake Form. To provide the correct CPS response, it is important to obtain as much information from the reporter as the reporter knows or has access to.
- NDCC 50-25.1-04 requires that all persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made
- Oral reports must be followed by written reports within forty-eight hours if requested
- A requested written report must include information specifically sought by the department if the reporter possesses or has reasonable access to that information.
  - A reporter may be directed to obtain information from an existing source accessible to the reporter.
  - A reporter should not be directed to re-contact a child or to contact a family member or collateral for additional information for an intake.
  - A reporter should not be directed to make collateral contacts
- Reports involving known or suspected institutional child abuse or neglect must be made and received in the same manner as all other reports

## **Interviewing the Reporter 640-01-01-10-01**

(NEW 12/14/2020 ML 3603)

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- The CPS Intake process for interviewing a reporting party is intended to gather substantive information to evaluate and determine the correct CPS response. The CPS Intake Worker must always remain professional and courteous in any conversation with the reporting party or other interested parties. The intake interview should follow a three-phase process:

### The Initial Phase:

- Complete introductions, including explaining to the reporting party the role of CPS
- Encourage the reporter to identify him/herself and provide assurance that both the policy and statute prohibit disclosure of the reporter's identity except under the provisions of state law and during legal proceedings
- Explain the importance of reporting
- Allow reporter to share information unimpeded
- Respond to emotional reactions of the reporter
- Determine reporter's motivation for reporting
- Determine the need for CPS involvement, or provide appropriate referrals to other community services

### The Exploration Phase:

- The CPS Intake Worker must ascertain and make a reasonable judgment about the detail and amount of information the reporter is likely to possess based upon the relationship of the reporter to the family, e.g., a schoolteacher who has daily experience with a child, yet limited information about the child's caregivers or family.

- Obtain detailed information associated with the CPS Child Protection Services Intake Form
- Seek clarification regarding information that may indicate present or impending danger.
- Based on a reporting party's knowledge and familiarity with the family, the CPS Intake Worker must attempt to explore and obtain clarification regarding information that may indicate present or impending danger and substantive information associated with the six assessment factors:
  - Family composition
  - Extent of Maltreatment
  - Child functioning
  - Adult functioning
  - Parenting
  - Discipline

#### Family Composition

- What are the names and relationships of all persons living in the home?
- Have there been any recent changes in the family composition?
- How long has the family lived in this location?
- How do the family members seem to get along? How do they treat each other?
- Does anyone work outside of the home? Where do they work? What hours do they work?

#### Child Maltreatment

- What is the extent of child maltreatment?
- The kind and specific description of the alleged maltreatment.
- When and where the maltreatment has occurred or is occurring.
- The identification of the child(ren) alleged to be maltreated or in danger, including anything unusual about the situation of the child.
- The severity of the maltreatment.
- The specifics of the alleged events.
- The specifics about the child's injuries, including the location of the injuries.

- If living arrangements allegedly endanger a child, specifics about the conditions of the living arrangements and consideration of how they endanger the child.
- The specifics of the events, injuries, and conditions present.
- The conclusion reached by the worker confirming the maltreatment.
- What are the circumstances surrounding the child maltreatment?
  - i. The history, duration, and progression of the situation.
- The caregivers' explanation of what happened, physical injuries, dangerous or threatening family or living conditions, if such exist, and the child's condition.
- Co-existing factors and conditions such as substance abuse, domestic violence, or mental health.
- Contextual issues, such as use of instruments, acts of discipline, physical or verbal threats, caretaker intentions and family stress.
- How caregivers are likely to respond to Agency intervention.

#### Child Functioning

- How do the children function on a daily basis? The child's physical health. (Physical Health)
- The child's behavior, including appropriate and reasonable, withdrawn, acting out, unusual or changing behavior. (Behavior, Social Relations, Temperament)
- The child's intellectual capacity. (Cognitive Abilities)
- The child's current state of mind, emotions, anxiety, fearfulness, and any recent changes in these. (Emotional Health, Vulnerability)
- Any exceptional characteristics or needs the child may have. (Development, Vulnerability, Temperament)
- Medical needs or medical attention the child may be experiencing. (Physical Health, Emotional Health)
- The child's capacity and ability to communicate with others, self-protect, and seek help from others. (Vulnerability)

#### Caregiver Functioning

- How do the adults (primary caregivers) function on a daily basis?
- Describe caregivers' physical health.
- Describe caregivers' mental health and emotional stability/reality orientation.

- Describe the caregivers' cognitive functioning.
- Describe the caregivers' self-control and self-care.
- Describe and domestic violence perpetrated by or between caregivers.
- Describe any substance use and/or treatment by caregivers.
- Describe any criminal and civil behavior.
- Describes caregivers' personal stability as evidenced through employment, living arrangements, and routines.
- Personal resources and finances to meet family needs.
- Describe the caregivers' stress, problem solving, communication skills and coping skills.
- Describe any social supports to the caregivers or family.

### Parenting

- What are the general parenting practices in this family?
- Caregivers' history of recognizing threats and being protective.
- Caregivers' attitudes and attachment to children.
- Caregivers' viewpoint of and expectations for the children.
- Caregivers' abilities/capabilities to perform parenting responsibilities.
- Caregivers' knowledge and skill to care for and meet the needs of the children.
- Caregivers' motivation to meet the needs of the children before meeting their own needs.
- The capacity, including willingness to access resources, of the caregivers to meet exceptional needs a child may have.

### Discipline

- What are the disciplinary practices of this family?
- Caregiver ability to exhibit self-control when disciplining.
- Reasonableness of discipline for age, development, and vulnerability of child.
- Reason for discipline.
- Methods and frequency used for discipline.
- Caregivers response when child does something wrong.

### The Closing Phase

- Ensure that all essential information has been collected from the reporter.
- Explore and identify any concerns regarding worker personal safety, i.e., extensive violent criminal history, access to weapons, dangerous animals, etc.
- Collect any information about the ability of the child(ren), family, or subject to communicate with the worker (e.g., non-English speaking, hearing impaired) and what the preferred mode of communication of the subject(s) is.
- Collect any information related to difficulty the worker may encounter in gaining access to the family (e.g., gate code, complex names, and directions to the home).
- Determine if there is reason to believe that the family is about to flee (i.e., caregivers overtly reject CPS intervention or refuse access to the child(ren), and/or the child(ren) whereabouts cannot be ascertained).
- Inform the reporter that their report will be submitted for supervisory review.
- Mandated reporters who will continue to see the child in their professional capacity should receive confirmation of the disposition of their report. The Intake Worker should inform mandated reporters when reports are administratively assessed or referred.
- When a report is assigned to a CPS Worker, the reporter will receive contact from the CPS worker who will be conducting the assessment.

## **Intake Decision Making 640-01-01-10-05**

(NEW 12/14/2020 ML 3603)

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- The Intake Worker should begin the processes of report analysis and triage using the policies for Analysis and Triage of a CPS Intake (640-01-05). Triage of a CPS intake may involve the CPS Intake Worker and Intake Supervisor, CPS Worker or Supervisor, case management supervisors, case managers and CFS Field Service Specialists.
- When the criteria for administrative assessment or administrative referral are clearly met, the CPS Intake Worker can proceed with entering the intake report into FRAME and completing the administrative assessment or referral.
- When the appropriate action is less clear as to whether the criteria for administrative assessment or referral are met or whether the criteria for assignment may be met, the Intake worker should consult with the Intake Supervisor.

## **Tasks to Complete a CPS Intake ("Full Kit") 640-01-01-10-20**

(Revised 8/1/2021 ML 3631)

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- At the conclusion of the intake interview with the reporter, when the report meets the criteria for assignment to a CPS worker, the CPS Intake worker will:
- Conduct and document a record check of the FRAME system for previous CPS assessments.
  - Make note of ALL dates and types of previous CPS involvement (AA, AR, TIP, full assessments)
  - For full assessments, provide the date, victims, subjects, and maltreatments involving the same caregivers or the same children as in the current report for reports within the last three years and for all previous Confirmed or Services Required decisions. (Note: these will be found by searching the CPS Index.)
- Complete any necessary missing information (addresses, DOB, etc. using FRAME, Master Client Index, TANF program or other sources of information) the reporter was unable provide
- Check NDCourts for any criminal history or pending charges concerning the subject of the report.
- Request any necessary records for the assessment worker (school attendance for ed. Neglect concerns, medical records/Ambulance call records for injuries, police reports, etc.)
- If applicable, contact any tribe to determine jurisdiction for the assessment.

## **Notification of Reporter 640-01-01-10-25**

(NEW 12/14/2020 ML 3603)

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- At the time the decision is made by CPS Intake to administratively assess or refer a report provided by the reporter, the CPS Intake Worker or CPS Intake Supervisor should notify the reporter, if known, of this decision. The CPS Intake staff who is contacting the reporter regarding an administrative assessment may direct the reporter to other services which may be appropriate for the family in question.
- At the time the decision is made to refer an Intake to law enforcement or to another jurisdiction, CPS Intake staff or CPS assessment staff should notify the reporter, if known, of the decision. Any notification of the subject for those cases administratively referred is the responsibility of the agency receiving the referral.

## **Special Considerations for Intake 640-01-01-15**

(NEW 12/14/2020 ML 3603)

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- In addition to reports of suspected child abuse or neglect, CPS intake is responsible for accepting, recognizing, and processing reports of:
  - Abandoned Infants - Baby Safe Haven
  - Child Sexual Behaviors
  - Domestic Violence
  - Human Trafficking
  - Pregnant women abusing alcohol
  - Pregnant women using controlled substances
  - Substance exposed newborns
  - Suspected Institutional abuse or neglect
  - Withholding Medically Indicated Treatment from Disabled Infants (Baby Doe)

## **Abandoned Infants - Baby Safe Haven 640-01-01-15-01**

(NEW 12/14/2020 ML 3603)

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Reports concerning an abandoned infant should be considered an emergency. A CPS worker must be sent to the approved location where the infant was abandoned or, if the infant has been sent for medical examination, to the facility where the infant has been sent.

Reporters calling due to an abandoned infant will, by law, not have information about the parent/agent abandoning the infant. A parent is not required to provide any information nor to answer any questions. Also, under the statute, CPS is prohibited from attempting to identify or locate the parent or agent who abandoned the infant.

A CPS Intake worker should not request any identifying information about the parent/agent.

The CPS Intake Worker should document:

- Date and time the child was abandoned
- The approved location where the child was abandoned
- The name and contact information for the on-duty staff member who received the infant
- The infant's current location and, if an ambulance has been called for transport, where the infant will be taken
- Any information the reporter may have about the infant's appearance or condition
- Any other information the reporter can provide

When the reporter is a staff person at a hospital where the child was born:

- Request that the child's medical record be sent
- Ask if the hospital completed a birth registration for the infant. If so, ask for the infant's first name on the birth registration.

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- This information will be used to obtain an “anonymous” birth certificate (without parent names listed) from Vital Records as an aid in ‘matching’ birth registrations to prevent multiple registrations. Records can be redacted to keep birth parent information confidential.

State Law allows a parent or agent of the parent to anonymously abandon an unharmed infant up to 1 year of age with an on-duty staff member at a hospital or other approved location without criminal charges. (N.D.C.C. 50-25.1-15). An infant may be left at the hospital where the infant was born.

Approved locations for relinquishing an infant with an on-duty staff member are:

1. Local public health units
2. Human service zones
3. Regional human service centers
4. Long-term care nursing facilities
5. Children's advocacy centers
6. Emergency medical services operations
7. Criminal justice agencies.

(N.D.A.C. 75-03-19.1)

Approved locations are encouraged to ask the following questions:

- The city/State/time/place of the birth of the infant
- Does either parent have an Indian tribal affiliation? If yes, what tribe? (If the infant’s tribal affiliation is known, the Indian Child Welfare Act will apply, and the tribe will be contacted about possible tribal membership).
- Whether a birth certificate was issued and the first name on the birth certificate
- Any health problems the parents may have
- Any other information about the infant's medical, social, and family history

A parent is not required to provide information.

## **Child Sexual Behaviors 640-01-01-15-05**

(NEW 12/14/2020 ML 3603)

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- N.D.C.C. 50-25.1-05.3(2) states, "If law enforcement determines a minor committed an act in violation of sections 12.1-20-01 through 12.1-20-04, section 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2 against another minor, law enforcement shall provide the report to the department. Law enforcement shall conduct a criminal investigation and shall coordinate with the department for the provision of services to the minors, parents, custodians, or other persons serving in loco parentis with respect to the minors."
- When a report indicates that a minor committed a sexual offense against another minor, this is a report of Child Sexual Behavior, whether or not the minor was a person responsible for a child's welfare at the time of the sexual activity.
- These reports should be considered for an emergency response when information gathered at Intake indicates that the child/children may not be safe.
- If information obtained at Intake indicates that the child/children are being kept safe (parent is protecting), determine the amount of time the child/children will be kept in a safe situation and submit the information to a CPS Supervisor within 24 hours.

## **Domestic Violence 640-01-01-15-10**

(NEW 12/14/2020 ML 3603)

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Information that is important to collect when receiving a report of suspected child maltreatment involving concerns of domestic violence includes:

- Are there prior incidents/ reports of domestic violence?
- Have there been any separations/reconciliations due to domestic violence?
- Are the parties involved living together or separately?
- Who has physical custody of the child?
- Was the DV precipitated by conflicts over discipline or care of the child?
- How was the child exposed to the domestic violence?
- Was the child in danger of physical harm or injury during domestic violence?
- What is the age and vulnerability of the child?
- Did the child try to stop the confrontation?
- Does the child show signs of being emotionally traumatized as a result of domestic violence?
- What degree of violence was involved?
- Was there physical contact?
- Was there physical injury to anyone?
- Did an injury require medical attention?
- Was there a weapon involved?
- Is there a history of other violence?
- Were the police called?
- Is there an adult in the home capable of protecting the child from exposure to future episodes of domestic violence?
- Are there other factors indicating danger or risk to the child?
- These are pieces of information specific to domestic violence concerns. Of course, the same information (identifying information, caregiver information and reporter information, etc.) should be collected, as well, just as in any other CPS intake.

## **Human Trafficking 640-01-01-15-15**

(NEW 12/14/2020 ML 3603)

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- Receiving the report Reports of suspected child abuse and neglect that involve labor or sex trafficking of a minor are received in the same manner as any other report of suspected child abuse or neglect. Reports containing concerns or sex, or labor trafficking of a child are also reports of possible criminal activity and are considered to be Response Time A reports, requiring contact with law enforcement within 24 hours.

## **Report of Pregnant Individuals Abusing Alcohol 640-01-01-15-20**

(NEW 12/14/2020 ML 3603)

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- Information that is important to collect and document when receiving a report that an individual who is pregnant has abused alcohol includes:
- The name, age, telephone number and permanent address of the pregnant individual
- Gestational age of the fetus
- The point in time the individual discovered she was pregnant
- The individual's awareness of possible effects of alcohol abuse on the fetus
- The nature and extent of the alcohol abuse:
- What are the health risks to the individual that are associated with the abuse of alcohol?
- When and how often is the alcohol being abused?
- Is the individual currently under the influence of alcohol?
- The present location of the individual
- The location where the reported concerns occurred if different from a permanent address
- The individual's history of past treatment for alcohol dependence
- Any current treatment for alcohol abuse the individual is receiving
- The location/facility where past or current treatment is/was received
- The name of parent, guardian, or custodian if the individual is an unmarried child
- The family composition (e.g., names, sex, ages of children and other adults normally present). If there are children in the home who may be abused or neglected as a result of the alcohol abuse, then the procedures for reports of suspected child maltreatment must be followed.
- Names of persons present when alcohol is being abused
- Any indication of violence in the home
- Any prior or current legal issues
- Any action taken by the reporting source

- The reporter's name, telephone number, and address. (If the reporter is reluctant to provide their name and contact information, the reporter needs to be informed that a report of a pregnant individual who has abused alcohol cannot be assessed if the reporter does not provide the reporter's name and address.)
- The relationship of the reporter to the pregnant individual (e.g., mental health personnel, addiction staff, law enforcement officer, family member, etc.)
- The willingness of the reporter to share with the individual his/her role in initiating the report
- The willingness of the reporter to allow the CPS Worker to use the reporter's name when interviewing the individual
- The willingness of the reporter to participate further in the assessment process, if appropriate
- The motives of the reporter, if possible, to evaluate
- The names of persons who may have information or direct knowledge concerning the suspected abuse of alcohol by the individual who is pregnant
- Any pre-natal care received by the individual and the name of the treating physician
- If the reporter is a medical professional, request verification of the pregnancy (copy of the pregnancy test record) and the medical indications of the suspected abuse of alcohol (e.g., obstetrical complications that indicate abuse of alcohol, results of toxicology screenings, etc.)

## **Report of Pregnant Individuals Using Controlled Substances 640-01-01-15-25**

(NEW 12/14/2020 ML 3603)

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Information that is important to collect when receiving a report concerning an individual who is pregnant and has used a controlled substance for a non-medical purpose during the pregnancy includes:

- The name, age, telephone number and permanent address of the pregnant individual.
- Gestational age of the fetus.
- The individual's awareness of possible effects of drug use on the fetus.
- The nature and extent of the substance use:
  - What controlled substance is being used?
  - How is the controlled substance being used?
  - When and how often is the controlled substance being used?
  - Is the individual currently under the influence of the controlled substance?
- The present location of the individual.
- The location where the reported concerns occurred if different from a permanent address.
- Indication of manufacture of controlled substance at the residence.
- The individual's history of past treatment for use of a controlled substance
- Any current treatment the individual is receiving for substance use.
- If there is current or past treatment, the location/facility where the treatment is/was received.
- The name of parent, guardian, or custodian if the individual is an unmarried child
- The family composition (e.g., names, sex, ages of children and other adults normally present). If there are children in the home who may be abused or neglected as a result of the use of controlled substances, then the procedures for assessment of reports of suspected child maltreatment must be followed.

- The names of persons present when the controlled substance is being used.
- Indications of violence in the home.
- Any prior or current legal issues.
- Any action taken by the reporting source.
- Whether law enforcement has been contacted regarding criminal activity.
- The reporter's name, telephone number, and address (If the reporter is reluctant to provide their name and contact information, the reporter needs to be informed that a report of a pregnant individual who has used controlled substances cannot be assessed if the report is made anonymously.).
- The relationship of the reporter to the pregnant individual (e.g., mental health personnel, addiction staff, law enforcement officer, family member, etc.).
- The willingness of the reporter to share with the individual his/her role in initiating the report.
- The willingness of the reporter to allow the CPS Worker to use the reporter's name when interviewing the individual.
- The willingness of the reporter to participate further in the assessment process, if appropriate.
- The motives of the reporter, if possible, to evaluate.
- The names of persons who may have information or direct knowledge concerning the suspected use of a controlled substance by the individual who is pregnant.
- Any pre-natal care the individual has received and the name of the treating physician.
- If the reporter is a medical professional, request verification of the pregnancy (copy of the pregnancy test record) and the medical indications of the suspected use of a controlled substance for a non-medical purpose (e.g., obstetrical complications that indicate use of controlled substance, results of toxicology screenings, etc.).

## **Substance Exposed Newborns 640-01-01-15-30**

(NEW 12/14/2020 ML 3603)

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Follow the procedures for CPS intake. Additional information that is important to collect when receiving a report of substance exposed newborns includes:

- Information specific to child's parents, caretakers, persons responsible, guardians, and/or custodians:
  - The name, age, sex, telephone number and permanent address of the parents, caretakers, persons responsible, guardians, and/or custodians
  - Present location of the parents, caretakers, persons responsible, guardians, and/or custodians.
  - Available information on prior substance use during pregnancy substance abuse history including:
    - Substances used (alcohol, heroin, other opiates, cocaine, methamphetamines, marijuana, etc.)
    - Amount/duration/frequency of substances used; and date/time of last usage
    - Social context of usage (with whom, where and when)
    - Motivation for treatment
- Substance use disorder treatment received in the past or currently
  - Provider names, telephone numbers, and addresses
  - Service type (inpatient/outpatient, education, etc.)
  - Service dates
  - Was service completed/terminated by provider or terminated by parent
- Prenatal care
  - Provider names, telephone numbers, and addresses
  - Service type (inpatient/outpatient, education, etc.)
  - Service dates

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- Was service completed/terminated by provider or terminated by parent
- Psychiatric treatment received in the past or currently
  - Provider names, telephone numbers, and addresses
  - Service type (inpatient/outpatient, education, etc.)
  - Service dates
  - Was service completed/terminated by provider or terminated by parent
  - Patient psychiatric diagnosis
- Mother's toxicology at the time of admission and validation of results
- Mother's toxicology at the time of birth and validation of results
- Was the mother informed of the test and results?
- Type(s) of testing done
- Date/time of planned discharge from hospital; and
- Discharge plan

Information specific to the child:

- The name, date of birth, sex, telephone number and permanent address of the child
- Present location of the child and the location where the reported concerns occurred if different from a permanent address
- Substance(s) that affected the infant
- Toxicology on child as well as method of testing and validation of toxicology results – Was the mother informed of the test and results
- Impact of the drugs/alcohol on the infant (NAS, meconium aspiration, other medical)
- Withdrawal symptoms of the infant
- Long Term effects on the infant
- Medical care the infant is currently receiving
- Medical care the infant will require in the immediate future and long term
- Date/time of planned discharge from hospital
- Plan of care for the infant at discharge from the hospital

Other information:

- The family composition (e.g., names, sex, ages of siblings and current location, other adults normally present and their relationship to mother/infant)
- Any previous deceased children (cause/circumstances/location of death/ death investigation conducted and result of investigation)
- Domestic violence
- Family/social support
- Housing situation
- Transportation availability
- Legal involvement
- Names of persons or agencies who may have information concerning the reported neglect
- \* Note: Contacting the reporter following intake of the report should be the first step in the assessment. The reporter may not have, or have access to, some/much of this information. Information not obtained from the reporter must be gathered during the initial interview, prior to determining eligibility for Alternative Response Assessment.

## **Institutional Child Abuse and Neglect 640-01-01-15-35**

(Revised 8/1/2021 ML 3631)

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- N.D.C.C. 50-25.1 defines Institutional child abuse or neglect as situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a public or private school, a residential facility or setting either licensed, certified, or approved by the department, or a residential facility or setting that receives funding from the department. For purposes of this subsection, residential facilities and settings excludes correctional, medical, home- and community-based residential rehabilitation, and educational boarding care settings.
- When an intake contains information that a child is the current resident of a public or private school, a residential facility or setting either licensed, certified, or approved by the department, or a residential facility or setting that receives funding from the department, the Intake form should be completed insofar as is practical and immediately forwarded to the Institutional Child Protection Unit, who will complete the 'full kit' and determine the disposition of the report.
- Reports of Institutional Child Abuse and Neglect are not entered into the FRAME system.

## **Withholding Medically Indicated Treatment from Disabled Infants (Baby Doe) 640-01-01-15-40**

(NEW 12/14/2020 ML 3603)

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- When the intake of a report indicates that medical treatment, recommended by a physician using reasonable medical judgment, is being withheld from an infant with a disability by a person responsible for a child's welfare, this is a report of suspected medical neglect.
  - Example #1:
    - A child is born with Down's syndrome, a condition that usually results in mental retardation. The parents refuse to authorize hospital personnel to provide the child with any nutrition (infant formula). Although providing formula would not "correct" the probability of a diagnosis of mental retardation, failure to provide formula will ultimately result in the child's death. This report meets the criteria for assessment.
  - Example #2:
    - A premature infant has a poor prognosis for long-term survival. There are heart problems, intestinal problems, and brain abnormalities. The child is conscious and not sedated. The neonatologist explains that there is no hope of survival independent of life support. Further, neonatologist states that the medical care being provided is inhumane because a ventilator, a tube in the throat, and IVs, intensified suffering and will not solve the health problems. The medical treatment makes it difficult to hold and impossible to feed the baby. Additional medical care is futile because there is no treatment to reverse the child's condition. The neonatologist recommends providing palliative care such as

fluids, warmth, monitoring of heart rate and vital signs, and possibly a feeding tube. The parents agree. This is not a report of medical neglect of a disabled infant. A physician, using reasonable medical judgment has provided evidence that the provision of such treatment would:

- merely prolong dying
  - not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
  - otherwise be futile in terms of the survival of the infant; or
  - be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.
- Failing to provide appropriate nutrition, hydration, and medication to any infant with a life-threatening condition always constitutes "withholding of medically indicated treatment." Reports that indicate that parents are wanting to withhold food, water (or medical hydration) or medication deemed necessary by a physician for a disabled child should be forwarded immediately to a CPS Supervisor.

## **Analysis and Triage of a CPS Intake 640-01-05**

### **Criteria For a Report of Suspected Child Abuse and Neglect 640-01-05-01**

(NEW 12/14/2020 ML 3603)

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Following an interview with a reporter of suspected child abuse or neglect, the intake information must be analyzed to determine whether the intake meets the statutory requirements for a report of suspected child abuse or neglect.

For a CPS Intake to be considered to be a report of suspected child abuse and/or neglect, the information received at intake must:

1. involve a child under the age of 18 years as a victim of suspected child abuse and/or neglect
2. include information that, if found to be supported by the facts and evidence in an assessment, may meet a definition of Abused Child; Sexually abused child, or neglected child as defined by NDCC 50-25.1.
3. include a child victim that is currently physically located within the geographical boundaries of North Dakota and not in a tribal jurisdiction (physical location, NOT where the child resides)
4. contain sufficient information to identify or locate the child victim(s) of the report
5. name a subject of the report (person suspected of abusing or neglecting a child) who is a "person responsible of a child's welfare" as defined in NDCC 50-15.1-02 as, "an individual who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or child care setting" (emphasis added)

Proceed with analysis of the Intake with the following steps:

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- If the Intake does not involve a child under the age of 18 years as a victim of the report (child who is suspected of being abused or neglected) (50-25.1-02(3)).
- If an Intake involves an individual over the age of 18 years, consider whether the reporter may be referred to Protection and Advocacy (P&A receives reports of alleged abuse, neglect, and exploitation of individuals with disabilities. While P&A's authority to provide protective services focuses primarily on adults, P&A protective services may also be provided to children with disabilities when Child Protection Services has determined that the situation or incident is not within CPS criteria.)
- Consider whether the reporter should be directed to Adult Protective Services if the concerns involve a victim over age 65.
- An administrative assessment or referral must be completed when a CPS Intake does not involve a child in North Dakota who is under the age of 18.
- If the Intake does not contain information that, if found to be true by the facts gathered in an CPS assessment, may meet a definition of Abused Child; Sexually abused child, or Neglected child as defined by NDCC 50-25.1. An administrative assessment must be completed when an Intake does not contain reported child abuse or neglect concerns that may meet a definition of Abused Child (N.D.C.C. 50-25.1-02(3)); Sexually Abused Child N.D.C.C. 50-25.1-02(3), or Neglected child N.D.C.C. 50-25.1-02(14).

If a child victim of the CPS Intake is not currently physically located within the geographical boundaries of North Dakota ( or expected to return within a very short time e.g. visiting out of state, on vacation or parenting time, etc.) an administrative referral must be completed to the jurisdiction (state/tribal/international) where the child is physically present, if known. (State law cannot be applied to a child who is not in the state.)

If the child victim of the report resides within a tribal jurisdiction, it must be determined whether the child is a member or eligible for membership in a federally recognized Indian tribe. (See THE INDIAN CHILD WELFARE ACT 640-01-10-70)

If a CPS intake does not contain sufficient information to identify or locate the child victim(s) of the CPS Intake, perform the following due diligence to attempt to identify or locate:

- Perform a search of the Master Client Index if sufficient information is available
- Perform a search of FRAME if sufficient information is available
- Check with available public resources such as the local public-school system, TANF benefits program, utility company, etc. (2-3 resources is sufficient for this purpose)
- Re-contact the reporter if possible, to request any additional information which could assist in locating/ identifying the child
- Attempt a site visit to an address or location if provided by the reporter

The person suspected of abusing or neglecting a child (the 'subject' of the report) must be a "person responsible for a child's welfare" (N.D.C.C. 50-25.1-02-1.

- To determine whether a person reported to be the subject of a CPS report is a "person responsible for a child's welfare" as defined in NDCC 50-25.1-02, apply the following criteria:
  - The person has/had responsibility for the care and supervision of the child at the time the suspected child abuse and/or neglect occurred. (See Determining Responsibility for Care and Supervision.
    - Unless a person was responsible for the care and supervision of the child, that individual cannot be considered as the subject of a report of suspected child abuse and neglect

**and**

- The person is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or child care setting.

**Both criteria above must be met in order to consider an individual to be the subject of a CPS assessment.**

If the CPS Intake names a subject of the report (person suspected of abusing or neglecting a child) who is NOT a “person responsible for a child’s welfare”, consider whether the report should be referred to a law enforcement agency for investigation and disposition (report contains information which is a potential criminal violation that endangers the child e.g. physical abuse/assault/sexual abuse/sexual assault/drug involvement, etc.)

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**Exceptions 640-01-05-01-01**

(NEW 12/14/2020 ML 3603)

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State law requires certain types of reports to be accepted by CPS, which are not required to meet the criteria for a report of suspected child abuse or neglect. These types of reports are:

- Reports of pregnant women using controlled substances are accepted.
  - N.D.C.C. 50-25.1-16 states, "A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of use, if known, and the name and address of the individual making the report."
- Reports of pregnant women abusing alcohol are accepted.
  - N.D.C.C. 50-25.1-18 states, "A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of use, if known, and the name and address of the individual making the report."
- Reports of Abandoned Infants (Baby Safe Haven) are accepted.
  - N.D.C.C. 50-25.1-19(2) states, "A parent of an infant under the age of one year, or an agent of the parent with the parent's consent, may leave the infant with an on-duty staff member at an approved location. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving an abandoned infant."
  - N.D.C.C. 50-25.1-19(6) states, "Within twenty-four hours of receiving an infant under this section, the approved location shall report to the department, as required by section 50-25.1-03, that an infant has been left at the approved location. The report may not be made before the parent or the agent leaves the approved location."
  - North Dakota Administrative Code 75-03-19.2 names the following approved locations:

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- Local public health units
  - Human service zones
  - Regional human service centers
  - Long-term care nursing facilities
  - Children's advocacy centers
  - Emergency medical services operations
  - Criminal justice agencies.
- Reports of child sexual behaviors are accepted (one child sexually perpetrating against another child)
    - N.D.C.C. 50-25.1-05,3 states, "If law enforcement determines a minor committed an act in violation of sections 12.1-20-01 through 12.1-20-04, section 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.2, or chapter 12.1-27.2 against another minor, law enforcement shall provide the report to the department. Law enforcement shall conduct a criminal investigation and shall coordinate with the department for the provision of services to the minors, parents, custodians, or other persons serving in loco parentis with respect to the minors.

## **Determining a Person Responsible for a Child's Welfare 640-01-05-01-05**

(NEW 12/14/2020 ML 3603)

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Determining responsibility for care and supervision.

The ultimate responsibility for the safety, care and supervision of children remains with the parent or guardian, whether the parent or guardian is present to personally supervise them or not.

