

Regulatory Analysis Form		This space for use by IRRC RECEIVED 99 FEB 18 PM 3:41 BUSH IRRC Number: 1928	
(1) Agency Department of Public Welfare			
(2) I.D. Number (Governor's Office Use)			
(3) Short Title Protective Service Regulations			
(4) PA Code Cite Title 55 Pa. Code, Chapter 3490 (relating to Child Protective Services – Child Abuse)		(5) Agency Contacts & Telephone Numbers Primary Contact: Joseph L. Spear 787-3986 Secondary Contact: Lee W. Miller 787-3984	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input checked="" type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. It is the purpose of these regulations to assure the safety of children; encourage more complete reporting of suspected child abuse; to involve local law enforcement agencies in responding to child abuse; and to establish protective services in each county for the purpose of investigating reports of suspected abuse and neglect swiftly and competently, providing for protection of children from further abuse and providing rehabilitative services for children and parents. It is also the purpose of this chapter to provide for investigations of reports of suspected abuse of students by school employees and screen applicants for employment in schools to determine whether or not the applicant has a prior history of abusing children. It is also the purpose of this chapter to establish a training and certification program for all county children and youth agency staff who provides protective services to children.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The legal base of this chapter is the following statutory provision: <ol style="list-style-type: none"> (1) Article VII and IX of the Public Welfare Code (62 P.S. §§ 701 – 774 and 901 – 922). (2) Chapter 63 of 42 Pa. C.S. (relating to the Juvenile Act). (3) Section 2168 of the County Code (16 P.S. § 2168). (4) Section 405 of the County Institution District Law (62 P.S. § 2305). (5) The CPSL, Chapter 63 of 23 Pa. C.S. §§ 6301-6385 (relating to the Child Protective Services Law). 			

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The regulations are mandated by the CPSL, Section 6348 (relating to regulations) which reads:

§ 6348. Regulations

The Department shall adopt regulations necessary to implement this chapter.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The compelling public interest is the need to protect children from abuse by their parents and others entrusted with their care. In 1997 in Pennsylvania over 5,600 children were abused by their parents or other individuals responsible for their care.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

The consequences of non-action are that more children will be abused and more children will die as a result of abuse. It has only been within the last 35 years that society has begun to pay attention to the needs of abused and neglected children. We must continue to strengthen services and programs to protect children. In a society of ever increasing domestic violence and drug and alcohol abuse, we must protect not only this generation of children from abuse but future generations of children because violence begets violence where victim becomes predator not only against children but also against adults. Empirical data documents that the majority of violent adult offenders were abused as children. These regulations amend existing regulations.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Abused children and children in need of general protective services and their families will benefit from these regulations. School students will also benefit from these regulations. Approximately 100,000 children and their families will benefit from these regulations. Children will be protected as a person applying for employment in schools have to be screened by the Statewide Central Register to determine whether or not the person is named as a perpetrator of child abuse or as a person responsible for injuring or sexually abusing a student in school. Persons named in a founded report of child abuse or student abuse are prohibited from employment in a public or private school.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

No one will be adversely affected by these regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The persons, businesses and organizations that will be affected by this regulation are: county children and youth agencies; person whose occupation brings them into contact with children; school employees; coroners; law enforcement officials; directors of hospitals; staff of the Department of Public Welfare; child care personnel; prospective adoptive and foster parents; designated county officials and private agencies; and individuals providing services to abused and neglected children.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

These regulations are the direct result of Act 151 of 1994 and Act 10 (SS1) of 1995 which amended the CPSL. Input for the development of these regulations was provided by: the Pennsylvania Children and Youth Administrators, Inc.; the Pennsylvania State Education Association; the School District of Philadelphia; the Pennsylvania Federation of Teachers; the Children, Youth and Family Council of the Delaware Valley; the Pennsylvania Council of Children's Services; and the administrators of Erie, Westmoreland, Philadelphia, and Allegheny County Children and Youth Agencies.

The Department received comments from members of the General Assembly, Independent Regulatory Review Committee, Juvenile Court Judges' Commission, staff of public and private social services agencies, public children and youth agencies, and organizations associated with the educational system.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

These regulations require an applicant for a job in a school to pay up to \$10 to the Department of Public Welfare to verify whether or not the applicant's name is on file in the Statewide Central Register of founded and indicated reports of child abuse and student abuse. We received an additional 107,478 requests from individuals requesting ChildLine clearance for employment in schools in 1997. The current cost per applicant is \$10, thus total cost to applicants for employment in schools was \$1,074,780 in 1997. We estimate a 10% increase per year. Please see question number 20.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The County Code and Institution District Law mandates counties to establish programs to protect children from abuse and neglect from their parents. The Public Welfare Code provides that counties and state share in the costs of these programs. The costs to the counties to implement the provisions of Act 151 of 1994 are shown in the table in question 20.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The County Code and Institution Law mandates counties to establish programs to protect children from abuse and neglect from their parents. It further requires the counties and state share in the costs of these programs. The costs to the State to implement the provisions of Act 151 of 1994 are shown in the table in question 20.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.
(amounts are in thousands)

	Current FY* 1998-99	FY +1 1999-00	FY +2 2000-01	FY +3 2001-02	FY +4 2002-03	FY +5 2003-04
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community	\$1,182	\$1,301	\$1,430	\$1,574	\$1,731	\$1,904
Local Government	1,902	3,936	4,074	4,217	4,364	4,517
State Government	7,607	15,746	16,297	16,867	17,457	18,068
Federal Government	2,340	4,844	5,013	5,189	5,370	5,558
Total Costs	\$13,031	\$25,827	\$26,814	\$27,847	\$28,922	\$30,047
REVENUE LOSSES:						
Regulated Community	N/A	N/A	N/A	N/A	N/A	N/A
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(20a) Explain how the cost estimates listed above were derived.

COSTS:

A. Regulated Community:

In Calendar Year 1997 ChildLine received an additional 107,478 requests for a clearance statement because of the requirement that applicants for employment in schools be screened by ChildLine to determine whether or not their name is on file for abusing a child. We estimate that the number of requests will increase by 10 percent a year.

B. Local Government:
Please see attached.

C. State Government:
Please see attached.

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Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.
(amounts are in thousands)

Program	FY -3 1995-1996	FY -2 1996-1997	FY -1 1997-1998	Current FY 1998-1999
County Child Welfare				
State	\$264,743	\$354,863	\$398,740	\$403,619
Federal	459,508	448,570	407,293	453,534
Total	\$724,251	\$803,433	\$806,033	\$857,153

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

A major emphasis of these regulations is to keep children safe in their own homes, whenever possible. Therefore, the immediate benefits are to assure safety of children and prevent placement children in out-of-home care, which is more costly than in-home services. When it is necessary to place children away from their own home, they are placed in the least restrictive setting to assure their safety and the safety of the public.

The benefits are also measured in terms of reducing human suffering for this generation of children and future generations of parents and children which cannot be measured in dollars and cents. We know that our prisons are filled with persons who were abused as children; we know that many individuals turn to drugs and alcohol as a result of being abused and we know that the majority of children who were victims of abuse go on to victimize others. If we protect today's children, we save untold suffering for children and families and millions of dollars in the future.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The CPSL mandates the Department to promulgate regulations. Other alternatives, e.g., Departmental bulletins and guidelines, are not binding and there is no way to enforce them. If we are going to improve protection to abused and neglected children, we must promulgate regulations in order to have the authority to enforce the duties placed on the county agencies.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

There are no other regulations to consider. There are the only regulations that implement the CPSL to protect abused and neglected children.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The issue of competitive advantage or disadvantage with other states is not applicable to these regulations. The regulations are required by statute and are promulgated to protect abused children and those children in need of general protective services.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. A) The regulations amend Title 55 Pa. Code, Chapter 3490 (relating to child protective services regulations – child abuse); and

B) The regulations rescind Title 55 Pa. Code Chapter 3480 (relating to child protective services – general).

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

There were no public hearings held. Input and review of the draft regulations occurred during the developmental and proposed stages of amending these regulations.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

School administrators will be required to complete a portion of a form and send it to the district attorney and law enforcement official when making a report of suspected student abuse.

The law enforcement official will be required to complete the other portion of the form and send it to the county agency when the law enforcement official receives a report of suspected student abuse.

The law enforcement official will also be requested to complete a brief form and send it to the county agency advising the agency of the legal status of a referral of suspected child abuse or student abuse that was made to the law enforcement official.

Attached are copies of the CY 47-D and the CY 73.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

There are no provisions in these regulations to meet the special needs of those affected by these regulations. These requirements are found in other laws and regulations which address the operation of the affected agencies and programs.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulations become effective upon publication in the Pennsylvania Bulletin as final rulemaking.

(31) Provide the schedule for continual review of the regulation.

The CPSL requires the Department to submit an annual report to the Governor and General Assembly on the implementation of the law and with any recommendations from the Secretary of the Department to amend the CPSL.

COSTS:

Local and State Government

(1) The counties received an additional \$15,166,682 between FY 1995-96 and FY 1997-98 to implement the provisions of the act that went into effect in those years. The provisions that went into effect between FY 1995-96 and FY 1997-98 include investigating cases of imminent risk of suspected serious physical injury or sexual abuse; investigating cases of suspected serious bodily injury or sexual abuse of students allegedly perpetrated by a school employe; and implementing a risk assessment process to determine the level of risk to a child if the child remains in the home where the alleged abuse occurred.

The allocations were:

- FY 1995-96 - \$3,010,500
- FY 1996-97 - \$5,545,091
- FY 1997-98 - \$6,611,091

(2) The estimate for FY 1998-99 is based on a supplemental increase for January 1999 through June 1999 for implementation of these final rules, which are anticipated to be finalized in January of 1999. The estimate is calculated based on half of the total estimated increase for FY 1999-00 less the 3.5 % cost of living increase.

(3) The estimate for FY 1999-00 is based on increased county and state costs associated with implementing the additional requirements in these final rules to:

- provide general protective services;
- see children weekly when they remain in their own homes and are at high risk of further abuse;
- visit the homes of children at least once during the investigation or assessment period;
- investigate reports of suspected child abuse for persons between the age of 18 and 20 when the alleged abuse occurred before the person reached 18 years of age; and
- convene a county's Multidisciplinary Team when the county agency receives reports of suspected child abuse where the children are the victims named in substantiated reports of child abuse previously.

The estimated increased costs for FY 1999-00 is based on the Department's knowledge and experience with the county agencies in their implementation of the requirements in the final form rules listed above.

The Department's estimated increase was based on our review of funds certified for counties in their FY 1998-99 budgets for in-home services.

(4) The estimates for FY 2000-01 through 2003-04 include an annual increase of 3.5% of the total increased allocations to county agencies for the implementation of the CPSL from FY 1995-96 through 1999-00.

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#14-441

REPORT OF SUSPECTED STUDENT ABUSE
 (CHILD PROTECTIVE SERVICE LAW TITLE 23 PA SA CHAPTER 63)

INSTRUCTIONS TO SCHOOL EMPLOYEE AND ADMINISTRATOR

A SCHOOL EMPLOYEE WHO HAS REASONABLE CAUSE TO SUSPECT, ON THE BASIS OF PROFESSIONAL OR OTHER TRAINING AND EXPERIENCE, THAT A STUDENT COMING BEFORE THEM IS A VICTIM OF SERIOUS BODILY INJURY OR SEXUAL EXPLOITATION BY A SCHOOL EMPLOYEE, SHALL IMMEDIATELY REPORT THAT SUSPICION TO THE ADMINISTRATOR. THE ADMINISTRATOR SHALL REPORT THE SUSPICION IMMEDIATELY AND PROVIDE A COPY OF THIS REPORT TO LAW ENFORCEMENT OFFICIALS AND THE APPROPRIATE DISTRICT ATTORNEY. (IF THE ACCUSED SCHOOL EMPLOYEE IS THE ADMINISTRATOR, THEN THE SCHOOL EMPLOYEE WHO HAS THE SUSPICION SHALL MAKE THIS REPORT.)

1. NAME OF STUDENT (Last, First, Middle Initial)		SOC. SEC. NO.	BIRTHDATE	SEX <input type="checkbox"/> M <input type="checkbox"/> F
ADDRESS (Street, City, State & Zip Code)			COUNTY	
2. MOTHER (Last, First, Middle Initial)		SOC. SEC. NO.	BIRTHDATE	TELEPHONE NO.
ADDRESS (Street, City, State & Zip Code)			COUNTY	
3. FATHER (Last, First, Middle Initial)		SOC. SEC. NO.	BIRTHDATE	TELEPHONE NO.
ADDRESS (Street, City, State & Zip Code)			COUNTY	
4. AGENCY OR LEGAL GUARDIAN		SOC. SEC. NO.	BIRTHDATE	RELATIONSHIP TO CHILD SEX <input type="checkbox"/> M <input type="checkbox"/> F
ADDRESS (Street, City, State & Zip Code)		COUNTY	TELEPHONE NO.	
5. NAME OF SCH EMPL SUSPECTED OF ABUSING STUDENT		SOC. SEC. NO.	BIRTHDATE	RELATIONSHIP TO CHILD SEX <input type="checkbox"/> M <input type="checkbox"/> F
HOME ADDRESS (Street, City, State & Zip Code)		COUNTY	TELEPHONE NO.	
SCHOOL ADDRESS (Street, City, State & Zip Code)				
NATURE OF ALLEGED OFFENSE (INCLUDE ANY SPECIFIC COMMENTS OR OBSERVATIONS THAT ARE DIRECTLY RELATED TO THE ALLEGED INCIDENT, THE INDIVIDUALS INVOLVED, AND THE SPECIFIC LOCATION OF THE INCIDENT).				
COUNTY WHERE ALLEGED INCIDENT OCCURRED			DATE OF INCIDENT	

REPORTING SOURCE (CONFIDENTIAL)			
NAME	TITLE	SCHOOL FACILITY OR LEO	
ADDRESS	TELEPHONE NUMBER	DATE OF REPORT	

INSTRUCTIONS TO LAW ENFORCEMENT OFFICIALS

YOUR INITIAL REVIEW GIVES EVIDENCE OF SERIOUS BODILY INJURY OR SEXUAL ABUSE OR SEXUAL EXPLOITATION, CALL THE COUNTY AGENCY IN THE COUNTY WHERE THE ABUSE OCCURED. FORWARD A COPY OF THIS FORM, ALONG WITH ANY OTHER INFORMATION YOU HAVE GATHERED IN WRITING TO THE COUNTY AGENCY WITHIN 48 HOURS. PLEASE NOTIFY THE COUNTY AGENCY OF THE RESULTS OF YOUR INVESTIGATION, SUCH AS ANY ARRESTS, CHARGES, OR CONVICTION (PLEASE USE FORM CY-LEO).

FOLLOW-UP ON CHILD ABUSE REFERRAL

INSTRUCTIONS TO LAW ENFORCEMENT OFFICIAL: Please provide updated information to county children and youth agencies so they may complete their records regarding joint investigations of child abuse and student abuse perpetrated by school employees. This is in accordance with the Child Protective Services Law, Chapter 63 of 23 Pa. C.S.A. (relating to the Child Protective Services Law) §§ 6346(d) and 6353.1(b) (4). Please forward within 15 days of the event or change.

TO:
 _____ County Agency

FROM:

CHILD'S NAME:		PERPETRATOR'S NAME:	
ADDRESS:		ADDRESS:	
DATE OF BIRTH:	SOCIAL SECURITY NUMBER:	DATE OF BIRTH:	SOCIAL SECURITY NUMBER:

1. WAS A CRIMINAL INVESTIGATION UNDERTAKEN?
 Yes No If "Yes" please answer #2 below.

2. WERE CHARGES FILED AS A RESULT OF INVESTIGATION?
 Yes No If "Yes" please specify charges.

3. RESULTS OF CRIMINAL PROSECUTION

Guilty Not Guilty Please specify offense(s)

Nolo Contendere: Please specify offense(s)

Other:

COMPLETED BY:

TITLE:

MUNICIPALITY:

DATE:

TELEPHONE:

FACE SHEET
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LEGISLATIVE SECRETARY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

BY: _____
(Deputy Attorney General)

Date of Approval

Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Public Welfare

(Agency)
LEGAL COUNSEL: Myra Proach

DOCUMENT/FISCAL NOTE NO. #14-441

DATE OF ADOPTION: _____

BY: Feather O. Houston

TITLE: Secretary
(Executive Officer, Chairman or Secretary)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies.

Howard G. Burt

10-15-98
Date of Approval

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney General approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

1. DEPARTMENT OF PUBLIC WELFARE
2. OFFICE OF CHILDREN, YOUTH AND FAMILIES
3. [55 Pa. Code, Chapters 3480 and 3490]
4. Protective Services

PREAMBLE

Statutory Authority

The amendments are adopted in Annex A under the authority of Articles VII and IX of the Public Welfare Code (62 P.S. §§ 701-774 and 901-922); 42 Pa.C.S. §§ 6301-6365 (relating to the Juvenile Act); section 2168 of the County Code (16 P.S. § 2168); section 405 of the County Institution District Law (62 P.S. § 2305); and Chapter 63 of 23 Pa.C.S. §§ 6301-6385 (relating to the Child Protective Services Law),

Notice of proposed rulemaking was published at 28 Pa.B. 1079 on February 21, 1998.

Purpose of Regulations

It is the purpose of this chapter to:

- encourage more complete reporting of suspected child abuse; to involve law enforcement agencies, as permitted by this chapter, in responding to child abuse; and to establish protective services in each county, for the purpose of investigating reports swiftly and competently;
- protect children from further abuse and provide rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate;
- ensure that each county children and youth agency establishes a program of general protective services for children; to assess the risk of harm to a child and respond adequately to meet the needs of families and children who may be at risk and to prioritize the response and services to children most at risk;
- provide for investigations of reports of suspected abuse of students by school employes and screen applicants for employment in schools to determine whether or not the applicant has a prior history of abusing children. The requirement to screen applicants for employment in schools is a new requirement and is in addition to the requirement to screen applicants for employment in child care agencies; and
- establish a training and certification program for all county children and youth agency staff who provide direct services to children who need protective services and for persons who supervise direct service workers.

Need for Regulation

These amendments are needed to implement the act of December 16, 1994 (P.L. 1286, No. 151) (Act 151) and Act 10 of 1995 Special Session (SS1), to clarify and amend existing regulations and to rescind Chapter 3480 (relating to child protective services - general).

Requirements

a. Section 3490.4 (relating to definitions) adopts the Child Protective Services Law (CPSL) definition of *child abuse* in the regulations to:

1. Require the county children and youth agencies to investigate recent reports of suspected serious physical injury, and reports of imminent serious physical injury or sexual abuse or exploitation that are reported within two years of the date the alleged abuse occurred.

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

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

b. Section 3490.34 (relating to pending complaint file) adopts the CPSL requirement that unfounded reports are expunged from the State and county files within 120-calendar days from when the report was received at ChildLine. Founded and indicated reports are expunged from the Statewide central register when the child turns 23 years of age. However, except for the identity of the child, information on founded and indicated reports of child abuse and student abuse are maintained indefinitely when the Social Security Number or date of birth of the perpetrator of child abuse or the school employe who abused the student is known.

c. Section 3490.39 (relating to expunction from the Statewide central register) adopts the CPSL requirement for the Department to establish a subfile of the names of perpetrators of indicated and founded reports of child abuse and student abuse in the Statewide central register when the Social Security Number or date of birth of the person responsible for the abuse is known. These reports remain on file indefinitely.

d. Section 3490.56 (relating to the county agency investigation of suspected child abuse perpetrated by persons employed or supervised by child-care services and residential facilities) adopts the CPSL requirement that child-care agencies and residential facilities develop and implement a plan of supervision or make alternative employment arrangements for the individual under investigation as the alleged perpetrator when the child is allegedly abused by an employe of the agency or facility. The plan must be approved by the county agency.

e. Sections 3490.61 (relating to supervisory review and child contacts) and 3490.235 (relating to services available through the county agency for children in need of general protective services) require the county agency supervisor to review reports of suspected abuse that are under investigation and reports that are being assessed to determine the need for general protective services to ensure the safety of the child and the progress made toward reaching a status determination. These sections also require the county agency to assure that contacts are made with the child and parents as often as necessary for the protection of the child but no less often than once a week when the child is in a high-risk status.

f. Section 3490.105(a) (relating to request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995) adopts the CPSL requirement that perpetrators named in indicated reports of child abuse who seek to have the report amended or expunged to request the Secretary of DPW to amend or expunge the report within 45-calendar days of the mailing date of the notice from ChildLine.

g. Section 3490.108 (relating to cooperation of county agencies and law enforcement agencies) adopts the CPSL requirement that county agencies and law enforcement officials must, to the extent permitted by law, cooperate and coordinate their investigations of reports of suspected child abuse. The CPSL was amended to require county agencies to report certain types of child abuse to law enforcement officials.

h. Section 3490.109 (relating to report from law enforcement agencies) adopts the CPSL requirement that law enforcement agencies must notify the county agency if a criminal investigation has been undertaken and the results of the investigation and prosecution on child abuse reports referred to them by the county agency. Prior to Act 151, county agencies were required to notify law enforcement officials of certain instances of suspected child abuse. However, there was no requirement for law enforcement officials to notify the county agency of the results of the referrals.

i. Sections 3490.131 - 3490.137, under the center heading Verification of The Existence of Child Abuse and Student Abuse Records for School Employes, adopt the CPSL requirements that administrators of schools must require all applicants for positions as school employes, including independent contractors and their employes who have contact with children, to submit a clearance statement from the Statewide central register. The Statewide central register is the state repository of all founded and indicated reports of child abuse and student abuse. A clearance determines if the applicant's name is on file as a perpetrator of child abuse or student abuse. An administrator or independent contractor of a school may not hire an applicant if the applicant is a perpetrator named in a founded report of child abuse or student abuse.

j. Sections 3490.141 - 3490.193, Subchapter B (relating to abuse of students in school) adopt the requirements of the CPSL regarding reporting and investigating reports of suspected serious bodily injury or sexual abuse or exploitation of a student by a school employe. School administrators are required to report suspected student abuse to the district attorney and local law enforcement officials. The law enforcement official is required to investigate the allegation and to report the suspected student abuse to the county agency if the official has reasonable cause to suspect that the child was abused by a school employe. The county agency is required to investigate the report to determine whether the report is a founded, indicated or unfounded report of student abuse.

k. Section 3490.192 (relating to request for a hearing from a school employe for indicated reports of student abuse) adopts the CPSL requirement that a person responsible for the abuse in an indicated report of student abuse has the right to request the Secretary of DPW to amend or expunge the report within 45 calendar days of the mailing date of the notice from ChildLine.

l. Sections 3490.201 - 3490.242, Subchapter C (relating to general protective services) adopt the CPSL requirement that each county agency must administer a program of general protective services for children who have been assessed as needing such services to prevent abuse, neglect and exploitation. The goal of general protective services is to: keep children safely in their own homes when possible; overcome problems that result in dependency; provide temporary substitute care; reunite children safely with their families, whenever possible, when children have been placed in out-of-home care; provide permanent legally assured homes for children who cannot return home; and provide services for children adjudicated dependent at section 6341 of the Juvenile Act.

General protective services are defined as "services to prevent the potential for harm to a child". A definition of "potential for harm" was added for clarity. It is defined as: "likely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning". The term does not include imminent risk as defined in the definition of "child abuse" in section 3490.4 (relating to definitions).

This subchapter requires county agencies to receive and assess reports of children alleged to be in need of general protective services. The subchapter establishes those services that county agencies must have available for children in need of general protective services and their families both during and after the assessment. It establishes recordkeeping procedures and procedures for notifying persons named in reports alleging the need for general protective services. It provides procedures for persons to appeal the decision of the agency to provide services to the child and family. Previously, county agencies provided general protective services under Chapter 3480 (relating to child protective services - general). These regulations rescind Chapter 3480 regulations.

k. Sections 3490.311 - 3490.314, Subchapter D, Staff Orientation, Training and Certification Requirements, adopt the requirement of the CPSL that the Department establish a training and certification program for county agency staff who provide direct services. County staff who had regular employment status on June 30, 1996, were grandfathered in and not required to complete any of the required training courses. Staff hired on or after July 1, 1996, are required to complete 120 hours of CORE training and be recommended by the person's supervisor for certification. Staff who are not certified as direct service workers may not provide protective services. The regulations also require annual training for direct service workers. The certification requirements will ensure that all direct service workers have met minimum training requirements and have been approved by the county agency as certified direct service workers.

Section 3490.314 requires persons who supervise direct service workers to complete a supervisory training program which is approved by the Department in consultation with a steering committee composed of State and County staff.

l. Sections 3490.321 and 3490.322, Subchapter D, Risk Assessment, adopt the CPSL requirement that the Department and the county agencies must establish a State-approved risk assessment process to aid in determining the amount of risk to a child if the child remains in the child's own home or is returned home from placement. The county agencies began using a single State-approved risk assessment process on July 1, 1997.

m. Section 3490.361 (relating to requirement for agencies providing protective services) was added by the Department to require private agencies providing protective services arranged by the county agency to comply with requirements in sections 3130.21(4) (relating to responsibilities of county executive officers), 3130.39 (relating to services and facilities which may be used) and section 3130.40 (relating to delivery of services through other service providers) to assure that children covered by the CPSL and this chapter receive services provided by agencies and facilities licensed by the Department.

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

o. Section 3490.401 (relating to intercounty transfer of cases) contains requirements relating to the transfer of information from one county to another county when the child or parents move to another county and the case is being investigated for suspected child abuse, being assessed for general protective services or was previously accepted by a county agency for protective services.

Affected Individuals and Organizations

The amendments will affect children and youth and their families, as well as, public and private children and youth agencies, law enforcement officials, school employes, and persons whose employment, occupation, or practice of their profession bring them into direct contact with children, and persons seeking employment in a child-care service.

Accomplishments/Benefits

All children deserve to grow up in safe, nurturing homes. Sadly, many are victims of child abuse and neglect. It is a problem that has devastating effects on children and families in our Commonwealth. While substantial progress has been made in addressing this problem, we continue to look for ways to improve the program. These final regulations have addressed issues and remedies identified by the Pennsylvania State Legislature, the Department, county agencies, and other practitioners in implementing the CPSL since its enactment on November 26, 1975 and amendments enacted December 16, 1994.

The Department has found that the development of a quality children and youth work force is critical to the child protection program in the Commonwealth. These final rules address that

issue. As required by the CPSL, these final rules provide for initial and ongoing training and certification of all county personnel providing protective services for children. Persons who are not certified may not perform these functions.

Additionally, caseworkers need adequate and appropriate tools to do the job. As required by the CPSL, these final rules have established requirements for the statewide implementation of a State-approved risk assessment process. This process must be used in every investigation or assessment made by county protective service workers and at least every six months thereafter. Assessments are also required when a child is being returned home and within 30 days prior to closing the case.

