

Glossary

“Agency” means a county department of social services under s. 46.22, Stats., a county department of human services under s. 46.23, Stats., or the Bureau of Milwaukee Child Welfare.

“Agent” means, but is not limited to, a foster parent, treatment foster parent, or other person given physical custody of a child or a human services professional employed by a county department under s. 51.42 or 51.437 or by a child welfare agency who is working with a child or expectant mother of an unborn child under contract with or under the supervision of the Department in a county having a population of 500,000 or more or a county department under s. 46.22. [. 48.981(d)(1), Stats.]

“Assessment” means the process of gathering thorough relevant information for decision making and weighing the importance, significance and meaning of the information gathered.

“Child protective services or “CPS” is the public agency with the authority to respond to threats to child safety.

“County department” means a county department under s. 46.215, 46.22, or 46.23, Stats., and, for the purposes of child welfare, the Department in Milwaukee County.

“CPS Access” means the function of the agency to gather information leading to a determination of the need for CPS intervention.

“Consent” means compliance in or approval of what is done or proposed to be done.

“Controlled substance” means a drug, substance or immediate precursor included in Schedules I to V of subch. II. of Ch. 961, Stats.

“Controlled substance analog” means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in Schedule I or II and:

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or
2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.
 - (b) “Controlled substance analog” does not include:
 1. A controlled substance;
 2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or
4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance [s. 961.01(4m), Stats.].

“Domestic violence” means a pattern of behavior that one intimate partner or spouse exerts over another as a means of control. Perpetrators of domestic violence typically consider themselves entitled to have their needs met first within the family. Domestic violence may include physical violence, coercion, threats, intimidation, isolation, stalking, and emotional, sexual or economic abuse. Frequently, perpetrators use the children to manipulate victims: by harming or abducting the children; by threatening to harm or abduct the children; by forcing the children to participate in abuse of the victim; by using visitation as an occasion to harass or monitor victims; or by fighting protracted custody battles to punish victims.

“Dwellings” means family or family-like settings which do not depend solely on professional care providers. Dwellings include private residences shared by family members, foster families and unrelated individuals. Dwellings do not include residential facilities.

“Emergency circumstances” means those situations:

- in which a child is immediately threatened with harm, or
- where there exists an immediate threat to the safety of the child, or
- where a vulnerable child is left without necessary care and supervision, or
- where there is evidence of serious ongoing abuse and the CPS caseworker has reason to fear imminent recurrence.

Emergency circumstances need not equate to life or death situation. Emotional harm or neglect may not be sufficient to meet the requirements of emergency circumstances, unless these parental actions or omissions rise to the level of placing the child at imminent risk of physical harm.

The test for emergency circumstances is whether a reasonable person would have believed that there was an immediate need to provide aid or assistance to a person due to actual or threatened physical injury, and that immediate entry into the area in which a person had a reasonable expectation of privacy was necessary in order to provide aid or assistance.

“Exigent circumstances” means situations, for which probable cause exists, where the caseworker would be unable to examine a child's body for evidence of maltreatment unless the caseworker acts swiftly and without seeking prior judicial authorization in order to preserve evidence. “Exigent circumstances,” when they exist, allow a CPS initial assessment to proceed without consent or a court order. An example is when a parent, guardian, or legal custodian would likely seek to make the child unavailable by fleeing with the child or hiding the child. If possible, without subjecting the child to increased risk of danger, a caseworker should consult with a supervisor, supervisor’s designee, or legal counsel before proceeding to take action on the basis of exigent circumstances.

“Family” means a group of persons, including at least one adult in a caretaking role and one child, who generally reside together and identify themselves as a family

“Foster family” means the foster parent(s), foster child(ren), any birth or adoptive children of the foster parent(s) and any other person(s) living in the home.

“Foster parent(s)” means, for the purpose of this Standard, individuals licensed to provide care and maintenance to children placed in their home by court order or voluntary placement agreement. This includes all foster homes, treatment foster homes, family-operated group homes and licensed respite homes. [s. HFS 37.03(10)]

“Household” means all individuals living together in the same dwelling.

“Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the services provided to Indians by the U.S. Secretary of the Interior because of Indian status, including any Alaska native village, as defined in 43 USC 1602(c).

“Maltreatment” means child abuse as defined in s. 48.02 (1), (5j) and (14g), Stats., child neglect as defined in s. 48.981(1)(d), Stats., or threatened child abuse or neglect.

“Maltreatment determination” means a conclusion drawn as to whether abuse or neglect or unborn child abuse has occurred.

“Maltreater determination” means a conclusion as to whether a specific person abused or neglected a child.

“Non-Caregivers” means those individuals who do not meet any of the statutory definitions of caregiver in s. 48.981(1)(am), Stats. Included is an individual who is a stranger, neighbor, adult acquaintance, or another child who never had control over or supervisory responsibility for the child who is the alleged victim of maltreatment. The individual can not have ever shared the same household as the child.

“Non-Caregiver Investigation” is conducted when the alleged maltreater has not supervised or exercised control over the child or has never resided in the child’s dwelling. This would include strangers, neighbors, adult acquaintances, and other children.

“Peer” means a person who, in terms of general cognitive development and social role, has equal standing with the child. A caregiver or other person who exercises or has exercised temporary or permanent control over a child can never be considered a peer.

“Primary Assessment” is conducted when the alleged maltreater is a parent, guardian, legal custodian, brother, sister, foster parent, or anyone who has resided in the child’s dwelling, currently or in the past.

“Probable cause” means the amount of information which would lead a reasonable investigator to believe the child has been abused. It is not necessary that the information be sufficient to prove abuse “beyond a reasonable doubt” for guilt in criminal court, or by “clear and convincing evidence” for a CHIPS finding, or even by a “preponderance of the evidence” for maltreatment substantiation purposes; it is only necessary that the information lead a reasonable investigator to believe that abuse is more than a possibility. Thus, probable cause follows reasonable suspicion in the continuum of proof. For probable cause, it is necessary that the child abuse report, together with any additional corroboration, be strong enough to demonstrate a substantial likelihood that abuse has in fact occurred.

“Reasonable suspicion” or “Reasonable Cause to Suspect” means a belief that a prudent person would have suspected, based on all the known information and circumstances, that a child has been abused or neglected. It is a belief based on evidence of specific and articulable facts, which when combined with rational inferences, creates a belief in a prudent person that a child has been abused or neglected. Reasonable cause to suspect child abuse or neglect is more than a hunch, but less than proof, that a child has been abused or neglected.

“Relative” means a parent, stepparent, brother, sister, stepbrother, stepsister, half brother, half sister, brother-in-law, sister-in-law, first cousin, 2nd cousin, nephew, niece, uncle, aunt, step-uncle, step-aunt, or any person of a preceding generation as denoted by the prefix of grand, great, or great-great, whether by blood, marriage, or legal adoption, or the spouse of any person named in this subsection, even if the marriage is terminated by death or divorce. [s. 48.02(15), Stats.] When used in reference to an Indian child, the tribe's definition of relative generally, but not always, applies.

“Secondary Assessment” is conducted when the alleged maltreater is a contracted caregiver or relative not sharing the child’s dwelling. This includes, but is not limited to, child care staff, juvenile corrections and other residential facilities, babysitters, teachers, and youth activity leaders.

“Unborn child” means a human being from the time of fertilization to the time of birth. [s. 48.02(19), Stats.]

Appendix 1

Statutory Definitions of Abuse and Neglect

Physical Abuse

[Physical abuse] is defined in s. 48.02(1)(a), Stats., as "Physical injury inflicted on a child by other than accidental means." "'Physical injury' includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22(14)." [Ref. s. 48.02(14g), Stats.]

Neglect

Neglect is defined in s. 48.981(1)(d), Stats., as "failure, refusal or inability on the part of a caregiver [as defined in s. 48.981(1)(am), Stats.], for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child."

Sexual Abuse

[Sexual abuse] is defined in s. 48.02(1), Stats., as:

- 1) "Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025."
[Ref. s. 48.02(1)(b), Stats.]

Section 940.225, Stats., addresses sexual assault of any person, and therefore includes sexual assault of a child aged 16 or 17 years old or less.

Sexual assault under this section is defined as when a person

- "Has sexual contact or sexual intercourse with another person without consent of that person"
- "Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition."
- "Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition"
- "Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious"

"Consent" "means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.....The following persons are presumed incapable of consent but the presumption may be rebutted...

- A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.
- A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act" [Ref. s. 940.225 (4)., Stats.]

Section 948.02, Stats., defines sexual assault to include sexual contact or intercourse with a child, aged 15 years or less. Section 948.025 addresses "engaging in repeated acts of sexual assault of the same child" aged 15 years or less.

"Sexual intercourse includes the meaning assigned under s. 939.22(36), vulvar penetration, as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required." [Ref. s. 940.225(5)(c), Stats.].

"Sexual contact" means any of the following:

- Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19(1), Stats.
 - a. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.
 - b. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.
- Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually arousing or gratifying the defendant.
- For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.
[Ref. s. 940.225(5)(b)1. and s. 948.01(5)(a), Stats.]

"Intimate parts" means the breast, buttock, anus, groin, scrotum, penis, vagina or pubic mound of a human being." [Ref. s. 939.22(19), Stats.]

[Ref. s. 940.225(5)(b)2. and s. 948.01(5)(b), Stats.]

A violation of s. 948.095, Stats., Sexual assault of a child by a school staff person or a person who works or volunteers with children.

s. 948.085, Stats., Sexual assault of a child placed in substitute care by a foster parent or treatment foster parent or by an employee or volunteer of a shelter facility,

group home, or other institution for care of certain children as identified in s. 940.295(2)(m), Stats.

- 2) "A violation of s. 948.05, Stats.," [Ref. s. 48.02(1)(c), Stats.] This section addresses "sexual exploitation of a child."

"Sexual exploitation of a child" is described as:

a. when someone "does any of the following with knowledge of the character and content of the sexual explicit conduct involving the child...:

- (1) Employs, uses, persuades, induces, entices or coerces any child to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying in any way the conduct.
- (2) Photographs, films, videotapes, records the sounds of or displays in any way a child engaged in sexually explicit conduct."

b. When someone:

"produces, performs in, profits from, promotes, imports in the state, reproduces, advertises, sells distributes or possesses with intent to sell or distribute, any undeveloped film, photographic negative, photograph, motion picture, videotape, sound recording or other reproduction of a child engaging in sexually explicit conduct if the person know the character and content of the sexually explicit conditions involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years."

- 3) "Permitting, allowing or encouraging a child to violate s. 944.30, Stats.," [Ref. s. 48.02(1)(d), Stats.] This section addresses prostitution.

A violation of s.944.30, Stats., includes when a person:

- (1) Has or offers to have or requests to have non-marital sexual intercourse for anything of value.
- (2) Commits or offers to commit or requests to commit an act of sexual gratification, in public or in private, involving the sex organ of one person and the mouth or anus of another for anything of value.
- (3) Is an inmate of a place of prostitution.
- (4) Masturbates a person or offers to masturbate a person or requests to be masturbated by a person for anything of value.
- (5) Commits or offers to commit or requests to commit an act of sexual contact for anything of value."

- 4) "A violation of s. 948.055, Stats.," [Ref. s. 48.02(1)(e), Stats.] This section addresses intentionally causing a child to view or listen to sexual activity.

This is defined as when a person "intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct ...if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child."

5) “A violation of s. 948.10, Stats.,”. [Ref. s. 48.02(1)(f), Stats.]. This section addresses exposing the genitals or pubic area to a child or causing a child to expose genitals or pubic area.

This is defined as when a person “for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child.”

