

## **POLICY II-D: Investigation of Child Maltreatment Reports**

05/2022

### **OVERVIEW**

All reports of known or suspected child maltreatment are promptly investigated and immediate steps are taken to protect a maltreated child and any other child under the care of the same alleged offender who may also be in danger of maltreatment. The health and safety of the child are always of paramount concern.

While the Department of Human Services (DHS or department), Division of Children and Family Services (DCFS or Division) is responsible for ensuring the health and safety of children in Arkansas, the Arkansas State Police Crimes Against Children Division (CACD) collaborates with DCFS to conduct investigations of child maltreatment allegations. DCFS and CACD will assess Priority I and Priority II referrals as outlined in the “Agreement Between the Department of Human Services and the Arkansas State Police” and is subject to renewal annually. To determine the individual responsibilities and operational protocol of the two agencies, see the specifics of the agreement. The agreement is written in accordance with Act 586 of 2007, the Governor’s Executive Order, and all applicable federal and state laws.

DCFS and CACD, as appropriate, will issue notices regarding child maltreatment allegations to all persons pursuant to § A.C.A 12-18-501 et seq. The Division will issue notices in such a way as to ensure the rights to due process of the alleged offender and to protect others who may be at risk of harm from the alleged offender. For more information on child maltreatment notices, see Policy XIV-A: Notices Regarding Child Maltreatment and related procedures.

### **INVESTIGATION INITIATION TIMEFRAMES**

All investigations will begin within seventy-two (72) hours with the exception of investigations of the following allegations. These allegations will begin within twenty-four (24) hours:

- A. Allegations of severe maltreatment, excluding an allegation:
  - 1) Of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago or if the alleged victim does not currently have contact with the alleged offender;
  - 2) Of abandonment and the child is in a facility or,
  - 3) Of cuts, welts, bruises, or suffocation if the most recent allegation was more than one (1) year ago and the alleged victim is in the custody of the Department of Human Services; or
  - 4) In which the alleged victim is in a facility and does not currently have contact with the alleged offender.

- B. The allegation is that a child has been subjected to neglect as defined in A.C.A. 12-18-103(14)(B) (i.e., Garrett's Law referral);
- C. A child has died suddenly and unexpectedly.

Investigations are considered initiated when, as age appropriate, the investigator conducts a face-to-face interview with the alleged victim outside the presence of the alleged offender or observes the alleged victim outside the presence of the alleged offender, or the investigator has otherwise met due diligence (see Procedure II-D3 for more information). Once the investigation has begun, the primary focus will be to determine whether or not the alleged offender has access to the child and whether the child or any other children as well as any elderly persons or individuals with a disability or mental illness with whom the alleged offender works are at risk such that they need to be protected.

### **NOTICE OF ALLEGATION**

The investigative agency at the local level is responsible for providing the notice of allegation to all applicable parties as outlined in Procedure XIV-A1: Notices of Allegations of Child Maltreatment.

### **AT RISK DETERMINATIONS UPON INITIATION**

Upon initiation the investigative agency must determine:

- A. Alleged offender's employer, including the physical address;
- B. Alleged offender's job duties at his employment; and,
- C. Alleged offender's supervisor.

In addition to gathering the information above, the investigative agency must also gather any other necessary information to determine if the alleged offender:

- A. Works with children or is otherwise engaged in paid or volunteer child-related activities;
- B. Works with the elderly;
- C. Works with an individual with a disability or mental illness; or,
- D. Is a juvenile (and therefore has access to other juveniles in a school or similar setting).

If so, the investigative agency must immediately ascertain the name and address of the person in charge of those activities. The investigative agency must then immediately determine whether or not children, the elderly, or individuals with disabilities or mental illness under the care of the alleged offender appear to be at risk of maltreatment by the alleged offender.

The investigative agency supervisor and Area Director (as applicable) may consult with the Office of Chief Counsel (OCC) as necessary, prior to making a determination as to whether children, the elderly, or individuals with disabilities or mental illness appear to be at risk. If the investigative

agency determines children, the elderly, or individuals with disabilities or mental illness under the care of the alleged offender are at risk of maltreatment by the alleged offender, then the investigative agency may notify the people and entities listed below of the hotline report if the DCFS Director or designee approves the at risk determination and gives written approval to the investigative agency to provide notifications of the at risk determination to:

- A. The alleged offender's employer;
- B. The school superintendent, principal, or a person in an equivalent position where the alleged offender is employed;
- C. The person in charge of a paid or volunteer activity; and,
- D. The appropriate licensing or registering authority to the extent necessary to carry out its official responsibilities.

See Procedure XIV-A2 for number of notification form and other specific instructions regarding providing at risk notifications to the persons and entities listed above.

The "at risk" determination will be changed immediately if, upon further investigation, it is determined the children under the care of the alleged offender are not at risk. See Procedure XIV-A3 for more information.

### **OVERALL INVESTIGATION GOALS**

During the investigation of an allegation of child maltreatment, and if the alleged offender is a family member, or lives in the home of the alleged victim, the assigned investigative agency will conduct an investigation to determine:

- A. The existence, cause, nature and extent of child maltreatment with particular attention to any of the Arkansas Health and Safety factors that may be present. The Arkansas Health and Safety Factors are:
  - 1) Caretaker's behavior toward child is violent or out of control.
  - 2) Caretaker describes or acts towards the child in predominantly negative terms or has extremely unrealistic expectations.
  - 3) Caretaker caused serious physical injury to child or made plausible threat to cause severe physical injury.
  - 4) Caretaker's explanation for injury is unconvincing.
  - 5) Family refuses access to child there is reason to believe that family is about to flee, or child's whereabouts cannot be ascertained.
  - 6) Caretaker has not, cannot, or will not provide supervision necessary to protect child from potentially dangerous harm.
  - 7) Caretaker is unwilling or unable to meet child's needs for food, clothing, shelter, or medical or mental health care.

- 8) Child is fearful of caretaker, other family members, or other people living in or having access to the home.
- 9) Child's physical living conditions are hazardous and immediately threatening, based on child's age and developmental status.
- 10) Child sexual abuse is suspected, and circumstances suggest that child safety may be an immediate concern.
- 11) Caretaker's current substance use seriously affects his/her ability to supervise, protect, or care for the child.
- 12) Caretaker fails to protect child from serious physical or threatened harm.
- 13) Caretaker's emotional stability seriously affects current ability to supervise, protect, or care for child.
- 14) Caretaker has previously maltreated a child and severity of maltreatment or caretaker's response to previous incidents suggest child safety may be an immediate concern.

- B. The existence and extent of previous injuries; and,
- C. The names and conditions of other children in the home.

If the alleged offender is not a family member or does not live in the home of the alleged victim, the assigned investigative agency will conduct an investigation to determine:

- A. The existence, cause, nature, and extent of child maltreatment with particular attention to any of the Arkansas Health and Safety Factors that may be present (see above for list of the fourteen Arkansas Health and Safety Factors);
- B. The identity of the person responsible for the maltreatment; and,
- C. The existence and extent of previous maltreatment perpetrated by the alleged offender.

In addition to the other information described in this section (i.e., Overall Investigation Goals), the assigned investigative agency will also attempt to determine:

- A. The identity of the person responsible for the maltreatment;
- B. The relationship of the children with the parents or caretakers and their circumstances;
- C. The child's environment in terms of risk and protective factors; and,
- D. All other pertinent information.

Ultimately, the information described above that is collected during the fact-finding phase of the child maltreatment investigation allows the Division to determine:

- A. If services are necessary to assist the family and allow the child to remain safely at home (per A.C.A. §12-18-604, the Department has the authority to make referrals or provide services during the course of the child maltreatment investigation);

- B. If separation of the child from the family is necessary to protect the health and safety of the child; and,
- C. Whether there is a preponderance of the evidence (see Appendix I: Glossary) to support the report.

If at any time before or during an investigation it is determined that the alleged offender is not a caretaker of a child and the alleged victim has reached eighteen (18) years of age prior to notification the child maltreatment investigation shall be closed, notwithstanding any criminal investigation.

### **REASONABLE EFFORTS TO PREVENT REMOVAL**

Throughout the investigation the Division will ensure reasonable efforts are made to preserve the family and to prevent the need to remove the child from the home unless the health and safety of the child warrant immediate removal for the protection of the child. When the investigative agency's first contact with the family has occurred during an emergency in which the child could not safely remain at home, even with reasonable services being provided, the Division will be deemed to have made reasonable efforts to prevent or eliminate the need for removal.

