

CHILDREN AND FAMILIES

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Protection Investigations

Readoption with Amendments: N.J.A.C. 10:129

Adopted New Rules: N.J.A.C. 10:129-4 and 8.4

Adopted Repeals: N.J.A.C. 10:129-2.7, 2.8, and 2.9

Adopted Amendments: N.J.A.C. 10:120A-2.3 and 3.1, 10:133E-2.1, and 10:133G-3.1

Proposed: December 20, 2010 at 42 N.J.R. 3034(a).

Adopted: December 12, 2011 by Allison Blake, Commissioner, Department of Children and Families.

Filed: December 13, 2011 as R.2012 d.015, **with substantial and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 9:6-8.15, 9:6-8.36a, 9:6-8.106, and 30:4C-4(h).

Effective Dates: December 13, 2011, Readoption; February 6, 2012, Amendments, New Rules, and Repeals.

Expiration Dates: December 9, 2015, N.J.A.C. 10:120A; December 13, 2018, N.J.A.C. 10:129; October 23, 2014, N.J.A.C. 10:133E; and May 21, 2014, N.J.A.C. 10:133G.

Summary of Public Comments and Agency Responses:

Comments were received from the Law Office of Peter Fiorentino; Carol A. Weil, R.N., J.D., Attorney at Law; Debra L. Wentz, Ph.D., CEO of the New Jersey Association of Mental Health and Addiction Agencies, Inc. (NJAMHAA); Amy Vasquez, Esquire; Cecilia Zalkind, Executive Director, and Mary Coogan, Assistant Director of the Advocates for Children of New Jersey (ACNJ); Carolyn Torre, RN, MA, APN, Director of Regulatory Affairs of the New Jersey State Nurses Association (NJSNA).

General Comments

Peter Fiorentino, Esquire, Amy Vasquez, Esquire, and Carol A. Weil, R.N., J.D., Attorney at Law, made recommendations to amend N.J.A.C. 10:129, Child Protection Investigations. The Division of Youth and Family Services ("Division" or "DYFS") would like to thank these individuals for their comments and will collectively address the recommendations made in their comments, that are a hybrid of the Virginia state codes, in the first six comments below:

1. COMMENT: Agency workers should only recommend a finding of abuse or neglect to the court by the filing of a verified complaint. A lifetime penalty should only be determined by the judiciary, as is the case for temporary restraining orders (TROs), final restraining orders (FROs), Megan's Law offenders, etc. The commenters strongly promote adjudication of abuse/neglect findings over administrative determinations and offer this proposal as a remedy for an imbalanced and unfair system. Already, many cases are litigated and a judge makes the finding while some cases are left with an administrative determination and the accused must overcome the burdens and standards required on an appeal. One system should prevail for all.

RESPONSE: The Division is required to afford due process of law including cases where the Division substantiates a finding of abuse and neglect, but does not seek or require relief available by filing a complaint in the judicial system. The Division provides the administrative appeal process in order to satisfy this requirement and afford these individuals due process of law. Adjudications made through the Division's administrative appeal process are appealable through the judicial system, to the Superior Court, Appellate Division.

2. COMMENT: All notifications required under this code must be made by certified and regular mail, if not personal service.

RESPONSE: The Division of Youth and Family Services agrees with the recommendation to require notification by regular mail for all cases

and has changed N.J.A.C. 10:129-7.4(a)2 to require this. The Division of Youth and Family Services appreciates the recommendation to require notification by certified mail, if not personal service. The Division considered the impacts, including costs and benefits, of requiring certified mail in the rule, which would immediately impact fiscal year 2011, and the Division declines to change this provision of the rule. The Division will reconsider this request and its ability to allocate resources for providing notices via certified mail in future fiscal year budgets. Should the Division elect to provide notice via certified mail in the future, it may do so in advance of any further rule changes.

3. COMMENT: The commenters recommend three different tiers of substantiations to distinguish the most violent offenders, along with tiered penalties, that is, length of time for his or her name to be published in the registry.

RESPONSE: The Division of Youth and Family Services finds the recommendation to allow for three different tiers of substantiations to be inconsistent with New Jersey law and the framework that guides New Jersey's child protective services. N.J.S.A. 9:6-8.11 provides that the child abuse registry shall be the repository of all information regarding child abuse or neglect. The DYFS child abuse registry workgroup is focused on exploring the issues surrounding the child abuse registry, its purpose, its implementation and possible solutions to identified concerns surrounding the child abuse registry.

4. COMMENT: The commenters recommend that a voluntary program for services should be offered as an alternative to a finding of abuse/neglect, in which the offender's name would not be published in the registry. This alternative resolution would be comparable to the Pre-trial Intervention (PTI) model.

RESPONSE: The Division of Youth and Family Services finds that the recommendation for a voluntary program for services as an alternative to a finding of abuse/neglect is inconsistent with New Jersey law, and is not allowed. N.J.S.A. 9:6-8.11 provides that the child abuse registry shall be the repository of all information regarding child abuse or neglect.

5. COMMENT: The commenters recommend that the purging of records of unfounded reports occurs after one year to allow for completion of the investigation and services, if needed, which is a more sound reason for holding records than the arbitrary three-year period currently in effect.

RESPONSE: N.J.S.A. 9:6-8.40a requires the Division of Youth and Family Services in the Department of Children and Families (Department) to expunge from its records information relating to a report, complaint or allegation of child abuse or neglect that it determines is unfounded. The statute also requires the Department to promulgate rules setting forth the definition of, and process for making a determination of, unfounded. The Division of Youth and Family Services finds there are no consequences for holding records that are unfounded reports. The Division has reviewed the issue of expunction of unfounded reports and deems the three-year timeframe for "purging of records" to be reasonable and sufficient.

6. COMMENT: The commenters recommend a process for redress for reporting made in bad faith or with malicious intent.

RESPONSE: New Jersey law does not provide the Department with authority to establish a process for redressing a report made in bad faith or with malicious intent.