Emotional Damage

Emotional damage is defined as “emotional damage for which the child’s parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms”. [Ref. s. 48.02(1)(gm), Stats.] “‘Emotional damage’ means harm to a child’s psychological or intellectual functioning. ‘Emotional damage’ shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial or observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.” [Ref. s. 48.02(5j), Stats.]

DISCUSSION

Physical Abuse

“Physical abuse” is defined under s. 48.02(1)(a), Stats., as “Physical injury inflicted on a child by other than accidental means.” “Physical injury” is defined under s. 48.02(14g), Stats., as “includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm as defined under s. 939.22(14).” “Great bodily harm” as defined under s. 939.22(14), Stats., means bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.

Injuries other than those specifically listed may be considered physical abuse if they are similar in degree or nature to the injuries listed. However, additional types of injuries do **not** need to rise to the level of great bodily harm since the listed types of injury do not rise to that level. Substantial bodily harm under s. 939.22(38), Stats., is a level of harm that falls between “bodily harm” and “great bodily harm”. It is defined in the statutes as bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth.

This definition seems more similar to the types of injuries included in the definition of physical injuries that constitute child abuse under s. 48.02(14g), Stats. However, some of the injuries listed as physical injuries constituting physical abuse are less severe than substantial bodily

harm. For example, physical injuries constituting abuse include any lacerations, but the definition of substantial bodily harm includes more severe lacerations requiring stitches.

Under this definition, physical injury of some sort is clearly an essential element of the abuse. However, physical injury need not necessarily be visible to the unaided eye for example, a broken bone constitutes physical injury, but its existence may not be proven until X-rays have been taken. Since conducting medical tests may be necessary before the existence of actual physical injury can be ascertained, incidents of violence directed against a child should be screened in even when physical injury, or physical injury of the degree described in statutes, is not immediately apparent.

Physical abuse does **not** include self-injury by a child. See the section under Neglect below for a discussion of self-injurious behavior.

For screening purposes, the information in the complaint must be assessed under the totality of circumstances, including information from any previous CPS reports. Therefore, a reporter cannot be expected to provide sufficient information to support a decision that abuse or neglect has occurred or may occur. Gathering additional information and making a final determination as to whether the child is safe/unsafe and whether the child is in need of protection or services related to maltreatment is the purpose of the initial assessment.

For an injury to be considered not accidental, it must meet one of the following criteria:

- the person who inflicted the injury had a conscious intent to harm or injure the child, **or**
- the person knowingly, recklessly, or carelessly engaged in behavior that resulted in the child being injured, regardless of whether he or she intended to cause the injuries.

The following are examples of *non-accidental* injuries:

- bruises or welts as described in s. 48.02(14g), Stats., that are a result of corporal punishment, even if injuring the child was not the parent's conscious intent
- brain injuries that are a result of Shaken Baby Syndrome
- a dislocated elbow that is the result of a parent roughly jerking a child about
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when one parent/caregiver attacks the other parent
- an injury as described in s. 48.02(14g), Stats., that is sustained when a parent angrily shoves or throws a child aside, even if injuring the child was not the parent's conscious intent

The following are examples of *accidental* injuries:

- a dislocated elbow that is the result of a parent catching a child to keep him or her from falling
- bruises that result from a child falling as part of normal play
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when the parent slips and falls while carrying the child
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when hit by a softball while playing with a parent

Neglect

The statutory definition of neglect includes the following concepts:

- a caregiver is not providing care, food, clothing, shelter, medical or dental care to a child, **and**
- the care the child is not receiving is necessary, **and**
- the lack of care seriously endangers the physical health of the child.

The unmodified term “care” in the definition can be assumed to include, at a minimum, a level of supervision consistent with the child’s needs as well as protection from dangers that a caregiver can reasonably be expected to foresee and prevent.

The conditions or behaviors that seriously endanger the physical health of the child may include the child’s own behaviors. For example, allegations that a child suffers from anorexia, slashes himself or herself, or plans to commit suicide and the parents, though aware of the situation, neglect, refuse, or are unable to provide the necessary care to protect the child from harm is an allegation of neglect. Depending on the circumstances, such cases might also be alleged emotional damage.

The worker should consider whether a forensic interview at a children’s advocacy center would be valuable in the initial assessment. The risk of physical harm should be considered in any case of neglect when the physical well-being of the child is at risk. Many cases of environmental neglect (mold, etc.) seriously impact or are at risk of seriously impacting the physical well-being of the children in the home. If the worker is unsure of the risk, consider consulting with the health care provider resources. Also, consider obtaining the child’s medical records. When one type of neglect or abuse is present, there is a strong possibility that other forms of abuse or neglect are present, including medical neglect.

Sexual Abuse

The statutory definitions of sexual abuse include abuse by any other person. Although reports of children being sexually victimized within their own families are of special concern to CPS, reports of children being assaulted or exploited by other persons outside of the family, particularly other caregivers, may also be accepted.

Section 948.02, Stats., has the effect of potentially defining developmentally normal sexual curiosity and behavior of children as abusive. Sexual behavior is part of normal growth and development and can be seen from birth on. There are no protection or service needs in cases of sexual *contact* that is mutual and generally within the bounds of normal sexual development. In fact, a CPS response to instances of developmentally normal child behavior where there is no potential for protection or service needs might have the effect of being emotionally and developmentally harmful to the child.

In cases of children under the age of 16 engaging in sexual *intercourse*, however, there may be protection or service needs even if that involvement is mutual, with a peer and devoid of any elements of assault, exploitation, or coercion. The needs are primarily health-related (e.g., contraception and avoidance of sexually transmitted diseases). Any CPS response to these

cases must focus on offering information and services or community referral to families, rather than on determining who is sexually active with whom.

Reports may be received of one child coercing another child, where the coercive child's behavior indicates an unusual knowledge of sexual behavior inappropriate to the child's age and development. In such reports, both children should be viewed as a possible victim of sexual abuse. The coercive child's behavior may indicate that he or she has been the victim of another person and is acting out that victimization on another child. The protection and service needs of both children are paramount and are the focus of CPS intervention.

Behaviors or Conditions Likely to Result in Abuse or Neglect/ Threatened Harm

Section 48.981(2)(a), Stats., requires certain persons to report if they have "reason to believe that a child...has been threatened with abuse or neglect and that abuse or neglect of the child will occur." The intent is for CPS to intervene before a child is seriously harmed, if that harm can be reasonably predicted or foreseen to occur, based on reported information and, when applicable, previous CPS reports.

The present danger and impending danger threats to child safety describe behaviors and conditions that indicate a child might be seriously harmed in the immediate to very near future. Threatened abuse or neglect, then, can be said to be the same as the presence of safety threats, since both involve a judgment or concern that the child is likely to be seriously harmed. Reports that, taken together with other information available to CPS, support a suspicion that a child may be unsafe must be screened in.

Young children with alleged non-accidental injuries are of particular concern to CPS Access. Often times these injuries may not, on the surface, meet the definitions of child abuse or neglect but the child's age and the nature and the type of the injury necessitate a response from child protective services. Reports of this type meet the definition of threatened abuse or neglect, i.e. an unsafe child. Therefore, a report of a small bruise on the face, head, or neck of an infant should not only be screened in, but generally requires an immediate to same-day response.

Appendix 2

Substantiating the Different Types of Maltreatment

Preponderance of the Evidence

The term *preponderance of the evidence* is referenced only once in the child abuse reporting law. It is found under s. 48.981(3)(c)4., Stats., and is presented in the context of identifying the level of proof under which the CPS worker should conclude that child maltreatment has occurred.

The term *preponderance of the evidence* is the level of proof which, as a whole, shows that the fact sought to be proved is more probable than not. It is that level of proof or persuasion which is more credible and convincing to the mind. The term then might be defined as the *amount of proof which would allow an individual to conclude that the maltreatment is more probable to have occurred than not.*

The only definition for *preponderance of the evidence* as used in Ch. 48, Stats., is found in case law. In the case In the Interest of T.M.S., the appellate court specifically stated, "It requires that the fact finder must be satisfied to a reasonable certainty by the greater weight of the credible evidence".

In applying this standard, the worker considers two issues:

- 1) *Whether the evidence gathered and reviewed by the CPS worker is **credible**.* Credible evidence is defined as evidence which is trustworthy, believable, or dependable. The opposite would include evidence which is doubtful, unreliable, or untrustworthy. For example, a written medical report reviewed by a CPS worker is credible evidence. The credibility of this report would substantially diminish if the contents of a medical report were read to the CPS worker over the phone by an unknown person. Therefore, in applying this standard, the CPS worker must be satisfied that the evidence being reviewed has indicators of being trustworthy. The ultimate question for the CPS worker which addresses the trustworthiness or reliability of the evidence is, "What about this information makes it credible or reliable?"
- 2) *Whether the evidence gathered and reviewed by the worker is **persuasive**.* Once the trustworthy evidence is reviewed, it must then be weighed by the worker. The worker must determine whether, based on all the evidence presented, the greater weight of the evidence supports the conclusion or persuades the worker that maltreatment has occurred or is likely to occur. Or, in the form of a question: Does the proof lead the CPS worker to conclude that the existence of maltreatment is more probable than its nonexistence?

Assessing both the credibility of the evidence as well as the persuasiveness of the evidence are critical to the worker's assessment. The analysis of both of these concepts leads to a conclusion based on the preponderance of the evidence.

Preponderance of the evidence is a lower standard than clear and convincing evidence, which is the burden required to prove non-delinquency (CHIPS) cases in juvenile court. Therefore, even though there may not be sufficient evidence for a court to find that a child is in need of protection or services, there could be sufficient credible evidence for a worker's finding of "substantiated". Furthermore, because the role of law enforcement and the standard of evidence for criminal conviction (beyond a reasonable doubt) differ from those of child protective services, law enforcement officers may conclude there is not enough evidence on a particular case to pursue charges. Yet the CPS worker may have sufficient evidence on the same case to make a finding of "substantiated."

Substantiation of Physical Abuse

In order to substantiate physical abuse, a worker will have information that establishes all of the following:

- the child involved is under the age of 18, *and*
- the child has (or had) an injury, *and*
- the injury was inflicted on the child by other than accidental means, *and*
- the injury the child has or had falls within the definition in s. 48.02(14g), Stats., *and*
- the determination that abuse has occurred is not "based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child." [Ref. s. 48.981(3)(c)4., Stats.]*

Physical abuse does not include self-injury by a child.

Identifying Additional Injuries that Constitute Physical Abuse

The statutory definition of physical injury introduces a list of injuries with the phrase "...includes but is not limited to..." Injuries other than those specifically listed may be considered physical abuse if they are similar in degree or nature to the injuries listed under s. 48.02(14g), Stats. Additional types of injuries do not need to rise to the level of great bodily harm since the listed types of injury do not rise to that level. Substantial bodily harm under s. 939.22(38), Stats., is a level of harm that falls between "bodily harm" and "great bodily harm". It is defined in the statutes as "bodily injury that causes a laceration that requires stitches, staples, or a tissue adhesive; any fracture of a bone; a broken nose; a burn; a temporary loss of consciousness, sight or hearing; a concussion; or a loss or fracture of a tooth." [Ref. s. 939.22(38), Stats.]

This definition seems more similar to the types of injuries included in the definition of physical injuries that constitute child abuse under s. 48.02(14g), Stats. However, some of the injuries listed as physical injuries constituting physical abuse are less severe than substantial bodily harm. For example, physical injuries constituting abuse include any lacerations, but the definition of substantial bodily harm includes more severe lacerations requiring stitches.

* Note: However, these circumstances may still suggest a referral for a CHIPS petition for necessary treatment, services, or care.

Determining Whether an Injury is Accidental/Non-Accidental

For an injury to be considered not accidental, it should meet one of the following criteria:

- the person who inflicted the injury had a conscious intent to harm or injure the child, **or**
- the person knowingly, recklessly or carelessly engaged in behavior that resulted in the child being injured, regardless of whether he or she intended to cause the injuries.