### **INVESTIGATION COMPONENTS**

The child maltreatment investigation will consist of, but is not limited to, completion of a Health and Safety Assessment and interviews with:

- A. Alleged victim;
- B. Parents, both custodial and non-custodial;
- C. If neither parent is the alleged offender, the alleged offender;
- D. Any siblings of the victim or other children under the care of the alleged offender;
- E. Current or past healthcare providers when the allegation of child maltreatment was reported by a healthcare provider; and,
- F. Any other relevant collaterals.

DCFS staff are encouraged to bring child victims of Priority I reports involving sexual abuse, physical abuse, neglect, and witness to violence to the nearest Child Safety Center for the interview whenever available and appropriate. In some cases, it may also be appropriate to bring child victims of certain Priority II maltreatment reports to the nearest Child Safety Center for the interview.

The Health and Safety Assessment is designed to:

- A. Identify Arkansas Health and Safety Factors in the home which affect the child's immediate health and physical well-being.
- B. Guide the Family Service Worker (FSW) in determining whether or not the child can remain safely in the home.
- C. Serve as a structured decision-making tool. For example, information collected on the Health and Safety Assessment can be used to document reasonable efforts or aggravated circumstances. It can also be used to assist in completing the court report, and at important case decision points, or when there are major changes in case circumstances.
- D. Assess the child's health and safety at placement changes if the child is removed from the home.

If the alleged offender is identified as a parent or primary caregiver, the Health and Safety Assessment in the Division's information management system will be completed based on the conditions present when the child and the parent or primary caregiver are together in the home. Children ages zero (0)- six (6), children with developmental disabilities or children who have been repeatedly victimized shall be considered especially vulnerable.

Information to complete the Health and Safety Assessment will be gathered during the child maltreatment interviews. All interviews and the entirety of the Health and Safety Assessment must be completed by the investigator within thirty (30) calendar days of the receipt of the child maltreatment report. The Health and Safety Assessment must be approved by the FSW Supervisor within forty-five (45) calendar days of the receipt of the child maltreatment report.

The Health and Safety Assessment is comprised of three components:

- A. Health and Safety Checklist
- B. Safety Planning
- C. Investigation Risk Assessment

The Health and Safety Assessment cannot be closed until both the Health and Safety Checklist and Safety Planning screens are completed.

A description of each of the Health and Safety Assessment sections and their associated actions during an investigation follows:

#### *Health and Safety Checklist*

The Health and Safety Checklist is the first component of the Health and Safety Assessment. It contains the fourteen (14) Arkansas Health and Safety Factors (hereinafter referred to as "safety factors"). Upon the investigation initiation, the primary investigative agency will assess whether

or not any of the fourteen (14) safety factors are present. The presence or absence of safety factors must be documented by the primary investigative agency in the Health and Safety Checklist screen in the Division's information management system within two (2) business days of the investigation initiation. Every subsequent contact with the family should also include an assessment for any safety factors; however, the Health and Safety Checklist is only completed again in the event that additional safety factors are identified or facts change.

If CACD is assigned primary on an investigation and, after interviewing the alleged victim, identifies the need for DCFS to complete a safety assessment, the CACD Investigator will immediately contact DCFS to conduct the Health and Safety Assessment (Safety Planning and Investigation Risk Assessment) as appropriate. DCFS will then be assigned as the secondary investigator on that particular investigation.

If CACD is assigned primary on an investigation and does not identify the need for DCFS to conduct a safety assessment, the CACD Investigator is responsible for completing the Investigation Risk Assessment if the allegation is found true and an in-home or out-of-home case will be opened.

If DCFS is assigned primary on an investigation, DCFS will complete all components of the Health and Safety Assessment as appropriate regardless of whether safety factors are identified. The identification of the presence or absence of safety factors is critical to safety planning.

### *Safety Planning*

Safety Planning is the second component of the Health and Safety Assessment. Safety planning requires specific actions to be taken to ensure a child's safety during the course of an investigation. If a safety factor is identified, there are only two options to implement during the safety planning process:

- A. Develop a protection plan to mitigate the identified safety factors to allow the child remain safely in the home; or,
- B. Remove the child from the home and take protective custody.

These two options are described below:

#### 1) Protection Plans

##### *Protection Plan Development and Content*

When any safety factors are present, a protection plan must be developed to address each identified safety factor if the child will remain in the home. A protection plan is a written plan developed by DCFS staff in conjunction with the family to address identified safety factors. The actions and any services needed to address safety factors contained in

a protection plan will depend on the dynamics of a particular investigation (or case) and the family involved. This documentation describing the actual use or consideration of using protecting interventions establishes reasonable efforts to prevent removal of the child from the home.

Regardless of the actions included in a protection plan, protection planning is a process that occurs with the family and may include the family's selected support network. Protection planning and oversight on the part of the Division continues throughout involvement with the family as long as safety factors are present. The plan must be sufficient to manage and control safety factors based on a high degree of confidence that it can be implemented, sustained, and closely monitored by DCFS (see below for more information). The Division will assure that the roles and responsibilities of the protection plan are clearly described to and discussed with the person providing those services.

A protection plan must be developed and receive DCFS supervisory approval prior to DCFS staff leaving the home. The protection plan serves as a written agreement between the Division and the family. As such, a copy of the plan will be provided to the caregiver and to other members participating in the plan prior to the investigator leaving the home.

However, protection plans may not:

- a) Make a change to the current physical or legal custody arrangement of the child; or,
- b) Otherwise limit the right of a parent or legal custodian to visit/have access to his or her child, including supervised visits,

*unless* a dependency-neglect petition is first filed with the court to address identified safety factors and a corresponding court order is obtained to make a change to the current custody arrangements or otherwise limit the right of a parent or legal custodian to have access to his or her child. An alternate method of ensuring child safety must be implemented until the required court order is issued to alter custody or visitation arrangements.

To file a dependency-neglect petition to ensure a child's safety in the home, the FSW will contact OCC immediately (or at the start of the next business day if the safety assessment occurred after hours or on the weekend) to request OCC to file the appropriate petition. It is crucial that the FSW Investigator, with support from his or her supervisor, determines exactly what the Division is requesting the court to order, if applicable, to address the identified dependency-neglect issues (i.e., safety factors).



If the requested court order is issued, the FSW Investigator will then craft a corresponding protection plan that reflects the orders of the court as well as any other actions or information that need to be included in the protection plan to ensure child safety. The FSW Investigator will then thoroughly explain the contents of the protection plan to the caregivers and other individuals who may be a part of the protection plan.

#### *Order of Less Than Custody*

An order of less than custody is one action that could potentially be included in a protection plan (once the order is issued), if appropriate. An order of less than custody legally restricts the alleged offender from contact with the child while allowing the child to remain in the home with the non-offending custodian (if the non-offending custodian is already a legal custodian of the child) as part of the protection plan.

In addition to the situation above in which the non-offending custodian is the legal custodian of the child and wants to restrict the alleged offender's access to the child, orders of less than custody may also be applicable to situations in which:

- a) The legal custodian placed or otherwise allowed the child to reside with another person for more than six months; and,
- b) The legal custodian is named as an alleged offender in the investigation; and,
- c) The child's current caretaker and DCFS assess that the legal custodian's (who is also the alleged offender) access to the child poses an immediate danger to the child's health or physical well-being; and,
- d) DCFS has no immediate health or physical well-being concerns with the current placement; and,
- e) DCFS has determined that specific safeguards in the court order will ensure the child's immediate health and physical well-being while remaining in the current home.

The Division will thoroughly assess for safety factors (to be documented in the Health and Safety Checklist) to ensure that a protection plan is in place for a child before leaving that child in a home where DCFS has petitioned the court for an order of less than custody.

To file a dependency-neglect petition to obtain an order of less than custody, the FSW will contact OCC immediately to request OCC to file the appropriate petition.

#### *Protection Plan Documentation*

The Safety Planning screen in the Division's information management system documents the actions taken to ensure a child's safety during the course of an investigation. If a protection plan is developed, it must be documented in the Safety Planning screen in the

Division's information management system within two (2) business days of the investigation initiation.

If any other actions were taken or services put in place to ensure safety of the child victim or other children in the home, then these activities must also be documented in the Safety Planning screen in the Division's information management system within two (2) business days.

#### *Protection Plan Monitoring and Assessment*

All protection plans will be monitored via an initial face-to-face contact with the family (to include alleged victim(s), alleged offender(s), and any other children in the home) within at least seventy-two (72) hours and then via a minimum of weekly face-to-face contact for the remaining life of the protection plan.