N.J.A.C. 10:129-1.1

7. COMMENT: The ACNJ states that they have no objection to combining the current "initial" investigation with the "formal" investigation in N.J.A.C. 10:129-1.1, provided that the investigation will be conducted promptly and thoroughly.

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment and support of the proposed changes.

N.J.A.C. 10:129-1.3

8. COMMENT: The ACNJ proposes the following change: "Child means a person from birth to his or her 18th birthday, or in the case of youth currently under the care and supervision of the Department of Children and Families, a person from birth to his or her 21st birthday."

RESPONSE: The Division of Youth and Family Services is unable to make this change as the Division cannot conduct a child protection investigation on a person age 18 and older pursuant to N.J.S.A. 9:6-8.21c. However, the Division can provide services to, and respond to referrals regarding, persons 18-21 who have open cases with the Division.

N.J.A.C. 10:129-1.3 and 2.3

9. COMMENT: The ACNJ offered two comments that address the same issue, in two different subchapters. The issue relates to “immediate response” in N.J.A.C. 10:129-1.3, Definitions, and 2.3, Time frames for investigation. ACNJ objects to the time frame of “no later than the end of the work day” to respond. Reports requiring immediate response should be acted upon within two hours as currently required. The current two-hour response for allegations that require an immediate response is more appropriate than the proposed “no later than the end of the work day.”

RESPONSE: The Division of Youth and Family Services is given the charge to act with a sense of urgency in every immediate referral received. However, in the cases that involve working with prosecutor’s offices to conduct a thorough and complete investigation, the Division will work in accordance with the prosecutor’s timelines, while still fulfilling the mandate to protect our most vulnerable population. In the instance of multiple reports that require immediate response, each report is assessed and reviewed according to priority. A planned and intentional response is conducted for each report that allows for the child protective investigator to effectively investigate each report by the end of the work day.

Subchapter 3. Child Protection Investigation Process for Local Office Investigations

10. COMMENT: While ACNJ has no objection to requiring one complete investigation, ACNJ believes one step currently required under N.J.A.C. 10:129-2.9 as part of a formal investigation has been left out of the overall requirements for an investigation. This is N.J.A.C. 10:129-2.9(b)5: “Interview a prior permanency worker who is the most knowledgeable about the family, if available, and if a services case is currently closed but had been open within the last two years.” This interview should be completed as part of the investigation and should be added if not included in the proposed regulations.

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment, and agrees to include this step as new N.J.A.C. 10:129-3.1(b)3, as it is helpful in completing a thorough investigation. As a result of this change, paragraphs (b)3 through 11 have been recodified as paragraphs (b)4 through 12.

N.J.A.C. 10:129-3.1

11. COMMENT: NJSNA asks that the Division modify the language to include the phrase advanced practice nurse (APN) after physician, since the APN may be the provider who has been “directly involved with the treatment of the reported injury condition” and documented the written report regarding “the alleged child victim” either in the emergency room, in an outpatient setting or as chosen primary care provider in private practice. APNs are authorized by N.J.S.A. 45:11-49 to manage preventative care services, diagnose and manage acute and chronic illnesses, order laboratory and diagnostic tests, prescribe drugs and devices, order and perform treatments, and make referrals to other providers, in accordance with a patient’s needs.

RESPONSE: The Division of Youth and Family Services would like to thank NJSNA for its comment and agrees to add “advanced practice nurse” to N.J.A.C. 10:129-3.1(e)11 and 12 to reflect their statutory authority.

N.J.A.C. 10:129-3.2

12. COMMENT: ACNJ supports the proposed requirement to this section that “If a safety plan includes any provision limiting a parent or guardian access to a child or the home, a Department representative shall notify the deputy attorney general within five days.”

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment and support of the proposed changes.

Subchapter 4. Child Protection Investigation Process for the Institutional Abuse Investigation Unit

13. COMMENT: ACNJ supports adding a separate section that states the requirements of an investigation for the Institutional Abuse Unit.

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment and support of the proposed changes.

N.J.A.C. 10:129-4.1

14. COMMENT: NJSNA asks that the Division modify the language to include the phrases, registered professional nurse, Forensic Nurse – Certified Sexual Assault (FN-CSA) and advanced practice nurse because any one of these providers may have been involved in making an assessment of physical harm.

RESPONSE: The Division of Youth and Family Services would like to thank NJSNA for its comment and agrees to include the phrases “registered professional nurse,” “Forensic Nurse – Certified Sexual Assault (FN-CSA)” and “advanced practice nurse (APN)” to N.J.A.C. 10:129-4.1(a)6ii, iii, and iv to reflect the statutory authority of nurses.

N.J.A.C. 10:129-6.2(c)

15. COMMENT: ACNJ states that the proposed regulations require the Department representative to make a “reasonable” effort to place the alleged child victim with his or her sibling. While we appreciate that the Department is seeking to strengthen this requirement we ask that some stronger language be used so that the mandates in the Child Placement Bill of Rights are adhered to as much as possible.

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment; however, the Division declines to make the requested change. The Division believes that the proposed rule requiring a representative to make “reasonable efforts” to place sibling groups together reflects the Division’s strong commitment to placing siblings together and the Division’s compliance with the mandates of the Child Placement Bill of Rights.

16. COMMENT: The NJAMHAA applauds the Division’s efforts to further enhance children’s safety and reduce the risk of abuse and neglect and streamline the investigation process to benefit children by facilitating prompt resolution of these investigations. In N.J.A.C. 10:129-6.2(c)2, the phrase “whenever possible” should be added, in order to emphasize that every reasonable effort must be made to keep siblings together, regardless of when they are removed and placed, for the sake of permanency and continuity.

RESPONSE: The Division of Youth and Family Services would like to thank NJAMHAA for its comment; however, the Division declines to make this change. The Division believes that the proposed language demonstrates a strong statement of its commitment to placing siblings together and that it emphasizes the Division’s commitment to making a reasonable effort, in every case, to keeping siblings together.