The following are examples of *non-accidental* injuries:

- bruises or welts as described in s. 48.02(14g), Stats., that are a result of corporal punishment, even if injuring the child was not the parent's conscious intent
- brain injuries that are a result of shaken baby syndrome
- a dislocated elbow that is the result of a parent roughly jerking a child about
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when one parent/caregiver attacks the other parent
- an injury as described in s. 48.02(14g), Stats., that is sustained when a parent angrily shoves or throws a child aside, even if injuring the child was not the parent's conscious intent

The following are examples of *accidental* injuries:

- a dislocated elbow that is the result of a parent catching a child to keep him or her from falling
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- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when the parent slips and falls while carrying the child
- an injury as described in s. 48.02(14g), Stats., that is sustained by the child when hit by a softball while playing with a parent

Recency of Injury

The statutes are silent on how recent an injury must be to fall under the definition of abuse for purposes of reporting, responding, and making a substantiation decision. If the report of alleged abuse is accepted and investigated, the decision to substantiate or not should be based upon all the pertinent information gathered, as it is in all cases.

Substantiation of Neglect

In order to substantiate that neglect has occurred, the worker will have information that establishes all of the following:

- the child is under the age of 18, *and*
- the child is not receiving:
 - care,
 - food,
 - clothing,
 - medical or dental care or
 - shelter, *and*

- this care which the child is not receiving is necessary, *and*
- this lack of care seriously endangers the physical health of the child, *and*
- this lack of care is a result of failure, refusal or inability to provide the care, *and*
- the lack of care is not due to poverty, *and*
- the parent, guardian, legal custodian, or other person exercising temporary or permanent control is not providing this care to the child, *and*
- the determination of neglect is not made "based solely on the fact that the child's parent, guardian or legal custodian in good faith selects and relies on prayer or other religious means for treatment of disease or for remedial care of the child" [Ref. s. 48.981(3)(c)4., Stats.]*

Necessary care, as referenced above, includes protection from behaviors that seriously endanger a child's physical health. A caregiver has a responsibility to protect a child not only from dangerous situations or behavior of others, but also from any behaviors of the caregiver himself or herself that present an imminent threat of serious physical harm. Therefore, lack of necessary care includes when a caregiver negligently, recklessly, or intentionally commits an act against the child that places the child at substantial risk of harm, i.e., an act that a reasonable person could conclude would logically result in injury as defined in s. 48.02(14g), Stats., regardless of the actual outcome. (If the act resulted in actual injury to the child as defined in s. 48.02(14g), Stats., it would be substantiated as physical abuse.)

Neglect does not include an act by a caregiver that is accidental, regardless of whether it results in harm to the child. Every parent on at least one occasion has had a lapse in memory or attention that resulted in a child being at risk. The following are examples of accidents that occur with generally protective, vigilant parents that are **not** substantiated as neglect:

- a tired, overwhelmed parent forgets that the baby is in the back seat of the car and unknowingly leaves the child unattended in the car while putting away groceries
- a tired mother unintentionally falls asleep with the baby in her arms and the baby falls to the floor
- a 3-year-old gets out of the house and into the street without the parent's knowledge when the parent is on the phone, changing the baby sister's diaper, or taking care of some other responsibility, etc.
- a child becomes separated from a parent at the county fair and another adult must assist the child in finding the parent

The elements set forth above identify each element that needs to be established to support a conclusion that neglect has occurred. Of these elements, the critical and often most difficult issues involve the determination of whether the care in question is necessary and whether the lack of care seriously endangers the physical health of the child.

A determination of necessary care is based upon an assessment of an individual child's needs. For example, a normal 3-year-old needs constant supervision; a normal 13-year-old should be able to handle self-care for periods of time. A determination of conditions or behaviors that seriously endanger a child's physical health should be based upon an assessment of whether the

* Note: However, these circumstances may still suggest a referral for a CHIPS petition for necessary treatment or care.

lack of care threatens the child's safety or is likely to cause long-term or permanent impairment.

The following questions can be used by the worker to help determine if neglect is substantiated:

- What does the child need? (Consider age, physical/emotional/social/cognitive development, current physical and emotional condition, etc.)
- What will happen or is likely to happen if the child doesn't have the need met?
- Will the result be seriously injurious or detrimental to the child's physical health? Could it cause long-term or permanent impairment or harm to the child?
- What specific behaviors or pattern of behaviors on the part of the caregiver(s) result in the child not having this need met?
- What specific behaviors or pattern of behaviors on the part of the caregiver(s) present an imminent threat of serious harm to the child?
- What is the serious harm that will result or is likely to result from these behaviors?
- What role if any is the parent assuming in recognizing the child's needs and providing for those needs?

Considerations for Cases with Domestic Violence

Children may suffer serious injury or have their physical health seriously endangered when one adult commits domestic violence against another. Although all children suffer when they are exposed to domestic violence, the presence of domestic violence in the household does not always mean that children are at imminent risk of harm. In situations where a domestic abuser's violence does pose a significant safety threat to the child, a substantiation of neglect against the abuser may be appropriate.

Criteria to use in making this decision include:

- A child is held during or forcibly exposed to the violence, or restrained from leaving, thereby increasing the likelihood of injury.
- A child is actively intervening in the violence.
- A child is exposed to violent behavior in the home that is increasing in frequency or severity.
- A child is exposed to violence in the home which involves the use of weapons or believable threats of suicide or homicide, or which results in substantial harm to any person present.

Substantiation of Sexual Abuse

In order to substantiate that sexual intercourse or contact constituting abuse occurred, the worker will have information that establishes all of the following:

- the child involved is fifteen years old or less,
or
the child involved was 16 or 17 years old *and* did not freely give consent, was unconscious, was under the influence of an intoxicant to a degree which rendered him or her incapable of appraising the other person's conduct, or was suffering from a mental illness or deficiency

which rendered that person temporarily or permanently incapable of appraising the person's conduct,
and

- sexual intercourse as described above occurred,
or
sexual contact as described above occurred *and* that it was done for the purpose of:
 - sexually degrading the child victim, *or*
 - sexually humiliating the child victim, *or*
 - sexually arousing or gratifying the maltreater, *or*
 - the touching contained elements of actual or attempted battery

Sexual contact that is mutual, that occurs with a peer, and that is devoid of elements of actual or attempted battery, coercion, or exploitation must be Unsubstantiated if the sexual contact is within the range of normal sexual behavior for the child's age or development.

There are two general types of sexual contact and sexual intercourse:

- where a child, male or female, is assaulted or otherwise victimized, exploited or coerced by another person, either an adult or another child
- where a child, male or female, is engaging in mutual sexual activity with a peer, but the child is not old enough to consent under Wisconsin laws

The statutory definitions of sexual abuse are created by cross-referencing certain crimes against children. When they are interpreted, however, they must be interpreted within the legislative purposes of Ch. 48. Subsection 48.01(1), Stats., states: "In construing this chapter, the best interests of the child...shall always be of paramount consideration. This chapter shall be liberally construed to effectuate the following express legislative purposes:...(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family..."

Most of the definitions of sexual crimes against children translate reasonably well for application in Ch. 48. Children who are sexually assaulted or exploited are in need of protection by their families, the child welfare system or the criminal justice system. Section 948.02, Stats., however, describes behavior (sexual contact or intercourse with a child under the age of 16) that may not be assaultive, exploitative, or coercive. It is written to eliminate consent of the child victim as a potential defense for a criminal defendant. The concept underlying the statute is that children are unfairly susceptible to influence or direction by older persons and persons in a caregiver role and must be protected from such manipulation to engage in sexual activity. The concept of protection from another person does not apply, however, in mutual peer relationships.

As a result, s. 948.02, Stats., has the effect of potentially defining developmentally normal sexual curiosity and behavior of children as abusive. Sexual behavior is part of normal growth and development and can be seen from birth on.

Mutual sexual *contact* with a peer that is normal for age/development is generally screened out at Access. Some reports may be screened in for assessment because insufficient information is available at the point of Access to determine that it was mutual and with a peer. If the initial assessment in such cases concludes that there was sexual contact, but that it occurred with a peer, that it was mutual, was devoid of elements of actual or attempted battery, coercion, and exploitation and was within the range of normal sexual behavior for the child's age or development, the report is Unsubstantiated.

Sexual *intercourse* may also occur with a peer and be mutual. Opinions vary as to whether sexual intercourse in the mid-teens is within the bounds of normal sexual development. However, what distinguishes these situations are the following:

- the relationship is mutual
- there is no one in the victim role and no one in the maltreater role; both are mutual participants
- there are no elements of coercion, exploitation, battery, or assault
- the children are peers

A peer is defined as a person who, in terms of general cognitive development and social role, has equal standing with the child. For example, this can include a 15-year-old and an 18-year-old when they are both in high school. A caregiver or other person who exercises or has exercised temporary or permanent control over a child can never be considered a peer.

Mutual sexual intercourse that meets the above criteria may be substantiated, but is coded as *Mutual sexual activity*. This differentiates those cases from cases of sexual contact or intercourse that occurred and that was not mutual, which must be coded as *Sexual contact/intercourse*.

Sexual abuse is also defined in the statutes as:

1) "A violation of s. 948.05, Stats." [Ref. s. 48.02(1)(c), Stats.] This section addresses "sexual exploitation of a child."

In order to substantiate that a violation of s. 948.05, Stats., occurred, the worker will have information that establishes all of the following:

- that the child is under the age of 18, and
- that the child was persuaded, induced, employed, used, enticed, or coerced by another person to engage in sexually explicit conduct for the purpose of photographing, filming, videotaping, recording the sounds of or displaying the conduct in any way, or
- that the child was photographed, filmed, or videotaped engaged in sexually explicit conduct or the sounds of that conduct recorded or the conduct displayed in any other way.

2) “Permitting, allowing or encouraging a child to violate s. 944.30, Stats.,” [Ref. s. 48.02(1)(d), Stats.] This section addresses prostitution.

In order to substantiate that a child was allowed to violate s. 944.30, Stats., the worker must have information that establishes all of the following:

- the child involved is under the age of 18, and
- the child was permitted, allowed, or encouraged by another person to engage in prostitution.

3) “A violation of s. 948.055, Stats.” [Ref. s. 48.02(1)(e), Stats.] This section addresses intentionally causing a child to view or listen to sexual activity.

In order to substantiate that a violation of s. 948.055, Stats., occurred, the worker will have information that establishes all of the following:

- the child involved is under the age of 18, and
- another person intentionally caused the child to view or listen to sexually explicit conduct, and
- the person did so for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.

4) “A violation of s. 948.10, Stats.” [Ref. s. 48.02(1)(f), Stats.]. This section addresses exposing the genitals or pubic area to a child or causing a child to expose genitals or pubic area.

In order to substantiate that a violation of s. 948.10, Stats., occurred, the worker must have information that establishes all of the following:

- the child involved is under the age of 18, and
- another person caused the child to expose genitals or pubic area or exposed genitals or pubic area to the child, and
- the person did so for the purpose of sexual arousal or sexual gratification, and
- the child was not the defendant’s spouse.

NOTE: There are additional types of sexual crimes against children which are described in Ch. 948, but which are not cross-referenced under s.48.02(1), Stats., as abuse. They are still crimes, however, and may be dealt with by the law enforcement and criminal justice system.

Substantiation of Emotional Abuse/Damage

In order to substantiate emotional abuse/damage, the worker will have information that establishes all of the following:

- the child involved is under the age of 18, and
- the child has suffered harm to his/her psychological or intellectual functioning, and
- that harm is evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development.
- the child's parent, guardian, or legal custodian has neglected, refused or been unable, for reasons other than poverty, to obtain necessary treatment or to take steps to ameliorate the symptoms.
- "due regard to the culture of the subjects" must be given. [Ref. s. 48.981(3)(c)4., Stats.]