While the health and safety of the child is always assessed each time the Division comes into contact with the child, per A.C.A. 12-18-1001(d)(2)(A)-(B), the health and safety of the child and any corresponding protection plan will be formally reassessed within 30 days of the date on which the protection plan was implemented. If after this formal reassessment is performed, the Division determines that a substantial risk of harm to the health and safety of the child remains and that the protection plan must stay in place to ensure the health and safety of the child, then the Division will file a petition for dependency-neglect (however, note that the Division may file a petition for dependency-neglect at any point to if needed to ensure the health and safety of the child) unless the parent, guardian or custodian is not:

- a) The alleged offender; or,
- b) Alleged to have failed to protect the juvenile.

If a case connect has already occurred, then the assigned FSW Caseworker and FSW Investigator who implemented the protection plan will collaborate to reassess the protection plan and provide the affidavit and a copy of the CFS-200: Protection Plan to OCC to file any necessary petitions for dependency-neglect at thirty (30) days.

#### *Case Opening, Assessment, and Case Plan as a Result of a Protection Plan Filed with the Court*

For a petition filed as the result of a protection plan, a corresponding case plan will be filed with the court within 30 days per A.C.A. § 9-27-402.

The assigned FSW will continue to monitor the protection plan until it is no longer needed. The assigned FSW will complete the Family Advocacy and Support Tool (FAST) in collaboration with the family, FSW Investigator, and other appropriate stakeholders (see Policy IV-A: Family Assessments for more information regarding the FAST). The FSW Caseworker will also have the primary responsibility of developing the case plan with the family and ensuring the implementation of the case plan (see Policy IV-B: Services Case Plans for more information).

If a reasonable protection plan cannot be developed, then the child must be removed and placed in an approved placement (see below for more information regarding protective custody). Removal must also be documented in the Safety Planning screen in the Division's information management system within two (2) business days of the act of removal of the child.

If there are risk factors or evidence that maltreatment has occurred, but no safety factors are present, then neither a protection plan nor removal of the child is necessary at that point in time. When no safety factors are present, per A.C.A. § 12-18-1009, the parents retain the right to keep the child at home or to place the child outside the home. However, as appropriate, the FSW Investigator may make referrals or provide services during the course of the child maltreatment investigation to address any risk factors. All referrals made or services provided during the course of the child maltreatment investigation shall be documented in the Investigation Finding screen in the Division's information management system.

## 2) Protective Custody

If a safety factor is identified in the home and it cannot be mitigated with the implementation of a protection plan, the Division must remove the child from the home and take protective custody. This requirement applies to any point during a child maltreatment investigation or open case when the health and physical well-being of a child are in immediate danger. When a child is taken into protective custody, the child shall be placed in an appropriate licensed or approved placement. This may include an identified relative or fictive kin (fictive kin means a person selected by the Division of Children and Family Services who is not related to the child by blood or marriage, and has a strong, positive, and emotional tie or role in the child's life or the child's parent's life if the child is an infant) home if it is in the best interest of the child and all criteria for opening a provisional foster home and placing the specific child for whom the provisional foster home was opened have been met (see Policy VI-B: Consideration of Relatives and

Fictive Kin for Children in Foster Care and Policy VII: Development of Foster Homes for more information).

The Division may file a motion to transfer any other prior or subsequent legal proceeding concerning the juvenile (e.g., if a relative of the child taken into custody attempts to obtain guardianship or custody of the juvenile) to the court that is hearing the dependency-neglect petition if the Division:

- a) Takes a seventy-two (72) hour hold; or,
- b) Files a petition for ex parte emergency order; or,
- c) Files a petition for dependency-neglect.

See Procedure II-D11: Protective Custody of a Child in Immediate Danger for information regarding how to proceed when a child is taken into protective custody by a non-DCFS stakeholder.

### *Investigation Risk Assessment*

The Investigation Risk Assessment is the third component of the Health and Safety Assessment. It is designed to:

- A. Assess the family's level of risk during the child maltreatment investigation.
- B. Establish a baseline level of risk for a family.
- C. Identify the factors and circumstances that indicate the child may be at risk of future abuse or neglect.
- D. Indicate the necessary level of involvement to assure the child's well-being.
- E. Provide a structured decision-making tool in case planning (the investigation risk assessment informs the case plan if a case is opened after the completion of the investigation).

The Investigation Risk Assessment in the Division's information management system will be completed on all cases with a child maltreatment determination of "True." As such, the Investigation Risk Assessment must be completed by the investigator within thirty (30) calendar days of receipt of the hotline report and must receive supervisory approval within forty-five (45) calendar days of receipt of the hotline report.

Levels of risk are classified as intensive, high, moderate, and low. The higher the score, the higher the risk of future harm. The level of risk determined during the Investigation Risk Assessment will be considered the baseline level of risk for any subsequent case that is opened, if applicable.

Overrides to Risk Levels have been established to assist the FSW in ensuring that the level of risk for a case accurately reflects the risk level for the children. A supervisor is allowed to make discretionary policy overrides when a unique circumstance warrants a higher risk level than assigned by the risk level chart.

The discretionary Risk Level Override options are listed below and require the supervisor to upgrade the risk level to Intensive at the initial investigation, regardless of the risk scale score.

- A. Sexual abuse cases where the perpetrator is likely to have access to the victim child.
- B. Cases with non-accidental physical injury to an infant.
- C. Serious non-accidental physical injury requiring hospital or medical treatment.
- D. Death (previous or current) of a sibling as a result of abuse or neglect.

Risk Level Overrides must be reassessed when the case plan is updated.

#### **LEGAL REPRESENTATION FOR CHILD IN FOSTER CARE NAMED AS AN ALLEGED OFFENDER**

If DCFS or CACD is investigating an allegation of child maltreatment in which a child in foster care is named as the alleged offender and the acts or omissions that gave rise to the child maltreatment report may lead to a criminal or delinquency investigation or charge, the assigned DCFS caseworker (or designee) for the child in foster care will contact the public defender. The assigned DCFS caseworker or designee will request that the public defender represent the child in foster care who is named as the alleged offender.

If the public defender accepts representation, the DCFS caseworker or designee will inform the investigator, so that the assigned investigator can request an interview. The public defender will provide or withhold consent for any investigative interview of the juvenile offender in foster care.

If the public defender refuses to represent the child in foster care who is named as the alleged offender in a child maltreatment report because there is no risk of criminal or delinquency charges being filed, the investigator will contact the assigned DCFS caseworker for the child to request an interview. The DCFS caseworker, in collaboration with his or her supervisor and Area Director, will determine whether it may be appropriate for a child in foster care named as the alleged offender in a child maltreatment report to be interviewed. If deemed appropriate, the local team will make the recommendation to the DCFS Director or designee. Only the DCFS Director or designee, based on the recommendation by the local team, may give consent for the child in foster care named as an alleged offender to be interviewed as part of a child maltreatment investigation. The Office of Chief Counsel may be consulted as needed regarding legal advice but cannot give consent to an interview with a child in foster care named as an alleged offender.

## **RIGHTS OF INVESTIGATOR**

The investigator has the right to obtain a criminal background check, including a fingerprint-based check in any national crime database, on any subject of the report. The results of the criminal background check will not be disclosed outside of the Department except as permitted under A.C.A. §12-18-612.

In accordance with A.C.A. § 12-18-613, on request by the investigating agency, any school, child care center, child care facility, residential facility, residential treatment facility, or similar institution shall provide the investigator with the name, date of birth, Social Security number, and last known address and phone number of any alleged offender if the alleged maltreatment occurred at that school, center, or facility. Any school, child care facility, residential facility, or similar institution shall also provide the person conducting the investigation with the name and address of any witness to the alleged child maltreatment if the alleged child maltreatment occurred at that school, center, or facility.

The FSW or CACD Investigator conducting the child maltreatment investigation also has the right to enter into the home, school, or other place for the purpose of conducting an interview or completing the investigation. The investigator also has the right to request accompaniment by a law enforcement agent while conducting the investigation. If the investigator is denied access into the home, school, or other place for investigative purposes, then the investigator must prepare an affidavit to submit to OCC in order to request an Order of Investigation. If the investigator is denied access into the home, school, or other place and has reason to believe a child's health or safety are in immediate danger, the investigator will call local law enforcement immediately (if not already accompanied by LLE) in order to help gain access into the home.

No publicly supported school, facility, or institution may deny access to any person conducting a child maltreatment investigation. DCFS, CACD, and law enforcement shall be allowed access to the child's public and private school records during the course of the child maltreatment investigation. School district staff shall not provide notification if a request is made to interview a student during the course of an investigation of suspected child maltreatment and a parent, guardian, custodian, or person standing in place of a child's parent is named as an alleged offender and the interviewer requests that the school personnel does not make said notification.

Per A.C.A. § 12-18-604, DHS may petition a circuit court to allow an investigator to access the controlled substance database if the investigator demonstrates probable cause that the alleged offender has one or more prescription drugs, and the baby or the alleged offender tested positive for prescription drugs at the time of the birth of the baby.