The risk assessment process is not a substitute for education, experience, training, supervision or good judgment. It is an important tool that assures uniform application of validated criteria as an aid in decision making. Likewise, it must be used to inform agency planning when children may be at risk of further abuse. To this end, these final rules have established a requirement that case plans for children in need of protective services reflect the level of risk determined by the county agency for each case. Supervisory oversight of this requirement has been established by these final rules.

An effective child protection program provides for frequent contact with children who are at high risk of abuse by caseworkers assigned responsibility for these cases. Recent inquiries into tragic child deaths in the Commonwealth by the General Assembly and the Department have documented the need for such contact. To that end, these final rules have established a requirement that children be seen as often as necessary for their protection but no less frequently than once a week as long as they remain at high risk of abuse. The Department contends this requirement will further assure the safety of children in the Commonwealth. It is also an existing practice by many counties. These contacts may be made by county agency caseworkers or by persons under contract with county agencies.

The Commonwealth child protection program cannot assure that children will always be safe, but it must be vigilant in protecting children from repeated abuse. In response to comments received, these final regulations have raised the threshold of intervention for repeated cases of child abuse by requiring multidisciplinary team reviews where a child has been the victim of one substantiated incident of child abuse and the receipt of a subsequent report of suspected child abuse rather than the prior requirement of three such reports. This requirement affirms that child protection is not just a function of county agencies but must be addressed by the broader community.

The CPSL provides for the sharing of case information among county agencies. These final regulations have further implemented this provision of the CPSL by requiring information sharing and cooperation between counties. The need for information sharing and cooperation between counties arises when families with children in need of protection move across county lines, sometimes to avoid detection. In other instances, the subjects of reports may reside in multiple counties and cooperation is needed to complete investigations/assessments. These final rules have provided procedures for counties to follow when families move from one county to another, whether or not a specific new address of the family is known. These final rules also require accommodation by all counties of requests by those counties assigned responsibility for completion of investigations of reports of suspected child abuse or assessments of the need for general protective services. Cooperation across county lines is critical to the protection of children and cannot be simply left to negotiation between counties.

The amendments to the CPSL, by the Act of December 16, 1994, (P.L. 1286, No. 151) (Act 151) for the first time, established a program of general protective services in State law. The CPSL requires that the Department define "general protective services" by regulations. The Department's proposed definition of "general protective services" includes activities and services arranged and/or provided for neglected children. These final rules have been revised to clarify the definition of "general protective services" to be consistent with the broad purpose of the CPSL to protect the rights, welfare, and safety of children so that they have the opportunity for healthy growth and development and to assist parents in recognizing and remedying conditions harmful to their child and in fulfilling their parental duties in a manner that does not put the child at risk. This clarification is a recognition that children may be at risk, not only as a result of the acts or failure to act of their parents, but also because of their own behavior. The definition of general protective services is clarified to acknowledge conditions leading to dependency as defined by the Juvenile Act. Alleviation of these conditions is included as necessary to provide essential care for children and assist parents with issues involving truancy and ungovernability. County agency assistance may be required to correct these conditions before seeking an adjudication of dependency.

General protective services are critical in preventing cases from escalating to serious child abuse, dependency or delinquency. Success with these services results in less intrusive and less costly services.

The Department has incorporated other important revisions directly from the CPSL into the final regulations. These revisions are already a matter of public policy and the Department has added them to establish context and continuity in the final regulations. These provisions included expanding the definition of "child abuse" to include imminent risk of abuse; requirements relating to abuse of students in schools; and requirements relating to the reporting of suspected child abuse.

Public Comments

Written comments, suggestions and objections were solicited within a 30-day period after the publication date.

Discussion of Comments

Major Comments

§ 3490.43. Issuance of bulletins.

Comment: Seven commentators, including IRRC, requested clarification related to the issuance of bulletins for the dissemination of practice standards; several inquired if implementation of these standards would be mandatory and binding. Requests were made for inclusion of the standards in regulation and the need for advance notification with the opportunity for public comment. Several commentators stated that these standards should not be implemented as a result of performance audits in specific counties but across the Commonwealth.

Response: The Department deleted the section referencing issuance of bulletins. The Department has the authority to issue statements of policy to communicate policy, including the interpretation of regulation, through the issuance of bulletins in accordance with 55 Pa. Code section 9.12. The Department, in conjunction with the Pennsylvania Children and Youth Administrators, is developing practice standards to strengthen the child welfare system throughout the Commonwealth. These standards will be made available to county agencies to improve the quality of services to children and families and exceed the requirements of these regulations. The Department will incorporate these practice standards in the training program. The Department expects the development of these standards to be completed by July 1999. Statewide distribution and training would begin with implementation in the year 2000.

The CPSL at section 6342(b) grants the Secretary or a designee the power to direct a performance audit of any activity engaged in pursuant to the CPSL. Specific action necessary to correct a condition identified as a result of a finding in a performance audit will be shared with the county agency in order

to fulfill the Department's and the county agency's duties under the legal base at section 3490.3. The Department will assure compliance with any recommendations made to the county agency which will improve child safety and protection.

§ 3490.61. Supervisory review and child contacts.

Comment: Six commentators, including IRRC, raised concern related to the fiscal impact associated with weekly contact with children who are deemed at high risk of abuse. Several requested clarification specifying who is required to make these contacts. Commentators also raised concern related to caseload size and the inability to meet these increased demands. Several commentators requested statistics on the number of high-risk children identified within the Commonwealth.

Response: The Department reviewed the comments and amended the regulation to provide clarification that the county agency will assure that the child is seen either directly by the worker or through a purchase of service. Children who are at high risk of abuse or neglect must be seen once a week to assure the safety of the child and that the level of services provided to children and families should be consistent with the level risk to the child. This regulation could result in some increased fiscal demands for those county agencies where this is not a current practice. The county agency is required to see the child no less than every 180-days to fulfill its casemanagement responsibilities. Child safety is paramount. County agencies through the needs-based budget process may request additional resources for the implementation of this regulation. The cost to implement this regulation will be based on the existing level of service already being provided to high-risk children. It is expected that some county agencies are already attempting to meet this standard.

The number of high-risk children throughout the Commonwealth would be difficult to project given that the current nature of these reports and the number of children changes frequently.

§ 3490.223. Definitions.

Comment: Seven commentators, including IRRC, raised concern related to the definition of general protective services as the focus was limited to neglect. Several commentators requested the inclusion of services to children who are truant and ungovernable as defined by the Juvenile Act. One commentator requested clarification of the difference between the definition of neglect as defined in general protective services and neglect as defined relating to child abuse.

Response: The Department reviewed the comments and considered the need for a definition of general protective services which clarifies the broad purposes of the subchapter. There are two purposes at section 3490.222: to protect the rights, welfare, and safety of children so that they have an opportunity for healthy growth and development and to assist parents in recognizing and remedying conditions harmful to their child and in fulfilling their parental duties in a manner that does not put the child at risk. In order to effect these purposes, the Department made changes to acknowledge that without intervention these conditions could lead to dependency as defined by the Juvenile Act. Conditions, including truancy and ungovernability, should be assessed and if identified would make a child eligible for general protective services. The correction of these conditions is necessary to provide essential care for children and to assist parents.

The addition of a definition of "potential for harm" clarifies the definition of general protective services, requiring that general protective services are needed because without such intervention, a detrimental effect on the child's health, development or functioning is likely. Provision of general protective services will also prevent cases from escalating to reports of child abuse.

§ 3490.401. Intercounty transfer of cases.

Comment: Four commentators, including IRRC, recommended the inclusion of regulatory language which provides detailed requirements when a family moves to another county and there is no specific address for the family. Commentators raised concern that the regulation as proposed did not adequately protect children.

Response: The Department concluded that the additional requirements will aid in the protection of children. The Department included language which provides requirements for both the referring county and the receiving county when the family's address is unknown. The provision requires both the referring and receiving agency make attempts to locate the family. There must be contact with the agencies who may have knowledge of the family's location. The Department enumerated persons and entities who must be contacted including schools, post offices, medical personnel, county assistance offices and persons who are known to have knowledge of the family. High-risk children must be seen within 24 hours at their new residence to assess the current level of risk. The Department requires communication between county agencies and notification by the receiving county to the referring county of the attempts made to locate the family and the status of the investigation.

Discussion of comments:

PROTECTIVE SERVICES

INTRODUCTION

§ 3490.4. Definitions.

Comment: IRRC requested an explanation of the decision making process when accepting cases for service. Another commentator recommended the regulations include accept for service criteria.

Response: Child welfare in Pennsylvania is a county-administered system. The determination of service provision at the county level must not fall below state and federal statute and regulation. The definition of "accept for service" is the threshold that indicates when a county agency determines that involvement with a family is warranted based on the level of risk and the potential for harm to a child.

Comment: Commentators, including IRRC, requested clarification regarding the inclusion of the clinical nurse specialist and the registered nurse in the definition of certified medical practitioner.

Response: The Department amended the definition of certified medical practitioner to include a licensed physician's assistant and a certified registered nurse practitioner (CRNP), however, declined to include clinical nurse specialists (CNS). This decision was based on the fact that CNS are not certified by the Commonwealth. Certified registered nurse practitioners are licensed as registered nurses and certified by the State Board of Nursing under the rules and regulations jointly promulgated by the State Boards of Nursing and Medicine.

Comment: Several commentators raised concern regarding the deletion of the definition of organized church or religious denomination in the definition of child abuse. Persons may not be deemed as perpetrators of child abuse if they have withheld medical or surgical care as a result of religious beliefs consistent with a bona fide religion. One commentator failed to recognize the deletion of the definition of recognized church or religious denomination and commended the Department for including the clarification.

Response: The Department deleted the definition of recognized church or religious denomination as recognized for tax purposes by the United States Internal Revenue Service because there are a number of groups who are otherwise bona fide who religious doctrine precludes them from obtaining Internal Revenue

Service certification. The Department did not further clarify the definition of bona fide religion so as not to exclude any form of recognized religion. Religious beliefs are potentially so very diverse as to preclude necessary and sufficient criteria.

Comment: One commentator viewed the definition of ChildLine as a clerical function with the purpose of receiving and maintaining reports and questioned the authority of ChildLine workers to assign reports if the county agency does not feel that the allegations meet the definition for a child protective services investigation.

Response: The Department made no functional changes to the definition of ChildLine. In the proposed regulations, the definition of ChildLine was modified to include receipt of reports of student abuse.

Comment: One commentator raised concern related to the reference of the Department supervising the county agency. The commentator suggested that the word supervised be changed to monitored in the definition of county agency.

Response: The Department adopted the statutory definition of county agency.

Comment: IRRC suggested the Department use the statutory definition of deviate sexual intercourse as the current regulatory definition differs from the statute.

Response: The Department adopted the statutory definition deviate sexual intercourse.

Comment: IRRC raised concern regarding the difference between the regulatory and statutory definition of forcible compulsion.

Response: The Department adopted the statutory definition of forcible compulsion.

Comment: IRRC raised concern that the definition of a founded report differed from the statutory definition.

Response: The Department adopted the statutory definition of founded report.

Comment: IRRC noted that the definition of indicated report differs from the statutory definition.

Response: The Department adopted the statutory definition of indicated report.

Comment: Two commentators, including IRRC, raised concern regarding the definition of individual residing in the same home as the child. IRRC commented the definition deviates from the statute while the second commentator requested timeframes be provided to define residency.

Response: The Department adopted the statutory definition of individual residing in the same household as the child.

Comment: One commentator expected further clarification of the definition of imminent risk and was concerned about the lack of regulation when other areas appear strictly regulated.

Response: The Department considered the comment but did not change the regulation. The Department provides training to county agency workers through the certification of direct service workers. The Department intends to reconvene a task force to address issues related to imminent risk and will provide further guidance through the training program.

Comment: IRRC advised that the definition of person responsible for a child's welfare differs from the statutory definition.

Response: The Department adopted the statutory definition of person responsible for a child's welfare.

Comment: IRRC commented that the definition of protective services in regulation differs from the statutory definition.

Response: The Department adopted the statutory definition of protective services.

Comment: IRRC advised that the definition of required reporter differs from the statutory definition. One commentator offered to aid the Department by informing those required reporters in their department of the change from reasonable cause to believe to reasonable cause to suspect that a child has been abused.

Response: The Department added optometrist to the list of those persons required to report as this was inadvertently deleted from the regulation. The Department added psychologist to the enumeration of those required to report abuse as a clarification of mental health professional. Psychologists frequently conduct evaluations of children and parents which are used by the county agency in determining the need for services and the most appropriate modality for treatment.

Comment: IRRC commented that the definition of serious mental injury differs from the statutory definition. Another

commentator further suggested that clinical nurse specialists be given the ability to diagnosis serious mental injury rather than limiting it to a physician or licensed psychologist.

Response: The Department adopted the statutory definition of serious mental injury. The Department cannot include clinical nurse specialists as the statute limits those authorized to determine serious mental injury to physicians and licensed psychologists.

Comment: IIRC commented that the definition of serious physical injury deviates from the statutory definition.

Response: The Department adopted the statutory definition of serious physical injury.

Comment: IIRC supported the use of the statutory definition of sexual abuse as the regulatory definition deviates from the statutory definition. One commentator suggested that language be added to clarify that acts by the perpetrator that are committed for the purpose of sexual gratification should include those that cannot be reasonably explained except for the purpose of sexual gratification. This would aid in the ability to substantiate reports as sexual gratification can be difficult to prove.

Response: The Department adopted the definitions from the Crimes Code when applicable. In addition, the Department clarified the terms "sexual abuse" and "exploitation."

Comment: IIRC advised that the term "sexual exploitation" is used in regulation; however, it is not defined. They recommended the use of the statutory definition and that the term be used consistently in regulation.

Response: The Department deleted references to sexual exploitation except from the definition of child abuse. The term "exploitation" is included under the definition of sexual abuse.

Comment: One commentator requested that a definition of student be added so that persons are able to differentiate between student abuse and child abuse throughout the regulation.

Response: The Department defined student in Subchapter B, section 3490.143. This subchapter specifically pertains to student abuse. The definition of student was, therefore, not included in Subchapter A which specifically relates to child protective services.

Comment: IIRC suggested the Department use the statutory definition of subject of the report in regulation.

Response: The Department adopted the statutory definition of subject of the report.

Comment: One commentator suggested that the term "substantial evidence" be changed as it may be confusing and recommended conformance to case law. They recommended the definition be changed to "evidence which so preponderates in favor of a conclusion that it outweighs in the mind of a fact finder any inconsistent evidence and reasonable inference drawn." The commentator cited Mortimore v. Pennsylvania Department of Public Welfare, 697 A.2d 1031 (1993).

Response: The Department adopted the statutory definition of substantial evidence. The decision in Mortimore v. Pennsylvania Department of Public Welfare, 697 A.2d 1031 (1993), pre-dates amendments to section 6303 of the CPSL.

Comment: IRRRC commented that the definition of unfounded report differs from the statutory definition and recommended conforming to the statutory definition.

Response: The Department adopted the statutory definition of unfounded report.

§ 3490.5. Waivers.

Comment: Subsection (a). IRRRC noted that the language in this subsection is vague in that it does not provide guidance on the content of petitions, timeframe for action, or where waiver requests are to be submitted. They recommended that specific provisions be included in regulation.

Response: The Department issued procedures for county agency waiver requests and will not include the specific procedural requirements in the regulation. These procedures are periodically subject to revision and are similar to others promulgated children and youth regulations.

Comment: Paragraph (b) (4). IRRRC concurred with one commentator who advised that the proposed regulation appears to allow the Department to authorize a violation of Federal statute or regulation or a State statute. They recommended that the language be amended to clearly state that the provision does not allow violation of either Federal or State statute or regulation.

Response: The Department did not intend to imply the Secretary could authorize violation of Federal statute or regulation or State statute. The Department made the recommended language change which does not allow granting waivers that

violate or condone noncompliance with Federal statute or regulations or State statute.

Comment: Sections 3490.5(b)(2), (b)(3), and (d) use the term "agency." IIRC recommended using the term "county agency" to be consistent with the definitions.

Response: The Department adopted the term "county agency" throughout the regulation.

REPORTERS

§ 3490.11. Reporting suspected child abuse.

Comment: One commentator suggested that clarification be provided in this section to include language that persons, other than school employes, who suspect student abuse shall report the suspected student abuse to the school administrator as defined in section 3490.143.

Response: The Department included language that persons other than school employes, including independent contractors, who have reasonable cause to suspect student abuse shall report the suspected student abuse to the school administrator as defined in section 3490.143. The administrator does not have the authority to screen reports of suspected student abuse and shall immediately report the alleged student abuse to law enforcement officials and the appropriate district attorney as required by section 6352(a)(2) of the CPSL.

§ 3490.13. Reports by employes who are required reporters.

Comment: Subsection (a) and (b). IIRC raised concern about the interim step for required reporters who are employed in an institution, school, facility, or agency which requires notification to their superior of suspected abuse. The superior then notifies ChildLine. Section 6313 of the CPSL does not require a mandated reporter to notify their superior; however, section 6352 does require school employes to notify the administrator regarding suspected student abuse. Confusion could result for required reporters who do not come under the definition of school employee under the statute. IIRC recommended that clarification be provided to clarify who must report to an administrator. There was further concern noted that it would appear that two calls to ChildLine are required for one incident of suspected child abuse as section 3490.12 requires the required reporter to call ChildLine.

Response: The Department added language to clarify that two calls to ChildLine are not mandatory. Section 6311(c) of the CPSL requires staff of institutions, school, facilities, or

agencies to report cases of suspected child abuse to the person in charge. Two calls to report suspected child abuse may result if the reporter first provides the report to the county agency because required reporters are mandated to report to ChildLine. The requirements for reporting suspected student abuse to the administrator are provided in Subchapter B.

§ 3490.14. Privileged Communication.

Comment: IRRC and one commentator noted that the exception to required reporters relating to confidential communications to members of the clergy was not included in regulation.

Response: The Department made the necessary change to the regulation which provides exemption of reporting confidential communications made to ordained members of the clergy.

§ 3490.15. Taking a child into protective custody.

Comment: Paragraph (a) (2). IRRC commented that the provision allowing a person designated specifically in writing by the director of a hospital or medical facility to take protective custody of a child to protect the child was omitted from regulation. Another commentator requested the inclusion of a certified clinical practitioner as a person authorized to take protective custody of a child.

Response: The Department amended the regulation to include the person designated by the director as a person authorized to take protective custody of a child. Certified clinical practitioners cannot be added to those enumerated as having the authority to take protective custody of a child. Section 6315 of the CPSL does not include certified clinical practitioners as having the authority to take protective custody of a child unless designated by the director of the hospital or medical facility as having this authority.

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

Comment: Two commentators requested the ability to withhold the child's whereabouts from parents, guardians or other custodians absent a court order when providing this information would present a danger to the child or substitute caretaker.

Response: The Department considered the comment but did not change the regulation. This section relates to persons who take a child into protective custody and their need to notify the parent, guardian or other custodian of the child's whereabouts within 24 hours. The county agency does not have statutory authority to take protective custody of a child absent a court

order and therefore would be excluded from this section. The county agency is required in section 6315(f) of the CPSL to convene a conference with the parent, guardian or other custodian of the child within 48 hours and provide information explaining the reasons for detention, as well as the child's whereabouts at that time. The county agency would need to include the request for withholding the child's whereabouts in an emergency placement petition to the court with the supporting rationale for withholding this information.

§ 3490.21. Release of information on prior abuse reports.

Comment: A commentator recommended expanding the enumeration of persons who may request information from the county agency on prior abuse involving the child being examined to include practitioners other than physicians.

Response: The Department amended the enumeration of persons who are authorized to request prior abuse information to include the person designated by the director of a hospital or medical facility. The Department cannot enlarge the statutory list. Information may be provided to these practitioners if they have been so designated by the director.

DEPARTMENTAL RESPONSIBILITIES

§ 3490.31. Receipt of Reports.

Comment: IIRC and another commentator questioned the Department's authority to refuse reports when persons are over the age of 18. The CPSL does not place a time limit on reports of serious mental injury, sexual abuse or serious physical neglect as long as the incidents occurred when the person was under the age of 18. IIRC further recommended the language be changed to indicate that the Department already has established a Statewide toll-free number.

Response: The Department reviewed the comments and deleted the last sentence of the regulation which would limit referrals to investigation of reports of suspected child abuse when the child was less than 18 years of age at the time of the report. The Department will implement the practice of receiving reports for incidents occurring when the child victim was under the age of 18 which are reported until the age of 20. This provision is consistent with statutory language mandating the investigation of recent acts for physical abuse and imminent risk. Recent act is defined in the CPSL at section 6303 as an act or omission that occurred within two years of the date of the report to the Department or the county agency. The Department will accept reports of sexual abuse, serious physical neglect and serious mental injury until the victim is age 20 without regard to the

term "recent" as it is not found in the CPSL at section 6303(b). The Department will refer persons over the age of 20 alleging child abuse to law enforcement officials. In making this decision, the Department relied on the purpose of the CPSL at section 6302(b), which is designed to protect children, rehabilitate to ensure the child's well-being and to preserve, stabilize, and protect the integrity of family life, whenever appropriate. The Department corrected the verb tense regarding the establishment of a Statewide toll-free number.

§ 3490.32. ChildLine reporting to the county agency.

Comment: IIRC and another commentator raised concern regarding the lack of guidance to county agencies when they are unable to agree upon who is responsible for cases of suspected child abuse. The lack of timeframes for coordination while trying to meet the mandated timeframes of seeing the child and completing the investigation may jeopardize child safety. As proposed, when county agencies are unable to agree who is responsible for the case, the regional office would resolve the difference. A commentator suggested that ChildLine make the determination of county agency responsibility. Another commentator requested the option of having responsibility for a report within their county when multiple counties are involved rather than just the county where the most recent suspected abuse occurred.

Response: The Department recognized the need for clarity regarding the involvement of numerous county agencies and included language to assure that investigations are completed within the timeframes mandated by the CPSL at section 6368. The Department accepted the suggestion that ChildLine determine the county agency responsible for investigation of reports when county agencies are unable to agree. ChildLine will continue to assign reports to multiple counties when there is more than one location of abuse if requested by a county agency. The county where the most recent incident occurred will have primary responsibility for investigation of the report.

The Department included language in section 3490.55(j) which requires county agency cooperation to complete child abuse investigations. When the child and family are in a county other than the county responsible for the investigation of the report, the county where the subjects are located must perform the duties of the investigation if requested by the county responsible for the investigation. If a county agency seeks assistance from another county agency to complete an investigation, the agency must assist as required by section 3490.55. This process is consistent with section 6334(a) of the CPSL which requires cooperation.

§ 3490.33. Files.

Comment: A commentator requested that the Department clarify whether statistics in the annual Child Abuse Report include unfounded reports. The commentator also inquired if unfounded reports are reviewed during licensing inspections for the purpose of determining the reason the report was unfounded. The commentator advised that the question arises as a result of the difference in the rate of substantiation among county agencies.

Response: The annual Child Abuse Report prepared by the Department includes information relating to the number of unfounded reports received. However, a majority of the focus is on the substantiation of reports. The Department does review the decisions of the county agency in unfounded reports during the annual licensing inspection. The review is limited to those unfounded reports on file that are awaiting expunction.

§ 3490.33. Files.; 3490.34. Pending complaint file.; 3490.35. Statewide central register.

Comment: IRRC commented that these three sections discuss the same files; however, the discussion is broken into separate sections. This requires the reader to view two sections to understand the content of and procedures for pending complaint files and for the Statewide central register. IRRC recommended that the Department consider consolidation of these sections.

Response: The Department maintained the three separate sections to provide clarification of the purpose of each file. The files of the Department are subject to mandatory audit by the Attorney General to ensure these files are maintained appropriately and therefore a clear definition of each file is necessary.

§ 3490.35. Statewide Central Register.

Comment: IRRC and another commentator requested clarification of the reference to ChildLine entry of reports "if there is sufficient documentation to justify entry into the Statewide Central Register." Commentators were concerned that ChildLine would determine that reports would not be entered into the register if the Department determines that there is insufficient information.

Response: The Department reviewed the comments and amended the regulation to clarify the need for complete information in the Statewide central register. It is not the intent of the Department to change the determination of the county agency but to ensure the entry of complete information.

§ 3490.40. Notifications regarding indicated reports.

Comment: A commentator agreed that the change from "right to services" to "services available" from the county agency should result in a clearer articulation of the supportive services that a family can obtain; however, the family's right to services should not be diminished in light of the forthcoming changes in the "reasonable efforts" requirements under the Adoption and Safe Families Act (ASFA), Pub.L. No. 105-89 (amending Titles IV-B and IV-E of the Social Security Act). The notice should also be clear about the subject's right to service.

Response: The Department reviewed the comment and returned to the original language which provides notice to subjects of the report of their right to services.

§ 3490.42. Performance audit and reviews.

Comment: IRRC and numerous commentators requested the Department clearly define the required documentation and the reasons that would be acceptable in allowing child abuse reports to go beyond the 30-day time requirement.

Response: The Department considered the comment but did not change the regulation to provide a listing of reasons for exceeding the 30-day time requirement for child abuse reports. The Department cannot compile an inclusive listing and will provide direction through interpretive guidelines. Acceptable reasons for exceeding the 30-day time requirement would include awaiting the receipt of medical or psychological reports.

COUNTY RESPONSIBILITIES

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

Comment: One commentator questioned the language change from "deemed" to "determined" when referencing that no child shall be determined to be abused based solely on injuries that result from environmental factors that are beyond the control of the person responsible for the child. The commentator believed that the statement indicated a higher standard for substantiation. Two commentators questioned the inclusion of this paragraph in that it was redundant. This portion of the definition of child abuse was included in the section while the remaining components of the definition were excluded.

Response: The Department reviewed the comments and deleted subsection (d) from the regulations.

§ 3490.54. Independent investigation of reports.

Comment: One commentator supported the provision allowing the county agency to rely on the law enforcement finding rather than conducting its own investigation which would reduce the need for multiple investigations and interviews.

Response: The Department considered the comment but did not change the regulation. The intent of the regulation is to enable county agencies to use the law enforcement investigation to support its finding when the allegations are substantially the same. It does not give the county agency the authority to not conduct an investigation. The first sentence of the regulation announces the requirement that the county agency conduct an investigation and make an independent determination. Section 6368(a) of the CPSL requires the county agency to immediately commence an appropriate investigation, see the child immediately if emergency protective custody is warranted or if safety cannot be determined, and to otherwise see the child within 24 hours. The Department supports cooperation and coordination between law enforcement officials and county children and youth agencies. The conducting of joint investigations and interviews will reduce both the number of interviews and the amount of trauma to children.

§ 3490.55. Investigations of reports of suspected child abuse.

Comment: IRRC and other commentators recommended the inclusion of the statutory provision requiring the county agency provide or arrange the services necessary to protect the child during the investigation period.

Response: The Department accepted the comment and amended section 3490.53(b) to include the provision of section 6368(a) of the CPSL which requires services be provided or arranged during the investigation period when necessary to ensure the safety of the child.