Although it is very helpful to have a psychological or clinical evaluation to substantiate this form of maltreatment, it is not always absolutely necessary. Information about behaviors, emotional response, or cognition that is outside the normal range of behavior of children and adolescents may be used to determine whether an allegation of emotional damage is substantiated. A worker's knowledge of child development is important in supporting this conclusion. The worker may also use information about how the child used to function to determine if there is a "substantial" change. School personnel are generally an excellent source of information in helping to determine how the child used to function and how the child's psychological or intellectual functioning has been impaired.

A case is not substantiated merely because a parent chooses not to follow the treatment recommendations of educational, mental health, or other professionals. Parents have a right and responsibility to determine what the needs of their children are. If there is a professional determination that treatment is necessary to remedy the harm and the parent fails to provide it and fails to take steps to ameliorate the symptoms, emotional damage is established.

Substantiating Unborn Child Abuse

In order to substantiate that unborn child abuse has occurred, the worker will have information that establishes the following:

- Expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances, or controlled substance analogs, exhibited to a severe degree
- There is a substantial risk to the physical health of the unborn child, **and**
- The child when born will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment.

Appendix 3

Information to Be Gathered and Analyzed in Primary Assessment Cases

Information gathered and analyzed in Primary Assessments is critical to understanding and making decisions related to child safety, risk of maltreatment, services needs and the occurrence of maltreatment.

The *CPS Access and Initial Assessment Standards* requires that thorough information be gathered in the following areas:

- Maltreatment (alleged maltreatment, and any other type of maltreatment occurring within the family),
- Surrounding Circumstances (circumstances leading up to maltreatment and the parent's/caregiver's response)
- Child Functioning (general functioning of children in the household and effects of any maltreatment)
- Adult Functioning (including parent/caregiver protective capacities)
- Parenting Practices (including parent/caregiver protective capacities)
- Family Functioning (including strengths and current stresses)

Understanding the above conditions, behaviors, perceptions, etc. are critical to assessing threats to child safety and risk of maltreatment. Depending on how they present in families, they may contribute to the presence of an unsafe home environment or risk of maltreatment or may provide a buffer against/mitigate threats to child safety or the risk of maltreatment. The assessment of a parent/caregiver's protective capacities is critical in being able to arrive at a decision of whether or not a child is safe. Information in this assessment provides for the identification of parent/caregiver protective capacities and strengths that are operating or that can be reinforced and used in case planning. In all families, there are both buffers (protective capacities, positive support networks and other strengths) and risks present. Identifying both creates a more accurate description of the family.

Sufficiency and Relevance of Information

Information gathered should be specific to the family and family members and describe both the problems and strengths of the family and family members in terms of behaviors, perceptions, conditions, beliefs, etc, pertinent to safety and risk of maltreatment.

The information is gathered through interviews with and observations of family members and information from collateral persons and reports, if available. In addition to information about the alleged maltreatment, information obtained through interviews with family members provides the basis from which to understand how family members and the family generally function on a day-to-day basis. Relevant information is related to:

- evidence of a safe home environment
- the presence of threats to child safety
- the presence or mitigation of the risk of maltreatment

Relevance also pertains to the meaning and significance of the information. “Mom is a young single mother of four children ages 2, 4, 5 and 7” is pertinent information, but what significance does it have in this family? Some young parents are knowledgeable and competent; others are immature in their judgment and impulse control and unaware of children’s needs, resulting in the children being unsafe. Some single parents of multiple young children are overwhelmed, highly stressed and unable to respond to the needs of all of their children. Others are generally calm, patient and able to handle the demands of parenting. What is the significance of the information in the family that is being assessed? The worker is responsible for describing how behaviors, perceptions and conditions are related to the risk or mitigation (buffering) of maltreatment if the information documented can impact a family in different ways.

Regarding sufficiency of information, phrases such as “Mom’s discipline is inappropriate and ineffective” are, if not further explained with specific examples, insufficient. The following demonstrates sufficient documentation of this concept: “Mom uses only corporal punishment (spanking, slapping the children’s hands, pinching, grabbing children by the arm and shaking them). She has no idea of other methods to impact the children’s behavior and never uses time outs, withdrawal of privileges, explaining, etc. She makes no differentiation based on the children’s ages or needs. Usually she ignores the children’s behavior, but when they are screaming, fighting noisily or making demands on her attention she yells, hits and is generally out of control. Although she recognizes that the children haven’t improved their behavior following these actions on her part, she doesn’t perceive any connection between her actions and how that might contribute to the children’s acting-out behavior. ‘That’s the way kids are and you have to keep after them.’”

The following outlines the required areas of information gathering for Primary Assessments. A variety of different aspects of the identified dimensions of relevant functioning are discussed. They are presented to support the worker in understanding the scope of the areas to be assessed and guide the worker to consider those issues that contribute to or mitigate the presence of a safe home and the occurrence of maltreatment.

Maltreatment

This component describes the maltreatment that occurred, based on the CPS worker's assessment of information gathered from the family, collaterals, and other professional evaluations (medical, law enforcement, etc.). All types of maltreatment found to be present should be specifically described. Any maltreatment alleged in the CPS report but not found to be present should also be described, with the reasons for that determination.

Be specific about the injuries and/or conditions. If the child(ren) received medical attention, describe the findings. Injuries may be non-accidental and the result of impulsive, inappropriate or violent behavior on the part of the parent, but still not serious enough to meet the statutory definition of physical abuse. Therefore, a worker may document non-accidental injury in this section, but still determine that maltreatment is unsubstantiated later in the case record. Also, conditions present and documented here may be concerning, but may not rise to the level to

“seriously endanger the physical health of the child”, and therefore be unsubstantiated as maltreatment.

This component provides the supporting documentation for maltreatment determinations (substantiated, unsubstantiated, etc.). It also provides documentation that supports a petition under s. 48.13, Stats. If a heightened level of detail is needed to support a petition, such as a transcription of an interview with a child, this information might be documented on an audio or visual media, in case notes or in a law enforcement report and cross-referenced here.

Surrounding Circumstances

This component addresses the surrounding circumstances accompanying or leading up to the maltreatment. What was happening when the maltreatment occurred? What were immediate precursors to the maltreatment? Was the use of drugs or alcohol a contributing factor? Was the maltreatment incident an unusual circumstance or behavior, situation-related, or has it been occurring for a while? Has it been escalating, or have the behaviors or conditions stayed about the same or improved over time?

This component also addresses the parent’s reaction after the maltreatment occurred. Did he or she regret the maltreatment or did they justify the behavior? Were the maltreatment and its results intentional or premeditated? How did the parent interact with or respond to the child following the maltreatment? Does the parent accept responsibility?

Was the maltreatment justified as a cultural or religious practice to which the parent adheres? When parental behavior that contributes to maltreatment is a religious or cultural practice that the parent fully embraces and intends to continue applying, it is important to describe and analyze the impact these cultural or religious practices have on the child.

Environmental conditions that clearly and directly contribute to the maltreatment identified should be documented in this element. For example, if a child is being left unsupervised because a parent must work, cannot afford child care and has no other resources to care for a child that should be documented. Neglect cannot be substantiated if the lack of adequate food, shelter, care, etc. is truly due to poverty. Additionally, other stressful conditions that the caseworker assesses as having directly contributed to the occurrence or risk of maltreatment should be documented. Consider whether those conditions are beyond a parent’s control, such as living in a dangerous, crime-ridden neighborhood because it is the only affordable housing available.

This element also addresses the parent’s reaction even if the finding is that there was no maltreatment. When there is no maltreatment, the information should describe the parent’s explanation of the circumstances that support the CPS worker's finding of no maltreatment.

Child Functioning

This component is concerned with how the child acts and includes physical capacity as well as vulnerability. Vulnerability should be considered based not just on age, size, cognitive development and physical needs, but also emotional development and needs.

The emphasis in this component is on general behaviors, emotions and temperament rather than the child's response to intervention. Specific areas of study include: capacity for attachment, general temperament, expressions of emotions/feelings, typical behaviors, presence and level of peer relationships, school performance and behaviors, known mental disorders (organic/inorganic), issues of independence/dependence, motor skills and physical capacity.

Effects of maltreatment on a child's functioning should also be described. This includes emotional and behavioral effects as well as physical effects. The link between the maltreatment and the child's functioning need not be verified by a physician or psychologist/psychiatrist in order to be documented, but the basis for the worker's conclusions in this area should be documented.

Some child functioning may be different than what one normally expects but can be understood as associated with a cultural norm, behavior or practice. If the culturally based functioning does not endanger the child or others, jeopardize development or cause the child to be generally rejected by others, it should be judged as acceptable and appropriate.

Adult Functioning

This component is concerned with how the adults in the family feel, think and act on a daily basis in respect to life events and life management. This includes any information concerned with substance abuse or mental health such as consideration of reality perception, coherence, rationality, self/emotional control, and any impairment that is associated with mental health or substance use; physical health, self-concept and esteem, self-care and self-preservation.

It also includes such areas as communication, coping, stress management, impulse control, problem solving, judgment, decision making, independence, money and home management, employment, education, social relationships, citizenship, community involvement and other basic life skills. Any criminal behavior in the community or home, including domestic violence, should be discussed here. Judgments should be made based on how the parents are generally, rather than in relation to their response to intervention and reaction to the worker.

Some adult functioning may be different than what one normally expects but can be understood as associated with a cultural norm, behavior or practice. If the culturally based functioning does not detract from the person's ability to function acceptably on a daily basis, it should be judged as acceptable and appropriate.

This component may also include the childhood and recent adult history of the adult being assessed, particularly as it may affect current functioning. Is the adult from a stable, well-

adjusted family or a product of an unstable/dysfunctional family? Is there evidence of life successes as a child or general life disappointment dating to childhood? Is there a history of behavioral/emotional dysfunction as a child/young adult? Was the adult's general childhood history nurturing and satisfying or unhappy and miserable? Are there indications that the adult is a product of an abusive or neglectful childhood or seriously deprived childhood? What is known about permanency and significant relationships in their history?

Perhaps most critical is a person's current perceptions of and adjustment to his or her childhood history. If there is a negative history, does the parent recognize this or deny it? Does the parent seem to be repeating the same negative behaviors of his/her own parents or do they see themselves as separate and able to behave differently? Are they "stuck" in this history or have they been able to come to terms with it and move on to build a positive life? Consider the individuals' cultural context as you describe adult childhood history.

Parenting Practices

This component explores the general nature and approach to parenting and includes matters associated with their perception of their children, reasons for being a parent, feelings about being a parent, knowledge and general skill, basic care, nurturance, discipline practices, decision making about parenting, parenting style, history of parental behavior and expectations for the child. Parenting should be assessed for all of the children, not just the child reported as maltreated.

Are expectations for the child appropriate for the child's age, capacities and development? Do parents see parenting as a chore or as a positive part of their lives? How does the parent express affection for the child and under what circumstances? Does the parent consistently provide for the basic necessities for the child? How does the parent describe the child? To what extent does the parent meet the child's need for social interaction? How "tuned in" to the child is the parent? Does the parent recognize cues from the child and respond appropriately?

The disciplinary methods include more than punishment. They include the parent's manner of teaching a child how to behave and guiding his or her behavior as well as the actions a parent takes to teach the child self-discipline. They should be described as well as an evaluation of the typical context in which it occurs, i.e. when, how, where and for what reasons and purpose discipline might occur or usually occurs. The disciplinary methods used with all of the children should be assessed, not just with the child reported as maltreated.