Both parents are considered to be equally responsible for care of their children regardless of parenting time orders, etc. unless there has been a termination of parental rights or legal restriction on their parenting time (Protection order, court-ordered supervised visitation, etc.).

When analyzing a report of suspected child abuse and neglect, first determine the role and the location of each parent/caregiver at the time the suspected abuse/neglect occurred.

To determine the subject status of the parent/guardian/caregiver, consider whether:

- The caregiver was the sole adult present at the time of the reported abuse/neglect. If so, this caregiver is most likely a subject.
- If two caregivers were present in the home at the time of the reported abuse/neglect, examine the role of each. If one caregiver was directly interacting with the children while the other caregiver was in another part of the home or property, determine whether the caregiver who was not in direct contact with the children knew or should have known the children were not or may not have been safe in the situation. If one caregiver was interacting directly and the other was unaware of any safety issues or potential safety issues, it is likely that the caregiver in

direct interaction with the children is the subject and the other is a non-subject.

- If two or more caregivers were present in the home at the time of the abuse/neglect, examine the role of each. If multiple caregivers were directly interacting with the children examine whether any caregiver intervened or attempted to intervene to protect the children. The caregiver attempting to intervene may not be a subject.
- If there is behavior by/between the caregivers, witnessed by the children (such as domestic violence or drug usage), consider whether one caregiver was responsible for the behavior and the other was a victim or under control of the person responsible for the action. The caregiver who was a victim or under control of the person responsible for the action may not be a subject.
- In a household shared by more than one family or more than one generation of the same extended family, the biological parent should be considered first as being responsible for the care and supervision of their child. If other family or household members are temporarily placed in a position of being responsible for the care and supervision of the child(ren), continue analysis of the report as outlined below. This analysis may continue into the assessment process as additional information is obtained.
- Consider whether the parent delegated responsibility for temporary care and supervision to another individual inside of the home. For substitute caregivers outside the home refer to CPS Assessments in Out-Of-Home Care Settings 640-01-10-75
- Did the parent notify the individual that responsibility for care and supervision for the child(ren) was transferred from the parent to the substitute caregiver? If the parent simply assumed someone else was responsible for the child, the responsibility may remain with the parent.
- Consider whether an individual designated by the parent to provide care and supervision in the home is an appropriate caregiver.
  - Did the parent know, or should the parent have known, an individual the parent delegated to provide care and supervision was, or may have been, incapable of providing safe care? Examples of this are:
  - Was the individual of an age and maturity to responsibly provide care?

- Persons in frail health who are unable to provide for the child's needs
- Persons who the parent knows or has reason to know may be impaired by use of drugs or alcohol, impacting the individual's ability to provide safe care for the child
- Persons who the parent knows, or has reason to know, has a past legal conviction for offending against a child or past/current child welfare involvement resulting in removal of the person's children from the home for safety reasons.
- If it can be shown that a parent knew or should have known that a person was not appropriate caregiver for children or was unable to meet any special or developmental needs of the child, the parent may be considered a subject along with another individual or individuals.

If the individual named on the SFN 960 does not meet the criteria required to identify a "person responsible for a child's welfare", the directive in NDCC 50-25.1-05.3 must be followed and the administrative referral documented in FRAME:

**50-25.1-05.3. Disposition of reports implicating a person not responsible for the child's health or welfare.**

Upon determination by the department or the department's designee that a report made under this chapter implicates a person other than a person responsible for a child's welfare, the department may refer the report to an appropriate law enforcement agency for investigation and disposition.

To determine whether a report concerns a "childcare setting", refer to Child Care Setting Assessment 640-01-10-75-05.

## **Determining a Household Member** **640-01-05-01-05-01**

(NEW 12/14/2020 ML 3603)

[View Archives](#)

For the purposes of determining whether an individual is a “person responsible for a child’s welfare”, “member of the child’s household” means an individual who resides in a family home as evidenced by factors including:

- maintaining clothing and personal effects at the household address,
- receiving mail at the household address,
- using identification with the household address, or
- eating or sleeping at the household address on a regular basis

When a child’s residence is divided between two households, such as when parents have joint custody or exchange the child for regular parenting time, the child is considered a member of each household and individuals within each home may meet the definition of “household member”.

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**Determining a Subject Who is Out-Of-State**  
**640-01-05-01-15**

(Revised 8/1/2021 ML 3631)

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When a child is currently physically located in North Dakota and an individual meets the definition of a "person responsible for a child's welfare, but is no longer in the state of North Dakota, determine whether the individual suspected of abusing or neglecting a child meets the following criteria:

- When the reported abuse or neglect occurred in North Dakota and the subject also resided in North Dakota at the time of the abuse or neglect, but subsequently left North Dakota, and is currently residing in another state, a report can be assigned for assessment and decision of "Confirmed" can be made if supported by the facts of the assessment.
- If the subject is an out-of-state resident but comes into North Dakota and child abuse or neglect occurs while the subject is within North Dakota, but the subject subsequently leaves North Dakota, a report can be assigned for assessment and a decision of "Confirmed" can be made if supported by the facts of the assessment.
- For reports where the subject is an out-of-state resident, the maltreatment occurred in another state and the children suspected of being abused or neglected are now present in North Dakota, assess for present danger. When a child is determined to be unsafe, protection of the children must be provided according to North Dakota law. Children who are determined to be unsafe may be placed in protective custody by order of the Juvenile Court as in any other case.
- Reports concerning children who were abused or neglected in another state, but who now reside in North Dakota should be referred to the state where the abuse or neglect occurred with an offer of assistance to interview the child/non-subject parent and

any other necessary collateral interviews or additional information available.

- In some of these situations, depending on the family arrangements for care and considerations of custody, or joint custody, contact will need to be made with CPS staff in another state (if the family has moved or the child travels between parental homes). This is a decision and process that should include consultation with a supervisor. The Field Service Specialist may also be consulted.
- Children abused or neglected in another state should also be screened for trauma and referred for appropriate services.
- When the subject of a report of suspected child abuse or neglect is an out-of-state resident and the abuse or neglect occurred outside of North Dakota, the state of North Dakota has no jurisdiction over this subject. Therefore, an intake that names a subject who is an out-of-state resident and the maltreatment also occurred out of state must be administratively referred to the appropriate agencies in the other state (child welfare and/or law enforcement).

## **Forwarding a Report to a CPS Supervisor 640-01-05-05**

(NEW 12/14/2020 ML 3603)

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When the above criteria can be reasonably determined by the Intake worker to meet the above criteria, the intake can be forwarded to a CPS Intake Supervisor for review/assignment.

When the above criteria cannot be reasonably determined by the CPS Intake Worker, the Intake must be forwarded to the Intake Supervisor for review and direction. The Intake Supervisor may:

- direct the intake worker to make additional contacts to clarify the information, either by re-contacting the reporter, checking the CPS history, or other actions
- consult with the CPS Supervisor as to the appropriate direction for the intake; or
- decide to forward the intake to a CPS Supervisor for review/assignment

When the Intake supervisor is unable to determine whether the criteria for assignment are met, the Field Service Specialist may be consulted.

When the appropriate disposition remains unclear after consultation, the intake will be forwarded to a CPS Supervisor for review or assignment in order to gather sufficient information to determine appropriateness of the assessment. For example, the reporter does not know sufficient details to determine whether the named subject meets the definition of a "person responsible for a child's welfare".

**All CPS intakes not identified to be administratively assessed or administratively referred must be reviewed with the CPS Intake Supervisor or CPS Supervisor within 24 hours of receiving the Intake.**

For any intake that is not administratively assessed or administratively referred or forwarded to a CPS Supervisor within 24 hours, there must be a Case Activity Log note explaining the delay.

Reports containing any of the following factors should be considered emergency reports requiring a plan for intervention and safety as soon as possible:

- Report that a child is in Present Danger
- Serious physical injuries that create a substantial risk of death, disfigurement, or impairment. Serious injuries include fractures, subdural hematoma, dislocation, sprains, internal injuries, burns etc.
- Current non-accidental injury to the head or face of any child such as welts, bruises, lacerations, and abrasions
- Current concerns of sexual abuse, where the alleged perpetrator has access to the victim
- A young child or a child with disabilities or other special needs is currently left unsupervised and/or inadequately supervised for any period of time or left in the care of an inappropriate caregiver to the extent that the child's immediate needs go unnoticed or unmet
- Abuse or neglect such as failure to thrive, malnutrition, poisoning or ingestion of/exposure to noxious substance in which the child's safety is immediately threatened.
- Cruel, unconscionable, intimidating, or terrorizing acts or statements (e.g., deliberate threats to the child's life, or intimidating acts with firearms or animals)
- Situation compromises child's safety and may reflect a real and immediate potential for harm (e.g., domestic violence where there is an immediate risk of substantial harm to child, grossly inappropriate discipline, or access of an alleged perpetrator who has seriously harmed or abused a child in the past)
- No protective caregiver available
- Police request immediate response

## **Administrative Referral 640-01-05-10**

(NEW 12/14/2020 ML 3603)

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Administrative Referral is the process for documenting the referral of intakes of suspected child abuse or neglect that fall outside the North Dakota CPS jurisdiction.

Reasons for an administrative referral include:

- The child is not present in a North Dakota state jurisdiction
- The report implicates an individual who is not a person responsible for a child's welfare (non-caregiver)
- The child victim in the report is a member of a federally recognized Indian tribe and is currently located on an Indian Reservation
- The Intake requires a response to a report of Child Sexual Behavior (cross reporting to law enforcement is required)

The intake should be analyzed to ascertain the current location of the child victim(s) and any jurisdictional questions or issues. Referrals should be made within 5 days, considering the details of the intake, the urgency of the situation, and the health and welfare of the child(ren) the timeframe for a referral may be shortened by the Intake Supervisor.

Administrative referrals should be made when:

- Intakes in which the child named in the intake is not physically present North Dakota
- When the child is physically present in another jurisdiction (state or tribal) an administrative referral must be completed in FRAME
- Intakes concerning sexual abuse and/or physical abuse (or other potentially criminal behavior), in which the subject is not a person responsible for a child's welfare (non-caregiver)

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Intakes in which the suspected child abuse or neglect of a Native American child took place on an Indian Reservation and the assessment is the responsibility of the tribal government or BIA.

## **Timeline for Administrative Referrals**

### **640-01-05-10-01**

(NEW 12/14/2020 ML 3603)

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An **administrative** referral shall be completed and entered into the FRAME system and submitted within five working days of the receipt of the report of suspected child abuse and/or neglect by CPS Intake.

At the time the decision is made to administratively refer a report of suspected child abuse or neglect, the Intake worker or Intake Supervisor should notify the reporter, if known, of the decision.

Notification of the subject of a report that has been administrative referred is the responsibility of the agency receiving the referral.

## **Administrative Assessment 640-01-05-20**

(NEW 12/14/2020 ML 3603)

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**Administrative Assessment is the process for documenting the disposition of CPS Intakes that fall outside the criteria for a report of suspected child abuse and neglect.**

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## Conditions for Administrative Assessment 640-01-05-20-01

(Revised 8/1/2021 ML 3631)

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The following types of reports may be considered for an administrative assessment:

- Reports in which the concern related by reporter **clearly fall outside** the state law. Examples include:
  - the child in question is 18 years of age or older.
  - the allegation is that the child is being kept home from school and the child is under age 7.

The guideline to use for this condition is that if a full assessment took place there would be **no** chance that a decision of Confirmed could be made.

- Reports in which the reporter can give **no credible or causal reason** for suspecting the child has been abused or neglected. Examples include:
  - “the mother has men sleeping over;”
  - “the father drinks;”

Under this condition there is not cause and effect between a caregiver’s alleged actions and the possible abuse or neglect of the child.

- Reports in which **insufficient information is given to identify or locate the child or family (after performing due diligence)**. Example includes:
  - The report lacks information that would allow for a full assessment to proceed, and there is no reasonable means of gathering the information to proceed.
- Reports where there is, based on specific information, **reason to believe the reporter is willfully making a false report**. Example includes:

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- Reporter had previously threatened to "turn the subject in to CPS" because of unrelated conflict.

If the Intake Supervisor or CPS Supervisor believes that the reporter is willfully making a false report, specific information that can establish that claim shall be documented. This information must be provided to the state's attorney for investigation and possible criminal prosecution.

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## **Additional Criteria for Administrative Assessment 640-01-05-20-05**

(Revised 8/1/2021 ML 3631)

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When a Child Protection Supervisor receives an Intake from the Intake Unit, the supervisor must first review the report to determine whether the intake provides as complete a "full kit" as possible, given the limitations of the reporter's knowledge and the relationship of the reporter to the child and family. (e.g. A police officer would likely not be able to identify the supportive connections for the family based on responding to a complaint of domestic violence.)

The supervisor must confirm that the report meets all the criteria required for the Intake to be regarded as a report of suspected child abuse or neglect (or another type of accepted report) and determine the time frame for a response.

The CPS Supervisor may consider the following options:

**\*\*\* NOTE:** options available for reports initiated by Human Service Center (HSC) staff are **ONLY** applicable to HSCs and should not be applied to reports made by private therapy service providers. The reason for this is that HSCs are part of the Department of Human Services, as such, they are still within the scope of DHS' responsibility under NDCC 50-25.1.

- Reports in which the suspected child abuse or neglect has been **addressed in a prior assessment**. Example:
  - Reports that are received with identical concerns about the same children and subject(s), regardless of the identity of the reporter, with no additional concerns of abuse or neglect beyond the concerns reported and assessed in a prior assessment.

- Care must be taken to assure that the concerns reported are the same as concerns addressed a prior assessment rather than a new incident of similar concerns.
- If the reported concerns were addressed in a prior assessment and there are no new concerns, the report may be sent back to Intake for administrative assessment.
- Reports in which the alleged **subject is receiving therapy at the human service center and** the therapist is the reporter.
  - The CPS Supervisor, CPS Worker and reporting therapist have jointly assessed the information to determine whether the concerns have been previously assessed in this, or another, jurisdiction.
    - Example is: An individual who was the subject of an assessment/investigation in another state seeks therapy services and discloses past abusive behavior which was previously assessed by a CPS agency or law enforcement in the other state. (This must be verified by the other state.)
      - This report may be administratively assessed using the criteria for a prior assessment.
- Reports made by human service center therapists who have reason to suspect that a child is abused or neglected.

If such a report is made, the therapist, the CPS Supervisor, and/or the CPS Worker shall assess the factors in the report and consult on the best process for the assessment.

- The extent and degree of the assessment will depend on the factors in the report and the circumstance of the therapeutic relationship. The obvious reason for this coordination is to assist in the protection of the child(ren) while doing our best support the therapeutic process in place.
- The report may be assigned and considered for termination when there is no present or impending danger identified.

If the concerns are considered a violation of a criminal statute involving physical or sexual abuse, law enforcement must be contacted.

- An example is: a parent recognizes that certain parenting behavior (neglect/psychological maltreatment) is inappropriate and voluntarily seeks treatment in order to change the behavior and the therapist believes the behavior is no longer occurring and there is no present or impending danger identified.
- **Reports made by a client receiving HSC services because of a CPS referral.** If a referral has been made to the Human Service Center because of a Confirmed (or “services required”) decision, and the case has remained open at the zone for case management.

If information is received, which causes the therapist to suspect a child is being maltreated during the therapy, that information must be reported as any other mandated report.

The CPS Supervisor, the therapist, the referring child welfare worker, and/or (if it is different person) the CPS worker will staff the information. Information on any suspected continued maltreatment must be assessed to determine the safety of the child(ren). The consultation must include consideration of the basis of the previous decision that services are required, and whether the current concerns can be addressed by the case manager, assisted by the therapist.

- The possible need for a referral to Juvenile Court or the State’s Attorney for intervention should also be discussed, as there may be a basis to re-refer to the court if the court has already been involved.
  - An example is: A referral resulting from a CPS assessment with a decision of Confirmed (or services required) is made to a HSC. During therapy, it is disclosed that there has been another incident of suspected abuse/neglect.

- A staffing occurs and that staffing may conclude either that addressing the abuse/neglect through case management is sufficient to control impending danger or that addressing the abuse/neglect through case management and therapy is insufficient to protect the children.
- A choice can be made to complete another CPS assessment or to go directly to the court for deprivation action and that it is not necessary or desirable to complete another CPS assessment. However, when the reported maltreatment concerns are considered a violation of a criminal statute involving physical or sexual abuse, law enforcement must be contacted and a CPS assessment completed, if not previously assessed.
- **Reports made when a client receiving HSC Services that are not related to involvement of Child Protection Services** and child abuse or neglect is suspected by the therapist, a report providing the reasons for the concerns must be made.

In this situation, the therapist, CPS Supervisor, and the CPS Worker will staff the case to discuss the safety of the child(ren) and necessary assessment actions.

- The staffing of the report may result in the decision that the concerns for the safety of the child(ren) and the needs of the family are being addressed through the therapeutic process with the client and the therapist. Therefore, there is no need for a more direct involvement by the CPS worker.
- The report may be assigned and considered for termination when there is no present or impending danger identified.
  - An example is: A parent recognizes that there is an excessive amount of parent/child conflict in the family and seeks services to reduce this conflict. Consultation reveals that, while the conflicts may be still occurring,

the family is actively working through the therapeutic process and no child is in danger.

- However, when the concerns are considered a violation of a criminal statute involving physical or sexual abuse, law enforcement must be contacted and a CPS assessment completed, if not previously assessed.
- The **Child is Receiving HSC Services** is the Source of Information that Leads to Suspected Maltreatment

If during therapy a child discloses information about maltreatment of self or sibling(s) which leads the therapist to suspect child abuse or neglect, a report needs to be made.

The therapist, CPS Supervisor, and/or CPS Worker should discuss the case to determine the appropriate assessment process.

- If the abuse/neglect is suspected to have occurred in the distant past (five years ago or more) and the child no longer has contact with the subject (couple divorced, past relationship with no future contact planned, subject whereabouts unknown, etc.). The report may be assigned, assessed, and considered for termination when there is no present or impending danger identified.
- However, when the concerns are considered a violation of a criminal statute involving physical or sexual abuse, law enforcement must be contacted and a CPS assessment completed, if not previously assessed.

## **Reports with Open Case Management 640-01-05-20-10**

(NEW 12/14/2020 ML 3603)

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The intent of this policy is for the Child Welfare Worker serving as the foster care or in-home case manager with the family to assess additional concerns of suspected child abuse or neglect received while the family is receiving case management services.

If report of suspected child abuse or neglect is made when the family is receiving protective services through a human service zone foster care or in-home case manager, the concerns will be reviewed to determine if they can be assessed by the case manager.

- This will be true whether the report is from an external source or the child abuse or neglect concern surfaces and is identified by the County Worker providing the case management services.

A team comprised of the caseworker providing foster care or in-home case management, the caseworker's supervisor, the CPS worker who completed the most recent CPS assessment with this family, and the CPS Supervisor, discuss the concerns, reviewing for any present or impending danger , and plan for the next steps in the process.

- This team of professionals will decide if the concerns will be assessed by the caseworker providing foster care or in-home case management services or if a new full CPS assessment is necessary.
  - Reports that require extensive collateral information, medical records, etc. may be more appropriately assessed by the CPS worker.
  - During this meeting, this team of professionals will decide whether:
  - Any modifications to the present danger plan or safety plan are required;

- Updates to the PCFA, case plan or PCPA are necessary and whether an emergency child and family team meeting must be scheduled.

The in-home case manager will assess the reported concerns of suspected child abuse and neglect with the parents/caregivers, child (when developmentally and age appropriate), and safety service providers within three (3) business days from the decision to handle the report administratively to determine what action, if any, is necessary to address the concerns. During the discussion with the family and safety service providers key topics must be discussed including whether:

- A present danger plan has been put in place and if so, whether any changes to the present danger plan are necessary;
  - A revision to the safety plan is needed to ensure it remains sufficient to control impending danger;
  - A referral for an FCE meeting has been or will be made due to the risk of the child being placed out of home; and
  - Any changes are needed to the PCFA, case plan, or PCPA and the timing of the next child and family team meeting as a result of the new circumstances.
- A choice can also be made to go directly to the court for deprivation action and that it is not necessary or desirable to complete another CPS assessment.
  - When it is decided that a new CPS assessment will be completed by a CPS worker, the rationale for this decision will be documented in the written assessment report section entitled, "Reason for This Assessment."
  - When the foster care or in-home case manager completes the assessment, the CPS Supervisor or CPS Worker will complete the Administrative Assessment in FRAME within ten working days of the receipt of the report of suspected child abuse and/or neglect by the assessing agency.
  - However, when the concerns are of a criminal nature (Examples: sexual abuse, physical abuse), or if the family has revealed information indicating a child

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may have been a victim of a crime, a referral shall be made to law enforcement for a joint assessment/investigation with a CPS worker.

The foster care or in-home case manager will assess the reported concerns of suspected child abuse and neglect by discussing them with the appropriate family member(s) prior to the child and family team meeting. The assessment of the additional concerns shall be documented in FRAME.

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## **Timeline for Administrative Assessments 640-01-05-20-15**

(NEW 12/14/2020 ML 3603)

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When an Intake is forwarded to a CPS Supervisor for review, the decision to administratively assess the Intake must be made within three working days of the receipt of the intake of suspected child abuse and/or neglect by a CPS Supervisor.

A CPS Supervisor may return an Intake to the Intake Supervisor for FRAME entry.

- The intake may be returned to Intake for an administrative assessment under any of the administrative assessment options below related to "administrative assessment".
- The intake can be returned to Intake for an administrative referral when the named subject of the intake does not meet the definition of a "person responsible for a child's welfare" (NDCC 50-25.1-05.3)
- The intake can be returned to Intake for transfer when the CPS Supervisor determines the jurisdiction for an assessment lies within a different Zone.
  - The CPS Supervisor in the Zone wishing to transfer a report must confer with the CPS supervisor in which it is believed the jurisdiction lies prior to transfer of an intake.

The administrative assessment must be entered into the FRAME system within five working days from the date the intake is returned to Intake for entry.

At the time the decision is made to return an intake to the Intake Unit to be entered into FRAME, CPS Worker or CPS Supervisor should notify the reporter, if known, of the decision. Consider referring the reporter to other services which may be appropriate for the family in question.

Professional judgment shall be the guide as to whether the subject of the intake should be notified of the administrative assessment.

- Any notification of the subject for those cases administratively assessed is the responsibility of the Intake Supervisor when the intake is administratively assessed at Intake.
- When the decision to administratively assess and intake is made by CPS it is the responsibility of the CPS Worker or CPS Supervisor to notify the subject.

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## Jurisdiction for Assessments 640-01-05-25

(NEW 12/14/2020 ML 3603)

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When considering the jurisdiction for a CPS Intake, it is important to determine the correct jurisdiction for directing the Intake so as not to slow the response to a child who may be in danger.

For Child Protection purposes, the zone where the child is currently physically present, regardless of the child's temporary or permanent residence, represents the county responsible for the CPS assessment. This is where the child can be protected using the Juvenile Court where the child is.

This is true, except when:

- the child named as the suspected victim is a resident of an institution or residential facility
- child named as the suspected victim is in family foster care and the foster home is outside the county with Juvenile Court jurisdiction over the child, and the subject is not the out of home care provider.
- jurisdiction for reports concerning children in out-of-home placement.
- the subject of a report of suspected child abuse or neglect is a facility, the report must be immediately forwarded to the CFS Field Service Specialist Institutional CPS Unit as a report of suspected institutional child abuse or neglect.
- a report is received which names a child who is currently placed in an out-of-home facility, **and the subject is a caregiver other than the facility**, the lead county for the assessment is the county under the same Juvenile Court jurisdiction as the child. The zone staff where the facility is located will conduct any necessary interviews with the alleged child victim if requested to do so by the zone under the same jurisdiction as the child. CPS Workers from the two zones will coordinate the assessment process when each plays a role in the assessment.

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- a child in an out of home facility is in the custody of a non-social service agency (DJS, parental custody), and the subject is not the facility, the zone with responsibility for the assessment will be the zone where the victim child resided prior to placement or where siblings may also be in need of protection.
- the child is placed in family foster care outside the county with Juvenile Court jurisdiction and the subject is not the out of home care provider, the zone with Juvenile Court jurisdiction over the child will be responsible for the assessment.

## **Jurisdiction for Children on an Indian Reservation 640-01-05-25-01**

(NEW 12/14/2020 ML 3603)

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When the alleged victim of a report of suspected child abuse or neglect is a Non-Native American child living on the Indian Reservation, the county that encompasses the Reservation area where the child is located has the responsibility for the assessment. The county will coordinate with Tribal Social Services in completing the assessment.

When the alleged victim of a report of suspected child abuse or neglect is an enrolled or enrollable member of a federally recognized tribe living on the Indian Reservation, the tribe will have jurisdiction for assessment/investigation of any report of suspected child abuse or neglect.

When the alleged victim of a report of suspected child abuse or neglect is not an enrolled or enrollable member of a federally recognized tribe living on the Indian Reservation, the tribe will determine whether the child is otherwise considered in "Indian Child" under jurisdiction of the tribe for assessment/investigation of any report of suspected child abuse or neglect.

When the tribe determines that the alleged victim is not under tribal jurisdiction, the county that encompasses the Reservation area where the child is located has the responsibility for the assessment. The county will coordinate with Tribal Social Services in completing the assessment.

In any assessment involving an Indian Child, it must be determined whether the Indian Child Welfare Act applies.

## **Transfer of Assessments to Another Zone 640-01-05-25-05**

(NEW 12/14/2020 ML 3603)

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Assessments initiated by a Human Service Zone agency should be transferred following jurisdiction policy above when it is reported that the child victim is physically present in another zone, and the child is expected to remain in that zone for the period of the assessment.

Conditions for transfer of an assessment to another Human Service Zone

- An assessment initiated in a zone where a child is physically present may be transferred to another zone when a child moves to the other zone and is expected to remain in the other zone for the period of the assessment, when the child or subject have not yet been interviewed.
- When the child and/or parent have been interviewed by the CPS Worker for the zone initiating the assessment, that assessment should be completed by that zone and the case transferred for services as appropriate.
- When there are indications that a child victim in an open assessment is present in another zone and is currently unsafe, the zone where the child is currently physically present must take any necessary protective action while the child is present in that zone and assessed to be in present danger.
  - An assessment may be transferred when it is determined whether the child will remain in the zone where the child is currently physically present and protective action was necessary for the child's safety.
- Courtesy interviews may be requested as needed as described in policy for jurisdiction for an assessment.

When transfer of an assessment to another zone is planned, a supervisor or other designated staff of the zone accepting the

transfer must be contacted and the transfer discussed prior to a formal transfer in FRAME.

- All documentation associated with the assessment report, Intake Form and/or SFN 960, case activity logs, and any documentation gathered from other sources must be complete, up to date (including any extensions and safety plans) and attached to the assessment in FRAME.
- A summary of assessment activity to date shall be included in the Case Activity Log prior to transfer.
- A zone must accept transfer of an assessment when the above conditions have been met.

## **Conflicts of Interest 640-01-05-25-10**

(NEW 12/14/2020 ML 3603)

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When a potential conflict of interest is recognized, a strategy for managing the potential conflict of interest situation should be discussed before the report is assigned.

For CPS purposes, a conflict of interest defined as personal, organizational, or professional involvement by a Department of Human Services' employee or employee of an authorized agent of the department in a CPS action that:

- may impact the judgment or objectivity of any staff in the performance of their official duties or
- may result in personal, organizational, or professional gain

Personal involvement means a concern for self, a friend, a relative, or a co-worker. Organizational or professional involvement means a concern for an agency resource, such as an employee or a foster home or a contractual relationship with another entity such as another community agency. An agency conducting a CPS assessment shall not engage in the assessment if the assessment or assessment decision would be affected by personal interest, or professional or organizational relationship to a third party.

It is crucial to understand that a conflict of interest is a situation, not an accusation. Having a conflict of interest is not the same as being unethical and pointing out that someone has a conflict of interest is not accusing them of bias or lack of integrity. Recognizing a potential conflict of interest is labeling a situation that might cause concern that a personal or professional interest may interfere with objective professional judgment.

Unaddressed conflicts of interest may promote misunderstanding and leave the public and vulnerable individuals with doubts about the

objectivity of the CPS process and the integrity of the public agencies involved.

Conflicts of interest may exist in several kinds of situations. For example:

- When a CPS report involves an employee, Zone Board member, County Commissioner
- When a CPS report involves an employee of a Human Service Center who has regular interaction with the zone agency, such as a therapist who regularly works with children involved with the Zone agency
- With a zone staff member within the agency who has or may have personal interests that compete with his/her employment with the public agency (for example: employees who hold additional jobs or who volunteer for private agencies or through religious affiliations or who serve on a non-profit board, etc.)
- With a staff person who has conflicting responsibilities (for example: a CPS worker who is assigned a CPS assessment of a foster home where the worker has a current, or pending placement of a child in that foster home or who is or was the case manager for the suspected victim or subject of a report
- Potential conflicts of interest may also exist when CPS reports concern family members of persons in any of the above roles

When an Intake Supervisor is notified about a potential conflict of Interest situation, the Intake Supervisor should contact the CPS Supervisor in the appropriate zone to discuss potential conflict of interest situation and strategize a plan to manage the situation. The Intake Supervisor and/or CPS Supervisor may consult the CPS Field Service Specialist for assistance if needed.

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**Assessment of a Report Involving a Conflict of Interest 640-01-05-25-10-01**

(NEW 12/14/2020 ML 3603)

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When a potential conflict of interest is recognized upon intake or soon after the intake of the report, potential conflict of interest situations should be discussed with the Family Service Specialist and a determination made about how to best conduct the assessment before the report is assigned.

- Under no circumstances should a CPS Worker be assigned to do the assessment if the CPS Worker is a relative, intimate friend, or close associate of the subject of the report, the child, or the family involved.
- The zone in which the person is employed should not handle reports involving child welfare employees in that zone or a Human Service Center staff member who has regular interaction with the zone agency in the same HSC region.
- Assessments of licensed foster homes, kinship placements or treatment homes by CPS Workers in the same zone should be regarded as a conflict of interest in most circumstances.

When the report is determined to be response time A and an immediate or urgent response is needed, a timely response for assessment of a child's safety will take precedence over managing a conflict of interest.

- First, determine whether there is a qualified individual within the agency for whom the conflict of interest may be reduced, such as a supervisor or case manager. The assessment should be transferred as soon as possible after determining safety.
- When it has been determined that a report will be referred to another zone, the CPS Supervisor should ask for assistance from another zone office for the completion of a conflict of interest assessment. The Family Service Specialist may assist the zone in locating resources for conducting assessments in conflict of interest situations,

- Efforts to transfer the assessment to another zone to reduce the potential conflict of interest should be documented.

When it is felt that reasonable efforts have been made to transfer the assessment and another zone cannot be engaged to accept the assessment of a conflict of interest report, staffing with the Central Office is recommended before proceeding with the assessment.

Because of the broad access to the FRAME database assessments determined to be a conflict of interest shall be locked to limit access in order to assure confidentiality. The level of lock will be determined in consultation with the Family Service Specialist or, if the assessment is to be locked at level 1, with the CPS administrator or assistant CPS administrator.

