

CHAPTER 129

CHILD ABUSE AND NEGLECT CASES

Authority

N.J.S.A. 9:6-8.36a, 30:1-12, 30:4C-4, 9:6-8.10a,
9:6-8.15 and 45 C.F.R. 1340.14(i).

Source and Effective Date

R.1995 d.362, effective June 12, 1995.
See: 27 N.J.R. 1125(a), 27 N.J.R. 2616(c).

Executive Order No. 66(1978) Expiration Date

Chapter 129, Child Abuse and Neglect, expires on June 12, 2000.

Chapter Historical Note

Chapter 129, Child Abuse and Neglect Cases, became effective October 11, 1979 as R.1979 d.400. See: 11 N.J.R. 74(a), 11 N.J.R. 559(b). Pursuant to Executive Order No. 66(1978), Chapter 129 was readopted as R.1984 d.489. See: 16 N.J.R. 2224(a), 16 N.J.R. 3033(a). Pursuant to Executive Order No. 66(1978), Chapter 129 was readopted as R.1990 d.389, eff. July 13, 1990. See: 22 N.J.R. 1535(a), 22 N.J.R. 2320(a). Chapter 129 was readopted as R.1995 d.362, effective June 12, 1995. See: Source and Effective Date.

See subchapter and section annotations for specific rulemaking activity.

Cross References

See N.J.A.C. 10:91-5.11, Blind and visually impaired services suspected child abuse or neglect reporting.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. POLICY CONCERNING THE
REFERRAL AND INVESTIGATION OF CHILD
ABUSE AND NEGLECT CASES

- 10:129-1.1 Purpose
- 10:129-1.2 General policy
- 10:129-1.3 Referral of cases to prosecutor
- 10:129-1.4 Division recommendations to prosecutors
- 10:129-1.5 Response by prosecutors

SUBCHAPTER 2. CHILD ABUSE PREVENTION AND
TREATMENT ACT OF 1974 REQUIREMENTS

- 10:129-2.1 Confidential reporting and releasing requirements
- 10:129-2.2 Definition of sexual abuse

SUBCHAPTER 1. POLICY CONCERNING THE
REFERRAL AND INVESTIGATION OF
CHILD ABUSE AND NEGLECT CASES

10:129-1.1 Purpose

(a) State law requires all persons to report suspected cases of child abuse or neglect to the Division of Youth and Family Services ("the Division"), and the Division has a legal obligation to refer to county prosecutors all cases that

involve suspected criminal activity on the part of a child's parent, caretaker or any other person. While this duty may result in the referral of a substantial number of cases to prosecutors, it is anticipated that in most of the cases referred extensive police involvement will not be warranted, and indeed that in many cases no police involvement will be required. The objectives of this policy statement are:

1. To set forth guidelines by which Division caseworkers may easily identify cases that must be referred to prosecutors;
2. To establish procedures for such referrals;
3. To establish a system through which Division caseworkers may assist prosecutors in determining which cases should be investigated and in identifying cases in which criminal investigation or prosecution would be detrimental to the child's best interests; and
4. To establish a framework for liaison and improved communication and cooperation between the Division's district offices and the several prosecutors' offices in order to further the mutual goals of protecting the child and proper law enforcement.

Case Notes

Close working relationship between the Division of Youth and Family Services and county prosecutor's office made DYFS caseworker "law enforcement officer," for purposes of *Miranda* when conducting custodial interview of defendant charged with sexually assaulting his daughters. *State v. Helewa*, 223 N.J.Super. 40, 537 A.2d 1328 (A.D. 1988).

10:129-1.2 General policy

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

10:129-1.3 Referral of cases to prosecutor

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

1. Death of a child;
2. The subjecting or exposing of a child to unusual or inappropriate sexual activity;

3. Any type of injury or condition resulting in hospitalization or emergency room treatment;

4. Any type of injury or condition that requires more than superficial medical attention (e.g., treatment for broken bone at physician's office);

5. Repeated instances of physical violence committed against a child, or substantially depriving a child of necessary care over a period of time; or

6. Abandonment of a child.

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

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

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

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

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

(e) Prompt referrals of child abuse and neglect cases are important, and in some cases essential. Hence, written referrals on DYFS Form 9-7, or other Division of Youth and Family Services form which contains a narrative description of the essential facts, shall be sent to the prosecutor as soon as the caseworker determines that referral is required by this policy. In cases where there is serious or repeated harm, the referral shall be made as soon as possible by telephone, with written confirmation being sent within 48 hours thereafter. The Division will establish consistent with this policy, specific procedures for making referrals which will include participation of supervisory personnel in identifying cases that this policy requires to be referred and designation of a person in each district office to act as a liaison to the prosecutor. Copies of such procedures will be furnished to all county prosecutors.

Amended by R.1995 d.362, effective July 3, 1995.
See: 27 N.J.R. 1125(a), 27 N.J.R. 2616(c).

Made stylistic changes.

Case Notes

Various state, county, and governmental agencies as well as private agencies and persons were immune under doctrine of quasi-judicial immunity. *Delbridge v. Schaeffer*, 238 N.J.Super. 323, 569 A.2d 872 (L.1989).

Close working relationship between the Division of Youth and Family Services and county prosecutor's office made DYFS caseworker "law enforcement officer," for purposes of *Miranda* when conducting custodial interview of defendant charged with sexually assaulting his daughters. *State v. Helewa*, 223 N.J.Super. 40, 537 A.2d 1328 (A.D. 1988).