N.J.A.C. 10:129-6.3

17. COMMENT: The rule is being amended to include the notification to relatives; specifically subsection (c) requires the Department representative to notify each adult relative of a child’s out-of-home placement in accordance with N.J.A.C. 10:133-1.6(b). Though N.J.A.C. 10:133-1.6(b) sets forth some of these requirements, that subsection does not include the 30-day time frame, nor does it clearly state that relatives be told how they can become resource parents. While ACNJ supports the inclusion of relatives into this section, we recommend that the language clearly reflect the requirement of the Fostering Connections to Success and Increasing Adoptions Act of 2008 with reference to notification of relatives when a child enters foster care.

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment; however N.J.A.C. 10:133-1.6(b), was not the subject of this rulemaking and was not opened to the public for comment. Therefore, the Department will not consider changes to N.J.A.C. 10:133-1.6(b) through this rulemaking process. The Department will take ACNJ’s recommendation under advisement at the time of the next rulemaking for N.J.A.C. 10:133.

N.J.A.C. 10:129-8.3

18. COMMENT: This section is troubling given recent court decisions addressing the registry and the fact that the Department has convened a

work group to review the registry process. Various groups and individuals have raised concern about the Central Registry and recommended significant changes. ACNJ urges the Department to defer changes to this section until the entire registry is reviewed.

RESPONSE: The Division of Youth and Family Services would like to thank ACNJ for its comment. However, the Division finds that there are no consequences for holding records that are unfounded reports. The DYFS child abuse registry workgroup is focused on exploring the issues surrounding the child abuse registry, its purpose, its implementation, and possible solutions to identified concerns surrounding the child abuse registry. The Division has reviewed and discussed the issue of expunction of unfounded records and deems the three-year time frame for “purging of records” to be reasonable and sufficient.

Federal Standards Statement

The rules readopted with amendments, new rules, and repeals assist New Jersey to meet Federal requirements to obtain funds. The rules readopted with amendments, new rules, and repeals do not require New Jersey to exceed Federal requirements.

Specifically, the rules assist the Department to comply with 42 U.S.C. § 5106a(b)(2)(A) and 42 U.S.C. § 5106c(a)(3), which provide a grant to states “. . . to improve . . . the investigation and prosecution of cases of child abuse and neglect . . .”

42 U.S.C. § 671(a)(9) requires that the state has a State Plan which provides for reporting an injury, sexual abuse, or neglectful treatment of a child receiving aid under either Title IV-B or Title IV-E of the Social Security Act, to an appropriate agency. These rules require that the reporting of child abuse and neglect to the county prosecutor happens and are cited in the State Plan.

N.J.A.C. 10:129 is consistent with the Federal Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106(b)(2)(A)xii, regarding expunction of records.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:129.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 120A
DISPUTE RESOLUTION

SUBCHAPTER 2. GENERAL PROVISIONS FOR DIVISION
DISPUTE RESOLUTION AND
ADMINISTRATIVE HEARINGS

10:120A-2.3 Notice of substantiated findings

The Division shall provide notice of a finding of substantiated abuse or neglect to each perpetrator pursuant to N.J.A.C. 10:129-7.4(c).

SUBCHAPTER 3. DISPOSITIONAL REVIEW

10:120A-3.1 When to hold a dispositional review

(a) When preliminary efforts described in N.J.A.C. 10:120A-2.4 have been declined by the appellant or have failed to resolve an issue and an appellant requests a dispositional review, and when the request is made in accordance with N.J.A.C. 10:120A-2.5, the Division shall provide a dispositional review with:

1. (No change.)
2. A resource parent who disagrees with the removal of a child receiving foster care in his or her resource home when the child has been residing with the resource parent for at least six months, except when:
 - i.-iv. (No change.)
 - v. The resource parent or household member has a finding of substantiated abuse or neglect in accordance with N.J.A.C. 10:129-7.3(a); 3.-5. (No change.)
- (b) (No change.)

CHAPTER 129
CHILD PROTECTION INVESTIGATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

10:129-1.1 Purpose and objectives

- (a) The purpose of this chapter is to:
1. (No change.)
 2. Explain the requirements of a child protective investigator in performing an investigation; and
 3. (No change.)
- (b) The objectives of this chapter are to:
- 1.-4. (No change.)
 5. Define the requirements for starting and completing an investigation conducted by local office staff or Institutional Abuse Investigation Unit staff, including a safety assessment and risk assessment; Recodify existing 7. and 8. as 6. and 7. (No change in text.)
 8. Set forth guidelines by which Department caseworkers may easily identify cases that must be referred to prosecutors; Recodify existing 10.-17. as 9.-16. (No change in text.)

10:129-1.2 Scope

- (a) The provisions of this chapter apply to the following persons involved in a child protection investigation:
1. Each child and his or her family and each household member;
 - 2.-3. (No change.)
 4. Each caregiver or paramour, including a temporary or an institutional caregiver;
 - 5.-8. (No change.)

10:129-1.3 Definitions

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

- ...
“Caregiver” means any person who has full-time physical custody of a child, including a parent, stepparent, paramour, and resource parent.
“Child” means a person from birth to his or her 18th birthday.
...
“Child advocacy center” means a county-based center, pursuant to N.J.S.A. 9:6-8.104, which provides abuse prevention, intervention, and treatment services to children, who are victims of abuse or neglect.
...
“Department” means the New Jersey Department of Children and Families.
...
“Division” means the Division of Youth and Family Services at the New Jersey Department of Children and Families.
...
“Immediate response” means an in-person contact with a child victim made by an assigned child protective investigator no later than the end of the work day in which the State Central Registry assigns the report to the local office or Institutional Abuse Investigation Unit for response.
“Institution” means any facility, public or private, in-State, which provides children with out-of-home care, supervision or maintenance. “Institution” includes, but is not limited to, a correctional facility, detention facility, residential child care facility, hospital, camp, day care center that is licensed or should be licensed, group home and registered family child care home.
“Institutional Abuse Investigation Unit (IAIU)” means a child protective service agency within the Department of Children and Families, dedicated solely to investigating allegations of abuse or neglect in child care facilities, resource homes, and other out-of-home care settings.
...
“Investigation” or “child protection investigation” means the activity of gathering all information relevant to making a determination as to whether abuse or neglect occurred.
“Local office” means an office of the Division of Youth and Family Services which provides direct services and referrals to clients within a limited geographic area of New Jersey. The services provided may be child welfare services, child protective services, and adoption services.