## **CPS Assessment 640-01-10**

### **Introduction 640-01-10-01**

(NEW 12/14/2020 ML 3603)

[View Archives](#)

North Dakota Century Code (N.D.C.C.) requires that all reports of suspected child abuse and neglect be reported to the department of Human Services and allows the duties of Child Protection Services to carry out the mandates on the law through the use of an "Authorized Agent, defined as "Human Service Zones".

All reports of suspected child abuse and neglect are required to be reported through the Department of Human Services through its authorized agent and requires that "any report" must be accepted:

"The department, in accordance with rules adopted by the department, immediately shall initiate a child protection assessment, alternative response assessment, or family services assessment or cause an assessment, of **any** report of child abuse or neglect including, when appropriate, the child protection assessment, alternative response assessment, or family services assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect." (N.D.C.C. 50-25.1-05(1)) (emphasis added.)

State law limits Child Protection Services actions to reports involving a "person responsible for a child's welfare", defined as:

"an individual who has responsibility for the care or supervision of a child and who is the child's parent, an adult family member of the child, any member of the child's household, the child's guardian, or the child's foster parent; or an employee of, or any person providing care for the child in, a public or private school or child care setting. (N.D.C.C. 50-25.1-02(1)). Reports which do not meet statutory definitions mandated to Child Protection Services but which may be a potential violation of criminal law

are to be "disposed" through referral to law enforcement (N.D.C.C. 50-25.1-05.3).

Throughout this manual, A 'person responsible for a child's welfare' may be referred to as a "parent", "non-subject parent", "non-offending parent", or "caregiver". A person suspected of abusing or neglecting a child or confirmed as a person who has abused or neglected a child is referred to as a "subject".

State law defines three types of assessments which may be carried out in response to a report of suspected child abuse and neglect:

1. "Alternative response assessment" means a child protection response involving substance exposed newborns which is designed to:
  - a. Provide referral services to and monitor support services for a person responsible for the child's welfare and the substance exposed newborn; and
  - b. Develop a plan of safe care for the substance exposed newborn. (N.D.C.C. 50-25.1-02(4))
2. "Child protection assessment" means a factfinding process designed to provide information that enables a determination to be made that services are required to provide for the protection and treatment of an abused or neglected child and an evidence-based screening tool. (N.D.C.C. 50-25.1-02 (6))
3. "Family services assessment" means a child protection services response to reports of suspected child abuse or neglect in which the child is determined to be at low risk and safety concerns for the child are not evident according to guidelines developed by the department and an evidence-based screening tool. (N.D.C.C. 50-25.1-02(10))

The Child Protection Assessment (CPS Assessment), sometimes referred to as a 'standard' assessment or "full" assessment is the traditional response to a report of suspected child abuse and neglect and results in a decision or determination whether a child has been abused or neglected based on a preponderance of factual information obtained in the assessment process.

The Family Services Assessment is a variation of the Child Protection Assessment in which the report indicates a type or level of child abuse or neglect that indicates a child is not in danger, but the family may need services to remediate family behaviors, attitudes, motives, emotions, and/or situations which may develop into abusive or neglectful situation if not addressed. Family Services Assessments do not result in a decision or determination whether a child has been abused or neglected.

The Alternative Response Assessment is specific to reports of substance exposed newborns whose caregivers agree to provide safety for the infant and seek treatment for substance use or other services needed for the safety and well-being of their infant. Alternative Response assessments do not result in a decision or determination whether a child has been abused or neglected.

State law also mandates action from Child Protections Services for other types of reports concerning the welfare of a child. These include:

- Institutional child abuse or neglect (N.D.C.C. 50-25.1-02(11))
- Abandoned infants (N.D.C.C. 50-25.1-15)
- Prenatal exposure to controlled substances (N.D.C.C. 50-25.1-16)
- Prenatal exposure to alcohol abuse (N.D.C.C. 50-25.1-18)
- Child sexual behaviors (50-25.1-05.3.)

It is imperative that all CPS assessments contain sufficient factual information to enable a correct determination whether a child has been abused or neglected. The assessment determination, however, does not establish safety for the child. Securing safety for the child is the primary goal and requires more than facts surrounding a particular incident or incidents.

The CPS assessment is more than simply fact-finding. It is a way to establish rapport with family members and engage them in the safety intervention process. Child safety is the ultimate focus of any CPS assessment. Effective family engagement enhances the quality of the CPS assessment.

The Safety Framework Practice Model overlies and is incorporated into the CPS assessment process and documentation from the point of intake through referral to In Home services or out of home placement and closure of the assessment. Please reference the Safety Focused Child Welfare Practice Policy Manual 607-05.

North Dakota's practice model clearly outlines duties of all Child Welfare workers to ensure child safety through the life of the case. The CPS assessment is crucial to identify:

- Present danger safety threats, and
- Impending danger safety threats.

The CPS assessment process is necessary to assure child safety through development, monitoring and updating of:

- Present Danger plans,
- Initial safety plans, or
- Ongoing safety plans.

## **Receiving a Report of Suspected Child Abuse or Neglect From Intake 640-01-10-05**

(Revised 8/1/2021 ML 3631)

[View Archives](#)

A Report of Suspected Child Abuse or Neglect **MUST** be received before any CPS assessment activities can be initiated by the Human Service Zone. It is only the receipt of a report of Suspected Child Abuse or Neglect that allows the Zone agency to conduct a CPS assessment under NDCC 50-25.1:

North Dakota Century Code 50-25.1-05. Assessment.

1. The department, in accordance with rules adopted by the department, immediately shall initiate an assessment, or cause an assessment, of **any report of child abuse or neglect** including, when appropriate, the assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.(emphasis added)

State law requires that assessments shall be conducted "of any report of child abuse or neglect". Unless a report of "child abuse or neglect" is received, there is no legal basis for an assessment to be done. CPS has no authority to contact collaterals, interview children or conduct any other CPS assessment activity unless:

- a report of suspected child abuse or neglect is received.
- a report of a pregnant woman using/abusing controlled substances or abusing alcohol is received
- a report of child sexual behavior is received
- a report of an abandoned infant is received
- a report of child sexual behavior problems is received

ALL CPS functions conducted by a Zone CPS Worker must occur **AFTER** a report is received.

When a Child Protection Services (CPS) Supervisor receives a child protection Intake from the Intake Unit, the supervisor must first review the report to determine whether the intake provides as complete a "full kit" as possible, given the limitations of the relationship of the reporter to the child and family. (e.g. A police officer would likely not be able to identify the supportive connections for the family based on responding to a complaint of domestic violence.)

The supervisor must confirm that the report meets all the criteria required for the Intake to be considered to be a report of suspected child abuse or neglect (See 640-01-05 Analysis and Triage of a CPS Intake) and determine the timeframe for a response. All reports shall be appropriately processed using the policy for triage of a report of suspected child abuse or neglect.

When determining whether a report meets the criteria for assignment to a CPS worker, the CPS Supervisor may consider the following options:

- The report may be returned to Intake for an administrative assessment under any of the administrative assessment options below related to "administrative assessment".
- The report can be returned to Intake for an administrative referral when the named subject of the report does not meet the definition of a "person responsible for a child's welfare" (NDCC 50-25.1-05.3)
- The report can be returned to Intake for transfer when the CPS Supervisor determines the jurisdiction for an assessment lies within a different Zone.
  - The CPS Supervisor in the Zone wishing to transfer a report must confer with the CPS supervisor in which it is believed the jurisdiction lies prior to transfer of a report or assessment.
- Prior to assigning the report to a CPS worker, the CPS Supervisor should determine whether a conflict of interest may be involved. If a potential conflict of interest is identified, follow the policy for conflicts of interest (See 640-01-05 Analysis and Triage of a CPS Intake)

- The CPS Supervisor will determine the type and number of assessments needed (See 640-01-10-15).

Generally, reports will be reviewed by the Intake Worker and Intake Supervisor to determine whether the report meets the criteria for assignment prior to sending a report to a CPS Supervisor. However, a CPS Supervisor still has the option to return a report to Intake for Administrative Assessment if, upon review, the CPS Supervisor determines Administrative Assessment criteria is met (See 640-01-05 Analysis and Triage of a CPS Intake).

On occasion, this determination may require additional knowledge and/or discussion with other Zone staff (previous CPS worker or In Home or Foster Care caseworker, etc.), Human Service Center staff, or consultation with another jurisdiction. The supervisor should consider:

- Reports in which the suspected child abuse or neglect has been **addressed in a prior assessment.**
- Reports in which the **subject is receiving therapy at the human service center and** the therapist is the reporter.
- **Reports made by human service center therapists** who have reason to suspect that a child is abused or neglected.
- **Reports made by a client receiving HSC services as a result of a CPS referral.** If a referral has been made to the Human Service Center because of a Confirmed (or "services required") decision, the case will remain open at the HSZ for case management.
- **a client receiving HSC Services not related to involvement of Child Protection Services** and child abuse or neglect is suspected by the therapist, a report providing the reasons for the concerns must be made.

**\*\*\* NOTE:** Options available for reports made by HSC staff are ONLY applicable to HSCs and should not be applied to reports made by private service providers. The reason for this is that HSCs are part of the Department of Human Services, as such, they are still within the scope of DHS' responsibility under NDCC 50-25.1.

- The **Child is Receiving HSC Services** is the Source of Information that Leads to Suspected Maltreatment

If during therapy a child discloses information about maltreatment of self or sibling(s) which leads the therapist to suspect child abuse or neglect, a report needs to be made.

- When it is discovered during the course of an assessment that an individual named by the reporter as the subject of the report does not meet the definition of "person responsible..." and there are no other subjects who are "persons responsible for the child's welfare, the assessment must be terminated in progress and the report referred to law enforcement, if appropriate.
- If it is determined that a person other than, or in addition to, the individual named by the reporter as the subject of the report and who meets the definition of "person responsible for a child's welfare" may be responsible for the maltreatment, the name of the individual suspected as responsible for the maltreatment should be added to the assessment as a subject of that assessment.
- If it is determined that a person, named by the reporter as the subject of the report, is determined through information gathered through the course of the assessment not to have been responsible for abuse or neglect of the child, an Unconfirmed decision shall be entered on behalf of that individual.

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## **Assessment of a Report Involving a Conflict of Interest 640-01-10-05-01**

(NEW 12/14/2020 ML 3603)

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When a potential conflict of interest is recognized, a strategy for managing the potential conflict of interest situation should be discussed before the report is assigned. (See 640-01-05-35 for definitions and examples of conflict of interest.)

While it is recognized that a potential conflict of interest situation may not be known at the time a report is received and may not be identified until after an assessment is completed, when a conflict of interest or potential conflict of interest is recognized, the situation must be managed. A CPS agency should make reasonable attempts to identify or discover conflicts of interest, but conflicts that are not disclosed or discovered until late in the assessment process, or even after the assessment is complete, may impact possibilities for effective management.

Steps for managing a potential conflict of interest include:

- Recognize a potential conflict of interest
  - Review policy and examples in 640-01-05-35
- Disclose any potential conflict of interest
  - Anyone involved in the CPS assessment process who recognizes a potential conflict of interest situation, should disclose the situation or potential to their immediate supervisor.
- Analyze the situation identified as a potential conflict of interest
  - Determine whether a conflict of interest exists or may exist.
  - Discuss the potential for personal, organizational, or professional gain or potential for bias. This discussion may involve consultation with a Field Service Specialist or the Central Office

- Determine whether an identified conflict of interest involves an individual, multiple individuals, or applies to the county and/or regional agencies.
- Take action to remove or minimize any potential impact of a recognized conflict of interest situation. This may be accomplished in several ways:
  - Remove the involved agencies and staff from any decision making, or from the entire situation
  - Request a conflict of interest assessment from another zone to complete the assessment
  - Request a conflict of interest assessment or transfer the assessment another county in the same region to complete the assessment
  - When it is identified that an individual has a conflict of interest, rather than an agency, mitigate the situation by assigning different staff within the agency e.g. assigning a different worker or different county or regional supervisor
- Under no circumstances should a CPS Worker be assigned to do the assessment if the CPS Worker is a relative, intimate friend, or close associate of the subject of the report, the child, or the family involved.
- The zone in which the person is employed should not handle reports involving child welfare employees in that zone or Human Service Center staff who has regular interaction with the Zone Human Service agency.
- Assessments of licensed foster homes, kinship placements or treatment homes by CPS workers in the same zone should be regarded as a conflict of interest in most circumstances.
- Discussion should also be held on the potential conflict of interest for the Field Service Specialist staffing the case.
- When the report is determined to be Response Time A or B and an immediate or urgent response is needed, a timely response for assessment of a child's safety will take precedence over managing a conflict of interest.
  - Whenever possible or practical, consider the possibility of requesting a face-to-face contact and safety assessment to be completed by a qualified individual within the agency for whom the conflict of interest may be reduced, such as a case manager or supervisor. The assessment should then be

transferred as soon as possible after determining safety.

- When it has been determined that a report will be referred to another zone, the CPS Supervisor should ask for assistance from another zone office for the completion of a conflict of interest assessment.
- Efforts to transfer the assessment to another zone to reduce the potential conflict of interest should be documented.
- When it is felt that reasonable efforts have been made to transfer the assessment and another zone cannot be engaged to accept the assessment of a conflict of interest report, or it is impractical to transfer the report, staffing with the Central Office is recommended before proceeding with the assessment.
- Because of the broad access to the FRAME database assessments determined to be a conflict of interest shall be locked to limit access to assure confidentiality.
  - The level of lock will be determined in consultation with the Field Service Specialist or, if the assessment is to be locked at level 1, with the CPS administrator.

## **Reports Received During an Assessment 640-01-10-05-05**

(NEW 12/14/2020 ML 3603)

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It is not unusual that a new report is received during a current open assessment.

When this occurs, every effort must be made to avoid subjecting a family to multiple concurrent assessments or involvement with multiple CPS Workers.

Unless there is very sound rationale for assigning a second CPS Worker to be involved with a family, both reports should be assigned to the same CPS Worker. If a subsequent report is assigned to a different CPS Worker, the reason for this must be documented in the Case Activity Log in FRAME.

When an assessment is in progress and an additional report is received, the new report must be reviewed to determine whether:

- the concerns in the new report are being addressed in the current assessment
- the concerns in the new report are of a substantially similar nature as the current assessment \*e.g. additional concerns of neglect, an additional incident of physical discipline, additional incident of psychological maltreatment, etc.)
- the concerns in the new report require law enforcement involvement (e.g. physical abuse involving injury, sexual abuse, potential child endangerment, contributing to the deprivation of a child, etc.) while the concerns in the current assessment do not require law enforcement involvement

When the concerns in the new report have been addressed in the current assessment or when new concerns are of a substantially

similar nature to concerns in the current assessment, the new report must be combined with the current assessment.

When the concerns in the new report require law enforcement involvement, the new report can be combined with the current assessment when the current assessment also requires law enforcement involvement.

When the concerns in the new report require law enforcement involvement and the current assessment does not require law enforcement involvement (e.g. new report of sexual abuse and current assessment for concerns of neglect or new report of physical abuse and current assessment for educational neglect), the new report may be assigned as a separate assessment.

A new report must be combined with a current assessment so long as the current assessment has not been staffed with a supervisor or CFS Field Service Specialist and a determination made. Once a determination has been made, the new report should be assigned as a new assessment.

When a subsequent report is received that contains new concerns of child abuse and neglect and the new report is combined with an open assessment:

- the CPS Supervisor and CPS Worker must staff the new report and determine whether the new report indicates a child may be in present or impending danger
- if it is determined that a child may be in danger, a response time shall be assigned and a new present danger assessment completed

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**Number of Assessments Needed 640-01-10-05-10**

(Revised 8/1/2021 ML 3631)

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In general, the scope of an assessment should be limited to a single household, and individuals residing or spending a significant amount of time caring for the children within that household. (See determining a person responsible for a child's welfare 640-01-05-05.)

However, there may be occasions for which a single assessment will include two or more households, such as parents with shared custody arrangements and reported concerns for the same child in both households. When a child travels between two parental households, both households are considered the child's home/household.

Multiple reports concerning one or more persons responsible for a child's welfare in a licensed or unlicensed childcare setting, where there is potential for maltreatment by one or more caregivers and one or more children must be combined and one assessment completed.

Use the following guidance for determining the number of assessments needed:

- It is one assessment if suspected child abuse or neglect is being addressed in an open assessment and another report of suspected child abuse and/or neglect is filed expressing the same, or substantially similar, concerns about any child in the household;(e.g. assessment is opened for a report of inadequate supervision (neglect) and additional report is received concerning psychological maltreatment (also neglect.)
- It is one assessment if concerns are identified by more than one reporter. The concerns expressed about the same subject or any child in the household would be combined and one assessment would take place (e.g. family member discloses concerns to a

mandated reporter and both grandmother and mandated reporter make a report).

- It is one assessment if the concerns address one subject and multiple children are involved, even if the children do not reside at the same place (e.g. a grandmother who provides unlicensed childcare for grandchildren who reside in separate homes)
- It is one assessment if a report of suspected child abuse/neglect addresses the same concerns about multiple subjects and/or multiple children living or staying at the same residence, school, or child care facility, etc.(e.g. several parents share a home with each other and provide care for each other's children within the household or multi-generational families. Also applies to childcare situations)
- It is one assessment when a report of suspected child abuse/neglect is received in which multiple types of maltreatment are identified, e.g., physical neglect and psychological maltreatment or physical abuse and sexual abuse, etc.

## **Reports Received with Open In-Home or Foster Care Services Case 640-01-10-05-15**

(NEW 12/14/2020 ML 3603)

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When an additional report of suspected child abuse or neglect is made while the family is receiving in-home case management, the concerns will be reviewed no later than three business days after receipt of the report by a team comprised of the CPS worker who completed the most recent CPS assessment with the family, and the CPS Worker's supervisor, the caseworker and this caseworker's supervisor. This team of professionals will decide if the concerns will be administratively assessed to be addressed by the in-home caseworker or if a new full CPS assessment is necessary. The need for a possible referral directly to Juvenile Court or State's Attorney for intervention should be considered.

If the suspected child abuse and neglect concerns point to present danger threats to the child, the agency will complete a Present Danger Assessment and Present Danger Plan with the family immediately to determine what steps must be taken to control the danger. Once child safety is assured, the agency will complete the referral for an FCE meeting.

If it is decided the report will be administratively assessed through in-home case management, the in-home caseworker will assess the reported concerns of suspected child abuse and neglect with the parents/caregivers, child (when developmentally and age appropriate), and safety monitors within 3 business days from decision to handle the report administratively to determine what action, if any, is necessary to address the concerns.

Exceptions for CPS Reports on In-Home Services Cases or during a foster care episode.

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When the concerns are of a criminal nature, or if the family has revealed information indicating a child may have been a victim of a crime (caused by a person responsible for a child's welfare) a referral shall be made to law enforcement for a joint assessment/investigation with a CPS worker. In no case of reported child sexual abuse will the report be referred to a case worker for assessment.

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**Assignment of a Report to a CPS Worker  
640-01-10-10**

(NEW 12/14/2020 ML 3603)

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Reports determined appropriate for assignment to a CPS Worker for assessment should be assigned according to the agency's batching schedule, but in no case should safety-related response time be compromised. When the supervisor has determined that the report is appropriate for assignment to a CPS worker, further analysis of the report and planning the assessment should take place. The supervisor and the worker should review the report and any other information obtained, discuss the currently known information, and develop a plan how to proceed with the assessment. It is also important to consider:

- Any Present danger or impending danger safety threats
- History, or a pattern of maltreatment
- Information or knowledge of child and family support systems and protective capacity
- Information related to any of the six assessment factors
- Worker safety.

While much information will remain unknown until further assessment takes place, analysis of the current information and planning onset of the assessment will guide urgency of the CPS response.

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**Response Time Decision 640-01-10-10-01**

(NEW 12/14/2020 ML 3603)

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The Supervisor must take into consideration whether the reported concerns would indicate a child is in present or impending danger to determine the appropriate plan for initiating the assessment. In determining response time for a CPS assessment, the CPS Supervisor must consider the following response time timelines:

- Emergency - Immediate
  - No protective caregiver available.
  - Critical incident (serious injury, death, sexual abuse, etc.)
  - Certain abandoned children (Safe Haven, young child)
  - Medical neglect of a disabled child (Baby Doe)
  - Law enforcement requesting emergency contact
  - Within 24 hours response required
  - Present danger safety threats reported
  
- Within 3 days response required
  - Potential impending danger
  
- Within 14 days
  - Suspected maltreatment, no report of present/impending danger
  
- **Response Time A -Within 24 hours response required. (Replaces Category A)**

An Immediate Response is required if the report contains indication of Present Danger, or serious injury, or near death or death caused by suspected child abuse or neglect. If the child is with a responsible adult/protective caregiver that is clearly documented in the record, the CPS Worker may respond within the day if child safety will in no way be jeopardized.

- Initiation of the assessment is face-to-face contact with all reported child victim(s)

- CPS response time will be within and no later than 24 hours from the date and time the report was received.
- The harm reported can reasonably lead to severe injury, disability, severe trauma, or death.
- Family behaviors, conditions or circumstances that threaten a child's safety right now.

Reports containing any of the following factors require a plan for intervention and safety as soon as possible (within 24 hours):

- Serious physical injuries that create a substantial risk of death, disfigurement, or impairment. Serious injuries include fractures, subdural hematoma, dislocation, sprains, internal injuries, burns etc.
- Physical abuse to children five years of age or younger (injuries need not be visible).
- Current non-accidental injury to any child such as welts, bruises, lacerations, and abrasions. If the injuries are to the head, neck, or face, it would most likely fall into the immediate response timeframe.
- Current concerns of sexual abuse, where the alleged perpetrator has access to the victim.
- A young child (ages 5 or under) or a child with disabilities or other special needs is currently left unsupervised and/or inadequately supervised for any period of time or left in the care of an inappropriate caregiver to the extent that the child's immediate needs go unnoticed or unmet.
- Abuse/neglect such as failure to thrive, ingestion of, or exposure to, noxious substances, failure to provide adequate food to meet nutritional needs (malnutrition), failure to provide clothing consistent with climatic conditions, and failure to provide medical care. Immediate response is recommended if the report alleges that the condition is immediately life threatening.
- Cruel, unconscionable, intimidating, or terrorizing acts or statements (e.g., deliberate threats to the child's life or safety, or intimidating acts with firearms or animals, etc.).
- Situation compromises child's safety and may reflect a real and immediate potential for harm (e.g., domestic violence where there is an immediate risk of substantial harm to child, grossly

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inappropriate discipline, or access of an alleged perpetrator who has seriously harmed or abused a child in the past).

- Reports of unsafe or unsanitary living conditions where children age five or under are present. Conditions include feces on the floor that young children could crawl in or put in their mouth, or moldy food accessible to them, guns, tools, exposed wiring, etc.
- Reports of domestic violence and the alleged batterer still has access.
- No protective caregiver available.
- Police request immediate response.

The CPS Supervisor shall determine the appropriate response time within 24 hours (immediate, same day, following day).

- **Response Time B - Within 3 days response required. (Replaces Category B)**
  - Initiation of the assessment is face-to-face contact with all reported child victim(s)
  - For reports in which there is identified impending danger, the CPS response time will be within and no later than 3 days from the date and time the report was received
  - Consider the best approach to contact the family and consider scheduling a visit when appropriate.
  - If mail is the only means to arrange a visit, a letter should be sent quickly to allow time to receive a response and make contact within the 3 days.
  - Any exception to the assigned time frame must be documented in the Case Activity Log in FRAME.

When the 3-day response timeline is assigned, the CPS Supervisor will decide how soon within the 3 days to respond based on an assessment/identification of impending danger (1 day, 2 days, 3 days).

- **Response Time C - Within 14 days response. (Replaces Category C)**
  - **Assigning the 14-day response time is only permitted when conditions in which there is a suspicion of maltreatment and no indication of present or impending danger.**

- **A Family Services Assessment Response may be assigned to Response Time C when criteria are met. See Family Services Response for guidance on the assessment process for these reports.**
- **Initiation of the assessment is face-to-face contact with all reported child victims for a standard assessment**
- **When the 14-day response timeline is assigned, the CPS Supervisor will decide how soon within the 14 days (1 day to 14 days) to respond based on an assessment/identification of child vulnerability. The younger the child, or the presence of a child disability, diagnosis, or condition, the sooner the response should be.**

## **Response Time Exceptions 640-01-10-10-05**

(NEW 12/14/2020 ML 3603)

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Exceptions related to complying with the assigned timeline could include specific compelling circumstances such as:

- Law enforcement assistance is necessary because the information indicates a crime may have been committed or worker safety is in question and no law enforcement assistance is immediately available.
- Law enforcement requests a delay.
- Due to the child's location, access within the timeline is not possible (e.g., roads are closed due to extreme weather or the child currently out-of-jurisdiction).
- Needed time and demand for planning logistics of the intervention (e.g., child needs to be interviewed separately from the parents and already has left school, etc.).

When a child is reported as being in a safe place (e.g., school or hospital), the judgment about the time of the response must take into account the location of the safe place, how long the child will be there, access others have to the child's location, and a plan to keep the child safe until CPS can respond.

Any exception to the assigned time frame must be staffed with a supervisor and the reason for the exception must be documented in the Case Activity Log in FRAME.

## **Recording After Hours Response Time 640-01-10-10-10**

(NEW 12/14/2020 ML 3603)

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When responding to an after-hours emergency, the date and time of the after-hours call (first notice to a child welfare agency) will be the date and time of the report as well as the date and time of report assignment to a worker, regardless of the role of the on-call worker within the agency.

Initiation of the assessment for an after-hours emergency shall be the date and time the on-call worker meets with the suspected child victim.

- Activities of the on-call worker must be entered into the Case Activity Log in FRAME under the Assessment tab and coded as "CPS" in the Case Activity Log.

The on-call worker must provide the Intake unit with the CPS report (SFN 960, police report, etc.) on the next business day so a full kit Intake can be completed.

If the assessment is to be assigned to another worker on the following business day, the reassignment date must be documented in the Case Activity Log.

## **Law Enforcement Involvement in the Assessment Process 640-01-10-10-15**

(NEW 12/14/2020 ML 3603)

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The CPS Worker must contact law enforcement immediately for assistance in the assessment process:

- For any report of child sexual abuse
- For any report of child physical abuse in which there is a significant or visible injury
- For any report that indicates that a serious crime related to the suspected child abuse or neglect may have been committed against a child

Other circumstances which suggest that the CPS Worker should consider involving law enforcement in the assessment include the following:

- The report suggests that parental anger and discomfort with the assessment will be directed toward the child in the form of severe retaliation against the child, other family member, or the CPS Worker
- There is reason to believe that the caregiver will flee if the worker is not accompanied by law enforcement
- The physical environment of the home poses an immediate threat to the child and emergency removal may be needed
- The information suggests that the caregiver is out of touch with reality and therefore cannot provide for the child's basic needs
- The information suggests that the caregiver is currently under the influence of alcohol or other drugs
- The caregiver has abandoned the child
- The report suggests that law enforcement will need to take protective temporary custody of the child
- The information indicates that there may be a need to take photographs
- Information in the report which suggests that law enforcement may have been involved with and have important information

about the family (e.g., one of the caregivers has been jailed, the child has a history of running away, the children have been left alone, family disputes have resulted in law enforcement involvement)

When Contacting Law enforcement:

- A CPS Worker should first contact the law enforcement agency which has jurisdiction in the locale where the incident of sexual abuse, physical abuse or other suspected criminal activity occurred. This is the agency which will have primary jurisdiction for investigation.
- When requesting assistance to locate or visit a family, the law enforcement agency in the jurisdiction where the family resides is most appropriate. If the family has recently moved, the law enforcement agency in the jurisdiction of the last known residence may also be helpful.
- When law enforcement accepts the report for criminal investigation, all future assessment activity must be closely coordinated with investigators so as not to interfere with the investigation.
  - It will be necessary for the CPS worker to convey urgency when a report indicates a child is in present danger and safety intervention needs to occur, informing investigators of the timelines and danger to the child.
  - Document any delays in responding to a report due to law enforcement request.

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**Timeliness and Workflow 640-01-10-10-20**

(Revised 8/1/2021 ML 3631)

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When the CPS Supervisor receives a new intake from the CPS Intake Unit, the new report will be reviewed by the supervisor for additional administrative assessment options to determine whether the Intake is as complete as possible (Full Kit) or ready for assignment to a CPS Worker.

#### Batching

Each CPS Supervisor shall develop a schedule for rotation of CPS Workers to receive assigned reports on a predictable interval. Batching schedules may vary across agencies dependent upon the number of CPS Workers in the Zone and the numbers of reports received. However, the CPS Supervisor must assure that each worker is allowed predictable time, 2 days per week, in which to complete the assessments assigned to the worker.

#### Task Analysis Board

Each Supervisor shall manage a Task Analysis Board (TAB) and monitor the workflow of each CPS Worker assigned to that supervisor using the TAB. The TAB measures work that has started, in process and work that is completed. Use of the TAB communicates the workflow between the CPS Workers and CPS Supervisors and measures timeliness of assessments.

TABS Keep track of reports assigned, provide visual guidance for balancing and leveling workloads, track flow and movement of assessments, and identify bottlenecks in the assessment process. TABs also contribute to assuring quality through visual awareness of timeliness and regular monitoring by a supervisor and assist the supervisor in monitoring a CPS Worker's skillset.

#### Entering and assessment on the Task Analysis Board

- When a new Intake is received from the Central CPS Intake Unit, the CPS Supervisor may enter the report on the TAB in the "In Queue" column to prioritize on the batching schedule and to be assigned within the first working day following receipt of the report or immediately for emergencies.
- Each Supervisor will coordinate a daily meeting with the CPS Workers, as a group, daily to assign assessments, set expectations, determine response times, and monitor workflow, assisting the worker to prioritize tasks for each day.
- These daily meeting should be kept short, within 15-20 minutes.
- CPS Workers are responsible for moving their assessments in a timely fashion and providing daily updates to the CPS Supervisor.
- When an assessment is assigned to a CPS Worker, the worker enters the assessment on the TAB, if the supervisor has not already done so, in the "In Queue" column, indicating that the assessment has been assigned, but not yet initiated. The supervisor determines the response time based on assessment of the reported danger to the child.

#### Quality Assurance Staffing

- When the tasks of initiating the assessment are complete, the CPS Worker updates the TAB to the "Quality Assurance Staffing" column.
- The Supervisor meets individual with the CPS Worker to discuss a newly assigned assessment and plan the assessment, identifying the key participants, first steps and a response time.
- The Supervisor schedules a Quality Assurance Staffing with each worker for each assigned assessment every 7-10 days at a minimum. The purpose of this staffing is to review the Present Danger Assessment and Plan (if needed), identify the next steps in the assessment and identify any additional information needed for a quality assessment and assure that assessment documentation is completed timely.

