

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

CHILDREN AND FAMILIES

(a)

COMMISSIONER

Child Protection Investigations

Proposed Readoption with Amendments: N.J.A.C. 3A:10

Proposed Repeal: N.J.A.C. 3A:10-2.2

Authorized By: Christine Norbut Beyer, Commissioner, Department of Children and Families.

Authority: N.J.S.A. 9:3A-7.f and g, 9:6-8.15, 9:6-8.36a, 9:6-8.106, and 30:4C-4(h).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2019-017.

Submit written comments by March 23, 2019, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, N.J.A.C. 3A:10, Child Protection Investigations, was scheduled to expire on December 13, 2018. The Department of Children and Families (Department) has reviewed these rules and has determined that they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated. As the Department filed this notice of readoption prior to December 13, 2018, that date is extended 180 days to June 11, 2019. As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department proposes to readopt with amendments and a repeal, the rules governing the investigation of reports of abuse or neglect. The purpose of the chapter continues to be to describe how a child protection investigation is conducted, what the requirements for an investigation are, and what the child or the parent or guardian involved in a child protection investigation may expect. Readoption of the chapter is required to ensure that children are protected from abuse and neglect. These rules will continue to impact each child protective investigator, alleged child victim, caregiver, or parent or guardian in a child protective investigation.

N.J.A.C. 10:129, Child Abuse and Neglect Cases, the precursor of N.J.A.C. 3A:10-5, was initially adopted in 1979 and readopted and/or amended in 1984, 1985, 1990, 1995, 1999, and 2000. N.J.A.C. 10:129A, Child Protective Service Investigations and Determinations of Abuse and Neglect, was initially adopted in 1995, amended in 1999, and readopted in 2000. It was repealed in 2005 and its content was merged into N.J.A.C. 10:129 and then-existing N.J.A.C. 10:129 was recodified as Subchapter 3. In 2012, the chapter was readopted, amended, and reorganized with Subchapter 3 recodified as Subchapter 5. The chapter was significantly amended in 2013. Effective January 3, 2017, the chapter was administratively recodified as N.J.A.C. 3A:10 (see 49 N.J.R. 98(a)).

At N.J.A.C. 3A:10-1.3, the definition of “caregiver” is proposed for amendment to remove the requirement that a caregiver must have full-time physical custody of a child. The Department is also removing “paramours” from the definition, as they are encompassed by the proposed addition of “any person who has assumed responsibility for the care, custody, or control of a child.” This amended definition more accurately reflects those who can be considered a caregiver when investigating an allegation of child abuse or neglect. The definition of “Child Abuse Record Information” is proposed for amendment to include the Institutional Abuse Investigation Unit as it is part of the Department of Children and Families. The definition of “multidisciplinary team” is proposed for amendment to remove erroneous commas between “mental health, and substance abuse” and “substance abuse” and “identification.” The correct phrase is “mental health and substance abuse identification and treatment.” The definition of “regional diagnostic and treatment center” is proposed for amendment to remove the number of such centers that exist, as it may change. The Department proposes to amend the definitions of “risk assessment” and “safety assessment” to include that these assessments use a tool to make the determination of risk or safety. This is to clarify the nature of the assessment process.

N.J.A.C. 3A:10-2.1(b) and (b)1 are proposed for amendment to identify the current Department of Defense Instruction and its website location. The Department is replacing the U.S. Department of Defense’s website with an updated website address to obtain the U.S. Department of Defense Instruction 6400.01, which states that it is Department of Defense policy to identify, assess, and support child abuse victims (6400.01(4.2)), and to cooperate with civilian authorities and organizations to address problems of child abuse (6400.01(4.5)).

The Department proposes to repeal N.J.A.C. 3A:10-2.2, Allegations of abuse or neglect. This section names specific types of abuse or neglect. The Department no longer uses this set of specific allegations.

The Department proposes to amend recodified N.J.A.C. 3A:10-2.3(a), (b), and (d) to remove reference to the allegations in N.J.A.C. 3A:10-2.2, which is proposed for repeal. The Department proposes to amend recodified N.J.A.C. 3A:10-2.3(c) and (c)2 and 3, 3.1(c), and 4.1(b) to substitute “allegation of sexual abuse” for the outdated terms that referred to the same actions.