...
 "Paramour" means a parent's or guardian's partner, other than his or her spouse, who is in a care-giving role for the alleged child victim. This definition is applicable whether the paramour resides in the home, frequents the home, is a same-sex partner or is a current or ex-boyfriend or girlfriend.

...
 "Parent or guardian" means any birth parent, adoptive parent, resource parent, stepparent, paramour, or any person, who has assumed responsibility for the care, custody or control of a child or upon whom there is a legal duty for such care. "Parent or guardian" includes a teacher, employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child's welfare and any other staff person of an institution regardless of whether or not the person is responsible for the care or supervision of the child. Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in N.J.S.A. 9:6-8.21.

...
 "Perpetrator" means a person who has been determined by the Department to have inflicted or allowed to be inflicted abuse or neglect.

...
 "Regional diagnostic and treatment center" or "center" means one of four regional diagnostic and treatment centers, as established pursuant to N.J.S.A. 9:6-8.99, to provide for the medical and mental health diagnostic and treatment needs of abused or neglected children in the geographic region in which the center is located, through a multidisciplinary approach to abuse and neglect.

...
 "State Central Registry" means the centralized operation within the Department of Children and Families responsible for screening incoming calls to the State of New Jersey to gather information about an alleged incident or set of circumstances suggesting suspected abuse or neglect or a child welfare service need.

"Substantiated" means a finding when the available information, as evaluated by the child protective investigator, indicates by a preponderance of the evidence that a child is an abused or neglected child as defined in N.J.A.C. 10:129-1.3 because the alleged child victim has been harmed or placed at risk of harm by a parent or guardian.

10:129-1.4 General policy

The primary concern of all public agencies involved with abuse and neglect is to ensure the safety, well-being, and best interests of the child. Other considerations, such as the objective of maintaining family integrity, promoting family functioning or the concern for traditional "parental rights," are secondary.

SUBCHAPTER 2. CHILD PROTECTION INVESTIGATION PROCESS

10:129-2.1 When an investigation is required

(a) The State Central Registry representative shall deem a call to be a report if he or she determines that a call contains at least one allegation which, if true, would constitute a child being an abused or neglected child, as defined in N.J.A.C. 10:129-1.3. The child protective investigator shall investigate each new report, regardless of whether the alleged child victim and his or her family is known or not known to the Department.

(b) A child protective investigator shall conduct a child protection investigation in response to each report alleging abuse or neglect on a military installation, to the extent permitted by the base commander, in accordance with U.S. Department of Defense Directive 6400.1, incorporated herein by reference as amended and supplemented, and this chapter.

1. U.S. Department of Defense Directive 6400.1 is available for download from the Department of Defense's website, <http://www.dtic.mil/whs/directives/corres/dir.html>.

(c) A child protective investigator shall handle each report in which the harm alleged to a child is the result of treatment in good faith for a medical condition by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious

denomination by a duly accredited practitioner thereof in accordance with this chapter, except for N.J.A.C. 10:129-7.3(a).

10:129-2.3 Time frames for investigation

(a) The child protective investigator shall start the investigation of a report no later than the end of the work day or within 24 hours of the State Central Registry representative determining the time frame and notifying the local office or the after-hours child protective investigator of the report, unless a Division or other entity authorizes a delay based upon the request of a law enforcement official, pursuant to N.J.S.A. 9:6-8.11.

(b) The State Central Registry representative determines whether each report meets one or more of the following criteria. The State Central Registry representative determines each report that meets one or more of the following criteria shall be investigated no later than the end of the work day of receipt at the State Central Registry. The criteria are:

1.-2. (No change.)

3. A child has died due to abuse or neglect and a sibling or other child remains under the care of a parent or guardian;

4. A child is born drug-exposed;

5.-7. (No change.)

10:129-2.4 Evidence needed to support a finding

(a) The child protective investigator shall, in completing the investigation of a report containing one or more allegations of abuse or neglect, as specified in N.J.A.C. 10:129-2.2:

1.-4. (No change.)

5. Document each verbal statement by the police and the request for the police report, whenever there is police involvement in the investigation and a police report is not made or is unavailable.

(b) The child protective investigator shall, in completing the investigation of a report containing one or more allegations of abuse specified in N.J.A.C. 10:129-2.2(a) and (b), except substantial risk of physical injury or environment injurious to health and welfare and risk of harm due to substance abuse by a parent or guardian or child:

1. When there is not a clear preponderance of evidence regarding the allegation, obtain a medical opinion which states whether the explanation given by the parent or guardian for the injury or condition is inconsistent with the injury or condition and that the most likely manner in which the injury or condition occurred was abuse; or

2. (No change.)

(c) The child protective investigator shall, in completing an investigation of a report containing an allegation of sexual penetration, sexual exploitation, or sexual molestation:

1. (No change.)

2. Assess, for each allegation listed in (c) above as well as for an allegation of substantial risk of sexual injury, the credibility of each subject involved in the investigation and document reasons for the assessment, for example, demeanor of witness, consistency of reports over time; and

3. (No change.)

(d) (No change.)

SUBCHAPTER 3. CHILD PROTECTION INVESTIGATION PROCESS FOR LOCAL OFFICE INVESTIGATIONS

10:129-3.1 Requirements for an investigation

(a) The child protective investigator shall interview the alleged child victim in person and individually, during the investigation of a report containing any allegation. The child protective investigator shall observe each non-verbal alleged child victim. The child protective investigator shall use sensitivity to avoid further trauma to each alleged child victim.

(b) The child protective investigator shall, in completing an investigation of a report containing any allegation:

1.-2. (No change.)