#### Initiate Assessment

- The CPS Worker enters updates the TAB to the "Initiate Assessment" column.
- The CPS Worker initiates the assessment by making face-to-face contact with suspected child victims according to assigned

response times and completes the Present Danger assessment and any needed Present Danger Plan. The CPS Worker continues the assessment tasks as described in Conducting A Child Protection Services Assessment 640-01-10-15.

Timeframe for initiation is as determined by the CPS Supervisor.

#### Gathering Additional Information

- Following the Quality Assurance Staffing, the CPS worker the CPS Worker updates the TAB to the "Gathering Additional Information" column.
- The CPS Worker continues the process of gathering assessment information following the process described in Conducting A Child Protection Services Assessment 640-01-10-15.
- During this time, the CPS Supervisor monitors the assessment workflow through the daily TAB meetings to assure that the assessment continues to be timely and assist the CPS Worker in overcoming any roadblocks encountered.
- This process is estimated at 3-15 days from the date of assignment.

#### Pending

- With approval from the supervisor, the CPS worker place an assessment on the TAB to the "Pending" column when an assessment involving law enforcement investigation or that requires extensive record requests or other unavoidable delay outside of the CPS Worker's control in the while waiting for information or action that it necessary to complete the assessment.
- The CPS Supervisor must monitor assessments placed in this column and assure that the CPS Worker is following up with any collateral source or entity controlling the needed information.
- If excessive delay occurs, the Supervisor may need to step in to help resolve any roadblocks.
- Reason for placing an assessment in the "Pending" column must be documented in the CAL in FRAME.
- Estimated time for cases in "Pending" is 15 days from the date of assignment until the assessment can be moved forward with the required information or until it is determined that the awaited

information will not be forthcoming and the assessment must move forward.

### Staffing and Decisions

- When the CPS Worker and Supervisor agree that the assessment is complete, there must be a staffing scheduled with the Supervisor.
- The purpose of this staffing is:
  - to determine the assessment decisions whether the information in the assessment meets a definition of “abused child, sexually abused child, or neglected child in statute.
  - Review the Safety Assessment and Safety Determination Analysis and any Safety Plan developed with the family for sufficiency, feasibility, and sustainability.
  - Review the quality, sufficiency, and accuracy of the assessment documentation.
- The Field Service Specialist may be consulted for any questions regarding assessment staffing decisions.
- When the supervisor and CPS Worker believe the maltreatment decision for the assessment may be Confirmed or Confirmed with an Unknown Subject, the assessment is staffed with the CPS Field Service Specialist.
  - The Supervisor must review the assessment with the worker and determine whether a “full kit” assessment has been prepared for a “Warm Handoff” to a case manager for any assessment where a child is determined to be in Impending Danger (See Service Chapter 607-05).
- The estimated time to staffing is 30-40 days from the date of assignment.
- The assessment may be considered complete when the case has been staffed and the decision has been made, the subject and parent(s) have been notified, and the written report is completed, attached to the assessment in FRAME and submitted for approval.

### Full Kit Review and Submission

Following the staffing and decisions, the CPS Worker completes the closing documentation, sends required notifications, and makes necessary referrals. The supervisor reviews the completed assessment documentation to assure that all of the necessary

information is included in the CPS Assessment form, Case Activity Log and that all other documents are attached to the assessment.

When the quality assurance review is complete, the CPS Worker submits the assessment for approval in FRAME.

The estimated timeframe for this step is within 40-45 days from the date of assignment.

While timely completion of assessments is key to managing and controlling workflow, case variables must also be considered. Complex assessments, assessments with a large number of child victims or subjects, assessments conducted in conjunction with law enforcement criminal investigations, etc. may require additional time for completion.

North Dakota Administrative Code 75-03-19-04. Time for completing assessments requires:

*Assessments of reports of suspected child abuse or neglect must be completed, a decision made, and a written report completed and submitted to the individual designated by the department within sixty-two days from the date of receipt of the report unless an extension of the time is requested of and granted by the department.*

- On the rare occasion when an assessment exceeds a 30 62-day time period, a 30-day deadline extension must be requested.
- The reason for delay must be staffed with the CPS Worker's immediate Supervisor and this staffing documented in the Case Activity Log.
- No more than one (1) deadline extension may be requested for a single assessment except in an extreme circumstance beyond the worker's and agency control (ex: law enforcement request, exceptional short staffing situation, etc.).
- Request for a deadline extension must be made prior to the 62-day deadline. Late requests, such as multiple requests at the time of submission, are not allowed. Any exceptions are at the

discretion of the Field Service Specialist reviewing the late request.

Additional time for the following is not accepted as rationale for delay.

- Completing documentation
- Contacting collaterals
- Waiting to staff the assessment for a maltreatment decision

Acceptable reasons include:

- Coordinating with law enforcement investigation.
- Waiting to receive requested documentation necessary for decision-making (ex: forensic interviews, courtesy interviews, medical records, etc.).
- Unable to locate caregivers, child, subject (due diligence is required).
- Monitoring substance exposed newborn (alternative response assessments).
- Attending mandatory training/child welfare certification training.
- Court involvement (example: caregiver/subject being charged criminally and advised not to speak with cps).

CPS Zone Supervisors are expected to monitor worker timeliness and extension requests. If there is a pattern developed for any particular Zone or CPS Worker having an excessive number of assessments not completed within the 62-day timeframe, the CPS Supervisor will notify the Zone Director and CPS Field Service Specialist to determine if there is need for training, increased monitoring, or other coaching which can be provided to assist with the timeliness.

**Staff to Supervisor Ratio 640-01-10-10-25**

(NEW 8/1/2021 ML 3631)

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The zone supervisor to staff ratio is established at no fewer than 4 staff per supervisor and no more than 8 staff per supervisor.

## **Caseload Standard for CPS Assessments 640-01-10-10-30**

(NEW 8/1/2021 ML 3631)

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Failure to control workload may result in poor services, high staff turnover, overuse of placement, the increase of recidivism, dilution of the quality of service and may increase the potential for agency liability. Adherence to the caseload standard is required by NDAC 75-03-19-07.

For caseload standard purposes, the standard shall be no more than 15 child abuse and neglect assessments at one time per each full-time equivalent CPS zone worker.

If at any time a CPS Worker has fewer than 10 cases over a 30-day period, the CPS Zone supervisor/Zone Director must look to other Zones to support workers that are exceeding the established caseload standards.

It is recognized that there may occasionally be situations, which place greater demands on agency resources than normal, for example, a greater than average number of reports during a particular period of time. If the caseload standard is exceeded, the Zone Director and Family Service Specialist should be informed of the reason for the excess caseload. The caseload is expected to return to standard levels and not to be consistently exceeded.

### Variables

Supervisors in child protection services play the key role in the effectiveness of the delivery of protection services. The supervisor should consider the following variables to determine if the number of cases should be lower than the standard:

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- Geographical area covered (travel)
- Complexity of the assessment e.g. Sexual abuse, multiple jurisdictions, complex medical issue, etc.
- Family size, e.g. number of children, multiple victim cases, etc.
- Time for appeal process activities

Activities such as supervision, assessment planning, etc. are considered "standard work" for CPS and should not be considered as rationale for lowering of the caseload standard.

## **Conducting a Child Protection Services Assessment 640-01-10-15**

(Revised 8/1/2021 ML 3631)

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Once the report is assigned to a CPS Worker, the worker must:

- Document the date and time the report was assigned to a CPS Worker in the Case Activity Log in Frame.
- Contact the reporter.
- Contact Law enforcement whenever indicated by concerns in a report of suspected child abuse and neglect (physical or sexual abuse or other potential criminal activity e.g. child endangerment, contributing to the deprivation of a minor, etc.), regardless of response time assigned.
- Initiate the assessment by making face-to-face contact with all suspected victim(s) within the assigned response timeline.
  - Document contact with each victim in the Case Activity Log in FRAME.
- Interview and observe (face-to-face contact):
  - All siblings in the home.
    - Determine any benefit in contacting children who live outside of the home.
  - Parents or other caregivers.
  - Other children and adults living in the home; and
  - The subject(s) of the report.
  - Each individual must be interviewed separately.
- At the initial contact with the individual subject of the report, advise the subject of a report of suspected child abuse and neglect and of the reported concerns. (Required under NDCC 50-25.1-19)
  - When the subject of the report is unknown at the outset of the assessment, the parent or guardian must be advised.

- If any siblings or other children in the household disclose, or appear to be, possible child abuse or neglect, themselves, include them as victims in the current assessment.
- Pre-verbal children may be observed, but not interviewed, however use caution when deciding not to interview a young child. Even one or two open-ended questions can be revealing (For example: Q: "what happened to your head?" A: "Mommy hit".).
- Complete the trauma screening tool as required by N.D.C.C. 50-25.1-02 (6) and (10). (See Trauma Screening in Special Topics 640-01-10-90-15).
- Consider whether a physical examination and/or forensic interview is advisable or appropriate given the nature and extent of the maltreatment reported or determined throughout the assessment.
- Access and view the home environment whenever possible.
  - If not allowed into the home, assess the condition of the home by making collateral contact with someone who has been in the home recently, if possible.
  - Document if no home assessment is done and the reason.
- Gather information on the extent, circumstances and history of the reported maltreatment and any other potential maltreatment discovered during the assessment.
  - Add additional maltreatment in FRAME as maltreatment is identified.
  - If records are needed in addition to those requested by Intake, the CPS Worker should send requests for records.
- Gather safety-related information through interviews and observations.
  - Child Functioning (general functioning of children in the household and effects of any maltreatment).
  - Adult Functioning (including both enhanced and diminished parent/caregiver protective capacities).
  - Disciplinary Approaches.
  - Parenting Practices (including both enhanced and diminished parent/caregiver protective capacities).
- Determine if there is a present danger safety threat.

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- Develop a Present Danger plan when it is determined the child is unsafe due to a present danger safety threat as directed in the Child Welfare Practice Policy Manual 607-05.
  - Use the Present Danger Hard Card for guidance in completing this document.
- Schedule an FCE Meeting when appropriate according to 607-05-35-25-10-05
- Interview at least 2 collateral sources (throughout the assessment)
  - Any eye or ear witnesses.
  - Individuals who have regular contact with the child or parent and child (Child's teacher or childcare provider, etc.).
  - Doctor or others who evaluated or maintained records on behalf of the child (therapist, dentist, chiropractor, Family Nurse Practitioner, etc.).
  - People with established personal or professional (service provider) relationship with the parent/caregiver and who can contribute information about the quality or nature of the caregiver's parenting, behavior, or functioning.
  - It is neither necessary nor advisable to contact individuals to serve as "character witnesses" such as employers, co-workers, etc. who have limited knowledge of the functioning, parenting, or child vulnerability.
  - Inform collateral contacts of the confidential nature of the discussion, including keeping the fact of a report confidential.
- Document the name, relationship, role and date and time of contact for all contacts in the Case Activity Log.
- Document factual and relevant information in the Child Protection Services Assessment form.
  - It is not necessary to include long-running narratives to include all topics discussed during an interview. Narrative should summarize salient facts and include relevant quotes and examples to illustrate the worker's observations.
- Gather sufficient relevant information to establish whether the facts of the case meet any definitions in state law of abused child, sexually abused child or neglected child to enable a determination to be made whether services are required for the protection and treatment of an abused or neglected child.

- Gather sufficient information to determine if there is an impending danger safety threat (apply the safety threshold criteria).
- Develop a safety plan with the family when a child is determined to be unsafe due to an impending danger safety threat.
- Review the safety plan with the case manager when a child is determined to be unsafe from an impending danger safety threat at the conclusion of the CPS assessment.
- Determine whether the safety plan is the least intrusive plan sufficient to manage child safety (identify how the safety threat occurs and apply the safety plan criteria).
- Monitor the safety plan for the duration of the CPS assessment or until the Safety Plan is discontinued.
- Staff the assessment with a CPS Supervisor at regular intervals according to the workflow process using the TAB Board.
- Staff the assessment With the CPS Supervisor to determine whether services are required for the protection and treatment of an abused or neglected child.
  - Whenever the potential is identified that a preponderance of the factual evidence may meet the definition of an abused child, sexually abused child or neglected child as defined in N.D.C.C. 50-25.1; staff the assessment with a CFS Field Service Specialist for a determination.
- Refer any abused or neglected child victim under age 3 to IDEA Part C Early Intervention Services.
- Notify the subject, in writing, of the maltreatment decision for the assessment.
  - Notification to the subject(s) must be mailed within seven (7) days of the assessment decision.
  - Notify a subject of appeal rights whenever a decision of Confirmed is made.
    - Include the CPS Appeal Notification Insert as an attachment to the notification letter.
- Notify the parents/guardians of any child determined to be an abused or neglected child (Confirmed).
  - A good faith effort is required by law (N.D.C.C. 50-25.1-11(i)).

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- Notify any non-subject parent of the assessment decision concerning their child whenever practical to do so (parent's contact information is available, parent was contacted as a collateral during the assessment, etc.) unless doing so might place a child or caregiver in jeopardy.
- When impending danger is identified, transition the assessment to an In-Home or Foster Care caseworker following the policies in Child Welfare Practice Policy Manual 607-05-35-30.
- Document the assessment in Child Protection Services Assessment form and attach the form to the assessment in FRAME.

## **Considerations During a Child Protection Services Assessment 640-01-10-15-01**

### **Subject Refuses to be Interviewed 640-01-10-15-01-01**

(NEW 12/14/2020 ML 3603)

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- North Dakota Administrative Code 75-03-19-06 requires procedures that include interviewing and observing the subject of an assessment.
- In-person contact is required to be attempted during a CPS Assessment.
- The CPS worker should contact the subject of the report in-person whenever possible and practical.
- If the subject refuses an in-person interview, attempt to explore the individual's reluctance to meet, offer explanations and answer questions about the assessment process.
- If the individual continues to refuse a meeting, request an interview by phone or secure electronic means.
- Document all attempts.
- If the individual continues to refuse an interview, the person should be informed that state law requires Child Protection Services to conduct assessment of reported child abuse and neglect and that the interview is their opportunity to respond to the concerns reported. Clearly state to the individual that the assessment will continue without their input if they refuse to participate.
- The worker may follow up with a letter confirming the individual has clearly refused to participate in the CPS Assessment and include the worker's contact information should the individual reconsider.
- If the individual clearly refuses to meet with or speak to the CPS Worker after being informed that the assessment will continue without their input, it is not required to continue efforts to meet with or interview the individual.

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- In this situation, the CPS Worker may request the assistance and advice of their supervisor, law enforcement, the state's attorney and/or Juvenile Court.

## **Caregiver Refuses Access to Child 640-01-10-15-01-05**

(NEW 12/14/2020 ML 3603)

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- State law requires Child Protection Services to immediately initiate an assessment or cause an assessment, of any report of child abuse or neglect including, when appropriate, assessment of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.
- North Dakota Administrative Code 75-03-19-06 requires procedures that include interviewing and observing the child victim of an assessment.
- When a caregiver refuses access to a child victim, the CPS Worker must make the caregiver aware of the legal requirement to conduct an assessment of the home or residence of the child.
- If the caregiver continues to refuse, the CPS Worker should inform the caregiver that state law requires Child Protection Services to conduct assessment of reported child abuse and neglect and that it is the worker's responsibility to ascertain whether the child is safe.
- The worker may request the caregiver to bring the child to the doorway of the home in order that the worker may ascertain that the child is in reasonably good health and not suffering life-threatening injuries, malnutrition or other immediate concerns.
- The worker may offer an alternative location to meet so the child can be observed and/or interviewed. The worker's office, police station or other safe secure location may be offered.
- Clearly state to the individual that the assessment will continue even if they refuse access to the child.
- The worker may follow up with a letter confirming the individual has clearly refused to participate in the CPS Assessment and include the worker's contact information should the individual reconsider.
- If the caregiver refuses to allow the worker to observe or interview the child the worker should consider the risk to the child

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if the caregiver refuses access to child. Discussion should take place with their supervisor. The state's attorney, a Juvenile Court Officer, and/or law enforcement may be contacted.

## **Reenactment of an Incident 640-01-10-15-01-10**

(NEW 12/14/2020 ML 3603)

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- When concerns involve a particular incident resulting in abuse or neglect of a child, the CS worker may request the caregiver to reenact the occurrence, in order to clarify the worker's understanding and evaluate the veracity of the explanation. In this manner an accurate account of events can be assured.

- For example:

The caregiver may be asked to demonstrate how the child received a particular injury by showing the CPS Worker where and how the incident occurred. This reenactment allows the CPS Worker to make specific observations about the scene of injury and simultaneously to clarify the details of the caregiver's account of the injury. This technique is particularly helpful when discussing injuries that the caregiver reports as accidental. For example, observing the distance between a crib and the floor, the condition of the floor/carpet, and the position and movement of the child may pinpoint discrepancies, which can be explored by additional questions. When faced with the impracticality or implausibility of the explanation, the caregiver may be prompted to provide a more accurate or plausible account of the incident.

## **Discrepancies in Information 640-01-10-15-01-15**

(NEW 12/14/2020 ML 3603)

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Discrepancies in the information provided during child protection assessments are inevitable. The CPS Worker should assume that this will occur and be prepared to acknowledge the inconsistencies. Discrepancies must be confronted with and the interviewee afforded an opportunity to clarify, restate, and possibly negate information provided earlier. Confront discrepancies in a calm, matter-of-fact, non-threatening manner. For example, "I'm slightly confused by the information that you gave me. You first said that you turned on the hot water faucet before you left the room, but later you mentioned that you mistakenly turned on the hot water faucet after you went to the kitchen." Clarifications phrased in this manner do not sound like accusations or suggest that the interviewee is not being honest.

## **Guidelines for Case Referrals to a Children's Advocacy Center 640-01-10-15-01-20**

(NEW 12/14/2020 ML 3603)

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Referral to a Children's Advocacy Center should be considered for any child who is a suspected victim in a report where the initial report indicates a concern for sexual abuse.

Children who are suspected victims in reports where the initial report indicates the potential for significant physical effects resulting from abuse or neglect or there is a need for a forensic interview to be conducted, should also be considered for referral to a Children's Advocacy Center.

Children who are suspected victims in reports where physical abuse or sexual abuse were not the initial concern, but for whom concerns develop through the assessment process may also be considered for referral to a CAC if is deemed appropriate.

In any case, the actual referral of a child to a Children's Advocacy Center shall be based on the individual circumstances of the report and the appropriateness of the referral and is the responsibility of the lead agency. When an active criminal investigation is conducted concurrently with the CPS assessment, the decision to refer to a Children's Advocacy Center is at the discretion of the investigating law enforcement agency.

When it has determined that the child will not be referred to a Children's Advocacy Center, the Social Worker may observe the child's body for evidence of physical abuse. When a physical examination is necessary to verify the concerns, the CPS Worker may offer the options below.

The caregiver can take the child to a physician or hospital emergency room for a physical examination.

The caregiver or another adult and the CPS Worker can jointly conduct a cursory physical observation of the child. This may necessitate the child to partially disrobe with some assistance as appropriate for age and physical limitations.

If the caregiver agrees to take the child to a physician, a time and day should be established before the CPS Worker leaves the home. The CPS Worker should follow up after the scheduled visit to assure that the caregiver complied with the agreement. If the caregiver did not, the CPS Worker should locate the child, reassess for safety and take appropriate action. When a child has been seriously harmed and requires immediate medical attention, the doctor or hospital physician who is treating the child is the appropriate examiner.

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## **Physical Examinations and Observation**

### **640-01-10-15-01-25**

(NEW 12/14/2020 ML 3603)

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When it has determined that the child will not be referred to a Children's Advocacy Center and a physical examination is necessary to verify the concerns, the CPS Worker may offer the following options:

- The caregiver can take the child to a clinic, walk-in or urgent care clinic, well baby clinic, physician's office or hospital emergency room for a physical examination.
  - If the caregiver agrees to take the child to a physician, a time and day should be established before the CPS Worker leaves the home.
  - The CPS Worker should follow up after the scheduled visit to assure that the caregiver complied with the agreement.
  - If the caregiver did not follow up after the scheduled visit, the CPS Worker should locate the child, reassess for safety and take appropriate action.
  - When the child has a known medical condition, the doctor or hospital physician who is treating the child is the appropriate examiner.
- The caregiver or another adult, such as a teacher or childcare provider, and the CPS Worker can jointly conduct a cursory physical observation of the child. This may necessitate the child to adjust clothing with some assistance as appropriate for age and physical limitations.
- When a child has been seriously harmed and requires immediate medical attention, the CPS Worker may call for emergency medical assistance.
  - If the CPS Worker believes that the child is injured and requires medical treatment, immediate arrangements should be made for a medical examination. Consider the following conditions of the child when determining whether immediate medical attention is necessary:

- Difficulty in breathing
  - Unexplained seizure
  - Appears seriously ill/injured and is unresponsive
  - Appears to be in a coma
  - High fever
  - Unusual or severe bleeding
  - Prolonged diarrhea or vomiting
  - Loss of movement in an extremity
  - Symptoms of failure to thrive
  - Unusual burns or bruises
  - Untreated conditions or infections
- The CPS Worker should make all possible attempts to contact the caregiver or parent in this situation before medical treatment is sought if there is sufficient time.
- When immediate and intensive medical diagnosis and treatment are indicated, medical intervention should receive priority over other parts of the assessment process.
  - Medical tests such as imaging studies, laboratory tests, X-rays, colposcopies and other medical tests may be authorized only by a physician as part of the physical examination of an allegedly abused child.
  - If a CPS Worker suspects or knows of previous abuse which the doctor or investigator may not be aware of, the CPS Worker should notify the investigator and the doctor and suggest that x-rays or other medical testing may be beneficial in the medical analysis.

## **Evaluations 640-01-10-15-01-30**

(NEW 12/14/2020 ML 3603)

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- In general, the CPS Worker should secure a psychological or psychosocial evaluation when a child exhibits bizarre or exaggerated behavior or speech/statements, or if there is a need to secure information about the child's developmental needs.
- Behavioral signs of abuse and neglect delineate behaviors which may indicate that the child is experiencing emotional, psychological or developmental problems. The CPS Worker should be alert and note if the child's behavior or statements are pervasive, exaggerated, or bizarre.
- Children who are threatening physical harm to themselves must be taken seriously. Obtaining a mental health evaluation in this situation is strongly recommended. Other situations which suggest the need for a mental health evaluation may include the following:
  - The child is hysterical and cannot be calmed within a reasonable amount of time
  - The child has self-inflicted injuries, by non-accidental means
  - The child's behavior or statements suggest that the child may be out of touch with reality
  - The child is physically abusive to other individuals and is unable to control this aggression, which results in the child endangering the safety of another (e.g. the caregiver, siblings, the CPS Worker).

## **Physical Evidence 640-01-10-15-01-35**

(NEW 12/14/2020 ML 3603)

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- The purpose of gathering physical evidence is to corroborate the information collected via interviewing and observations.
- Physical evidence relevant to abuse and neglect reports can include clothing worn by the victim, weapons, body charts/photographs, x-rays and other medical tests.
- **It is not the role of a Child Protection Services Worker to collect or preserve physical evidence in a criminal case.**
- In a criminal case, photographs of the child, the implements used to injure the child or other items connected with an injury, as well as the home conditions, particularly the exact location where the incident occurred, can and should be photographed by law enforcement or medical personnel.
  - N.D.C.C. 50-25.1-03.1 Allows, "Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who the person or official has knowledge or reasonable cause to suspect is an abused or neglected child and, if indicated by medical consultation, cause to be performed imaging studies, laboratory tests, colposcopies, and other medical tests of the child without the consent of the child's parents or guardian. All photographs and other visual images taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter. Photographs and visual images, or copies of them, must be sent to the department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible."
- A CPS Worker involved in a situation where physical evidence is present and criminal charges may be brought must immediately contact a law enforcement officer or the States Attorney.
- The CPS Worker's responsibility is:

- Not to touch any physical evidence
- To contact law enforcement as soon as possible
- To record observations on the physical evidence in the assessment notes, giving specifics of date, time, location, description of the object, how it may have been used, and the action taken to assure law enforcement was immediately contacted.

However, in a non-criminal assessment, it is often helpful to consider whether physical evidence is available that may corroborate information gathered during interviews.

- For example:
  - If a child talks about being struck with an object, ask what the object looks like and where it is kept in the home. When interviewing the caregivers, ask whether an object meeting the child's description is in the home and where the object is kept. Ask to see the object and describe in any documentation of the maltreatment.
- Clothing worn by the victim, showing that the child's clothing hasn't been changed for an overly long period of time (many layers of food stains, etc.) and may have a distinctive odor, and weapons such as belts or paddles used to discipline the child, unsanitary home conditions and other inanimate objects may be photographed by the CPS Worker and attached to the assessment.
- Photographs should be taken with a camera or phone owned and controlled by the Human Service Zone agency and not the CPS Worker's personal device in order to maintain confidentiality and avoid having the CPS Worker's personal items subpoenaed for an Juvenile Court action or CPS appeal hearing.

## **Child Abuse and Neglect Near Deaths 640-01-10-15-01-40**

(Revised 8/1/2021 ML 3631)

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The federal Child Abuse Prevention and Treatment Act (CAPTA) requires each state receiving CAPTA funds to have in place "provisions which allow for public disclosure of the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality". North Dakota receives CAPTA funds.

North Dakota Century Code Chapter 50-25.1-02 provides a definition: "Near death" means an act that, as certified by a physician, places a child in serious or critical condition. (50-25.1)

State law requires that the annual reports of the Child Fatality Review Panel involving child abuse and neglect deaths and near deaths must include the following:

- The cause of and circumstances regarding the death or near death
- The age and gender of the child
- Information describing any previous child abuse and neglect reports or assessments that pertain to the child abuse or neglect that led to the death or near death
- The result of any such assessments; and
- The services provided in accordance with section N.D.C.C 50-25.1-06, unless disclosure is otherwise prohibited by law. (50-25.1-04.5)

For these reasons, Child Abuse and neglect near-deaths must be recognized, documented, and reported.

Reporting and Review of Child Abuse and Neglect Near Deaths

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- When, during an assessment, a child is hospitalized, the CPS Worker must inquire of the treating physician whether the child is in serious or critical condition.
- When a physician certifies (by verbal statement, agreement, or in writing) that a child is in serious or critical condition, the CPS Worker must note this certification in the case activity log in FRAME.
- When the assessment decision is Confirmed, and a child has been certified by a physician as having been in serious or critical condition, the CPS Worker will need report a child abuse or neglect near-death to the Field Service Specialist.
- The Field Service Specialist will then notify the CFS Central Office, CPS administrator or CPS Assistant Administrator that a child abuse and neglect near-death has been identified.
- The CPS Worker must indicate a child abuse or neglect near-death in the "Notifications" section for the CPS assessment in FRAME.
- All documents related to the assessment, including all CPS Intake forms, SFN 960s, medical records, police reports, photographs, notification letters, etc. must be scanned and attached to the assessment in FRAME.
- Preparing the case for review of the near-death by the Child Fatality Review Panel will be the responsibility of the Children and Family Services Division, Central Office, however, when there is a need for additional information in possession of a Human Service Zone, a CPS Supervisor or CPS Worker and/or Field Service Specialist may be requested.
- Child abuse and neglect near deaths are reviewed by the Child Fatality Review Panel to inform strategies for prevention of future near deaths from child abuse and neglect.

**Present Danger Safety Threats 640-01-10-20**

(NEW 12/14/2020 ML 3603)

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At the first contact, and whenever present danger is suspected, complete the Present Danger Assessment instrument and Present Danger Plan as directed in the Child Welfare Practice Policy Manual 607-05. Use the Present Danger Hard Card for guidance in completing this document.

**Present Danger Involving an Indian Child  
640-01-10-20-01**

(NEW 12/14/2020 ML 3603)

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Whenever Present danger is identified concerning an Indian Child, the provisions of ICWA apply and timely notice must be provided to appropriate tribe (The Indian Child Welfare Act 640-01-10-70)

**Documenting the Present Danger Assessment/Plan  
640-01-10-20-05**

(NEW 12/14/2020 ML 3603)

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The Present Danger Assessment and Present Danger Plan documents will provide the format for documenting the Present Danger Plan (see Child Welfare Practice Policy Manual 607-05). The completed documents must be attached to the CPS assessment in FRAME whenever present danger is identified.

## **Out of Home Present Danger Plan - Assuring Safety in Unlicensed Homes 640-01-10-20-10**

(NEW 12/14/2020 ML 3603)

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Whenever CPS implements an out-of-home Present Danger plan in an unlicensed home to control present danger threats, the CPS worker must assess and evaluate the safety of the placement setting as outlined below:

- Prior to implementing the out-of-home Present Danger plan, CPS must assess and evaluate the safety of the placement through direct contact with the substitute caregiver. This also includes a discussion of the expectations and their role in the Present Danger plan as well as any issues related to the care of the child.
- Prior to a child's placement with an unlicensed caregiver (e.g. relatives, friends, neighbors), CPS must request a check of law enforcement records on all individuals residing in the identified placement home.
- When a child is placed in an unlicensed home, a CPS records check must be completed within 24 hours of placement. A child must not be placed in an unlicensed home where there has been confirmed child abuse or neglect leading to conditions of impending danger.
- If a home visit is not conducted at the time placement in an unlicensed home, CPS must document in the Case Activity Log how child safety was ensured in the placement setting.
- When a home visit is not conducted at the time of placement in an unlicensed home, the CPS worker must, within 24 hours of placement, conduct a home visit to assess safety and the home conditions, and to assist the caregiver in setting up whatever provisions are needed for the care of the child.

**Out of Home Present Danger Plan - Assuring Safety  
in Licensed Homes 640-01-10-20-15**

(NEW 12/14/2020 ML 3603)

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Within five (5) working days of placement in a licensed home, CPS must conduct a home visit to reassess the home conditions and assist the caregiver in setting up whatever provisions are needed for the care of the child.

## **Monitoring the Present Danger Plan 640-01-10-20-20**

(NEW 12/14/2020 ML 3603)

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The Present Danger plan remains in effect during the period of the CPS assessment or until information is gathered to either eliminate the need for a Present Danger plan or create a Safety Plan based on impending danger threats.

For the duration of the Present Danger plan, CPS must review the adequacy of the Present Danger plan weekly and modify, when necessary. After reviewing the Present Danger plan, the CPS Worker must document the status of the present danger threat(s) identified, the sufficiency, feasibility, and sustainability of the Present Danger plan and any needed revisions in the Case Activity Log in FRAME.

If there are modifications made to the Present Danger plan, a newly developed Present Danger plan document must be signed by all parties and attached to the assessment in FRAME within two business days of implementation of the plan.

If separation is used as part of the Present Danger Plan, then the Present Danger Assessment and Present Danger Plan needs to be updated in FRAME to reflect any changes that have been made that impacts the frequency or duration that separation is used.

When present danger threats are no longer active in the family and a Present Danger plan is no longer needed, the assessment surrounding this determination and the end of the Present Danger plan must be documented in the Case Activity Log.

When a caregiver refuses access to the child for purposes of interviewing or observing, the CPS Worker should consider the risk to the child if the caregiver refuses access to child. Discussion should

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take place with their supervisor, state's attorney, a juvenile court officer, and/or law enforcement.