The Department proposes to amend N.J.A.C. 3A:10-3.1(c) to reference the correct web address for the DCF/Law Enforcement Model Coordinated Response Protocol. The Department proposes to amend N.J.A.C. 3A:10-3.1(e)3 to remove the limitations to interviewing collateral contacts. The Division's investigators must interview each collateral contact. The Department proposes to amend N.J.A.C. 3A:10-3.1(e)11 and 12 to remove "the physician and advanced practice nurse" and replace it with "medical professional," which covers all medical professionals who have treated the child for the child abuse injury or who have otherwise seen the child. This will allow the Division to gather all relevant medical information.

The Department proposes to amend N.J.A.C. 3A:10-3.2(d) to update the name of the "safety plan" to the "safety protection plan" to reflect current terminology.

The Department proposes an amendment at N.J.A.C. 3A:10-4.2(c) to state that a "Department representative" shall remove an alleged child victim from the home or institution during an IAIU investigation, rather than the "IAIU investigator." This is not the work of an IAIU investigator.

At N.J.A.C. 3A:10-5.1(a), the Department proposes to replace the term "State law" with the legal citation to N.J.S.A. 9:6-8.10 for clarity. N.J.A.C. 3A:10-5.1(b) and (f), 5.2(a), 5.3(a), (b)1, and (c), and 7.1(d)1 are proposed for amendment to change "will" to "shall" in order to use standardized language within the chapter. In addition, the Department is proposing to change the word "policy" to "chapter" or to the specific citation at N.J.A.C. 3A:10-5.1(d), (e), and (f) and 5.2(a), in order to correctly denominate this chapter of the New Jersey Administrative Code.

At N.J.A.C. 3A:10-5.1(f), the Department proposes to remove a requirement that a required written confirmation of a report be sent by fax. The requirement for a confirmation in writing is retained, but the Department sees no need to prescribe the method of conveyance. The Department also proposes to remove the requirement of participation by supervisory personnel. The Department will continue to establish specific procedures for making referrals to the prosecutor, but the Department does not believe it is necessary to regulate this level of detail.

Throughout Subchapter 5 and at N.J.A.C. 3A:10-1.1(b)8 and 10, the Department has changed the name of the person who investigates allegations of abuse or neglect from caseworker to child protective investigator to reflect current usage and to be in line with the rest of the chapter.

At N.J.A.C. 3A:10-6.3(b)1, the Department proposes to remove the term "chief administrator" and substitute "employee" of an institution. This allows the investigator to serve written notice to someone working in the institution without waiting for the chief administrator, who may be away. The cross-reference to N.J.A.C. 3A:11-1.6(b) at 3A:10-6.3(c) is proposed for amendment to N.J.A.C. 3A:11-1.6(c) due to an amendment published at 49 N.J.R. 3498(b).

The Department is proposing to amend N.J.A.C. 3A:10-7.1(b) to remove an explanation that the parents of child witnesses "other than the child subject of the investigation" will be informed of an interview only "when abuse or neglect is substantiated and that child was abused or neglected." A child will not be found to have been abused or neglected without being the subject of an investigation.

The Department is further proposing to amend N.J.A.C. 3A:10-7.6(a)2 to require that notice of both substantiated and established abuse and neglect findings be conveyed to the alleged perpetrator by both regular and certified mail, if not delivered by personal service. Because both findings are subject to administrative appeal, it is now required that the conveyance of the findings be by the same means.

The Department proposes to amend N.J.A.C. 3A:10-7.6(b) to remove the limitation on the rule that required notification of substantiated or unfounded findings within 10 days. Changes to which findings are afforded an administrative appeal have eliminated any rationale for imposing a different notification deadline on other findings.

The Department proposes to amend N.J.A.C. 3A:10-7.6(c)1 to remove the term "confirmed" perpetrator, as the Department no longer classifies perpetrators as confirmed. The Department also proposes to amend N.J.A.C. 3A:10-7.6(c) and (c)3 to include that perpetrators may dispute a finding of either substantiated or established. The finding of "established" is included based on *New Jersey Div. of Child Prot. & Permanency v. V.E.*, 448 N.J.Super. 374 (2017).