Which of the child's behaviors do the parents tolerate and which do they not tolerate? Does the parent use a variety of disciplinary approaches, suited to the child's age and needs? How consistent is the parent in the use of discipline? To what extent does the parent demonstrate self-control when disciplining? To what extent is the parent aware of and responsive to the child's need for boundaries? Does the parent avoid applying discipline? Does the parent view discipline as punishment only? Do disciplinary practices represent a cultural practice and does this endanger or harm the child?

Cultural practices must be assessed on the basis of their effects on the child. For instance, is the stated cultural practice destructive or harmful to the child; or does it represent a practice that is acceptable by virtue of having no harmful effect on the child?

This component also includes the parent's ability and willingness to parent based on their child's needs rather than their own needs, to put their child's needs ahead of their own, to have empathy for the child and act on that empathy, and to have sensitivity and understanding toward children.

It is not unusual for parents to divide some parenting responsibilities and share others. It is also not unusual for this to change at different life stages of a family, with one parent more effective with toddlers, for example, and the other more effective with adolescents. The fact that one parent does not perform all parental functions does not indicate that they are unable or unwilling to do so, and may indicate that their family is flexible in its roles in order to meet family needs. This should be discussed as part of the family's functioning as a system (see below).

Family Functioning

This component concerns itself with how the family unit operates, including both strengths and current stresses. Major issues for study and understanding include:

- how the family is structured,
- the clarity of roles and boundaries,
- who is in charge,
- how family decisions are reached,
- the level and type of communication used,
- the presence and use of affection,
- marital issues,
- presence/absence of domestic violence
- the general feelings/climate within the family and relationship to the community, and
- demographics, including family make-up, housing, and income in terms of its sufficiency to meet the family's needs.

Are family roles and boundaries clear and effective or blurred and ineffective? Are roles being vacated by adults or is there an inappropriate exchange of roles between children and adults? Is communication open and productive or closed/manipulative/used to intimidate? Is the home climate calm, inconsistent, indifferent, frustrating or destructive? Is there routine and order or chaos/disorganization?

Is the marital relationship satisfying and stable? Is there a sense of belonging to a family among all family members? How is power distributed among family members? How does the family respond to problems/crises? Is the family integrated into the community or isolated? How does the family manage the stresses associated with resources, employment, neighborhood, etc.?

Appendix 4

Effective Communication

Agencies that receive federal funds are required to develop a language access policy and plan indicating how the agency will provide resources to limited English proficiency (LEP) individuals. These requirements are outlined in the Title VI of the Civil Rights Act of 1964. CPS workers should check with their supervisor to see what the county's policies and procedures are pertaining to limited English proficiency resources, in addition to becoming aware of the particular limited English proficiency resources in the county.

Definitions:

Limited English Proficient (LEP): a limited English proficient individual is someone who is unable to speak, read, write or understand the English language in a way that allows them to effectively interact with health and social services agencies and providers.

Qualified Interpreter: Qualified interpreters will be proficient in both English and the individual's native language, will have knowledge in both languages of relevant specialized terms, concepts and cultural issues, and be bound by the interpreter code of ethics.

Translator: refers to an individual who translates the text of a document in one language into the text of another language. This term is often mistakenly used interchangeably with interpreter; interpreters speak, whereas translators write.

Communicating with limited English proficient individuals:

- When it has been identified that an individual has a limited capacity to communicate in English, CPS workers will make reasonable and documented efforts to provide the individual with information and services, in a language that the individual can understand through the use of interpreters, translators, or other methods that might be needed.
- CPS workers will carry out reasonable efforts to ensure that limited English proficiency individuals understand, as entirely as possible, all significant CPS actions throughout their involvement with the CPS agency.
- CPS efforts to provide limited English proficiency individuals with interpreter or translator services may not delay or interfere with actions necessary to protect a child from harm or risk of harm, or act in accordance with legal requirements.

Resources for working with limited English proficient individuals:

- The State Court Office has compiled a roster of trained court interpreters which could be very helpful in interpreting due to the potential legal issues of CPS communication with a limited English proficient individual. The roster can be accessed at:
 - <http://www.wicourts.gov/services/interpreter/roster.htm>

Resources for working with blind or visually impaired individuals:

- Services and resources that could help with effectively communicating with blind or visually impaired individuals can be accessed from the DHFS website:
 - <http://dhfs.wisconsin.gov/blind/resources.htm>
- To obtain a listing of the regional offices from the Office for the Blind and Visually Impaired (OBVI) that could help identify local services available visit:
 - <http://dhfs.wisconsin.gov/blind/regionaloffices.htm>

Resources for working with deaf or hard of hearing (DHH) individuals:

- DHH Interpreter Information:
 - Interpreter Referral Agencies-
<http://www.dhfs.state.wi.us/sensory/interpreting/terpagencies.htm>
 - Statewide Interpreter Directory-
<http://www.dhfs.state.wi.us/sensory/interpreting/InterpreterDirectory.htm>
 - Suggestions for communicating with DHH individuals-
<http://www.dhfs.state.wi.us/sensory/interpreting/commtips.htm>
 - Considerations for using an interpreter-
<http://www.dhfs.state.wi.us/sensory/interpreting/interpreter.htm>

Information for Emergency Situations:

- CPS workers need to be aware that even though they have effectively communicated with a bilingual individual in English previously, in an emergency situation the individual may not be comfortable speaking English and might revert back to their native language.

Helpful Tips in Using Interpreters:

- CPS should not use family members, friends, or children to interpret, translate, sign, or read for limited English proficient individuals except in emergency circumstances when other resources have been exhausted..
- The interpreter should be culturally appropriate given the age, gender, class, etc. of the individual that you are working with. This will depend on CPS workers knowledge of the limited English proficient individual's cultural norms and mores, to be able to determine what interpret characteristics are appropriate given the situation.
- Ensure that the selection of the interpreter maintains the individual's privacy. Cite confidentiality statute? Or is this already assumed/covered under "certification" for interpreter. This can be done by having the interpreter sign appropriate confidentiality forms, and be sure to discuss with the interpreter the seriousness of an individual's confidentiality. CPS agencies may need to develop a form for interpreters and translators to sign, explaining confidentiality and ensuring the interpreter/translator understands the legal ramification of breaching confidentiality.

- Ask prospective interpreters several screening questions relevant to the situation, to ensure that their personal bias will not influence the interpretation.
- Speak in short, simple, jargon-free sentences and avoid slang, to make interpretation easier.
- Encourage the interpreter to translate literally rather than paraphrase, although sometimes paraphrasing might be necessary for cultural understanding.
- Look and speak directly to the individual that you are interviewing or meeting with rather than speaking directly to the interpreter.
- Even though the CPS worker might not understand the language be aware of the non-verbal cues given by the person you are interviewing.
- Have the interpreter ask the interviewee to repeat the information being communicated and documented, this will help ensure that there are no gaps in understanding.
- Remember that using an interpreter is not easy for everyone involved and try to be patient.

Appendix 5

Domestic Abuse

There is a significant overlap between domestic abuse and child maltreatment: in families where one form of family violence exists, there is a likelihood that the other does, too. The majority of research studies over the past two decades reveal that in an estimated 30 to 60 percent of families where either domestic violence or child maltreatment is identified, it is likely that both forms of abuse exist. Good CPS practice will address this co-occurrence.

Access - Interviewing the Reporter to Assess for Presence of Domestic Violence

As a routine part of gathering information during the Access process, staff should ask questions of the reporter about the possibility of domestic violence in the home.

Information gathered at Access will help determine if the report is screened in as a CPS report. Information about the family will help determine if intervention is needed and at what level.

Collecting comprehensive information about possible violence, including reports from law enforcement, is also critical regarding worker safety.

The following sample questions can help determine if the reporter has information about domestic violence and can be adapted to your interviewing style.

- Do you know if anyone else in the home besides the child has been hurt or assaulted? If yes, who?
- Have the police ever been called to the house to stop fighting among the family members? If yes, tell me about that.
- Have the children said that one of their caregivers is a victim of violence or is acting violently in the home?
- Do family members appear to be afraid of or intimidated by the alleged maltreater?

If the answers to the above four questions indicate the presence of domestic violence in the home, or if it appears that a family member is violent, aggressive, or controlling, these additional questions can assist with assessing the risk of danger to family members.

- Has the violence changed or increased over time? How often does it happen?
- Has anyone made threats to hurt or kill him/herself, another family member or pets?

- Do you know if there any weapons in the home? If yes, what kinds? Who had access?
- Has the violent parent or caregiver threatened to run off with the child(ren) or threatened to take full custody of the child(ren)?
- Are you aware of circumstances in which the parent/caregiver has been criticized or threatened for seeking help or community resources, such as medical, mental health, parenting assistance, child care, legal action etc.?
- Has a family member stalked another family member? Has anyone ever taken a family member hostage?

Screening of the Report

The presence of domestic violence does not in and of itself indicate that a report should be screened in for initial assessment. Although many children suffer when they are exposed to domestic violence, not every child exposed is in need of child protective services. As with all reports to CPS, a decision must be made during the point of Access if information supports a suspicion that the child may be unsafe, may have been abused or neglected, or may be at risk of abuse or neglect (threatened harm).

Absent a direct allegation of abuse or neglect to a child, a report of children exposed to domestic violence should be screened in as a CPS report according to the following criteria:

A report is made in which there is reasonable cause to believe there is current domestic violence or the abuser has a history of domestic violence, **and**

- There is reason to believe the child is intervening or will intervene, placing him or her at risk of injury, or
- The child is likely to be injured during the violence (e.g., being held during the violence, physically restrained from leaving), or
- The alleged perpetrator does not allow the protective parent and child access to basic needs impacting their health or safety, or
- The alleged maltreater has killed, substantially harmed or is making a believable threat to do so to anyone in the family, including extended family members and pets, or
- The child exhibits observable behavioral, emotional or psychological effects.

Other factors to consider in making a decision to screen-in a report include:

- There is serious injury to the non-offending parent (e.g. broken bones, internal injuries, suffocating, strangulation, etc.), limiting protective capacity.
- Violence is increasing in frequency or severity.
- Weapons were used or threatened.
- Threats of kidnapping, suicide or homicide.

If the information does not rise to the level of a CPS report, the agency may decide to screen the report as a services intake to offer resource and referral assistance to the family or the

alleged victim. The offer of services should be made carefully with the consideration that any intervention may be viewed by the abuser as a challenge to their authority and may increase the risk of harm to the children or the adult victim.

Initial Assessment

The dynamics of domestic abuse are based on the abuser maintaining power and control over his or her partner. Domestic abuse is not limited to physical violence, and many victims report that emotional abuse, threats and coercion can be more debilitating than physical assaults. Challenges to a domestic abuser's power and control, including a CPS initial assessment, may increase the likelihood of escalating violence. In addition, a victim faces an increased risk of being harassed, seriously harmed, or killed when an abuser's control is challenged or when the abused leaves the abuser. Children are also more at risk during this time. When domestic abuse is known or suspected, plan the initial assessment carefully and always take into consideration that the initial assessment may increase the risk of harm to the child and the adult victim.

CPS workers should routinely inquire about domestic abuse during Initial Assessment interviews, whether or not there are allegations of domestic abuse.

Note: Domestic violence can occur in heterosexual or same sex relationships and may be perpetrated by males or females.