10:129-1.4 Division recommendations to prosecutors

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

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

10:129-1.5 Response by prosecutors

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

(b) The prosecutor may take various courses of action upon receipt of a referral, among them, the following:

1. Advise the Division staff member making the referral that the prosecutor will not undertake an investigation and request that the prosecutor be advised immediately of any indication of further or continuing abuse or neglect.
2. With advance notice to the Division, undertake an initial investigation using, to the extent practicable, specially designated investigators or refer the matter to a designated officer in a local police department for initial investigation.

(c) After investigating a case, the prosecutor will determine whether criminal prosecution must be undertaken. He should confer with the caseworker in making this determination and will advise the caseworker of his decision.

SUBCHAPTER 2. CHILD ABUSE PREVENTION AND TREATMENT ACT OF 1974 REQUIREMENTS

Authority

N.J.S.A. 30:4C-4, 30:1-12, 9:6-8.10a, 9:6-8.15
and 45 CFR 1340.14(i)(2)(xi).

Source and Effective Date

R.1985 d.373, effective July 15, 1985.
See: 17 N.J.R. 885(a), 17 N.J.R. 1766(b).

10:129-2.1 Confidential reporting and releasing requirements

(a) All records of child abuse reports made pursuant to section 3 of P.L.1971, c.437 (C.9:6-8.10), all information obtained by the Division of Youth and Family Services in investigating such reports including reports received pursuant to section 20 of P.L.1974, c.119 (C.9:6-8.40), and all reports of findings forwarded to the central registry pursuant to section 4 of P.L.1971, c.437 (C.9:6-8.11) shall be kept

confidential and may be disclosed only under the circumstances expressly authorized in subsection (b) below.

(b) The Division may release the records and reports referred to in (a) above, or part thereof, to:

1. A public or private child protective agency authorized to investigate a report of child abuse or neglect;
2. A police or other law enforcement agency investigating a report of child abuse or neglect;
3. A physician who has before him a child who he reasonably suspects may be abused or neglected;
4. A physician, a hospital director or his designate, a police officer or other person authorized to place a child in protective custody when such person has before him a child who he reasonably suspects may be abused or neglected and requires the information in order to determine whether to place the child in protective custody;
5. An agency authorized to care for, treat, or supervise a child who is the subject of a child abuse report; or an agency authorized to care for, treat, or supervise a parent, guardian or other person who is responsible for the child's welfare, when the information is needed in connection with the provision of care, treatment, or supervision to such child or such parent, guardian or other person by the agency;
6. A court, upon its finding that access to such records may be necessary for determination of an issue before the court, and such records may be disclosed by the court in whole or in part to the law guardian, attorney or other appropriate person upon a finding that such further disclosure is necessary for determination of an issue before the court;
7. A grand jury upon its determination that access to such records is necessary in the conduct of its official business;
8. Any appropriate State legislative committee acting in the course of its official functions, provided, however, that no names or other information identifying persons named in the report shall be made available to the legislative committee unless it is absolutely essential to the legislative purpose;

9. Any person engaged in a bona fide research purpose, provided, however, that no names or other information identifying persons named in the report shall be made available to the researcher unless it is absolutely essential to the research purpose and provided further that the prior written approval of the director of the Division of Youth and Family Services shall first have been obtained, and the child through his or her representative gives permission to release the information;

10. A family day care sponsoring organization for the purpose of providing information on child abuse or neglect allegations involving prospective or current providers or household members pursuant to P.L. 1993, c. 350 (N.J.S.A. 30:5B-25.1 et al.) and as necessary for use in administrative appeals related to information obtained through a central registry search.

(c) Any individual agency, court, grand jury or legislative committee which receives from the Division the records and reports referred to in (a) above shall keep such records and reports, or parts thereof, confidential.

(d) Whenever information is disclosed pursuant to any of the exceptions enumerated in (b)1 through 10 above, the identity of the referrant and any other person shall be protected and not disclosed by the Division where the disclosure of such information would be likely to endanger the life or safety of the referrant or other person, or where such disclosure would be likely to result in the discharge or discrimination against the referrant with respect to his or her employment.

1. The determination as to whether the disclosure of such information would be likely to endanger the life or safety of the referrant or other person, or jeopardize the referrant's employment, shall be based upon the case-worker's and supervisor's evaluation of the nature and seriousness of the case and an assessment of the propensity for violence and harm or discharge or discrimination.

2. This procedure shall apply to all instances in which information (records and reports) is requested, but particularly when information is requested by an agency authorized to care for, treat or supervise the child's parent, guardian or other person responsible for the child's welfare when the information is needed in connection with the provision of care, treatment or supervision of the parent, guardian or other person responsible for the child's welfare.

Amended by R.1995 d.362, effective July 3, 1995.

See: 27 N.J.R. 1125(a), 27 N.J.R. 2616(c).

Added (b)10.

10:129-2.2 Definition of sexual abuse

(a) The term "sexual abuse" includes:

1. The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or having a child assist any other person to engage in, any sexually explicit conduct (or any simulation of such conduct) for the purpose of producing any visual depiction of such conduct; or

2. The rape, molestation, prostitution, or other such form of sexual exploitation of children, or incest with children, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

(b) The term "child" or "children" means any individual who has not or individuals who have not attained the age of 18.

New Rule, R.1985 d.706, effective January 21, 1986.

See: 17 N.J.R. 2735(a), 18 N.J.R. 196(a).