At N.J.A.C. 3A:10-7.6(e)2 and 7.8(a)2, the Department is proposing to change the term from "child" to "alleged child victim" for consistency. At recodified N.J.A.C. 3A:10-7.8(e)8, "child's injuries" is proposed to be changed to "child victim's injuries" for consistency with the section.

The Department is proposing to delete N.J.A.C. 3A:10-7.8(b) to remove the specific information given to a child victim of abuse or neglect. Instead, the child protective investigator will give a child victim information that the investigation is completed in a developmentally appropriate way, as stated in recodified subsection (b).

The Department proposes to amend N.J.A.C. 3A:10-8.1(a) to state that the Department shall expunge the record of identifying information regarding each alleged perpetrator who was unfounded, rather than expunging the record in its entirety. In some instances, the record concerning an allegedly abused or neglected child contains allegations against more than one person. In those instances, the Department will delete all identifiers and references to the person against whom the allegations were determined to be unfounded, so that no record of that person's having initially been involved remains. However, where an allegation against someone else was determined to be not established, established, or substantiated, the record of that information will continue to exist. In instances where only one person was alleged as a perpetrator, and that allegation was unfounded, the entire record will be deleted. The Department believes the changes best reconcile the requirements and legislative intent behind N.J.S.A. 9:6-8.40a, that defamatory information about persons falsely alleged to have abused or neglected children be removed from agency records, without jeopardizing the competing need to retain information on children served and persons found to have abused or neglected children during the course of the same investigation.

A summary of the chapter proposed for readoption, as it exists at the time of this rulemaking, follows:

N.J.A.C. 3A:10-1.1 states the purposes and objectives of the chapter.

N.J.A.C. 3A:10-1.2 states the scope of the chapter.

N.J.A.C. 3A:10-1.3 states the definitions and terms used throughout the chapter.

N.J.A.C. 3A:10-1.4 states the general policy to ensure the safety, well-being, and best interest of children.

N.J.A.C. 3A:10-2.1 states when a child abuse investigation is required.

N.J.A.C. 3A:10-2.2 sets forth the allegations of abuse or neglect.

N.J.A.C. 3A:10-2.3 provides the timeframes for an investigation.

N.J.A.C. 3A:10-2.4 defines the type of evidence the child protective investigator is required to obtain during the course of the investigation in order to support the finding of abuse or neglect.

N.J.A.C. 3A:10-3.1 states the required activities for an investigation conducted by the Division.

N.J.A.C. 3A:10-3.2 requires the child protective investigator to conduct safety assessments and risk assessments using tools specified by the Department.

N.J.A.C. 3A:10-3.3 states the actions permitted in performing investigations.

N.J.A.C. 3A:10-4.1 states the requirements for an IAIU investigation.

N.J.A.C. 3A:10-4.2 states the requirements to assess the safety of each alleged child victim and to complete a Department-designated safety assessment tool when investigating a report of abuse or neglect in a resource home.

N.J.A.C. 3A:10-4.3 states the actions permitted in performing an IAIU investigation.

N.J.A.C. 3A:10-5.1 states when Departmental employees are required to refer a case to the prosecutor.

N.J.A.C. 3A:10-5.2 states that the Department's recommendations are communicated to the prosecutor.

N.J.A.C. 3A:10-5.3 states the responses by prosecutors.

N.J.A.C. 3A:10-5.4 sets forth when the Department will request law enforcement assistance.

N.J.A.C. 3A:10-5.5 states how the child protection investigation is coordinated.

N.J.A.C. 3A:10-5.6 states when medical evaluation and treatment are arranged.

N.J.A.C. 3A:10-6.1 states when services are offered on an emergency basis.

N.J.A.C. 3A:10-6.2 describes the emergency placement process.

N.J.A.C. 3A:10-6.3 states the information provided to a parent, caregiver, or relative when an emergency removal is made.