3. In cases where a service case is currently closed but had been open within the previous two years, interview a prior permanency worker who is the most knowledgeable about the family, if he or she is available;

[3.] *4.* Interview, in person and individually, each other child residing in the home of the alleged child victim. The child protective investigator shall observe each non-verbal child;

Recodify existing 4.-10. as *5.-11.* (No change in text.)

[11.] *12.* Obtain and document written approval by a supervisor when seeking to eliminate any requirement listed in (b)1 through *[10]* *11* above.

(c) The child protective investigator shall assess the need to contact and cooperate with law enforcement or a prosecutor, based upon the allegation(s) made in the report when completing an investigation. In particular, the child protective investigator shall determine if a joint investigation in accordance with the DCF/Law Enforcement Model Coordinated Response Protocol, <http://www.state.nj.us/lps/dcj/pdfs/def-law-enf-protocol.pdf>, is possible and consult with the investigating police officer or prosecutor before interviewing the alleged child victim, unless emergency action is needed, when completing an investigation of sexually transmitted diseases, sexual penetration, sexual exploitation, or sexual molestation.

(d) The child protective investigator shall obtain a medical assessment of the injury, which may include photos or a body chart, when completing an investigation of a report containing any allegation that involved a physical injury and when a physician has examined the child. The child protective investigator shall request a certified copy of hospital or other medical or forensic records, if available, for the DYFS record, if abuse or neglect is substantiated.

(e) The child protective investigator shall, in completing an investigation:

1. Assess the strengths and needs of the caregiver;
2. Assess the strengths and needs of the alleged child victim;
3. Interview at least two collateral contacts who have knowledge of the incident or circumstances, if the alleged child victim, the alleged child victim's family, or the alleged perpetrator identifies two or more of them;
4. Confirm child care arrangements reported by the caregiver where appropriate;
5. Interview school personnel or a child care provider, if any, with knowledge of the parental care provided to that child;
6. Interview each identified witness who is reported to have knowledge of the alleged abuse or neglect;
7. Interview each community professional who has first-hand knowledge of the alleged abuse or neglect;
8. Interview the following persons:
 - i. Each person residing at the address of occurrence, at the time of incident; and
 - ii. Each witness offered by the alleged perpetrator who could provide evidence that he or she did not abuse or neglect the alleged child victim;
9. Interview each investigative law enforcement officer working on the report;
10. Interview each of the primary response law enforcement personnel called to the scene of the alleged abuse or neglect;
11. Interview each physician ***and advanced practice nurse*** directly involved with the treatment of the reported injury or condition, and obtain, if possible, a certified copy of any report;
12. Obtain a collateral contact from the primary care physician ***or advanced practice nurse*** who has seen the alleged child victim; and
13. Obtain and document written approval by a supervisor when seeking to eliminate any requirement listed in (e)1 through 12 above.

10:129-3.2 Safety assessment and risk assessment for local offices

(a) (No change.)

(b) The child protective investigator shall assess the safety of an alleged child victim, using a Department-designated assessment tool, during the investigation.

(c) The child protective investigator shall complete a risk assessment, using a Department-designated assessment tool, during the investigation and after the completion of a safety assessment.

(d) The child protective investigator shall, in the event that a factor which makes the child unsafe has been identified, develop and implement a safety plan to assure the child's safety with the parent or caregiver. If the safety plan cannot assure the safety of the alleged child victim, the child protective investigator shall remove the alleged child victim from

the home, in accordance with N.J.A.C. 10:129-6.2. If a safety plan includes any provision limiting a parent or guardian access to a child or the home, a Department representative shall notify the *[Deputy Attorney General]* ***deputy attorney general*** within five days.

10:129-3.3 Actions permitted in performing investigations

(a) The child protective investigator may make an unannounced visit to the alleged child victim's residence or place where the alleged child victim, or his or her parent or guardian, is located, when conducting the investigation except that, if the parent or guardian has explicitly forbidden contact with the child, an Order to Show Cause to Investigate may be required prior to contact.

(b) The child protective investigator may remove, move or cause to be removed or moved only that clothing necessary to view suspected injuries, when conducting the investigation. This shall be done in a manner consistent with the alleged child victim's sense of privacy and in consideration of the age, sex and emotional state of the alleged child victim and the need to limit the number of physical examinations the alleged child victim undergoes. This shall be done only in the presence of an adult supportive of the alleged child victim, except in emergency situations.

(c) The child protective investigator may photograph or arrange to photograph the alleged child victim's injury or harm, whenever there are visible indications of injury or harm, and subsequently to record the results of the injury or harm, when conducting the investigation.

SUBCHAPTER 4. CHILD PROTECTION INVESTIGATION PROCESS FOR THE INSTITUTIONAL ABUSE INVESTIGATION UNIT

10:129-4.1 Requirements for an IAIU investigation

(a) The IAIU investigator shall, in completing an investigation of a report containing any allegation:

1. Interview the alleged child victim in person and individually, using sensitivity to avoid further trauma to each alleged child victim;
 2. Observe each non-verbal alleged child victim;
 3. Interview, in person and individually, the caregiver or institutional caregiver, on the same day as the alleged child victim, if possible;
 4. Interview each adult in the home, when the investigation involves a resource home or family child care home;
 5. Read and review each available prior investigation relevant to the report;
 6. Interview the reporter and each other person identified in the current report or related information as having knowledge of the incident or as having made an assessment of physical harm, including, but not limited to, the:
 - i. Physician;
 - *ii. Registered professional nurse;**
 - iii. Forensic Nurse-Certified Sexual Assault (FN-CSA);**
 - iv. Advanced practice nurse (APN);***
 - *[ii.]* *v.* Medical examiner;
 - *[iii.]* *vi.* Coroner;
 - *[iv.]* *vii.* Other professional who treated the alleged child victim's current condition, other than the reporter;
 - *[v.]* *viii.* Assigned permanency worker;
 - *[vi.]* *ix.* Youth services provider;
 - *[vii.]* *x.* Private agency caseworker; and
 - *[viii.]* *xi.* Other Department representative working with the alleged child victim or his or her family;
 7. Interview the alleged perpetrator, in person;
 8. Complete a Child Abuse Record Information check of each household member and each other individual regularly frequenting or living in the alleged child victim's home when investigating a report involving a resource home or family child care home;
 9. Conduct a PROMIS/GAVEL check to identify a paramour's record of criminal history, when the report involves a resource parent's paramour; and
 10. Observe the environment where alleged abuse or neglect occurred or which poses a threat to the child.
- (b) The IAIU investigator shall assess the need to contact and cooperate with law enforcement or a prosecutor, based upon the

allegation(s) made in the report, when completing an investigation. In particular, the IAIU investigator shall determine if a joint investigation in accordance with the DCF/Law Enforcement Model Coordinated Response Protocol is possible and consult with the investigating police officer or prosecutor before interviewing the alleged child victim, unless emergency action is needed, when completing an investigation of sexually transmitted diseases, sexual penetration, sexual exploitation, or sexual molestation.