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## Temporary Protective Custody 640-01-10-25

(NEW 12/14/2020 ML 3603)

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Under N.D.C.C. 27-20-06(e) a Juvenile Court Director shall "Issue a temporary custody order concerning a child who is referred to the director's supervision or care as a delinquent, unruly, or deprived child."

N.D.C.C. 27-20-06(h) states, a Juvenile Court Director shall "Make such temporary order not to exceed ninety-six hours for the custody and control of a child alleged to be deprived as may be deemed appropriate. The order must be reduced to writing within twenty-four hours, excluding holidays and weekends.

If the caregivers are unwilling, unable, or unavailable to cooperate in the protection of the child, a temporary custody order should be considered and discussed with the Juvenile Court Director in the Judicial District with jurisdiction. When the Human Service Zone is granted an emergency temporary custody order by the juvenile court and is prepared to remove the child or to place a child, a law enforcement officer must be involved. **CPS Workers must not attempt to exercise a court order to remove a child without involvement of law enforcement or a juvenile court officer.** The CPS Worker must make reasonable efforts to notify the child's custodian(s).

When a child is taken into temporary custody and placed in shelter care, the juvenile court must hold a shelter care hearing (to determine probable cause to detain or retain custody) within 96 hours (NDCC 27-20-17). Temporary custody orders must be put in writing by the juvenile court within 24 hours of the issuance of the order (NDCC 27-20-06). The judge (or referee) at the shelter care hearing can issue an order for the child to remain in shelter care for up to 60 days, however, if court intervention is sought beyond a temporary custody order (petition for deprivation) a petition must be

filed with the juvenile court within 30 days. Appropriate extensions of the order may be requested by the State's Attorney, based on the facts of an individual case.

The Uniform Juvenile Court Act (NDCC 27-20-13) authorizes Juvenile Court Officers, law enforcement officers, physicians treating a child, or otherwise by order of the juvenile supervisor or pursuant to a court order under this Act, to take temporary protective custody of a child without the consent of the person(s) responsible for the child's welfare, if they have reasonable grounds to believe that:

- The child is suffering from illness or injury
- That the child is in immediate danger from the surroundings
- That the child's removal is necessary
- That the child has run away from parents or another custodian
- By order of the Juvenile Court Officer (i.e., if the child is in imminent danger, deprived, delinquent, unruly, as found in NDCC 27-20-06.)

**A CPS Worker has no authority to remove a child from the custody of parents.** Removal may only be accomplished by court order, with the assistance of the Juvenile Court Officer, or law enforcement officer (NDCC 27-20).

#### Law Enforcement Removal

27-20-13. Taking into custody. By a law enforcement officer if there are reasonable grounds to believe:

- That the child is suffering from illness or injury or is in immediate danger from the child's surroundings, and that the child's removal is necessary; or
- That the child has run away from the child's parents, guardian, or other custodian; or

#### Medical Hold

NDCC 50-25.1-07 allows a physician to keep a child in custody in a hospital or medical facility, "Any physician examining a child with respect to whom abuse or neglect is known or suspected, after reasonable attempts to advise the parents, guardian, or other person

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having responsibility for the care of the child that the physician suspects has been abused or neglected, may keep the child in the custody of the hospital or medical facility for not to exceed ninety-six hours and must immediately notify the juvenile court and the department in order that child protective proceedings may be instituted.”

## **Impending Danger Safety Assessment and Safety Analysis 640-01-10-30**

(NEW 12/14/2020 ML 3603)

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The CPS Worker must complete a safety assessment at the conclusion of the CPS assessment. Assess for impending danger according to the policies in the Child Welfare Practice Policy Manual 607-05.

The basis for assessing child safety at the conclusion of the assessment is the identification of impending danger threats. If impending danger threats are identified, then a child may be unsafe.

If the safety assessment indicates that a child may be unsafe, a safety analysis is completed to further examine specifically how impending danger identified in the safety assessment is occurring in a family and evaluate the capacity of the parent/caregiver or family members to assure child safety. CPS assessment information related to adult functioning and parenting should reveal if there are parent/caregiver protective capacities sufficient to manage impending danger. Additional information may be necessary to further identify parent/caregiver protective capacities that will assure child safety.

A child is unsafe when the safety analysis concludes that parent/caregiver protective capacities are insufficient to manage or mitigate impending danger and assure protection. (*See Parent/Caregiver Protective Capacities Guide for more help with this.*)

Document the Safety Determination on the Child Protection Services Assessment form.

When it is determined that Impending danger safety threats are identified through the Safety Assessment and Safety Determination

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Analysis at the conclusion of the assessment, a Safety Plan is required to control and manage impending danger threats.

**A safety plan is only required when a child is determined to be in impending danger.**

If a child is in impending danger, a determination needs to be made regarding the level of intervention required to control and manage impending danger threats, including the need for an in-home safety plan, an out-of-home safety plan, or a safety plan that combines in-home and out-of-home options. Use the "Rule In or Rule Out In-Home Safety Plan" section of the Child Protection Services Assessment form and the Impending Danger Safety Threats Guide (3B) to document the level of intervention required to manage the impending danger threats.

- Does the child's primary parent(s)/caregiver(s) have a suitable place to reside where an in-home safety plan can be considered?
- Is there confidence in the sustainability of the safety plan in the current location of the parents/caregivers?
- Is the home environment calm/consistent enough to allow safety services in accordance with the safety plan, and for people participating in the safety plan to be in the home safely without disruption (e.g. reasonable schedules, routine, structure, general predictability of family functioning)?
- Are the primary parents/caregivers cooperative with child welfare services and willing to participate in the development of the in-home safety plan?
- Are the primary parents/caregivers willing to allow safety services and actions to be provided in accordance with the safety plan?
- Do the primary caregivers possess the necessary ability/capacity to participate in an in-home safety plan and do what they must do as identified in an in-home safety plan?
- Are there sufficient resources within the family or community to perform the safety services necessary to manage the identified impending danger threats?

**Safety Plan 640-01-10-35**

(NEW 12/14/2020 ML 3603)

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A safety plan is a written arrangement between parents/caregivers and CPS that establishes how impending danger threats will be managed. The safety plan is implemented and remains active if impending danger threats exist, and parent/caregiver protective capacities are insufficient to assure a child is protected. Completing the referral for a Family Centered Engagement (FCE) meeting when appropriate, can assist in developing a safety plan that is sufficient, feasible, and sustainable. See FCE policy contained in the Safety Framework Practice Policy Manual (607-05-35-25-10-05) for information concerning the FCE meeting process.

The safety plan must describe in detail:

- the specific impending danger threats,
- the safety services that will be used to manage impending danger threats,
- the names of formal and informal providers that will provide safety services,
- the roles and responsibilities of the safety services providers including a description of the availability, accessibility, and suitability of those involved,
- the action/services including frequency and duration, and
- how CPS will manage/oversee the safety plan, including communication with the family and providers.

CPS should consider the least intrusive means possible to control impending danger and involve parent/caregivers in a discussion about the results of the safety analysis and the need for a safety plan. CPS should inform parents/caregivers about their rights related to accepting/cooperating with the safety plan as well as any alternatives or consequences.

To develop a safety plan that uses the least intrusive means possible, CPS should:

- work to engage parent/caregiver in understanding and accepting the need for a safety plan,
- enlist the parent/caregiver in a process of identifying and fully considering available safety management services/options.

Careful consideration is first given to the use of in-home safety management options followed by combinations of in-home and out-of-home safety management options, before concluding that out-of-home safety management is the only acceptable means to manage impending danger and assure child protection.

## **Developing a Safety Plan 640-01-10-35-01**

(NEW 12/14/2020 ML 3603)

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When developing a safety plan, CPS must first use the in-home safety management criteria to determine if an in-home safety plan can be implemented and is sufficient to control impending danger threats to assure child safety.

CPS must also confirm that parents/caregivers are willing to cooperate with an in-home safety plan and agree with the expectations, designated tasks, and time commitments set forth in the safety plan.

When an in-home safety plan cannot assure that impending danger threats will be managed, CPS must develop an out-of-home safety plan. CPS must inform the substitute caregivers of the expectations and their role in the safety plan as well as discuss any issues related to the care of the child. An out-of-home safety plan must clearly outline what is needed (e.g. conditions, expectations, safety services) for the child to return home with an in-home safety plan. Prior to an unsafe child's placement in a relative or foster home, CPS must formally assess the safety of the placement setting. (see Assuring Safety in Unlicensed Homes When Present Danger Plan is Out of Home or Assuring Safety in Licensed Homes When Present Danger Plan is Out of Home above).

When developing the safety plan, use the policy criteria 607-05-35 Safety Information and Safety Assessment, Analysis, and Plan in the Child Welfare Practice Policy Manual 607-05-35.

When Impending Danger Threats exist for one or more children in the home at the time the CPS assessment is complete, a case will be opened for either In-Home or Foster Care case management.

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- Limited transition, of necessity, may occur between the Foster Care Case Worker and the CPS Worker at the time of case assignment to the Foster Care Case Worker or as soon as possible after the foster care placement is made.

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## **Terminating an Assessment in Progress**

### **640-01-10-40**

(NEW 12/14/2020 ML 3603)

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When the information found during the assessment process through contact(s) with collaterals, family members, the child(ren), or the subject(s) leads the CPS Worker to believe that ALL the reported concerns fall outside the definitions in the Child Abuse and Neglect law, (NDCC 50-25.1) the assessment may be terminated in progress (AT). Examples include:

- A report of suspected neglect which expresses concern that a six-year-old child is home alone unsupervised. The CPS Worker goes to the home and finds a teenager supervising the child. Upon interviewing the teenager and the neighbor, the CPS Worker receives verification that shows the child has been receiving regular supervision while the parent is at work. Consideration should be given to whether there is a safety reason to continue with the full assessment.
- A report received states concerns that a child has bruises on his buttocks. The spots look like bruises, but it is confirmed that the child has similarly located "Mongolian spots." Consideration should be given to whether the concerns in the report been assessed or whether there are safety reasons to continue with the full assessment.
- An assessment is initiated and corroborated information is obtained in the assessment process (from an individual outside of the family) indicates that the family has left the state's jurisdiction (moved to another state or tribal jurisdiction, the assessment may be terminated in progress and referred to the jurisdiction where the family is located (if known).
- An assessment is initiated and after due diligence, the child cannot be identified or cannot be located.
  - "Due diligence" means that the following steps have been taken whenever practical or document those that are not practical:

- A phone contact has been attempted at least three times at different times of the day (including at least one call after regular business hours), with messages left, where possible (Document if the individual doesn't have a phone or a phone number is unknown).
- Check the Master Client Index through FRAME for a current address
- Inquire of the TANF program if there is a current address
- Contact the school district, if a child in the family is school age to ask whether the child is in school or the location of any new enrollment
- Re-contact the reporter
- Contact one or more identified friends or family members (identified by Intake or in this assessment or any previous assessments).
- Attempt a visit to the last known local address; ask individuals at that address if a new address for the family is known
- Send a letter to the last known address requesting contact by a specific date

If the CPS worker believes the information acquired in the partial assessment meets the circumstance for an assessment to be terminated in progress, the worker will review the case with the Zone CPS Supervisor. If the CPS Supervisor agrees that the assessment should be terminated, consultation with the CPS Field Service Specialist shall take place. After discussion of the circumstance of the assessment and if everyone agrees, the assessment may be terminated in progress. If there is a difference of opinion as to the appropriateness of terminating the assessment, the CPS Field Service Specialist has the responsibility for making the final decision.

When the child(ren) is contacted, the parent must be contacted, informed about the concerns in the report, the actions taken by CPS and Present danger assessment completed. Contact with the parent must be documented in the Case Activity Log in FRAME.

Reports concerning a pregnant woman who has abused a controlled substance for a non-medical purpose or who has abused alcohol are

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recorded on FRAME as Assessments terminated in progress, since there is not yet a child as defined by 14-10-01 and no decision can be made that meets the definition of "abused child" or "neglected child" as defined in 50-25.1-02.

**Documentation for Assessments Terminated in Progress 640-01-10-40-01**

(NEW 12/14/2020 ML 3603)

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Assessment activities shall be documented in the Case Activity Log in FRAME. Present Danger Assessment form must be completed and attached to the assessment in FRAME. Assessment Summary, including basis and rationale for terminating the assessment shall be documented using the Child Protection Services Assessment form and attached to the assessment in FRAME. All Assessments Terminated in Progress must be approved by the Family Service Specialist.

## **Assessment Transition Process 640-01-10-45**

(NEW 12/14/2020 ML 3603)

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This policy applies when a family transitions from one caseworker to another caseworker and circumstances require continued agency intervention. The Case Transition Process is defined as a warm handoff of the case from one caseworker to another caseworker and includes:

- Sharing and understanding information collected and decisions made during the CPS assessment process, any case management services that have been provided, or other points in the case process.
- Ensuring a clear understanding of roles and responsibilities of caseworkers and formal and informal family supports.
- Identifying additional agency and community resources, services, and supports to the family.
- Preparing the receiving caseworker for the initial meeting with the family.
- Completing the referral for a Family Centered Engagement (FCE) meeting when appropriate, in collaboration with juvenile court. See FCE policy contained in the Child Welfare Practice Policy Manual 607-05 for information concerning the FCE meeting process.

## **Case Management During the Transition Process 640-01-10-45-01**

(NEW 12/14/2020 ML 3603)

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The CPS Worker initiating the case transition maintains responsibility for managing the case until the conclusion of the warm handoff case transition staffing. This includes:

- Managing and overseeing the safety plan, as applicable
- Continuing contact with children and parents/caregivers
- Maintaining communication with assigned tribal child welfare caseworkers, formal service providers, and informal supports as appropriate to the case
- Full disclosure of case information and determinations assists the in-home caseworker in assuming safety and case management responsibilities

## **Requirements for Warm Handoff Case Transition Staffing 640-01-10-45-05**

(NEW 12/14/2020 ML 3603)

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The warm handoff case transition staffing will include the transferring caseworker, the receiving caseworker, and the necessary supervisors.

Safety management is the primary responsibility of the Human Service Zone agency when a CPS Assessment is transitioned to in-home case management. The warm handoff case transition staffing communicates the status of impending danger to the caseworker receiving the case who examines the safety plan to ensure it is sufficient, feasible, and sustainable.

In cases where the CPS Assessment process requires a case opening for In-Home Case Management services, the case transition staffing must occur within 3 business days of in-home case assignment. For all other types of case transition, the two agency workers must schedule a warm handoff case transition staffing.

## **Timing of Case Transition 640-01-10-45-10**

(NEW 12/14/2020 ML 3603)

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Case transition to an in-home caseworker will occur following the completion of the CPS assessment. In some cases, the case will transition to In-Home Case Management services, but will not transfer to a new caseworker because that person functions as both the CPS worker and in-home caseworker. In these situations, the caseworker and supervisor will need to focus on changing roles and responsibilities to provide necessary services and supports to the child and family.

**Documentation of Case Transition Staffing**  
**640-01-10-45-20**

(NEW 12/14/2020 ML 3603)

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The content and date of the case transition staffing must be documented as a case activity log in FRAME. Agencies will determine which caseworker is responsible for documenting this information.

## **The Indian Child Welfare Act 640-01-10-70**

(NEW 12/14/2020 ML 3603)

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The Indian Child Welfare Act (ICWA) passed into law in 1978. The law protects American Indian and Alaska Native (AI/AN) children in state child welfare systems and helps them remain connected to their families, cultures, and communities.

ICWA only protects American Indian and Alaska Native children who are:

1. Unmarried
2. Under 18 and
3. A tribal member OR
4. Eligible for tribal membership; AND has a biological parent who is a tribal member

ICWA applies when there is:

1. A "child custody proceeding"
2. Involving an "Indian child"

Child Custody Proceedings ICWA Does Cover:

- Foster care placements
- Guardianships
- Termination of parental rights
- Pre-adoptive placements
- Adoptive placements (includes conversion from foster care to adoptive placement)
- Voluntary placements and involuntary placements where parents cannot regain custody of child "upon demand"
- Divorce proceedings or custody disputes in which neither parent will get custody

- Status offenses (juvenile delinquency proceedings that involve an offense that would not be a crime if committed by an adult, e.g. drinking, runaway, truancy, etc.)

**Note:** ICWA may also apply in a juvenile delinquency proceeding where the basis for the proceeding is a criminal act by the child, but the proposed out-of-home placement is based upon the fitness of the parents rather than the criminal act by the child.

#### Child Custody Proceedings ICWA Does Not Cover

- Divorce proceedings or custody disputes between two parents
- Juvenile delinquency proceedings (violations of criminal law)

Adapted from, *"A Guide to Compliance with the Indian Child Welfare Act"; The National Indian Child Welfare Association, 201;*  
[http://www.nicwa.org/Indian\\_Child\\_Welfare\\_Act/documents/2015Guide%20to%20ICWA%20Compliance.pdf](http://www.nicwa.org/Indian_Child_Welfare_Act/documents/2015Guide%20to%20ICWA%20Compliance.pdf)

## **Determining if the Child is a Tribal Member or Eligible for Membership 640-01-10-70-01**

(NEW 12/14/2020 ML 3603)

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At first contact with a family (i.e. child protection assessment), and before every change or potential change in custody, the CPS Worker should ask a client family how they self-identify. For example:

- Whether the client family identifies as American Indian, Alaska Native, or Native American
- Which of the following do you consider yourself a member: Asian American, Black/African, American, American Indian, or Alaska Native or Native American, White, Latino, etc.?

The worker should always follow up by asking:

- Do you have any Native American, American Indian, Alaska Native ancestry?

If the client response that they are not Native American, American Indian, or Alaska Native, and do not have any related ancestry the CPS Worker should:

- Document this in case notes

If the client responds that they are American Indian, Alaska Native, or Native American, or believe there is Native ancestry the CPS Worker should:

- Ask the client family which tribe(s) they identify with and if they are a member and/or enrolled
- Fill out a family tree chart with the help of client family or other genealogy form provided by the Agency

If, in following the previous steps, a worker has reason to believe the child is Indian, she/he will need to identify the Indian tribe by:

- Consulting with extended family members and other relatives

- Contacting, as appropriate, the suspected tribe(s) (their child welfare units, enrollment office, their designated tribal service agent for ICWA notice\*), an appropriate Indian social services organization, or the Bureau of Indian Affairs

If the parents are unavailable or unable to provide a reliable answer regarding the Native heritage of their children, workers then:

- Make a thorough review of all documentation in the case record (look for clues regarding Native ancestry as discussed in the BIA ICWA Guidelines)
- Contact the previous caseworker, if any
- Contact extended family identified by child or client family and ask about identification of the family members

“Reason to Know”

ICWA rule requires State courts to ask each participant in an emergency or voluntary or involuntary child-custody proceeding, whether the participant knows or has “reason to know” that the child is an Indian child.

Indications of “reason to know” include:

- Anyone, including the child, tells the court the child is an Indian child or there is information indicating the child is an Indian child
- The domicile or residence of the child or parent/Indian custodian is on a reservation or in an Alaska Native village
- The child is, or has been, a ward of Tribal court; or
- Either parent or the child has an ID indicating Tribal membership.

**Note:** As a best practice it is suggested that caseworkers and officers of the court assume that ICWA may apply in a case until otherwise determined. This will help avoid unnecessary delays or the potential for disrupted placements or proceedings in the future.

## **Verifying the Child is a Tribal Member 640-01-10-70-05**

(NEW 12/14/2020 ML 3603)

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If the Family Identifies as American Indian, Alaska Native, or Native American, tribal membership must be verified.

Send notice to the child's tribe via their designated tribal service agent for ICWA notice to:

- Confirm that the child is a member; or
- Confirm that the child is eligible for membership and confirm a biological parent's membership

**Note:** If several tribes are identified by client family, send the letter to all tribes identified. Best practice includes telephone contact also be made with the tribe's child welfare unit, enrollment office, and their designated tribal service agent for ICWA notice.

Although this is not required by ICWA, it may help a CPS Worker get quick confirmation and notate that ICWA may apply to a case. Any phone conversation that confirms that ICWA may apply should be documented in the case activity log. Formal notice should still be set to the tribe and the written response confirming tribal membership filed in the case activity log.

**When the Child is Verified as a Tribal Member**  
**640-01-10-70-05-01**

(NEW 12/14/2020 ML 3603)

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Once a tribe has determined that a child is a member, the response must be documented in the case record, including date and source of documentation, and:

- File in the case record the tribe's written statement declaring the child is a member
- Incorporate in any court hearing the tribe's written statement declaring the child to be a member
- Work with the understanding that ICWA applies throughout the entirety of the child welfare case

**When the child is eligible for tribal membership  
640-01-10-70-05-05**

(NEW 12/14/2020 ML 3603)

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The worker should confirm the membership status of the biological parent. The response to both the child and parent's status must be documented in the case record, including date and source of documentation:

- File in the case record the tribe's written statement declaring the child's eligibility for membership
- Incorporate in any court hearing the tribe's written statement declaring the child eligible for membership and the biological parent to be a member
- Assist the family in formally enrolling the child or establishing membership of the child. If necessary, the CPS Worker may counsel parents hesitant to enroll a child by emphasizing the positive benefits of tribal membership, particularly in child welfare and adoption proceedings.
- Work with the understanding that ICWA applies throughout the entirety of the child welfare case

**When the child is not a tribal member and ineligible for membership 640-01-10-70-05-10**

(NEW 12/14/2020 ML 3603)

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Once a tribe has determined that a child is not a member and not eligible for membership, the response must be documented in the case record, including date and source of documentation:

- Document all steps taken to determine the child's Indian or tribal ancestry
- File in the case record the tribe's written statement declaring the child ineligible for membership
- Incorporate in any court hearing the tribe's written statement declaring the child ineligible for membership
- Work with the understanding that ICWA does not apply

Best practice includes telephone contact also be made with the tribe's child welfare unit, enrollment office, and their designated tribal service agent for ICWA notice.

**If the tribe does not respond 640-01-10-70-05-15**

(NEW 12/14/2020 ML 3603)

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If the tribe does not respond, the workers should call the ICWA designated tribal agent for service and inquire about the status of the inquiry and the membership status of the child. The worker should document the conversation in the case activity log.

## **Notifications Procedures Required by ICWA 640-01-10-70-10**

(NEW 12/14/2020 ML 3603)

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Who receives notice?

- Parents
- "Indian Custodian" (defined by ICWA as "Any Native person who has legal custody of the child under tribal law or custom or under state law or to whom temporary physical care, custody, or control has been transferred by the parent")
- The child's tribe (If child is affiliated with, or eligible for, membership in more than one tribe, all tribes should receive notice)
- The BIA (only if identity/location of the tribe and/or parent, or Indian Custodian cannot be determined)
  - To Contact Tribes

If you do not have accurate contact information for a Tribe, or the contacted Tribe fails to respond to written inquiries:

- Seek assistance from the BIA local or regional office or the
  - BIA's Central Office in Washington, DC (see [www.bia.gov](http://www.bia.gov))
- Find the Tribe's designated Tribal agent for service of notice
  - BIA publishes a list each year in the Federal Register
  - The list is also available at: [www.bia.gov](http://www.bia.gov) under the "Office of Indian Services" and "Division of Human Services"

## **Sending Notices 640-01-10-70-10-01**

(NEW 12/14/2020 ML 3603)

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Notice must be sent by registered mail, return receipt requested. A copy of this notice should be filed in the case file and with the court, along with any returned receipts.

No requests for a court proceeding (with the exception of emergency removals) can be made until:

- At least 10 days after receipt of notice by parents or Indian Custodian, or after 30 days if 20 additional days are requested by the parents or Indian Custodian to prepare for the proceedings, or
- At least 10 days after receipt of notice by the tribe, or after 30 days if the tribe requests an additional 20 days to prepare or the proceeding, or
- No fewer than 15 days after receipt of notice by the Bureau of Indian Affairs

**If the Tribe Does Not Respond 640-01-10-70-10-05**

(NEW 12/14/2020 ML 3603)

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Even if a tribe does not respond to an official notice sent, or if it replies that it does not wish to intervene in the proceeding, continue to send the tribe notices of every proceeding. The tribe can intervene at any point in the proceeding and therefore it has the right to notice of all hearings related to the case.

## **Transfer to Tribal Court 640-01-10-70-15**

(NEW 12/14/2020 ML 3603)

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ICWA allows the parent, Indian Custodian, or child's tribe to request that the child custody proceeding be transferred to tribal court.

If the tribe requests, orally or in writing, a transfer of the proceeding to its tribal court:

- The worker should inform the parents or Indian Custodian of their right to object to the transfer

The state court must transfer unless:

- The tribal court declines jurisdiction
- Either parent objects to such transfer
- The state court determines that "good cause" exists to deny the transfer

## **Determine Jurisdiction 640-01-10-70-15-01**

(NEW 12/14/2020 ML 3603)

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The Indian child's Tribe has exclusive jurisdiction over the case if the Indian child's domicile or residence is on a reservation where the Tribe exercises exclusive jurisdiction over child custody proceedings, or the child is a ward of Tribal court. A parent or Indian custodian and the Indian child's Tribe may request a transfer of a foster-care or termination-of-parental-rights (TPR) proceeding to Tribal jurisdiction, at any stage and at any time, orally on the record or in writing. Upon such a request, the court must transfer unless:

- Either parent objects to such transfer
- The Tribal court declines the transfer
- Good cause exists for denying the transfer
- The reasons for denial must be on the record

**Good Cause 640-01-10-70-15-05**

(NEW 12/14/2020 ML 3603)

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If any party believes that good cause exists to not transfer the proceeding:

- They should share their reasons for such belief with the court
- Other parties should be given the opportunity to respond

Good cause to not transfer examples:

- A proceeding is at an advanced stage
- Child over 12 objects to the transfer
- It would be difficult to present the evidence and witnesses necessary in tribal court

**Note:** The perceived adequacy of a tribal court, the type of court the tribe uses, or a tribe's use of a traditional decision-making processes cannot be considered good cause to not transfer.

## **Services That Are Required in ICWA Cases 640-01-10-70-20**

### **"Active Efforts" 640-01-10-70-20-01**

(NEW 12/14/2020 ML 3603)

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"Active efforts" means not just an identification of the challenges a family faces and providing solutions. It also requires a state case manager make efforts to actively assist a family in making the changes necessary to keep a child safely in their home, or to make the changes necessary for a child to return safely and reunify with family.

Active efforts must be undertaken to provide remedial services after an investigation and before a decision is made to place the child out of the home.

Active efforts must also be provided after the child has been removed in order to prevent the breakup of the family by working toward reunification.

Active efforts can be demonstrated by:

- Making a strength-based evaluation of the family's circumstances that takes into account the prevailing social and cultural conditions and way of life of the child's tribe
- Intervening only when necessary. Workers conducting such an intervention should:
  - Develop a case plan with assistance from the parents or Indian Custodian that involves use of tribal Indian community resources
  - Seek out the necessary family preservation and wrap-around services to support the family with the child in the home, except where imminent physical or emotional harm may result

## Child Protection Services

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- Involve the child, if of sufficient age, in the design and implementation of case plan
- Assisting parents or Indian Custodian and child in maintaining an ongoing familial relationship
- Engaging the child's tribe early and working closely with the child's tribe to access culturally relevant resources and informal support networks

## **Removing a Child from the Home in an ICWA Case 640-01-10-70-25**

(NEW 12/14/2020 ML 3603)

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To remove a child, the state must prove (and case records should document) that:

- Conduct or condition of the parent will result in serious physical or emotional damage to the child
  - This must show a causal relationship between the conditions and the serious damage that is likely to result to the child is necessary to meet this requirement of ICWA. Without a causal relationship, evidence that shows only the existence of community or family poverty, isolation, single parenthood, custodian age, crowded or inadequate housing, substance abuse, or nonconforming social behavior does not by itself meet the standard of evidence.
  - Citing structural issues beyond the control of the parent, such as living in poverty, is not appropriate.
- Active efforts were made to support the family in overcoming the challenges that presented imminent risk of serious physical or emotional damage to the child
  - The case record cannot simply state that such efforts were unsuccessful, but must document the specific efforts and how they were unsuccessful

## **Burden of Proof Required for Foster Care Placement 640-01-10-70-25-01**

(NEW 12/14/2020 ML 3603)

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ICWA states that a court may not issue the foster care placement of an Indian child in the absence of a determination—by clear and convincing evidence—supported by the testimony of a qualified expert witness that the child’s continued custody with the child’s parents or Indian Custodian is likely to result in serious emotional or physical damage to the child.

“Clear and convincing” evidence means that in order to be successful, the side favoring foster placement must present evidence that is not just slightly more persuasive than the evidence against it, but clearly more persuasive.

## **"Qualified Expert Witnesses" 640-01-10-70-25-05**

(NEW 12/14/2020 ML 3603)

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Persons with the following characteristics are considered most likely to be qualified expert witnesses:

- A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices
- An expert with substantial experience in the delivery of child and family services to Native families and extensive knowledge of prevailing social and cultural standards of child rearing practices in the child's tribe
- A professional person having substantial education and experience in the area of his or her specialty along with substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

This list is not meant to be exhaustive. The workers should enlist the assistance of the child's tribe to locate persons qualified to serve as expert witnesses. The BIA is also required to provide this assistance.

**Placement of a Child in an ICWA Proceeding if  
Removal from the Home is Necessary  
640-01-10-70-25-10**

(NEW 12/14/2020 ML 3603)

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The child should be put in the setting that:

- Is least restrictive
- Is most like family
- Is within a reasonable proximity to the child's family
- Meets any special needs the child may have

Preference to the following types of placements should be given in the order provided, unless there is good cause to place the child elsewhere or the tribe has a different placement preference order:

1. Member of the child's extended family
2. Foster home licensed, approved, or specified by the child's tribe
3. Indian foster home licensed or approved by the state or other non-Native licensing authority
4. Institution for children approved by an Indian tribe or operative by an Indian organization that meets the child's special needs

The worker should contact the tribe to ask if they have a different placement preference.

The worker should perform a diligent search to comply with ICWA's placement preferences.

This should include, at a minimum:

- Contact with tribe's social service program
- Search of state and county lists of foster homes
- Contact with other tribes and Native organizations with available placement resources

**Note:** ICWA placement preferences apply regardless of whether the child's tribe intervenes in the case or whether the child's tribe can identify a preferred placement home.

When placing a child in an ICWA case, document:

- Document the placements of the child and all efforts to comply with the placement preferences.
- Where required placement preferences have not been followed, efforts to find suitable placements within those priorities shall be documented in detail.

## **Emergency Removal of an "Indian Child" 640-01-10-70-25-15**

(NEW 12/14/2020 ML 3603)

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Unless circumstances do not permit, the racial/ethnic status of the child should be immediately determined. For example, a case worker should ask:

- "Which of the following do you consider yourself a member?"  
(Asian American, Black/African, American, American Indian, or Alaska Native or Native American, White, Latino, etc.)
- "If American Indian or Alaska Native or Native American, what is the name of your tribe?"