N.J.A.C. 3A:10-7.1 requires that the child protective investigator informs the alleged child victim, caregiver, and temporary caregiver about the investigation.

N.J.A.C. 3A:10-7.2 states that information will be provided to the alleged perpetrator about the investigation.

N.J.A.C. 3A:10-7.3 states information about investigation findings.

N.J.A.C. 3A:10-7.4 states the circumstances when the finding of substantiated is required.

N.J.A.C. 3A:10-7.5 sets forth what factors are considered in determining whether a finding is substantiated or established.

N.J.A.C. 3A:10-7.6 states who is notified of a finding.

N.J.A.C. 3A:10-7.7 states the use the Department makes of the findings.

N.J.A.C. 3A:10-7.8 states other notifications that the investigator must make at the conclusion of the investigation.

N.J.A.C. 3A:10-8.1 states that expunction is limited to a record that consists of an unfounded report and the contents of a record being expunged.

N.J.A.C. 3A:10-8.2 states the time frames and start date of expunctions.

N.J.A.C. 3A:10-8.3 states when the Department retains, rather than expunges, a record.

N.J.A.C. 3A:10-8.4 states when an IAIU record is expunged.

N.J.A.C. 3A:10-8.5 requires that the Department includes expunction information in the notification of finding.

Social Impact

The social impact of the rules proposed for readoption with amendments and a repeal is to ensure the increased safety and protection of New Jersey’s most vulnerable population. The safety, well-being, and permanency of each child who is a part of New Jersey’s child welfare system is of the utmost importance. Children and families will benefit directly from a thorough and comprehensive investigation that establishes that children will be safe and at reduced risk of any future abuse or neglect.

The rules proposed for readoption with amendments and a repeal will benefit each person who is investigated on an allegation of abuse or neglect. In addition, the rules proposed for readoption with amendments and a repeal provide clarity on when the contents of a record and its findings are retained and when they are expunged.

Economic Impact

The rules proposed for readoption with amendments and a repeal are expected to result in no net increase in costs to the State. The rules have no economic impact on the families involved in abuse or neglect investigations.

As the rules are in compliance with Federal requirements, they assist New Jersey in claiming Federal funds.

For fiscal year 2019, the appropriated amount of the Federal Administration for Children and Families’ (ACF) Child Abuse Prevention and Treatment Act (CAPTA) grant is \$5,371,000, which includes the Children’s Justice Act grant. These funds are received pursuant to 42 U.S.C. §§ 5101 et seq.

The FY 2019 Title IV-E of the Social Security Act appropriation is \$176,957,000 and the Title IV-B child welfare services appropriation is \$5,246,000.

Federal Standards Statement

The rules proposed for readoption with amendments and a repeal assist New Jersey to meet Federal requirements to obtain funds. The rules proposed for readoption 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 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 a state have a State Plan, which provides for reporting an injury, sexual abuse, or negligent treatment of a child receiving aid under either Title IV-B or Title IV-E of the Social Security Act to an appropriate agency. That statute requires the reporting

of certain instances of alleged child abuse and neglect to the county prosecutor and is cited in the State Plan.

N.J.A.C. 3A:10 is consistent with the Federal Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(b)(2)(A)xii, regarding expunction of records.

Jobs Impact

The Department anticipates no impact, either positive or negative, on job creation due to the rules proposed for readoption with amendments and a repeal.

Agriculture Industry Impact

The rules proposed for readoption with amendments and a repeal will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Neither the Department nor the Department’s clients or reporters are considered small businesses under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et. seq. While some institutions investigated by the Institutional Abuse Investigation Unit may be small businesses under the Regulatory Flexibility Act, the rules proposed for readoption with amendments and a repeal do not impose any reporting, recordkeeping, or compliance requirements on those institutions. These rules provide information on how the Department conducts investigations of abuse or neglect reports and how the Department determines the finding resulting from the investigation. Therefore, a regulatory flexibility analysis is not necessary.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments and a repeal have no impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules pertain to the Department’s child protection investigation process.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and a repeal have no impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the Department’s child protection investigation process.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated the rules proposed for readoption with amendments and a repeal and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 3A:10.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 3A:10-2.2.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

3A:10-1.1 Purpose and objectives

- (a) (No change.)
- (b) The objectives of this chapter are to:
 - 1.-7. (No change.)
 - 8. Set forth guidelines by which Department [caseworkers] **child protective investigators** may easily identify cases that must be referred to prosecutors;
 - 9. (No change.)
 - 10. Establish a system through which a Department [caseworker] **child protective investigator** may assist prosecutors in determining which cases should be investigated for criminal prosecution and in identifying cases in which criminal investigation or prosecution would be detrimental to the child’s best interests;

11.-16. (No change.)