(c) The IAIU investigator shall obtain a medical assessment of the injury, which may include photographs or a body chart, when completing an investigation of a report containing any allegation that involved a physical injury and when a physician has examined the child. If hospital or other medical or forensic records are available and abuse or neglect is substantiated, the IAIU investigator shall request a certified copy for the DYFS record.

(d) The IAIU investigator shall interview each identified witness who is reported to have knowledge of the alleged abuse or neglect.

(e) The IAIU investigator shall interview each community professional who has first-hand knowledge of the alleged abuse or neglect including:

1. Each witness offered by the alleged perpetrator who could provide evidence that he or she did not abuse or neglect the alleged child victim;
2. Each investigative law enforcement officer working on the report;
3. Each of the primary response law enforcement personnel called to the scene of the alleged abuse or neglect; and
4. Each physician directly involved with the treatment of the reported injury or condition, and obtain if possible a certified copy of any report.

10:129-4.2 Safety assessment for IAIU cases

(a) The IAIU investigator shall consider the alleged child victim's safety throughout the investigation and at each meeting with the alleged child victim or caregiver.

(b) The IAIU investigator shall assess the safety of an alleged child victim when investigating an allegation in a DYFS resource home, using a Department-designated assessment tool, during the investigation.

(c) The Department representative shall, in the event that a factor which makes the child unsafe has been identified, complete a safety assessment. A Department representative shall develop and implement a safety plan to assure the child's safety with the caregiver or institutional caregiver. If the safety plan cannot assure the safety of the alleged child victim, the IAIU investigator shall remove the alleged child victim from the home or institution, in accordance with N.J.A.C. 10:129-6.2.

10:129-4.3 Actions permitted in performing IAIU investigations

(a) The IAIU investigator may make an unannounced visit to the alleged child victim's residence or place where the alleged child victim, or his or her parent or guardian is located, when conducting the investigation.

(b) The IAIU investigator may remove, move or cause to be removed or moved only that clothing necessary to view suspected injuries, when conducting the investigation. This shall be done in a manner consistent with the alleged child victim's sense of privacy and in consideration of the age, sex and emotional state of the alleged child victim and the need to limit the number of physical examinations the alleged child victim undergoes. This shall be done only in the presence of an adult supportive of the alleged child victim, except in emergency situations.

(c) The IAIU investigator may photograph or arrange to photograph the alleged child victim's injury or harm, whenever there are visible indications of injury or harm, and subsequently to record the results of the injury or harm, when conducting the investigation.

SUBCHAPTER 5. SPECIALIZED ASSESSMENT AND INVESTIGATION

10:129-5.1 Referral of cases to a prosecutor

(a) State law requires each person to report suspected cases of abuse or neglect to the Department, and the Department has a legal obligation to refer to county prosecutors all cases that involve suspected criminal activity on the part of a child's parent, caregiver or any other person. While this duty may result in the referral of a substantial number of cases to prosecutors, it is anticipated that in most of the cases referred,

extensive police involvement will not be warranted, and indeed that in many cases no police involvement will be required.

(b) Caseworkers are obligated to immediately report to the prosecutor all cases involving suspected criminal conduct on the part of a parent, caregiver, or any other person. This obligation will be satisfied if caseworkers refer to the prosecutor all cases involving any of the following: (This list shall not be construed to preclude the referral of any other case which, in the judgment of the caseworker and supervisor, warrants review by the prosecutor.)

1.-6. (No change.)

(c) While several of the criteria set forth in (b) above are based solely upon the objective condition of the child, there should also be some reason to believe that the injury or condition was not accidentally caused. For purposes of these guidelines, an injury is not accidental if an intentional act produces an unintended result. Thus, a parent, caregiver, or any other person who physically disciplines a child may have committed child abuse even though the resulting injury was not intended.

(d) This policy regarding referral applies whether the child is residing at home or in an institution, school or other residential facility, and whether the person believed to be responsible for the injuries is the child's parent, caregiver, or any other person.

(e) The Department's duty to refer a case to the prosecutor immediately arises as soon as the caseworker has any information about the case which leads him or her to suspect that the alleged abuse or neglect may have occurred. This means that the child's condition or injury is one of those specified in this policy and the caseworker has reason to believe that the condition or injury was not accidentally caused.

1.-2. (No change.)

(f) Immediate, prompt referrals of abuse or neglect cases are important, and in some cases essential. Hence, written referrals on a Department-specified form which contains a narrative description of the essential facts, shall be sent to the prosecutor as soon as the caseworker determines that referral is required by this policy. The referral shall be made as soon as possible by telephone, with written confirmation being sent within 48 hours thereafter by fax. The Department will establish, consistent with this policy, specific procedures for making referrals which will include participation of supervisory personnel in identifying cases that this policy requires to be referred and designation of a person in each local office to act as a liaison to the prosecutor. Copies of such procedures will be furnished to all county prosecutors.

10:129-5.2 (No change in text.)

10:129-5.3 Response by prosecutors

(a) In order to facilitate communication with the Department and coordinate handling of abuse and neglect cases, each county prosecutor will designate an assistant prosecutor to serve as liaison to the Department's local office for such cases. The person so designated will be responsible for keeping the Department informed as to the course of action taken by the prosecutor. In addition, and to the extent practicable, each prosecutor will delegate to one or several investigators responsibility for conducting all investigations in abuse and neglect cases.