Issue: Commentators raised concern with the requirement to conduct a home visit during a general protective service assessment when responding to section 3490.235. During review of these comments, the Department noted no similar provision was required for child abuse investigations. The Department believes that in order to conduct a thorough child abuse investigation, the county agency must see the child and visit the child's home during the investigation period; therefore, this requirement has been included in regulation. Although reports may not indicate a need to see the child's home, the county agency must assess the condition of the home in order to complete the risk assessment process. The Department further recognized that the presenting problem may not be an isolated issue and it is during the course

of the investigation that the family dynamics are identified and evaluated.

Comment: One commentator suggested that the Department include language similar to that in section 3490.172 that would require joint interviews for child abuse reports which is provided in reports of student abuse.

Response: The Department considered the comment but did not change the regulation. Section 6353.1(b)(2) of the CPSL states that law enforcement officials and the county agency shall conduct joint interviews of the student in reports of student abuse while section 6346(c) provides for cooperation and coordination to the fullest extent possible for cases of child abuse. The Department strongly encourages conducting joint interviews in cases involving child abuse, but the statute does not authorize the Department to require joint interviews.

Comment: Subsection (a). Two commentators questioned the need to see all children within 24 hours of the receipt of the report. Child abuse reports involving serious physical injury may be received based on allegations that occurred within two years and for sexual abuse, serious mental injury, and serious physical neglect there is no statute of limitations. The perpetrators in these cases may no longer be involved with the family or the incident could have occurred several years ago. It is suggested that at those times when the victim is over the age of 18, that the victim need not be seen within 24 hours.

Response: The Department considered the comment but did not change the regulation. Section 6368(a) of the CPSL requires that all children be seen within 24 hours of the receipt of a report of alleged child abuse. The Department would not require the county agency to see a victim over the age of 18 within 24 hours. When there are indications that an alleged perpetrator of a report where the victim is over the age of 18 would have contact with a child as defined in regulation at section 3490.4, the Department requires the county agency see those minor children within 24 hours.

Comment: Subsection (h). Several commentators raised concern that needed medical examinations where serious physical injury is indicated have not been incorporated into the current needs-based budgets.

Response: The Department notified the county agencies of this requirement and the need to include costs associated with these medical examinations in their needs-based budgets. The cost of these medical examinations may be covered through the HealthChoices program.

Comment: Subsection (f) and (g). One commentator questioned the language of these sections as they require the county agency to obtain color photographs and medical evidence or consultation whenever possible and appropriate. The commentator inquired whether the Department will question the county agency's determination of the appropriateness in these circumstances.

Response: The Department considered the comment but did not change the regulation and will provide direction through interpretive guidelines. Color photographs are necessary when children have visible injuries and medical evidence should support the agency determination in child abuse reports.

Comment: Subsection (h). A commentator suggested that the term "certified medical practitioner" be expanded to include registered nurses as school nurses often complete medical examinations when there is an indication of serious physical injury.

Response: The Department considered the comment but did not change the regulation. The Department recognizes that often school nurses have contact with children who are the subjects of abuse reports. However, they are not included in the definition of certified medical practitioner. They may not conduct the examination to determine that an injury meets the definition of serious physical injury under the statute. They will document injuries for reporting purposes and are required reporters.

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

Comment: Numerous comments were received concerning the need for the county agency to approve the safety plan of child care and residential facilities when investigating reports of child abuse within such facilities. Commentators perceived the Department as abdicating responsibility for licensing these facilities to the county agency. Several commentators felt that they were placed in awkward positions and that conflicts of interest may arise. There were also comments that not all child care facilities obtain ChildLine and State Police clearances because it is inconvenient. One commentator reported that investigation of these reports burdens the county agency and that county agencies have no jurisdiction over these facilities.

Response: The Department considered the comment but did not change the regulation. The county agency is required to investigate reports of suspected child abuse when the alleged perpetrator is employed by a child-care facility. It is during these investigations that the county agency would need to approve the safety plan developed to assure the safety of the children

within the care of the facility. The county agency is then required to submit the safety plan to the Department. The Department does not require the county agency to license the child-care facility. The Department would assume the responsibility to investigate these reports and to obtain the safety plan when the facility is an agent of the county agency as defined in section 3490.81 and section 6362(b) of the CPSL.

§ 3490.58. Notifications.

Comment: Subsection (a)(1). Several commentators requested clarification regarding the need to provide the alleged perpetrator with the specific allegations prior to the interview because a description may compromise the investigation. Commentators further requested the Department develop a uniform notification letter to the subjects of the report.

Response: The Department recognized that notification of specific allegations at the onset of the interview could compromise the investigation and revised the regulation. The initial notification may be limited to the existence of the report and type of suspected abuse. This will be confirmed in writing within 72 hours under section 3490.58(b). The Department will develop a model notification letter.

Comment: One commentator raised concern that reference is made to the right of the subjects to written notification of the existence of the report and a copy of the report. Clarification was requested of what information a subject may receive and requested a clear delineation of the confidentiality of the referral source.

Response: The Department referenced the confidentiality of the referral source throughout the regulations, specifically in sections 3490.37, 3490.91, 3490.94, and 3490.104. It also appears in section 6340(c) of the CPSL; therefore, there is no need for inclusion. The subjects of the report are entitled to copies of the Report of Suspected Child Abuse (CY-47), Child Protective Service Investigation Report (CY-48), and Child Protective Service Supplement Report (CY-49).

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

Comment: Subsection (b). Two commentators, including IRRRC, raised concern that when reports are unfounded and the agency determines that the family is in need of services, the county shall advise the family of social services available. The commentators were concerned that the county agencies may refuse to accept families for service when they have in fact determined that the family is in need of services. Clarification of the

Department's intent was requested. IRRC further requested that there be a cross-reference to services available through Subchapter C, General Protective Services.

Response: The Department amended the regulation to state that if the report is unfounded and the county agency determines that there is a need for services other than those services provided by the county agency, the county agency will notify the family of other services available.

§ 3490.60. Services available through the county agency.

Comment: One commentator expressed concern that the county agency may incur increased fiscal burdens as a result of being required to provide or arrange or otherwise make available the enumerated services for the prevention and treatment of child abuse and inquired if the Department would provide the resources necessary to provide these services. The commentator inquired if the county agency would need to develop self-help groups if there are none located in the county and whether the county agency would be responsible to incur medical expenses during the course of child abuse investigations.

Response: The Department adopted the regulatory language directly from section 6365 of the CPSL and therefore, made no changes to the regulation. The county agency is responsible for services that are deemed necessary to treat and prevent child abuse. If self-help groups would be the most effective treatment for families, the county would need to assure that those services are available to the family either directly, through purchase of service or by referral. Investigative medical expenses incurred, not covered through Medical Assistance, HealthChoices, insurance, or paid by the family would become the responsibility of the county agency as required by the statute.

Comment: Paragraph (3). One commentator suggested the inclusion of language in the section to allow participation in state or local child death review teams.

Response: The Department amended the regulation to permit participation in local or state child death review teams.

§ 3490.61. Supervisory review and child contacts.

Comment: Subsection (a). Four commentators, including IRRC, raised concern that the "ten day supervisory review" was deleted from regulation and replaced with "regular and ongoing basis." Commentators stated the regulation provides an unclear standard. A commentator stated the supervisor should review the case in the beginning of the investigation because it relates to child safety. Commentators requested further clarification on

whether notations made in the case record dictation would constitute the supervisory log.

Response: The Department acknowledged the need for clarity regarding regular and ongoing supervisory review and documentation and added requirements for reviews of these cases every ten-calendar days during the investigation period. The Department would accept notations made in the case record at ten-day intervals provided those notations address child safety and risk. This does not preclude supervisors from having a separate log.

Comment: *Subsection (b) (2) (ii).* Two commentators requested the term "oversight" be defined.

Response: The Department considered the comment but did not include a definition of the term "oversight." Oversight is a routine responsibility of supervision in assuring that the agency case management responsibilities are met.

Issue: *Subsection (f).* The Department included in the regulation that the county agency, as a provision of the family service plan require the parent to notify the county agency of any change of residence within 24 hours. This clarified regulation increases parental accountability and assures the safety of children by reducing the number of persons who elude county agency involvement.

§ 3490.62. Repeated child abuse.

Comment: IRRRC and one commentator raised concern that a multidisciplinary team is not convened until after three substantiated reports of child abuse. Commentators recommended that the multidisciplinary team be convened after two substantiated reports of abuse in an attempt to prevent future incidents of abuse and assure child safety.

Response: The Department accepted the recommendation and amended the regulation to require a multidisciplinary team review after one substantiated report of abuse and the receipt of a subsequent report of suspected child abuse. After the receipt of the subsequent report of suspected child abuse, the regulation requires a review of the family service plan by the administrator or a designee, the supervisor and the caseworker. The county agency must provide a recommendation to the multidisciplinary team related to the appropriateness of the plan and the need for additional services to protect the child.

§ 3490.65. Staffing and staff qualifications.

Comment: IIRC commented this section requires a county agency to have sufficient qualified staff and to be organized to perform the functions required by the statute. The section does not provide guidance on how this is to be accomplished or how it will be evaluated and recommended addition of a reference to section 3130.32 (relating to staffing requirements).

Response: The Department deleted this section and amended section 3490.341 which requires county agencies to have qualified staff to perform the functions required by the statute which includes a reference to section 3130.32 (relating to staffing requirements).

§ 3490.67. Written reports to ChildLine.

Comment: Subsection C. Three commentators raised concern related to the addition of "pending criminal court jurisdiction" as an interim disposition on reports of alleged child abuse. They advised that this would seem to hamper the criminal proceeding in that the District Attorney's Office would not be able to use the indicated disposition in the criminal proceeding and that defense attorneys would be able to use the lack of a disposition to their advantage. Commentators also believed that the potential for appeals within the criminal proceeding could lengthen the timeframe for the county's determination and would prohibit the county from developing a permanency plan as required by ASFA.

Response: The Department did not intend for the county agency to delay the status determination of a report if there was sufficient evidence for disposition. The Department amended the regulation for clarification. In cases when the county agency would be approaching the 60-day time limit and is unable to make a determination, the pending criminal court status could be utilized. The regulation does not preclude the county from making a determination if substantial evidence exists.

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

Comment: One commentator raised concern that the county agency must notify persons to whom they provided child abuse information of the need to expunge this information when the county agency is notified by ChildLine. The process of retrieving this information and providing the notification is potentially time consuming and a clarification was requested on whether the notification should be verbal or written.

Response: The county agency has discretion on the manner the notification is provided to persons required to receive notice. A county agency should develop an internal policy to efficiently implement a notice system.

Comment: Two commentators, including IRRC, advised section 6341 of the CPSL eliminates the sealing of reports and recommended the deletion of such reference.

Response: The Department included the reference to sealing of reports for reports that were received prior to the amendments of the CPSL in 1995. Reports received after July 1, 1995, would not be subject to sealing, as the amendments specifically deleted this from the CPSL at section 6341(a). It is the position of the Department that those prior to the amendments would be subject to sealing.

§ 3490.71. Guardian ad litem or court designated advocate.

Comment: One commentator inquired if the Department should determine a maximum age for which the guardian ad litem would determine the child's wishes.

Response: The Department considered the comment but did not change the regulation. There are numerous developmental variables included in the decision making process of representation of the child's wishes to the court which should not be unilaterally based on age.

Comment: Five commentators, including IRRC, recommended amending regulatory language that would allow cooperation of the county agency with both a guardian ad litem and a court designated advocate. As proposed, the regulation appeared to limit cooperation to one or the other. Commentators recommended the word "or" be changed to "and."

Response: The Department reviewed the comments and made the necessary change to the regulation to provide release of information to both the guardian ad litem and the court designated advocate.

CONFIDENTIALITY

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

Comment: Subsection (a)(1). One commentator advised that a guardian ad litem may release information obtained in the course of representing a child with persons who are not enumerated in regulation but are in need of the information. The language

relating to civil and criminal penalties for releasing such information should not apply to a guardian ad litem.

Response: The Department amended the regulation to exclude guardian ad litem from civil or criminal liability for release of information while representing children.

Comment: Subsection (a) (1). Two commentators expressed concern relating to the release of the name of the reporter. One commentator requested the term "legitimate" be defined. The remaining commentator advised that the release of the reporter's name places the agency in a precarious position in determining whether other agencies can assure the confidentiality of the reporter.

Response: The Department added language to the regulation that provides clarity. "Legitimate" was not defined but language was added that links the release of the reporter's name to child protection.

Comment: Subsection (a) (3). Five commentators recommended the term "or" be changed to "and" which would allow the release of child abuse information to both the guardian ad litem and the court designated advocate. One commentator further recommended that the Department include a definition of court designated advocate in regulation.

Response: The Department made the necessary regulatory change to allow for release of information to both the guardian ad litem and a court designated advocate. The Department added a definition of court designated advocate to the regulations at section 3490.4.

Comment: Subsection (a) (5). Two commentators stated that a written court request for child abuse information is not required by statute and is cumbersome. One of the commentators requested clarification of the reason the court must contact the Department.

Response: The Department included the provision requiring the written court request of child abuse records in order to authenticate the request. Requests made by telephone would be difficult to verify; however, the Department will accept requests from the court via facsimile. The regulation includes the specific documents available from the Department. ChildLine will forward written court requests for additional information not on file with ChildLine to the county agency administrator for compliance. Written court requests to the Department would include statewide child abuse reports while information at the county agency level may not include child abuse reports from other county agencies.

Comment: One commentator recommended the inclusion of District Justices in the enumeration of persons who may have access to child abuse information because this has been introduced in House Bill 1992.

Response: The Department considered the comment but did not change the regulation. The Department cannot include the release of information to District Justices because the statute does not currently allow for such a release. The Department will immediately implement any statutory changes and provide notice of amendment to county agencies.

Comment: *Subparagraph (a)(5)(ii).* One commentator suggested the regulation appears to unduly restrict custody courts to acquire all information maintained on a child or family by the county agency. The commentator also recommended the deletion of the second sentence of the subparagraph which provided for release of only the investigatory information.

Response: The Department deleted the second sentence of the subparagraph, thus allowing the court to receive all information from the county agency. This information is needed to ensure that all related information is available when making custody decisions for children to assure that the safety of the child is assured.

Issue: *Paragraph (a)(10).* The Department has added the word "immediately" to provide consistency with the section 6340 of the CPSL which requires the immediate referral of reports of child abuse to law enforcement officials.

Comment: One commentator recommended the addition of language which would allow members of a local or state child death review team access to confidential child abuse information.

Response: The Department concurred that members of child death review teams through the Department or county agency staff member should be granted access as a member of a multidisciplinary child death review team to confidential child abuse information. Paragraph (a)(17) was added to clarify this provision. The Department may release confidential information pursuant to the CPSL at section 6340(a)(1).

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

Comment: *Paragraph (b)(7).* Two commentators expressed concern with the requirement to complete the written referral to law enforcement officials on the next work day following the verbal report.

Response: The Department considered the comment did not change the regulation. The written referral to law enforcement officials within this timeframe is necessary so that they have the information in a timely manner to insure a thorough and efficient review.

Comment: *Subsection (c).* Two commentators advised that the regulation provides for inconsistent referrals to law enforcement.

Response: The Department considered the comment but did not change the regulation. Section 6340 of the CPSL authorizes the immediate referral to law enforcement officials of cases involving homicide, serious bodily injury, sexual abuse, or cases perpetrated by non-family members which are investigated by county agencies. The Department cannot include referral of reports not enumerated in the statute. It should be noted that when the alleged perpetrator is not a person responsible for a child's welfare, the county agency is required to immediately report the allegations to law enforcement officials.

Comment: One commentator recommended the Department devise a form for reporting referrals which do not meet the criteria for investigation by the county agency to law enforcement.

Response: The Department considered the comment but did not change the regulation. A form for reporting other allegations concerning child abuse to law enforcement agencies should be developed at the county level to meet the local law enforcement needs.

GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

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

Comment: Two commentators, including IRRC, advised that the provision of information to the District Attorney for dissemination to criminal defendants violates due process and section 6340(b) of the CPSL which allows for release of child abuse information to subjects of the report upon written request.

Response: The Department amended the regulation to provide for the release of child abuse information in the county agency's possession to the criminal defendant and the District Attorney.

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

Comment: IRRC and another commentator suggested the deletion of references to sealing of reports because section 6341 of the CPSL deletes the authority to seal reports.

Response: The Department considered the comment but did not change the regulation. Persons who were entitled to request sealing of reports prior to July 1, 1995, maintain this right.

Comment: Two commentators, including IRRC, inquired about the inclusion of the distinction of reports received prior to July 1, 1995.

Response: The Department differentiated between reports received prior to July 1, 1995, and those received after that date. Persons who were entitled to request the sealing of reports prior to July 1, 1995, maintain this right. Prior to the effective date of the amendments, fewer procedural safeguards existed to assure notice of a child abuse report.

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

Comment: Seven commentators expressed concern that non-perpetrator subjects are given the right to appeal unfounded reports. One commentator further stated that giving non-perpetrators appeal rights is an excessive and unreasonable right not afforded in criminal proceedings.

Response: The Department deleted the section to be consistent with section 6341(a) of the CPSL.

Comment: IRRC advised the regulation does not include a provision for notifying the county agency if a request for amending a report is granted.

Response: The Department deleted the section to be consistent with section 6341(a) of the CPSL.

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

Comment: Subsection (g). IRRC and two commentators expressed concern that the statute places the burden of proof in such appeals on the county agency while the regulation places the burden of proof on the perpetrator.

Response: The Department amended the regulation to place the burden of proof on the county agency. The Department deleted reference to the perpetrator bearing the burden of proof in such appeals.

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

§ 3490.124. Departmental procedures for replying to a request for verification.

Comment: One commentator supported the exemption of workfare participants from the payment of the fee for verifications.

Response: The Department did not amend the regulation based on support for this provision.

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

§ 3490.131. Definitions.

Comment: IIRC and two commentators requested clarification regarding the definition of administrator. IIRC advised the definition deviated from the statutory definition. Another commentator noted that the definition was limited in that governing bodies are responsible for hiring decisions, but normally delegate these responsibilities to other personnel.

Response: The Department adopted the statutory definition of administrator.

Comment: IIRC recommended use of the statutory definition of applicant. The regulatory definition refers to a person who applies for employment as opposed to the statutory definition that refers to a person who applies for a position.

Response: The Department amended the regulation to define an applicant as a person who applies for a position. However, the Department included a volunteer at a charter or regional charter school in the definition of applicant to be consistent with the Act of June 19, 1997 (P.L. 225, No. 22).

Comment: IIRC and two commentators requested clarification regarding the term "direct contact" with students. Further clarification was requested for the phrase "unsupervised access" within this definition.

Response: The Department considered the comment but did not change the regulation. A person who has contact with a student who is not supervised directly by a person with a clearance needs to be screened. This contact does not need to be scheduled contact and would apply to a person who has unsupervised contact with a child while in the school setting. This would include independent contractors the school would procure for all purposes. The intent of the requirement is focused on child protection.

Comment: Three commentators, including IRRC, raised concern related to the term "position." One commentator believed that the definition was too narrow and that persons who are administratively reassigned would need to receive a clearance statement. Although the regulation addresses this in section 3490.132, the commentator does not believe this foreclosed potential problems. Another commentator also believed the definition was too narrow but that the provisions of the statute addressed situations where employees move from one school or assignment to another which includes persons who transfer from one building to another. IRRC requested an explanation of the categories of employment which would be considered positions.

Response: The Department considered the comment but did not change the regulation. Persons who change job classifications would be required to be screened. The Department does not believe that the statute contemplates that persons be screened when they transfer from one school building to another, within the same school district, and have not changed job classification.

Comment: IRRC and two commentators recommended the inclusion of charter schools in the definition of public school.

Response: The Department amended the regulation to include charter schools in the definition of public schools.

Comment: IRRC requested clarification on the distinction between "employment" and "position" in the definition of the term "transfer."

Response: The Department through the definitions of "applicant" and "transfer" require an applicant who changes job classification to obtain a new verification of child abuse clearance statement. The term "position" is used consistently throughout the CPSL and regulation.

§ 3490.132. Responsibilities of an administrator.

Comment: Subsection (g). One commentator stated that the regulation seems inconsistent with the interpretation of

"position" and requires a substitute teacher provide a recent clearance check for each school where application is made for inclusion on the school substitute list.

Response: The Department considered the comment but did not change the regulation. A person employed by more than one school district must provide a verification of child abuse clearance statement to each school district.

§ 3490.133. Responsibilities of an applicant.

Comment: Subsection (a). IRRRC stated that the proposed regulation requires the fee for the clearance statement may not exceed \$10 and questions how an applicant will know what amount should be provided in the check or money order. The recommendation was made to add language which advises that applicant to submit the amount specified on the form. IRRRC noted the information on where to obtain and submit the form is located in section 3490.137 and suggested this information be incorporated into this section.

Response: The Department amended the regulation for clarity. The regulation provides that payment by a check or money order in the amount specified on the application be submitted to the Department. The Department incorporated section 3490.137 within this section which informs applicants where to obtain and submit the clearance forms. As a result of this change, the Department deleted section 3490.137.

§ 3490.134. Information relating to prospective school employes.

Comment: Subsection (a). IRRRC raised concern that the requirements are similar to the CPSL. However, the CPSL provides for exemption if one of the criteria are met.

Response: After discussion with IRRRC, the objection to the Department's interpretation of the statute was withdrawn.

Comment: Subsection (b). IRRRC advised that the proposed regulation includes allowing applicants to submit the request for clearance check within 24 hours of provisional employment. The statute requires that the employe demonstrates application prior to employment.

Response: The Department deleted the provision for application within 24 hours.

SUBCHAPTER B. ABUSE OF STUDENTS IN SCHOOL

INTRODUCTION

§ 3490.143. Definitions.

Comment: IIRC and one commentator suggested clarification be provided relating to the term "administrator." IIRC advised the regulation deviates from statute while the remaining

commentator suggested that in some schools, the principal may not be the person designated to report incidents of student abuse.

Response: The Department adopted the statutory definition of administrator.

Comment: IIRC advised the definition of school differs from the statutory definition in that intermediate unit or area vocational technical school was deleted from the regulatory definition.

Response: The Department adopted the definition of school used in section 3490.131.

SCHOOL RESPONSIBILITIES

§ 3490.151. Required reporting.

Comment: One commentator noted that school employes are required to report suspected student abuse on the basis of professional or other training and experience. The commentator identified importance of being able to properly make such a determination. The commentator believes the Department should provide adequate training and cooperate with school entities to aid personnel in recognizing the signs of child abuse.

Response: The Department considered the comment but did not change the regulation. The Department recognizes the need for training and will assist in the development of training material. The Department will work cooperatively with the Department of Education in training school personnel. County agencies also assist local school districts with this training.

§ 3490.152. Responsibilities of administrators and school employes.

Comment: Subsection (a). Two commentators, including IIRC, expressed concern with the language which requires school employes in certain cases to report suspected student abuse directly to law enforcement officials and the district attorney. Clarification was requested defining what "certain cases" school

employees would be required to report, other than when the administrator is the alleged perpetrator of the student abuse.

Response: The Department clarified the regulatory language requiring school employees to report suspected student abuse to law enforcement and the district attorney when the administrator is the alleged perpetrator.

Comment: Subsection (c). IIRC suggested the information on obtaining the form for reporting suspected student abuse be included in the regulation.

Response: The Department amended the regulation to provide direction on where to obtain the forms for reporting suspected student abuse.

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

Comment: Subsection (a). IIRC advised the information in reports of suspected student abuse is confidential and the statute enumerates who may receive this information. IIRC pointed out the regulation appears to include persons who are not authorized to obtain this information and those persons should be deleted. One commentator requested that guardian ad litem and court designated advocates be included as persons to whom this information may be provided.

Response: The Department amended the regulation to comply with the statutory authority of the CPSL at section 6352(a).

COUNTY RESPONSIBILITY

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

Comment: Subsection (b). IIRC recommended that the regulation include the information contained in the county agency's oral report to ChildLine.

Response: The Department added clarifying language which includes the required information when making oral reports of student abuse.

Comment: Subsection (d). IIRC raised concern related to reports that are not received by the Department within 60-calendar days from the date of oral report which are considered unfounded. It was recommended that the Department verify the report was unfounded to ensure the paperwork was not lost.

Response: The Department included clarifying language requiring ChildLine to contact the county agency to verify the report was not completed within 60-calendar days prior to expunction of the report.

Comment: *Subsection (f).* IRRC recommended changing the citation which references the submission of a new report when a final status determination is made. There is no reference to the child protective services investigation report form in subsection (a).

Response: The Department corrected the citation referencing subsection (e).

§ 3490.173. Notifications by the county agency.

Comment: IRRC advised the section provides for written notification to the subjects of the report within 72 hours of the oral notification of the rights regarding amendment and expunction. Section 6353.2(d) of the CPSL permits delaying the notice if the notification is likely to threaten the safety of the student or the county agency worker, to cause the school employe to abscond or to significantly interfere with the conduct of a criminal investigation while the regulation does not.

Response: The Department amended the regulation to include language which allows for delaying the notification pursuant to the CPSL at section 6353.2(d).

GENERAL REQUIREMENTS FOR STUDENT ABUSE

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

Issue: As a result of several comments received on related student abuse issues, the Department amended the regulation to provide consistency with the statutory requirement placing the burden of proof on the county agency in requests for hearings relating to appeals of the Secretary's decision to deny amendment and expunction of student abuse cases. A similar concern was raised regarding appeals relating to child abuse reports in section 3490.106.

SUBCHAPTER C. GENERAL PROTECTIVE SERVICES

COUNTY RESPONSIBILITIES

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

Comment: IRRRC inquired if the objectives have been outlined elsewhere and if the county agencies have the power and resources to fulfill the objectives.

Response: The Department used the objectives from section 6373 of the CPSL. The issue of resources will be addressed through the needs-based budgeting process. Training is available to county agencies to aid county agency staff in achieving the objectives. The Department and Pennsylvania Children and Youth Administrators (PCYA) are developing practice standards which will aid county agencies in achieving the objectives. The Department expects to distribute these standards to county agencies to begin implementation by the year 2000.

Comment: Paragraph (2). Three commentators requested the inclusion of the phrase "whenever possible" related to preventing abuse, neglect and exploitation of children.

Response: The Department considered the comment but did not change the regulation. The Department adopted the objectives in section 6373 of the CPSL.

Comment: Paragraph (3). Three commentators recommended the inclusion of the phrase "assist in overcoming" related to problems that could result in dependency.

Response: The Department considered the comment but did not change the regulation. The Department adopted the objectives in section 6373 of the CPSL.

Comment: Paragraph (4). One commentator recommended expanding the language to include kinship care as a substitute care placement.

Response: The Department included clarifying language to include placement with an individual who has a significant relationship with a child or the child's family and that the home must be approved by the county for this purpose which supports placement in the least restrictive setting and kinship care.