The investigator will have the discretion, in the child's best interest, to limit the persons allowed to be present when a child is being interviewed concerning an allegation of child maltreatment. The investigator will determine when a child or any other children residing in the home should be referred to a physician, psychologist, or psychiatrist for a medical or psychological examination. While DCFS staff may conduct drug screens on teenagers when necessary, all children younger than thirteen (13) should be referred to a physician or medical facility for drug screening if needed. Please see Policy III-E: Client Drug and Alcohol Screening for more information.

DCFS will fully cooperate and participate in multidisciplinary child maltreatment response teams. All information except the name of the reporter may be disclosed to the teams.

### **INTERPRETER SERVICES**

At any point during the course of a child maltreatment investigation, when the person being interviewed cannot clearly communicate in English, the investigator shall arrange for an interpreter before continuing the interview. The interpreter must be trained and appropriately certified to translate the specific language needed.

If at any point during the course of a child maltreatment investigation, the investigator cannot determine whether the person being interviewed can clearly and effectively communicate in English, the interviewer shall end the interview. The interview shall recommence when a determination is made that the person can or cannot clearly communicate in English, and when necessary, a translator certified to translate the specific language has been obtained to facilitate clear communication. Family members should never serve as interpreters for an investigator conducting an interview.

If any delay in obtaining investigation or investigative information from having to make a determination about language and clear communication results in or creates a situation in which the alleged victim child's health or physical well-being will be put in immediate danger, the child will be placed in seventy-two (72)hour protective custody.

## **INVESTIGATION COMPLETION TIMEFRAMES AND EXTENSIONS**

Regardless of whether the child maltreatment investigation is conducted by DCFS, CACD, or local law enforcement, the supervisor approved investigative determination shall be made within forty-five (45) calendar days.

The Area Director or designee may request an extension of an additional fifteen (15) calendar days (for a total investigative timeframe of sixty (60) calendar days) to complete the investigation and make a determination if good cause for the requested extension is shown. Circumstances that meet the definition of good cause, as it pertains to requesting and granting a fifteen (15) day extension to make an investigative determination, include but are not limited to:

- A. The Prosecuting Attorney or law enforcement officials have requested that DCFS postpone the determination due to a pending criminal investigation;
- B. Medical, crime lab, or autopsy reports needed to make a determination have not been received;
- C. The report involves some out-of-state subjects and interview write-ups have not been received;
- D. Conflicting medical opinions have been received, requiring further analysis; or,
- E. Multiple alleged offenders or victims are involved, requiring additional time to conduct interviews and gather evidence.

Documentation supporting the request for the extension must be submitted with the request.

All extension requests must be submitted to and approved by the applicable Area Director followed by the DCFS Assistant Director or designee designated by the DCFS Director or designee via auto notification through the Division's information management system.

## **INVESTIGATION CLOSURES AND DETERMINATIONS AND RESULTING REFERRALS AND CASE OPENINGS**

Within the appropriate timeframes outlined above and utilizing PUB-357: Child Maltreatment Investigation Determination Guide as a reference where applicable, the Department will either:

- A. Administratively close an investigation of a child maltreatment report pursuant to A.C.A. §12-18-601 without a determination of whether the allegation is unsubstantiated, true, true but exempted, or inactive (see Procedure II-D14 for administrative closure criteria and related requirements); or
- B. Close the investigation with a determination that the allegations of child maltreatment are either:
  - 1) Unsubstantiated; or
  - 2) True; or
  - 3) True but exempted for:



- 1) Neglect as defined by A.C.A. § 12-18-103(14)(B) (i.e, Garrett's Law)
- 2) Religious beliefs
- 3) Underaged juvenile offenders; or,
- 4) Inactive.

Criteria for the administratively closed investigations and child maltreatment determinations are as follows:

*Administratively Closed*

A child maltreatment investigation will be administratively closed without further action or determination if:

- A. A preliminary investigation has been completed, to include:
  - 1) Interview with the alleged victim outside the presence of the alleged offender.
  - 2) Assessment of the alleged victim's home environment, as appropriate.
  - 3) Interview of a collateral witness;
  - 4) Review prior history of child maltreatment related to the family of the child and to the alleged offender.
- B. There has not been an additional report of abuse or neglect that has been committed by the alleged offender who is the subject of the current report; and,
- C. The health and safety of the child can be assured without further investigation by DCFS based on review of prior child maltreatment history;
- D. There is a determination that abuse or neglect of the child did not occur; and at least one of the following criteria are met:
  - 1) There are indications of malicious reporting; or,
  - 2) Details of the allegations are insufficient to investigate; or,
  - 3) Reporter was anonymous, and no evidence exists to corroborate the report; or,
  - 4) There is no available evidence to support or refute the allegation(s) due to the passage of time between the alleged occurrence of the maltreatment and the time the report was made; and,

The DCFS Director or designee approves the administrative closure of an investigation conducted by DCFS.

*Unsubstantiated Determination*

A child maltreatment investigation will be determined unsubstantiated in the event that:

- A. The allegation of child maltreatment is not supported by a preponderance of the evidence following an investigation by Division staff.

- B. The investigation concludes the injuries were the result of reasonable and moderate physical discipline inflicted by a parent or guardian for the purpose of restraining or correcting the child.

#### *True Determination*

A child maltreatment investigation will be determined true in the event of:

- A. An admission of the fact of maltreatment by persons responsible;
- B. An adjudication of dependency-neglect;
- C. A determination of the existence of maltreatment by Division staff, based on a preponderance of the evidence;
- D. A medical diagnosis of failure to thrive. The Family Service Worker should, however, complete the Child Maltreatment Investigation in accordance with the procedures included to determine the identity of the caretaker and to conduct an investigation of the family for the purposes of determining appropriate service delivery;
- E. Any other medical or legal form of confirmation deemed valid by the Division.

If a report is determined to be true, the names and conditions of any minor children of the alleged offender, and whether these children have been maltreated, or are at risk of maltreatment, will also be determined unless the investigating agency has determined that there is no indication of risk to the children. If the report is determined to be true, and is a report of sexual abuse, sexual contact, or sexual exploitation, an assessment of any other children previously or currently under care of the alleged offender, to the extent practical, and whether these children have been maltreated, or are at risk of maltreatment, will be conducted unless the investigating agency has determined that there is no indication of risk to the children. The worker conducting the investigation shall also seek to ascertain all other relevant data.

If a report is determined to be true and involves any children under the age of three (3), those children must be referred to the Division of Developmental Disabilities Children's Services for an early intervention screening per the Child Abuse and Prevention Treatment Act (CAPTA) if the children were not already referred during the course of the investigation (see Policy II-J: Early Intervention Referrals and Services and related procedures for more information).

If a report of sexual abuse is determined to be true and the alleged offender is under the age of eighteen (18) at the time the act or omission occurred, the parents or legal guardians of the alleged juvenile or underaged juvenile offender and victim shall be provided with a list of mental health professionals or agencies available to evaluate and treat the alleged juvenile offender or underaged juvenile offender and victim, if necessary. Providing this information does not

necessarily require the Division to pay for the mental health evaluation or any subsequent mental health treatment or services.

If a child maltreatment report is determined to be true, the Division will then also determine the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment, including without limitation children, the elderly, persons with a disability, and persons with a mental health illness. The following factors will be considered when determining whether an offender poses a risk of maltreatment to a vulnerable population:

- A. The severity of the child maltreatment;
- B. The nature and severity of an injury or other adverse impact caused by the child maltreatment;
- C. The current or future access the offender has or could have to a vulnerable population;
- D. Offender's previous child maltreatment history and whether there are similar fact patterns related to current offense and past child maltreatment history;
- E. Subsequent reports of child maltreatment against the offender;
- F. Criminal history of the offender; and,
- G. Risk assessment tool rating.

If the Division determines the offender poses a risk to a vulnerable population, the investigative determination will continue to be documented as True, and the offender's name will be placed in the Child Maltreatment Central Registry. If the Division determines the offender does not pose a risk to a vulnerable population, the investigation determination will be documented in the Division information system as Exempted-No Risk. The DCFS Director or designee will approve determinations for true but exempted for no risk to vulnerable populations.

#### *True but Exempted Determination*

A determination of true but exempted, which means the offender's name will not be placed in the Child Maltreatment Central Registry, will be entered for the reasons listed below. The following circumstances do not require a consideration of the risk level of the offender and any vulnerable population to which the offender may pose a risk of maltreatment as these conditions warrant a determination of True But Exempted pursuant to A.C.A. § 12-18-702. The Division may open a protective services case (i.e., in home or foster care as appropriate based on the dynamics of a particular family) for any investigative determination of true but exempted.

