

CHAPTER 129

CHILD PROTECTION INVESTIGATIONS

Authority

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

Source and Effective Date

R.2012 d.015, effective December 13, 2011.
See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Chapter Expiration Date

Chapter 129, Child Protection Investigations, expires December 13, 2018.

Chapter Historical Note

Chapter 129, Child Abuse and Neglect Cases, was adopted as R.1979 d.400, effective October 11, 1979. See: 11 N.J.R. 74(a), 11 N.J.R. 559(b).

Pursuant to Executive Order No. 66(1978), Chapter 129, Child Abuse and Neglect Cases, was readopted as R.1984 d.489, effective October 1, 1984. See: 16 N.J.R. 2224(a), 16 N.J.R. 3033(a).

Subchapter 2, Child Abuse Prevention and Treatment Act of 1974 Requirements, was adopted as R.1985 d.373, effective July 15, 1985. See: 17 N.J.R. 885(a), 17 N.J.R. 1766(b).

Pursuant to Executive Order No. 66(1978), Chapter 129, Child Abuse and Neglect Cases, was readopted as R.1990 d.389, effective July 13, 1990. See: 22 N.J.R. 1535(a), 22 N.J.R. 2320(a).

Pursuant to Executive Order No. 66(1978), Chapter 129, Child Abuse and Neglect Cases, was readopted as R.1995 d.362, effective June 12, 1995. See: 27 N.J.R. 1125(a), 27 N.J.R. 2616(c).

Subchapter 2, Child Abuse Prevention and Treatment Act Requirements, was repealed by R.1999 d.238, effective August 2, 1999. See: 30 N.J.R. 3912(a), 31 N.J.R. 2211(a).

Pursuant to Executive Order No. 66(1978), Chapter 129, Child Abuse and Neglect Cases, was readopted as R.2000 d.253, effective May 23, 2000. See: 32 N.J.R. 439(a), 32 N.J.R. 2241(a).

Chapter 129, Child Abuse and Neglect Cases, was readopted as R.2005 d.441, effective November 18, 2005. As a part of R.2005 d.441, Chapter 129, Child Abuse and Neglect Cases, was renamed Child Protection Investigations; Subchapter 1, Policy Concerning the Referral and Investigation of Child Abuse and Neglect Cases, was renamed General Provisions; and Subchapter 2, Child Protection Investigation Process, Subchapter 4, Services and Removal During Investigation, Subchapter 5, Findings and Documentation, and Subchapter 6, Expunctions, were adopted as new rules, effective December 19, 2005. See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 129, Child Protection Investigations, was scheduled to expire on May 17, 2013. See: 43 N.J.R. 1203(a).

Chapter 129, Child Protection Investigations, was readopted as R.2012 d.015, effective December 13, 2011. As a part of R.2012, d.015, Subchapter 2 was recodified in part to new Subchapter 3; new Subchapter 3 was named Child Protection Investigation Process for Local Office Investigations; Subchapter 4, Child Protection Investigation Process for the Institutional Abuse Investigation Unit, was adopted as new rules; former Subchapter 3, Specialized Assessment and Investigation, was recodified as Subchapter 5; former Subchapter 4, Services and Removal During Investigation, was recodified as Subchapter 6; former Subchapter 5, Findings and Documentation, was recodified as Subchapter 7; and former Subchapter 6, Expunctions, was recodified as Subchapter 8, effective February 6, 2012. See: Source and Effective Date. See, also, section annotations.

Cross References

See N.J.A.C. 10:91-5.9, Blind and visually impaired services suspected child abuse or neglect reporting.

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SUBCHAPTER 1. GENERAL PROVISIONS

10:129-1.1 Purpose and objectives

(a) The purpose of this chapter is to:

1. Describe how the Department conducts a child protection investigation;
2. Explain the requirements of a child protective investigator in performing an investigation; and
3. Explain what an alleged child victim, caregiver, or parent or guardian may expect during the course of a child protection investigation.

(b) The objectives of this chapter are to:

1. Define when an investigation is required;
2. Identify each allegation of abuse or neglect that constitutes a report;
3. Establish the time frame for initiating an investigation;
4. Identify the evidence needed to support a finding;
5. Define the requirements for starting and completing an investigation conducted by local office staff or Institutional Abuse Investigation Unit staff, including a safety assessment and risk assessment;
6. Define Department actions permitted in performing investigations;
7. Define each circumstance requiring referral of a report to a medical or other professional, law enforcement officer or prosecutor for specialized assessment;
8. Set forth guidelines by which Department caseworkers may easily identify cases that must be referred to prosecutors;
9. Establish procedures for such referrals to prosecutors;
10. Establish a system through which a Department caseworker may assist prosecutors in determining which cases should be investigated for criminal prosecution and in identifying cases in which criminal investigation or prosecution would be detrimental to the child's best interests;
11. Establish a framework for liaison and improved communication and cooperation between the Department's local offices and the prosecutors' offices in order to further the mutual goals of protecting the child and proper law enforcement;

12. Identify the requirements for accessing law enforcement assistance;

13. Establish a requirement for providing services to an alleged child victim or his or her family members;

14. Identify the standards for removing an alleged child victim from his or her home;

15. Specify standards for documentation and notification of an investigation finding as well as other notification given at the end of an investigation; and

16. Specify standards for the expunction of a record.

Amended by R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R.5004(b).

Rewrote the section.

Amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a)2, deleted "both" preceding "an"; "initial and a formal" following "an"; deleted (b)5; recodified (b)6 through (b)17 as (b)5 through (b)16; rewrote (b)5; and in (b)8, substituted "Department" for "Division".