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

Comment: Subsection (a). One commentator advised that the regulation appears to limit the authority of the Juvenile Court to receive and any person to file a petition for adjudication of dependency under section 6334 of the Juvenile Act.

Response: The Department amended the regulation and cited the Juvenile Act provision that allows any person to file a petition alleging dependency.

Comment: Subsection (d). One commentator expressed concern that no timeframe for completing the initial assessment was included in the regulation and questioned whether this will become a licensing issue.

Response: The Department considered the comment but did not change the regulation. Response time for initial assessment should be directly related to risk. At the time a referral is accepted for service, the risk assessment screening process requires that a level of risk is assigned to the case. Consistent with the identified risk and the allegations of the report, the county agency would decide when to see the child. Some county agencies have devised a level system where the supervisor assigns the required time within which the child must be seen. The required response time is based upon child risk.

Comment: Paragraph (e)(3). One commentator suggested the addition of language calling for services that respond to risk, rather than simply aid in determining the need for services.

Response: The Department included clarifying language in paragraph (d)(4) to coordinate risk with the creation of a family service plan. The plan required under sections 3130.61 (relating to family service plans) and 3490.235 is properly cross-referenced to identify needed services. The level of services provided should be consistent with level of risk and should address child safety.

Issue: Paragraph (e)(4). The Department included language which requires the use of the risk assessment process in the development of the family service plan. This is related to the above-mentioned comment which suggests the level of service should respond to the level of risk to the child.

Comment: Subsection (f). Four commentators suggested that the completion of an assessment for reports of general protective services should be extended to 90 days. The commentators believed that the proposed time limit of 60 days is unrealistic.

Response: The Department considered the comment but did not change the regulation. Assessments need to be completed in a timely manner. Section 6375(c)(1) of the CPSL mandated the completion of an assessment within 60 days.

Comment: Subsection (g). Five commentators raised concern that the regulation required a home visit during the assessment period and believed this should be left to the discretion of the county agency.

Response: The Department considered the comment but did not change the regulation. A visit must be made to the child's residence during the assessment period. While presenting allegations may not indicate that a home visit is necessary, often there are undisclosed issues not provided to the county agency at referral. The Department decided that home visits are necessary as part of the risk assessment process which requires a risk rating based on the condition of the home. The risk assessment process is not complete without a visit to the home. Home visits are required by the CPSL at section 6375(g). The county agency maintains the ability to discontinue an assessment, when after one contact the allegations are determined to be inaccurate.

Comment: Subsection (i). One commentator reported that previous language required that the county agency would make unannounced home visits if an announced home visit would result in an inaccurate portrayal of the home conditions. The regulation as written does not allow county discretion.

Response: The Department considered the comment but did not change the regulation. Unannounced home visits, in some instances, are necessary to obtain an accurate depiction of the conditions in the child's home. The regulation does not require unannounced home visits. It allows county agencies to make unannounced home visits.

§ 3490.233. Protective Custody.

Comment: One commentator requested clarification related to taking a child into protective custody when parents fail to act based on religious beliefs.

Response: The Department made no change to the regulation as this was a request for clarification. Persons authorized to take protective custody of a child under the Juvenile Act at section 6324 (relating to taking a child into custody) and the CPSL at sections 6315 (relating to taking into protective custody), 6339(b) (relating to investigation and report-physical and mental examinations and treatment), 6375(i)(j) (relating to county agency requirements for general protective services) may

take protective custody of a child if the parents fail to provide essential medical treatment to protect the child.

§ 3490.234. Notifications.

Comment: Subsection (a). One commentator raised concern regarding the omission of the requirement for written notification to the parent which advises that the agency has received a report and will complete an assessment. The only notification that is required is the verbal notification at the time of the initial interview.

Response: The Department considered the comment but did not change the regulation. Written notification is not a requirement of the CPSL at the time of oral report. The Department maintained the requirement of verbal notification at the time of the oral report and written notification when the county agency accepts the family for service.

Comment: Subsection (b) and paragraph (b) (1). Three commentators, including IRRC, recommended the word "Department" be changed to "county agency" because it is at the county level that the family is accepted for service.

Response: The Department amended the regulation and changed the word "Department" to "county agency."

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

Comment: IRRC recommended the proposed heading of the section be changed because services should not only be provided to children who are neglected.

Response: The Department amended the section heading to read "services available through the county agency for children in need of general protective services."

Comment: Subsection (e). Two commentators requested clarification related to the phrase "regular and ongoing" and requested guidelines for supervisory review.

Response: The Department clarified the regulation to include supervisory review of the referral every ten-calendar days during the assessment period. The Department will accept a supervisor's documentation of review in the case record or by another method. The review should include a statement of the review and that the supervisor concurs with the caseworker's assessment that the child is safe and the services being provided to assure the continued safety of the child are appropriate.

Comment: Subsection (h). One commentator raised concern that there is no corresponding provision in the Child Protective Services section of the regulations that require a risk assessment be completed on a periodic basis.

Response: The Department amended section 3490.61(d) of the regulation to require periodic risk assessments on substantiated cases of child abuse. The Department provides for the requirements for the risk assessment process in section 3490.322.

Issue: Subsection (k). The Department included in the regulation that the county agency, as a provision of the family service plan require the parent to notify the county agency of any change of residence within 24 hours. The clarified regulation increases parental accountability.

§ 3490.236. General protective services records.

Issue: Paragraph (a)(5). The Department included the need for the provision of services that are consistent with the risk to the child to assure that the child is safe and receiving services that are consistent with need as identified through the risk assessment process. This amendment was made in conjunction with comments made relating to section 3490.232.

GENERAL REQUIREMENTS FOR GENERAL PROTECTIVE SERVICES

§ 3490.241. Appeals with respect to general protective services.

Comment: Two commentators raised concern related to the appeals process, identifying that the family may not engage in service during the appeals process which would provide for a lengthy process. One commentator did not see the need for the appeals process when court jurisdiction may be utilized.

Response: The Department considered the comment but did not change the regulation. The county agency is responsible for assessing the need to seek court involvement in cases when parents appeal the county agency decision to accept the family for services. In cases when the family is in need of service and the safety of the child is of concern, the agency must file a petition with the juvenile court consistent with the risk to the child. The CPSL at section 6376 affords parents the right to appeal the county agency decision to accept the family for services.

*SUBCHAPTER D. GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES
AND GENERAL PROTECTIVE SERVICES*

STAFF ORIENTATION, TRAINING AND CERTIFICATION REQUIREMENTS

§ 3490.311. Establishment of a staff development process.

Comment: Subsection (d). One commentator raised concern that the county agency may need to provide statistical information related to evaluating program effectiveness against measurable outcomes.

Response: The Department considered the comment but did not change the regulation. The county agency may need to provide additional information to insure that the training program is adequately meeting the program objectives. The Department is focused on staff development through the training and certification program to aid staff in meeting the demands of the child welfare system.

§ 3490.312. Training program requirements for direct service workers.

Comment: One commentator interpreted the proposed regulation to require that workers not provide protective services until they are certified.

Response: The Department considered the comment but did not change the regulation. The Department does not prohibit workers from providing services while they are attending CORE training. Paragraph (d)(5) provides that workers who are in the process of obtaining certification may be assigned a caseload consistent with their ability to perform the job duties determined by the agency through policy and procedure. Workers who fail to achieve certification within 18 months or fail to maintain certification may not provide direct services until certification is completed.

Comment: Clause (ii)(A). One commentator expressed concern related to the time that will be required to complete the assessment to determine recommendation of a direct service worker for certification.

Response: The Department considered the comment but did not change the regulation. The process of determining the recommendation for certification of a direct service worker is an ongoing process that is both formal and informal. During supervisory review, oversight of cases and the casework process, the supervisor would be assessing the decision making process and the worker's analytical ability.

Comment: Subparagraph (8)(i). For a direct service worker who completed direct service worker certification during the agency training year, the county agency would be able to pro-rate the number of training hours the worker would need to take during the training year. One commentator reported that to pro-rate training in a large agency would be difficult.

Response: The Department considered the comment but did not change the regulation. To pro-rate training when workers have completed CORE within the calendar year, but have not reached the 20-hour annual requirement, is reasonable.

Comment: Subparagraph (10). Two commentators requested clarification related to workers who do not complete or maintain certification as direct service workers. A commentator inquired if failure to maintain certification would serve as grounds for involuntary termination of employment while the other questioned what would happen to those workers who do not complete certification within 18 months.

Response: The Department considered the comment but did not change the regulation. The county agency would determine if grounds exist for termination of employment based on performance of the employe and county policy or labor contracts. The regulation provides that workers who do not achieve or maintain certification may not perform direct service duties until such time as they are certified. The county agency would determine what position the worker may hold and would follow county policy and procedures.

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

Comment: One commentator raised concern that there is no remedy for supervisors who fail to meet the requirements of this section.

Response: The Department considered the comment but did not change the regulation. Supervisors who fail to meet the direct service worker certification may not supervise direct service workers. At the time the supervisor achieves certification they could resume their supervisory responsibilities.

RISK ASSESSMENT

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

Comment: One commentator suggested that risk assessment apply to children who are alleged to be dependent.

Response: The Department amended the general protective services regulations in Subchapter C to include completion a risk assessment on all reports for children alleged to be in need of general protective services. The requirements of this section are applicable.

Comment: One commentator suggested that this section should include language which specifies the assessment of risk is exclusively a county determination which may not solely be based on the State-approved risk assessment process.

Response: The Department established regulation to provide the framework for the risk assessment process. The determination of risk is based on this process, while casework skills are used to determine the level of risk. County agencies should utilize information obtained in the case through the assessment in ongoing phases to document risk according to the risk assessment case interval policy. The CPSL at section 6362(e) requires county agencies to implement a State-approved risk assessment process.

Comment: Subsection (d). IRRC and one commentator raised concern related to the issuance of bulletins to establish standards and questioned whether developing risk assessment is an ongoing process. The public and the Legislature have a right to know the changes to be made and have a right to participate in the regulatory review process.

Response: The Department deleted the reference to issuance of bulletins. The Department amended the regulation to clarify the risk assessment process. The regulation includes the current practice which is followed by county agencies.

The Risk Assessment Task Force (RATF) has been in existence since 1988 and will continue to evaluate the risk assessment process to assure child safety and that the provision of services to children and their families. Recommendations will be made to improve the process to assure that the core factors assessed continue to address child safety and family dynamics.

The standards that guide the risk assessment are included in the regulation. The core factors which must be assessed and the intervals at which the assessments will be completed are enumerated.

§ 3490.322. County agency compliance with risk assessment standards.

Comment: Subsection (d). One commentator recommended a statement which provides risk assessment as an ongoing process completed when making case decisions.

Response: The Department considered the comment but did not change the regulation. Risk assessment training is a component of the CORE training prior to certification of a direct service worker. The training includes intervals and circumstances during the case when the risk assessment form should be completed.

ANNUAL REPORT

§ 3490.331. Annual report on required activities.

Comment: One commentator recommended the inclusion of statistics related to unfounded cases which go beyond the 60-calendar day time limit and are determined unfounded as well as those cases that are unfounded resulting from a lack of evidentiary proof as required by the Supreme Court in A.Y. v. Department of Public Welfare, 641 A.2d 1148 (1994). One commentator also suggested including recommendations for improving the child welfare system to children and families.

Response: The Department considered the comment but did not change the regulation. The annual report does include a table which provides the number of reports that were expunged because a county agency could not complete an investigation within the 60-calendar day limit at section 6368(c) of the CPSL. There are no statistics relating to expunction of reports resulting from a lack of evidentiary proof required by the Supreme Court in A.Y. v. Department of Public Welfare, 641 A.2d 1148 (1994).

Comment: IRRRC reported that one commentator reported that costs were not factored into need-based budgets and therefore the fiscal impact to the public sector was underestimated and the published appropriations will not reflect actual costs. They recommended an explanation of the calculation of costs of the program in the report and how the calculations represent accurate costs.

Response: The Department considered the comment but did not change the regulation. The Department will include an explanation of the calculation of program costs in the annual report.

STAFF RATIOS

§ 3490.341. Staff-to-family ratios.

Comment: IRRRC questioned if the Department has established staff-to-family ratios. Two commentators expressed concern relating to the 1 to 30 staff-to-family ratio set forth through section 3130.32 which is believed to be too high. One commentator suggested the Department consider a staff-to-children ratio as there is more than one child in most families.

Response: The Department provided a cross-reference to sections 3130.32 (relating to staffing requirements) and 3140.17 (relating to plan and budget estimates) which establishes the staff-to-family ratio. The Department will participate in the reduction of caseload size by incremental decreases through the needs-based budget process.

STANDARDS FOR STAFF

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

Comment: One commentator raised concern that persons who provide service which is arranged or provided by the county agency must possess a license issued by the Department of State if the profession is subject to mandatory licensure. The commentator noted potential difficulty in assuring that services are provided in rural areas.

Response: The Department considered the comment but did not change the regulation. If a profession is subject to mandatory licensure, services from a qualified professional are required.

ATTORNEY FOR THE COUNTY AGENCY

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

Comment: One commentator inquired whether consideration was given to development of training requirements for county solicitors on issues of child abuse and neglect and child welfare law. The commentator further requested clarification on the steps taken.

Response: The Department considered the comment but did not change the regulation. County solicitors benefit from training. The Department, in conjunction with the PCYA, will continue to develop continuing legal education. Special training has been provided for solicitors at PCYA quarterly meetings with the approval of the Pennsylvania Bar Association.

Fiscal Impact

• *Public Sector*

(1) The counties received an additional \$15,166,682 between FY 1995-96 and FY 1997-98 to implement the provisions of the act that went into effect in those years. The provisions that went into effect between FY 1995-96 and 1997-98 include investigating cases of imminent risk of suspected serious physical injury or sexual abuse; investigating cases of suspected serious bodily injury or sexual abuse of students allegedly

perpetrated by a school employe; and implementing a risk assessment process to determine the level of risk to a child if the child remains in the home where the alleged abuse occurred.

The allocations were:

- FY 1995-96 - \$3,010,500
- FY 1996-97 - \$5,545,091
- FY 1997-98 - \$6,611,091

(2) The estimate for FY 1998-99 is based on a supplemental increase for January 1999 through June 1999 for implementation of these final rules, which are anticipated to be finalized in January of 1999. The estimate is calculated based on half of the total estimated increase for FY 1999-00 less the 3.5% cost of living increase.

(3) The estimate for FY 1999-00 is based on increased county and state costs associated with implementing the additional requirements in these final rules to:

- provide general protective services;
- see children weekly when they remain in their own homes and are at high risk of further abuse;
- visit the homes of children at least once during the investigation or assessment period;
- investigate reports of suspected child abuse for persons between the age of 18 and 20 when the alleged abuse occurred before the person reached 18 years of age; and
- convene a county's multidisciplinary team when the county agency receives reports of suspected child abuse were the children are the victims named in substantiated reports of child abuse previously.

The estimated increased costs for FY 1999-00 are based on the Department's knowledge and experience with county agencies in their implementation of the requirements in the final rules listed above.

The Department's estimated increase was based on our review of funds certified for counties in their FY 1998-99 budgets for in-home services.

- (4) The estimates for FY 2000-01 through 2002-03 includes an annual increase of 3.5% of the total increased allocations to county agencies for the

OCT 19 1998

#14-441

implementation of the CPSL from FY 1995-96 through 1999-00.

Estimated increased costs to implement the provisions of this regulation from FY 1998-99 through 2002-03 are shown on the following chart.

Year	1998-99	1999-00	2000-01	2001-02	2002-03
Federal	\$2,340	\$4,844	\$5,013	\$5,189	\$5,370
State	\$7,607	\$15,746	\$16,297	\$16,867	\$17,457
Counties	\$1,902	\$3,936	\$4,074	\$4,217	\$4,364
Total	\$11,849	\$24,526	\$25,384	\$26,273	\$27,191

(The figures are in thousands)

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

- Private Sector

These proposed amendments require an applicant for employment in a school to pay up to \$10 to DPW to verify whether or not the applicant's name is on file in the Statewide central register of founded and indicated reports of child abuse and student abuse. In Calendar Year 1997, ChildLine received 239,466 requests for clearance statements from applicants for employment where the applicants have direct contact with children. Of these 239,466, 107,478 were as a result of the amendment that requires applicants for employment in schools to receive a clearance statement from ChildLine. We estimate the number of requests will increase by 10% a year.

The following chart shows the increased costs for persons applying for employment in schools from Calendar Year 1998 through 2002.

	1998	1999	2000	2001	2002
Total	\$1,182	\$1,301	\$1,430	\$1,574	\$1,904

(The figures are in thousands)

- General Public

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

OCT 19 1998

#14-441

Paperwork Requirements

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

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

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

Law enforcement officials will also complete a brief form and send it to the county agency advising it of the status of a referral of suspected child abuse or student abuse that was made to law enforcement. This is a new requirement. It will take approximately 10 minutes to complete the form.

County agencies are required to assess the risk to children needing protective services and to complete a risk assessment process. It is estimated that it takes approximately 45 minutes to complete the risk assessment process.

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

A court of common pleas may request and shall receive confidential child abuse information in connection with any matter involving custody of a child. To assure that the request is from a judge, the Department is requiring that the request be in writing and either mailed or sent by facsimile to the Department or county agency. The length of time to prepare this letter is minimal.

As a result of the revision to the definition of general protective services in the final regulations, counties will be required to notify the parents that the county agency is conducting an assessment to determine the need for general protective services. Counties will also be required to send a notice to parents advising them of the results of the assessment and their right to appeal the agency's decision that the child is in need of general protective services. While counties will

incur increased costs in implementing these requirements, we do not expect these increased costs to be substantial in relation to the overall funding for the children and youth programs.

Effective Dates

These amendments will take effect upon publication in the Pennsylvania Bulletin as final rulemaking.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19) (71 P.S. §§ 745.1-745.15) the agency submitted a copy of the Notice of Proposed Rulemaking, published at 28 Pa.B. 1079, to the IRRC and to the Chairpersons of the House Aging and Youth Committee and the Senate Committee on Public Health and Welfare for review and comment. In compliance with sections 5.1(a) and (b) of the Regulatory Review Act, the agency also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final form regulations, the agency has considered all comments received from the Commission, the Committees and the public.

These final form regulations were deemed approved by the House Aging and Youth Committee and the Senate Public Health and Welfare Committee on _____ and were approved by IRRC on _____ in accordance with sections 5.1(d) and (e) of the Regulatory Review Act.

Contact Person

The contact person for these regulations is Mr. Joseph L. Spear, P.O. Box 2675, Harrisburg, PA 17105-2675, (717) 787-3986.

Findings

The Department of Public Welfare finds that:

(1) Public notice of intention to adopt the administrative regulations adopted by this Order has been given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations thereunder 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments in the manner provided in this Order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department, acting under the Public Welfare Code, orders that:

(a) The regulations of the Department are amended to read as set forth in Annex A to this Order.

(b) The Secretary of the Department of Public Welfare shall submit this Order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department of Public Welfare shall certify this Order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This Order shall take effect upon publication in the Pennsylvania Bulletin as final rulemaking.

Feather O. Houstoun
Secretary of Public Welfare

Annex A

[CHILD] PROTECTIVE SERVICES

**CHAPTER 3490. [CHILD] PROTECTIVE SERVICES [--
CHILD ABUSE]**

[INTRODUCTION

Sec.

- 3490.1. Applicability.
- 3490.2. Goals.
- 3490.3. Legal base.
- 3490.4. Definitions.

REPORTERS

- 3490.11. Reporting suspected child abuse.
- 3490.12. Required reporters.
- 3490.13. Reports by employes who are required reporters.
- 3490.14. Privileged communication.
- 3490.15. Taking a child into protective custody.
- 3490.16. Notifying the CPS.
- 3490.17. Notifying the child's parents.
- 3490.18. Filing of written report by required reporter.
- 3490.19. Reporting to the coroner.
- 3490.20. Other medical information.
- 3490.21. Release of information on prior abuse reports.

DEPARTMENTAL RESPONSIBILITIES

- 3490.31. Receipt of reports.
- 3490.32. ChildLine reporting to CPS.
- 3490.33. Files.
- 3490.34. Pending complaint file.
- 3490.35. Statewide Central Register.
- 3490.36. Providing information to the CPS.
- 3490.37. Release of information: Statewide Central Register and pending complaint file.
- 3490.38. Authorized studies of child abuse data.
- 3490.39. Expunction from the Statewide Central Register.
- 3490.40. Notifications.
- 3490.41. Determination of time.
- 3490.42. Performance audit.
- 3490.43. Issuance of bulletins.

Title 55

DEPARTMENT OF PUBLIC WELFARE

COUNTY RESPONSIBILITIES

- 3490.51. Child protective services.
- 3490.52. Receipt of reports.
- 3490.53. Functions of the CPS.
- 3490.54. Independent investigation of reports.
- 3490.55. Investigation of reports of suspected child abuse.
- 3490.56. CPS investigation of suspected child abuse perpetrated by persons employed or supervised by child caring agencies and residential facilities.
- 3490.57. Protective custody.
- 3490.58. Notifications.
- 3490.59. Action by CPS after determining the status of the report.
- 3490.60. Services available through the CPS.
- 3490.61. Supervisory review and child contacts.
- 3490.62. Repeated child abuse.
- 3490.63. Waiver of CPS unit.
- 3490.64. CPS plan.
- 3490.65. Staffing and staff qualifications.
- 3490.66. Staff orientation and training.
- 3490.67. Written reports to ChildLine.
- 3490.68. Retention of information on unfounded reports.
- 3490.69. Reports not received within 60 days.
- 3490.70. Expunction and amendment of report by the CPS.
- 3490.71. Guardian ad litem.
- 3490.72. Availability of an attorney for the CPS.
- 3490.73. Petitioning the court.

CHILD ABUSE BY AGENTS OF THE COUNTY AGENCY

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

CONFIDENTIALITY

- 3490.91. Persons to whom child abuse information shall be made available.
- 3490.92. Requests by and referrals to law enforcement officials.
- 3490.93. Requests by county executive officers.
- 3490.94. Release of identity of person who made a report of child abuse or cooperated in a subsequent investigation.
- 3490.95. Release of information to required reporters.

Chapter 3490

[CHILD] PROTECTIVE SERVICES

OTHER GENERAL REQUIREMENTS

- 3490.101. Sanctions.
- 3490.102. Criminal liability for breach of confidentiality.
- 3490.103. Nonabuse reports received by the county agency or other public agency from ChildLine.
- 3490.104. Release of information to a subject of a report.
- 3490.105. Request by subject of founded or indicated report for expunction, amendment or sealing of abuse report.
- 3490.106. Hearings and appeals.
- 3490.107. Notification of Secretary's decision to amend, seal or expunge a report of child abuse.

**VERIFICATION OF EXISTENCE OF
CHILD ABUSE RECORDS**

- 3490.121. Definitions.
- 3490.122. Responsibilities of an applicant, prospective operator or legal entity of a child care service.
- 3490.123. Responsibilities of a prospective adoptive parent, prospective foster parent, foster family care agencies and adoption investigators.
- 3490.124. Departmental procedures for replying to a request for verification from an applicant, prospective operator of a child care service, prospective adoptive parent or prospective foster parent.
- 3490.125. Voluntary certification of child caretakers.
- 3490.126. Sanctions.
- 3490.127. Information relating to prospective child care personnel.

**FOUNDED REPORT OF CHILD ABUSE --
STATEMENT OF POLICY**

- 3490.201. Criminal court -- found guilty.
- 3490.202. Criminal court -- plea of guilty or no contest.
- 3490.203. Criminal court -- Accelerated Rehabilitated Disposition.
- 3490.204. Criminal court -- found not guilty.
- 3490.205. Civil court.
- 3490.206. Juvenile court -- CPS petition.
- 3490.207. Juvenile court -- child not a dependent.
- 3490.208. Juvenile court -- CPS and indicated report.
- 3490.209. Juvenile court.
- 3490.210. Multiple categories.]

SUBCHAPTER A
CHILD PROTECTIVE SERVICES

INTRODUCTION

- Sec.
3490.1. Applicability.
3490.2. [Goals] Purposes.
3490.3. Legal base.
3490.4. Definitions.
3490.5. Waivers.

REPORTERS

- 3490.11. Reporting suspected child abuse.
3490.12. Required reporters.
3490.13. Reports by employes who are required reporters.
3490.14. Privileged communication.
3490.15. Taking a child into protective custody.
3490.16. Notifying the [CPS] county agency.
3490.17. Notifying the child's parents, GUARDIANS OR OTHER CUSTODIANS.
3490.18. Filing of a written report by a required reporter.
3490.19. Reporting to the coroner.
3490.20. Other medical information.
3490.21. Release of information on prior CHILD abuse reports.

DEPARTMENTAL RESPONSIBILITIES

- 3490.31. Receipt of reports.
3490.32. ChildLine reporting to [CPS] the county agency.
3490.33. Files.
3490.34. Pending complaint file.
3490.35. Statewide central register.
3490.36. Providing information to the [CPS] county agency.
3490.37. Release of information: Statewide central register, [and] pending complaint file and file of unfounded reports.
3490.38. Authorized studies of child abuse data.
3490.39. Expunction from the Statewide central register.
3490.40. Notifications regarding indicated reports.
3490.40a. Notifications regarding founded reports.
3490.41. Determination of time.
3490.42. Performance audit and reviews.
3490.43. Issuance of bulletins. RESERVED

Chapter 3490

[CHILD] PROTECTIVE SERVICES

COUNTY RESPONSIBILITIES

- 3490.51. [Child protective services] (Reserved).
- 3490.52. Receipt of reports.
- 3490.53. Functions of the [CPS] county agency for child protective services.
- 3490.54. Independent investigation of reports.
- 3490.55. Investigation of reports of suspected child abuse.
- 3490.56. [CPS] County agency investigation of suspected child abuse perpetrated by persons employed or supervised by child caring agencies and residential facilities.
- 3490.57. Protective custody.
- 3490.58. Notifications.
- 3490.59. Action by [CPS] the county agency after determining the status of the report.
- 3490.60. Services available through the [CPS] county agency.
- 3490.61. Supervisory review and child contacts.
- 3490.62. Repeated child abuse.
- 3490.63. [Waiver of CPS unit] (Reserved).
- 3490.64. [CPS plan] (Reserved).
- 3490.65. ~~Staffing and staff qualifications~~ (RESERVED).
- 3490.66. [Staff orientation and training] (Reserved).
- 3490.67. Written reports to ChildLine.
- 3490.68. Retention of information on unfounded reports.
- 3490.69. Reports not received within 60 calendar days.
- 3490.70. Expunction, SEALING and amendment of report by the [CPS] county agency.
- 3490.71. Guardian ad litem ~~or~~ AND court designated advocate.
- 3490.72. ~~Availability of an attorney for the [CPS] county agency~~ (RESERVED).
- 3490.73. Petitioning the court.