3A:10-1.3 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, or any person who has assumed responsibility for the care, custody, or control of a child.

...
 "Child Abuse Record Information" or "CARI" means the information in the child abuse registry as established in N.J.S.A. 9:6-8.11, which may be released to a person or agency outside the Department's Division of Child Protection and Permanency or **Institutional Abuse Investigation Unit** only as prescribed by law.

...
 "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.

...
 "Multidisciplinary team" means an investigation and case management team comprised of professionals from law enforcement, medicine, child protective services, mental health[,] and substance abuse[,] identification and treatment, and a core service provider from a regional diagnostic and treatment center.

...
 "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.

...
 "Regional diagnostic and treatment center" or "center" means [one of four] a regional diagnostic and treatment center[s], 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.

...
 "Risk assessment" means a structured process [for determining] **that uses a tool to determine** the likelihood that the alleged child victim will be abused or neglected in the future.

"Safety assessment" means a structured process [for determining] **that uses a tool to determine** whether the alleged child victim is in imminent danger of harm.

...

3A:10-1.4 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

3A:10-2.1 When an investigation is required

(a) (No change.)

(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] **Instruction 6400.01**, incorporated herein by reference, as amended and supplemented, and this chapter.

1. U.S. Department of Defense [Directive 6400.1] **Instruction 6400.01** is available for download from the Department of Defense's website,

<http://www.dtic.mil/whs/directives/corres/dir.html> http://www.esd.whs.mil/Portals/54/Documents/DD/dodm/640001m_voll.pdf?ver=2018-03-16-083539-267.

(c) (No change.)

3A:10-[2.3]2.2 (No change in text.)

3A:10-[2.4]2.3 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. 3A:10-2.2]:

1.-5. (No change.)

(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. 3A:10-2.2(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.-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] **abuse**:

1. (No change.)

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

3. Obtain, for each allegation [listed in (c) above as well as for an allegation of substantial risk] of sexual [injury] **abuse**, a statement from a mental health professional, which does or does not corroborate behavioral or emotional problems when the child's emotional or behavioral problems are used to corroborate the information used to make the finding.

(d) The child protective investigator shall, in completing an investigation [of a report containing one or more allegations specified in N.J.A.C. 3A:10-2.2(a) and (b)], obtain circumstantial evidence [which] **that** identifies the most likely perpetrator if multiple alleged perpetrators are identified.

SUBCHAPTER 3. CHILD PROTECTION INVESTIGATION PROCESS FOR LOCAL OFFICE INVESTIGATIONS

3A:10-3.1 Requirements for an investigation

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

(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/DCF-law-enf-protocol.pdf> <https://www.nj.gov/oag/dcj/pdfs/DCF-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] **abuse**.

(d) (No change.)

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

1.-2. (No change.)

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.-10. (No change.)

11. Interview each [physician and advanced practice nurse] **medical professional** 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] **each medical professional** who has seen the alleged child victim; and

13. (No change.)

3A:10-3.2 Safety assessment and risk assessment for local offices

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

(d) The child protective investigator shall, in the event that a factor [which] **that** makes the child unsafe has been identified, develop and implement a safety **protection** plan to assure the child's safety with the parent or caregiver. If the safety **protection** 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. 3A:10-6.2. If a safety **protection** 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.

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

3A:10-4.1 Requirements for an IAIU investigation

(a) (No change.)

(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] **abuse**.

(c)-(e) (No change.)

3A:10-4.2 Safety assessment for IAIU cases

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

(c) The Department representative shall, in the event that a factor [which] **that** 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] **Department representative** shall remove the alleged child victim from the home or institution, in accordance with N.J.A.C. 3A:10-6.2.