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 Scope

(a) The provisions of this chapter apply to the following persons involved in a child protection investigation:

1. Each child and his or her family and each household member;
2. Each child at risk of abuse or neglect;
3. Each parent or guardian of such a child;
4. Each caregiver or paramour, including a temporary or an institutional caregiver;
5. Each person named as an alleged perpetrator of abuse or neglect;
6. Each reporter;
7. The Public Defender when acting as the Department's agent; and
8. Each Department representative.

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Former N.J.A.C. 10:129-1.2, General policy, was recodified as N.J.A.C. 10:129-1.4.

Amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a)1, inserted "and each household member"; and in (a)4, inserted "or paramour".

10:129-1.3 Definitions

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

“Abused or neglected child” means a child:

1. Less than 18 years of age:

i. Whose parent or guardian inflicts, or allows to be inflicted upon such child, physical injury by other than accidental means, which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;

ii. Whose parent or guardian creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ;

iii. Whose parent or guardian commits or allows to be committed an act of sexual abuse against the child;

iv. Whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his or her parent or guardian to exercise a minimum degree of care:

(1) In supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so, or though offered financial or other reasonable means to do so; or

(2) In providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court;

v. Who has been willfully abandoned by his or her parent or guardian;

vi. Upon whom excessive physical restraint has been used under circumstances which do not indicate that the child’s behavior is harmful to himself or herself, others or property; or

vii. Who is in an institution other than a day school, and:

(1) Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child’s mental or physical well-being; or

(2) Who has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.

2. No child who in good faith is under treatment by spiritual means alone, through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, shall, for this reason alone, be considered to be abused or neglected.

“Assessment of physical harm” means assessment, including visual inspection, used by a child protective investigator, made by either the child protective investigator or by another professional on the request of the child protective investigator, to determine the existence of and the extent of an alleged child victim’s physical injury or condition.

“Call” means contact made by a reporter to the State Central Registry through a phone call or other means of communication.

“Caregiver” means any person who has full-time physical custody of a child, including a parent, stepparent, paramour, and resource parent.

“Child” means a person from birth to his or her 18th birthday.

“Child Abuse Record Information” or “CARI” means the information in the child abuse registry as established in N.J.S.A. 9:6-8.11, which may be released to a person or agency outside the Department’s Division of Youth and Family Services only as prescribed by law.

“Child advocacy center” means a county-based center, pursuant to N.J.S.A. 9:6-8.104, which provides abuse prevention, intervention, and treatment services to children, who are victims of abuse or neglect.

“Child protective investigator” means a Department representative who performs a child protection investigation including a representative of the Office of the Public Defender acting as the Department’s agent.

“Core service” means any one of the mandated services that a regional diagnostic and treatment center may provide to or on behalf of an alleged child victim, and his or her parent or family member whom a center is evaluating in the context of a child protection investigation or treatment of abuse or neglect, as specified in N.J.S.A. 9:6-8.99.

“Criminal History Record Information” or “CHRI” means the information collected by the Department through State and Federal criminal background checks.

“Department” means the New Jersey Department of Children and Families.

“Department representative” means a professional employee of the Department, including a child protective investigator.

“Division” means the Division of Youth and Family Services at the New Jersey Department of Children and Families.

“Expunction” means the destruction, erasure and complete eradication of a record and applies to the destruction of computer files and corresponding paper files.

“Finding” means the final determination made by a child protective investigator of the results of a child protection investigation.

“Immediate response” means an in-person contact with a child victim made by an assigned child protective investigator no later than the end of the work day in which the State Central Registry assigns the report to the local office or Institutional Abuse Investigation Unit for response.

“Institution” means any facility, public or private, in-State, which provides children with out-of-home care, supervision or maintenance. “Institution” includes, but is not limited to, a correctional facility, detention facility, residential child care facility, hospital, camp, day care center that is licensed or should be licensed, group home and registered family child care home.

“Institutional Abuse Investigation Unit (IAIU)” means a child protective service agency within the Department of Children and Families, dedicated solely to investigating allegations of abuse or neglect in child care facilities, resource homes, and other out-of-home care settings.

“Institutional caregiver” means an employee or volunteer, whether compensated or uncompensated, of an institution who is responsible for the child’s welfare and any other staff person of an institution, regardless of whether or not the person is responsible for the care or supervision of the child. “Institutional caregiver” also includes the chief administrator responsible for the operation of an institution or facility.

“Investigation” or “child protection investigation” means the activity of gathering all information relevant to making a determination as to whether abuse or neglect occurred.

“Local office” means an office of the Division of Youth and Family Services which provides direct services and referrals to clients within a limited geographic area of New Jersey. The services provided may be child welfare services, child protective services, and adoption services.

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

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

“Parent” means a person who is the mother or father of a child through birth or adoption.

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

“Permanency worker” means a Department representative, other than the child protective investigator, who is responsible for providing and monitoring services to a child and his or her family involved with the Department.

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

“PROMIS/GAVEL” means the New Jersey courts’ computer criminal record check.

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

“Report” means an account or statement describing a specific incident or set of circumstances of suspected abuse or neglect.

“Reporter” means an individual who contacts the State Central Registry to make a child protective services report, a child welfare service referral, or a request for social services.

“Risk assessment” means a structured process for determining the likelihood that the alleged child victim will be abused or neglected in the future.

“Safety assessment” means a structured process for determining whether the alleged child victim is in imminent danger of harm.

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

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

“Temporary caregiver” means a person who has assumed temporary care, custody, or control of a child, including a babysitter, but does not include an institutional caregiver or a police officer acting in an official capacity.