CHILD ABUSE BY AGENTS OF THE COUNTY AGENCY

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

CONFIDENTIALITY

- 3490.91. Persons to whom child abuse information shall be made available.
- 3490.92. Requests by and referrals to law enforcement officials.
- 3490.93. Requests by designated county [executive officers] officials.
- 3490.94. Release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation.
- 3490.95. Release of information to required reporters.

[OTHER] GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

- 3490.101. Sanctions.
- 3490.102. Criminal liability for breach of confidentiality.
- 3490.103. Nonabuse reports received by the county agency or other public agency from ChildLine.
- 3490.104. Release of information to a subject of a report.
- 3490.105. Request by the subject of a founded or indicated report for expunction, amendment or sealing of an abuse report WHEN THE REPORT WAS received by ChildLine prior to July 1, 1995.
- 3490.105a. Request by a perpetrator to amend or expunge an indicated report of child abuse received by ChildLine after June 30, 1995.
- ~~3490.105b. Request by a nonperpetrator subject to amend an indicated report of child abuse received after June 30, 1996.~~
- 3490.106. Hearings and appeals proceedings for reports received by ChildLine prior to July 1, 1995.
- 3490.106a. Hearings and appeals proceedings for indicated reports received by ChildLine after June 30, 1995.
- 3490.107. Notification of Secretary's decision to amend, seal or expunge a report of child abuse.
- 3490.108. Cooperation of county agencies and law enforcement agencies.
- 3490.109. Report from law enforcement agencies.

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

- 3490.121. Definitions.
- 3490.122. Responsibilities of an applicant, prospective operator or legal entity of a child care service.
- 3490.123. Responsibilities of prospective adoptive parents, prospective foster parents, foster family care agencies and adoption investigators.
- 3490.124. Departmental procedures for replying to a request for verification.
- 3490.125. Voluntary certification of child caretakers.
- 3490.126. Sanctions.
- 3490.127. Information relating to prospective child care personnel.

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

- 3490.131. Definitions.
3490.132. Responsibilities of an administrator.
3490.133. Responsibilities of an applicant.
3490.134. Information relating to prospective school employes.
3490.135. Responsibilities of the Department.
3490.136. Sanctions.
3490.137. ~~Forms~~ (RESERVED).

INTRODUCTION

§ 3490.1. Applicability.

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

§ 3490.2. [Goals] Purposes.

The [goals] purposes of this subchapter are to:

- (1) Protect abused children from further abuse.
- (2) Preserve and stabilize families.
- (3) Implement the CPSL.
- (4) Involve law enforcement agencies in responding to child abuse.
- (5) Prioritize the response and services to children most at risk.
- (6) Encourage more complete reporting of suspected child abuse.

§ 3490.3. Legal base.

The legal base of this chapter is the following statutory provisions:

- (1) Articles VII and IX of the Public Welfare Code (62 P. S. §§ 701 -- 774 and 901 -- 922).
- (2) Chapter 63 of 42 Pa.C.S. (relating to the Juvenile Act).
- (3) Section 2168 of the County Code (16 P. S. § 2168).
- (4) Section 405 of the County Institution District Law (62 P.S. § 2305).
- (5) The CPSL, 23 Pa.C.S. §§ 6301-6385 (relating to the Child Protective Services Law).

§ 3490.4. Definitions.

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

Accept for service - ~~the~~ THE county agency decides on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa. C.S. Chapter 63 ~~(relating to juvenile matters)~~ THE JUVENILE ACT.

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

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

- (A) Preadoptive parents.
- (B) Foster parents.
- (C) Staff and volunteers of public and private residential child care facilities.
- (D) Staff and volunteers of public and private day care centers, group day care homes and family day care homes.
- (E) Staff and volunteers of public and private social service agencies.
- (F) Staff and volunteers of county detention centers.
- (G) Persons residing in the home of foster or preadoptive parents.
- (H) A school employe of a facility or agency that is an agent of a county agency.

(ii) The term does not include staff of Commonwealth-operated youth development centers and youth forestry camps.

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

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

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

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

CPSL -- The Child Protective Services Law [(11 P. S. §§ 2201 -- 2224] (23 Pa.C.S. §§ 6301-6385).

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

Child abuse -- [Serious physical or mental injury which is not explained by the available medical history as

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

Child abuse

(i) The term child abuse shall mean any of the following:

- A. Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child.
- B. An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or ~~sexual~~ exploitation of a child.
- C. Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or ~~sexual~~ exploitation of a child.
- D. Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

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

(iii) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held

religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, under Subchapter C of the CPSL (relating to general protective services) of this chapter, if appropriate.

ChildLine -- An organizational unit of the Department which operates a Statewide toll-free system for receiving reports of suspected child abuse established by UNDER section [14(c)] 6332 of the CPSL (relating to establishment of Statewide toll-free telephone number), refers the reports for investigation, and maintains the reports in the appropriate file. In addition, it also receives reports of student abuse under Subchapter B C.1 of the CPSL (relating to abuse of students in school).

Child Protective Services -- Those services and activities provided by the Department and each county agency for child abuse cases.

County agency -- [The county children and youth social service agency as required by Chapter 3130 (relating to administration of county children and youth social service programs).] The county children and youth social service agency established under section 405 of the act of June 24, 1937 (P.L. 2017, No. 396), known as the County Institution District Law, or its successor, and supervised by the Department under Article IV of 62 P.S., 401-403 VII OF 62 P.S. §§ 701-774 known as the Public Welfare Code. It also includes the Department's Office of Children, Youth and Families' regional offices when the report of suspected child abuse or student abuse involves an agent of the county agency.

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

COURT DESIGNATED ADVOCATE -- A TRAINED CITIZEN VOLUNTEER APPOINTED BY THE COURT TO ADVOCATE ON BEHALF OF

DEPENDENT CHILDREN AND ALLEGED DEPENDENT CHILDREN INVOLVED IN JUVENILE COURT PROCEEDINGS.CRIMES CODE -- TITLE 18 PA.C.S.

Department -- The Department of Public Welfare of the Commonwealth.

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

Expunge -- To strike out or obliterate entirely so that the stricken information may not be stored, identified or later recovered by any means -- mechanical, electronic or otherwise.

Family members -- Spouses, parents and children or other persons related by consanguinity or affinity. The term does not include foster parents, foster children and paramours.

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

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

- (i) Available medical evidence.
- (ii) The ~~{CPS}~~ county agency investigation.
- (iii) An admission of the acts of abuse by the perpetrator.

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

JUVENILE ACT -- 42 PA.C.S. CHAPTER 63.

Law enforcement official -- The term includes the following:

- (i) The Attorney General.
- (ii) A county district attorney.
- (iii) A State Police officer.
- (iv) A county sheriff.
- (v) A county police officer.
- (vi) A county detective.
- (vii) A local or municipal police officer.

Medical evidence -- Evidence provided by a licensed health care professional, including but not limited to a physician, nurse practitioner, registered nurse, psychiatrist or licensed psychologist.

Paramour -- A person who is engaged in an ongoing intimate relationship with a parent of the child but is not married to and does not necessarily reside with the child's parent.

Parent -- A biological parent, adoptive parent or legal guardian.

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

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

Performance audit -- A review of a county agency's practices and implementation of the CPSL and this chapter by persons designated by the Secretary.

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

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

Physician -- A person licensed under the statutes and regulations of the Commonwealth to practice medicine.

Protective services -- ~~These services~~ SERVICES and activities provided by the Department and each county agency for children who are ~~alleged or actually abused OR IN NEED OF GENERAL PROTECTIVE SERVICES under subchapter A of the CPSL (relating to child protective services) of this chapter or alleged or actually neglected under subchapter C of the CPSL (relating to general protective services) of this chapter.~~

Provide -- TO Perform PERFORM an activity directly through county agency staff or ensure the performance of an activity through a purchase of service agreement with another agency or individual.

Recent act or failure to act -- AN Act ACT or failure to act committed within two years of the date of the report of suspected child abuse to the Department or county agency.

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

Regional staff -- Department [employees] employes who license and monitor public and private children and youth social service agencies and facilities within a specific geographical area of the Commonwealth.

Required reporters -- Persons who, in the course of their employment, occupation or practice of their profession come into contact with children and have [reason to believe] reasonable cause to suspect, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Except with respect to confidential communications made to an ordained member of the clergy which are protected under 42 Pa.C.S. Section 5943 (relating to confidential communications to clergymen), the privileged communication between any professional person required to report and the patient or client of that person shall DOES not apply to situations involving child abuse and shall DOES not constitute grounds for failure to report as required by this subchapter. Persons required to report include, but are not limited to a licensed physician, medical examiner, coroner, funeral director, dentist, OPTOMETRIST, osteopath, chiropractor, psychologist, podiatrist, intern, registered nurse, licensed practical nurse; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner, member of the clergy, school administrator, school teacher, school nurse, social services worker, day care center worker or another child care or foster care worker, mental health professional, peace officer or law enforcement official.

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

Serious bodily injury -- Injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a body member or organ.

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

- (i) Renders the child chronically and severely anxious, agitated, depressed, socially withdrawn,

psychotic or in reasonable fear that [his] the child's life or safety is threatened; OR

(ii) Seriously interferes with the child's ability to accomplish age-appropriate developmental and social tasks.

~~Serious physical injury -- An injury caused by the act[s] or [omissions] failure to act of a perpetrator which does one of the following THAT:~~

(i) Causes the child severe pain; OR

(ii) Significantly impairs the child's physical functioning, either temporarily or permanently.

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

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

(i) Prolonged or repeated lack of supervision.

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

~~Sexual abuse OR EXPLOITATION -- [Any of the following when committed on a child by a perpetrator:~~

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

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

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

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

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

(vi) Rape -- Sexual intercourse by forcible compulsion.

(vii) Pornography -- Includes one of the following:

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

(B) The obscene filming or photographing of children or showing of obscene films or photographs to arouse or gratify sexual desire in

either the perpetrator, subject child or viewing audience.]

Sexual abuse

(i) Definitions.

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

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

(C) Foreign object — Includes any physical object not part of the perpetrator's body.

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

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

(ii) (I) Any of the following if committed on a child by a perpetrator:

(A) THE EMPLOYMENT, USE, PERSUASION, INDUCEMENT, ENTICEMENT OR COERCION OF ANY CHILD TO ENGAGE IN OR ASSIST ANY OTHER PERSON TO ENGAGE IN ANY SEXUALLY EXPLICIT CONDUCT.

(B) ANY SIMULATION OF ANY SEXUALLY EXPLICIT CONDUCT FOR THE PURPOSE OF PRODUCING ANY VISUAL DEPICTION, INCLUDING PHOTOGRAPHING, VIDEOTAPING, COMPUTER DEPICTING OR FILMING, OF ANY SEXUALLY EXPLICIT CONDUCT.

(C) ANY OF THE FOLLOWING OFFENSES AS DEFINED BY THE CRIMES CODE:

(1) RAPE AS DEFINED BY SECTION 3121;

(2) STATUTORY SEXUAL ASSAULT AS DEFINED BY SECTION 3122.1;

(3) INVOLUNTARY DEVIATE SEXUAL INTERCOURSE AS DEFINED BY SECTION 3123;

(4) SEXUAL ASSAULT AS DEFINED BY SECTION 3124.1;

(5) AGGRAVATED INDECENT ASSAULT AS DEFINED BY SECTION 3125;

(6) INDECENT ASSAULT AS DEFINED BY SECTION 3126;

(7) INDECENT EXPOSURE AS DEFINED BY SECTION 3127;

DEPARTMENT OF PUBLIC WELFARE

(8) INCEST AS DEFINED BY SECTION 4302;(9) PROSTITUTION AS DEFINED BY SECTION5902.~~Aggravated indecent assault — Penetration, however slight, of the genitals or anus of a child with a part of the perpetrator's body for any purpose other than good faith medical, hygienic or law enforcement procedures.~~~~(I) By forcible compulsion.~~~~(II) If the child is less than 13 years of age.~~~~(III) If the child is less than 16 years of age and the perpetrator is four or more years older than the child and they are not married to each other.~~(D) EXPLOITATION WHICH INCLUDES ANY OF THE FOLLOWING:(1) LOOKING AT THE SEXUAL OR OTHER INTIMATE PARTS OF A CHILD FOR THE PURPOSE OF AROUSING OR GRATIFYING SEXUAL DESIRE IN EITHER PERSON.(2) ENGAGING OR ENCOURAGING A CHILD TO LOOK AT THE SEXUAL OR OTHER INTIMATE PARTS OF ANOTHER PERSON FOR THE PURPOSE OF AROUSING OR GRATIFYING SEXUAL DESIRE IN ANY PERSON INVOLVED.(3) ENGAGING OR ENCOURAGING A CHILD TO PARTICIPATE IN ANY SEXUALLY EXPLICIT CONVERSATION EITHER IN PERSON, BY TELEPHONE, BY COMPUTER OR BY A COMPUTER AIDED DEVICE.~~(B) Indecent assault — Indecent contact with a child or causing the child to have indecent contact with the perpetrator.~~~~(I) Without the child's consent.~~~~(II) By forcible compulsion.~~~~(C) Indecent exposure — Exposing one's genitals to a child.~~~~(D) Incest — Sexual intercourse with an ancestor or descendant, — by blood or adoption — brother or sister of the whole or half blood, or an uncle, aunt, nephew or niece of the whole blood.~~~~(E) Involuntary deviate sexual intercourse — Deviate sexual intercourse with a child.~~~~(I) By forcible compulsion.~~~~(II) Who is less than 13 years of age.~~~~(III) Who is less than 16 years of age and the perpetrator is four or more years older than the child and they are not married to each other.~~

~~(F) Molestation -- Indecent contact, including looking at the sexual or other intimate parts of a child for the purpose of arousing or gratifying sexual desire in either person, requiring the child to look at the sexual or other intimate parts of another person for the purpose of arousing or gratifying sexual desire in any person involved or the showing of pornographic material to a child.~~

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

~~(H) Promoting prostitution -- Inducing or encouraging a child to engage in prostitution.~~

~~(I) Rape -- Sexual intercourse by force or compulsion.~~

~~(J) Statutory sexual assault -- Sexual intercourse with a child who is less than 16 years of age and the perpetrator is four or more years older than the child and they are not married to each other.~~

~~(K) Sexual assault -- Sexual intercourse or deviate sexual intercourse with a child without the child's consent.~~

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

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

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

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

Unfounded report -- A ANY report made under the CPSL and this chapter unless the report is a founded report or

Title 55

DEPARTMENT OF PUBLIC WELFARE

[unless an investigation by the appropriate CPS determines that the report is] an indicated report of child abuse.

§ 3490.5. Waivers.

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

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

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

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

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

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

(5) Does not jeopardize receipt of Federal monies.

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

(d) An A COUNTY agency requesting a waiver must continue to comply with all requirements of these regulations unless or until a waiver is granted.

REPORTERS

§ 3490.11. Reporting suspected child abuse.

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

(B) A PERSON OTHER THAN A SCHOOL EMPLOYEE HAVING REASONABLE CAUSE TO SUSPECT THAT A SCHOOL EMPLOYEE HAS COMMITTED STUDENT ABUSE MAY REPORT THE SUSPECTED ABUSE TO THE SCHOOL ADMINISTRATOR AS DEFINED IN SECTION 3490.151 (RELATING TO REQUIRED REPORTING).

§ 3490.12. Required reporters.

In addition to other reports they make, required reporters shall report suspected child abuse to ChildLine.

§ 3490.13. Reports by [employees] employees who are required reporters.

(a) Required reporters who work in an institution, school, facility or agency shall immediately notify the person in charge of the institution, school, facility or agency or [his] the person in charge's designee of suspected abuse. The person in charge, or [his] the designee, shall be responsible and have the obligation to make a report of the suspected child abuse to ChildLine immediately. NOTHING IN THIS CHAPTER REQUIRES MORE THAN ONE REPORT FROM ANY INSTITUTION, SCHOOL, FACILITY OR AGENCY.

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

(c) Notwithstanding subsection (a) nothing in this chapter prohibits an employe who is a required reporter from making a report directly to ChildLine.

§ 3490.14. Privileged communication.

EXCEPT WITH RESPECT TO CONFIDENTIAL COMMUNICATIONS MADE TO AN ORDAINED MEMBER OF THE CLERGY WHICH ARE PROTECTED UNDER 42 PA.C.S. § 5943 (RELATING TO CONFIDENTIAL COMMUNICATIONS TO CLERGYMEN), The privileged communication between a professional person required to report and [his] the person's patient or client does not apply to situations involving child abuse and may not constitute grounds for failure to report as required by section 6311 of the CPSL (relating to persons required to report suspected child abuse) and this chapter.

§ 3490.15. Taking a child into protective custody.

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

(1) Persons authorized to do so under 42 Pa.C.S. § SECTION 6324 OF THE JUVENILE ACT (relating to taking into custody).

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

(b) The director OR A PERSON SPECIFICALLY DESIGNATED IN WRITING BY THE DIRECTOR or physician may take a child into protective custody if [he determines that] protective custody IT is immediately necessary in the director's or physician's judgment to protect the child from further serious physical injury, sexual abuse, or serious physical neglect -- as indicated by the following examples:

(1) Medical indications of repeated abuse, the existence of previous indicated or founded reports of CHILD abuse, the seriousness of the child's condition, evidence of recent acts of abuse as opposed to old injuries, or statements of the child, or statements or actions by the parents indicating they are likely to be abusive toward the child.

(2) There is medical evidence that the child is a victim of alleged CHILD abuse and that the child's physical condition constitutes a medical emergency which requires immediate hospitalization to prevent death or serious physical impairment.

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

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

§ 3490.16. Notifying the [CPS] county agency.

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

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

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

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

(2) The reason for taking the child into protective custody.

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

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

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

Chapter 3490

[CHILD] PROTECTIVE SERVICES

- (1) The names and addresses of the child and the parents or other persons responsible for the care of the child.
- (2) The county in which the suspected abuse occurred.
- (3) The [child's] age and sex[.] of the subjects of the report.
- (4) The nature and extent of the suspected child abuse, including evidence of prior abuse to the child or a sibling.
- (5) The reasons for suspecting child abuse.
- (6) The name of the alleged perpetrator(s) of the suspected abuse [.] and any evidence of prior abuse by that person or persons.
- (7) The relationship of the alleged perpetrator to the child.
- (8) The family household composition.
- (9) The source of the report.
- (10) The person making the report and where the person can be reached.
- (11) A statement of the child's parents regarding the suspected abuse and a statement or admission of abuse by the alleged perpetrator.
- (12) The actions taken by the reporting source, including:
 - (i) The taking of photographs and x-rays.
 - (ii) The taking of protective custody.
 - (iii) Notification to the coroner.
 - (iv) The hospitalization of the child.

§ 3490.19. Reporting to the coroner.

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

§ 3490.20. Other medical information.

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

§ 3490.21. Release of information on prior abuse reports.

(a) A physician or director OR A PERSON SPECIFICALLY DESIGNATED IN WRITING BY THE DIRECTOR of a hospital or other medical facility may request information from the [CPS] county

agency on prior abuse involving [a] the child being examined or treated by the physician or director OR A PERSON SPECIFICALLY DESIGNATED IN WRITING BY THE DIRECTOR of the hospital or other medical facility.

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

DEPARTMENTAL RESPONSIBILITIES

§ 3490.31. Receipt of reports.

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

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

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

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

(c) The county agency which receives the report initially is responsible to contact the other counties in subsections (a) and (b) in conducting the investigation. If it appears that a county other than the one to which the report was referred should conduct the investigation, the agencies should decide between themselves which one is responsible for the report. The county which received the report initially shall notify ChildLine of any change so that ChildLine's records are accurate and up-to-date.

(d) If the counties are unable to agree about which one is responsible to conduct the investigation and make the status determination, the county to which the report was assigned shall contact its Regional Children and Youth Office. The region CHILDLINE AND CHILDLINE will resolve the difference ASSIGN THE INVESTIGATION TO A COUNTY AGENCY TO MAKE A STATUS DETERMINATION.

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

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

- (1) The substance of the allegations of abuse.
- (2) The number, status, nature and extent of reports

of child abuse under investigation in the pending complaint file and Statewide Central Register concerning any subject of the current report.

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

[(b)] (g) If the complaint received does not suggest suspected child abuse but does suggest a need for social services or other services or investigation, ChildLine shall transmit the information to the appropriate county agency or other public agency.

§ 3490.33. Files.

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

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

- (i) Under investigation.
- (ii) Pending juvenile or criminal court action.
- [(iii) Unfounded awaiting expunction.]

(2) A Statewide Central Register which contains THE FOLLOWING:

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

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

(4) A file of unfounded reports awaiting expunction.

§ 3490.34. Pending complaint file.

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

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

Title 55

DEPARTMENT OF PUBLIC WELFARE

(c) If within 60 calendar days from the date of the initial report of suspected child abuse a status determination has not been received at ChildLine, the report shall be considered unfounded. PRIOR TO EXPUNGING THE REPORT, CHILDLINE SHALL VERIFY WITH THE COUNTY AGENCY THAT THE REPORT WAS NOT COMPLETED WITHIN 60 CALENDAR DAYS.

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

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

§ 3490.35. Statewide Central Register.

When a report of suspected child abuse is determined founded or indicated, ChildLine shall enter the report in the Statewide Central Register, provided there is sufficient documentation to justify entry into the Statewide Central Register, and expunge the report from the pending complaint file. IF THERE IS INCOMPLETE INFORMATION IN THE REPORT, CHILDLINE WILL CONTACT THE COUNTY AGENCY AND REQUEST ADDITIONAL CLARIFYING INFORMATION SO THAT THE INFORMATION IN THE STATEWIDE CENTRAL REGISTER IS COMPLETE.

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

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

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

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

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

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

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

(a) A request for information from the Statewide Central Register, [or] pending complaint file or file of unfounded reports

by persons permitted access to this information, other than the [CPS] county agency, shall be in writing and signed by the person requesting the information.

(b) The name of the person who made the report or who cooperated in the investigation may be released only by the Secretary.

§ 3490.38. Authorized studies of child abuse data.

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

§ 3490.39. Expunction from the Statewide Central Register.

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

[(b) If another abuse report involving the same child, his sibling or offspring or another child in the care of the person responsible for the child's welfare has been received, ChildLine shall expunge founded and indicated reports when each of the children involved reaches age 23.]

(b) If the Social Security Number or date of birth of the perpetrator is known in founded or indicated reports of child abuse, the following information shall be maintained:

(1) The name, Social Security Number, date of birth, and sex of the perpetrator.

(2) The date of birth and sex of the child.

(3) The date or dates and the nature and extent of the CHILD abuse.

(4) The county in which the CHILD abuse occurred.

(5) The relationship of the perpetrator to the child.

(6) Whether the report was a founded or indicated report.

(7) The results of any criminal prosecution.

The information shall remain in the subfile under § SECTION 3490.33 (relating to files).

§ 3490.40. Notifications regarding indicated reports.

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

- (1) The status of the report.
- (2) [Their] The perpetrator's right to request the Secretary to amend [, seal] or expunge the report.
- (3) The circumstances under which the report will be expunged.
- (4) ~~{Their right to services}~~ Services available from the county agency.
- (5) The effect of the report upon future employment opportunities in a child care service [under section 23.1 of the CPSL (11 P. S. § 2223.1)].
- (6) The fact that the name of the perpetrator and nature of the abuse will be kept on file indefinitely if the Social Security Number or date of birth of the perpetrator is known.

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

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

§ 3490.40a. Notifications regarding founded reports.

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

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

§ 3490.41. Determination of time.

ChildLine will use the United States Postal Service postmark OR THE DATE RECEIVED BY THE DEPARTMENT WHEN TRANSMITTED ELECTRONICALLY to determine when the Department is informed by the [CPS] county agency of the status determination of a report.

§ 3490.42. Performance audit and reviews.

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

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

Chapter 3490

[CHILD] PROTECTIVE SERVICES

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

~~§ 3490.43. Issuance of bulletins. RESERVED~~

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

COUNTY RESPONSIBILITIES

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

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

§ 3490.52. Receipt of reports.

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

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

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

(b) The [CPS] county agency shall protect the safety of the subject child and other children in the home or facility[.] AND SHALL PROVIDE OR ARRANGE APPROPRIATE SERVICES WHEN NECESSARY DURING THE INVESTIGATION PERIOD.

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

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

Title 55

DEPARTMENT OF PUBLIC WELFARE

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

- (1) Accept the case for service.
- (2) Provide direct case management.
- (3) Monitor the provision of services, whether provided directly by the county agency or through purchase or agreement.

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

§ 3490.54. Independent investigation of reports.

Except for reports investigated by the Department, the [CPS] county agency shall investigate and make independent determinations on reports of suspected child abuse, regardless of another investigation conducted by another agency, the court or the police and regardless of whether or not the person making the report identified himself. A county agency may rely on an investigation of substantially the same allegations by a law enforcement agency to support the county agency's finding regarding a child abuse report. THIS RELIANCE SHALL NOT, HOWEVER, LIMIT THE DUTIES REQUIRED OF THE COUNTY AGENCY BY SECTION 6368 of the CPSL (RELATING TO INVESTIGATION OF REPORTS).

§ 3490.55. Investigation of reports of suspected child abuse.

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

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

- (1) Emergency protective custody has been [or shall be] taken or is needed.
- (2) It cannot be determined from the report whether or not emergency protective custody is needed.

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

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

Chapter 3490

[CHILD] PROTECTIVE SERVICES

- (1) The child, if appropriate.
- (2) The child's parents or other person responsible for the child's welfare.
- (3) The alleged perpetrator of the suspected child abuse.
- (4) The reporter of the suspected child abuse, if known.
- (5) Eyewitnesses to the suspected child abuse.
- (6) Neighbors and relatives who may have knowledge of the abuse.
- (7) Day care provider and/or school personnel, if appropriate.

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

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

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

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

(1) Photographs shall ~~have at least~~ INCLUDE one snapshot in which the child is clearly identifiable with the injured part of the body visible in order to establish the identity of the child and the actual location and extent of the injury. More than one photograph of the injury shall be taken if it is necessary to obtain a clear close-up of the injury.

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

- (i) The name of the child.
- (ii) The age of the child.
- (iii) The date and time of day the photograph was taken.
- (iv) The location at which the photograph was taken.
- (v) The names of witnesses present.
- (vi) The name of the photographer.

(g) When investigating a report of suspected [child abuse] serious mental injury, sexual abuse or ~~sexual~~ exploitation or serious physical neglect, the [CPS] county agency shall, whenever

appropriate, obtain medical evidence or expert consultation, or both. The [CPS] county agency shall maintain a record of medical evidence or expert consultation, or both, obtained during its investigation including one of the following:

(1) The reasons why medical examination or expert consultation, or both, was secured and the results of the examination/consultation.

(2) The reasons why medical examination or expert consultation, or both, was determined not to be necessary.