#### **Garrett's Law Exemptions**

A child maltreatment investigation that documents the presence of an illegal substance in either the bodily fluids or bodily substances in the mother or child at the time of birth resulting from the mother knowingly using any illegal substance (i.e., Garrett's Law case)

will be found true but exempted and will not be placed on the child maltreatment registry. A protective services case shall be opened to establish a plan of safe care.

If the FSW determines on an individual basis the child's health or physical well-being is in immediate danger, he or she should take the newborn into protective custody. The FSW must also assess any siblings of the newborn or other children under the care of the alleged offender. If it is determined that there is an immediate danger to the siblings' (or any other children under the care of the alleged offender) health or physical well-being, then they must also be brought into emergency seventy-two (72) hour protective custody.

"Acceptable" reporters include any one of the following mandated reporters, who have reasonable cause to suspect that a newborn has been subjected to an illegal substance before birth or the mother had an illegal substance in her bodily fluids or bodily substances at the time of the birth:

- licensed nurse;
- osteopath;
- physician;
- medical resident or intern;
- surgeon;
- hospital social worker; or,
- any medical personnel who may be engaged in the admission, examination, care or treatment of persons in hospitals or similar medical settings.

During the course of an investigation, or when DCFS has custody, if the mother or newborn has tested positive for the presence of an illegal substance in the bodily fluids or bodily substances, and the mother indicates that she wants to place the newborn for adoption through a private agency or private entity, the Family Service Worker must contact OCC immediately. If the infant is placed with a private adoption agency, then do not open a Protective Services case.

### **Religious Belief Exemptions**

A child maltreatment investigation will be determined to be true but exempted due to religious beliefs exemption in the event that the Family Service Worker (FSW) determines that the parent's decision to withhold medical treatment was based solely upon a religious belief, choosing instead to furnish the child with prayer and spiritual treatment in accordance with a recognized religious method of healing by an accredited practitioner.

An FSW will place a child whose health or physical well-being is in immediate danger in a safe environment in DHS custody regardless of the beliefs of the parents. The religious exemption does not preclude the FSW's right and responsibility to take appropriate action, including petitions to the court, to obtain necessary medical services.

#### **Underaged Juvenile Offender Exemptions**

A child maltreatment investigation will have an individual finding of true but exempted for underaged juvenile offenders if there is an overall true finding of sexual abuse by a child under the age of fourteen (14) to another child.

#### **Juvenile is Less than Fourteen Years of Age Exemption**

A child maltreatment investigation will have an individual finding of true but exempted if an offender is a juvenile less than fourteen (14) years of age.

#### *Inactive Determination*

Per A.C.A. § 12-18-619(c), if at any time before or during the investigation the Department is unable to locate or identify the alleged offender or alleged victim, the Department may consider the report unable to be completed and determine the report to inactive if a true or unsubstantiated determination cannot be established without interviewing the alleged offender or alleged victim.

Failure to complete the investigation within the required forty-five (45) days is NOT a reason to place a case on inactive status. The report must document why the investigation is determined to be inactive. All activities on the CFS-155: Unable to Locate Checklist must be completed by the FSW investigator before determining an investigation to be inactive and verified by the FSW Supervisor before approving the investigation.

For investigations determined to be inactive but information obtained from a subsequent report would permit the assigned investigative agency to gather additional evidence, the assigned investigative agency will provide notice of the allegations as per A.C.A. 12-18-501 et seq. and conduct the investigation. The assigned investigative agency will amend the determination of the earlier report accordingly based on evidence collected. The allegations contained in the most recent report will be investigated separately and an associated determination made based on the evidence collected during the investigation of the more recent report.

For information regarding how to proceed when DCFS is assigned to a report previously found to be inactive and CACD is assigned to a new report that would permit DCFS to gather additional evidence on the report previously determined to be inactive, please see the Agreement Between the Arkansas Department of Human Services (ADHS), Division of Children and Family Services (DCFS) and the Arkansas State Police (ASP), Crimes Against Children Division (CACD).

## PROCEDURE II-D3: Investigation Initiation

05/2022

The FSW will:

- A. Initiate the child maltreatment investigation within seventy-two (72) hours with the exception of investigations of the following allegations. These allegations will begin within twenty-four (24) hours:
  - 1) Allegations of severe maltreatment, excluding an allegation:
    - a) Of sexual abuse if the most recent allegation of sexual abuse was more than one (1) year ago or if the alleged victim does not currently have contact with the alleged offender;
    - b) Of abandonment and the child is in a facility or,
    - c) Of cuts, welts, bruises, or suffocation if the most recent allegation was more than one (1) year ago and the alleged victim is in the custody of the Department of Human Services; or
    - d) In which the alleged victim is in a facility and does not currently have contact with the alleged offender.
    - e) The allegation is that a child has been subjected to neglect as defined in A.C.A. 12-18-103(14)(B) (i.e., Garrett's Law referral);
    - f) A child has died suddenly and unexpectedly.
- B. Consider the investigation initiated:
  - 1) By interviewing or observing, when appropriate, the alleged victim child outside the presence of the alleged offender; or,
  - 2) If after exercising and documenting due diligence, an interview or examination of the child could not be made. Due diligence includes, but is not limited to:
    - a) Making an unannounced visit to the child's home at least three (3) times at different times of the day or on different days (provided the three visits are within the appropriate investigation initiation timeframes) in an attempt to interview the child;
    - b) Contacting the reporter again if the reporter is known;
    - c) Visiting or contacting the child's school, child care facility, and all other places where the child is said to be located;
    - d) Sending a certified letter to the location given by the reporter, if attempts to locate the child have failed;
    - e) Contacting appropriate local Division of County Operations staff and requesting research of their information systems and other files to obtain another address.

- f) Completing other activities listed on the CFS-155: Unable to Locate Checklist as needed.
- C. Document initiation activities within two (2) business days.
- D. Submit the record to the supervisor for approval of due diligence to locate and interview the child after all these efforts have been made.
- E. Document initiation activities within two (2) business days.

The FSW Supervisor will:

- A. Conduct a supervisory conference with investigator within seventy-two (72) hours of investigator initiating the investigation.



## PROCEDURE II-J1: DDS Early Intervention Services Referrals

05/2022

When children under the age of three (3) are involved in a substantiated case of child maltreatment, but a case is not opened, the investigator will:

- A. Provide an overview of the benefits of early intervention services to the parent/guardian.
- B. Make a referral to DDS for each child in the home (victims and non-victims) under age three (3) via the DDS First Connections Referrals page through the Arkansas Department of Human Services website.
- C. Inform the parent/guardian that their child(ren) will be referred to DDS Children's Services to assess the child(ren)'s need and eligibility for early intervention services that may help the child learn and reach his or her individual potential.

When children under the age of three (3) are involved in a substantiated case of child maltreatment and a protective services or foster care case is subsequently opened, the FSW caseworker (either protective services or foster care, as applicable) will:

- A. Provide an overview of the benefits of early intervention services to the parent/guardian.
- B. Make a referral to DDS for each child in the home (victims and non-victims) under age three via the DDS First Connections Referrals page through the Arkansas Department of Human Services website.
- C. Inform the parent/guardian that their child(ren) will be referred to DDS Children's Services to assess the child(ren)'s need and eligibility for early intervention services.
- D. Prior to the early intervention services intake meeting, provide the local DDS Services Coordinator with:
  - 1) Court-order, if applicable
  - 2) Copy of Social Security Card or number
  - 3) Copy of Medicaid Card or number, if applicable
  - 4) Any other pertinent information related to the request for the early intervention screening
  - 5) Copy of EPSDT, if available (parent must obtain)
  - 6) Copy of all evaluations, if applicable
- G. Coordinate remaining paperwork and services, as applicable, with the local DDS Service Coordinator. This includes but is not limited to:
  - 1) Coordinating the completion of DMS-800: Authorization for Children's Medical Services if the early intervention intake meeting determines the child is eligible for DDS Children's Medical Services;
  - 2) Providing a copy of the Division's completed assessment tool on any child involved in an open case and the associated case plan once they are completed;
  - 3) Notifying, as applicable, PACE, Health Service Worker, and foster parent(s) that early intervention screening referral has already been made to DDS Children's Services per CAPTA requirements prior to PACE evaluation.
- H. Invite DDS services coordinator and early intervention service providers to staffings if child is receiving early intervention services.

- I. Keep the local DDS Service Coordinator informed of any changes to the case plan that may affect early intervention services and coordination.
- J. Document contacts related to the DDS early intervention services referral in the Division's information management system.
- K. Update the child's case plan as appropriate.
- L. Conference with supervisor as needed regarding the referral to DDS early intervention services.