“Unfounded” means a finding when:

- i. There is not a preponderance of evidence that the alleged child victim was harmed or placed at substantial risk of harm; or
- ii. There is not a preponderance of evidence indicating that a parent or guardian and child were involved.

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Former N.J.A.C. 10:129-1.3, Referral of cases to a prosecutor, was recodified as N.J.A.C. 10:129-3.1.

Administrative correction.

See: 38 N.J.R. 2828(b).

Amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In definition “Caregiver”, deleted “live-in” preceding “paramour”; in definition “Child advocacy center”, deleted “child” preceding “abuse”; in definitions “Department”, “Division”, and “State Central Registry”, substituted “Children and Families” for “Human Services”; in definition “Institution”, substituted “child care facility” for “school”, “group home” for “group homes”, and “family child care home” for “family day care homes”; in definition “Paramour”, substituted “parent’s” for “parent”, “care-giving” for “care giving”, and inserted “frequents the home.”; in definition “Parent or guardian”, inserted “paramour.”; in definition “Regional diagnostic and treatment center”, deleted “child” preceding “abuse”; in definition “Substantiated”, updated the N.J.A.C. reference; added definitions “Child”, “Immediate response”, “Institutional Abuse Investigation Unit (IAIU)”, “Investigation”, “Local office”, and “Perpetrator”; and deleted definitions “Formal investigation” and “Initial investigation”.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 901) adopted, which concluded that Department of Children and Families’ finding that child abuse allegations against a teacher were “unfounded” did not bar tenure charges. Under the statute (N.J.S.A. 18A:6-7a) safeguarding a school employee’s personnel file from any reference to allegations of child abuse or neglect when such charges have been investigated and determined to be unfounded, such unfounded allegations of abuse cannot be used against the employee as a basis for termination. However, nothing in the statute precludes charges separate and apart from “child abuse or neglect,” such as “conduct unbecoming” as the basis for tenure charges. In re Tenure Hearing of Young, OAL Dkt. No. EDU 11569-07, 2008 N.J. AGEN LEXIS 1239, Final Decision (August 18, 2008).

10:129-1.4 General policy

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

Amended by R.2000 d.253, effective June 19, 2000.

See: 32 N.J.R. 439(a), 32 N.J.R. 2241(a).

Substituted a reference to family functioning for a reference to family therapy.

Recodified from N.J.A.C. 10:129-1.2 by R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Former N.J.A.C. 10:129-1.4, Division recommendations to prosecutors, was recodified as N.J.A.C. 10:129-3.2, Department recommendations to prosecutors.

Amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Deleted “child” preceding “abuse”.

SUBCHAPTER 2. CHILD PROTECTION INVESTIGATION PROCESS

10:129-2.1 When an investigation is required

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

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

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

(c) A child protective investigator shall handle each report in which the harm alleged to a child is the result of treatment in good faith for a medical condition by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof in accordance with this chapter, except for N.J.A.C. 10:129-7.3(a).

Amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a), substituted “a child being an abused or neglected child” for “abuse or neglect”; in (b)1, substituted “<http://www.dtic.mil/whs/directives/corres/dir.html>” for “<http://west.dtic.mil/whs/directives/>”; and in (c), inserted “a” preceding “duly”, and updated the N.J.A.C. reference.

10:129-2.2 Allegations of abuse or neglect

(a) The allegations of the types of injuries or risk or harm that may be abuse or neglect include:

1. Child death;
2. Head injuries;
3. Internal injuries;
4. Burns;
5. Poison or noxious substances;
6. Wounds;
7. Bone fractures;
8. Substantial risk of physical injury or environment injurious to health and welfare;
9. Cuts, bruises, abrasions, welts or oral injuries;
10. Human bites;
11. Sprains or dislocations;
12. Mental or emotional impairment; and
13. Risk of harm due to substance abuse by the parent/caregiver or the child.

(b) The allegations of the types of injuries or risk or harm that may be abuse include:

1. Torture;
2. Tying or close confinement;
3. Sexually transmitted diseases;
4. Sexual penetration;
5. Sexual exploitation;
6. Sexual molestation; and
7. Substantial risk of sexual injury.

(c) The allegations of the types of injuries or risk or harm that may be neglect are:

1. Inadequate supervision;
2. Abandonment or desertion;
3. Inadequate food;
4. Inadequate shelter;
5. Inadequate clothing;
6. Medical neglect;
7. Failure to thrive;
8. Environmental neglect;
9. Malnutrition;
10. Lock-out;

11. Medical neglect of a disabled infant; and

12. Educational neglect.

10:129-2.3 Time frames for investigation

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

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

1. Law enforcement personnel request an immediate response;
2. An immediate response will prevent the loss of evidence;
3. A child has died due to abuse or neglect and a sibling or other child remains under the care of a parent or guardian;
4. A child is born drug-exposed;
5. A child under age six is alone at the time the State Central Registry receives the report;
6. A child requires medical attention at the time the State Central Registry receives the report; or
7. A child is being seriously physically abused at the time the State Central Registry receives the report.

Amended by R.2012 d.015, effective February 6, 2012.
See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Time frames for initial investigation". In (a), inserted "no later than the end of the work day or"; deleted "either two hours or" following "within"; and substituted "local" for "field"; in the introductory paragraph of (b), substituted "no later than the end of the work day" for "within two hours"; in (b)3, inserted "or other child"; and in (b)4, deleted "a boarder baby left in a hospital or" preceding "born".