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

(I) WHEN CONDUCTING ITS INVESTIGATION, THE COUNTY AGENCY SHALL VISIT THE CHILD'S HOME, AT LEAST ONCE DURING THE INVESTIGATION PERIOD. THE HOME VISITS SHALL OCCUR AS OFTEN AS NECESSARY TO COMPLETE THE INVESTIGATION AND TO ASSURE THE SAFETY OF THE CHILD.

(J) WHEN INVESTIGATING CASES OF SUSPECTED CHILD ABUSE AND A SUBJECT IS LOCATED IN A COUNTY OTHER THAN WHERE THE ABUSE OCCURRED, THE COUNTY AGENCY SHALL EITHER MAKE CONTACT IN THE COUNTY WHERE THE SUBJECT IS LOCATED OR REQUEST THE COUNTY WHERE THE SUBJECT IS LOCATED TO CONDUCT THE INTERVIEW. THE COUNTY AGENCY WHERE THE SUBJECT IS LOCATED SHALL ASSIST IN THE INVESTIGATION AS REQUIRED BY THIS SECTION.

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

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

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

(2) The person in charge of the agency which placed the child.

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

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

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

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

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

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

[(e)] (f) If the facility or [agency] child care service is operated, registered, licensed or approved by the Department, the [CPS] county agency shall send a copy of the completed form required by § SECTION 3490.67 (relating to written reports to ChildLine) -- filed with ChildLine -- and a copy of the written statement required by subsection [(d)] (e) to the regional [staff] director or the director's designee in the region where the founded or indicated CHILD abuse occurred.

§ 3490.57. Protective custody.

(a) The [CPS] county agency shall comply with 42 Pa.C.S. Chapter 63 (relating to {the} THE {Juvenile Act} juvenile matters), the CPSL and this chapter when taking a child into custody. In no case shall protective custody under this chapter be maintained longer than 72 hours without an informal hearing under 42 Pa.C.S. § SECTION 6332 OF THE JUVENILE ACT (relating to informal hearing). If, at the informal hearing, it is determined that protective custody shall be continued and the child is alleged to be a dependent child under 42 Pa.C.S. § SECTION 6302 OF

THE JUVENILE ACT (relating to definitions), the county agency shall within 48 hours of the determination file a petition with the court under 42 Pa.C.S. Chapter 63 (relating to juvenile matters) THE JUVENILE ACT alleging that the child is a dependent child.

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

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

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

(1) A hospital, if hospitalization is medically necessary in the opinion of the attending physician.

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

(3) A foster family home approved by a licensed foster family care agency.

(4) A licensed residential child care facility.

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

§ SECTION 3490.17 (relating to notifying the child's parents, GUARDIANS OR OTHER CUSTODIANS).

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

(1) Meet with the child's parents to assess their ability to assure the child's safety if the child is to be returned home.

(2) Meet with other individuals who may have information relating to the safety of the child in the home if the child is to be returned home.

(3) Determine if services could be provided to the family which would alleviate the conditions necessitating protective custody.

(4) Provide or arrange for necessary services.

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

(i) Return the child to the child's home.

(ii) Explain to the parents the reasons why the child will continue to be held in protective custody and the nature of future legal proceedings including the rights provided under 42 Pa.C.S. §§ SECTIONS 6337

~~(relating to right to counsel)~~ and 6338 OF THE JUVENILE ACT (relating to RIGHT TO COUNSEL; AND other basic rights) which are:

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

§ 3490.58. Notifications.

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

- (1) The existence of the report.
- (2) The right to do the following:
 - (i) Obtain a copy of the report.
 - (ii) Request that indicated and founded reports be amended, sealed or expunged.
- (3) The fact that the report, if determined unfounded, will be expunged within 12 months.
- (4) The purpose of the law, the implications of the status determination of the report and the services available through the CPS.

(5) The effect that a founded or indicated report of child abuse will have on a person seeking employment in a child care service under section 23.1 of the CPSL (11 P. S. § 2223.1).

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

(c) The notifications required by subsections (a) and (b) shall be in writing and shall be made regardless of where the persons live.]

(a) Except for the subject child, the county agency shall notify the subject who is about to be interviewed of:

(1) The existence of the report including the nature and allegations of AND the TYPE OF suspected abuse.

(2) The subject's rights under 42 Pa.C.S. §§ SECTIONS 6337 ~~(relating to right to counsel)~~ and 6338 OF THE JUVENILE ACT (relating to RIGHT TO COUNSEL; AND other basic rights) when a case goes to Juvenile Court. Those rights are:

- (i) The right to counsel.
- (ii) The right to introduce evidence and cross examine witnesses.

(3) The perpetrator's rights regarding amendment and expunction.

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

(1) The existence of the report and ~~kind~~ TYPE of alleged abuse.

(2) The rights under 42 Pa. C.S. §§ SECTIONS 6337 (relating to right to counsel) and 6338 OF THE JUVENILE ACT (relating to RIGHT TO COUNSEL; AND other basis rights), when a case goes to Juvenile Court. Those rights are:

(i) The right to counsel.

(ii) The right to introduce evidence and cross examine witnesses.

(3) The perpetrator's rights regarding amendment and expunction.

(4) The right to obtain a copy of the report from the Statewide Central Register or the county agency.

(5) The fact that the report, if determined unfounded, will be expunged from the pending complaint file within 120-calendar days from the date the report was received at ChildLine.

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

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

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

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

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

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

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

(E) The county agency shall provide ~~this~~ THE notification REQUIRED UNDER SUBSECTION (D) when it notifies ChildLine of the status of the report.

Chapter 3490

[CHILD] PROTECTIVE SERVICES

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

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

(b) If the report is unfounded and not accepted for services but [if] the family is in need of services, OTHER THAN THOSE PROVIDED BY THE COUNTY AGENCY, the [CPS] county agency shall advise the subjects of the ~~social~~ services available [from the county agency and in the community].

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

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

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

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

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

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

(ii) Provide or recommend comprehensive coordinated treatment.

(iii) Periodically assess the relevance of the treatment and the progress of the family.

(IV) PARTICIPATE IN THE STATE OR LOCAL CHILD DEATH REVIEW TEAM CONVENED BY A PROFESSIONAL, ORGANIZATION OR THE COUNTY AGENCY FOR THE PURPOSE OF INVESTIGATING A CHILD DEATH OR THE DEVELOPMENT AND PROMOTION OF STRATEGIES TO PREVENT CHILD DEATH.

§ 3490.61. Supervisory review and child contacts.

(a) [Within 10 calendar days of the receipt of the initial report, the] The [CPS] county agency supervisor shall review each report of suspected child abuse which is under investigation on a regular and ongoing basis TO ENSURE THAT THE LEVEL OF SERVICES ARE CONSISTENT WITH THE LEVEL OF RISK TO THE CHILD, to determine the

safety of the child and the progress made toward reaching a status determination. The supervisor shall maintain a log of these reviews WHICH AT A MINIMUM SHALL INCLUDE AN ENTRY AT 10-CALENDAR DAY INTERVALS DURING THE INVESTIGATION PERIOD.

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

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

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

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

(ii) Remains in the same foster family home or residential facility in which the abuse occurred.]

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

(c) When a case has been accepted for service, the county agency shall monitor the safety of the child and assure that contacts are made with the child, parents and service providers. The contacts may occur EITHER DIRECTLY BY A COUNTY AGENCY WORKER OR THROUGH PURCHASE OF SERVICE, by phone or in person but face-to-face contacts with the parent and the child must occur as often as necessary for the protection of the child but no less often than:

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

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

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

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

(D) A PERIODIC ASSESSMENT OF THE RISK OF HARM TO THE CHILD SHALL BE CONDUCTED AS REQUIRED BY THE STATE-APPROVED RISK ASSESSMENT PROCESS.

(E) THE COUNTY AGENCY SHALL MONITOR THE PROVISION OF SERVICES AND EVALUATE THE EFFECTIVENESS OF THE SERVICES PROVIDED UNDER THE FAMILY SERVICE PLAN UNDER SECTION 3130.63 (RELATING TO REVIEW OF FAMILY SERVICE PLANS). THE COUNTY AGENCY WORKER SHALL

Chapter 3490

[CHILD] PROTECTIVE SERVICES

VISIT THE FAMILY IN PERFORMING THE CASE MANAGEMENT RESPONSIBILITIES AS REQUIRED BY SECTION 3130.63 (RELATING TO REVIEW OF FAMILY SERVICE PLANS) AS OFTEN AS NECESSARY FOR MANAGEMENT OF THE SERVICES PROVIDED BUT NO LESS OFTEN THAN EVERY 180-CALENDAR DAYS.

(F) THE FAMILY SERVICE PLAN SHALL CONTAIN A PROVISION THAT REQUIRES THE PARENTS ADVISE THE COUNTY AGENCY, WITHIN 24 HOURS, WHEN THE CHILD OR FAMILY MOVE FROM ONE RESIDENCE TO ANOTHER.

§ 3490.62. Repeated child abuse.

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

(b) If the child is a victim of three or more ONE substantiated incidents of CHILD abuse, AND THE COUNTY AGENCY RECEIVES A SUBSEQUENT REPORT OF SUSPECTED CHILD ABUSE, the county agency administrator or [CPS] supervisor shall arrange for a review by the multidisciplinary team as required by § SECTION 3490.60 (relating to services available through the [CPS] county agency). PRIOR TO THE MEETING WITH THE MULTIDISCIPLINARY TEAM, THE AGENCY ADMINISTRATOR OR DESIGNEE, THE SUPERVISOR AND CASEWORKER SHALL REVIEW THE FAMILY SERVICE PLAN AND MAKE A RECOMMENDATION TO THE MULTIDISCIPLINARY TEAM ON THE APPROPRIATENESS OF THE FAMILY SERVICE PLAN AND WHETHER ADDITIONAL OR DIFFERENT SERVICES ARE NECESSARY TO PROTECT THE CHILD. The [CPS] county agency shall modify the family service plan, if necessary and appropriate, to reflect the recommendations of the multidisciplinary team and implement action necessary to fulfill the recommendations.

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

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

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

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

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

Title 55

DEPARTMENT OF PUBLIC WELFARE

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

§ 3490.64. [CPS plan] (Reserved).

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

~~§ 3490.65. Staffing and staff qualifications. (RESERVED)~~

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

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

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

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

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

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

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

§ 3490.67. Written reports to ChildLine.

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

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

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

Chapter 3490

[CHILD] PROTECTIVE SERVICES

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

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

~~(1) Pending juvenile court action.~~

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

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

~~(1) Pending criminal court action.~~

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

(B) TO AVOID EXPUNCTION OF A CASE AS REQUIRED BY SECTION 3490.69 (RELATING TO REPORTS NOT RECEIVED WITHIN 60-CALENDAR DAYS) WHERE A STATUS DETERMINATION CANNOT BE MADE AND THE COUNTY AGENCY HAS PETITIONED THE JUVENILE COURT, AN ARREST HAS BEEN MADE OR THERE IS CRIMINAL COURT ACTION PENDING, THE COUNTY AGENCY SHALL SEND A COPY OF THE CY-48 TO CHILDLINE WITH ONE OF THE FOLLOWING STATUS DETERMINATIONS:

(1) PENDING JUVENILE COURT ACTION.

(2) PENDING CRIMINAL COURT ACTION.

(3) INDICATED, WHEN THERE IS SUBSTANTIAL EVIDENCE THAT THE CHILD WAS ABUSED.

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

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

§ 3490.68. Retention of information on unfounded reports.

[If a subject of an unfounded report needs and voluntarily accepts services, the county agency may retain those portions of its records which do not indicate that services are needed as a result of a report of alleged child abuse or identify the person who made the report or a person who cooperated in the investigation.] ~~When the county agency accepts an unfounded report of suspected child abuse for services~~ WHEN A COUNTY AGENCY DETERMINES THAT A REPORT OF SUSPECTED CHILD ABUSE IS UNFOUNDED BUT ACCEPTS THE FAMILY FOR SERVICES, the agency shall maintain the

records under Chapter 3130 (relating to administration of county children and youth social service programs).

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

§ 3490.69. Reports not received within 60-calendar days.

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

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

The [CPS] county agency shall amend, seal or expunge a record of child abuse upon notification from ChildLine. ONLY THOSE REPORTS RECEIVED BY CHILDLINE PRIOR TO JULY 1, 1995 ARE SUBJECT TO SEALING PURSUANT TO SECTION 3490.105 (RELATING TO REQUEST BY THE SUBJECT OF A FOUNDED OR INDICATED REPORT FOR EXPUNCTION, AMENDMENT OR SEALING OF AN ABUSE REPORT, WHEN THE REPORT WAS RECEIVED BY CHILDLINE PRIOR TO JULY 1, 1995.) NOTWITHSTANDING SECTION 3490.59 (RELATING TO ACTION BY COUNTY AGENCY AFTER DETERMINING THE STATUS OF THE REPORT). ~~The~~ THE county agency shall expunge all information in its possession in unfounded, founded and indicated reports of child abuse upon notification from ChildLine. The [CPS] county agency shall notify those to whom they gave information to take similar action.

§ 3490.71. Guardian ad litem or AND court designated advocate.

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

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

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

§ 3490.73. Petitioning the court.

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

- (1) Placement or continued placement of a child is necessary.

Chapter 3490

[CHILD] PROTECTIVE SERVICES

(2) A subject of the report of suspected child abuse refuses to cooperate with the [CPS] county agency in an investigation, and the [CPS] county agency is unable to determine whether the child is at risk.

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

**CHILD ABUSE BY AGENTS OF THE
COUNTY AGENCY**

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

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

- (1) Take protective custody.
- (2) Petition the court.
- (3) Provide services.

(b) If a report is determined indicated or founded and the regional staff determines that services are necessary, the regional staff, the county agency in the county where the abuse occurred and the county agency with custody or supervision of the child, if different, shall plan for social and rehabilitative services for the child and perpetrator. The plan shall identify which county is responsible for case management.

(c) Regional staff shall conduct the investigation regardless of the relationship of the agent to the subject child.

CONFIDENTIALITY

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

Reports, report summaries and other accompanying information obtained under the CPSL and this chapter in the possession of the Department [,] and a county agency [and a CPS] are confidential. Except for the subject of a report, OR GUARDIAN AD LITEM APPOINTED ON BEHALF OF THE CHILD persons who receive information under this section shall be advised that they are subject to the confidentiality provisions of the CPSL and this chapter, that they are required to insure the confidentiality and security of the information and that they are liable for civil and criminal penalties for releasing information to persons who are not permitted access to this information. This material shall

only be released under the CPSL and this chapter and be made available only to the following:

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

(2) A physician examining or treating a child or the director of a hospital or medical facility treating a child, if the physician or the director of a hospital or medical facility suspects the child of being an abused child .

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

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

(i) The Secretary.

(ii) Deputy Secretaries of the Department and designated staff, in cases involving alleged or actual abuse of children in facilities or programs under their jurisdiction.

(iii) ChildLine staff.

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

(5) A court of competent jurisdiction under a court order.

(5.1) A court of common pleas upon written request from a judge in connection with any matter involving custody of a child. When the Department receives a written request under this subsection, ChildLine will send ~~to~~ the court copies of the Report of Suspected Child Abuse (CY-47); the ChildLine Report of Suspected Child Abuse and Neglect For ChildLine Use Only (CY-47C); the Child Protective Service Investigation Report (CY-48); and the Child Protective Service Supplemental Report (CY-49) on file at ChildLine involving the subject child, the child's siblings and their parents.

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

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

(7) The Attorney General.

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

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

(i) Homicide, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the victim.

(ii) Suspected child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health or welfare is harmed or threatened.

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

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

(i) Homicide, sexual abuse or exploitation, or serious bodily injury perpetrated by persons whether or not related to the child.

(ii) Child abuse perpetrated by persons who are not family members.

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

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

(ii) The mayor of a city of the first class under the act of April 21, 1949 (P.L. 665, No. 155), known as the First Class City Home Rule Act.

(iii) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government under the act of April 13, 1972 (P.L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law.

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

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

(14) Individuals authorized by the Department to conduct studies of data, if the study does not contain the name or other information by which the subjects of reports may be identified.

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

(i) The final status of the report following the investigation, whether it be indicated, founded or unfounded.

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

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

(17) MEMBERS OF A LOCAL OR STATE CHILD DEATH REVIEW TEAM FORMALLY ORGANIZED FOR THE PURPOSE OF ASSISTING IN THE INVESTIGATION OF CHILD DEATH OR THE DEVELOPMENT AND PROMOTION OF STRATEGIES TO PREVENT CHILD DEATH. THE INFORMATION SHALL BE PROVIDED ONLY THROUGH STAFF OF THE COUNTY AGENCY OR DEPARTMENT WHO ARE MEMBERS OF THE TEAM.

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

child-care personnel) [(11 P. S. § 2223.1)].

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

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

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

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

(1) Requests shall be in writing and signed by the law enforcement official.

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

(i) Homicide, sexual abuse or exploitation, or serious bodily injury, perpetrated by persons whether or not related to the victim.

(ii) Child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances that indicate that a child's health or welfare is harmed or threatened.

(iv) A missing child report.

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

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

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

(2) Referrals shall be made if the initial report to or initial review by the [CPS] county agency gives evidence

that the alleged abuse perpetrated by persons whether or not related to the child is one of the following:

- (i) Homicide.
- (ii) Sexual abuse or exploitation.
- (iii) Serious bodily injury.

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

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

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

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

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

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

(c) If the complaint of suspected abuse is determined to be one which cannot be investigated by the county agency because the person accused of the abuse is not a perpetrator, but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities.

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

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

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

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

- (1) Requests shall be made in writing and addressed to [the Deputy Secretary of the Office of Children, Youth and

Families] the county administrator.

(2) Requests shall be signed by:

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

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

(iii) The county chief executive.

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

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

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

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

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

(b) Prior to releasing information under subsection (a)[,] to anyone other than a law enforcement official under subsection (a), the Secretary will notify the person whose identity would be released that [he] the person has [45] 30-calendar days to advise the Secretary why this anticipated release would be detrimental to [his] the person's safety.

§ 3490.95. Release of information to required reporters.

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

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

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

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

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

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

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

(4) The [CPS] county agency shall release the information under § SECTION 3490.91(a)(15) (relating to persons to whom child abuse information shall be made available) when requested by a required reporter.

(5) The [CPS] county agency may release the information under § SECTION 3490.91(a)(15) (relating to persons to whom child abuse information shall be made available), either [orally] verbally or in writing, to the required reporter whether or not a request for information was received.

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

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

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

[OTHER] GENERAL REQUIREMENTS FOR CHILD PROTECTIVE SERVICES

§ 3490.101. Sanctions.

A staff member of the Department or county agency who willfully violates the CPSL and this chapter is subject to disciplinary action, including dismissal.

§ 3490.102. Criminal liability for breach of confidentiality.

Any person who willfully releases or permits the release of data or information contained in the pending complaint file, the Statewide Central Register, or the county agency records, to persons or agencies not permitted by this chapter to receive this information shall be guilty of a misdemeanor of the third degree. In addition, the person shall be denied access in the future to any information that the person would otherwise be entitled to receive under the provisions of the CPSL and this chapter.

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

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

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

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

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

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

(a) A subject of an indicated or founded report may request in writing that the Secretary amend, seal or expunge the report on the grounds that it is inaccurate or being maintained in a manner inconsistent with the CPSL and this chapter.

(b) The Secretary will decide whether to grant or deny a request made under subsection (a) within 30 days from the date the

request is received. The Secretary will notify subjects of the report and the appropriate [CPS] county agency of [his] the decision by first-class mail.

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

(a) A perpetrator of an indicated report of child abuse may request the Secretary to amend or expunge the report on the grounds that it is inaccurate or is being maintained in a manner inconsistent with the CPSL and this chapter. The request must be in writing and postmarked within 45-calendar days of the mailing date of the letter from ChildLine under § SECTION 3490.40 (relating to notifications regarding indicated reports) and § SECTION 3490.40(a) (relating to notifications regarding founded reports).

(b) The Secretary will decide within 30-calendar days whether or not to grant the request. The Secretary will notify the perpetrator, the county agency and other subjects in writing as follows:

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

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

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

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

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

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

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

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

(c) If a subject or [CPS] county agency files an appeal under ~~§ 3490.105(a)~~ (relating to request by the subject of a founded or indicated report for expunction, amendment or sealing of an abuse report received by ChildLine prior to July 1 1995),

the subject or [CPS] county agency has the right to a hearing before the Department's [Office] Bureau of Hearings and Appeals.

(d) Except as provided in subsection (e), hearings will be conducted under 2 Pa.C.S. §§ 501 -- 508 and 701 -- 704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to rules of procedures).

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

(f) The burden of proof in hearings held under this section is as follows: ON THE APPROPRIATE COUNTY AGENCY.

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

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

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

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

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

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

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

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

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

(e) Except as provided in subsection (f), hearings will be conducted under 2 Pa.C.S. §§ 501 -- 508 and 701 -- 704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to GENERAL rules of procedures ADMINISTRATIVE PRACTICE AND PROCEDURE).

(f) Hearings will be scheduled and final administrative action taken in accordance with the time limits specified in 55 Pa. Code, §§ 275.4(b) and (e)(1), (3) and (5) (relating to procedures).

(g) The burden of proof in hearings held under this section is+ ON THE APPROPRIATE COUNTY AGENCY.

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

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

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

(i) Any administrative appeal proceeding will be automatically stayed upon notice to the Department by any subject or the county agency that there is a pending criminal proceeding or a dependency or delinquency proceeding under 42 Pa.C.S. Chapter 63 (relating to juvenile matters), THE JUVENILE ACT including an appeal thereof, involving the same factual circumstances.

§ 3490.107. Notification of Secretary's decision to amend, seal or expunge a report of child abuse.

The Secretary, after ordering a record to be amended, sealed or expunged, shall advise ChildLine of the decision.

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

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

§ 3490.109. Report from law enforcement agencies.

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

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

§ 3490.121. Definitions.

The following words and terms, when used in §§ ~~3490.122~~ 3490.121 -- [3490.126] 3490.127 (relating to verification of THE existence of child abuse AND STUDENT ABUSE records for child care

services) have the following meanings, unless the context clearly indicates otherwise:

Administrator -- A person hired by or under contract with a legal entity to be responsible for the management and operation of a child care service.

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

(i) Applies for gainful employment in a child care service, including an administrator, or other support personnel.

(ii) Applies for employment with a contractor who is under contract with a child care facility or program.

(iii) Is employed by a contractor seeking a contract with a child care facility or program.

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

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

Child caretaker -- A person whether compensated or not who provides care for a child and who voluntarily solicits certification from the Department under section [23.1(k)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [(11 P. S. § 2223.1(k))].

The term includes but is not limited to a babysitter, scout leader or den ~~mother~~ PARENT.

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

Legal entity -- Includes, but is not limited to a society partnership, corporation or another governing authority legally responsible for the administration and operation of a child care service.

Operator -- A person who provides a child care service but is not hired by or under contract with a legal entity.

Permanent employe -- A child care worker who meets one of the following conditions:

(i) Has met the requirement of § 3490.122 (relating to responsibilities of an applicant, prospective operator or legal entity of a child care service).

(ii) Was employed prior to January 1, 1986 and was not required to submit the requests for clearances.

Request for verification -- A request to the [ChildLine and abuse registry] Statewide Central Register from an applicant, operator of a child care service, foster parent or adoptive parent or a child caretaker seeking voluntary certification to determine whether [he] the applicant is named as a perpetrator in an indicated or founded report of child abuse.

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

(a) An applicant or prospective operator of a child care service shall submit a request for verification on forms provided by the Department. The request for verification shall include a check or money order for the fee charged by the Department, payable to the Department of Public Welfare, which will not exceed \$10. Prospective [community work experience] workfare program participants are exempt from payment of the fee. TO OBTAIN A FORM FOR THE CLEARANCE STATEMENT, AN APPLICANT MAY CALL THE CHILDLINE VERIFICATION UNIT AT (717) 787-6211 AND REQUEST A PENNSYLVANIA CHILD ABUSE HISTORY CLEARANCE FORM.

(b) A person who applies to the Department or the Department of Health to operate a child care service shall comply with procedures established by these Departments for documentation of compliance with the requirements for reports of child abuse and criminal record history information.

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

(d) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance

or registration if the applicant's criminal history record information dictates that the applicant or prospective operator has been convicted of a crime as specified in section [23.1(e)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) [11 P. S. § 2223.1(e)], or an equivalent out-of-State crime as determined by the Department[, within 5 years or less prior to the request for criminal record history information].

(e) An administrator, or other person responsible for hiring decisions, may not hire or contract with an applicant, nor may a prospective operator be issued a certificate of compliance or registration if the applicant's report of criminal history record verification or the report of child abuse record information was obtained more than 1 year prior to the date of application.

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

§ 3490.123. Responsibilities of ~~the~~ prospective adoptive parents, prospective foster parents, foster family care agencies and adoption investigators.

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

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

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

(d) A prospective adoptive parent or prospective foster parent may not be approved by a foster family care agency, an adoption 23 Pa.C.S. § 2535(a) (relating to investigation) when any of the following circumstances exist:

(1) The parent has been named as a perpetrator of a founded report of child abuse committed within [5] five years or less prior to the request for verification.

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

(3) The report of criminal history record information or the report of child abuse record information was obtained more than [1] one year prior to the date of application to the agency for approval or [1] one year prior to the date of commencement of the investigation under 23 Pa.C.S. § 2535(a).

(e) A prospective adoptive parent or prospective foster parent who is not a resident of this Commonwealth is required to obtain a report of criminal history from the Federal Bureau of Investigation according to procedures established by the Department and on forms provided by ChildLine.

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

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

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

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

(2) The date of the incidents of indicated or founded reports of child abuse and/or indicated or founded reports for a school employe STUDENT ABUSE IN WHICH THE PERSON IS NAMED.

§ 3490.125. Voluntary certification of child caretakers.

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

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

(c) A child caretaker requesting voluntary certification who is not a resident of this Commonwealth shall secure a report of criminal history from the Federal Bureau of Investigation under procedures established by the Department on properly prepared forms provided by ChildLine.

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

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

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

(e) A request for voluntary certification from the Department may be made no more frequently than every [2] two years.

(f) [Requests for voluntary certification received on properly prepared Departmental forms with a check or money order payable to the Department in the amount charged by the Department will be processed.] The Department will process requests for voluntary certification it receives on the forms developed by the Department. The request must include a check or money order payable to the Department of Public Welfare in the amount charged by the Department. OTHERS WILL BE RETURNED WITH INSTRUCTIONS FOR RESUBMITTING THE REQUEST.

§ 3490.126. Sanctions.

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

(b) Information received by a legal entity, an administrator, the Department or the Department of Health under § 3490.124 (relating to Departmental procedures for replying to a request for verification [from an applicant, prospective operator

of a child care service, prospective adoptive parent or prospective foster parent]) is confidential and the legal entity, administrator, the Department and the Department of Health are subject to § 3490.102 (relating to criminal liability for breach of confidentiality).

§ 3490.127. Information relating to prospective child care personnel.