Investigative and FSW Supervisors will:

- A. Conference with the investigator and/or FSW caseworker as needed regarding the child's DDS early intervention referral and/or any subsequent services.
- B. Notify, as necessary, his or her supervisor of any issues related to the child's DDS early intervention referral and/or services.

Upon referral assignment, the DDS Service Coordinator should:

- A. Arrange the early intervention intake meeting.
- B. Assess and determine the need and eligibility of the child for services and notify in writing the DCFS Family Service Worker (FSW) and FSW Supervisor indicating the eligibility status and needs of the child, if applicable.
- C. If it is determined that the child needs and is eligible for early intervention services:
  - 1) Provide a more detailed explanation to the parent/guardian of early intervention services including types, benefits, requirements, etc.
  - 2) Provide copies of the child's IFSP and any early intervention evaluations to the FSW.
  - 3) Keep the child's FSW and person serving as the parent informed of the child's progress and any changes in services.

## **POLICY VII-K: Child Maltreatment Allegations Concerning Out-of-Home Placements**

05/2022

### **OVERVIEW**

All child maltreatment allegations concerning any person in a foster home will be investigated in accordance with the Child Maltreatment Act § 12-18-602. As with all children whose interest becomes the concern of DCFS, the safety and welfare of all children in foster care will be paramount.

If any child in foster care is the subject (alleged offender or alleged victim) of an allegation of child maltreatment, the Child Abuse Hotline will notify the appropriate DCFS and CACD Executive Staff as well as the Area Director for the DCFS service area in which the foster home named in the report is located. The DCFS Area Director will then ensure that the appropriate Division staff notify the child(ren)'s family, the primary and secondary Family Service Worker (FSW) for the child, as applicable, the Office of Chief Council (OCC) attorney, the child(ren)'s CASA, if applicable, and the child(ren)'s attorney ad litem. The attorneys ad litem for any other children placed in the home will be notified as well.

If there is an allegation of child maltreatment in which a child in foster care is named as the alleged offender, see Policy II-D: Investigation of Child Maltreatment Reports under "Legal Representation for Child in Foster Care Named as an Alleged Offender" for more information.

The Arkansas State Police Crimes Against Children Division (CACD) will conduct all child maltreatment investigations (Priority I and II) involving a foster parent or household member of a foster home excluding reports that meet Differential Response criteria involving a child in foster care that allegedly occurred prior to the child entering foster care.

However, when any household member of a foster home (to include foster parents, biological and adopted children of the foster parents, and children in foster care placed in the home) is the subject of a child maltreatment allegation, DCFS staff will also conduct an individualized evaluation to assess the safety of the child(ren) within twenty-four (24) hours of the receipt of the report to determine if the child(ren) can safely remain in the home during the course of the investigation. DCFS staff will try to coordinate this visit to the home to assess safety with CACD staff.

If any of the fourteen (14) Arkansas Health and Safety Factors are identified in the foster home in consultation with a DCFS supervisor, the children will be moved into another approved

placement. However, if no Health and Safety Factors are identified, and if it can be shown that it is in the best interest of any or all of the children currently placed in that foster home, a corrective action plan may be considered to allow any or all of the children in foster care to remain safely in a home involved in a child maltreatment report. A corrective action plan is designed to ensure the safety and well-being of the children in the home as long as the concern was not directly related to an act or omission rising to the level of maltreatment on the part of the foster parent(s) (e.g., a biological child of the foster parent posed a risk, but not the foster parents themselves). All relevant information will be reviewed to make a decision regarding the implementation of a corrective action plan for the foster home. This would include, but is not limited to:

- A. The characteristics and history of the child in foster care;
- B. The characteristics and history of the foster parents and their own children (if any);
- C. The nature of the allegation;
- D. Information collected during the investigation;
- E. The services, supports, and/or monitoring that will be put in place during the investigation.

The Assistant Director of Community Services or designee must approve all corrective action plans for foster homes prior to the DCFS staff leaving the home in which the corrective action plan will be implemented. If the safety and welfare standards of the Division cannot be met and the children cannot safely remain in the home, the children in care will be moved to another approved placement.

If after the initial safety evaluation conducted by DCFS staff it is determined that there are no risk or safety factors present and, as such, a corrective action plan is not required while the investigation is being completed, the Area Director may approve leaving the children in the home if it is in the best interest of the children. The Area Director will notify the Assistant Director of Community Services or designee when children are left in a foster home with a pending investigation but for which a corrective action plan was not necessary.

While any foster home is being investigated because of a child maltreatment allegation, no additional children in foster care may be placed there (regardless of whether a corrective action plan was required or not). As such, the foster home will be placed on unavailable status in the Division's information management system.

## **POLICY XIII-A: CHILD MALTREATMENT CENTRAL REGISTRY**

05/2022

The Child Maltreatment Central Registry is established within the Department of Human Services for the collection of records of cases involving allegations of child maltreatment which are determined to be true pursuant to A.C.A. § 12-18-901. The Division of Children and Family Services (DCFS or Division) maintains the statewide Child Maltreatment Central Registry. Reports made to the Division are confidential and may be disclosed only as provided by A.C.A. § 12-18-909-910.

Names of offenders and alleged offenders shall be placed on the Child Maltreatment Central Registry as specified by A.C.A. § 12-18-903. Names will be removed automatically or at the request of the offender according to A.C.A. § 12-18-908.

All requests for Child Maltreatment Central Registry information will be made through the Release of Information Unit in the DCFS Central Office.

The Division may charge a reasonable fee, not to exceed ten dollars (\$10.00) for research, copying, and mailing records of the investigative files of child maltreatment cases and Central Registry information. DCFS may also charge a reasonable fee for reproducing copies of electronic media, such as audio tapes, video recordings, compact discs, or DVDs and photographs.

No fee will be charged to a:

- A. Nonprofit or volunteer agency that requests searches of the investigative files; or
- B. Person who is indigent.

### **PROCEDURE XIII-A1: Placement of Name on the Child Maltreatment Central Registry**

05/2022

An offender's name shall be placed in the Child Maltreatment Central Registry in the following cases, as provided by A.C.A. § 12-18-903:

- A. After notice, the offender eighteen (18) years of age or older at the time the act or omission occurred does not request an administrative hearing within thirty (30) days.

- B. The offender was a child from fourteen (14) to seventeen (17) years of age at the time of the act or omission and the child or their legal guardian waived the administrative hearing.
- C. The administrative law judge upheld the investigative determination of true pursuant to a preliminary administrative hearing.
- D. Upon completion of the administrative hearing process, the Division's determination of true is upheld.

In addition to the requirements above, the name of an offender will be placed in the Child Maltreatment Central Registry only if the Department determines pursuant to A.C.A. § 12-18-702 that the offender may pose a risk of maltreatment to a vulnerable population that includes without limitation children, the elderly, persons with a disability, and persons with a mental health illness.

#### PROVISIONAL PLACEMENT

An offender's name shall be placed provisionally in the Child Maltreatment Central Registry as specified by A.C.A. § 12-18-905 when directed by an Administrative Law Judge (ALJ) after the determination of a prima facie case in a preliminary administrative hearing (refer to Procedure XIV-A1 and IX-A6). The alleged offender may request a regular administrative hearing within thirty (30) days of receipt of the notice of the investigative determination. Failure to do so shall result in a finding by the ALJ that the provisional designation shall be removed, and the offender's name shall be officially placed in the Child Maltreatment Central Registry.

If an alleged offender's name is provisionally placed in the Child Maltreatment Central Registry, any disclosure by the Child Maltreatment Central Registry shall include the notation that the name has only been provisionally placed in the Child Maltreatment Central Registry.

#### PERMANENT PLACEMENT

Pursuant A.C.A. §12-18-908, an offender shall permanently remain on the Child Maltreatment Central Registry if the:

- A. Adult offender:
  - 1) Is convicted of a criminal offense for an act or omission that constitutes child maltreatment and for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the adult offender's criminal record;
  - 2) Has a conviction for the criminal offense described in item one (1) (of current section XIII-A1) that has not been reversed or vacated; and
  - 3) Has their name placed in the registry for severe maltreatment.
- B. Offender was a juvenile from fourteen (14) to (17) years of age and:

- 1) Is convicted of a felony as an adult for an act or omission for which the offender is named in the Child Maltreatment Central Registry, regardless of any subsequent expungement of the felony from the offender's criminal record;
- 2) The offender's conviction for the felony described in item one (1) above has not been reversed or vacated; and
- 3) The offender's name is placed in the registry for severe maltreatment.