SUBCHAPTER 5. SPECIALIZED ASSESSMENT AND
INVESTIGATION

3A:10-5.1 Referral of cases to a prosecutor

(a) [State law] **N.J.S.A. 9:6-8.10** 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] **Each child protective investigator** is 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] **the child protective investigator** refers 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] **that**, in the judgment of the [caseworker] **child protective investigator** and supervisor, warrants review by the prosecutor.)

1.-6. (No change.)

(c) (No change.)

(d) This [policy] **chapter**, 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] **child protective investigator** has any information about the case [which] **that** 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] **chapter** and the [caseworker] **child protective investigator** has reason to believe that the condition or injury was not accidentally caused.

1. In some cases, such as where the child is in a hospital and a doctor states his or her opinion that the condition or injury was probably not accidental, the [caseworker] **child protective investigator** will have sufficient information to require a report at a very early stage of the investigation. In other cases, such as where evidence initially supports the claim that the condition or injury was accidentally caused, the duty to report may not arise until a later point when the [caseworker] **child protective investigator** has conducted a more extensive investigation.

2. [Thus, referral] **Referral** need not be made at the time a report is first received by the Department even if the report provides information to place the case in one of the categories set forth in [this policy] **(b) above**. This information should be supported by the belief of the [caseworker] **child protective investigator**. This does not mean that the [caseworker] **child protective investigator** must have completed an investigation and secured solid evidence of abuse or neglect. Rather, cases falling within these categories must be referred at the point at which the [caseworker] **child protective investigator** has some suspicion that the child's condition or injury probably was not accidentally caused.

(f) Immediate, prompt referrals of abuse or neglect cases are important, and in some cases essential. [Hence, written] **Written** referrals on a Department-specified form [which] **that** contains a narrative description of the essential facts, shall be sent to the prosecutor as soon as the [caseworker] **child protective investigator** determines that referral is required by this [policy] **chapter**. 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] **chapter**, specific procedures for making referrals [which will include participation of supervisory personnel in identifying] **to identify** cases that this [policy] **chapter** 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.

3A:10-5.2 Department recommendations to prosecutors

(a) When referring a case to the prosecutor, the [caseworker] **child protective investigator** may already have information sufficient to arrive at a preliminary conclusion concerning the need for investigation by a law enforcement agency. This conclusion will be based on the standards **set forth** in this [policy] **chapter**. A recommendation, and **the** underlying reasons therefor, will be communicated to the prosecutor at the time the case is referred.

(b) Recognizing that the [caseworker] **child protective investigator** may have already conducted a preliminary investigation of the case, that the [caseworker] **child protective investigator** has some experience and expertise enabling him or her to assess the need for action by the prosecutor, that in some cases efforts already made to ameliorate the underlying problems may be undermined by the initiation of a police investigation, and that the [caseworker] **child protective investigator** is also in a position to identify cases in which immediate action by a law enforcement agency is required, the prosecutor shall give due consideration to the recommendations of the Department. If the prosecutor determines to investigate a case notwithstanding a contrary recommendation by the Department, he or she should discuss the matter with the [caseworker] **child protective investigator**, his or her supervisor, or the local office liaison before initiating the investigation.

3A:10-5.3 Response by prosecutors

(a) In order to facilitate communication with the Department and coordinate handling of abuse and neglect cases, each county prosecutor [will] **shall** 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] **shall** delegate to one or several investigators, **the** responsibility for conducting all investigations in abuse and neglect cases.

(b) (No change.)

(c) After investigating a case, the prosecutor [will] **shall** determine whether criminal prosecution must be undertaken. He or she should confer with the [caseworker] **child protective investigator** in making this

determination and will advise the [caseworker] **child protective investigator** of his or her decision.

3A:10-5.5 Coordination of a child protection investigation

(a) Each child protective investigator shall, when conducting a child protection investigation of a report in which law enforcement, a regional diagnostic and treatment center, a child advocacy center, medical and psychological personnel, or a multidisciplinary team is involved, participate in the coordination of the following activities:

- 1.-3. (No change.)
- (b) (No change.)