(b) The supervising detective of the county prosecutor's office shall determine if law enforcement will be involved in the investigation and shall notify a Department representative. The prosecutor may take various courses of action upon receipt of a referral, among them, the following:

1.-2. (No change.)

(c) (No change.)

Recodify existing N.J.A.C. 10:129-3.4 and 3.5 as 5.4 and 5.5 (No change in text.)

10:129-5.6 Medical evaluation and treatment

(a) The Department representative shall arrange for the alleged child victim and each of his or her siblings or any other child in the household to receive appropriate and immediate medical screening, care*,* and treatment pursuant to N.J.S.A. 9:6-8.30c, when an alleged child victim has been removed from his or her home. A medical professional shall release medical reports resulting from the screening, care*,* or treatment to a Department representative for the purpose of aiding in the finding of

whether the alleged child victim has been abused or neglected, pursuant to N.J.S.A. 9:6-8.30c.

(b) (No change.)

SUBCHAPTER 6. SERVICES AND REMOVAL DURING INVESTIGATION

10:129-6.1 (No change in text.)

10:129-6.2 Emergency placement process

(a) The Department representative shall remove the alleged child victim from his or her current home or location and initiate an emergency placement process, if:

1. Any child in the home or location is determined to be unsafe and at imminent risk of harm in accordance with N.J.A.C. 10:129-3.2 and 4.2; and

2. A plan which allows the alleged child victim to remain in his or her own home or location cannot be developed.

(b) The Department representative shall place an alleged child victim removed from his or her home or other location in a resource home or in a congregate care facility which is consistent with his or her service need.

(c) The Department representative shall make a reasonable effort to place the alleged child victim with his or her sibling, if:

1. (No change.)

2. The alleged child victim and his or her sibling are being placed at the same time.

(d) (No change.)

10:129-6.3 Information provided to parent, caregiver, and relative

(a)-(b) (No change.)

(c) The Department representative shall notify each adult relative of a child's out-of-home placement in accordance with N.J.A.C. 10:133-1.6(b).

SUBCHAPTER 7. FINDINGS AND DOCUMENTATION

10:129-7.1 Informing the alleged child victim, caregiver, and temporary caregiver about the investigation

(a)-(c) (No change.)

(d) The child protective investigator shall provide the following information to those people specified in (a) above:

1.-2. (No change.)

3. That a child protective investigator is responsible for conducting an investigation pursuant to N.J.S.A. 30:4C-11 and 12 and 9:6-8.11.

(e)-(g) (No change.)

10:129-7.2 Information provided to alleged perpetrator about the investigation

The child protective investigator shall, upon initial contact, inform each person specifically alleged to be a perpetrator of abuse or neglect about the provisions of N.J.A.C. 10:129-7.1 and that he or she has been named the alleged perpetrator of abuse or neglect, unless the police, prosecutor, or *[Deputy Attorney General]* ***deputy attorney general*** advises the child protective investigator to delay providing the information, or when providing such information will jeopardize the investigation.

10:129-7.3 Investigation findings

(a)-(c) (No change.)

(d) The child protective investigator shall not make a finding of substantiated on an allegation of medical neglect or medical neglect of a disabled infant when the harm or risk of harm to a child is the sole result of treatment in good faith by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof. The Department representative may need to develop a safety protection plan after consulting with the *[Deputy Attorney General]* ***deputy attorney general***.

10:129-7.4 Notification of finding

(a) The child protective investigator shall provide notification of the finding to those persons specified in (c) through (e) below. The child protective investigator shall delay the notification as long as the delay

does not appear to put the alleged child victim at risk, when a case is in litigation or a report is under criminal investigation and the police, prosecutor,* or *[Deputy Attorney General]* ***deputy attorney general*** has determined that notification of the investigation findings to persons in (c) through (e) below, would interfere with the litigation.

1. A Department representative shall consult with the *[Deputy Attorney General]* ***deputy attorney general*** before a finding of unfounded is made on a case in litigation, as a finding of unfounded results in the dismissal if litigation based on an allegation of abuse or neglect.

2. The child protective investigator shall provide written notification of the finding by regular mail.

(b)-(e) (No change.)

10:129-7.5 Other notification at conclusion of investigation

(a) The child protective investigator shall advise the following people whether further services shall be offered or provided to an alleged child victim or to his or her family, upon completion of the investigation:

1.-3. (No change.)

(b)-(d) (No change.)

(e) The child protective investigator shall forward information within 10 days from the date upon which the child protective investigator makes a substantiated finding, pursuant to N.J.S.A. 9:6-8.10a(e), to the police in the jurisdiction where:

1. The child victim resides;

2. The incident of abuse or neglect occurred; and

3. The child victim may be at risk of future harm.

(f) The written information regarding the report of abuse or neglect shall include:

1.-10. (No change.)

(g) (No change in text.)

(h) The child protective investigator shall advise the police, in writing, to destroy the information regarding the substantiated report, if a substantiated finding is later reversed by an appeal, a court order, or an internal Departmental decision, and a Department representative had notified the police of the substantiated report in accordance with (e) and (f) above.

(i) (No change in text.)

SUBCHAPTER 8. EXPUNCTIONS

10:129-8.1 Expunction limited to a record that consists of an unfounded report; contents of record to be expunged

(a) A Department employee shall expunge a record in any format relating to an unfounded finding within the time frames set forth in N.J.A.C. 10:129-8.2, pursuant to N.J.S.A. 9:6-8.40a, unless one of the exceptions listed in N.J.A.C. 10:129-8.3 exists. A record scheduled for expunction shall be expunged in its entirety.

(b) The Department shall retain each record which contains a substantiated report, as specified in N.J.A.C. 10:129-7.3(a).