Emergency protective custody of any Indian child can be taken only if:

- The child is not located on the reservation of a tribe that has jurisdiction over child custody proceedings
- The child is in danger of imminent physical damage or harm

Emergency custody must be terminated when removal is no longer necessary to prevent imminent physical damage or harm to the child.

In emergency proceedings, ICWA should be complied with whenever possible and child custody proceedings that fully comply with ICWA must be "expeditiously initiated." This could include transferring the case to the child's tribe immediately if the Indian child is a ward of the tribal court, or the child's tribe wishes to accept transfer of jurisdiction of the case from state court.

**Emergency Placement of the Child Who is Identified  
as Indian 640-01-10-70-25-20**

(NEW 12/14/2020 ML 3603)

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If the child is believed to be Indian, efforts shall be made to place the child during emergency care in a setting that follows the foster care placement priorities established by ICWA (see above).

## **CPS Assessments in Out-of-Home Care Settings 640-01-10-75**

(NEW 12/14/2020 ML 3603)

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Out of home care settings included in the definition of “person responsible for a child’s welfare as defined in N.D.C.C. 50-25.1-02 are “...an employee of, or person providing care for the child in a public or private school or childcare setting”.

Assessment of a report of suspected child abuse and/or neglect in an out- of-home setting is inherently different than an assessment of the dynamics of a family, parenting skills, parental discipline, and parental functioning in the following ways:

- Parental discretion in child rearing is inherently broader than a substitute caregiver’s discretion.
- Parents are afforded great latitude in determining limits and rules for their children.
- “Adequate parenting” assumes that parental expectations and discipline will vary according to the ages and developmental stages of the children, cultural and family norms and traditions, parenting beliefs and practices, etc.
- In an out-of-home care situation, the expectation is that policies and protocols pertain and are applied to all children, fairly and consistently.
- The policies and protocols in out-of-home settings are expected to reflect best practices and must conform to state law, administrative rules, and licensing standards.
- The scope of culpability is greater in an out- of-home setting than in the family context. Because there may be many individuals caring for a child in an out of home setting (multiple teachers, coaches, bus drivers, etc. in a school setting and multiple staff, supervisors, etc. in a childcare setting), there may be multiple types of maltreatment involved as well as multiple unrelated children.
- There may also be layers of hierarchy within an employment setting, such as school board, school superintendents, principals,

etc. within a school setting as well as governing boards, owners, operators, and supervisors in a childcare setting.

In contrast, in a family, there are generally one or two parents or adults in a household caring for a few children. Even in multi-generation families, the caregivers generally share the same background, heritage, culture, and values. In out-of-home settings, there are generally many caregivers, and many children with different backgrounds, heritage, cultures, and values.

While parents and families are expected to provide a standard of care that is adequate to provide basic health and safety for their children. Staff in an out-of-home setting are expected to provide a certain high-quality standard of care and education regulated through state and federal laws as well as local rules and policies that are very different from those in a family. Parents believe that they are paying for that quality of care through local taxes or through direct payment. There is also a public expectation that children will be safe and not mistreated while in school and in the care of professional caregivers.

Mitigating circumstances, personal characteristics, life stressors, adult functioning and parenting beliefs as well as socioeconomic factors, such as unemployment and poverty are relevant considerations when assessing family dynamics and situations, while none of these is relevant when considering care in an out-of-home situation. The caregiver's personal life functioning is not a consideration.

When CPS is involved with families, the goal is to work with families to help enable parents to keep children safe in their homes and to strengthen the family. In out-of-home care situations, the focus is on whether the actions and practices of the staff are abusive or neglectful in nature and the correction of abusive or neglectful conditions. Considerations may include such issues as the staffing patterns, staff training, supervision, and the hiring/disciplinary practices and policies, lack of adequate policies or failure to follow policies, laws, or rules in the setting.

Also relevant is the functioning and vulnerability of the child, which is based on individual child characteristics and not solely on age. While younger children are certainly more vulnerable than older children, a child may be vulnerable to maltreatment due to disability, mental health conditions, previous trauma, and other stressors. A child's vulnerability and functioning must be assessed in out-of-home care settings.

While the definitions of abused child, neglected child and sexually abused child remain consistent across family and out-of-home settings, Child Protection assessments in out-of-home situations rely far more on the occurrence of an incident or incidents, facts surrounding the incident(s) and identification of child maltreatment.

## **Foster Care Home Assessment 640-01-10-75-01**

(NEW 12/14/2020 ML 3603)

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A foster care home is, in essence, a family home setting, with similar dynamics to biological homes, with one or two parents or adults in a household caring for a few children. Foster parents are expected to provide a standard of care that is adequate to provide basic health and safety for the foster children and to promote normalcy in their lives. Foster parents may not be held to a higher standard of care by CPS than biological or adoptive parents. Therefore, Child Protection assessments in foster care homes are conducted under the same policies and processes as all other Child Protection assessments.

However, the increased vulnerability of foster children must be carefully assessed. Foster children who entered foster care because of child abuse or neglect in their biological home have already experienced the trauma of child maltreatment as well as separation from their primary caregiver and may be much more strongly impacted by actions or inactions of foster caregivers. The impacts of these events on the child should be documented in the Child Vulnerability section of the Child Protection Assessment form.

## **Child Care Setting Assessment 640-01-10-75-05**

(NEW 12/14/2020 ML 3603)

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When a report of suspected child abuse or neglect has been received and the subject of the report may be a person responsible for a child's welfare in a role of "an employee or any person providing care in a child care setting", or the subject is identified by the reporter as a "babysitter" or "childcare" or "daycare" provider, it must be determined whether the setting meets a definition of a "child care setting" as referenced in NDCC 50-25.1-02(1).

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## **Determining a Childcare Setting 640-01-10-75-05-01**

(NEW 12/14/2020 ML 3603)

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All programs that are licensed, self-declared, or registered under N.D.C.C 50-11 are “childcare settings” for the purposes of CPS reports and assessments.

For reports that do not concern a program licensed, self-declared, or registered under N.D.C.C 50-11, it must be established whether the reported circumstance meets criteria to be considered as a “childcare setting”. Evaluate the following:

- Is care being provided in the child’s home by an individual engaged by the parent to provide care for their child at least two hours per day for three or more days per week in their home (such as a paid nanny)? If so, this is not a childcare setting. The setting is the child’s home.
  - If the person providing care is the child’s parent, an adult family member, a member of the child’s household, the child’s guardian, or the child’s foster parent, follow the process for a CPS assessment as described in 640-01-10-15.
  - If the person providing care is not the child’s parent, an adult family member, a member of the child’s household, the child’s guardian, or the child’s foster parent, this is a report of non-caregiver abuse or neglect. Follow policy as described in 640-01-05-05 Determining A Person Responsible for A Child’s Welfare for the disposition of a report not implicating a person not responsible for the child’s health or welfare (N.D.C.C. 50-25.1-05.3).
  
- Is care being provided in the family home, by an individual engaged by the parent to provide care for their child on a one-time, occasional, or unscheduled basis (such as a ‘Saturday night babysitter’)? If so, this is not a childcare setting and is considered babysitting, regardless of whether there is an exchange of money, goods, or services. If the person providing care is the child’s parent, an adult family member, a member of the child’s

household, the child's guardian, or the child's foster parent, follow the process for a CPS assessment as described in 640-01-10-15. If the person providing care is not the child's parent, an adult family member, a member of the child's household, the child's guardian, or the child's foster parent, this is a report of non-caregiver abuse or neglect. Follow policy as described in 640-01-05-05 Determining A Person Responsible for A Child's Welfare for the disposition of a report implicating a person not responsible for the child's health or welfare (N.D.C.C. 50-25.1-05.3).

- Is care being provided on a one-time, occasional or unscheduled basis by an individual engaged by the parent to provide care for their child in a location that is not the child's home and by an individual who is not the child's parent, an adult family member, a member of the child's household, the child's guardian, or the child's foster parent (such as a friend or neighbor providing care in the friend or neighbor's home)? If so, this is not a childcare setting. Situations such as this are "babysitting". Follow policy as described in 640-01-05-05 Determining A Person Responsible for A Child's Welfare for the disposition of a report implicating a person not responsible for the child's health or welfare (N.D.C.C. 50-25.1-05.3).
- Is care being provided for at least two hours per day for three or more days per week in exchange for money, goods or services in a location that is not the child's home and by an individual who is not the child's parent, an adult family member, a member of the child's household, the child's guardian, or the child's foster parent? If so, this is an unregulated childcare setting and childcare assessment should proceed.

When triage of a report is complete and a determination is made that the report has met the criteria for assignment, the report will be assigned to a CPS Worker by a CPS Supervisor.

A determination will be made by the CPS Supervisor as to the response time for initiation of the assessment according to ASSIGNMENT OF A REPORT TO A CPS WORKER 640-01-10-10.

## **Assessment of Unlicensed/Unregulated Childcare Settings 640-01-10-75-05-05**

(NEW 12/14/2020 ML 3603)

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When it is believed that a CPS report may involve a “child care setting”, the Early Childhood Services Licensing Unit shall be notified upon assignment of the report and a determination made whether the subject of the report is providing Early Childhood Services under NDCC 50-11.1-03. When it is determined that the criteria for defining a “childcare setting” has been met and the setting is not an Early Childhood Services Program, proceed with assigning the report to a CPS Worker and follow the procedures outlined in Requirements for CPS assessments in childcare settings. While ECS Licensors have no authority to regulate unlicensed/unregulated childcare settings, their knowledge of the laws regulating childcare settings, fire safety and other safety requirement in childcare settings may be invaluable in assessing unregulated care settings.

When it is discovered that an unregulated childcare setting may be in violation of safety codes, state laws or local ordinances, consult the States Attorney or city attorney as needed.

When the report involves suspected child maltreatment in an unlicensed/unregulated childcare setting, requirements for notification of parents of the children in the childcare, notification of the owner, operator, or staff member do not apply.

The subject of the report and the parents of children suspected of or determined to be victims in the assessment shall be notified of the assessment decision within 7 days of the decision date.

## **Assessment of an Early Childhood Services (ECS) Program 640-01-10-75-05-10**

(NEW 12/14/2020 ML 3603)

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When it is believed that a CPS report may involve a “child care setting”, the Early Childhood Services Licensing Unit shall be notified upon assignment of the report and a determination made whether the subject of the report is providing Early Childhood Services under NDCC 50-11.1-03. This includes family childcare, licensed group childcare, licensed preschool, licensed childcare center or a registered or self-declared provider or a staff member or household member of the licensed, registered, or self-declared provider. If the subject of the report provides care, supervision and guidance to children and is:

- The owner of an early childhood program,
- The operator of an early childhood program,
- Staff member of an early childhood program,
- Household member of an early childhood program owner or operator,
- The holder of a self-declaration,
- A household member of the holder of a self-declaration,
- An in-home provider, or
- A household member of an in-home provider.

Procedures for a childcare assessment, including notifications at the onset and at the conclusion of the assessment, must be followed whenever the report concerns suspected maltreatment in an Early Childhood Services program.

## **Determining Danger to Children in the ECS Program 640-01-10-75-05-10-01**

(NEW 12/14/2020 ML 3603)

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If an owner, operator, holder of a self-declaration, in-home provider, staff member, or adult or minor household member of the program providing care of the child is the subject of a child abuse and neglect assessment, a determination must be made whether:

- The reported child abuse or neglect places children in the early childhood program, self-declaration, or in-home provider at risk of abuse or neglect (present or impending danger) and.
- The reported child abuse or neglect occurred outside the care, supervision, or guidance of children in an early childhood program, self-declaration, or in-home provider, there was an impact or is a potential impact on care, supervision, or guidance of the children in the early childhood program, self-declaration, or in-home provider.

Notification of the CPS assessment must be made to the owner, operator, holder of a self-declaration, or in-home provider and to the parent of any child receiving early childhood services:

- when it is determined that the reported child abuse or neglect places children in the early childhood program, self-declaration, or in-home provider at risk of abuse or neglect,
- there was an impact or is a potential impact on care, supervision, or guidance of the children in the early childhood program, self-declaration, or in-home provider

For example:

- an employee of an Early Childhood Services program strikes a child, leaving a bruise, but the employee is placed on leave, restricted from the facility or employment is immediately terminated, the children in the program are not at risk and notification of the CPS assessment is not required.

For example:

- A CPS report indicates that an ECS program employee frequently loses their temper with their biological children, causing injury and cannot control their impulses. There is a potential impact, in that this could also occur when interacting with children in the childcare. Notification is required.

**NOTE:** ECS is required to provide notice to the owner, operator, holder of a self-declaration, or in-home provider and the parent of any child receiving early childhood services parents of children in the facility when action is taken under N.C.C 50-11.1-07.8

## **Onset Notifications in Early Childhood Service Program Assessments 640-01-10-75-05-10-05**

(NEW 12/14/2020 ML 3603)

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Under 50-11.1-07.8(2), Early Childhood Services (ECS) is required to notify the parent of any child receiving early childhood services when there is an investigation (CPS assessment/Licensing, joint licensing/CPS/ law enforcement or CPS/law enforcement) concerning suspected child abuse, including child sexual abuse, or child neglect. This notification is required to be provided at the "onset" of the assessment or assessment/investigation when the subject/suspect is an:

- owner,
- operator,
- holder of a self-declaration,
- in-home provider,
- adult or a minor staff member,
- or an adult or a minor household member

The CPS Worker and ECS licensor will collaborate to process any CPS report concerning an ECS Provider Program

- When CPS reports are received concerning suspected abuse/neglect in an ECS Program, notify the ECS Licensing Unit within 24 hours of the initiation ("onset") of the assessment.
- "Onset" of the assessment/investigation shall be the same as initiation of the assessment under NDAC 75-03- (A records check is not considered an "onset activity for parent notification purposes.):
  - Contact with law enforcement
  - Contact with the subject of the report
  - Contact with a child victim
  - Contact with a collateral source of information

When a report of suspected child abuse or neglect is received that does not initially indicate that the subject of the report is an Early

Childhood Services provider (owner, operator, holder of a self-declaration, in-home provider, adult or a minor staff member, or an adult or a minor household member) but this fact is discovered after the assessment has been initiated, notify the ECS Licensor within 24 hours of discovering a subject/provider so that timely notices can be provided.

For administrative assessments and referrals, notifications are not required, since no assessment is completed beyond analyzing the information in the report for appropriateness of a CPS response and appropriate jurisdiction and no "initiation" of an assessment occurs.

ECS role:

Provide notification at the "onset" of an assessment concerning suspected child abuse, including child sexual abuse, or child neglect, to the parent of any child receiving early childhood services when there is an investigation (joint licensing/ CPS/ law enforcement or CPS/law enforcement). Notification of parents at the "onset" of the assessment/investigation is not required to contain specific information other than notice that the assessment/investigation that is being conducted. CPS information remains confidential until the required notification to parents of the result of the assessment.

Collaborate with CPS assessment worker to complete any licensing investigation requirements. Include copies of the notifications made in the licensing file.

## **Non-Law Enforcement Assessment**

**640-01-10-75-05-10-10**

(NEW 12/14/2020 ML 3603)

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If it is determined that the level of concern does not need law enforcement intervention (report of non-criminal behavior), the CPS worker will notify the ECS Licensing Unit. Consideration shall be given to a joint CPS assessment/licensing investigation with the licensing worker to document and address any violations of licensing rules or other issues related to Early Childhood Services licensing. When law enforcement is not involved, the CPS worker and Child Care Licensor shall work collaboratively, regarding agenda/interviews and setting a time for the interviews.

When conducting a joint CPS assessment/licensing investigation, the CPS worker is responsible for conducting the CPS assessment under CPS law, Administrative Rule, and program policies. The childcare licensing staff shall conduct a childcare license review under state law, Administrative Rule, and policies in place for Early Childhood Services Programs. If the childcare licensor is not available, the CPS worker must proceed with the assessment, including assessment timelines for present danger assessment and face-to-face contact with child victims, and must provide the assessment documentation to the childcare licensor.

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**Law Enforcement Investigation/CPS Assessment**  
**640-01-10-75-05-10-15**

(NEW 12/14/2020 ML 3603)

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When the concerns expressed in the report concern information that may be criminal in nature (e.g. sexual abuse, physical abuse, neglect/contributing to the deprivation of a minor, etc.) law enforcement must be notified and a determination made whether law enforcement intends to conduct a criminal investigation into the concerns.

- When law enforcement is conducting a criminal investigation of the report, the criminal investigation takes precedence and any action by the CPS Worker must be approved with the investigator.
- The CPS worker will assist the law enforcement official in the completion of the criminal investigation. The CPS worker will complete the Child Protection Assessment.
- Joint investigation/assessments, including interviews, records collection, and other activities are strongly recommended to avoid duplication of effort and, most importantly, to avoid multiple interviews, particularly with children.
- When the assessment concerns an Early Childhood Services Program, the CPS Worker should engage in discussion with law enforcement concerning the requirement for notification of parents of children in the childcare, both at the onset of the assessment and at the conclusion of the assessment.

North Dakota Century Code Chapter 50-11.1-07.8, Suspension of license, self-declaration, or registration document - Assessment upon a report of child abuse or neglect – Notification, states, "... If law enforcement requests a delay in notification, the department may delay notifying the owner, operator, holder of a self-declaration, or in-home provider and delay notifying the parent of any child receiving early childhood services. To be valid, a law enforcement request for a notification delay must be provided to the department in writing within forty-eight hours of law enforcement receiving notification of an alleged criminal matter. A notification delay may

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last up to sixty days and, upon request of law enforcement, may be renewed.

The ECS Licensing Specialist responsible for completing the licensing study for ECS programs will be kept informed on the assessment progress if the criminal investigation would not be hindered.

## **Notifications at the Conclusion of an Assessment in Early Childhood Services Programs 640-01-10-75-05-10-20**

(Revised 8/1/2021 ML 3631)

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- When the childcare is an Early Childhood Services Program participant and the assessment involves the owner, operator, holder of a self-declaration, or in-home provider; or involves an adult or minor staff member or adult or minor household member of the early childhood program, self-declaration, or in-home provider, who is providing care to the child, provide notification to the owner/operator of the childcare, and the parents of children who are receiving childcare services at the time the notice is sent, of the maltreatment decision for the assessment.
- Notifications required at the time of determination
  - Notification of parents of the children attending an Early Childhood Services program is required when:
    - the subject of an assessment is an owner, operator, holder of a self-declaration, or in-home provider; or is an adult or minor staff member or adult or minor household member of the early childhood program, self-declaration, or in-home provider, and who is providing care to the child at the time the decision is made.
    - Notifications are required when a notice was provided to the parents of children in the childcare at the onset of the assessment, regardless of the determination of the assessment
    - When an assessment determination of services required is made, regardless of whether notification of parents was made at the onset of the assessment
  - Written notice is required to the owner, operator, holder of a self-declaration, or in-home provider
  - Written notice is not required if the subject of the report:

- is no longer an owner, operator, or holder of a self-declaration, (e.g. License has been revoked or expired; etc.)
- is no longer an adult or minor staff member or adult or minor household member at the time the notice is prepared (staff member has left employment or has been terminated or household member has left the household)
- Written notices must contain the name of the subject(s), a brief summary of the facts and the determination of the assessment.
  - It is recommended that information concerning the initial concerns reported not be discussed as part of the notification, but a summary of the factual evidence supporting the decision be provided.
- Under the provisions of N.D. Administrative Code section 75-03-18-02, the subject of a report of suspected child abuse or neglect who is aggrieved by the result of the assessment may file an appeal. For this reason, written notice of the determination shall contain information indicating that an appeal of the determination is possible and may have the effect of reversing the assessment determination. Notice of a reversed determination is not provided.
- Any parent, owner, operator, holder of a self-declaration, or in-home provider who makes a request for additional information, should be informed that the only information that will be provided is the determination (result) of the assessment, a brief summary of the facts and the name of the subject
  - A parent requesting information over the phone should be requested to provide their contact information so it can be verified that the requesting parent may receive the information prior to providing information over the phone or by email.
- Notification to parents of the result of the assessment shall take place prior to submission of the assessment to the CFS Field Service Specialist

- Copies of the notifications provided to parents or a list of the persons and the contact information used to provide notice must be attached to the assessment in FRAME.
- The CPS Worker shall draft the written notice to the parents.
- The licensor shall provide contact information for all parents with children attending the childcare at the time the written notice is prepared.
- In order to provide consistent information to parents, the CPS Worker should prepare a written notice to the early childhood licensor to be placed in the licensing file for the licensor's reference which contains the results of the assessment, a brief summary of the facts and the name of the subject. Identifying information must be redacted prior to public examination of the licensing file.
- The protocol for answering telephone calls regarding the notice will be decided locally based on zone resources.

The assessment information will be provided to the county licensing worker for use in determining any licensing violation or to support any licensing action.

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## **Requirements for CPS Assessments in Childcare Setting 640-01-10-75-05-10-25**

(Revised 8/1/2021 ML 3631)

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Use of the Child Protection Services Assessment form is recommended, for documentation of maltreatment, child vulnerability and child abuse and neglect assessment information, including persons interviewed and significant facts provided by each contact. The Case Activity Log in FRAME will be used to document contacts and activities related to the assessment, with narrative summary kept to a minimum. Documents, reports, records, photos, etc. are entered into FRAME as attachments. Sections of the assessment form pertaining to Adult functioning, parenting, and discipline are not applicable to childcare assessments and do not need to be completed.

- Contact the reporter
- Contact Law enforcement whenever indicated by concerns of physical or sexual abuse (N.D.C.C 50-25.1-05(3)) in a report of suspected child abuse and neglect, regardless of response time assigned.
  - Contact with law enforcement is also recommended when other potential criminal activity involving a child victim is reported (e.g. significant child neglect, child endangerment, contributing to the deprivation of a minor, etc.).
- Initiate the assessment by making face-to-face contact with the suspected victim(s) within the assigned response timeline Unless specifically requested by law enforcement to delay.
- Interview and observe (face-to-face contact):
  - Child victim(s)
  - Parents or other caregivers
  - Childcare administrator/director/provider
  - Other children and adults in the childcare at the time; and
  - The subject(s) of the report

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- At the initial contact with the individual subject(s) of the report, advise the subject(s) of a report of suspected child abuse and neglect and of the reported concerns. (Required under NDCC 50-25.1-19)
  - When the subject of the report is unknown at the outset of the assessment, the parent or guardian must be advised
  - If any other children in the childcare disclose, or appear to be, possible child abuse or neglect, themselves, include them as victims in the current assessment and inform their caregivers
  
- Access and view the childcare setting whenever possible.
  - ECS Licensors can be helpful when attempting to visit an ECS program provider, as the licensor is generally familiar to the childcare administration and/or staff.
  - If not allowed into the setting, assess the condition of the childcare by making collateral contact with someone who has been in the location recently, if possible. Include parents of children in the childcare but understand that parents may be fearful of losing their childcare which may impact their ability to gain or keep employment, so may not be comfortable providing negative information about the provider.
  - Document if no site assessment is done and the reason.
  
- Gather safety information and child maltreatment facts through interviews and observations.
- Request records if appropriate (check-in logs, employee training logs, operation manuals or handbooks, etc.).
- Interview each employee involved, each witness, and each child separately. It is recommended that the parent not be present for a child's interview but can be formed after the interview is complete.
- Gather information on the extent, circumstances and history of the reported maltreatment and any other potential maltreatment discovered during the assessment.
- Determine if there is a present danger safety threat at the time of the visit. If so, contact parents of the children in danger and request the parent to retrieve their child as soon as possible. The CPS Worker should remain at the site until all the children have departed.

- Develop a Present Danger plan with the parents and the childcare administration/director, when appropriate, and when it is determined the child is unsafe due to a present danger safety threat as directed in the Safety Framework Practice Model Manual 607-05. Use the Present Danger Hard Card for guidance in completing this document.
- Interview at least 2 collateral sources (throughout the assessment)
- Any eye or ear witnesses
- Individuals who have regular contact with the provider and child (other parent of children in the childcare, neighbors, or acquaintances of the provider, etc.)
- Doctor or others who evaluated or maintained records on behalf of the child (therapist, dentist, chiropractor, Family Nurse Practitioner, etc.)
- Inform collateral contacts of the confidential nature of the discussion, including keeping the fact of a report confidential.
- Gather sufficient relevant information to establish whether the facts of the case meet any definitions in state law of abused child, sexually abused child or neglected child to enable a determination to be made whether services are required for the protection and treatment of an abused or neglected child. Determine if there is an impending danger safety threat (apply the safety threshold criteria).
- Develop a safety plan with the family as well as with the licensor and the childcare administration/director when a child is determined to be unsafe due to a present or an impending danger safety threat.
- Monitor the safety plan for the duration of the CPS assessment or until the Safety Plan is discontinued.
- Review the safety plan with the licensor when a child is determined to be unsafe from an impending danger safety threat at the conclusion of the CPS assessment
- Refer any abused or neglected child victim under age 3 to IDEA Part C Early Intervention Services.
- Notify, in writing, the subject(s) of the report.
  - The subject(s) of the report should be notified prior to notifying the employer.
  - Notify a known subject of appeal rights whenever a decision of Confirmed is made.
  - Include the CPS Appeal Notification Insert as an attachment.

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It is unlikely that the Juvenile Court will be able to act in cases of out-of-home care, due having no jurisdiction over individuals who are not the child's parent, guardian, or custodian. However, if the case results in an investigation by law enforcement and/or a referral to the State's Attorney, it is possible that legal action could result through legal charges. Typically, action necessary to protect the children in such assessments will be taken by the parent or legal custodian and there may also be licensing actions taken by the Early Childhood Services program.

**Specialized Assessments 640-01-10-80**

**Pregnant Woman Assessment 640-01-10-80-01**

(NEW 12/14/2020 ML 3603)

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Under Revision. Reference Service Chapter 640.

**Substance Exposed Newborns/Alternative Response  
640-01-10-80-05**

(NEW 12/14/2020 ML 3603)

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Under Revision. Reference Service Chapter 640.

**Abandoned Infants (Baby Safe Haven)**  
**640-01-10-80-10**

(NEW 12/14/2020 ML 3603)

[View Archives](#)

Under Revision.

**Family Services Assessment 640-01-10-80-15**

(NEW 12/14/2020 ML 3603)

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Under Revision.

**Special Topics 640-01-10-90**

**Sexual Abuse 640-01-10-90-01**

(NEW 12/14/2020 ML 3603)

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Under Revision. Reference Service Chapter 640.

**Domestic Violence 640-01-10-90-05**

(NEW 12/14/2020 ML 3603)

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Under Revision. Reference Service Chapter 640.

**Human Trafficking 640-01-10-90-10**

(NEW 12/14/2020 ML 3603)

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Under revision, reference PI-15-20

## **Trauma Screening 640-01-10-90-15**

(Revised 8/1/2021 ML #3631)

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State law (N.D.C.C. 50-25.1-02(6) and (10)) require trauma screening tools to be completed during every child protection services assessment and every family services assessment for each suspected child victim.

The purpose of conducting a trauma screening tool on all suspected victims of child abuse and neglect is to identify children who may be in need of additional mental health assessment and perhaps treatment for trauma.

While the CPS law requires this screening tool to be completed during the CPS assessment, it is not considered part of the assessment because, also by law (N.D.C.C. 50-25.1-24) the trauma screening tool information can only be used for conducting a screening, treatment, referral for services, and receiving services.

Trauma screening tools are not part of the "fact finding process" of an assessment. CPS assessment decisions cannot be based on information gathered during a trauma screening. Trauma screening tools cannot be used in defending CPS appeals. Trauma screening tools are "privileged information", a step beyond 'confidential'. Trauma screening tools cannot be released under 50-25.1-11 nor can they be subpoenaed or used in any legal proceeding without a court order to compel their release.

Since the trauma screening is not part of the assessment, the document should not be included with the documentation and other evidence in a CPS assessment. The only documentation regarding trauma screening in an assessment is documenting in the CAL that a trauma screening was completed, as required by law. When children are trauma screened at a CAC during an assessment. It should be

documented in the CAL that the trauma screening was completed at the CAC and it is not necessary for CPS to repeat the screening.

Trauma screening tools may be used/sent when making a referral for mental health services but should otherwise be stored separately. Records retention for trauma screening tools has not yet been established.

NOTE: The "Evidence based screening tool" referenced is the University of Minnesota's Traumatic Stress Screen for Children and Adolescents (TSSCA) trauma assessment tool which is found in the CPS 640 online manual Appendix in the "Supporting Documents" folder.

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**Child Sexual Behavior Problems 640-01-10-90-20**

(NEW 12/14/2020 ML 3603)

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Under Revision.

## **Maltreatment Decision-Making 640-01-15**

### **Introduction 640-01-15-01**

(NEW 8/1/2021 ML #3631)

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Under the Safety Framework Practice model, there are a few key decision points within a Child Protection Services Assessment, based on observations of present danger, maltreatment, and impending danger. This section will address making the determination whether child abuse or child neglect may be confirmed, based on the criteria established in state law, administrative rules and program policies.

For assessment of present danger threats, reference Assessing and Controlling Present Danger Threats 607-05-35-10.

- See 607-05-70-05 "Child Welfare Practice Appendix 2: Present Danger Threats to Child Safety" for detailed information on present danger threats and 607-05-70-10 "Child Welfare Practice Appendix 3: The Vulnerable Child" for additional information concerning the vulnerable child.

For Safety assessment and Safety Determination analysis, reference Safety Assessment and Safety Determination Analysis 607-05-35-25-05.

## **Making a Maltreatment Decision 640-01-15-05**

(NEW 8/1/2021 ML 3631)

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North Dakota Century Code Chapter 50-25.1-05.1. "Child abuse or neglect assessment decision - How determined", requires that upon completion of the child protection assessment, a decision must be made whether confirmed, confirmed with unknown subject, unconfirmed, or unable to determine abuse or neglect of a child.

1. This determination is the responsibility of the department.
2. A decision of confirmed may not be made if the suspected child abuse or neglect arises solely out of conduct involving the lawful practice of religious beliefs by a parent or guardian. This exception does not preclude a court from ordering that medical services be provided to the child if the child's life or safety requires such an order, or the child is subject to harm or threatened harm.

The Department has designated responsibility for making maltreatment decisions in CPS assessments to the CPS Field Service Specialists.

The following decisions are allowed by state law:

- "Confirmed" means that upon completion of a child protection assessment, the department determines, based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child, and the department confirms the identity of a specific person responsible for the child's welfare which is responsible for the abuse or neglect.
  - A decision of confirmed should be made when the subject meets the definition of a "person responsible for a child's welfare" and a preponderance of evidence indicates that the

facts in the assessment meet a definition of abused child or neglected child.

- "Confirmed with unknown subject" means that upon completion of a child protection assessment, the department determines, based upon a preponderance of the evidence, that a child meets the definition of an abused or neglected child, but the evidence does not confirm the identity of a specific person responsible for the child's welfare which is responsible for the abuse or neglect.
  - A decision that child abuse and/or child neglect is confirmed with an unknown subject should be made when a preponderance of the evidence meets a definition of abuse child or neglected child but does not confirm the identity of a specific person responsible for the child's welfare which is responsible or when the name of the subject is unknown.