## **PROCEDURE XIII-A2: Automatic Name Removal from Child Maltreatment Central Registry**

05/2022

### **CRITERIA FOR REMOVAL**

The offender's name will be automatically removed from the Child Maltreatment Central Registry for the following types of child maltreatment or types of maltreatment involving the following injury characteristics or other details, as designated by A.C.A. § 12-18-908, dependent upon the offender having not had a subsequent true report of this type for one (1) year and more than one (1) year having passed since the offender's name was placed on the Child Maltreatment Central Registry:

- A. Educational Neglect
- B. Environmental Neglect
- C. Inadequate Clothing
- D. Inadequate Food
- E. Inadequate Shelter
- F. Inadequate Supervision-Children six (6) years or older

(A.C.A. § 12-18-908 allows these to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs, and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908].)

## **PROCEDURE XIII-A3: Child Maltreatment Central Registry Review Team**

05/2022

If the offender's name is not eligible to be automatically removed from the Child Maltreatment Central as described in Procedure XIII-A2 above, the Child Maltreatment Central Registry Review Team shall review removal requests. The Child Maltreatment Central Registry Review Team shall operate as follows:

- A. The Director of DCFS will appoint the members of the Child Maltreatment Central Registry Review Team.
  - 1) The Review Team will be made up of DCFS central office and field staff and CACD.
  - 2) There will be five (5) members with alternates in case of scheduling conflicts.
  - 3) A representative of OCC may provide legal advice and assistance to the team but will not be a member of the Child Maltreatment Central Registry Review Team.
- B. The Review Team will select an alternating chairperson for each quarter.



- C. The Review Team will determine a regular meeting schedule for the review any requests that meet all criteria but shall meet no less-frequently than on a quarterly basis.
- D. Review requests must be received sixty (60) days in advance of the review meeting, and all Review Team members will be provided with the case information fifteen (15) days prior to the review team meeting. All decisions will be by a majority vote of the team members.
- E. All team decisions will be sent in writing by the Central Registry Manager or designee.
  - 1) Denials will be sent to the applicants by certified mail within fifteen (15) days of the review team meeting.
  - 2) Approvals will be sent to the applicants by regular mail within fifteen (15) days of the review team meeting.

### **PROCEDURE XIII-A4: Name Removal from Child Maltreatment Central Registry by an Adult Offender's Request**

05/2022

#### REMOVAL CRITERIA

An adult offender is defined as a person eighteen (18) years of age or older at the time of the act or omission that resulted in a true finding of child maltreatment.

An adult offender may request their name be removed from the Child Maltreatment Central Registry when:

- A. The individual has not had a subsequent true report of this type or type involving the specified injury characteristic or other detail for one (1) year; and
- B. More than one (1) year has passed since the adult offender's name was placed on the Child Maltreatment Central Registry.

However, the adult offender may not request removal from the Child Maltreatment Central Registry if any of the following apply:

- A. The adult offender was placed into the Child Maltreatment Central Registry for any type of child maltreatment that resulted in a child fatality as a direct result of the offender's act or omission.
- B. The adult offender is still involved in an open protective services or foster care case for the type of maltreatment for which they were placed into the Child Maltreatment Central Registry.
- C. The adult offender was placed into the Child Maltreatment Central Registry for any of the child maltreatment types or type involving any of the injury characteristics or details listed below and their parental rights were subsequently terminated either voluntarily or involuntarily:

- Abuse with deadly weapon
- Bone fractures
- Brain Damage/Skull Fracture
- Burns/scalding
- Immersion
- Inadequate supervision – children less than 6 years of age
- Interfering with a child’s breathing
- Internal injuries
- Malnutrition
- Oral sex
- Poison/noxious substances
- Presence of illegal substance in child or its mother at time of birth resulting from mother’s knowing use of the substance
- Sexual exploitation
- Sexual penetration
- Shaking a child three (3) years of age or younger
- Striking a child with a closed fist
- Subdural hematoma
- Suffocation

(A.C.A. § 12-18-908 allows the types of maltreatment that may be considered for removal to be set at the discretion of the Director of the Department. However, these can only be changed through normal promulgation *after* a special review by the House Interim Committee on Aging, Children and Youth, Legislative and Military Affairs, and the Senate Interim Committee on Children and Youth [A.C.A. § 12-18-908]).

Finally, per A.C.A. § 12-18-908, an adult offender shall permanently remain on the Child Maltreatment Central Registry if the:

- A. Adult offender is convicted of a criminal offense for an act or omission that constitutes child maltreatment and for which the adult offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the offense from the adult offender’s criminal record;
- B. Adult offender’s conviction for the criminal offense as described in item A above has not been reversed or vacated; and
- C. Adult offender’s name is placed in the registry for severe maltreatment.

APPLICATION FORMAT FOR AN ADULT OFFENDER

An application for name removal from the Child Maltreatment Central Registry shall conform to the following:

- A. The adult offender will submit their request to the DCFS Director via the CFS-328-A (Request for Name Removal from the Child Maltreatment Central Registry by Adult Offender) and shall also submit:
  - 1) A personal letter describing:
    - a) The offender's reason for the removal request;
    - b) The events and circumstances surrounding the child maltreatment finding;
    - c) The offender's rehabilitation; and
    - d) Why the offender does not pose a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
  - 2) Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding one (1) year;
  - 3) Child Maltreatment Registry results from the offender's current state of residence or any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding year;
  - 4) Arkansas Crime Information Center (ACIC) background check results free from child maltreatment-related offense for the preceding one (1) year;
  - 5) State background check results from the offender's current state of residence or any state in which the offender has resided in the preceding year free from child maltreatment-related offense for the preceding one (1) year;
  - 6) Description and documentation (for example: court records, or a letter from the adult offender's attorney, probation officer, or prosecuting attorney) of any current pending criminal charges, if applicable; and
  - 7) Evidence of the offender's rehabilitation, including, but not limited to:
    - a) Documentation proving completion of treatment, remediation, or rehabilitation programs as related to the specific offense, if applicable.
      - i. For removal requests related to sexual abuse, proof of rehabilitation must include documentation from a licensed mental health professional that:
        - a) States that the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense;
        - b) States total length of time the requestor has participated in therapy with the licensed mental health professional to address the issues related to the sexual abuse offense and the frequency of therapy sessions during that period of time;

- c) Indicates whether a sex offender specific assessment was conducted during the therapy period (for example: the Vermont Assessment of Sex Offender Risk (VASOR), Clarke Sex History Questionnaire for Males-Revised, or Hare Psychotherapy Scale) (*note: the use of such an assessment is not necessarily a requirement for removal but the presence or absence of such an assessment will be considered*); and
  - d) Provides the licensed mental health professional's assessment of the requestor's participation during the therapy period.
- b) One to three (1-3) letters of reference from professionals (not to include DCFS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation and whether the offender poses a risk of maltreatment to vulnerable populations, including without limitation, children, the elderly, persons with a disability, and persons with a mental health illness.
- i. No more than one (1) letter of reference can be submitted from a family member.

The Child Maltreatment Central Registry Review Team may select additional, non-child maltreatment-related offenses which prevent name removal from the Child Maltreatment Central Registry.

#### DETERMINATION OF NAME REMOVAL REQUEST BY AN ADULT OFFENDER

The Child Maltreatment Central Registry Review Team will consider requests for removal of names from the Registry. In determining whether or not to remove an offender from the Child Maltreatment Central Registry the Review Team shall consider any relevant evidence, which may include, but is not limited to the following:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children; and
- E. Any other information that is relevant to the specific offense.

If the child maltreatment type is in the removal-by-request category, and the adult offender has not had a subsequent true report of this type for one (1) year and more than one (1) year has passed since the offender's name was placed on the Child Maltreatment Central Registry, he will have a right to a review of the case.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the Review Team shall send a denial letter to the adult offender explaining the reason for denial as it relates to:

- A. The circumstances surrounding the maltreatment;
- B. The seriousness of the harm caused by the maltreatment to the child or children;
- C. The probability of the offender engaging in future maltreatment;
- D. Evidence of the offender's completion of training, rehabilitation, and efforts to learn effective strategies to care for children;
- E. Any pending criminal charges surrounding the maltreatment; and
- F. Any other information that is relevant to the specific offense.

The adult offender shall wait one (1) year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Child Maltreatment Central Registry. However, if the Review Team needs additional information from the adult offender in order to make the determination as to whether to remove his or her name from the Child Maltreatment Central Registry, the Review Team may request that the adult offender provide the additional information without requiring the adult offender to wait an additional year to file a new petition. The Review Team shall inform the adult offender in writing of the specific additional information requested. The adult offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via mail, the adult offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the adult offender shall wait one year from the date of the request to file a new petition requesting his or her name be removed from the Child Maltreatment Central Registry.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the adult offender may request an administrative hearing within thirty (30) days from the receipt of the Division's decision.