10:129-2.4 Evidence needed to support a finding

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

1. Obtain evidence whether the child has an injury or condition;
2. Obtain evidence whether the injury or condition is a direct result of one of the following:
 - i. Some action by a parent or guardian;

ii. The failure of a parent or guardian to stop the action of another person; or

iii. The parent or guardian's reckless disregard of a harmful situation;

3. Obtain a detailed explanation from the alleged child victim, the alleged perpetrator, each witness and each other person with knowledge of the injury or condition;

4. Document the final police investigation result, if any, whenever there is police involvement in the investigation; and

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

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

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

2. Obtain a statement by the alleged perpetrator that he or she has admitted causing the injury or condition.

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

1. Document the consistency between each statement and any existing physical evidence;

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

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

(d) The child protective investigator shall, in completing an investigation of a report containing one or more allegations specified in N.J.A.C. 10:129-2.2(a) and (b), obtain circumstantial evidence which identifies the most likely perpetrator if multiple alleged perpetrators are identified.

Administrative correction.

See: 38 N.J.R. 2828(b).

Amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a)5, substituted "police report" for "result" twice; in (b)1, substituted "When there is not a clear preponderance of evidence regarding the allegation, obtain" for "Obtain", and deleted ", when there is not a clear preponderance of evidence regarding the allegation" following "abuse"; and in (c)2, inserted "and document reasons for the assessment, for example, demeanor of witness, consistency of reports over time".

10:129-2.5 (Reserved)

Recodified to N.J.A.C. 10:129-3.1 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Requirements for an initial investigation".

10:129-2.6 (Reserved)

Recodified to N.J.A.C. 10:129-3.2 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Safety assessment and risk assessment".

10:129-2.7 (Reserved)

Repealed by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Decisions at time of initial investigation".

10:129-2.8 (Reserved)

Repealed by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Proceeding to a formal investigation".

10:129-2.9 (Reserved)

Repealed by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Requirements for formal investigation".

10:129-2.10 (Reserved)

Recodified to N.J.A.C. 10:129-3.3 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Actions permitted in performing investigations".

SUBCHAPTER 3. CHILD PROTECTION INVESTIGATION PROCESS FOR LOCAL OFFICE INVESTIGATIONS

10:129-3.1 Requirements for an investigation

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

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

1. Complete a safety assessment;
2. Interview, in person and individually, the caregiver and each adult in the home. The child protective investigator shall interview the alleged child victim's caregiver on the same day as the alleged child victim, if possible;
3. In cases where a service case is currently closed but had been open within the previous two years, interview a prior permanency worker who is the most knowledgeable about the family, if he or she is available;
4. Interview, in person and individually, each other child residing in the home of the alleged child victim. The child protective investigator shall observe each non-verbal child;
5. Read and review each available prior investigation relevant to the report;
6. Interview the reporter and each other person identified in the current report or related information as having knowledge of the incident or as having made an assessment of physical harm, including, but not limited to, the:
 - i. Physician;
 - ii. Medical examiner;
 - iii. Coroner;
 - iv. Other professional who treated the alleged child victim's current condition, other than the reporter;
 - v. Assigned permanency worker;
 - vi. Youth services provider;
 - vii. Private agency caseworker; and
 - viii. Other Department representative working with the alleged child victim or his or her family;
7. Interview the alleged perpetrator, in person;
8. Complete a Child Abuse Record Information check of each household member and each other individual regularly frequenting or living in the alleged child victim's home;
9. Conduct a PROMIS/GAVEL check to identify a paramour's record of criminal history, when the report involves a paramour;
10. Complete a risk assessment;
11. Observe the environment where alleged abuse or neglect occurred or which poses a threat to the child; and
12. Obtain and document written approval by a supervisor when seeking to eliminate any requirement listed in (b)1 through 11 above.

(c) The child protective investigator shall assess the need to contact and cooperate with law enforcement or a prosecutor, based upon the allegation(s) made in the report when

completing an investigation. In particular, the child protective investigator shall determine if a joint investigation in accordance with the DCF/Law Enforcement Model Coordinated Response Protocol, <http://www.state.nj.us/lps/dcj/pdfs/dcf-law-enf-protocol.pdf>, is possible and consult with the investigating police officer or prosecutor before interviewing the alleged child victim, unless emergency action is needed, when completing an investigation of sexually transmitted diseases, sexual penetration, sexual exploitation, or sexual molestation.

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

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

1. Assess the strengths and needs of the caregiver;
2. Assess the strengths and needs of the alleged child victim;
3. Interview at least two collateral contacts who have knowledge of the incident or circumstances, if the alleged child victim, the alleged child victim's family, or the alleged perpetrator identifies two or more of them;
4. Confirm child care arrangements reported by the caregiver where appropriate;
5. Interview school personnel or a child care provider, if any, with knowledge of the parental care provided to that child;
6. Interview each identified witness who is reported to have knowledge of the alleged abuse or neglect;
7. Interview each community professional who has first-hand knowledge of the alleged abuse or neglect;
8. Interview the following persons:
 - i. Each person residing at the address of occurrence, at the time of incident; and
 - ii. Each witness offered by the alleged perpetrator who could provide evidence that he or she did not abuse or neglect the alleged child victim;
9. Interview each investigative law enforcement officer working on the report;
10. Interview each of the primary response law enforcement personnel called to the scene of the alleged abuse or neglect;
11. Interview each physician and advanced practice nurse directly involved with the treatment of the reported

injury or condition, and obtain, if possible, a certified copy of any report;

12. Obtain a collateral contact from the primary care physician or advanced practice nurse who has seen the alleged child victim; and

13. Obtain and document written approval by a supervisor when seeking to eliminate any requirement listed in (e)1 through 12 above.