For example: A child is diagnosed with a subdural hematoma, medical experts conclude that the injury is consistent with non-accidental trauma, but there is not a preponderance of evidence to confirm abuse or neglect by a known person responsible for a child's welfare.

- "Unconfirmed" means that upon completion of a child protection assessment, the department has determined, based upon a preponderance of the evidence, that a child does not meet the definition of an abused or neglected child.
  - A decision of unconfirmed should be made when a preponderance of evidence indicates that the facts in the assessment do not meet a definition of an abused child or a neglected child.
- "Unable to determine" means insufficient evidence is available to enable a determination whether a child meets the definition of an abused or neglected child.
  - If insufficient evidence exists to form a preponderance of evidence to either confirm or unconfirm that a child has been abused or neglected, a decision of "unable to determine" must be made.

## **Preponderance of Evidence Standard 640-01-15-10**

(NEW 8/1/2021 ML 3631)

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The standard for making and supporting CPS assessment maltreatment decisions is a preponderance of evidence. This standard is established by North Dakota Century Code Chapter 28-32-46(5) "Administrative Agencies Practice Act":

A judge of the district court must review an appeal from the determination of an administrative agency based only on the record filed with the court. After a hearing, the filing of briefs, or other disposition of the matter as the judge may reasonably require, the court must affirm the order of the agency unless it finds that any of the following are present:

1. The findings of fact made by the agency are not supported by a preponderance of the evidence.

The Field Service Specialist must rely on definitions of "evidence", "sufficient evidence" and "preponderance of evidence" as they relate to the definitions for child abuse and neglect along with policy definitions and descriptions of maltreatment types:

**Evidence** – Any kind of proof offered to establish the existence or non-existence of a fact in dispute, e.g. testimony, writings, other material objects, demonstrations. Documentation, records, verification, substantiation, confirmation, grounds, data, sign, exemplification, authentication, certification, validation, corroboration, relevant facts, indication, testimony, trace, information\*.

**Sufficient Evidence** – Evidence that is relevant and of sufficient quality and quantity to support or refute the occurrence of child abuse or neglect.

**Preponderance of evidence** – Evidence that is of greater weight, or more convincing than evidence offered in opposition to it; more probable than not\*.

*\* Legal Thesaurus/Legal Dictionary: A Resource for the Writer and Computer Researcher; William P. Statsky; 1985*

By statutory definition, a CPS Assessment is "a factfinding process designed to provide information that enables a determination of whether a child meets the definition of an abused or neglected child, including instances that may not identify a specific person responsible for the child's welfare which is responsible for the abuse or neglect.

### Evidence

Consider whether the information gathered during the assessment contains adequate evidence:

- Were the children interviewed and observed as required by Administrative Rule?
- Were the subject(s) interviewed and observed as required by Administrative Rule?
- Were adequate and appropriate collateral contacts made?
- Were witnesses interviewed?
- Were interviews of sufficient quality to provide needed information in sufficient detail?
- Were corroborating documents included (police reports, written statements, medical records, etc.)?
- Were any material objects included (photos, weapons used, clothing children were wearing, etc.)?
- Are there any obvious gaps in information gathering?
- Has the information gathered during the assessment been validated?

### Sufficient Evidence

Evidence is sufficient if there is enough evidence to enable a decision whether child abuse or neglect can be confirmed or unconfirmed. If insufficient evidence exists to form a preponderance of evidence to either confirm or unconfirm that a child has been abused or neglected, a decision of "unable to determine" must be made.

For example:

The initial report of suspected child abuse or neglect contains believable concerns of possible abuse and neglect from a credible reporter (mandated reporter or reporter who knows the family well). A caregiver/subject refuses access to the suspected victim child and the caregiver, him/herself refuses to be interviewed or is otherwise unavailable. Gathering sufficient evidence to make a sound decision whether a child is abused or neglected may not be possible. A faulty decision that child abuse or neglect is unconfirmed may indicate to a reporter or others in a position to protect the child that a thorough assessment was completed and no abuse or neglect was found.

#### Preponderance of evidence

When considering the available information, the Field Service Specialist must consider that a preponderance of the evidence relies on "greater weight" of the evidence rather than simply a greater volume of evidence.

For example:

A child victim, subject of an assessment, or collateral contact may provide large quantities of information related to a child or family and historical events involving individuals inside and outside the family and provide the CPS Worker numerous "character references" to contact as part of an assessment. However, much of the information provided may be irrelevant to the current assessment (e.g. does not address current abuse/neglect report) and, even though the information may be accurate and truthful, may provide little information about whether the current abuse or neglect concerns are more or less true. While all of these contacts may have provided quantities of information, the "weight" of evidence provided is scant.

The reliability or trustworthiness of the information source (reporter or collateral) is an important clue to the weight or credibility assigned to the information. The following factors should be considered in assessing reliability:

- Professional expertise (medical, law enforcement, mental health, social work, etc.):
  - Education, training, and experience may qualify individuals (including the CPS Worker) as experts in their field. For

example, certain report allegations - subdural hematoma, failure to thrive syndrome, and malnutrition, require medical diagnosis. The physician's diagnosis is inherently more reliable than an explanation provided by a person with no medical training in this situation.

- Non-involved third party:
  - The more removed a person is from the individuals involved in an incident, the greater likelihood that the person can be objective. Thus, a collateral contact with a neighbor or unrelated witness may be more objective than that provided by a family member or friend.
- Eyewitness - direct observation:
  - An eyewitness account by a non-involved third party may be more reliable than a professional's analysis. The professional is generally involved in the situations after the abuse or neglect may have occurred and must reconstruct what could have happened based on the information presented during the assessment.

For example:

A caregiver disciplines a child in a public park with a wooden paddle. A bystander calls police, who respond to the scene, observe injuries to the child and call the CPS Worker to have the child examined by a physician. The bystander describes that the caregiver delivered several strong 'hits' to the child's back, buttocks and upper thighs with the paddle while the child was screaming in pain. The caregiver acknowledges using the paddle but claims that they hit the child "a couple of times" on the buttocks and the child's other injuries are caused by rough play with other children and falling from the playground equipment. The caregiver's two friends who accompanied the caregiver to the park agree with the caregiver's account. The physician states the opinion that the child presented with an account of injuries caused by falling from playground equipment, but the injuries are not consistent with a fall and are consistent with being struck with a blunt object. In this scenario, there are three people all voicing the caregiver's account and only 2 who support a physical abuse cause for the injuries, however, the bystander is a non-involved eyewitness, and the physician is an expert in the medical field, giving their account more "weight".

## **Validating Information 640-01-15-15**

(NEW 8/1/2021 ML 3631)

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Frequently, the information gathered from different sources during the assessment may be conflicting or inconclusive. The CPS Worker should attempt to double-check, corroborate, or verify statements provided by report subjects and collateral sources. This verification process helps to assure the accuracy of the information collected, and is necessary because:

- Individual may hide their responsibility for the abuse or neglect.
- The information source may be biased for or against report subjects.
- Memories of specific dates, times, and places may fade with time.
- Interviewee interpretations and opinions may be difficult to separate from facts.
- Report subjects may change their account of the incident during the assessment.

## **Child Maltreatment Types 640-01-15-20**

(NEW 8/1/2021 ML 3631)

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North Dakota Child Abuse and Neglect law, N.D.C.C. 50-25.1, defines an "abused child" and a "neglected child" (N.D.C.C 50-25.1-02 (3) and (18)).

Under the definition of "abused child", the law defines two types of abuse: physical abuse and sexual abuse, each definition includes references to other sections of statute, which will be included in this manual for completeness and clarity.

North Dakota Child Abuse and Neglect law, N.D.C.C. 50-25.1(18) defines "neglected child" and encompasses the absence of "proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals" and includes prenatal exposure to alcohol or controlled substances as well as children exposed to controlled substances or chemical substances in their environment.

In general, there are two types of child abuse – physical abuse and sexual abuse. There are also two types of child neglect - physical neglect and psychological maltreatment. Within physical neglect, there are several sub-types. Each type of child maltreatment will be further refined in separate subsections of this section of the Service Chapter to aid in sound decision-making.

**Child Abuse 640-01-15-20-01**

(NEW 8/1/2021 ML 3631)

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As defined in North Dakota law (N.D.C.C. 50-25.1-02(3))" abused child" means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare and includes a "sexually abused child" who is suffering from or was subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2, by any individual, including a juvenile.

## **Physical Abuse 640-01-15-20-01-01**

(NEW 8/1/2021 ML #3631)

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A physically abused child is defined in three different chapters of the North Dakota Century Code – N.D.C.C. 50-25.1 Child Abuse and Neglect, N.D.C.C. 14-09 Parent and Child and N.D.C.C. 12.1 Criminal Code.

Chapter 50-25.1-02(3) defines an abused child as:

“abused child means an individual under the age of eighteen years who is suffering from abuse as defined in section 14-09-22 caused by a person responsible for the child's welfare...”.

N.D.C.C. 14-09-22 defines the elements necessary for physical abuse:

- willfully inflicts or allows to be inflicted upon the child:
  - mental injury,
  - or bodily injury,
  - substantial bodily injury,
  - or bodily injury as defined by section 12.1-01-04

N.D.C.C. 12.1 defines “bodily injury”, “Serious Bodily Injury, and “substantial bodily injury.

- "Bodily injury" means any impairment of physical condition, including physical pain.
- "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes:
  - serious permanent disfigurement,
  - unconsciousness,
  - extreme pain,
  - permanent loss or impairment of the function of any bodily member or organ,
  - a bone fracture,

- or impediment of air flow or blood flow to the brain or lungs.
- "Substantial bodily injury" means:
  - a substantial temporary disfigurement,
  - loss, or impairment of the function of any bodily member or organ.

### Elements of Physical Abuse

Assessments of physical abuse must address whether bodily injury, serious bodily injury, or substantial bodily injury occurred.

- Bodily injury includes any physical impairment or physical pain. Examples are:
  - bruises
  - welts
  - minor cuts
  - scratches
  - abrasions
  - bloodied nose
  - sprains/strains
  - kicking a child
  - biting a child
  - tying or close confinement
  - physical pain

When assessing physical pain, the CPS Worker must inquire from the victim child, caregivers and collaterals, the presence and extent of pain and any effect pain may have had on child functioning.

For example:

Ask the child to describe any physical pain the child experienced:

- location of the pain (body part)
- severity of the pain (describe what it felt like, scale of 1-5, etc.). If the pain is significant or more than momentary 'sting', it may be considered as serious bodily injury.
- length of time in pain (immediate pain that faded quickly, pain that lasted all day, several days, current pain, etc.)
- how the pain affected the child (interfered with normal activities e.g. hurt when sitting, walking; unable to move

arms and legs without pain, unable to sleep due to pain, etc.)

- Substantial bodily injury includes temporary disfigurement, loss, or impairment of function of any body part.
  - Swelling of lips, tongue, or other body part (fat lip, goose egg)
  - Unable to stand, pick up objects, move limbs due to severe pain, sprain, strain, hyperextension injury (over extended joint), etc.
  - Any other injury that impairs functioning but does not create a substantial risk of death.
  
- Serious bodily injury may be identified when the physical intervention creates a substantial risk of death, even though the observable injury may be absent or appear to be minor, such as:
  - Striking a child on the head, neck, or face
  - Striking a child with large, heavy, or potentially deadly objects such as bats, shovels, etc.
  - Striking a child's soft tissues with fists or other blunt objects (kidney area, belly, etc.)
  - Throwing a child forcefully onto a soft or hard surface
  - Forced feeding or forced ingestion of noxious substances (carries a risk of choking/poisoning)
  - Physical punishment of an infant
  - Shaking of an infant, toddler, or preschooler
  - Choking or otherwise restricting air or blood flow to the brain or lungs (strangulation/choking, neck pressure, headlock, etc.)
  
- Serious bodily injury also includes:
  - Fractures
  - Burns/scalds
  - Loss of teeth
  - Poisoning
  - Internal injuries
  - Unconsciousness
  - Extreme pain (assess according to criteria under physical pain above)
  - Injury that causes permanent impairment
  - Brain or neurological damage

- Subdural hemorrhage or hematoma
  - Stabbing
  - Gunshot wounds
  - Death
- Whether the injury was inflicted willfully

The definition of an abused child in N.D.C.C. 14-09-22 requires that a subject “willfully inflicts or allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury...”. Willfulness should be considered in light of “general intent” to commit an act, without the specific intent to cause a particular result. An act can be considered “willful” if a person commits the act intentionally, knowingly, or recklessly.

For example, a caregiver who intends to shake or strike a child in anger may not intend to injure the child, but clearly intends to shake or strike the child. This is willful behavior.

By contrast, a caregiver who is intending to strike an object (swinging at a golf ball, for example) but who unintentionally strikes a child who runs by unexpectedly. In this example, the caregiver did not intend to strike the child. This act was not willful but may be considered “reckless” depending on the circumstances or setting. For example, swinging a golf club in a children’s play area occupied by children versus swinging a golf club on a golf course. When considering whether an act is “willful” it is important to also consider whether the act was engaged in “knowingly” or “recklessly”.

\*\*\* When a caregiver “allows to be inflicted upon the child mental injury or bodily injury, substantial bodily injury, or serious bodily injury”, also consider “failure to protect” under the section related to physical neglect as it relates to a caregiver who allows injury to be inflicted upon a child by another person, either by not intervening to protect the child or by continuing to leave a child in the care of another person who is known by the parent to have inflicted injury on a child.

## **Sexual Abuse 640-01-15-20-01-05**

(NEW 8/1/2021 ML #3631)

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A sexually abused child is defined in N.D.C.C 50-25.1-02 (3): a "sexually abused child" who is suffering from or was subjected to any act in violation of sections 12.1-20-01 through 12.1-20-07, sections 12.1-20-11 through 12.1-20-12.3, or chapter 12.1-27.2".

In North Dakota law, the criminal statute for sex offenses is N.D.C.C .12.1-20. The criminal statute on sexual performances by children is N.D.C.C. 12.1-27.2. (See appendix 640-01-50 for links to these statutes.)

N.D.C.C. 12.1-20-02 contains definitions that may be helpful in describing types of child sexual abuse:

### 12.1-20-02. Definitions.

In sections 12.1-20-03 through 12.1-20-12:

1. "Coercion" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
2. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
3. "Object" means anything used in commission of a sexual act other than the person of the actor.
4. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.

5. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

N.D.C.C. 12.1-20 is the Century Code Chapter entitled Sex Offenses. Sections that apply to child sexual abuse are:

- **Gross sexual imposition** (N.D.C.C. 12.1-20-03) (does not require the actor to be an adult)
- **Continuous sexual abuse of a child** (N.D.C.C. 12.1-20-03.1) (requires an actor to be in adult court)
- **Sexual imposition** (N.D.C.C. 12.1-20-04) (does not required the actor to be an adult)
- **Corruption or solicitation of minors** (N.D.C.C. 12.1-20-05) (requires the actor to be an adult)
- **Luring minors by computer or other electronic means** (N.D.C.C. 12.1.20-05.1) (requires the actor to be an adult)
- **Sexual abuse of wards** (N.D.C.C. 12.1-20-06) (requires official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person)
- **Sexual exploitation by therapist** (N.D.C.C. 12.1-20-06.1) (Requires the actor to be person who is or who holds oneself out to be a therapist)
- **Sexual assault** (N.D.C.C. 12.1-20-07) (does not require the actor to be an adult)
- **Incest** (N.D.C.C. 12.1-20-11) (does not require the actor to be an adult)

- **Deviate sexual act** (N.D.C.C. 12.1-20-12) (does not require the actor to be an adult)
- **Indecent exposure** (N.D.C.C. 12.1-20-12.1) (does not require the actor to be an adult)
- **Surreptitious intrusion** (N.D.C.C. 12.1-20-12.2) (does not require the actor to be an adult)
- **Sexual Extortion** (N.D.C.C. 12.1-20-12.3) (does not require the actor to be an adult)
- **Sexual performances by children** (NDCC 12.1-27.2) (does not require the actor to be an adult)

All of the above sections are criminal violations. Reports of these activities require contact with law enforcement before beginning an assessment. To assist understanding of these offenses, the salient elements are listed below:

Gross Sexual Imposition:

- Compelling a victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being.
- Substantially impairing the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance.
- Knowing or having reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her.
- Knowing or reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

Continuous sexual abuse of a child:

- Any combination of three or more sexual acts or sexual contacts with a minor during a period of three or more months

Sexual imposition:

- Compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting, or
- Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.
  - 12.1-06.2-01. Definitions. As used in this chapter, the term:
    1. "Criminal street gang" means any ongoing organization or group of three or more persons, whether formal or informal, that acts in concert or agrees to act in concert with a purpose that any of those persons alone or in any combination commit or will commit two or more predicate gang crimes one of which occurs after August 1, 1995, and the last of which occurred within five years after the commission of a prior predicate gang crime

Corruption or solicitation of minors:

- An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor,
- An adult who solicits with the intent to engage in a sexual act with a minor, or engages in, or causes another to engage in, a sexual act.

Luring minors by computer or other electronic means:

- The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one computer or electronic device to another to

initiate or engage in such communication with a person the adult believes to be a minor, and;

- By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.

Sexual abuse of wards:

- A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act when the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.

Sexual exploitation by therapist:

- Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination.
  - "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
  - "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, addiction counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.
  - 12.1-20-02(5) Definitions:
    1. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

Sexual assault:

- A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense when:
- That person knows or has reasonable cause to believe that the contact is offensive to the other person.
- That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct.
- That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance.
- The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person.

Incest:

- A person who intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship.
  - 14-03-03. Void marriages. The following marriages are incestuous and void:
    - Marriage between parents and children, including grandparents and grandchildren of every degree.
    - Marriage between brothers and sisters of the half as well as the whole blood.
    - Marriage between uncles and nieces of the half as well as the whole blood.
    - Marriage between aunts and nephews of the half as well as the whole blood.
    - Marriage between first cousins of the half as well as the whole blood. This section applies to illegitimate as well as legitimate children and relatives.

Deviate sexual act:

- A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire. (See definitions above.)

Indecent exposure:

- A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, if that person:
  - Masturbates in a public place or in the presence of a minor.
  - Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.
  - Exposes one's penis, vulva, or anus by unsolicited electronic means.

Surreptitious intrusion:

- An individual, with the intent to arouse, appeal to, or gratify that individual's lust, passions, or sexual desires, when that individual does any of the following:
  - With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously gazes, stares, or peeps into a house or place of dwelling of another.
  - With intent to intrude upon or interfere with the privacy of another, enters upon another's property and surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a house or place of dwelling of another.
  - With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously gazes, stares, or peeps into a tanning booth, a sleeping room in a hotel, or other place where a reasonable individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.
  - With intent to intrude upon or interfere with the privacy of the occupant, surreptitiously installs, or uses any device for observing, photographing, recording, amplifying, or broadcasting sounds or events from a tanning booth, a sleeping room in a hotel, or other place where a reasonable

individual would have an expectation of privacy and has exposed or is likely to expose that individual's intimate parts or has removed the clothing covering the immediate area of the intimate parts.

Sexual extortion:

An individual commits the offense of sexual extortion if the individual:

- With an intent to coerce a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute an image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, communicates in person or by electronic means:
  - A threat to the victim's or another's person, property, or reputation; or
  - A threat to distribute or an enticement to delete an intimate image or video of the victim or another.
- Knowingly causes a victim to engage in sexual contact, in sexually explicit conduct, or in simulated sexually explicit conduct, or to produce, provide, or distribute any image, video, or other recording of any individual engaged in sexually explicit conduct or any intimate image of an individual, or a demand for money, by means of:
  - A threat to the victim's or another's person, property, or reputation; or,
  - A threat to distribute or an enticement to delete an intimate image or video of the victim or another.

Sexual performances by children

Use of a minor in a sexual performance.

- A person, when knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.

- An adult when, with the intent to persuade, induce, entice, or coerce a minor to engage in a sexual performance, the adult portrays the adult to be a minor.

Promoting or directing an obscene sexual performance by a minor:

- A person, when knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.

Promoting a sexual performance by a minor:

- A person, when knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.

Possession of certain materials prohibited:

- A person, when knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

At the extreme end of the spectrum, sexual abuse includes sexual intercourse and/or its variations. These behaviors may only be the last step in an escalating pattern of sexual abuse. For that reason and because of their effects, exhibitionism, surreptitious intrusion, sexual extortion and use of a minor in a sexual performance as well as any sexual contact with children is also considered sexually abusive.

**Non-touching sexual abuse may include:**

- Indecent exposure/exhibitionism (NDCC 12.1-20-12.1)
- Deliberately exposing a child to the act of sexual intercourse (12.1-20-12.1)
- Masturbation in front of a child (NDCC 12.1-20-12.1)
- Solicitation of a child with the intent to engage in a sexual act (a child is harassed, encouraged, pressured, or propositioned (NDCC 12.1-20-05))

- surreptitious intrusion (Voyeurism or secretly observing an individual, for example: undressed, engaged in sexual activity, etc.) for the purpose of sexual gratification (NDCC 12.1-20-12.2).

**Touching sexual abuse may include:**

- Touching of the sexual or other intimate parts of the person
- Making a child touch an adult's sexual organs; or
- Any penetration or attempt at penetration of a child's vagina, anus or mouth by a penis or any other object that does not have a valid medical purpose.

The above actions may be referenced in NDCC 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20.07, 12.1-20-11.

**Sexual exploitation of a child may include:**

- Engaging a child or soliciting a child for the purpose of prostitution (NDCC 12.1-20-05)
- Using a child in the recording, filming, photographing or as a model in the filming or photographing of pornographic material (NDCC 12.1-27.2).

**Other interactions of a sexual nature**

There may be other types of interactions between an adult caregiver and a child which are of a sexual nature or carry sexual connotations, but which do not fall within a definition of sexual abuse. These types of interactions which cause a child to experience anxiety, embarrassment, fear, discomfort or psychological distress or trauma when the child is in the presence of the caregiver engaging in these behaviors should be considered under the criteria for psychological maltreatment (640-01-15-20-05-60).

Examples include:

- Exposing children to sexually explicit or pornographic material
- Making sexually provocative comments to a child
  - Commenting on or 'joking' about a child's developing body
  - Prying questions, sexual comments or 'jokes' about a child's sexuality or sexual behaviors

- Calling a child names such as “slut”, “whore”, “gigolo”, “boy toy”, etc.
- Denying of age-appropriate privacy to a child (watching or walking in on a child while dressing, bathing, toileting, etc.)

Also be aware of “grooming” behaviors, which are defined as, “a deliberate process by which offenders gradually initiate and maintain sexual relationships with victims in secrecy”. Grooming behaviors often precede actual sexual contact and can include:

- bathing a child unnecessarily or without the parent’s permission.
- walking in on a child changing.
- deliberately walking in on a child toileting.
- asking a child to watch the adult toileting.
- tickling and “accidentally” touching genitalia.
- activities that involve removing clothes (massage, swimming, ‘strip’ poker, etc.).
- wrestling in underwear.
- playing games that include touching genitalia (playing doctor).
- telling a child sexually explicit jokes.
- teasing a child about breast and genital development.
- discussing sexually explicit information under the guise of education.
- showing the child sexually explicit images.
- taking pictures of children in underwear, bathing suits, dance wear, or in sexually provocative poses, etc.

Grooming behaviors can be conducted both in person or over electronic means and may or may not be considered crimes. Law enforcement must be contacted when grooming behaviors are identified in order to determine whether criminal investigation is warranted.

### **Sexual activity between children:**

For reports of sexual activity between children, reference Child Sexual Behavior Intervention [640-01-10-90-20](tel:640-01-10-90-20).

## **Child Neglect 640-01-15-20-05**

(NEW 8/1/2021 ML #3631)

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1. "Neglected child" means a child who, due to the action or inaction of a person responsible for the child's welfare:
  - a. Is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare.
  - b. Has been placed for care or adoption in violation of law.
  - c. Has been abandoned.
  - d. Is without proper care, control, or education as required by law, or other care and control necessary for the child's well-being because of the physical, mental, emotional, or other illness or disability of a person responsible for the child's welfare, and that such lack of care is not due to a willful act of commission or act of omission, and care is requested by a person responsible for the child's welfare.
  - e. Is in need of treatment and a person responsible for the child's welfare has refused to participate in treatment as ordered by the juvenile court.
  - f. Was subject to prenatal exposure to chronic or severe use of alcohol, or any controlled substance as defined in chapter 19-03.1 in a manner not lawfully prescribed by a practitioner.
  - g. Is present in an environment subjecting the child to exposure of a controlled substance, chemical substance, or drug paraphernalia as prohibited by section 19-03.1-2.

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h. Is a victim of human trafficking as defined in title 12.1

## **General Neglect 640-01-15-20-05-01**

(NEW 8/1/2021 ML #3631)

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The definition of a “neglected child” is without proper care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health, or morals, and is not due primarily to the lack of financial means of a person responsible for the child's welfare.

The term ‘proper care,’ as used in Section 27-20-02(5)(a), N.D.C.C., means the parents' conduct in raising their children must satisfy the minimum standards of care which the community will tolerate.

“Minimum parenting standards” means that a person responsible for the child's welfare is able and willing to ensure that a child is healthy and safe, which includes ensuring that the child is:

- adequately fed,
- clothed appropriately for the weather conditions,
- provided with adequate shelter,
- provided with necessary medical care,
- protected from physical, mental, and emotional harm,
- provided with education as required by law.

Under the provision of “proper care” and “minimum parenting standards”, consideration should be given to reckless disregard for the child's safety and welfare in situations that expose children to significant risk of harm, even though injuries may not have resulted. It is not necessary for a child to be damaged by a lack of care. Persons with responsibility for the care and supervision of a child (caregivers) have a duty to protect the health and welfare of these children. When considering a maltreatment decision based on general neglect, consider whether actions of the caregiver meet a minimum standard of care (proper care) to protect the child’s physical, mental or emotional health or morals.

For example:

A parent is exposing a preschool child to pornography by leaving pornographic material within the child's view. While it may not be possible to assess the impact of exposure to pornography upon a child of tender years, exposing a child to pornography violates a "minimum standard of care which the community will tolerate". There are laws created to prevent pornography from being viewed by minors. The parent is not protecting the child's healthy moral development and is not providing 'proper care'. Similarly, a parent who involves a child in shoplifting, drug trade or exposing a child to "vice conditions" is not providing "proper care" even though impact to the child may not yet be evident.

Other examples include:

- A parent who drives while under the influence of substances with a child in the vehicle.
- A parent who swings a heavy object at a child but does not hit or injure the child.
- A parent whose capacity is impaired to the degree that the parent is unable to meet the child's basic needs or to perceive danger to the child.

The North Dakota Supreme Court has stated that proper (parental) care refers to the minimum standard of care which the community will tolerate. As a result, for example, **there is not a shifting or higher standard of care that applies to "a person responsible for the child's welfare"** who has had specialized training, such as CPR, AED (automatic external defibrillator) or First Aid. Rather, there is one standard of care applicable to all subjects regardless of their training or education.

Although individuals with specialized training (i.e. foster parents, teachers, medical doctors) cannot be held to a higher standard of care, **child vulnerability** can be considered when determining abuse/neglect; consider child characteristics such as trauma from previous abuse neglect, child disability or young age.

For example: A child who has been removed from parental care and placed in foster care will have experienced trauma from maltreatment in their home to the degree that maltreatment caused their removal. That child will also have experienced trauma from removal from their home. A child who has been previously maltreated and removed from their home will be particularly vulnerable to any further maltreatment. If that child also has a disability or mental health condition or is a very young child their vulnerability multiplies.

### **Consideration of Financial Means**

Applying the terms “proper care” and “minimum parenting standards” also requires consideration of the caregiver’s financial means.

Poverty is when the caregiver *does not have* the resources to provide for the child’s need but is making substantial efforts to provide necessities and using available income to benefit the children.

Neglect is when the caregiver *has* the resources but *chooses* not to provide for the child’s needs such as directing resources toward parental pastimes, entertainment or hobbies while depriving the children of basic necessities.

Caregivers who are living in poverty may not be neglectful when they do not have access to financial resources to provide proper care. It is important to explore the caregiver’s use of available resources in providing proper care for their children. When the family’s resources are depleted in an effort to provide for the family’s basic needs such as food, clothing, education, housing, etc. it should be explored whether the caregiver is willing to accept public and private benefits and assistance to enable proper care for the children. The following areas can be addressed to assess a caregiver’s financial means:

- Whether the caregiver has applied for public assistance benefits.
  - If the caregiver has applied for public assistance benefits and was found to be ineligible, what was the cause of ineligibility?

- If the cause of ineligibility is inadequate follow through by the applicant, explore whether the individual is willing to provide required documentation.
- If the cause of ineligibility is the result of the caregiver's irresponsible or poor choices, such as a criminal conviction or fraud, the behavior may be considered neglectful and child neglect may be confirmed.
  - Information about TANF ineligibility may be obtained without a release of information under Service Chapter Temporary Assistance for Needy Families (TANF) 448-01-25-10-10-30.
  - This exception applies only to the TANF program.
  - All other Economic Assistance programs require a signed release of information form.
- Whether the caregiver is willing to apply for public assistance benefits.
- Whether the caregiver is willing to access local resources such as food banks, Community Action Programs (offers help with Budgeting and Money Management, Child Care, Commodities, Emergency Assistance, Energy Assistance, Food Pantry, Head Start, Housing, Self-Sufficiency, Volunteer Income Tax Assistance (VITA), and Weatherization), local churches, etc.

When a caregiver has access to resources but does not direct needed resources to providing proper care for the children and/or is not willing to accept available help from public or private assistance agencies, child neglect may be confirmed.

## **Abandonment 640-01-15-20-05-05**

(NEW 8/1/2021 ML 3631)

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Neglect may be confirmed for abandonment when a caregiver:

- Leaves the child for an indefinite period without making firm and agreed plans with the child's immediate caregiver for the parent's resumption of physical custody.
- The arranged caregiver is no longer able/willing to care for the child, is unable to reach the parent and the parent had not returned as expected or made alternate arrangements.
- Following the child's birth or treatment at a hospital, to fails to arrange for the child's discharge within ten days after the child no longer requires hospital care; or
- Willfully to fails to furnish food, shelter, clothing, or medical attention reasonably sufficient to meet the child's needs
- Blatantly refuses physical custody of a child, such as the permanent or indefinite expulsion of a child from the home, without adequately arranging for his care by others or the refusal to accept custody of a returned child.
- Substitute caregiver is not being financially supported for the care of the child.

Note: Abandonment may not be considered when Abandoned Infant provisions have been met. (See N.D.C.C. 50-25.1-15)

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**Child Placed for Care or Adoption in Violation of Law  
640-01-15-20-05-10**

(NEW 8/1/2021 ML 3631)

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North Dakota Century code 30.1-26-04. (5-104) Delegation of powers by parent or guardian and 14-10-05. Assignment of children prohibited – Penalty addresses parental assignment of their children outside of legal proceedings. N.D.C.C. 30.1-26-04. prohibits a parent from placing a child for care for longer than 6 months without a properly executed Power of Attorney. N.D.C.C.14-10-05 allows a parent to place that person's own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by the person receiving the child. The child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. No parent may assign or otherwise transfer the parent's rights or duties with respect to the care and custody of the parent's child. These statutes apply to adoptive parents who attempt to "rehome" an adopted child.