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

(b) The maximum period of employment allowed for a provisional employe is as follows:

(1) Thirty calendar days for an applicant residing in this Commonwealth.

(2) Ninety calendar days for an out-of-State applicant.

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

(1) Mailed the requests for the required clearances to ChildLine, the State Police and the FBI, if applicable.

(2) Provided copies of these completed request forms for clearances to the administrator to retain as a condition of provisional employment.

(3) Sworn or affirmed in writing that ~~he~~ THE APPLICANT was not disqualified from employment under section [23.1(d) or (e)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) OR AN EQUIVALENT OUT OF STATE CRIME.

(d) During the 30- or 90-day provisional period, the provisional employe may not be permitted to work alone with children and shall work within ~~eyesight~~ THE VICINITY of a permanent employe.

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

(1) Dismiss the provisional employe until the required clearances are received.

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

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

(f) A provisional employe shall be immediately dismissed from employment if he is disqualified from employment under section [23.1(d) or (e)] 6344 of the CPSL (relating to information relating to prospective child-care personnel) .

**VERIFICATION OF THE EXISTENCE OF
CHILD ABUSE AND STUDENT ABUSE RECORDS
FOR SCHOOL EMPLOYES**

§ 3490.131. Definitions.

The following words and terms, when used in §§ 131-137, have the following meanings, unless the context clearly indicates otherwise:

Administrator -- The person or persons, including an independent contractor, responsible for employment decisions in a school. THE PERSON RESPONSIBLE FOR THE ADMINISTRATION OF A PUBLIC OR PRIVATE SCHOOL, INTERMEDIATE UNIT OR AREA VOCATIONAL-TECHNICAL SCHOOL. THE TERM INCLUDES A PERSON RESPONSIBLE FOR EMPLOYMENT DECISIONS IN A SCHOOL AND AN INDEPENDENT CONTRACTOR.

Applicant -- An individual who applies for employment A POSITION as a school employe INCLUDING PERSON APPLYING TO BE A VOLUNTEER IN CHARTER OR REGIONAL CHARTER SCHOOLS. The term includes an individual who transfers from one position as a school employe to another position as a school employe.

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

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

Independent contractor and the contractor's employe(s) -- A person employed in a position on a contractual basis with a school who has direct contact with students.

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

School -- All schools including public and nonpublic schools as defined in the School Code and private academic schools as defined in the Regulations of the State Board of Private Academic Schools, as follows:

(1) Public -- School Districts, Intermediate Units, and Area Vocational-Technical Schools, CHARTER AND REGIONAL CHARTER SCHOOLS.

(2) Registered -- Nonpublic (religiously affiliated schools).

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

(4) Accredited -- Accredited by an accreditation association or organization.

(5) State-Owned -- Scotland School and Scranton School for the Deaf.

School employe -- An individual employed in a position by a school. The term includes independent contractors and their employes. The term excludes individuals who have no direct contact with students.

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

Transfer -- A change from one position to another.

§ 3490.132. Responsibilities of an administrator.

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

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

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

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

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

(f) School administrators shall, in their contracts with independent contractors and their employes who have direct contact

with students, require contractors to include provisions for a clearance statement as required by this chapter.

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

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

§ 3490.133. Responsibilities of an applicant.

(a) An applicant shall submit a request for a clearance statement to the Department on the form provided by the Department. The request shall include a check or money order payable to the Department of Public Welfare IN THE AMOUNT SPECIFIED ON THE APPLICATION. The fee may not exceed \$10.

(B) TO OBTAIN A FORM FOR THE CLEARANCE STATEMENT, AN APPLICANT MAY CALL THE CHILDLINE VERIFICATION UNIT AT (717) 787-6211 AND REQUEST A PENNSYLVANIA CHILD ABUSE HISTORY CLEARANCE FORM.

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

§ 3490.134. Information relating to prospective school employes.

(a) The provisions of the section relating to responsibilities of an administrator shall not apply to a person working in a school who is:

(1) Under 21 years of age;

(2) Participating in a job development or job training program; AND

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

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

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

(2) The administrator has no knowledge of information which would disqualify the applicant under the section relating to responsibilities of an administrator.

(c) The provisional period may not exceed:

(1) Thirty-calendar days for residents of Pennsylvania.

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

Title 55

DEPARTMENT OF PUBLIC WELFARE

(d) An administrator may not hire an applicant on a provisional basis during a strike under the Act of July 23, 1970 (P.L. 563, No. 195), known as the Public Employe Relations Act.

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

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

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

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

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

§ 3490.135. Responsibilities of the Department.

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

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

(1) The number of indicated or founded reports of child abuse and/or ~~indicated or founded reports for a school employe in which the applicant is named as a perpetrator of child abuse or a school employe responsible for student abuse~~ IN WHICH THE PERSON IS NAMED.

(2) The date of the incidents of indicated or founded reports of child abuse and/or ~~indicated or founded report for a school employe~~ STUDENT ABUSE IN WHICH THE PERSON IS NAMED.

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

§ 3490.136. Sanctions.

An administrator who willfully violates section 6355 of the CPSL (relating to requirement) shall be subject to an

Chapter 3490

[CHILD] PROTECTIVE SERVICES

administrative penalty of \$2,500. An action under section 6355 of the CPSL (relating to requirement) is governed by 2 Pa.C.S. Chapter 5, subchapter A (relating to practice and procedure of Commonwealth agencies) and Chapter 7, subchapter A (relating to judicial review of Commonwealth agency DEPARTMENT action).

§ 3490.137. Forms (RESERVED).

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

SUBCHAPTER B
ABUSE OF STUDENTS IN SCHOOL

INTRODUCTION

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

SCHOOL RESPONSIBILITIES

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

LAW ENFORCEMENT RESPONSIBILITIES

- 3490.161. Responsibilities of law enforcement officials.

COUNTY RESPONSIBILITIES

- 3490.171. Responsibility of the county agency RECEIPT AND INVESTIGATION OF REPORTS OF SUSPECTED STUDENT ABUSE.
3490.172. Coordination of an investigation.
3490.173. Notifications by the county agency.
3490.174. Services for students who are reported for suspected student abuse.

Title 55

DEPARTMENT OF PUBLIC WELFARE

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

DEPARTMENT RESPONSIBILITIES

3490.181. Agents of the county agency.

3490.182. ChildLine files.

GENERAL REQUIREMENTS FOR STUDENT ABUSE

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

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

3490.193. Other provisions.

INTRODUCTION

§ 3490.141. Applicability.

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

§ 3490.142. Purpose.

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

§ 3490.143. Definitions.

In addition to the definitions in § SECTION 3490.4 (relating to definitions) the following words and terms, when used §§ SECTIONS 3490.141-3490.191, have the following meanings, unless the context clearly indicates otherwise:

Administrator - The person, ~~commonly referred to as the principal,~~ responsible for the administration of a PUBLIC OR PRIVATE school, INTERMEDIATE UNIT OR AREA VOCATIONAL-TECHNICAL SCHOOL. The term includes an independent contractor ~~of a school.~~

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

Indicated report for a school employe - A report of student abuse if an investigation by the county agency determines that substantial evidence of serious bodily injury

or sexual abuse or exploitation exists based on any or all of the following:

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

School -- All schools including public and private NONPUBLIC schools as defined in the School Code and private academic schools as defined in the Regulations of the State Board of Private Academic Schools, AS FOLLOWS:

(1) PUBLIC -- SCHOOL DISTRICTS, INTERMEDIATE UNITS, AREA VOCATIONAL-TECHNICAL SCHOOL, CHARTER AND REGIONAL CHARTER SCHOOL.

(2) REGISTERED -- NONPUBLIC (RELIGIOUSLY AFFILIATED SCHOOLS).

(3) LICENSED -- PRIVATE ACADEMIC SCHOOLS THAT ARE LICENSED BY THE DEPARTMENT OF EDUCATION (INCLUDING RESIDENTIAL FACILITIES THAT HIRE THEIR OWN STAFF TO TEACH RESIDENTS OF THE FACILITY).

(4) ACCREDITED -- ACCREDITED BY AN ACCREDITATION ASSOCIATION OR ORGANIZATION.

(5) STATE-OWNED -- SCOTLAND SCHOOL AND SCRANTON SCHOOL FOR THE DEAF.

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

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

Student abuse - ~~The term student abuse shall mean either~~ ONE OR MORE OF THE FOLLOWING:

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

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

Unfounded report for a school employe - Any report of student abuse unless the report is a founded report for a school employe or an indicated report for a school employe.

SCHOOL RESPONSIBILITIES

§ 3490.151. Required reporting.

A school employe who has reasonable cause to suspect, on the basis of professional or other training and experience, that a student coming before the school employe in the employe's professional or official capacity is a victim of serious bodily injury or sexual abuse or sexual exploitation by another school

employe, shall immediately notify the administrator of the alleged abuse or injury.

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

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

§ 3490.152. Responsibilities of administrators and school employes.

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

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

(c) The verbal report shall be followed up with a written report on a form provided by the Department. CALL (717) 783-1964 TO OBTAIN A COPY OF THE FORM - REPORT OF SUSPECTED STUDENT ABUSE (CY 47-D).

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

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

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

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

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

(1) The administrator.

(2) A law enforcement official in the course of investigating the allegation of suspected student abuse.

(3) A county agency worker.

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

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

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

(B) THIS Subsections (2) through (6) apply APPLIES to an administrator when the administrator made the report of suspected student abuse.

LAW ENFORCEMENT RESPONSIBILITIES**§ 3490.161. Responsibilities of law enforcement officials.**

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

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

COUNTY RESPONSIBILITIES**§ 3490.171. Receipt and investigation of reports of suspected student abuse.**

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

(b) When a county agency receives a report of suspected student abuse, it shall immediately notify ChildLine of the receipt of the report and begin an investigation as soon as possible. THE ORAL REPORT SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE NAME AND ADDRESS OF THE STUDENT AND THE STUDENT'S PARENT OR GUARDIAN.

(2) WHERE THE SUSPECTED ABUSE OR INJURY OCCURRED.

(3) THE AGE AND SEX OF THE STUDENT.

(4) THE NATURE AND EXTENT OF THE SUSPECTED ABUSE OR INJURY.

(5) THE NAME AND HOME ADDRESS OF THE SCHOOL EMPLOYE ALLEGED TO HAVE COMMITTED THE ABUSE OR INJURY.

(6) THE RELATIONSHIP OF THE STUDENT TO THE SCHOOL EMPLOYE ALLEGED TO HAVE COMMITTED THE ABUSE OR INJURY.

(7) THE SOURCE OF THE REPORT TO THE COUNTY AGENCY.

(8) THE ACTIONS TAKEN BY THE COUNTY AGENCY, LAW ENFORCEMENT OFFICIALS, PARENTS, GUARDIANS, SCHOOL OFFICIALS OR OTHER PERSONS, INCLUDING THE TAKING OF PHOTOGRAPHS, MEDICAL TESTS, AND X-RAYS.

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

(d) The county agency's investigation must be completed within 60-calendar days of when the report was received by ChildLine. The county agency shall submit a Child Protective Service Investigation Report form to ChildLine with a status determination of founded, indicated, unfounded or pending criminal court action. If the Child Protective Service Investigation Report form is not received within ~~sixty~~ 60-calendar days from the date the report was received by the county agency, the report shall be considered unfounded. PRIOR TO EXPUNGING THE REPORT, CHILDLINE SHALL VERIFY WITH THE COUNTY AGENCY THAT THE REPORT WAS NOT COMPLETED WITHIN 60-CALENDAR DAYS.

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

(1) Pending criminal court action, ~~or~~.

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

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

§ 3490.172. Coordination of an investigation.

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

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

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

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

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

§ 3490.173. Notifications by the county agency.

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

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

(1) The existence of the report.

(2) The allegations of STUDENT abuse.

(3) The school employe's rights regarding amendment and expunction.

(4) The right to obtain a copy of the report from ChildLine or the county agency.

(5) The fact that unfounded reports are expunged within 120-calendar days of receipt of the report by ChildLine.

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

(C) THE WRITTEN NOTICE REQUIRED BY SUBSECTION (B) MAY BE REASONABLY DELAYED IF NOTIFICATION IS LIKELY TO THREATEN THE SAFETY OF THE VICTIM, THE SAFETY OF ANOTHER SUBJECT OR THE SAFETY OF AN INVESTIGATING COUNTY AGENCY WORKER, TO CAUSE THE SCHOOL EMPLOYE TO ABSCOND OR TO SIGNIFICANTLY INTERFERE WITH THE CONDUCT OF A CRIMINAL INVESTIGATION.

~~(e)~~(D) The written notice must be given to all subjects before the status determination is submitted to ChildLine.

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

§ 3490.174. Services for students.

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

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

(a) The county agency shall amend a record of student abuse upon notification from ChildLine. The county agency shall expunge all information in its possession in unfounded, indicated, and founded reports of student abuse upon notification from ChildLine.

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

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

§ 3490.182. ChildLine files.

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

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

(i) The name and address of the student and the student's parents or guardian(s).

(ii) Where the suspected abuse or injury occurred.

(iii) The age and sex of the student.

(iv) The nature and extent of the suspected STUDENT abuse or injury.

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

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

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

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

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

(i) The name, Social Security Number, date of birth and sex of the subjects of the report.

(ii) The home address of the subjects of the report.

- (iii) The date and the nature and extent of the abuse.
 - (iv) The county in which the STUDENT abuse occurred.
 - (v) The factors contributing to the abuse.
 - (vi) The relationship of the school employe who abused the student to the student.
 - (vii) The source of the report (name of school administrator/school employe who made the report to a law enforcement official and the district attorney).
 - (viii) Whether the report is a founded or indicated report.
 - (ix) Information obtained by the Department in relation to a school employe's request to release, amend or expunge information retained by the Department or the county agency.
 - (x) The progress of any administrative or civil legal proceedings brought on the basis of the report.
 - (xi) Whether a criminal investigation was done and the result of the investigation and of any criminal prosecution.
- (3) The file of unfounded reports awaiting expunction which contains the same information that is in the Statewide Central Register.

GENERAL REQUIREMENTS FOR STUDENT ABUSE

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

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

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

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

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

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

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

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

(e) Except as provided in subsection (f), hearings will be conducted under 2 Pa.C.S. §§ 501 - 508 and 701 - 704 (relating to the Administrative Agency Law) and 1 Pa. Code Part II (relating to GENERAL rules of ADMINISTRATIVE PRACTICE AND procedure).

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

(g) The burden of proof in hearings held under this section is as follows: ON THE APPROPRIATE COUNTY AGENCY.

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

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

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

(i) Any administrative appeal proceeding will be automatically stayed upon notice to the Department by any subject or the county agency that there is a pending criminal proceeding or a dependency or delinquency proceeding under 42 Pa.C.S. Chapter 63 (relating to juvenile matters), THE JUVENILE ACT, including an appeal thereof, involving the same factual circumstances.

§ 3490.193. Other provisions.

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

- | | |
|----------------------|--|
| <u>(a) § 3490.31</u> | <u>(relating to receipt of reports).</u> |
| <u>(b) § 3490.35</u> | <u>(relating to Statewide Central Register).</u> |
| <u>(c) § 3490.36</u> | <u>(relating to providing information to the county agency).</u> |
| <u>(d) § 3490.37</u> | <u>(relating to release of information: Statewide Central Register, pending complaint file and file of unfounded reports).</u> |
| <u>(e) § 3490.38</u> | <u>(relating to authorized studies of child abuse data).</u> |

Chapter 3490

[CHILD] PROTECTIVE SERVICES

- (f) § 3490.40 (relating to notifications regarding indicated reports).
- (g) § 3490.40a (relating to notifications regarding founded reports).
- (h) § 3490.41 (relating to determination of time).
- (i) § 3490.42 (relating to performance audit and reviews).
- (j) § 3490.54 (relating to independent investigation of reports).
- ~~(k) § 3490.65 (relating to staffing and staff qualifications).~~
- ~~(l) (K) § 3490.91 (relating to persons to whom child abuse information shall be made available).~~
- ~~(m) (L) § 3490.93 (relating to requests by designated county officials).~~
- ~~(n) (M) § 3490.94 (relating to the release of the identity of a person who made a report of child abuse or cooperated in a subsequent investigation).~~
- ~~(o) (N) § 3490.104 (relating to release of information to a subject of a report).~~

SUBCHAPTER C
GENERAL PROTECTIVE SERVICES

[FOUNDED REPORT OF CHILD ABUSE --
STATEMENT OF POLICY]

- Sec.
3490.201. [Criminal court -- found guilty] (Reserved).
- 3490.202. [Criminal court -- plea of guilty or no contest] (Reserved).
- 3490.203. [Criminal court -- Accelerated Rehabilitated Disposition] (Reserved).
- 3490.204. [Criminal court -- found not guilty] (Reserved).
- 3490.205. [Civil court] (Reserved).
- 3490.206. [Juvenile court -- CPS petition] (Reserved).
- 3490.207. [Juvenile court -- child not a dependent] (Reserved).
- 3490.208. [Juvenile court -- CPS and indicated report] (Reserved).
- 3490.209. [Juvenile court] (Reserved).
- 3490.210. [Multiple categories] (Reserved).

INTRODUCTION

- 3490.221. Applicability.
- 3490.222. Purposes.
- 3490.223. Definitions.

COUNTY RESPONSIBILITIES

- 3490.231. Functions of the county agency for general protective services.
3490.232. Receiving reports and assessing the need for services.
3490.233. Protective custody.
3490.234. Notifications.
3490.235. Services available through the county agency for neglected children IN NEED OF GENERAL PROTECTIVE SERVICES.
3490.236. General protective services records.

GENERAL REQUIREMENTS FOR GENERAL PROTECTIVE SERVICES

- 3490.241. Appeals with respect to general protective services.
3490.242. Confidentiality.

[FOUNDED REPORT OF CHILD ABUSE --
STATEMENT OF POLICY]

§ 3490.201. [Criminal court -- found guilty] (Reserved).

[(a) If a perpetrator is found guilty in criminal court of a crime against a child which parallels a definition in the CPSL and this chapter, the CPS may assign a status of founded.

(b) The perpetrator shall be a parent, a paramour of the parent, a person responsible for the child's welfare or a person residing in the child's home.]

§ 3490.202. [Criminal court -- plea of guilty or no contest] (Reserved).

[(a) If a perpetrator pleads guilty or no contest to a crime against a child which parallels the definition of child abuse in the CPSL and this chapter, the CPS may assign a status of founded.

(b) After the court has accepted the defendant's plea of guilty and imposed sentence, there has been a final adjudication. Thus, the requirements of the definition of a founded report are met.

(c) A plea of nolo contendere is slightly different from a guilty plea. A plea of nolo contendere is an implied confession of guilt only and cannot be used against the pleader as an admission in a civil suit for the same act. The judgment of conviction follows upon the plea as upon a plea of guilty. Courts have consistently held that there is no valid distinction between a conviction upon a plea of nolo contendere and a judgment of conviction after a guilty plea or trial. Therefore, a plea of nolo

Chapter 3490

[CHILD] PROTECTIVE SERVICES

contendere which is accepted by the court and which results in a conviction is a sufficient basis for upgrading the status of an indicated report to a founded report. There is a final adjudication by a court, and the definition of a founded report is satisfied.]

§ 3490.203. [Criminal court -- Accelerated Rehabilitated Disposition] (Reserved).

[(a) If a perpetrator is involved in an Accelerated Rehabilitated Disposition (ARD) program in lieu of conviction for a child abuse related crime, the CPS may not assign a status of founded.]

(b) The result of successful completion by the defendant of an ARD program results in the dismissal of charges against the defendant. Hence, there is no final court adjudication. However, the county CPS may maintain the report as indicated.]

§ 3490.204. [Criminal court -- found not guilty] (Reserved).

[If a defendant is found not guilty in criminal court, the report may remain on file as indicated, as long as the county CPS determines that substantial evidence of abuse exists to support a status determination of indicated.]

§ 3490.205. [Civil court] (Reserved).

[A case that results in a judicial adjudication of child abuse under the Protection from Abuse Act (35 P. S. §§ 10181 -- 10190) may be determined founded, if the abuse meets the definition of child abuse in the CPSL.]

§ 3490.206. [Juvenile court -- CPS petition] (Reserved).

[The Superior Court of Pennsylvania ruled in the case of In re R.M.R., 366 Pa. Super 243, 530 A.2d 1381 (1987), that a CPS may petition the juvenile court for a finding that a child is dependent due to child abuse. The court held the CPSL does not provide jurisdiction for an adjudication that a child is an abused child. Therefore, the CPS shall petition the juvenile court under 42 Pa.C.S. §§ 6301 -- 6365 (relating to the Juvenile Act).]

§ 3490.207. [Juvenile court -- child not a dependent] (Reserved).

[(a) The CPS may not petition the court for a finding of abuse if the child is not dependent; for example, a baby sitter abused the child but the parents are providing adequate care, control, subsistence and education under 42 Pa.C.S. §§ 6301 -- 6365 (relating to the Juvenile Act).]

(b) The Juvenile Act limits the adjudications a judge may make to dependency or delinquency. It does not allow a judge to make a finding of abuse without determining that the child is also dependent.]

§ 3490.208. [Juvenile court -- CPS and indicated report] (Reserved).

[If the CPS petitions Juvenile Court for a founded status and the court does not adjudicate the child a dependent child based on abuse, the CPS may still maintain the report with a status of indicated. See section 3 of the CPSL (11 P. S. § 2203).

(1) An indicated report is one which is based on substantial evidence of abuse, which in turn is based on one or more of the following:

- (i) The CPS investigation.
- (ii) Available medical evidence.
- (iii) An admission by the perpetrator.

(2) If the county CPS has determined that there is substantial evidence of abuse, in spite of the juvenile court's failure to find clear and convincing evidence that the child is a dependent child (based on child abuse), the county CPS may maintain the report as indicated.

(3) Commonwealth Court has defined "substantial evidence" in child abuse cases. Evidence is substantial where it so preponderates in favor of a conclusion that it outweighs, in the mind of the fact-finder, any inconsistent evidence and reasonable inferences drawn therefrom. G. S. v. Department of Public Welfare, 104 Pa. Commw. 84, 521 A.21 87 (1987).]

§ 3490.209. [Juvenile court] (Reserved).

[The CPS is not prohibited from changing an affected report investigated since enactment of the CPSL. The CPS is not precluded from amending the status of a report from indicated to unfounded. Section 3490.57(c) (relating to protective custody) authorizes amendment of a Child Protective Service Investigation Report (CY-48) to reflect a change in status of an indicated or founded report of abuse. There is no time limit imposed upon the CPS in making the amendment to the status of the report.]

§ 3490.210. [Multiple categories] (Reserved).

[When there are multiple categories of abuse involved and some are determined founded, the CPS should use the following for determining which are founded and which are indicated: abuse, up to and including the most serious that was determined founded, is considered founded; the others may be considered indicated. For example, a father has forcible oral or vaginal intercourse with his 13-year-old daughter. On the CY-48 the CPS advises ChildLine that the abuse was indicated and involved incest, statutory rape, rape, deviate sexual intercourse and sexual assault. Later, the father, through plea bargaining, is convicted of deviate sexual intercourse. The CPS should submit the Supplemental Child Abuse Report (CY-49) to ChildLine changing the status of the deviate sexual intercourse to founded. The incest, statutory rape and rape would remain indicated. ChildLine would consider this as one

report with a dual status. If the perpetrator requests clearance under the CPSL, the application for Child Abuse History (CY-113) will show the applicant as a perpetrator of a founded report of child abuse and an indicated case of abuse.]

INTRODUCTION

§ 3490.221. Applicability.

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

§ 3490.222. Purposes.

(a) The purposes of this subchapter are to:

(1) Protect the SAFETY, rights and welfare of children so that they have an opportunity for healthy growth and development.

(2) Assist parents in recognizing and remedying conditions harmful to their children and in fulfilling their parental duties in a manner that does not put their children at risk.

§ 3490.223. Definitions.

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

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

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

General Protective Services -- ~~Those activities and services arranged and/or provided by each county agency for neglected children and their families both during the assessment and while the case is open for~~ Services TO PREVENT THE POTENTIAL FOR HARM TO A CHILD WHO:

(1) IS WITHOUT PROPER PARENTAL CARE OR CONTROL, SUBSISTENCE, EDUCATION AS REQUIRED BY LAW, OR OTHER CARE OR CONTROL NECESSARY FOR HIS PHYSICAL, MENTAL, OR EMOTIONAL HEALTH, OR MORALS;

(2) HAS BEEN PLACED FOR CARE OR ADOPTION IN VIOLATION OF LAW;

(3) HAS BEEN ABANDONED BY HIS PARENTS, GUARDIAN, OR OTHER CUSTODIAN;

(4) IS WITHOUT A PARENT, GUARDIAN, OR LEGAL CUSTODIAN;

(5) WHILE SUBJECT TO COMPULSORY SCHOOL ATTENDANCE IS HABITUALLY AND WITHOUT JUSTIFICATION TRUANT FROM SCHOOL;

(6) HAS COMMITTED A SPECIFIC ACT OR ACTS OF HABITUAL DISOBEDIENCE OF THE REASONABLE AND LAWFUL COMMANDS OF HIS

PARENT, GUARDIAN OR OTHER CUSTODIAN AND WHO IS UNGOVERNABLE AND FOUND TO BE IN NEED OF CARE, TREATMENT OR SUPERVISION;

(7) IS UNDER THE AGE OF TEN YEARS AND HAS COMMITTED A DELINQUENT ACT;

(8) HAS BEEN FORMERLY ADJUDICATED DEPENDENT UNDER SECTION 6341 OF THE JUVENILE ACT (RELATING TO ADJUDICATION), AND IS UNDER THE JURISDICTION OF THE COURT, SUBJECT TO ITS CONDITIONS OR PLACEMENTS AND WHO COMMITS AN ACT WHICH IS DEFINED AS UNGOVERNABLE IN PARAGRAPH (6); OR

(9) HAS BEEN REFERRED PURSUANT TO SECTION 6323 OF THE JUVENILE ACT (RELATING TO INFORMAL ADJUSTMENT), AND WHO COMMITS AN ACT WHICH IS DEFINED AS UNGOVERNABLE IN PARAGRAPH (6).

Neglect -- Act or failure to act by a parent or the primary person responsible for the care of a child which result in a failure to provide the essentials of life and which create a potential for harm to the child's safety, functioning or development. No child shall be considered neglected based solely on environmental factors that are beyond the control of the parent or the primary person responsible for the child's care including inadequate housing, furnishings, income, clothing and medical care. For purposes of the definition of neglect, the following terms have the following definitions:

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

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

(iii) Potential for harm -- Likely, if permitted to continue, to have a detrimental effect on the child's health, development or functioning. The term does not include imminent risk as defined in the definition of child abuse in § 3490.4 (relating to definitions).

PARENT -- A BIOLOGICAL PARENT, ADOPTIVE PARENT, LEGAL GUARDIAN OR PRIMARY PERSON RESPONSIBLE FOR A CHILD.