Recodified from N.J.A.C. 10:129-2.5 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Requirements for an initial investigation". Rewrote the section. Former N.J.A.C. 10:129-3.1, Referral of cases to a prosecutor, recodified to N.J.A.C. 10:129-5.1.

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

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

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

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

(d) The child protective investigator shall, in the event that a factor which makes the child unsafe has been identified, develop and implement a safety plan to assure the child's safety with the parent or caregiver. If the safety plan cannot assure the safety of the alleged child victim, the child protective investigator shall remove the alleged child victim from the home, in accordance with N.J.A.C. 10:129-6.2. If a safety plan includes any provision limiting a parent or guardian access to a child or the home, a Department representative shall notify the deputy attorney general within five days.

Recodified from N.J.A.C. 10:129-2.6 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Safety assessment and risk assessment". In (b) and (c), deleted "initial" preceding "investigation"; and in (d), updated the N.J.A.C. reference, and inserted the last sentence. Former N.J.A.C. 10:129-3.2, Department recommendations to prosecutors, recodified to N.J.A.C. 10:129-5.2.

10:129-3.3 Actions permitted in performing investigations

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

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

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

Recodified from N.J.A.C. 10:129-2.10 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Deleted "initial or formal" preceding "investigation" throughout; and in (a), inserted a comma following the first occurrence of "guardian", and inserted "except that, if the parent or guardian has explicitly forbidden contact with the child, an Order to Show Cause to Investigate may be required prior to contact". Former N.J.A.C. 10:129-3.3, Response by prosecutors, recodified to N.J.A.C. 10:129-5.3.

10:129-3.4 (Reserved)

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Recodified to N.J.A.C. 10:129-5.4 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Law enforcement assistance".

10:129-3.5 (Reserved)

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Recodified to N.J.A.C. 10:129-5.5 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Coordination of a child protection investigation".

10:129-3.6 (Reserved)

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Administrative correction.

See: 38 N.J.R. 2828(b).

Recodified to N.J.A.C. 10:129-5.6 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Medical evaluation and treatment".

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

10:129-4.1 Requirements for an IAIU investigation

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

1. Interview the alleged child victim in person and individually, using sensitivity to avoid further trauma to each alleged child victim;

2. Observe each non-verbal alleged child victim;

3. Interview, in person and individually, the caregiver or institutional caregiver, on the same day as the alleged child victim, if possible;

4. Interview each adult in the home, when the investigation involves a resource home or family child care home;

5. Read and review each available prior investigation relevant to the report;

6. Interview the reporter and each other person identified in the current report or related information as having knowledge of the incident or as having made an assessment of physical harm, including, but not limited to, the:

- i. Physician;
- ii. Registered professional nurse;
- iii. Forensic Nurse-Certified Sexual Assault (FN-CSA);
- iv. Advanced practice nurse (APN);
- v. Medical examiner;
- vi. Coroner;
- vii. Other professional who treated the alleged child victim's current condition, other than the reporter;
- viii. Assigned permanency worker;
- ix. Youth services provider;
- x. Private agency caseworker; and
- xi. Other Department representative working with the alleged child victim or his or her family;

7. Interview the alleged perpetrator, in person;

8. Complete a Child Abuse Record Information check of each household member and each other individual regularly frequenting or living in the alleged child victim's home when investigating a report involving a resource home or family child care home;

9. Conduct a PROMIS/GAVEL check to identify a paramour's record of criminal history, when the report involves a resource parent's paramour; and

10. Observe the environment where alleged abuse or neglect occurred or which poses a threat to the child.

(b) The IAIU investigator shall assess the need to contact and cooperate with law enforcement or a prosecutor, based upon the allegation(s) made in the report, when completing an investigation. In particular, the IAIU investigator shall determine if a joint investigation in accordance with the DCF/Law Enforcement Model Coordinated Response Protocol is possi-

ble and consult with the investigating police officer or prosecutor before interviewing the alleged child victim, unless emergency action is needed, when completing an investigation of sexually transmitted diseases, sexual penetration, sexual exploitation, or sexual molestation.

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

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

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

1. Each witness offered by the alleged perpetrator who could provide evidence that he or she did not abuse or neglect the alleged child victim;

2. Each investigative law enforcement officer working on the report;

3. Each of the primary response law enforcement personnel called to the scene of the alleged abuse or neglect; and

4. Each physician directly involved with the treatment of the reported injury or condition, and obtain if possible a certified copy of any report.

New Rule, R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-4.1, Services on an emergency basis, recodified to N.J.A.C. 10:129-6.1.

10:129-4.2 Safety assessment for IAIU cases

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

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

(c) The Department representative shall, in the event that a factor which makes the child unsafe has been identified, complete a safety assessment. A Department representative shall develop and implement a safety plan to assure the child's safety with the caregiver or institutional caregiver. If the safety plan cannot assure the safety of the alleged child victim, the IAIU investigator shall remove the alleged child

victim from the home or institution, in accordance with N.J.A.C. 10:129-6.2.

New Rule, R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-4.2, Emergency placement process, recodified to N.J.A.C. 10:129-6.2.

10:129-4.3 Actions permitted in performing IAIU investigations

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

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

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

New Rule, R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-4.3, Information provided to parent or caregiver, recodified to N.J.A.C. 10:129-6.3.

SUBCHAPTER 5. SPECIALIZED ASSESSMENT AND INVESTIGATION

10:129-5.1 Referral of cases to a prosecutor

(a) State law requires each person to report suspected cases of abuse or neglect to the Department, and the Department has a legal obligation to refer to county prosecutors all cases that involve suspected criminal activity on the part of a child's parent, caregiver or any other person. While this duty may result in the referral of a substantial number of cases to prosecutors, it is anticipated that in most of the cases referred, extensive police involvement will not be warranted, and indeed that in many cases no police involvement will be required.