SUBCHAPTER 6. SERVICES AND REMOVAL DURING INVESTIGATION

3A:10-6.3 Information provided to parent, caregiver, and relative

(a) (No change.)
 (b) A child protective investigator shall immediately:

1. Serve, or attempt to serve, written notice upon the parent, caregiver, or [chief administrator] **employee** of an institution from which the child was removed, whenever a child has been taken into protective custody pursuant to N.J.S.A. 9:6-8.16; and

2. (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. 3A:11-1.6[(b)](c).

SUBCHAPTER 7. FINDINGS AND DOCUMENTATION

3A:10-7.1 Informing the alleged child victim, caregiver, and temporary caregiver about the investigation

(a) (No change.)

(b) When an investigation is conducted in an institution, and any child, other than the child **that is the** subject of the investigation, is interviewed without the knowledge and consent of the parent, the Department shall not be obligated to notify the parents of those children of the investigation[, except when abuse or neglect is substantiated and that child was abused or neglected].

(c) (No change.)

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

1. That a report has been made, the nature of the allegation, and that an investigation will be conducted;

2.-3. (No change.)

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

3A:10-7.6 Notification of finding

(a) The Department representative shall provide notification of the finding to those persons specified in (c) [through], **(d), and** (e) below. The Department representative 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 has determined that notification of the investigation findings to persons in (c) [through], **(d), and** (e) below, would interfere with the litigation.

1. (No change.)

2. The Department representative shall provide written notification by either personal service or regular and certified mail to the perpetrator of each substantiated **or established** allegation.

3. (No change.)

(b) The child protective investigator shall notify persons specified in (c) [through], **(d), and** (e) below of the finding no later than 10 days from the date upon which the Department made a finding [of substantiated or unfounded,] unless for good cause approved by a supervisor.

(c) The child protective investigator shall advise each person identified as a perpetrator in a report of substantiated **or established** abuse or neglect that:

1. He or she has been identified as a [confirmed] perpetrator of abuse or neglect;

2. (No change.)

3. He or she shall have an opportunity to dispute a finding of **either** substantiated **or established** abuse or neglect, in accordance with N.J.A.C. 3A:5.

(d) (No change.)

(e) The child protective investigator shall advise the following people that the investigation has been completed and the finding of the investigation, upon completion of the investigation:

1. (No change.)

2. The parent with whom the **alleged child victim** normally resides;

3.-4. (No change.)

3A:10-7.8 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. (No change.)

2. The parent with whom the **alleged child victim** normally resides; and

3. (No change.)

[(b) The child protective investigator shall advise each alleged child victim of the following information, upon completion of the investigation:

1. That the investigation has been completed;

2. The finding of the investigation; and

3. What efforts will be made to protect him or her from further harm and how such protection will occur.]

[(c)] **(b)** The child protective investigator shall advise each alleged child victim of the [information specified in (b) above,] **completion of the investigation** in a manner determined to be consistent with, and appropriate to, the alleged child victim's age, condition, and ability to understand the basis for the Department's involvement; the alleged child victim's ability to cope with the information; and the alleged child victim's ability to participate in the development, discussion, or implementation of the case plan pursuant to N.J.S.A. 9:6-8.10a(c).

Recodify existing (d)-(e) as **(c)-(d)** (No change in text.)

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

1.-7. (No change.)

8. A summary of the circumstances of the incident, including a description of the [child's] **child victim's** injuries, if any, and a statement about the severity of the incident;

9.-10. (No change.)

[(g)] **(f)** (No change in text.)

[(h)] **(g)** 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 **(d) and** (e) [and (f)] above.

[(i)] **(h)** (No change in text.)

SUBCHAPTER 8. EXPUNCTIONS

3A:10-8.1 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. 3A:10-8.2, pursuant to N.J.S.A. 9:6-8.40a, unless one of the exceptions listed in N.J.A.C. 3A:10-8.3 exists. A record scheduled for expunction shall be expunged [in its entirety] **of identifying information regarding the alleged perpetrator.**

(b) (No change.)