- N.D.C.C.30.1-26-04. (5-104) Delegation of powers by parent or guardian. A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.
- N.D.C.C.14-10-05. Assignment of children prohibited - Penalty. No person, other than the parents, may assume the permanent care and custody of a child, unless authorized so to do by an order or decree of a court having jurisdiction, except that a parent, upon giving written notice to the department of human services and human service zone, may place that person's own child in the home of the child's grandparent, uncle, or aunt for adoption or guardianship by the person receiving the child. The

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child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. No parent may assign or otherwise transfer the parent's rights or duties with respect to the care and custody of the parent's child. Any such transfer or assignment, written or otherwise, is void. This section does not affect the right of the parent to consent in writing to the legal adoption of the parent's child, but such written consent does not operate to transfer any right in the child in the absence of a decree by a court having jurisdiction.

## **Inadequate Supervision 640-01-15-20-05-15**

(NEW 8/1/2021 ML 3631)

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Neglect due to inadequate supervision may be confirmed when:

- The child has been placed in a situation that requires actions beyond the child's level of maturity, physical ability, or mental ability.
- Caregiver is present but inadequately supervises a child. The caregiver is with the child, but is unable or unwilling to supervise (e.g., the caregiver is impaired by substances, distracted by other activities (internet, social media, television, hobbies, etc.), sleeps during the day or has inadequate parenting knowledge or skills (does not recognize dangers to unattended child)).
- The caregiver fails to arrange safe substitute care for the child.
- A child is repeatedly left in the custody of others for days or weeks at a time, possibly due to the unwillingness of the parent or the caregiver to provide or maintain care for the child. This practice is sometime referred to as "shuttling" as the child is shuttled from one home to another and is not provided stability needed for healthy development.

The ultimate responsibility for the safety, care, well-being, and behavior of children remains with the parent or caregiver, whether they are present to personally supervise them or not. Inadequate supervision may also exist in circumstances where the caregivers are present but physically or mentally impaired to such an extent that they are unable to provide supervision or respond to the needs of the child.

When a caregiver is not present to personally supervise their child, the caregiver has a responsibility to arrange appropriate substitute care for the child and assure that substitute caregivers are capable of providing safe and appropriate care and supervision. A parent must exercise reasonable judgement when selecting substitute care. A parent who does not exercise reasonable judgement in selecting a substitute caregiver may be considered neglectful.

Examples include substitute caregivers who:

- Are registered sex offenders or offenders against children (and the parent is aware/has been made aware).
- Are under the influence of substances or who are known to the parent to routinely abuse substances.
- Are not known to the parent (parent does not know their first and last name/address/phone number).
- Have not been made aware that they are responsible for the care and supervision of the child.
- Are physically or cognitively disabled or impaired to such a degree that they are unable to respond to a child's needs (e.g. frail elderly unable to lift and carry an infant, developmental disability which impairs judgement, mental health condition which interferes with focus, attention, or concentration toward child).
- Are under age 12, or over age 12 but lacks skills, focus or maturity to postpone their own needs in order to meet the child's needs (teenager who naps or focuses on video games/social media, etc. while caring for younger children).

Caregivers are also expected to provide substitute caregivers with:

- a definite plan for duration of the substitute care (when the parent is expected to return or when another person will assume care for the child),
- arrangements for meeting the needs of the child (sufficient food, clothing, school registration, medical care, etc.)
- emergency contacts for the substitute caregiver (who to call if the caregiver is unable to be reached)
- means to maintain contact with the child if during an extended absence.

Caregivers must also exercise reasonable judgement when determining to leave a child home alone. The age of the child is not the only factor that should be considered when children are left alone. Other factors include:

- the maturity of the child (must know how to identify an emergency situation and know how to respond appropriately; how to react to strangers coming to the door or on the phone, etc.

- must be able to exercise self-discipline to follow rules when alone; (ability to resist peer pressure, etc.)
- emotional health factors (is the child fearful or anxious when left alone; can the child control impulses when alone; can the child reliably carry out simple instructions such as calling to check-in with an adult, not leaving the home when instructed, etc.)
- the child's physical or cognitive limitations (is the child able to open necessary doors for safety; can the child physically navigate stairways, gates, etc. for safety; does the child recognize common dangers such as using matches or lighting candles, ingesting substances, safely using electrical appliances, etc.)
- frequency and length of time left alone,
- time of day or night,
- other children present or to be supervised,
- location and environmental conditions,
- the accessibility of a parent or other responsible adult.

Inadequate supervision may be confirmed when the guidelines outlined below are not met.

- For children 0-4 years of age:
- Outdoors, the child should be in view of the caregiver at all times. The caregiver must be able to respond to the child's immediate need for protection from harm.
- Children should not be left alone in a vehicle for more than a brief period of time. If left alone the child should be in direct view of the caregiver at all times. The child(ren) should be in a restraint unable to put the vehicle in gear; and
- Indoors, a caregiver should be available and able to respond to the child to provide immediate care and protection from harm.
- For children 0-17 (specific minimum ages outlined):
- Children eight (8) years of age or under should be supervised at all times with a caregiver available. An eight-year-old should not supervise other children.
- Children who are nine (9) years old should not be left unsupervised for periods greater than two (2) hours during the daytime. This age child should not be unsupervised at night and should not supervise other children.
- Children who are 10 and 11 years old may be left alone for longer periods of time. However, caution is advised in leaving a child

unsupervised during sleeping hours. Children in this age should not supervise other children.

- Children who are the age of twelve (12) years and older may be permitted to act as babysitters.
  - It is recommended that they successfully complete an approved child-care training course.
  - Caution should be advised on number of children left in care, length of time for care giving responsibility, factors regarding special needs of children left in care and resources available to the child who is providing care (ability to contact the caregiver or other adult).
- Children under 15 years of age should not be left unattended overnight.
- Caution should be taken in leaving 15-17-year-olds alone overnight. Extended absences of caregivers are not recommended.
- Caregivers are expected to adhere to supervision requirements of public facilities, (i.e. Video Arcades, Drop-In Centers, Pools, Restaurants, etc.).

Children left home alone or placed in a position of caring for other children in the home must:

- Have access by phone to emergency contacts (parent, neighbor, relative, 911).
- Be able to describe an emergency situation (fire, injury, intruder, etc.) and distinguish from non-emergencies (can my friend come over, can I play video games, can I go to the pool with the neighbor, etc.).
- Be able to verbalize how to respond to an emergency (leave the house, call 911, etc.).
- Discuss how to care for children they are supervising (meals, rules, safety, etc.).
- Not be fearful or anxious of being in a caregiver role.
- Not be overwhelmed by responsibilities (caring for a large number of children, or infants, or children with special needs, or expectations for household chores while watching other children, etc.).
- Not be involved in delinquent or unruly behaviors when unsupervised.

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- Must know how to respond appropriately to child behaviors typical of children being supervised (infant crying, toddler saying “no”, tantrums, disobedience to the substitute caregiver’s direction, etc.).

## **Environmental Conditions 640-01-15-20-05-20**

(NEW 8/1/2021 ML 3631)

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Neglect may exist when an environmental condition is such that it is harmful or potentially harmful to the children. There are many factors that may be present in a particular environment that pose potential health and safety hazards for children in that environment.

Children are inherently more at-risk for harm from environmental hazards since they may lack awareness and understanding of what may be harmful to them. The accessibility and potential harm of the following should be evaluated:

- Lack of food or clean water.
- Spoiled food that is potentially accessible to child.
- Inadequate sewage disposal: feces, urine (human or animal).
- Overflowing garbage/dirty dishes/rotting food or formula.
- Toilets not in working condition.
- Alcohol or other drugs (legal, illegal, prescription or over the counter) that are unsecured or within the child's reach.
- Lead paint, leaking gas or toxic fumes, or other toxic materials that is potentially accessible to child.
- Unsecured or accessible sharp objects (knives, tools scissors, etc.).
- Broken or missing windows, broken glass, or other potentially injurious object
- Choking or suffocation hazards (plastic bags, blinds, cords, small ingestible objects; unsafe infant sleep environment including blankets, pillows, or other objects that present a choking or suffocation hazard in the sleeping area).
- Drowning hazards (unsecured or unsupervised bathtubs, hot tubs, pools, ponds, stock tanks, deep buckets, etc.).
- Falling hazards (stairs, steps balconies, windows, window wells, construction excavations, etc.). No guards (as age appropriate) on open windows/or on stairwells.
- Presence of sick, injured, or dangerous animals
- Infestation of insects or vermin

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- Presence of criminal or gang activity
- Presence of drug manufacturing or delivery
- Presence of drug paraphernalia, drug delivery devices such as needles, smoking/snorting materials, etc.
- Firearms or other weapons including BB guns, airsoft guns, knives, switchblades, arrows, etc. (loaded, unsecured or accessible to the child)
- Poisonous household products (cleaning products, beauty products, solvents, paint, stain, adhesives, fertilizer, herbicides/insecticides, petroleum products, etc. unsecured or accessible to the child)
- Fire hazards (exposed electrical wires/switches, combustible materials close to heat sources, open fireplaces, etc.)
- External locks or locking devices on bedrooms/bathrooms.
- Power tools, vehicles, construction, or farm equipment unsecured or accessible to the child
- Abandoned appliances or vehicles.

## **Inadequate Nutrition 640-01-15-20-05-25**

(NEW 8/1/2021 ML 3631)

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Nutritional neglect may be confirmed when a caregiver fails to provide adequate nutrition to a child. In its more severe form, nutritional neglect is the failure to provide appropriate nutrition to a child resulting in poor growth, which may include the child's weight, height and head circumference falling significantly below the growth rates of average children, malnutrition, and non-organic failure to thrive.

- Nutritional neglect occurs when children repeatedly experience hunger for hours or a large part of the day and no food is available, not due to lack of resources.
- Inadequate nutritional food in home.
- Children unable to feed themselves. May eat nonfood items or spoiled food.
- Child deliberately or intentionally not fed or given water for at least one day, or fed minimally and nutritionally inadequate food for several days.
- Children suffer from clinical symptoms of malnutrition, dehydration, or food poisoning (non-organic failure to thrive is a medical diagnosis which must be made by a physician).

Children experiencing nutritional neglect may exhibit certain overt behaviors including:

- Begging from neighbors for food.
- Eating out of garbage cans.
- Constantly stating a need for food.
- Hoarding food.
- Gorging on food causing vomiting

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Caregivers may refuse offers of food through available sources such as food pantries, SNAP benefits, churches, backpack programs or reduced cost meals through the school.

## **Inadequate Clothing/Hygiene 640-01-15-20-05-30**

(NEW 8/1/2021 ML 3631)

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Neglect may be confirmed in the following circumstances:

- Failure to provide clothing adequate for the weather,
- When a child's lack of cleanliness has caused the child to be offensive to others, e.g., when the child is ostracized, teased, or bullied because of body odor or cleanliness.
- If a child and/or his/her clothing are infested with lice, fleas, etc. and goes untreated, even when provided information or medication to relieve problem.
- There is an identified risk of harm to the child as the result of the clothing or wrapping used.
- Hygiene issues which cause risk of escalation or complication of another condition, e.g., such as when lack of dental hygiene causes or exacerbates an infected tooth or lack of cleanliness contributes to an infection of an open sore or wound.

## **Medical Neglect 640-01-15-20-05-35**

(NEW 8/1/2021 ML 3631)

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Neglect may be confirmed when caregivers fail to provide appropriate medical care for the child's physical, mental or emotional health.

Medical neglect includes:

- Failure to seek treatment for a health condition, which left untreated could negatively impact the child's overall health or present danger of permanent impairment/disfigurement to the child.
- Failure to provide or allow needed care in accord with recommendations of a competent health care professional.
- Unreasonable delay or failure in providing timely and appropriate medical care for a serious health problem, which any reasonable person would have recognized as needing professional medical attention.

Supportive documentation from a physician/medical professional needs to be sought.

**Prenatal Exposure to Alcohol or Controlled  
Substances 640-01-15-20-05-40**

(NEW 8/1/2021 ML 3631)

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Neglect may be confirmed when a child is subjected, prenatally, to the chronic or severe use of alcohol or any use of a controlled substance not lawfully prescribed (NDCC 50-25.1-02(19 f)).

(See also Pregnant Woman Assessment and/or Substance Exposed Newborns.)

**Environmental Exposure to Controlled Substances**  
**640-01-15-20-05-45**

(NEW 8/1/2021 ML 3631)

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Neglect may be confirmed when a caregiver subjects a child to exposure to, a controlled substance, chemical substance, or drug paraphernalia, including any amount of marijuana (NDCC 50-25.1-02(19 g)).

The assessment must demonstrate that the child was directly exposed, in the near vicinity of the substance (same room while the substance is used), or the substance was within view or reach of the child, or that the child was aware of the location of the substance or paraphernalia and able to access the substance/items.

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**Educational Neglect 640-01-15-20-05-50**

(NEW 8/1/2021 ML 3631)

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North Dakota Century Code Chapter 15.1-20-01, "Compulsory attendance" directs, that the caregiver(s) for a child "between the ages of seven and sixteen years shall ensure that the child is in attendance at a public school for the duration of each school year." This law also says that if a person enrolls a child of age six in a public school, the caregiver shall ensure that the child attends the public school for the duration of the school year. A caregiver may withdraw a child of age six from the public school. This section of the law does not apply if the reason for the withdrawal is the child's relocation to another school district. State statute also provides that a child may receive home education unless the child has a developmental disability that meets the legal definition. There are also other allowable exemptions in NDCC section 15.1-20-02.

Under North Dakota Century Code Chapter 15.1-20-03 states that each teacher and administrator is charged with enforcement of compulsory attendance provision. Each teacher must notify the administrator of the school. The administrator must then initiate an investigation into the cause of the absence. If the administrator has reason to believe that the person responsible for the student has failed to ensure that the student is in attendance, the administrator is required to refer the matter to local law enforcement.

Educational neglect may be confirmed when the criteria above have been met and the criteria below is supported by evidence gathered in the assessment:

- The caregiver is aware or should have been aware of the excessive absenteeism.

and

- The caregiver contributed to the problem or failed to take steps to effectively address the problem (i.e. failure to provide a minimum degree of care),

and

- Educational impairment or harm to the child or danger of impairment or harm results.

Examples include:

- A situation in which a caregiver refuses to permit a child to attend school and makes no other provision for the child's education, such as home schooling.
- Action on the part of the parent requires an older child to stay home from school to provide childcare for a preschool sibling or other tasks for the caregiver.
- Action or inaction of the parent that hinders or prevents the child's school attendance.

## **Failure to Protect 640-01-15-20-05-55**

(NEW 8/1/2021 ML 3631)

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Neglect due to a failure to protect may be confirmed when caregivers fail to protect a child from harm or threat of harm inflicted by others or fails to intervene in self-harming behaviors (fails to protect the child from the child's own actions). Examples include:

- Person poses physical or sexual threat to child(ren) and caregiver does not act to protect child.
- Caregiver knowingly exposes children to threatening or dangerous conditions, situations, or individuals, including knowingly subjecting children to an untreated sexual offender, drug user or alcohol abuser.
- Report of abuse/assault between siblings and caregiver does not act to protect child(ren).
- Caregiver is not responding to protect a child from the degree of threat presented or is not cooperating with professional recommendations for the child's suicidal threats/gestures or other self-harming behavior.
- Caregiver allows numerous visitors into and out of the home at all hours of the day and night with unsupervised access to the children without regard to their potential harm to the child.

**\*\*\* Note:** Neglect due to a failure to protect may not be confirmed when a caregiver fails to protect the child from the caregiver's own actions.

## **Psychological Maltreatment 640-01-15-20-05-60**

(NEW 8/1/2021 ML 3631)

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Psychological maltreatment is defined as the psychological consequences of patterns of behavior or an extreme incident(s) by a caregiver which involves rejecting, isolating, threatening, ignoring, and/or exposing to negative influences, whether through acts of omission or commission. These acts convey to children that they are worthless, flawed, unloved, unwanted, endangered, or only of value to meeting another's needs. This can include parents or caretakers using extreme or bizarre forms of punishment.

Recent research indicates psychological maltreatment is associated with higher rates of:

- anxiety
- depression
- low self-esteem
- symptoms of post-traumatic stress
- suicidal
- general anxiety disorder
- social anxiety disorder
- attachment problems
- substance abuse
- behavioral issues at school
- self-injurious behaviors

Neglect due to psychological maltreatment may be confirmed when evidence supporting the following is gathered during the assessment:

**Rejecting** - the caregiver is refusing to acknowledge the child's worth and the legitimacy of the child's needs.

Examples include:

- The caregiver consistently singles out one child to scapegoat, criticize, or punish, to perform most of the household chores or receive fewer rewards of praise;
- The caregiver has consistent unrealistic expectations of achievement for the child that are shown by the caregivers criticizing, punishing, or condemning when the child does not achieve far above capabilities in school, sports, or social status;
- The caregiver regularly denigrates and belittles the child, stating that the child is different and unacceptable, or that the child reminds everyone of a person who is totally unacceptable by the family;
- The caregiver doesn't allow the children physical contact, nurturing;
- Child's faults and shortcomings are clearly overemphasized, criticism/disapproval disproportional to actual behavior or used in an unfair and inconsistent way -- excessive;
- Caregiver uses excessive threats of punishment in an attempt to control the child;
- Ridiculing a child for showing normal emotions;
- Singling out or humiliating a child in public
- Blaming the child for the caregiver's problems, losses, difficulties.

**Isolating** - the caregiver cuts the child off from normal social experiences prevents the child from forming friendships, makes the child believe that he or she is alone in the world.

Examples include:

- Punishment doesn't fit the behavior or is inconsistent;
- Restricting social interactions in the community;
- Confining a child within the home or school environment;
- The caregiver makes inappropriate demands on or exploits the child.

**Threatening** is a concern for safety or risk when the caregiver verbally assaults the child, creates a climate of fear, bullies, or frightens the child.

Examples include:

- Sensory deprivation or placement in a frightening situation (e.g., in the dark, etc.); or
- Direct or indirect verbal threats of abuse or harm that, if carried out, could result in physical or emotional harm
- Placing a child in unpredictable/chaotic circumstances
- Placing a child in recognizably dangerous situations
- Threatening/perpetrating violence against the child or the child's loved ones/pets/objects.

**Ignoring** is a concern for safety or risk when the caregiver deprives the child of essential interaction and responsiveness, stifling emotional growth and intellectual development.

Examples include:

- Caregiver shows no attachment to the child and fails to provide nurturance;
- The caregiver expresses no affection toward the child and avoids all physical closeness such as hugging, touching, or holding;
- There is a lack of discipline/rules; or
- The caregiver is inattentive, indifferent - there is little stimulation offered in the home.
- The child is repeatedly left in the custody of others who are not relatives or who are not known by the child for days or weeks at a time, possibly due to the unwillingness of the parent or the caregiver to maintain custody. This is sometimes known as "shuttling")

**Negative Influences** are a concern for safety or risk when the caregiver "mis-socializes" the child, models or encourages the child to engage in destructive antisocial behavior, and/or illegal activities and makes it difficult for the child to have normal social experiences.

Examples include:

- The caregiver exposes the child or permits or forces the child to engage to maladaptive and harmful behavior such as gang behavior or illegal activities.
- The caregiver exposes the child to pornographic material.
- The caregiver exposes the child to adult sexual activity.
- The caregiver restricts or undermines the child's cognitive development.

**Refusal of Services** by a caregiver to address physical, mental or emotional health of the child.

Examples include:

- The caregiver fails to follow through with a referral from a physician or mental health professional and that failure results in increased risk or harm to a child.
- A caregiver fails to follow through with a referral for evaluation or treatment for a child who is reported to have been sexually abused or is reported to have been sexually abusing other children.
- A caregiver fails to follow through with a referral for evaluation or treatment for a child at risk for suicide
- A caregiver fails to follow through with a referral for evaluation or treatment for a child who using alcohol or substances (controlled substances, gasoline/air duster (huffing),

**Emotional or behavioral problems of the child correlated to caregiver's behavior.**

Examples include:

- The caregiver provides no stability or security for the child in as much as expectations are unpredictable and change frequently;
- Rigid requirements for the child at one time to indifference to behavioral standards another time.
- Unrealistic expectations for behavior; expects the child to perform or act in a way that is improbable or impossible based on the

child's age and developmental capacities (expecting infants not to cry or to be toilet trained, expecting young children to sit quietly for long periods of time, providing care for younger siblings at an early age, etc.).

- Child punished for being unable to comply with demands; or
- Caregiver exposes child to abusive third parties or fails to take steps to stop repeated abuse by third parties.

**Exposure to Domestic Violence** (adults hitting each other or the threat of physical violence). Children may be put in the position of feeling responsible to protect themselves or the adult being abused.

Examples include:

- Child is physically involved in a domestic dispute;
- Child is in the area creating possibility of injury to the child;
- Child is verbally threatened by one or more adult family members/caregivers during a domestic abuse event;
- Child is aware of the domestic violence (eye or ear witness or witness to after-effects of violence: injuries to another person, broken items in the home, police intervention to stop violence, etc.).
- A firearm or other weapon is used during a domestic dispute and the child is present.

**Parental/Caregiver Relations** when children are continually being placed in the middle of disputes between their caregivers.

Examples include:

- Children who are frequently uprooted or whose custody is unclear or constantly changing; or
- Children drawn into arguments between caregivers, asked to choose sides or determine outcomes or are the subject of the caregiver's disagreement
- Caregivers degrade each other in front of the children.

**Caregiver Capacity Concerns** caregiver's protective capacities are impaired to the degree that the caregiver is unable to provide safe care for the child.

Examples include:

- Children who are living in environments where one or both caregivers are actively using chemicals, including alcohol, and their usage impacts care of the children
- Caregivers whose intellectual, mental health or behavioral capacities affect judgement and/or knowledge in ways that prevent provision of adequate basic care.
- Children, whose caregivers cannot provide the protection and supervision basic to keep them safe, are exposed to situations in which they may be exploited, molested, injured, and/or neglected. (These children live with the fear that if they are exposed to harm their caregivers won't be able to help them.)

Psychological maltreatment should also be considered as consequence of other forms of maltreatment (i.e., physical abuse, sexual abuse, other forms of neglect). Rarely does one form of maltreatment occur alone (physical abuse without a psychological maltreatment; sexual assault in the absence of emotional threat). When one form of maltreatment does exist in isolation from others, it is likely to be psychological in nature. Rarely, if ever, does a child experience physical abuse or neglect, or sexual assault or exploitation, in a relationship that is positive and nurturing.

**Notification of the Assessment Decision**  
**640-01-15-20-10**

(NEW 8/1/2021 ML 3631)

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Following the maltreatment decision, notifications are required for the subject of the assessment, parent(s) of the child victims in the assessment, and potentially notification to a mandated reporter if the child is likely to, or continues to come before the reporter, in the reporter's official or professional capacity. When the reporter is a designee of an entity that employs more than twenty-five mandated reporters, notification of the assessment decision is provided to the designee who made the report.

When the assessment concerns a subject in an assessment in a childcare setting refer to 640-01-10-75 CPS Assessments in Out-of-Home Care Settings for guidance regarding notifications.

## **Notification to the Subject of the Assessment 640-01-15-20-10-01**

(NEW 8/1/2021 ML 3631)

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Following staffing of a CPS assessment in which a decision is made whether confirmed, unconfirmed, or unable to determine abuse or neglect of a child, the subject of the report must be notified. Ideally, this will take place face-to-face with the subject whenever feasible but is not required in instances of worker safety or subject refusal to meet with the CPS Worker. Verbal notification may be provided directly to a subject by telephone, but not through a third party. Verbal notification does not relieve the responsibility to provide written notification.

Written notification is required for any assessment in which a subject is identified, must be provided to the subject(s) of the assessment within 7 days of the decision date, regardless of whether a warm handoff to case management services is to take place.

### **When the Subject Cannot Be Located**

If the subject of the assessment cannot be located to receive notification (e.g. written notification is returned without a forwarding address, neither reporter nor assessment collaterals can provide a mailing address and no other resource is available to locate a subject) documentation in the Case Activity Log must reflect due diligence in providing notice to the subject.

### **When Child Abuse or Neglect Is Confirmed**

When the decision in an assessment is that child abuse or neglect is confirmed, written notification must be provided to the subject of the assessment within 7 days of the date of the decision.

Written notification to the subject of a confirmed decision must contain the following:

- The heading
  - Headings must be specific:
    - List the subject.
    - List the victims of that subject's maltreatment.
    - List the maltreatment of each victim by each subject.
  
- Explain the decision
  - Confirmed
  - Confirmed with an unknown subject
  - Unconfirmed
  - Unable to determine
  
- Explain the specific type of abuse or neglect (basis of the decision) for each child victim
  - The subject's behavior that meets one or more definitions of a type of child abuse or neglect
  - Describe the facts separately for each child victim
  - Include the full basis for the decision
  - Explain any protective services that will be provided to address the maltreatment
  - Use the term "protective services" as required in statute (see N.D.C.C 50-25.1-06 Protective and other services to be provided).
    - When impending danger is identified, protective services must be offered to assist the parent to keep the child safe and prevent the need for further involvement with the child welfare system
      - "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services. (N.D.C.C. 50-25.1(21))
  
- Explain the right to appeal the decision
  - Include the CPS Appeal Notification Insert as an attachment to the notification letter.

- Explain the subject's name will appear on Child Abuse and Neglect Index.
  - The Index is not a public record
  - The Index cannot be accessed through any public website
  - Information from the Index can only be released according to provisions in state law or with the subject's signed consent
- Timeline: 33 days from the date on the affidavit of mailing
- Location of the form

SFN 499 (Affidavit of Mailing) (50kb pdf) must be completed and mailed to the subject with the written notification of the case decision. A copy of this form becomes a part of the case record and is used in determining the timeliness of appeal requests.

Notification of the subject when child abuse and neglect is confirmed serves as the "specification of issue" should the subject appeal the decision. The "specification of issue" is the document that:

- identifies and clarifies to all the parties involved in the appeal who is eligible to appeal (only the person who is the subject of a confirmed child abuse and neglect decision).
- which child was abused or neglected (each victim of that subject).
- the facts and information that informed and support the decision
- the protective services that will be provided to a subject when there is a supported state of impending danger.

Notification must include sufficient detail to inform the subject of the decision and why the decision was made (what actions of the subject resulted in the confirmed decision) so that a subject may make an informed decision whether to request an appeal.

### **When child abuse or neglect is confirmed with an unknown subject**

When the identity of the subject responsible for the abuse or neglect of a child, the subject's unknown identity renders it impossible to notify the subject. No subject notification is required in these

instances. The assessment will be listed on the Index with the subject name as "Unknown".

### **Notification To the Subject When Child Abuse or Neglect Is Unconfirmed.**

When child abuse or neglect is unconfirmed, written notification to the subject will occur within seven days. The letter to the subject of the unconfirmed decision must contain:

- A clear statement that the decision in the assessment is that child abuse and neglect were not confirmed.
- Explain the definition of "unconfirmed"
  - "Unconfirmed" means that upon completion of a child protection assessment, the department has determined, based upon a preponderance of the evidence, that a child does not meet the definition of an abused or neglected child.
- Explain any impending dangers
  - Use language that describes the subject's dangerous behavior
  - Emphasize how the behavior places the child in a dangerous situation, condition, etc.
  - When impending danger is identified, protective services may be offered, as resources are available, to assist the parent to keep the child safe and prevent the need for further involvement with the child welfare system
    - "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services. (N.D.C.C. 50-25.1(21))

### **Notification To the Subject When Child Abuse or Neglect Is Unable to Determine**

When child abuse or neglect is Unable to Determine, written notification to the subject will occur within seven days. The letter to the subject of the Unable to Determine decision must contain:

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- A clear statement that the decision in the assessment is that child abuse and neglect were unable to be determined.
- Explain the definition of "Unable to determine"
  - "Unable to determine" means insufficient evidence is available to enable a determination whether a child meets the definition of an abused or neglected child.
    - Explain, that should additional evidence of child abuse or neglect be reported, the newly reported information could result in another Child Protection Services assessment.

## **Notification to a Non-Subject Parent or Legally Appointed Guardian 640-01-15-20-10-05**

(NEW 8/1/2021 ML 3631)

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When a Child Protection Assessment decision is made the CPS Worker shall provide written notice of the decision to the parent(s) or legally appointed guardian of the child victims in the assessment, who is not the subject of the Child Protection Assessment. The CPS Worker shall consider any known domestic violence when providing this notification, keeping the safety of the child and non-offending caregiver in mind.

If parent or legally appointed guardian cannot be located, this needs to be documented in the Case Activity Log.

Notification letters to the non-subject parent should contain the assessment decision, an explanation of what the decision means, the reason for the decision and any protective services to be provided for the child.

- The department shall provide protective services for a child meeting the definition of an abused or neglected child and who is at substantial risk of continued abuse or neglect due to a supported state of impending danger, as well as other children under the same care as may be necessary for their well-being and safety and shall provide other appropriate social services, as the circumstances warrant, to the parents, custodian, or other persons serving in loco parentis with respect to the child or the other children.
- "Protective services" includes services performed after an assessment of a report of child abuse or neglect has been conducted, such as social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessment, monitoring service delivery, and direct services.

**Child Protection Services**

Division 20  
Program 600

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Notification letters to the non-subject parent should not contain Protected Health Information or information that is confidential under 42CFR Part II (addiction treatment information) regarding the subject, regardless of whether the subject is the other parent.

## **Notification to Educators 640-01-15-20-10-10**

(NEW 8/1/2021 ML 3631)

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The child abuse and neglect law permits CPS to make information available to educators in **public schools** as agents representing an elected school board as public officials.

When a child is interviewed at the school as a result of a report of suspected child abuse or neglect, whether the school is the reporting source or not, the school may be notified of the child abuse or neglect concern in the report of suspected child abuse or neglect and of the CPS assessment decision if the CPS Worker and CPS Supervisor believe it is appropriate.

- If the school is the reporting source the information on the decision of the CPS assessment shall be provided to the person who made the report if the child is likely to or continues to come before the reporter in the reporter's official or professional capacity.
- If the school is not the reporting source, information on the child abuse or neglect concern in the report of suspected child abuse or neglect and the CPS assessment decision should be provided to the principal, school social worker or school counselor of the school where the child attends.

The child abuse and neglect law provides for the confidentiality of any information regarding the child abuse and neglect report and assessment. The person who is notified at the school should be reminded about the legal responsibility to maintain the confidentiality of the information being provided and the possible penalty if confidentiality is breached.

**Notification of Another Jurisdiction if the Family  
Moves 640-01-15-20-10-15**

(NEW 8/1/2021 ML 3631)

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If a decision is made that child abuse or neglect is confirmed and a supported state of impending danger is identified and it becomes known that the family moved from the zone that completed the assessment, a referral for protective services **shall** be made to the zone where the family has moved. The referral shall be made to a zone within North Dakota or to any other state where the family has moved.