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

the judgment of the caseworker and supervisor, warrants review by the prosecutor.)

1. 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 significant medical attention (for example, 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.

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

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

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

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

2. Thus, referral need not be made at the time a report is first received by the Department even if the report provides information to place the case in one of the categories set forth in this policy. 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.

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

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.

Amended by R.2000 d.253, effective June 19, 2000.

See: 32 N.J.R. 439(a), 32 N.J.R. 2241(a).

In (d)1, neutralized a gender reference; and in (e), inserted "by mail or fax" at the end of the second sentence.

Recodified from N.J.A.C. 10:129-1.3 and amended by R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Rewrote the section.

Recodified from N.J.A.C. 10:129-3.1 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a), substituted "caregiver" for "caretaker"; in the introductory paragraph of (b) and (e), inserted "immediately"; in the introductory paragraph of (b) and in (c) and (d); substituted "caregiver," for caretaker"; in (c), inserted "in (b)"; and in (f), substituted "Immediate, prompt" for "Prompt" and the first occurrence of "The" for "In cases where there is serious or repeated harm, the", and deleted "child" preceding "abuse" and "mail or" preceding "fax". Former N.J.A.C. 10:129-5.1, Informing the alleged child victim, caregiver, and temporary caregiver about the investigation, recodified to N.J.A.C. 10:129-7.1.

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).

10:129-5.2 Department 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 or her to assess the need for action by the prosecutor, that in some cases efforts already made to ameliorate the underlying problems may be undermined by the initiation of a police investigation and that the caseworker is also in a position to identify cases in which immediate action by a law enforcement agency is required, the prosecutor shall give due consideration to the recommendations of the Department. If the prosecutor determines to investigate a case notwithstanding a contrary recommendation by the Department, he or she should discuss the matter with the caseworker, his or her supervisor or the local office liaison before initiating the investigation.

Amended by R.2000 d.253, effective June 19, 2000.

See: 32 N.J.R. 439(a), 32 N.J.R. 2241(a).

In (b), neutralized gender references throughout.

Recodified from N.J.A.C. 10:129-1.4 and amended by R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Section was "Division recommendations to prosecutors." In (b), substituted "Department" for "Division" throughout.

Recodified from N.J.A.C. 10:129-3.2 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-5.2, Information provided to alleged perpetrator about the investigation, recodified to N.J.A.C. 10:129-7.2.

10:129-5.3 Response by prosecutors

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

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

1. Advise the Department 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; or

2. With advance notice to the Department, 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 or

she should confer with the caseworker in making this determination and will advise the caseworker of his or her decision.

Amended by R.2000 d.253, effective June 19, 2000.

See: 32 N.J.R. 439(a), 32 N.J.R. 2241(a).

In (c), neutralized gender references throughout.

Recodified from N.J.A.C. 10:129-1.5 and amended by R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Substituted "Department" for "Division" throughout.

Recodified from N.J.A.C. 10:129-3.3 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a), deleted "child" preceding "abuse" twice; and in the introductory paragraph of (b), inserted the first sentence. Former N.J.A.C. 10:129-5.3, Investigation findings, recodified to N.J.A.C. 10:129-7.3.

Case Notes

Doctrine of fundamental fairness did not require any additional procedural safeguards other than those required by constitution or statute regarding Division of Youth and Family Services' (DYFS) investigation into suspected child abuse, so as to warrant suppression of defendant's statement to DYFS caseworker where there was no indication that caseworker interviewed defendant within intent of aiding criminal investigation. *State v. P.Z.*, 152 N.J. 86, 703 A.2d 901 (N.J. 1997).

10:129-5.4 Law enforcement assistance

(a) Each child protective investigator shall request assistance from and make every effort to coordinate investigative activities with local law enforcement pursuant to N.J.S.A. 9:6-8.28e and 8.29d, when conducting an investigation and whenever:

1. The child protective investigator needs personal protection;
2. The nature of the report suggests it;
3. There is an immediately life-threatening situation; or
4. Violence is occurring or is immediately threatened.

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Recodified from N.J.A.C. 10:129-3.4 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-5.4, Notification of finding, recodified to N.J.A.C. 10:129-7.4.

10:129-5.5 Coordination of a child protection investigation

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

1. Interviewing the alleged child victim and the alleged perpetrator;
2. Accessing appropriate investigative medical and psychological services; and

3. Making timely and appropriate linkages to treatment.

(b) Each child protective investigator shall make information developed during the investigation available on a timely basis to any party identified in (a) above and involved in the case, within the limits of N.J.S.A. 9:6-8.10a.

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Recodified from N.J.A.C. 10:129-3.5 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-5.5, Other notification at conclusion of investigation, recodified to N.J.A.C. 10:129-7.5.

10:129-5.6 Medical evaluation and treatment

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

(b) The child protective investigator may arrange for a psychiatric or psychological evaluation and treatment for the alleged child victim with parental consent or with a court order, whenever the child protective investigator has reason to believe that the alleged child victim may have suffered serious emotional harm.

New Rule, R.2005 d.441, effective December 19, 2005.

See: 37 N.J.R. 2132(a), 37 N.J.R. 5004(b).

Administrative correction.

See: 38 N.J.R. 2828(b).

Recodified from N.J.A.C. 10:129-3.6 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a), substituted "screening, care," for "evaluation" and "the screening, care," for "this examination".