General Practice Considerations

- Safety for both the child and the adult victim should be a top priority when CPS workers conduct an initial assessment where domestic abuse may be present.
- Assess for domestic abuse by looking for patterns of power, control, entitlement, and intimidation, in addition to physical violence.
- If there are allegations that the violence is mutual, look at the history of who has been the predominant aggressor. Although Wisconsin law discourages such practice, there are times when both parties may be arrested in a domestic abuse incident. Some things to consider include: who is afraid of whom; who controls or makes decisions in the relationship; who is more socially isolated; and who has more access to financial and economic resources. Keep in mind that there are times when a domestic abuse victim may act in self defense.
- Try to do the assessment with the adult victim when the domestic abuser is not home. If possible, call first to see who is at home and how safe it is to go out. Consider meeting the adult victim in a safe and neutral place. Being unable to talk to an adult victim alone may be a signal of danger and related to the level of control the abuser has over the family. Workers should consult with a supervisor as to how to proceed.

- Do not leave domestic abuse resource information, letters, or voice mail messages asking to speak with the adult victim about the abuse. Such information can jeopardize the victim's safety.
- When domestic abuse is suspected or known, develop a plan for interviewing family members that takes into account the safety of all family members. Be aware of any aspects of the timing of interviews that may put a victim at more risk, and help her plan for safety accordingly.
- In each culture there are values, traditions, and practices that facilitate abusive and coercive relationships, and values traditions, and practices that support and promote functional and respectful relationships. It is important for CPS workers to become familiar with these aspects of culture and to be able to use the protective resources of diverse cultures in their interventions with families.⁶
- Racial and cultural differences in how women and men experience, explain, or justify domestic abuse challenge CPS workers to become aware of their own culturally-based assumptions about domestic abuse and to avoid applying these assumptions with diverse populations.

Interviewing Children About Domestic Abuse

- As developmentally appropriate, ask children questions about what happens when adults in their families disagree.
- Provide an atmosphere that supports children's comfort in discussing domestic abuse. Children receive messages, either directly or indirectly, that domestic abuse is a "family secret". It is usually uncomfortable or frightening for children to talk about the domestic abuse. Some children may be afraid that discussing domestic abuse may cause problems at home or lead to their removal from their home.
- Be aware that some children may align with the abuser or attempt to protect him by not discussing the abuse or by blaming the victim. Assure the child that the domestic abuse is not his/her fault or the adult victim's.
- If an interview with a child reveals domestic abuse, it is important that you contact the adult victim as soon as possible. If the child informs the abuser about this disclosure, the adult victim may be at increased risk for violence and retaliation. The victim needs to have this information and help (if necessary) in planning for safety.
- Tell the child what information you will be sharing and what might happen next.

⁶ Mederos, Fernando et al, (2004) *Accountability and Connection with Abusive Men*. Family Violence Prevention Fund, San Francisco, CA.

Sample Questions

Adapt your questions to the developmental age of the child. If children are old enough, questions can be asked of them, including those below. It can be helpful to start with a broad-based statement before asking specific questions about the child's family. For example, "Sometimes when moms and dads (or boyfriends and girlfriends) fight, they get angry. Sometimes even too angry and they may start to yell at each other or even hit. I know fights can be scary. I want to ask you a few questions about when your parents fight and what you think about it". (Questions adapted from "Child Protection in Families Experiencing Domestic Violence", U.S. Dept. of Health and Human Services, Administration for Children and Families, Children's Bureau)

- What kind of things do mom and dad (or girlfriend or boyfriend) fight about?
- What happens when they argue? How does it make you feel?
- Does anyone ever hit another person? What do they hit with?
- How often do your mom and dad argue or hit?
- Have the police ever come to your home? Why?
- Did you ever see your mom or dad get hurt? What happened?
- Have you ever been hit or hurt when mom and dad (or girlfriend or boyfriend) are fighting? Has your brother or sister ever been hit or hurt during a fight?
- What do you do when they start arguing or when someone starts hitting?
- Do you often worry about mom and dad (or girlfriend or boyfriend) fighting a lot?
- On a scale of 1-10, where one equals very safe and 10 equals very unsafe, how safe do you feel at home?

Interviewing the Suspected Adult Victim of Domestic Abuse

- Never ask a victim about domestic abuse in front of her partner. It will not be safe for her to disclose if he is in the vicinity.
- If preliminary information suggests that the perpetrator is dangerous, workers should take appropriate measures to protect their own safety.
- Ask open-ended questions about the adult victim's well-being to start the conversation. However, express concern and ask questions about bruises or other visible injuries.

- Recognize that some victims may initially deny or minimize the abuse or may not identify their experiences as abuse. CPS workers can build trust and rapport over time to create an atmosphere in which a victim feels comfortable talking about her experiences.
- Affirm to the adult victim that she does not deserve to be abused and that the abuse is not her fault. Point out the abuser's responsibility for the violence. Express concerns for her safety and the safety of her children.
- Ask the adult victim about what strategies she uses to reduce the risk of harm to the child(ren). While personal resources vary among victims, many have developed survival skills and most have taken action to protect their children. Strategies that look like poor parenting may, in fact, be efforts by the victim to protect her family, based on her assessment of the situation. For example, a victim may comply with the perpetrator to reduce risk to the child.
- An adult victim may have had past experience with agencies or helping professionals that blame her for the abuse, discount the seriousness of her situation, or revictimize her in other ways. This may make CPS intervention more difficult. It may be useful to ask her about previous attempts to get help and the results.
- Avoid "victim blaming" questions or statements that deepen a victim's feelings of shame, guilt, or responsibility for the alleged abuser's behaviors. Examples of victim blaming questions include: "Why don't you leave?"; "Why did you go back?"; "What did you do to make your partner so mad?"; or "Why do you put up with the abuse?"
- Adult victims may be reluctant to talk with CPS because of fears of losing their children and/or retaliation by the batterer. Many times CPS intervention is the first time that domestic violence is revealed. This is often forced disclosure, not by the victim's choice. Progress in the interview will require open-ended questions, patience, support, and education.
- Work with the adult victim on developing safe alternatives for herself and her children. Do not demand that the victim leave the abusive relationship. Leaving can increase the risk to victims and their children as abusers can become increasingly violent during times of separation. Safety options can include obtaining a restraining order, working and consulting with a domestic abuse advocate, seeking shelter at a domestic abuse program, or developing a safety plan that details the steps to take if the abuser becomes threatening or violent.
- Revealing information that the adult victim shares with you to her partner may be dangerous to her. Consult with a supervisor about how to handle and document information that may put her or her children at increased risk.
- Let the adult victim know what will happen with the information gathered during the CPS initial assessment. A victim of domestic abuse may be particularly concerned

about safety and privacy. Let her know that CPS may be required to share information about her situation in court proceedings should the worker be subpoenaed, or that the results of the Initial Assessment may be shared with the alleged maltreater. Consult with a supervisor about how to handle and document information that may put her or her children at increased risk.

Sample Questions to Ask in All Interviews

The following are some sample questions to ask the adult victim for a general assessment of domestic abuse. Adapt these questions to your style and the situation. For a more thorough assessment of the forms and impact of domestic abuse, see the ***Domestic Abuse Handbook***. (Questions adapted from Child Welfare Practices for Cases with Domestic Violence, Oregon Department of Human Services)

- Tell me about your relationship.
- How do decisions get made?
- What happens when you and your partner disagree?
- How does your partner treat your pet? Your property?
- What happens when your partner feels jealous or possessive?
- Have you ever felt afraid of your partner? Tell me about that.
- Has your partner ever threatened to kill or harm himself, you, the children or a pet? Tell me about that.
- Has your partner threatened to take the children from your care if you leave him?
- Has your partner ever used force against you? Pushed? Shoved? Hit? Strangled or choked? If so, tell me about a time that stands out in your mind. Has the violence escalated over time?
- Has your partner pressured or forced you to engage in sexual activity? Tell me about that.
- Most people think of weapons as guns or knives, but other objects can be used to hurt someone. Has your partner used a weapon to threaten or harm someone in the family? Does your partner have access to a dangerous weapon or gun? If yes, tell me about that.
- On a scale of 1-10, where one equals very safe and 10 equals very unsafe, how safe do you feel in your relationship with your partner?

Interviewing the Alleged Maltreater About Domestic Violence

- Do not ask the alleged maltreater about domestic abuse in front of his partner. Do not tell the alleged maltreater any information given by the victim or a child.
- Caution must be exercised regarding information obtained from the victim or the children and redisclosure of that information to the abuser.
- The abuser may not be a reliable source of information about his violent behavior or his use of power and control tactics. Better sources of information include the adult and child victims, police reports, medical reports, and collateral contacts.
- Be aware that perpetrators of domestic abuse often appear very believable and controlled, especially during initial interviews. An abuser may also present himself as a victim of domestic abuse.
- Interview the domestic abuser in a way that encourages disclosure of abusive conduct. Domestic abusers routinely deny, minimize, or blame the victim for their violent behaviors. Ask specific questions about behaviors, as a perpetrator may not think of their actions as violent or abusive. For example, he may believe that "violence" refers to a serious injury requiring medical attention, whereas pushing, slapping or hitting is simply "arguing" or "disagreeing".
- If a alleged maltreater denies domestic abuse, do not try to force disclosure, but move on to other subjects. Angry confrontations with domestic abuse perpetrators can result in retaliation against the child or adult victim. You do not need the perpetrator's disclosure to confirm that domestic abuse has occurred. Such confirmation comes from adult and child victim statements, worker observations and other agency reports.

Sample Questions

The following are some sample questions to ask the alleged maltreater. You may want to reassure him that the domestic violence questions are a routine part of family assessment. These questions can also be used to screen for domestic abuse when it was not part of the allegation. (Questions adapted from Child Welfare Practices for Cases with Domestic Violence, Oregon Department of Human Services)

- Tell me about your relationship.
- How do decisions get made in your relationship?
- What happens when you and your partner disagree?
- Does your partner ever seem afraid of you?

- Do you or your partner use alcohol or drugs? How often? How much do you use?
- Has your partner ever been hurt during an argument? What happened?
- Have you ever used force against your partner? Pushed her? Shoved her? Hit her? Choked or strangled her? Bit her?
- If so, tell me about the worst episode. What was the most recent episode? How frequently does this happen?
- Where are the children usually when you and your partner fight?
- Have the children ever been hurt?
- On a scale of 1-10, where one is very safe and ten very unsafe, how safe do you feel in your family? How safe do you think your partner feels? Your children?

Appendix 6

Coordination and Collaboration with Law Enforcement Agencies

Coordination between the county department and local law enforcement agencies should fulfill the following purposes:

- Improve safety for children
- Improve efficiency and effectiveness of information gathering and decision making
- Reduce trauma to children
- Improve safety for other family members and the CPS worker, when needed

Collaboration with law enforcement is intended to result in improved safety for children. Law enforcement officers can enter a home or other private property without permission if there is probable cause to believe that a crime is being committed and there are exigent circumstances and can take children into immediate custody when the circumstances warrant it. Law enforcement officers can also handle dangerous criminal activity that creates risk for a child or makes a child unsafe.

Law enforcement information about alleged maltreaters and family members, as well as community conditions, can improve safety assessment and safety planning. In jurisdictions with an emphasis on community-oriented policing, the relationship that a law enforcement professional has with the principles of the report and collaterals in the community can encourage motivation and commitment to follow through with protective and safety plans. Law enforcement actions, such as arrest and incarceration of the maltreater, may also be factored into the safety plan.

Law enforcement officers can also help keep everyone safe during the initial assessment/investigation process. It is not unusual for a CPS worker to find himself or herself confronted by an angry, volatile or out-of-control family member or family friend. Alcohol or other drug abuse by family members or friends can create volatile, unpredictable conditions that are best handled by law enforcement professionals. In addition, the potential presence of weapons puts CPS workers at heightened risk.

Law enforcement officers can pursue alleged maltreaters in non-family cases where CPS has limited authority to intervene directly with the maltreaters. In cases of maltreatment by adult non-caregivers, the law enforcement system is the only system that can take action to directly control or restrict the behavior of the maltreater.

Underlying Philosophies of the Criminal Justice and Child Welfare Systems

Coordination between the county department and local law enforcement agencies are designed to recognize the different purposes and roles of each system and assure that both systems are able to perform their responsibilities effectively.

Interventions in cases of child maltreatment by the criminal justice system and child welfare system are each based on different beliefs as to the etiology of child abuse and neglect. The criminal justice system is constructed to view child maltreatment as an intentional anti-social act against a child. Therefore, the system is designed to deter and punish deviant behavior and to keep the public safe by separating offenders from the rest of society.

On the other hand, the child welfare system views child maltreatment as a result of problems in functioning in the parent role and family functioning which can be exacerbated by stressful societal or environmental conditions (e.g., loss of employment, poverty, racism, etc.). It views child abuse and neglect as the co-occurrence of the rise in risk factors and the breakdown of protective factors. As such, the child welfare system provides supports to stabilize a family and assure safety and treatment services to change those conditions placing children at risk and strengthen the protective capacities of the family.

These different views of the causes of child maltreatment define separate case identification strategies. Law enforcement agencies conduct incident-based investigations to determine if a crime has been committed and a particular person or persons should be held responsible and prosecuted. Child welfare agencies conduct assessments of risk factors and protective factors to determine if agency services or other community services are needed. Both systems act to assess and ensure immediate safety.

In reality, some of the cases of maltreatment referred to county agencies are the result of criminal behavior (anti-social behavior or other behavior rooted in psychopathologies or personality disorders resulting in criminal acts). Children living in homes where parents operate a methamphetamine lab or children methodically starved by their parents are neglected and endangered through their parents' criminal acts. The sexual abuse of a young child by an adult is also a criminal act. But the majority of cases referred to the child welfare system are families who need assistance to provide adequate care for their children.

Law enforcement agencies may use varied approaches, and some have an expanded role of prevention through community policing. These methods are generally more consistent with CPS purposes than is the law enforcement role of enforcement of laws or containment of criminal activity, and may result in the ability to coordinate on more cases.

Differences in Definitions of Maltreatment

Law enforcement and CPS agencies use different sets of definitions for child abuse and neglect. CPS agencies use the definitions for physical abuse, sexual abuse and emotional abuse found at s. 48.02, Stats., and the definition of neglect found in s. 48.981, Stats. The definitions of sexual abuse are a cross-reference to certain sexual crimes against children found in ch. 948 and other chapters of the Criminal Code. For purposes of criminal investigation, law enforcement agencies use the definitions and descriptions of crimes against children found in the Criminal Code, primarily in ch. 948, Stats. Law enforcement officers tend to focus on the definitions in the Criminal Code; although officers who deal more routinely with children's issues, such as juvenile officers and school liaison officers, are often more aware of the

definitions in ch. 48, and use those definitions when performing responsibilities under that chapter.

The differences in definitions for child abuse and neglect need to be discussed in developing Memorandum of Understanding (MOUs) for a variety of reasons. First, there are some crimes against children that are not child maltreatment under ch. 48, and therefore not within the scope or authority of CPS. CPS generally should not be involved in responding to those reports. Second, there are significant differences between the definition of physical abuse in ch. 948 and the definition of physical abuse in ch. 48, in terms of the level of harm to a child.

The level of harm needed to proceed for criminal purposes is **lower** than the level of harm needed for CPS purposes. As defined in s. 948.03, Stats., “physical abuse of a child” includes intentional or reckless “causation of bodily harm.” “Bodily harm” is defined as “physical pain or injury, illness, or any impairment of physical condition.” [Ref. s. 939.22(4), Stats.] However, in Chapter 48, the level of harm required to substantiate physical abuse is the following: “‘Physical injury’ includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22(14), Stats.” [Ref. s. 48.02(14g), Stats.] “Great bodily harm” is defined as “bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury.”

CPS agencies cannot restrict their response to just those reported cases that rise to the level of harm referenced above because CPS is also responsible for responding to children who are **likely** to be abused or neglected. This significantly expands those cases where CPS has a responsibility to respond and assess the situation. Nevertheless, the difference in definitions between ch. 948 and ch. 48 can still result, theoretically, in a case where a person is convicted in criminal court but unsubstantiated by the CPS agency. Therefore, county agencies and BMCW should discuss these differences with the law enforcement agencies during the process of developing the MOU to assure understanding of each other’s responsibilities and limitations.

Balancing the Needs and Responsibilities of Both Systems

Effective coordination cannot be accomplished without a clear understanding of each others’ purpose. Coordination is only effective if it allows each system to fulfill its purposes efficiently and successfully. The functions of each system are derived from their purposes. Law enforcement agencies investigate crimes and prepare cases for prosecution; therefore, the collection and preservation of evidence is a law enforcement function. CPS agencies provide and coordinate services to families to assure the ongoing safety and well-being of children; therefore, establishing and implementing safety and treatment plans with the family are CPS functions.

In developing an MOU describing what each agency will do in various case circumstances, it is helpful to consider the skill sets of each agency. A report of a young child who is unsafe because the single mother is depressed, overwhelmed and without adequate resources is a good fit with the social work skills of the CPS worker. Conversely, a report of a child who is unsafe

because the parent has a methamphetamine lab in the basement is not suited to the CPS skill-set and instead needs a primary response from a law enforcement agency, which has the necessary skills to respond.

There is no statutory requirement that the coordination of the planning and execution of cases of suspected or threatened sexual abuse be handled in a specific way. County departments or BMCW and law enforcement agencies may develop different procedures and protocols for different types of cases and determine responsibilities for the various activities.

Both systems have statutory responsibilities. The responsibilities of one system do not supercede the responsibilities of the other. In a written response to a request for a legal opinion from a district attorney in 1988, Attorney General Donald Hanaway stated: “Without minimizing in any way the importance of criminal investigations and sanctions in particular cases, I strongly believe that the primary purpose of s. 48.981, Stats., when originally enacted and now is to assure that appropriate protective and other services are provided to abused and neglected children and their families in order to protect such children from further harm and to promote the well-being of the child in his or her home setting, whenever possible.”

There may be circumstances, however, when it is reasonable for one system to take a more prominent, or lead, role in conducting an initial assessment/investigation. These decisions should be based upon an understanding of the functions that need to be accomplished. For example, in child fatality cases alleged to be due to maltreatment, if there are no surviving siblings or other children at risk, the only function to be performed is the collection and preservation of evidence, a law enforcement function. In such cases, CPS will have a minor role, such as establishing a CPS record that the fatality occurred or possibly making a maltreatment and maltreater decision regarding a licensee or employee who provides care to children. If there are siblings, however, CPS also has a primary role of assessing the safety of the surviving children and implementing safety plans as needed. In these instances, both systems have an equal statutory responsibility, and coordination efforts should address this understanding.

Some types of cases may require very specific procedures to be developed and documented in MOUs. For example, response to reports of methamphetamine labs in a family home requires the coordination of law enforcement agencies, CPS and hospitals. The initial response to this type of report must be made by law enforcement agencies, immediate assumption of custody and placement of children after law enforcement personnel have handled the emergent criminal issues are a CPS function, and decontamination and medical assessment of the children are a hospital responsibility. Cooperative efforts may also be made to enhance the collection of evidence that may assist in maintaining a child welfare intervention such as law enforcement noting conditions of the home (unhealthy conditions), availability of food, risks or dangers in the home (drugs, needles lying about). All of the above activities must be efficiently planned and executed in the best interests of the children.

Conducting Interviews

Interviews are a significant part of the investigation and initial assessment, for both the CPS agency and the law enforcement agency. Interviewing requirements vary, depending upon who is named as the alleged maltreater. In primary assessments, the CPS worker must interview/view the child, all siblings, the non-maltreating parent and the maltreating parent/person in parent role. Any agreements in an MOU regarding CPS conducting or participating in interviews must reflect these requirements.

The variation in the CPS role, depending upon whether the alleged maltreatment requires a primary assessment, a secondary assessment or non-caregiver investigation, is an additional consideration that must be taken into account in establishing procedures through an MOU. If the alleged maltreatment is being assessed using a primary assessment, an interview protocol that starts with the child is appropriate, as is interviewing the child without parental permission or knowledge. In such situations, consideration must be given to the location of the child, urgency of the situation, consent by appropriate caregivers, or other legal authority (e.g., court order, warrant, *capias*).

However, if the alleged maltreatment is being assessed using a secondary assessment or a non-caregiver investigation, the role of CPS during initial assessment or investigation, is to support the parent in meeting the child's need for protection and/or services and avoid usurping the parents' role, authority or judgment. Therefore, interviews by CPS should begin with the parent. This may not be consistent with the law enforcement interviewing protocol and will need to be addressed in the MOU.

Interviews may be conducted jointly or separately. Some interviews in certain circumstances may be conducted only by one of the systems, as the other does not need the information to fulfill its purposes. Communities may develop different models, employing a very standardized protocol or a more flexible protocol, depending upon community needs and resources. Generally, however, joint interviewing of children is recommended, particularly if it reduces the number of times that a child victim needs to tell his or her story. Other options may be considered, depending upon the resources available in the community. For example, one person may interview a child in a setting/facility, such as a child advocacy center, that allows others to observe and communicate with the interviewer as needed to assure both systems' questions are answered and needs are met.

In cases where joint interviews are conducted, a decision should be made as to who will take the lead in the interview. This decision may be made on a case-by-case basis, based on the skills and experience of the individual professionals involved, and the age, gender and particular needs of the child being interviewed or the particular history of the adult being interviewed. For example, a woman who has been the repeated victim of domestic violence by her husband/boyfriend may be more comfortable being interviewed by a female social worker or law enforcement officer. Some law enforcement and CPS professionals have developed such a level of experience and trust with each other that they are able to trade the lead in an

interview back and forth, as needed, to achieve their purposes; a formal decision, when such a working relationship exists, is often not needed.

The CPS system and law enforcement system have similar purposes when interviewing an alleged child victim and are likely to use similar interviewing techniques. When interviewing other principles of the report, such as an alleged maltreater, however, purposes and therefore techniques of the two systems may diverge. As mentioned earlier, establishing and implementing safety and treatment plans with the family are CPS functions. CPS cannot be effective in fulfilling these functions without a working relationship with the family based on trust and mutual respect. CPS must lay the groundwork for this relationship during the initial assessment and introduce the agency to the family as a source of help. Trust must be established and maintained over an extended period of time, not just over the course of one or two interviews. This requires honesty on the part of the workers in interacting with the family, as well as adherence to other social work casework principles, such as client self-determination, non-judgmental approach by the caseworker, etc. Law enforcement officers, on the other hand, may use an interviewing strategy that employs a level of deception to obtain critical information or confessions leading to convictions. The need to maintain an ongoing working relationship with the family is not necessarily relevant to their purpose. Agreements in the MOU regarding interview responsibilities should reflect the above understanding.

In those circumstances when separate interviews may be conducted, it is helpful to coordinate the order of the interviews by each system. The MOU should address this to the extent possible. However, the CPS system may not delay its required actions beyond those timeframes specified in statutes. Timelines in standards may only be delayed if the delay results in better adherence to the purposes of the standards and child safety is not jeopardized. The MOU should also address those circumstances when one system will not be involved in interviewing.

Expanding the MOU

County departments and BMCW may expand the types of cases that will be routinely referred to law enforcement agencies.

The MOU may also address additional procedures related to an investigation and initial assessment and how they will be implemented. One such procedure is the removal of a child from his or her home. The removal of a child, an action taken to ensure a child's safety, can escalate already volatile emotions in a family, creating a more dangerous situation than that which the CPS worker originally entered. Although the need for emergency removal may not be evident from the referral information, there are times when the referral information is sufficient to suggest this possibility. County agencies and BMCW are encouraged to develop procedures regarding the participation of law enforcement and social/human services personnel in the removal of children from their homes as part of the MOU.

In addition, other procedures associated with removing a child from a home may be addressed in the MOU, including:

- measures that decrease trauma to the child and assure a transition that is supportive (e.g., a parent accompanying the child to the placement, assisting the child in bringing some personal belongings, acclimating the child to the placement home, processing the situation with the child)
- identification of placement options other than licensed care, such as with relatives
- steps to assure the basic safety of the temporary placement
- obtaining basic health information from the parent so that the foster parent or other caregiver is aware of any immediate medical concerns
- notification of the parent if the parent is absent when the child is removed
- notification and involvement of the tribe for children who are included in the Indian Child Welfare Act
- other issues the parties to the MOU wish to address

County departments/BMCW and law enforcement agencies may choose to enhance the MOUs by including other parties, particularly those who have a responsibility to investigate or assess child maltreatment or take legal action on behalf of the child or the public. For example, local agencies may wish to include the District Attorney in the agreement process. If the county uses a child advocacy center, involvement of that center in the development of the MOU should also be considered.

Local agencies may develop the MOU as a broader document if that serves the community's purpose. For example, the statute states that "Each sheriff and police department shall adopt a written policy specifying the kinds of reports of suspected or threatened abuse, as defined in s. 48.02(1)(b) to (f), Stats., that the sheriff or police department will routinely refer to the district attorney for criminal prosecution." [Ref. s. 48.981(3)(b)3, Stats.] Although this does not involve the county department or BMCW, the involved parties may wish to include this policy in the MOU, particularly if the District Attorney is involved in the development of the MOU.

The statutes include a requirement that "The department, the county departments . . . to the extent feasible shall conduct continuing education and training programs for staff of the department, the county departments...law enforcement agencies, and . . . others as appropriate." [Ref. s. 48.981(8)(a), Stats.] County departments and BMCW may wish to include language addressing training issues involving law enforcement agencies in the MOU. If so, local departments are encouraged to include consideration as to how they will collaborate and support continuing education in child welfare cases where domestic violence, substance abuse, mental health issues or developmental disabilities are an issue or where the Indian Child Welfare Act applies.

County departments are encouraged to develop MOUs with the local law enforcement agencies that reflect the needs and resources of the community. The extent to which community oriented policing is employed, the skill level and experience level of professionals in the CPS and law enforcement systems, the ability of the CPS system to provide services beyond mandated responsibilities and the availability of other resources in the community can all impact the content of the MOUs.

Appendix 7

Considerations in Maltreater Determinations

Primary Assessment Cases

In Primary Assessment cases, the CPS Access and Initial Assessment Standards require that the identified child(ren) victim, siblings, parents and alleged maltreater be interviewed by CPS. When harm or the threat of harm is present in a child's family or household, a comprehensive level of interviewing, combined with the application of risk and safety assessment tools, is necessary to determine if a child is in need of protection or services by the child welfare system. It also generally results in a preponderance of the evidence regarding the occurrence of child abuse or neglect and the persons involved.

There may be instances in Primary Assessment cases where there is sufficient information to determine that a child has been abused, but not to determine the identity of the person responsible, regardless of interviewing that has occurred. An example is where a child too young to communicate has sustained a serious injury, parents have no explanation as to how the injury occurred, and several people had access to the child during the timeframe within which the injury occurred. In these instances, a maltreatment case finding of "Substantiated" should still be made, even though the agency may not know who harmed the child.

Secondary Assessments - Licensed Caregivers

The CPS agency may also make a maltreater determination regarding persons providing care in facilities licensed under Ch. 48. Although this determination generally does not serve a direct CPS purpose (determining the protection and service needs of the identified child), it is important to the state licensing and regulatory program. Persons determined to have maltreated a child are prohibited, by law, from caring for vulnerable persons, unless they have passed a rehabilitation review.

The decision as to whether a secondary caregiver in a licensed facility has violated care requirements, as defined by licensing regulations, for a child in that facility is a regulatory decision. It is the responsibility of regulatory agencies to determine whether a person should be allowed to acquire or maintain a license to care for children or other vulnerable persons, absent mandatory licensing bars under the law. The decision as to whether a secondary caregiver in a licensed facility has maltreated a child, as defined in ch. 948 or ch. 48, is primarily a law enforcement decision.

Other Secondary Assessments and Non-Caregiver Investigations

The CPS Access and Initial Assessment Standards do not require that the CPS agency interview alleged maltreaters in cases of maltreatment by unlicensed secondary caregivers and non-caregivers. The focus of CPS is on supporting the parents in providing protection or services for their child, if needed. Intervention with non-caregivers or unlicensed secondary

caregivers who are alleged to have abused or neglected a child is the responsibility of law enforcement agencies. Each county has a Memorandum of Understanding with law enforcement that specifies how reports of alleged maltreatment by a secondary caregiver or non-caregiver will be referred to law enforcement agencies in order to assure that the law enforcement system is able to carry out its responsibilities.

Even though CPS does not interview all involved parties in cases of maltreatment by non-caregivers and unlicensed secondary caregivers, there may clearly be a “preponderance of the evidence” to make a maltreatment determination (i.e., substantiate that maltreatment occurred). In these cases, the record should document that maltreatment has been substantiated and the basis for this decision. Reports gathered from other agencies, such as law enforcement agencies and mental health/AODA agencies, as part of the initial assessment/investigation process may be maintained in the case record. Information from those reports is relevant case history and may be taken into account in future decision making.

CPS Role with Children Who Harm Other Children

CPS will also be concerned with whether the aggressor child is exhibiting behavior that creates a suspicion that he or she is residing in a violent or neglectful home environment or has been victimized by another person and is therefore in need of protection or services. It is generally inconsistent with CPS purposes under Ch. 48 to make a formal determination that a child is a maltreater. The juvenile justice system is generally the appropriate system for determining whether a child must be held accountable for abusing another child.

The behavior of such children, however, may prompt the county department to identify them as in need of protection or services, which is consistent with CPS purposes under Ch. 48. In these cases, the record should identify the child and the problematic behaviors and document what occurred, reflecting the county’s assessment and decisions. [Note: This information may continue to be used along with other pertinent information from the family record, to the extent authorized under s.48.981(7), Stats., to make appropriate decisions about placement, licensure, and certification, if the child’s parents hold or pursue a license/certification to care for other children.]

Appendix 8

Model Procedures for Child Protective Services in Reports of Withholding Medically Indicated Treatment from Disabled Infants with Life-threatening Conditions

Part A: Information for CPS Worker

The allegations of withholding medically indicated treatment from disabled infants with life-threatening conditions are infrequent. Consultation with the county district attorney, the county corporation counsel or the Department of Health and Family Services is recommended.

Information for CPS Assessment of Child's Health Status

- Is the child at the hospital?

Diagnosis:

- What are the child's diagnoses?
- What is the life or health-threatening problem requiring treatment?
- Are immediate actions necessary to keep the child alive?
- Has withholding of life-sustaining treatment been recommended/implemented?

Treatment:

- What, precisely, is the treatment (necessary for the child's life or health) being recommended?
- What is the prognosis with/without the proposed treatments?
- What treatment or sustenance, if any, is being provided the child?
- Will the hospital choose to sustain life-supporting care for the immediate future (24 to 72 hours) while the CPS initial assessment is underway?

Physicians:

- How certain are the medical diagnoses among the treatment team?
- Is there unanimity among the treating and consulting physicians?
- Have there been any other opinions, and what are they?
- Has a hospital review process taken place?
- What was the review process?
- What were its recommendations?
- Who, if anyone, has concluded that:

The child is irreversibly and chronically comatose?

The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life threatening condition, or otherwise be futile in terms of the survival of the infant?

The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane?

Information Needed to Assess Parental Decision-Making

- Do the parents agree on the course of action to be followed?
- Were the parent(s) presented with all treatment options?
- Did the parent(s) understand the information?
- What was the nature and degree of parental involvement in the decision to deny treatment or sustenance?
- What is the parent(s)' view of the child's problem?
- What are the parent(s)' major concerns for their child?
- What is the basis of the parent(s)' refusal to consent to treatment?
- Have appropriate counseling services been made available to them?
- Were the parent(s) provided information on how to access services concerned with resources for disabled persons and their families?
- Did the parent(s) participate in or have access to the results of the hospital review process?
- Would the parent(s) agree to consultation with the hospital review committee?

Part B: Information for CPS Agency

It is mandated by the federal regulation that "programs or procedures" be in place in states for the use of child protective services agencies in responding to a report of possible medical neglect of a disabled infant. These guidelines serve, in part, to outline CPS procedures. It does place some requirements in the policies of medical neglect, coordination, and notification requirements.

Federal regulations relating to the provisions of the Child Abuse Amendments of 1984 governing the protection and care of disabled infants are at 45 Code of Federal Regulations (CFR) Part 1340. These regulations require that states establish programs or procedures within their child protective service (CPS) system to respond to reports of "medical neglect, including instances of withholding medically indicated treatment from disabled infants with life-threatening conditions" (also known as "Baby Doe").

Resources for CPS Worker and Agency

Definitions from Federal Regulation

Medical neglect means the failure to provide adequate medical care, and includes, but is not limited to, the withholding of medically indicated treatment from a disabled infant with a life-threatening condition.

Withholding of medically indicated treatment means the failure to respond to the infant's life threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician's (or physicians') reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's (or physicians') reasonable medical judgment any of the following circumstances apply:

- The infant is chronically and irreversibly comatose;
- The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; or
- The provision of such treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

Infant means a child less than one year of age. The reference to less than one year of age shall not be construed to imply that treatment should be changed or discontinued when an infant reaches one year of age, or to affect or limit any existing protections available under state laws regarding medical neglect of children over one year of age. In addition to their applicability to infants less than one year of age, the standards set forth above should be consulted thoroughly in the evaluation of any issue of medical neglect involving an infant older than one year of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability.

Reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

Hospital designee means a person(s) who is designated by an administrator of each hospital that provides obstetrical or newborn services in the state. The designee's role is to promptly notify CPS of cases of suspected medical neglect that come to the designee's attention. The designee is also to provide coordination and consultation to CPS within the health care facility during an initial assessment.

Rights of Infants

The legislation attempts to address two areas related to the rights of infants, parental guardianship, and attitudes toward disability.

Parents have traditionally had the legal right and obligation as well as the personal insight, concern, and love to make decisions regarding the health and welfare of their children. In the vast majority of instances, parents are the most enlightened and thoughtful decision-makers for their children. Government's role, however, is to protect children from abuse or neglect by parents or others. In this role, government recognizes that children have rights of their own to be protected, independent of the guardianship that parents maintain in relation to their children and above and beyond the needs and desires of the parents. In cases of possible medical neglect of disabled infants, one of the tensions that may exist is between the rights of parents as guardians to protect and make wise decisions on behalf of their children and the rights of children to be protected as individuals by the government.

Although there are many examples of appropriate medical treatment being provided to disabled infants, the legislation came into being to prevent discriminatory non-treatment of infants born with disabilities. The law asserts that all infants have certain rights to medical treatment whether they are born in perfect condition or with a disability.

Appendix 9

Counties Required to Notify a Tribe of Reports Received

Section 48.981(3) (bm), Stats., requires the following counties to notify a tribe when a report of an Indian child is received, as specified in the statutes and in *Section X Notifications* of the Access Standard:

Adams
Ashland
Barron
Bayfield
Brown
Burnett
Clark
Crawford
Columbia
Dane
Eau Claire
Forest
Iron
Jackson
Juneau
LaCrosse
Marathon
Menominee
Monroe
Oconto
Oneida
Outagamie
Polk
Sauk
Sawyer
Shawano
Vilas
Vernon
Washburn
Wood