10:129-8.2 Time frames and start date

(a) A Department employee shall expunge a record which consists of an unfounded report, as specified in N.J.A.C. 10:129-7.3(a), three years after determining that the report was unfounded, unless one of the exceptions listed in N.J.A.C. 10:129-8.3 exists.

(b) If unfounded, a Department employee shall expunge the entire record, containing the original report and each subsequent unfounded report, three years after the date of the finding associated with the last report, if a subsequent report received during the three years prior to expunction is likewise unfounded, unless one of the exceptions listed in N.J.A.C. 10:129-8.3 exists.

(c) The Department shall limit routine expunction of records to those which consist of unfounded reports, as specified in N.J.A.C. 10:129-7.3(a), for which the finding was made on or after the April 7, 1997 enactment of N.J.S.A. 9:6-8.40a.

(d)-(e) (No change.)

10:129-8.3 When the Department retains rather than expunges a record

(a) The Department employee shall retain a record which contains a report unfounded on or after April 7, 1997, when one or more of the following circumstances exist:

- 1. (No change.)
- 2. The Division provided services to the alleged child victim, a member of his or her family or household, or the alleged perpetrator, and three years have not passed since a service case was closed or provision of services has been concluded;
- 3.-4. (No change.)
- 5. A court of competent jurisdiction orders the Department to retain the record;
- 6. The Commissioner of the Department of Children and Families or designee requests that the Department retain the record;
- 7. The State Central Registry receives a subsequent report that the Department is investigating. If the subsequent report is unfounded, then the record is evaluated for expunction three years after the investigation is completed;
- 8. If an allegation is pending or under investigation at the time of expunction review, the record shall be retained for three years after the case is closed, if that allegation is likewise unfounded, or three years from when the service case is closed; or
- 9. If a service request is pending or under investigation at the time of expunction review, the record is retained until three years after the case is closed, if that allegation is likewise unfounded, or three years from when the service case is closed.

(b) The Division shall retain the record of any case where the Division provided out-of-home placement-related services, including, but not limited to, Medicaid, board payments, clothing allowance, or Child Placement Review Board review.

10:129-8.4 When an IAIU record is expunged

(a) For investigations of a resource parent or household member completed by the Institutional Abuse Investigation Unit, the Department representative shall expunge the IAIU record in three years as long as none of the reasons to retain the record as listed in N.J.A.C. 10:129-8.3 exist. The alleged child victim’s case is not subject to expunction.

(b) The Department shall expunge a report involving an IAIU investigation resulting in a finding of unfounded three years after the corrective action plan was completed, unless another allegation is received within the three-year time period.

10:129-8.5 Notification of record expunction

A child protective investigator shall include information about record expunction as set forth in this subchapter, when providing notification of the finding in accordance with N.J.A.C. 10:129-7.4.

CHAPTER 133E
SERVICES

SUBCHAPTER 2. SERVICES

10:133E-2.1 Services required as part of the case plan

The Division shall provide case management as part of the case plan to each client whose case is open or in accordance with N.J.A.C. 10:129-6.1 and 6.2.

CHAPTER 133G
CLIENT INFORMATION

SUBCHAPTER 3. RELEASE OF CLIENT INFORMATION TO
PERSONS OTHER THAN THE CLIENT

10:133G-3.1 Protective service information

- (a) (No change.)
- (b) A Division representative shall notify the police or local law enforcement authority of each substantiated incident of abuse or neglect involving a child who resides within their jurisdiction in accordance with N.J.A.C. 10:129-7.5(e) and (f).

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules

Definitions, Records Designated Confidential, Access to Government Records, and Computation of Time

Adopted Amendments: N.J.A.C. 10A:71-2.1, 3.9, 3.13, 3.15, 3.18, 3.20, 3.27, 3.30, 3.32, 3.37, 3.41, 3.43, 3.46, 3.48, 3.52, 3.53, 5.7, 5.8, and 7.18 and 10A:72-9.7 and 9.13

Adopted New Rules: N.J.A.C. 10A:71-2.1, and 2.3 through 2.7

Proposed: August 15, 2011 at 43 N.J.R. 2144(b).
 Adopted: November 30, 2011 by the New Jersey State Parole Board, James T. Plousis, Chairman and with the approval of Gary M. Lanigan, Commissioner, Department of Corrections.
 Filed: January 12, 2012 as R.2012 d.033, **without change**.
 Authority: N.J.S.A. 30:4-123.48(d), 47:1A-1, and 52:17B-4; and Executive Order No. 9 (1963).

Effective Date: February 6, 2012.
 Expiration Dates: October 27, 2017, N.J.A.C. 10A:71; and June 15, 2013, N.J.A.C. 10A:72.

Summary of Public Comments and Agency Responses:

The official comment period expired on October 14, 2011. In response to the notice of proposal, the State Parole Board received comments from Melinda S. Haley, Special Legal Advisor, Office of the Commissioner, Department of Corrections, and Joseph E. Krakora, Public Defender, Office of the Public Defender. The comments and agency responses are as follows:

COMMENT: Ms. Haley advised that the proposed rule action does not impact on the Department of Corrections (Department); that the proposed amendments and new rules pertain to records designated confidential, and access to government records and that therefore, the Department has no comment on the proposed rulemaking.

RESPONSE: The State Parole Board appreciates Ms. Haley’s advisement that the Department of Corrections, upon review of the notice of proposal, has no comment on the proposed rulemaking.

COMMENT: Mr. Krakora advised that the Public Defender’s Office takes no position on the proposed rules and amendments.

RESPONSE: The State Parole Board appreciates Mr. Krakora’s advisement that the Office of the Public Defender takes no position on the proposed new rules and amendments.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules are not subject to any Federal standards. The Federal Freedom of Information Act, 5 U.S.C. §§ 550a et seq., does not apply to records of State government and does not constitute a Federal standard.

Full text of the adoption follows:

CHAPTER 71
PAROLE

SUBCHAPTER 2. RECORDS; GENERAL ADMINISTRATIVE PROVISIONS

10A:71-2.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

“Access” shall mean granting a requester the opportunity to inspect, examine or obtain a copy of a government record.