SUBCHAPTER 6. SERVICES AND REMOVAL DURING INVESTIGATION

10:129-6.1 Services on an emergency basis

The Department representative shall offer the family services which are listed in N.J.A.C. 10:133E-2.1 and 2.2 that are needed on an emergency basis pursuant to N.J.S.A. 30:4C-13 and 9:6-8.11, before completing the child protection investigation and until the child protection investigation is completed.

Recodified from N.J.A.C. 10:129-4.1 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Former N.J.A.C. 10:129-6.1, Exemption limited to a record that consists of an unfounded report; contents of record to be expunged, recodified to N.J.A.C. 10:129-8.1.

10:129-6.2 Emergency placement process

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

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

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

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

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

1. The alleged child victim was placed on an emergency basis and has a sibling in placement; or

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

(d) The Department representative shall, within two court days of the emergency placement:

1. Return the child to his or her home when the Department representative has reason to believe that the child may do so safely; or

2. Petition the court for continued out-of-home placement.

Recodified from N.J.A.C. 10:129-4.2 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In the introductory paragraphs of (a), and in (a)1 and (a)2, inserted "or location"; in (a)1, substituted "3.2 and 4.2" for "2.6"; in (b), inserted "or other location"; in the introductory paragraph of (c), substituted "a reasonable" for "an"; and in (c)2, substituted "The" for "If the". Former N.J.A.C. 10:129-6.2, Time frames and start date, recodified to N.J.A.C. 10:129-8.2.

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

(a) The child protective investigator shall make every reasonable effort to notify the child's parent, caregiver, temporary caregiver, and institutional caregiver responsible for the child at the time of the removal, when an emergency removal is made pursuant to N.J.S.A. 9:6-8.29.

(b) A child protective investigator shall immediately:

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

2. Begin a child protection investigation.

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

Recodified from N.J.A.C. 10:129-4.3 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Information provided to parent or caregiver". Added (c). Former N.J.A.C. 10:129-6.3, When the Department retains rather than expunges a record, recodified to N.J.A.C. 10:129-8.3.

10:129-6.4 (Reserved)

Recodified to N.J.A.C. 10:129-8.5 by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Section was "Notification of record expunction".

SUBCHAPTER 7. FINDINGS AND DOCUMENTATION**10:129-7.1 Informing the alleged child victim, caregiver, and temporary caregiver about the investigation**

(a) The child protective investigator shall notify the parent of the child subject of the investigation and the caregiver of the child subject of the investigation, if the child will remain in the custody of the caregiver, as soon as possible after interviewing or observing the child or any of his or her siblings that the child(ren) has been interviewed or observed.

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

(c) The child protective investigator shall provide the following people with the information specified in (d) below:

1. The alleged child victim in accordance with and in a manner appropriate to the alleged child victim's age, condition, and capacity to understand and cope with the information;

2. The alleged child victim's caregiver with physical custody at the time of the incident;

3. The caregiver with whom the alleged child victim normally resides; and

4. The caregiver to whom the alleged child victim will be returned, if the alleged child victim is in an institution at the time of the incident.

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

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

2. The name and telephone number of the child protective investigator assigned to investigate and his or her supervisor; and

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

(e) The child protective investigator shall delay notifying the persons specified in (a) and (c) above, as long as the delay does not appear to put the alleged child victim at risk, when the police, prosecutor or Deputy Attorney General has determined that notifying them would impede the investigation or litigation.

(f) The child protective investigator shall provide the information indicated in (b) above at the time of his or her initial contact with each person interviewed and named in (a) above.

(g) The child protective investigator shall inform the temporary caregiver of any alleged child victim who is in the care of that temporary caregiver at the time of the investigation of the provisions of (b) above, when that information is necessary for the temporary caregiver to provide care for the alleged child victim.

Recodified from N.J.A.C. 10:129-5.1 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (d)3, substituted "child protective investigator" for "Department representative".

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

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

Recodified from N.J.A.C. 10:129-5.2 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Updated the N.J.A.C. reference, and substituted "deputy attorney general" for "Deputy Attorney General".

10:129-7.3 Investigation findings

(a) The child protective investigator shall evaluate the available information and, for each allegation, determine whether abuse or neglect has occurred, and shall make a finding of either substantiated or unfounded.

(b) The child protective investigator shall make every reasonable effort to identify the perpetrator for each allegation of abuse or neglect.

(c) The child protective investigator shall make the finding for each report within 60 days of the report being received at the State Central Registry, except for good cause approved by the office manager or designee. The officer manager or designee may grant extensions in increments of 30 days, if the child protective investigator is continuing efforts to confirm credible information.

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

Administrative correction.

See: 38 N.J.R. 2828(b).

Recodified from N.J.A.C. 10:129-5.3 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (d), inserted the last sentence.

10:129-7.4 Notification of finding

(a) The child protective investigator shall provide notification of the finding to those persons specified in (c) through (e) below. The child protective investigator shall delay the notification as long as the delay does not appear to put the alleged child victim at risk, when a case is in litigation or a report is under criminal investigation and the police, prosecutor, or deputy attorney general has determined that notification of the investigation findings to persons in (c) through (e) below, would interfere with the litigation.

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

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

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

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

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

2. His or her name and identifying information are entered into the Department's child abuse registry, pursuant to N.J.S.A. 9:6-8.11; and

3. He or she shall have an opportunity to dispute a finding of substantiated abuse or neglect, in accordance with N.J.A.C. 10:120A.

(d) The child protective investigator shall advise each alleged perpetrator of the finding, when a report is unfounded, except as limited by (a) and (b) above.

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

1. The caregiver with physical custody at the time of the incident;

2. The parent with whom the child normally resides;

3. The parent to whom the alleged child victim will be returned, if the alleged child victim was in an institution at the time of the incident; and

4. The institutional caregiver or chief administrator of the institution, if the alleged child victim was in institutional placement.

Recodified from N.J.A.C. 10:129-5.4 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In the introductory paragraph of (a), inserted a comma following "prosecutor" and substituted "deputy attorney general" for "Deputy Attorney General"; and added (a)1 and (a)2.

10:129-7.5 Other notification at conclusion of investigation

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

1. The caregiver with physical custody at the time of the incident;

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

3. The parent to whom the alleged child victim will be returned, if the alleged child victim was in an institution at the time of the incident.

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

1. That the investigation has been completed;

2. The finding of the investigation; and

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

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

(d) The child protective investigator may, and upon written request shall, advise the reporter of the disposition of the investigation, pursuant to N.J.S.A. 9:6-8.10a(b)(18).

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

1. The child victim resides;

2. The incident of abuse or neglect occurred; and

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

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

1. The name and age of each child victim and his or her address;

2. The name and age of each of the child victim's siblings, if any, obtained by the child protective investigator during his or her investigation;

3. The name of each perpetrator, his or her address, and his or her relationship to each child victim;

4. The name and address of the institution, if the incident occurred in an institution;

5. The date the State Central Registry created the report;

6. The date the child protective investigator completed the investigation;

7. Whether the substantiated finding was abuse, neglect, or a combination thereof;

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

9. A statement as to whether a child protective investigator reported the incident to the county prosecutor; and

10. A statement as to whether a child protective investigator investigated a prior allegation of abuse or neglect regarding the alleged child victim.

(g) The child protective investigator shall advise the police that the information provided must be kept confidential pursuant to N.J.S.A. 9:6-8.10a(e), in the notification, whereby the police shall be prohibited from sharing the information with anyone except as authorized under the provisions of N.J.S.A. 9:6-8.10a.

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

(i) The child protective investigator may advise others, including the non-custodial parent, of the finding only as permitted by N.J.S.A. 9:6-8.10a.

Recodified from N.J.A.C. 10:129-5.5 and amended by R.2012 d.015, effective February 6, 2012.
See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In the introductory paragraph of (a), substituted "an alleged child victim" for "a child"; in the introductory paragraph of (e), deleted "to the police in whose jurisdiction the child victim resides," following "information", inserted "to the police in the jurisdiction where:" at the end of the first sentence, recodified the last sentence as new (f); recodified former (e)1 through (e)10 as (f)1 through (f)10; added new (e)1 through (e)3; recodified former (f) through (h) as (g) through (i); in the introductory paragraph of (f), inserted "of abuse or neglect"; and rewrote (h).

SUBCHAPTER 8. EXPUNCTIONS

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

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

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

Recodified from N.J.A.C. 10:129-6.1 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Updated the N.J.A.C. references throughout.

10:129-8.2 Time frames and start date

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

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

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

(d) The Department shall limit the expunction of a record to its computer file only, if the record consists of a report unfounded prior to April 7, 1997.

(e) An alleged perpetrator may submit a request, in writing, to the Division of Youth and Family Services, Closed Records Liaison, PO Box 717, Trenton, New Jersey 08625-0717 when he or she seeks expunction of a record that consists of a report that was unfounded prior to April 7, 1997. The Division's Closed Records Liaison shall make a determination on each request in accordance with the criteria contained in this subchapter, and shall advise the alleged perpetrator, in writing, as to whether the Department shall expunge or retain the record.

Recodified from N.J.A.C. 10:129-6.2 and amended by R.2012 d.015, effective February 6, 2012.

See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

In (a), (b), and (c), updated the N.J.A.C. references.

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

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

1. The investigation of the report results in more than one finding, including both an unfounded and a substantiated finding;

2. The Division provided services to the alleged child victim, a member of his or her family or household, or the alleged perpetrator, and three years have not passed since a service case was closed or provision of services has been concluded;

3. The State Central Registry receives a subsequent report regarding the alleged child victim, a member of his or her family or household, or the alleged perpetrator, during the three years prior to eligibility for expunction, and the subsequent report is substantiated;

4. The outcome of a child protection investigation, a criminal investigation or a court proceeding involving the alleged child victim, a member of his or her family or household or the alleged perpetrator is pending;

5. A court of competent jurisdiction orders the Department to retain the record;

6. The Commissioner of the Department of Children and Families or designee requests that the Department retain the record;

7. The State Central Registry receives a subsequent report that the Department is investigating. If the subsequent report is unfounded, then the record is evaluated for expunction three years after the investigation is completed;

8. If an allegation is pending or under investigation at the time of expunction review, the record shall be retained for three years after the case is closed, if that allegation is likewise unfounded, or three years from when the service case is closed; or

9. If a service request is pending or under investigation at the time of expunction review, the record is retained until three years after the case is closed, if that allegation is likewise unfounded, or three years from when the service case is closed.

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

Recodified from N.J.A.C. 10:129-6.3 and amended by R.2012 d.015, effective February 6, 2012.
See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

Rewrote (a)2; in (a)5, deleted "or" from the end; in (a)6, substituted "Children and Families" for "Human Services" and a semicolon for a period at the end; and added (a)7 through (a)9 and (b).

10:129-8.4 When an IAIU record is expunged

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

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

New Rule, R.2012 d.015, effective February 6, 2012.
See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).

10:129-8.5 Notification of record expunction

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

Recodified from N.J.A.C. 10:129-6.4 and amended by R.2012 d.015, effective February 6, 2012.
See: 42 N.J.R. 3034(a), 44 N.J.R. 263(a).
Updated the N.J.A.C. reference.