### **PROCEDURE XIII-A5: Name Removal from Child Maltreatment Central Registry by a Juvenile Offender's Request**

05/2022

#### **REMOVAL CRITERIA**

Pursuant to A.C.A. § 12-18-908, the name of an offender who was a juvenile at the time of the offense shall not be removed from the Child Maltreatment Central Registry if:

- A. The offender is convicted of a felony as an adult for an act or omission that is the same act or omission for which the offender is named in the Child Maltreatment Central Registry regardless of any subsequent expungement of the felony from the offender's criminal record;
- B. The offender's conviction for the felony described in item A (of current section XIII-A5) has not been reversed or vacated; and
- C. The offender's name is placed in the Child Maltreatment Central Registry for severe maltreatment.

However, the name of an offender who was a juvenile at the time of the offense shall be removed from the Child Maltreatment Central Registry, as provided by A.C.A. § 12-18-908, when:

- A. The juvenile has reached eighteen (18) years of age or more than one (1) year has passed from the date of the act or omission that caused the true finding of child maltreatment and there have been no subsequent acts or omissions resulting in a true finding of child maltreatment; and
- B. The juvenile offender can prove by a preponderance of the evidence that they have been rehabilitated.

#### APPLICATION FORMAT FOR A JUVENILE OFFENDER

An application for name removal from the Child Maltreatment Central Registry shall conform to the following:

- A. The juvenile offender will submit his request to the DCFS Director via the CFS-328-B (Request for Name Removal from the Child Maltreatment Central Registry by Juvenile Offender) and shall also submit:
  - 1) Arkansas Child Maltreatment Central Registry results free from a true finding of the same maltreatment type for the preceding one (1) year;
  - 2) Child Maltreatment Registry results from the offender's current state of residence and/or any state in which the offender has resided in the preceding year free from a true finding of the same maltreatment type for the preceding one (1) year;
  - 3) Arkansas Crime Information Center (ACIC) background check results free from child maltreatment-related offense for the preceding one (1) year;
  - 4) State background check results from the offender's current state of residence and any state in which the offender has resided in the preceding year free from child maltreatment-related offense for the preceding one (1) year;
  - 5) Evidence of the offender's rehabilitation, which may include, but is not limited to:
    - a) A personal letter from the offender describing his rehabilitation;
    - b) Documents proving participation in treatment, remediation, or rehabilitation programs; and

- c) One to three (1-3) letters of reference from professionals (not to include DCFS employees), employers, spiritual counselors, friends, or family describing the offender's rehabilitation.

#### DETERMINATION OF NAME REMOVAL REQUEST BY A JUVENILE OFFENDER

The Child Maltreatment Central Registry Review Team will consider requests for removal of names from the Registry. In determining whether or not to remove a juvenile offender's name from the Child Maltreatment Central Registry, the Review Team shall consider the following:

- A. Whether the criminal history reveals any convictions as an adult for the same act for which the offender is named in the registry;
- B. Whether the juvenile offender has reached the age of eighteen (18); or, one (1) year has passed from the date of the act or omission that caused the true finding of child maltreatment;
- C. Whether there have been no subsequent acts or omissions resulting in a true finding of child maltreatment; and
- D. Whether the information submitted proves, by a preponderance of the evidence, that the juvenile offender has been rehabilitated.

If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the Review Team shall send a denial letter to the juvenile offender explaining the reason for denial. The juvenile offender shall wait one (1) year from the date of the request for removal before filing a new petition with the Division requesting the offender's name be removed from the Child Maltreatment Central Registry. If the Review Team denies the request-for-removal of the name from the Child Maltreatment Central Registry, the juvenile offender may request an administrative hearing within thirty (30) days from the receipt of the division's decision.

However, if the Review Team needs additional information from the juvenile offender in order to make the determination as to whether to remove their name from the Child Maltreatment Central Registry, the Review Team may request that the juvenile offender provide the additional information without requiring the juvenile offender to wait an additional one (1) year to file a new petition. The Review Team shall inform the juvenile offender in writing of the specific additional information requested. The juvenile offender shall have ten (10) calendar days from the date of the request to submit the requested additional information. If the request is sent via email, the juvenile offender shall be given an additional three (3) calendar days to submit the information. If the requested information is not submitted within the specified timeframe, then the juvenile offender shall wait one (1) year from the date of the request to file a new petition requesting their name be removed from the Child Maltreatment Central Registry.

## **APPENDIX 1: GLOSSARY**

05/2022

**INACTIVE** – An investigation determination that may be considered when the child maltreatment assessment cannot be completed because at any time before or during the investigation the Department of Human Services and the Division of Arkansas State Police are unable to locate or identify the alleged offender or alleged victim and a true or unsubstantiated determination cannot be established without interviewing the alleged offender or alleged victim.

**MANDATED REPORTER** -- Individuals identified in the “Child Maltreatment Reporting Act” who must immediately notify the Child Abuse Hotline or law enforcement if they have reasonable cause to suspect that a child has been subjected to or died from child maltreatment, or who observe the child being subjected to conditions or circumstances which would reasonably result in child maltreatment. These individuals include:

- AR State Police Crimes Against Children Division (CACD) Employee
- Attorney ad litem in the course of his or her duties as Attorney ad litem
- Child abuse advocate or volunteer
- Child advocacy center employee
- Child Care center worker
- Child Care worker
- Child safety center employee
- Child welfare ombudsman
- Clergyman\*
- Coroner
- Court Appointed Special Advocate (CASA) program staff or volunteer
- Dental hygienist
- Dentist
- Department of Human Services employee
- DHS contractor when acting within the scope of his or her employment
- Domestic abuse advocate
- Domestic violence shelter employee
- Domestic violence volunteer
- Employee of a reproductive health care facility
- Employee working under contract for the Division of Juvenile Services
- Foster care worker
- Foster parent
- Full-time or part-time employee of a public school or private school, including without limitation:
  - A. A school counselor;
  - B. A school official;
  - C. A teacher;



- D. A coach or director of a public or private athletic organization, team, or club;
- E. A coach or director of a public or private nonathletic organization, team, or club;
- F. A person who is at least twenty-one (21) years of age and volunteers in a public school or private school:
  - 1) As a coach or director of a public or private athletics organization, team, or club; or
  - 2) As a coach or director of a public or private nonathletic organization, team, or club
- G. A person employed as a school official in an institution of higher education

Judge

Juvenile intake or probation officer

Law enforcement official

Licensed nurse

Medical personnel who may be engaged in admission, examination, care, or treatment of persons

Mental health paraprofessional

Mental health professional

Osteopath

Peace officer

Physician

Prosecuting attorney

Rape crisis advocate or volunteer

Resident intern

Sexual abuse advocate or volunteer

Social worker

Surgeon

Victim assistance professional or volunteer

Victim/witness coordinator

Volunteer at a reproductive healthcare facility

Individual not otherwise identified in this list who is engaged in performing his or her employment duties with a nonprofit charitable organization other than a nonprofit hospital

\*Clergyman includes a minister, a priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him, except to the extent he has acquired knowledge of suspected maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith, or he received knowledge of the suspected maltreatment from the offender in the context of a statement of admission.

**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** \_\_\_\_\_  
**DIVISION** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_  
**TELEPHONE NO.** \_\_\_\_\_ **FAX NO.** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** \_\_\_\_\_

1. Does this proposed, amended, or repealed rule have a financial impact?  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?  
Yes \_\_\_\_\_ No \_\_\_\_\_
  
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes \_\_\_\_\_ No \_\_\_\_\_  
If an agency is proposing a more costly rule, please state the following:
  - (a) How the additional benefits of the more costly rule justify its additional cost;
  
  - (b) The reason for adoption of the more costly rule;
  
  - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and
  
  - (d) Whether the reason is within the scope of the agency's statutory authority, and if so, please explain.
  
4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
  - (a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_

Other (Identify)\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

Total\_\_\_\_\_

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue\_\_\_\_\_

General Revenue\_\_\_\_\_

Federal Funds\_\_\_\_\_

Federal Funds\_\_\_\_\_

Cash Funds\_\_\_\_\_

Cash Funds\_\_\_\_\_

Special Revenue\_\_\_\_\_

Special Revenue\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Other (Identify)\_\_\_\_\_

Total\_\_\_\_\_

Total\_\_\_\_\_

- 5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$\_\_\_\_\_

\$\_\_\_\_\_

- 6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$\_\_\_\_\_

\$\_\_\_\_\_

- 7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes\_\_\_\_\_ No\_\_\_\_\_

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
  - (a) the rule is achieving the statutory objectives;
  - (b) the benefits of the rule continue to justify its costs; and
  - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.