POTENTIAL FOR HARM -- LIKELY, IF PERMITTED TO CONTINUE, TO HAVE A DETRIMENTAL EFFECT ON THE CHILD'S HEALTH, DEVELOPMENT OR FUNCTIONING. THE TERM DOES NOT INCLUDE IMMINENT RISK AS DEFINED IN THE DEFINITION OF CHILD ABUSE IN § SECTION 3490.4 (RELATING TO DEFINITIONS).

PRIMARY PERSON WHO IS RESPONSIBLE FOR THE CARE OF A CHILD -- A PERSON WHO PROVIDES OR ARRANGES ONGOING CARE AND SUPERVISION TO A CHILD IN LIEU OF PARENTAL CARE AND SUPERVISION.

Report -- A verbal or written statement to the county agency from someone alleging that a child is neglected IN NEED OF GENERAL PROTECTIVE SERVICES.

COUNTY RESPONSIBILITIES

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

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

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

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

(a) The county agency shall be the sole civil agency responsible for receiving and assessing all reports of suspected neglect ALLEGING A NEED FOR GENERAL PROTECTIVE SERVICES. Nothing in this subchapter limits 42 Pa.C.S. § SECTION 6304 OF THE JUVENILE ACT (relating to powers and duties of probation officers) OR SECTION 6334 OF THE JUVENILE ACT (RELATING TO PETITION).

(b) The county agency shall provide 24-hours-per-day/7-days-per-week telephone access to receive reports of suspected neglect ALLEGING A NEED FOR GENERAL PROTECTIVE SERVICES.

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

(1) Accept the report for an assessment.

(2) Refer the information for other services provided by the county agency.

(3) Refer the person to another agency.

(d) (C) When the county agency accepts the report an assessment, The THE county agency shall see the child immediately

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

~~(e)~~(D) The county agency shall use a State-approved risk assessment process FOR GENERAL PROTECTIVE SERVICES as required by § SECTION 3490.321 (relating to establishment of standards for a risk assessment process) to:

(1) Aid in its assessment of whether to accept the family for services.

(2) Insure that its assessment is comprehensive.

(3) Help determine the need for general protective services.

(4) ASSIST IN THE DEVELOPMENT OF THE FAMILY SERVICE PLAN.

~~(f)~~(E) The county agency shall complete an assessment WITHIN 60-CALENDAR DAYS to determine whether or not the child is neglected and whether or not the family should be accepted for general protective services, BE REFERRED TO ANOTHER AGENCY FOR SERVICES OR CLOSE THE CASE within 60 calendar days from the date the agency received the report and accepted the report for an assessment under e(1) above.

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

~~(h)~~(G) The county agency shall interview the child, if age appropriate, and the custodial parentS or the primary person who is responsible for the care of the child. The county agency shall also conduct interviews with those persons who are known to have or may reasonably be expected to have information that would be helpful to the county agency in determining whether or not the child is neglected and in need of general protective services.

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

~~(j)~~(I) The county agency shall provide or arrange appropriate services when necessary to protect TO ASSURE THE SAFETY OF the child during the assessment period.

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

§ 3490.233. Protective custody.

(a) A child suspected of being neglected ALLEGED TO BE IN NEED OF GENERAL PROTECTIVE SERVICES may be taken into protective custody under §§ SECTIONS 3490.15 (relating to taking a child into protective custody), 3490.16 (relating to notifying the county agency), 3490.17 (relating to notifying the child's parents, GUARDIANS OR OTHER CUSTODIANS) and 3490.57. (relating to protective custody).

(b) The director or OF a hospital or other medical facility OR A PERSON SPECIFICALLY DESIGNATED IN WRITING BY THE DIRECTOR, or a physician examining or treating a child may take a child into protective custody if protective custody IT is immediately necessary in the director's, or physician's judgment to protect the child. and as indicated by the following examples:

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

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

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

§ 3490.234. Notifications.

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

(b) The county agency shall provide written notice to the parents of the child suspected of being neglected and the primary person who is responsible for the care of the child of the county agency's decision to accept OR NOT ACCEPT the family for general protective services because of neglect within seven calendar days of making the decision. If the COUNTY agency accepts the family for services, it shall include in the notice:

(1) The reason(s) why the COUNTY agency accepted the family for services.

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

(3) That the request for an appeal must be received by the county agency within 45-calendar days of the mailing date of the written notice in (b).

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

(5) That the WRITTEN appeal request must specify the reasons why the child is not neglected and IN NEED OF GENERAL PROTECTIVE services are not needed.

§ 3490.235. Services available through the county agency for neglected children IN NEED OF GENERAL PROTECTIVE SERVICES.

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

(b) The county agency shall develop a family service plan as required by 55 PA. C.S. § 3130.61 (relating to family service plans) for each family accepted for general protective services.

(c) The county agency shall monitor the provision of services and evaluate the effectiveness of the services provided under the family service plan under 55 PA C.S. § ~~3130.61~~ 3130.63 (relating to review of family service plans). THE COUNTY AGENCY WORKER SHALL VISIT THE FAMILY IN PERFORMING THE CASE MANAGEMENT RESPONSIBILITIES AS REQUIRED BY 55 PA. C.S. § 3130.63 (RELATING TO REVIEW OF FAMILY SERVICE PLANS) AS OFTEN AS NECESSARY FOR MANAGEMENT OF THE SERVICE PROVISION BUT NO LESS FREQUENTLY THAN EVERY 180-CALENDAR DAYS.

(d) The county agency may purchase and use the services of any appropriate public or private agency under Chapter 55 PA. C.S. § 3130 (relating to the administration of county children and youth social service programs).

(e) The county agency supervisor shall review each report of suspected child neglect ALLEGING A NEED FOR GENERAL PROTECTIVE SERVICES which is being assessed on a regular and ongoing basis TO ASSURE THAT THE LEVEL OF SERVICES ARE CONSISTENT WITH THE LEVEL OF RISK TO THE CHILD, to determine the safety of the child and the progress made toward reaching a determination on the need for protective services. The supervisor shall maintain a log of these reviews WHICH AT A MINIMUM SHALL INCLUDE AN ENTRY AT 10-CALENDAR DAY INTERVALS DURING THE ASSESSMENT PERIOD.

(f) When a case has been accepted for service and a family service plan has been developed under Chapter 55 PA. C.S. § 3130 (relating to the administration of county children and youth social service programs), the county agency supervisor shall, within 10-calendar days of the completion of the family service plan, review the plan to assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family which are contained in the plan,

are consistent with the level of risk determined by the county agency for the case. Documentation of this review shall be in the case record.

(g) When a case has been accepted for services, the county agency shall monitor the safety of the child and assure that contacts are made with the child, parents and service providers. The contacts may occur EITHER DIRECTLY BY A COUNTY AGENCY WORKER OR THROUGH PURCHASE OF SERVICE, by phone or in person but face-to-face contacts with the parent and the child must occur as often as necessary for the protection of the child but no less often than:

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

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

(i) Placed out of the home or setting in which the ~~neglect occurred~~ NEED FOR GENERAL PROTECTIVE SERVICES WAS ESTABLISHED.

(ii) ~~Not~~ NO LONGER DETERMINED TO BE at a high risk of abuse or neglect BY THE COUNTY AGENCY.

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

(i) Except where ordered by the court in a proceeding brought under 42 Pa.C.S. Chapter 63 (relating to juvenile matters), THE JUVENILE ACT, a county agency shall not be required to duplicate services which are the statutory responsibility of any other agency.

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

(K) THE FAMILY SERVICE PLAN SHALL CONTAIN A PROVISION THAT REQUIRES THE PARENTS ADVISE THE COUNTY AGENCY, WITHIN 24 HOURS, WHEN THE CHILD OR FAMILY MOVE FROM ONE RESIDENCE TO ANOTHER.

§ 3490.236. General protective services records.

(a) Records for reports that are accepted for general protective services shall be maintained under 55 PA. C.S. § 3130.43 (relating to family case records). In addition to the information required by 55 PA. C.S. § 3130.43, the records must contain the following information:

(1) The nature of the ~~neglect~~ EACH REPORT FOR GENERAL PROTECTIVE SERVICES.

(2) The date and source of the report.

(3) The names and addresses of the persons interviewed in conducting the assessment OF EACH REPORT.

(4) The services provided by the county agency during the assessment OF THE REPORT.

(5) HOW THE LEVEL OF SERVICES PROVIDED ARE CONSISTENT WITH THE LEVEL OF RISK TO THE CHILD.

(b) Records for reports that are not accepted for service shall be maintained for five years following the receipt of the latest report of suspected neglect-ALLEGING THE NEED FOR GENERAL PROTECTIVE SERVICES. The following information shall be maintained:

(1) The name and address of the child(ren).

(2) The names and addresses of the parent(s).

(3) The name and address of the primary person(s) who is responsible for the care of the child.

(4) The allegations of neglect THE NEED FOR GENERAL PROTECTIVE SERVICES.

(5) The date and source of the report.

(6) The names and addresses of the persons interviewed in conducting the assessment.

(7) The services provided by the county agency during the assessment.

(8) Referral to any other community agencies.

(9) A summary of the assessment and reason(s) for not accepting the family for general protective services.

GENERAL REQUIREMENTS FOR GENERAL PROTECTIVE SERVICES

§ 3490.241. Appeals with respect to general protective services.

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

(b) The county agency shall establish policies and procedures for handling these appeals. The policies and procedures shall be in the agency's manual as required by 55 PA. C.S. § 3130.21 (relating to responsibilities of county executive officers).

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

(d) The county agency shall review the request and issue a written decision to the person who made the request within 45-calendar days of the receipt of the appeal. If the agency denies the request, the person who made the request shall be advised in writing of his right to a hearing before the Department's Bureau of Hearings and Appeals and that such request must be made within

Chapter 3490

[CHILD] PROTECTIVE SERVICES

45-calendar days of the date of the letter from the county agency notifying the person of the agency's decision denying the request.

(e) If a hearing is requested, the Bureau of Hearings and Appeals will schedule a hearing under Article IV of the Act of June 13, 1967 (P.L. 31, No. 21), known as the Public Welfare Code, and applicable Department regulations. The burden of proof in the hearing shall be on the county agency. The Department shall assist the county agency as necessary.

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

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

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

§ 3490.242. Confidentiality.

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

(1) Under 55 Pa. Code § 3130.44 (relating to confidentiality of family case records).

(2) To another county agency.

(3) To an official of an agency of another state that performs general protective services analogous to those services performed by county agencies or the Department in the course of the official's duties.

SUBCHAPTER D
GENERAL REQUIREMENTS FOR
CHILD PROTECTIVE SERVICES AND
GENERAL PROTECTIVE SERVICES

INTRODUCTION

<u>Sec.</u>	
<u>3490.301</u>	<u>Applicability.</u>
<u>3490.302</u>	<u>Purpose.</u>
<u>3490.303</u>	<u>Definitions.</u>

STAFF ORIENTATION, TRAINING AND CERTIFICATION REQUIREMENTS

- 3490.311. Establishment of a staff development process.
- 3490.312. Training program requirements for direct service workers.
- 3490.313. Direct service worker certification requirements for supervisors who supervise direct service workers.
- 3490.314. Training and certification requirements for supervisors who supervise direct service workers.

RISK ASSESSMENT

- 3490.321. Establishment of standards for a risk assessment process.
- 3490.322. County agency compliance with risk assessment standards.

ANNUAL REPORT

- 3490.331. Annual report on required activities.

STAFF RATIOS

- 3490.341. Staff-to-family ratios.

FAILURE TO COOPERATE

- 3490.351. Willful failure to cooperate.

STANDARDS FOR STAFF

- 3490.361. Requirements for agencies providing protective services.
- 3490.362. Licensure requirements for persons providing services arranged or provided by the county agency.

ATTORNEY FOR THE COUNTY AGENCY

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

LAW ENFORCEMENT OFFICIALS

- 3490.381. Law enforcement assistance.

ANNUAL PLAN

3490.391. The County agency plan.

EFFECTIVE DATES

TRANSFER OF CASES

3490.401. Intercounty transfer of cases.

3490.411. Effective dates.

INTRODUCTION

§ 3490.301. Applicability.

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

§ 3490.302. Purpose.

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

§ 3490.303. Definitions.

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

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

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

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

STAFF ORIENTATION, TRAINING AND CERTIFICATION REQUIREMENTS

§ 3490.311. Establishment of a staff development process.

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

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

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

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

§ 3490.312. Training program requirements for direct service workers.

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

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

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

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

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

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

(3) Direct service workers who are not in a permanent employment status as of July 1, 1996, must be certified by December 31, 1997.

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

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

job duties as determined by the written policy of the county agency.

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

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

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

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

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

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

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

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

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

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

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

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

(i) Documentation of completion of a minimum of 20 hours of training annually. For direct service workers who complete the CORE training during the county agency's training year, the county agency shall pro rate the number of required training hours that a direct service worker must take in the county agency's training year schedule. Training content shall be based on the annual administration of an assessment of individual training needs and the development of an

individual training plan. Ongoing training, as identified in the individual training plan, may be obtained through the training program, provided by a county agency or obtained through another provider.

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

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

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

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

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

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

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

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

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

Persons EMPLOYED, hired, transferred or promoted to supervise direct service workers ON OR after ~~December 31, 1997~~ OCTOBER 1, 1998 must complete a supervisor's training program approved by the Department in consultation with the steering committee. The content of the training and certification requirements will be communicated by the Department to the county agencies and supervisors through a Departmental bulletin.

Risk Assessment§3490.321. Establishment of standards STANDARDS for a risk assessment process.

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

~~(b)(A) The standards established for risk assessment must include the following:~~

- ~~(1) a statement of purpose for the process.~~
- ~~(2) the core set of factors against which risk must be assessed.~~
- ~~(3) the application of the process, including the points at which the process must be applied and the periodicity of application.~~
- ~~(4) the record keeping requirements.~~
- ~~(5) the process for State approval.~~

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

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

~~(C) THE COUNTY AGENCY SHALL IMPLEMENT THE STATE-APPROVED RISK ASSESSMENT MODEL DEVELOPED BY THE DEPARTMENT IN CONSULTATION WITH THE RISK ASSESSMENT TASK FORCE.~~

~~(D) THE COUNTY AGENCY SHALL APPLY THE STATE-APPROVED RISK ASSESSMENT PROCESS ESTABLISHED UNDER THIS SECTION IN PERFORMING THE DUTIES UNDER SUBCHAPTER A (RELATING TO CHILD PROTECTIVE SERVICES) AND SUBCHAPTER C (RELATING TO GENERAL PROTECTIVE SERVICES).~~

~~(E) THE FACTORS WHICH SHALL BE ASSESSED BY THE COUNTY AGENCY INCLUDE:~~

- ~~(1) THE CHARACTERISTICS OF THE ENVIRONMENT IN WHICH THE CHILD ABUSE OCCURRED INCLUDING THE HISTORY OF PRIOR ABUSE AND NEGLECT;~~
- ~~(2) THE CHARACTERISTICS OF THE PARENT, CAREGIVER, HOUSEHOLD MEMBER, PRIMARY PERSON RESPONSIBLE FOR THE WELFARE OF A CHILD AND PERPETRATOR INCLUDING HISTORY OF DRUG AND ALCOHOL ABUSE; AND~~
- ~~(3) THE CHARACTERISTICS OF THE FAMILY INCLUDING THE HISTORY OF FAMILY VIOLENCE.~~

~~(F) THE COUNTY AGENCY SHALL RATE EACH FACTOR LISTED IN SUBSECTION (D) AND SHALL PROVIDE DOCUMENTATION IN THE RECORD TO~~

SUPPORT THE IDENTIFIED LEVEL OF RISK AND TO ASSURE THE CHILD'S SAFETY.

(1) EACH FACTOR SHALL BE RATED USING THE FOLLOWING DESIGNATIONS:

- (A) NO RISK;
- (B) LOW RISK;
- (C) MODERATE RISK; OR
- (D) HIGH RISK.

(2) IN THE EVENT THAT A COUNTY AGENCY IS UNABLE TO ASSESS THE RISK OF A SPECIFIC FACTOR LISTED IN SUBSECTION (E), THEN THE COUNTY AGENCY SHALL INDICATE THE REASONS IN THE RECORD.

(G) AT THE TIME OF THE REPORT OF SUSPECTED CHILD ABUSE OR ALLEGATIONS OF CHILDREN IN NEED OF GENERAL PROTECTIVE SERVICES, THE COUNTY AGENCY SHALL MAKE AN INITIAL DETERMINATION OF THE RISK TO THE CHILD. THE COUNTY AGENCY NEED NOT COMPLETE THE RISK ASSESSMENT PROCESS IF AFTER ONE CONTACT WITH THE FAMILY THE REPORT IS DETERMINED TO BE WITHOUT ANY MERIT. THE COUNTY AGENCY SHALL DOCUMENT EVIDENCE WHICH SUPPORTS THIS FINDING IN THE RECORD.

(H) PERIODIC ASSESSMENTS OF RISK SHALL BE COMPLETED BY THE COUNTY AGENCY NO LESS THAN:

(1) AT THE CONCLUSION OF THE INTAKE INVESTIGATION WHICH SHALL NOT EXCEED 60-CALENDAR DAYS.

(2) EVERY SIX MONTHS IN CONJUNCTION WITH THE FAMILY SERVICE PLAN OR JUDICIAL REVIEW UNLESS:

- (I) THE RISK TO THE CHILD REMAINS LOW OR NO RISK;
- OR
- (II) THE CHILD HAS BEEN PLACED OUT OF THE HOME FOR MORE THAN SIX MONTHS AND THERE ARE NO OTHER CHILDREN IN THE HOME.

(3) THIRTY-CALENDAR DAYS BEFORE AND AFTER THE CHILD IS RETURNED TO THE FAMILY HOME UNLESS:

- (I) THE RISK TO THE CHILD REMAINS LOW OR NO RISK;
- OR
- (II) THE CHILD'S RETURN HOME WAS NOT ANTICIPATED BY THE COUNTY AGENCY. A RISK ASSESSMENT FOR THESE CASES MUST BE COMPLETED WITHIN TWO WEEKS OF THE CHILD'S RETURN TO THE HOME.

(4) THIRTY-CALENDAR DAYS PRIOR TO CASE CLOSURE.

(I) THE COUNTY AGENCY SHALL CONDUCT A RISK ASSESSMENT AS OFTEN AS NECESSARY TO ASSURE THE CHILD'S SAFETY.

(J) THE COUNTY AGENCY SHALL ASSESS THE SAFETY AND RISK OF THE CHILD WHEN THE CIRCUMSTANCES CHANGE WITHIN THE CHILD'S ENVIRONMENT AT TIMES OTHER THAN REQUIRED UNDER THIS SECTION.

~~(e) The standards established under subsection (b) of this section apply to Subchapter A (relating to child protective services) and Subchapter C (relating to general protective services).~~

§ 3490.322. County agency compliance with risk assessment standards.

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

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

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

(d) The county agency in developing and implementing the Family Service Plan and Placement Amendment as required by Chapter 55 PA. C.S. § 3130 (relating to administration of county children and youth social service programs) shall assure that the level of activity, in person contacts with the child, oversight, supervision and services for the child and family are consistent with the level of risk as determined by the county agency ~~for the~~ ease.

ANNUAL REPORT

§ 3490.331. Annual report on required activities.

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

(1) The reports of suspected child abuse received by the Department.

(2) The reports of suspected student abuse received by the Department.

(3) The results of requests for child care clearances received by the Department.

(4) The costs to implement the law.

(5) An evaluation of services offered in response to the CPSL.

(6) The protective service referrals received and accepted by county agencies.

(7) The children over whom the county agencies maintain continuing supervision.

(8) The protective service cases closed by county agencies.

(9) The services provided to children and their families.

(10) Recommendations for legislative changes and the estimated increase or decrease in cost.

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

STAFF RATIOS

§ 3490.341. Staff-to-family ratios.

A COUNTY AGENCY SHALL HAVE SUFFICIENT, QUALIFIED STAFF AND BE ORGANIZED TO PERFORM THE FUNCTIONS REQUIRED BY THE CPSL AND THIS CHAPTER. Staff-to-family ratios for protective service workers must be in accordance with 55 PA. C.S. § 3130.32 (relating to staffing requirements) and 55 PA. C.S. § 3140.17 (relating to review of county plans and budgets).

FAILURE TO COOPERATE

§ 3490.351. Willful failure to cooperate.

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

STANDARDS FOR STAFF

§ 3490.361. Requirements for agencies providing protective services.

The county agency shall arrange for or provide protective services for children and their families only through agencies that comply with the requirements of 55 PA. C.S. §§ 3130.21 (relating to responsibilities of county executive officers), § 3130.39 (relating to services and facilities which may be used) and § 3130.40 (relating to delivery of services through other service providers).

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

The county agency shall arrange for or provide services from persons who are not affiliated with an agency under

Chapter 3490

[CHILD] PROTECTIVE SERVICES

§ SECTION 3490.361 (relating to requirements for agencies providing PROTECTIVE services) only if the person possessES a valid license issued by the Department of State, if the profession is subject to mandatory licensure.

ATTORNEY FOR THE COUNTY AGENCY

§ 3490.371. Availability of an attorney for the county agency.
The county agency shall retain or ensure the availability of an attorney for consultation with and representation of the county agency in fulfilling its responsibilities under the CPSL and this chapter.

LAW ENFORCEMENT OFFICIALS

§ 3490.381. Law enforcement assistance.
A county agency staff member may request a law enforcement officer to be present at any time during the course of fulfilling the county agency's staff person's responsibilities under the CPSL and this chapter without violating the confidentiality provisions of the CPSL or this chapter when the worker fears for his own safety or the safety of anyone else involved.

ANNUAL PLAN

§ 3490.391. ~~The county~~ COUNTY agency plan.
The county agency shall comply with ~~Chapter~~ 55 PA. C.S. § 3140 (relating to planning and financial reimbursement requirements for county children and youth social service programs) regarding the development and submission of a plan for the provisions of protective services required by the CPSL and this chapter.

TRANSFER OF CASES

§ 3490.401. Intercounty transfer of cases.
(a) ~~County agencies shall share that information with each other which will assist them in providing services to children and parents in delivering protective services~~ WHICH WILL ASSIST THEM IN PROTECTING CHILDREN.
(b) ~~When a report of suspected child abuse or neglect is under investigation, or~~ A REPORT IS BEING ASSESSED TO DETERMINE THE NEED FOR GENERAL PROTECTIVE SERVICES ~~assessment~~ or when a case has been accepted for protective services and the family moves to another county, and the address is known, the county AGENCY shall:

(1) immediately telephone the receiving county agency and tell them the name and address of the child and parent(s), the reason for agency involvement, the status of the case, the services that were being provided, the level of risk assigned to the case and any other information that would assist the receiving agency.

(2) within 24 hours of the phone call, send a fax to the receiving agency to confirm the referral. The faxed information shall contain the name and address of the child and parent(s), the level of risk assigned to the case and the status of the case.

(c) The receiving agency shall accept the referral and determine what services are necessary to protect the child from abuse or neglect.

(d) When the case is a high risk case, the receiving county agency shall reassess the risk of abuse or neglect to the child and see the child within 24 hours of receiving the telephone referral. The county agency worker shall see the child at the child's new address.

(E) THE RECEIVING AGENCY SHALL NOTIFY THE REFERRING AGENCY OF THE STATUS OF THE REFERRAL UPON COMPLETING THE INVESTIGATION OR ASSESSMENT.

(e) (F) REGARDLESS OF WHETHER OR NOT THE ADDRESS OF THE CHILD AND FAMILY IS KNOWN, WITHIN 72 hours of the telephone referral, the referring agency shall fax or send by overnight mail TO THE RECEIVING AGENCY THE FOLLOWING:

- (1) the family demographics;
- (2) the current Family Service Plan and placement amendment;
- (3) the current risk assessment matrix and summary;
- (4) court petitions and court orders;
- (5) a social summary, when available;
- (6) a copy of the CY-48 and other relevant ChildLine forms; and
- (7) any other information that would assist the receiving agency in providing services to the child and parents.

(~~e~~) (G) When a report of suspected child abuse or neglect is under investigation or assessment or when a case has been accepted for protective services and the family moves to another county, and the county where the child has moved to is known but not the street address, the referring county agency shall telephone the receiving county and give them the names and dates of birth of the child and parent(s).. ~~The receiving county shall accept and keep the information on file in the event the child or parent(s) are subsequently referred to the receiving agency. If the family is referred to the receiving county agency, the receiving county agency shall contact the referring agency and follow the procedures under subsections (e) and (d) and request the referring agency to send the information under subsection (e).~~

(H) THE REFERRING AND RECEIVING AGENCY SHALL MAKE REASONABLE EFFORTS TO LOCATE THE FAMILY, INCLUDING AS APPROPRIATE, BASED ON THE AGE OF THE CHILD AND OTHER CIRCUMSTANCES, BY CONTACTING THE FOLLOWING:

- (1) POST OFFICE OF THE LAST KNOWN ADDRESS.
- (2) SCHOOL.
- (3) HEALTH PROFESSIONALS AND HEALTH AGENCIES.
- (4) DOMESTIC RELATIONS OFFICE.
- (5) PARENT LOCATOR SERVICES.
- (6) LAW ENFORCEMENT OFFICIAL.
- (7) COUNTY ASSISTANCE OFFICE.
- (8) KNOWN RELATIVES.
- (9) KNOWN NEIGHBORS.

(I) THE REFERRING AND RECEIVING COUNTY SHALL DOCUMENT THEIR EFFORTS TO LOCATE THE CHILD AND FAMILY.

(J) THE RECEIVING COUNTY SHALL NOTIFY THE REFERRING COUNTY:

- (1) WITHIN TEN DAYS OF LOCATING THE CHILD AND FAMILY, WHEN FOUND.
- (2) WHEN THE COUNTY HAS EXHAUSTED ALL REASONABLE EFFORTS TO LOCATE THE FAMILY.

EFFECTIVE DATES

§ 3490.411. Effective dates.

These regulations take effect upon publication in the Pennsylvania Bulletin as final rulemaking.

PLEASE RETURN TO:
 INDEPENDENT REGULATORY REVIEW COMMISSION
 TRANSMITTAL SHEET FOR REGULATORY REVIEW ACT
 14TH FLOOR, HARRISTOWN II

RECEIVED

I.D. NUMBER: 14-441
 SUBJECT: Protective Services
 AGENCY: DEPARTMENT OF PUBLIC WELFARE

99 FEB 18 PM 3:4
 REGULATORY REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/18/99	<u>Dubbe Acon</u>	HOUSE COMMITTEE ON AGING & YOUTH
2/18/99	<u>Krusti Krasova</u>	SENATE COMMITTEE ON PUBLIC HEALTH & WELFARE
2/18/99	<u>John [unclear]</u>	
2/18/99	<u>Jetta [unclear]</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
2/18/99	<u>Jr. [unclear]</u>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU