TITLE 8 SOCIAL SERVICES
CHAPTER 10 CHILD PROTECTIVE SERVICES
PART 3 PROTECTIVE SERVICES INVESTIGATION

8.10.3.1 ISSUING AGENCY: Children, Youth and Families Department (CYFD), Protective Services Division (PSD)
[8.10.3.1 NMAC - Rp, 8.10.3.1 NMAC, 9/29/2015]

8.10.3.2 SCOPE: Protective services employees and the general public.
[8.10.3.2 NMAC - Rp, 8.10.3.2 NMAC, 9/29/2015]

8.10.3.3 STATUTORY AUTHORITY: Children, Youth and Families Department Act, Section 9-2A-7 D, NMSA 1978; New Mexico Children's Code, Section 32A-1-1, NMSA 1978 (2009 Cum. Supp.)
[8.10.3.3 NMAC - Rp, 8.10.3.3 NMAC, 9/29/2015]

8.10.3.4 DURATION: Permanent.
[8.10.3.4 NMAC - Rp, 8.10.3.4 NMAC, 9/29/2015]

8.10.3.5 EFFECTIVE DATE: September 29, 2015 unless a later date is cited at the end of a section.
[8.10.3.5 NMAC - Rp, 8.10.3.5 NMAC, 9/29/2015]

8.10.3.6 OBJECTIVE: To establish guidelines for the investigation and disposition of cases of alleged abuse and neglect of children by their parent, guardian, custodian, other household members, or resource family.
[8.10.3.6 NMAC - Rp, 8.10.3.6 NMAC, 9/29/2012; A, 5/25/2021]

8.10.3.7 DEFINITIONS:

A. "Abandonment" as defined in the Children's Code, Section 32A-4-2(A) NMSA 1978, includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of 14 days; or

(2) left the child with other, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three month period; or

(b) six months if the child was over six years of age at the commencement of the six month period.

B. "Abused child" as defined in the Children's Code, Subsection B of Section 32A-4-2 NMSA 1978, means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child.

C. "Administrative hearing" means a formal process in which the client shall have an opportunity to present evidence to an impartial hearing officer in accordance with CYFD's administrative appeals regulations 8.8.4 NMAC.

D. "Administrative review" is an informal process which may include an informal conference or a record review, and does not create any substantive rights for the family.

E. "Accepted report" is a verbal or written presentation of information concerning the alleged abuse or neglect made to the protective services division (PSD) of child abuse or neglect that falls within PSD's legal authority to investigate.

F. "Brief respite" is a non-legal, voluntary placement of a child for a period of no longer than five

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days. Brief respite occurs when a caregiver has asked a family member, friend or other person in the family's life to care for the child during a safety plan.

G. "Caregiver" is a parent, guardian or custodian in the household who provides care and supervision for the child.

H. "Children's Code" refers to the New Mexico State Statute, Chapter 32A NMSA 1978.

I. "Child vulnerability" refers to conditions resulting in the child's ability to protect themselves from identified danger indicators.

J. "Collateral contact" refers to any person who may be able to provide information to the PSD worker during an investigation of alleged abuse or neglect, concerning the alleged abuse or neglect that would be helpful in assessing child vulnerabilities, danger indicators and parent, guardian or custodian safety planning capacities.

K. "Complicating factors" are conditions that make it difficult for a caregiver to create safety for their child, but do not by themselves constitute danger.

L. "Custodian" as defined in the Children's Code, Subsection E of Section 32A-1-4 NMSA 1978, means an adult with whom the child lives who is not a parent or guardian of the child.

M. "CYFD" refers to the New Mexico children, youth and families department.

N. "Danger indicators" are conditions resulting in a child being exposed to harm or injury or being placed at risk of harm or injury that could occur immediately.

O. "Exigent circumstances" means when there is credible information that a child is in danger of severe harm and requires immediate protective services.

P. "Emotional abuse" is an observable behavior, activity, or words to intimidate, threaten, deride or degrade the child that causes substantial impairment of the child's mental or psychological ability to function.

Q. "FACTS" refers to the family automated client tracking system (FACTS), the official data and case management system for CYFD.

R. "Family" are caregivers, adults fulfilling the caregiver role, guardians, children, and others related by ancestry, adoption, or marriage, or as chosen by the family or child.

S. "Fictive kin" is a person not related by birth or marriage who has a significant relationship with the child.

T. "Guardian" as defined in the Children's Code, Subsection I of Section 32A-1-4 NMSA 1978, means a person appointed as guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law.

U. "Home school" is the operation of a home study program by a parent as filed with the public education department.

V. "Household members" are all persons who have significant in home contact with the child, including those who have a familial or intimate relationship with any person in the home. This may include persons who have an intimate relationship with a caregiver in the household (partner/significant other) but may not physically live in the home, or a relative whom the caregiver allows authority in parenting and caregiving decisions.

W. "Impending danger" is when a child is living in a state of danger or position of continual danger due to a family circumstance or behavior. The threat caused by the circumstance or behavior is not presently occurring, but it can be anticipated to have severe effects on a child at any time.

X. "Indian child" means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Y. "Initiation" of an investigation is the face-to-face contact by a PSD worker with the alleged victim, or documented diligent efforts to establish face-to-face contact with the victim.

Z. "Investigative decision" is a determination of whether each allegation in the report is substantiated or unsubstantiated, as defined herein at 8.10.3.17 NMAC.

AA. "Investigation disposition" is the determination of the level of involvement, if any, of PSD with the family based upon an assessment of safety threats and protective capacities, and considering the ongoing risk to the child and the needs and strengths of the family.

BB. "Neglected child" as defined in the Children's Code, Subsection G Section 32A-4-2 NMSA 1978, means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of faults or habits of the child's parent, guardian or custodian, or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

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(3) who has been physically or sexually abused, the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care of adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual needs alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code.

CC. "New Mexico child safety and risk assessment" is the research-based structured decision making tool child protective service workers use to gather information on an abuse or neglect or in-home services case by focusing on critical characteristics of a family to make informed safety decisions.

DD. "Parent" as defined in the Children's Code, Subsection P of Section 32A-1-4 NMSA 1978, includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child.

EE. "Parental notice or notification" is an in-person or telephone notice to the parent or legal guardian that their child will be or has been interviewed as part of an investigation.

FF. "Permission" is the consent for the child to participate in an investigation.

GG. "Physical abuse" as defined in the Children's Code, Subsection F of Section 32A-4-2 NMSA 1978 includes, but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence.

HH. "Placement" is an out of home residential arrangement for the care of children in PSD custody, which may include, but is not limited to brief respite, resource family foster care, relative or fictive kin foster care and treatment foster care, or a facility such as residential treatment center, group home, or emergency shelter.

II. "Polysubstance" Exposure to two or more drugs taken together or within a short amount of time. Both prescription and illicit drugs can contribute to polysubstance exposure.

JJ. "Protective services division (PSD)" refers to the protective services division of the children, youth and families department, and is the state's designated child welfare agency.

KK. "Provider" refers to a person or agency providing services to a PSD client.

LL. "Private school" is a public education department authorized school, including private childcare, other than a home school, that is not under the control, supervision or management of a local school board.

MM. "Poly-Substance: Exposure" means to two or more drugs taken together or within a short amount of time. Both prescription and illicit drugs can contribute to polysubstance exposure.

NN. "PSD custody" means custody of children as a result of an action occurring pursuant to the Children's Code, 32A-4 NMSA 1978 or 32A-3B and 34A-4 NMSA 1978.

OO. "PSD worker" refers to a person employed by the children, youth and families department, protective services division.

PP. "Public school" is a school that is under the control, supervision or management of a local school district or the state board of education, including charter schools.

QQ. "Reasonable efforts" as used in this policy refers to the provision of services or other interventions to prevent the removal of the child from the home, or if removal is required, to return the child home as soon as possible.

RR. "Report" is a verbal or written presentation of information alleging child abuse or neglect that is received by an intake worker.

SS. "Relative" means a person related to another person by birth, adoption or marriage, within the fifth degree of consanguinity or affinity.

TT. "Risk" is the term used to describe PSD's assessment, based on established criteria, of the likelihood that child will be abused or neglected by their parents, legal guardians or custodian.

UU. "Safe" as used in this policy means there are no danger indicators placing the child in a present or

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impending danger of serious harm.

VV. "Safe Haven for Infants Act" means an Act, Section 24-22-1 NMSA 1978, to promote the safety of infants and to immunize a parent from criminal prosecution for leaving an infant, 90 days of age or less, at a safe haven site. This Act is not intended to abridge the rights or obligations created by the federal Indian Child Welfare Act of 1978 or the rights of the parents.

WW. "Safe haven site" as defined by Subsection F of Section 24-22-2 NMSA 1978 means a hospital, law enforcement agency, or fire station that has staff onsite at the time an infant, 90 days of age or less, is left at such site.

XX. "Safe with a plan" is a New Mexico child safety assessment tool decision when one or more danger indicators are present, however, the child can safely remain in the home with a safety plan.

YY. "Safety decision" is based on the presence of danger indicators and safety planning capacities a family possesses that may offset, mitigate or control those danger indicators. Using the New Mexico child safety assessment tool, a child may be assessed to be safe, safe with a plan or unsafe.

ZZ. "Safety plan" is a detailed strategy that outlines immediate action steps the family and their network will take to help keep the child safe from the identified danger indicators.

AAA. "Safety Planning capacities" are those assets possessed by the caregiver that reduce or control the identified danger indicators.

BBB. "Sexual abuse" as defined in the Children's Code, Subsection J of Section 32A-4-2 NMSA 1978, includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law.

CCC. "Sexual exploitation" as defined in the Children's Code, Subsection K of Section 32A-4-2 NMSA 1978 includes, but is not limited to:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting or encouraging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law.

DDD. "Statewide central intake (SCI)" is the unit within PSD whose responsibilities may include, but is not limited to receiving and screening reports of alleged child abuse or neglect and prioritizing and assigning accepted reports to the appropriate county office for investigation.

EEE. "Unsafe" is a New Mexico child safety assessment tool decision when one or more danger indicators are present and a safety plan cannot be created.

FF. "Witness" refers to a person who has a firsthand account of an event that is relevant to a PSD abuse and neglect investigation.

[8.10.3.7 NMAC - Rp, 8.10.3.7 NMAC, 9/29/2015; A, 5/25/2021; A, 12/22/2026]

8.10.3.8 PURPOSE OF CHILD PROTECTIVE SERVICES INVESTIGATION:

A. The purpose of protective services investigation is to assess safety of children who are the subjects of reports of alleged abuse or neglect by:

(1) collecting and assessing information to determine whether the alleged child abuse or neglect occurred;

(2) determining whether any child in the home is vulnerable to danger indicators;

(3) assessing the parent, guardian or custodian safety planning capacities; and

(4) determining the need for additional services.

B. Investigations shall be conducted for children in the custody of their parents, guardians, or custodians and for children in PSD custody.

C. Reports of child abuse or neglect in schools, facilities, and childcare homes or centers shall be investigated by a local law enforcement agency. See 8.10.3.13 NMAC.

[8.10.3.8 NMAC - Rp, 8.10.3.8 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.9 ASSIGNMENT AND INITIATION OF INVESTIGATION:

A. Every accepted report concerning alleged child abuse or neglect shall be assigned for investigation or multi-level response (MLR) according to the priority as determined by statewide central intake (SCI).

B. Investigation priority: The PSD worker shall initiate the investigation within the time frames established by PSD as follows:

(1) An emergency report requires an investigation be initiated within three hours of the SCI supervisor's screening decision.

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(2) A priority one report requires an investigation be initiated within 24 hours of the SCI supervisor's screening decision.

(3) A priority two report requires an investigation be initiated within five calendar days of the SCI supervisor's screening decision.

C. In cases when there has been a child fatality, the PSD worker shall not be required to make face to face contact with the deceased alleged victim for purposes of the initiation of the investigation.

[8.10.3.9 NMAC - Rp, 8.10.3.9 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.10 INVESTIGATION REQUIREMENTS - GENERAL:

A. The safety of the child is the overriding concern throughout the casework relationship with the family. If the safety of the child is ever in conflict with the preservation of a family unit, the child's need for protection always takes precedence. PSD shall request immediate assistance from law enforcement if necessary to assess and secure the safety of the child.

B. The PSD worker shall conduct the investigation in a manner that protects the privacy of the child and family.

C. The PSD worker shall make efforts to engage the family in the investigation and assessment process to gather the information required to identify the danger indicators, child vulnerabilities, safety planning capacities and ongoing risks to the child.

D. The PSD worker shall interview collateral contacts during the investigation.

E. The PSD worker shall visit the home during an investigation. This requirement may be waived in specific circumstances that include but are not limited to:

(1) the parent, guardian or custodian refuses the worker entrance;

(2) the home has been determined to be unsafe by law enforcement or public health; or

(3) the family is homeless.

F. The PSD worker shall complete the New Mexico child safety assessment and risk assessment tools in all investigations. These are tools used by the PSD worker in determining the investigation disposition.

G. The PSD worker shall make efforts to provide or arrange for services for the child and family during the investigation to enhance the family's capacity to safely care for their child.

[8.10.3.10 NMAC - Rp, 8.10.3.10 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.11 INVESTIGATION REQUIREMENTS - CHILD VICTIM AND OTHER CHILDREN:

A. The PSD worker shall interview and observe the alleged child victim and all other children in the household during the investigation. A parent, guardian or custodian may refuse the PSD worker permission to interview or observe the child. If access is denied, the PSD worker shall determine whether it is necessary to contact law enforcement or obtain a court order to ensure the safety of the child. The following applies based on the site at which the interview will take place.

(1) Interviews at home: Children contacted at home shall be interviewed only with the permission of the parent, guardian or custodian.

(2) Interviews at public schools: Public schools are required by the Children's Code, Section 32A-4-5 (C) NMSA 1978, to permit the PSD worker to interview children involved in a PSD investigation without obtaining the permission of the parent of guardian.

(3) Interviews at private schools or in childcare homes and facilities:

(a) a private school or childcare home or facility may deny permission for the PSD worker to interview the child on the facility grounds, and

(b) if permission is denied by the private school or childcare home and by the parent, guardian or custodian and exigent circumstances are believed to exist, PSD shall determine whether to contact law enforcement or obtain a court order.

B. The PSD worker shall conduct all interactions with alleged child victims and child witnesses in a child sensitive manner that takes into consideration the special needs of the child, the child's ability, age, language and intellectual maturity and protects the child's privacy.

C. The PSD worker shall inform all children that their participation in the interview is voluntary. Children 14 years of age and older must agree to participate in the interview even when the PSD worker has obtained permission from the parent, guardian, or custodian.

D. The PSD worker shall arrange for any medical, mental health, or other evaluations or examinations as required during the investigation. Consent is required from the parent, guardian or custodian for any non-emergency medical, mental health or other evaluations, examinations or assessments. Children 14 years of age

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or older must also consent to services.
[8.10.3.11 NMAC - Rp, 8.10.3.11 NMAC, 9/29/2015]

8.10.3.12 INVESTIGATION REQUIREMENTS - PARENTS GUARDIANS AND CUSTODIANS:

A. The PSD worker shall notify the parent, guardian or custodian of the interview with the child in advance of the interview unless the worker has determined that notification could adversely affect the safety of the child about whom the report has been made or compromise the investigation.

B. If the PSD worker determines that notification could adversely affect the safety of the child or compromise the investigation, the worker may interview a child without prior notification to the parent, guardian, or custodian. In this situation, the PSD worker shall notify the parents, guardians or custodians of the interview within 24 hours.

C. The PSD worker shall identify all legal guardians of the child.

D. The PSD worker shall interview the parent, guardian or custodian and collateral contacts or witnesses during the investigation.

E. At the time of initial contact with the parents, guardian, custodian or alleged perpetrator the PSD worker shall inform them of the reported allegations in a manner consistent with laws protecting the rights of the reporter.

F. At the beginning of the investigation, or prior to beginning an interview with the parent, guardian, or custodian, the PSD worker shall inform the parents, guardians or custodian of the following:

(1) that prior to filing an abuse and neglect petition any PSD interaction with the parents, guardians, or custodians is voluntary;

(2) that PSD has received a report alleging child abuse or neglect and the nature of the allegations;

(3) that PSD is required by law to conduct an investigation of screened-in reports;

(4) that only law enforcement can remove a child who is not in PSD custody, if necessary to protect the child's health and safety, unless the district court issues an ex parte order allowing PSD to remove the child;

(5) that the investigation findings, decision, and disposition are confidential in accordance with the Children's Code, Section 32A-4-33 NMSA 1978;

(6) that information concerning the report and investigation has been entered into FACTS;

(7) that other people may be interviewed in order to complete the investigation; and

(8) children age 14 and older may consent to an interview away from the home even when the parent does not consent.

G. The PSD worker shall provide the parent, guardian or custodian with information regarding CYFD's complaint process should the parent, guardian, or custodian have any complaints.
[8.10.3.12 NMAC - Rp, 8.10.3.12 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.13 ALLEGATIONS OF SUBSTANCE EXPOSED INFANTS:

A. For all screened-in reports involving infants born exposed to methamphetamines, fentanyl, polysubstance, or exhibiting signs or symptoms of fetal alcohol syndrome, the infant must be taken into custody by the department filing an abuse/neglect petition with the court requesting ex parte custody prior to the infant's discharge from the hospital. If a petition cannot be filed before the infant is discharged, the department will collaborate with law enforcement to assess and request a 3-day hold to ensure the infant's safety. Any decision to return physical and/or legal custody to a safe parent/guardian/custodian will be determined on a case-by-case basis.

B. Children's Court Attorneys, with the assistance of investigators, file petitions alleging that the child is abused, pursuant to NMSA 32A-4-2(B)(1) and neglected pursuant to NMSA 32A-4-2(G)(2). Additional statutory grounds may be included when supported by appropriate case facts. If any internal disagreement exists about a filing decision, an upstaffing must be held immediately with the PSD Director and the Office of General Counsel.

C. If the family has a CPS history, the reasonable/active efforts section of the affidavit should reflect all the prior services offered and reasonable/active efforts made by CYFD. If the family does not have any prior CPS history, the reasonable/active efforts section of the affidavit should reflect that due to the infant's exposure to the listed drug (specify drug) and the serious effects of exposure to the type[s] of drug[s], the department is petitioning the court for custody to ensure the safety of the infant and to ensure that the parent(s) will be court ordered into

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necessary treatment. Any decision to return custody to a safe parent/guardian/custodian will be determined on a case-by-case basis.

D. If CYFD receives a SCI report after an infant is discharged from the hospital and there is confirmation that the infant has been exposed to any of the listed substances, the department must immediately conduct a safety assessment. If law enforcement does not give the department emergency custody, the department must file for emergency ex parte custody of the child if the child is assessed as unsafe.

E. The removal of an Indian child pursuant to this rule must adhere to the tribal notice, active efforts and other requirements of the IFPA and the ICWA.

[8.10.3.12 NMAC; A, 12/22/2026]

8.10.3.14 ALLEGATIONS OF ABUSE OR NEGLECT IN FACILITIES:

A. Law enforcement shall be responsible for conducting investigations of child abuse or neglect in schools, facilities and child care homes or centers. Upon request from law enforcement, PSD shall assist in the investigation.

B. When PSD is notified of any allegations in a school, facility or child care home or center in which a child in PSD custody is placed or receiving services:

(1) if the alleged victim is a child in PSD custody, PSD shall conduct an assessment of that child's safety and well-being; or

(2) if the alleged victim is not a child in PSD custody, PSD may, at its discretion, conduct an assessment of the safety and well-being of any children in PSD custody placed or receiving services there.

[8.10.3.1 NMAC - Rp, 8.10.3.13 NMAC, 9/29/2015]

8.10.3.15 ALLEGATIONS OF ABUSE OR NEGLECT IN RESOURCE FAMILY HOMES, TREATMENT FOSTER HOMES, AND PRE-ADOPTIVE HOMES:

A. PSD shall investigate abuse or neglect allegations involving a PSD licensed resource family home, treatment foster home, or pre-adoptive home.

B. PSD shall notify law enforcement and coordinate the investigation with law enforcement when law enforcement is involved.

[8.10.3.14 NMAC - Rp, 8.10.3.14 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.16 INVESTIGATIONS INVOLVING INDIAN CHILDREN:

A. PSD shall investigate allegations of child abuse or neglect involving Indian children who reside off the reservation or pueblo.

B. PSD may assist in the investigation of allegations of child abuse or neglect involving children who reside on the reservation or pueblo, if requested by the Indian tribal government.

C. PSD shall make efforts to determine if the child who is subject of an investigation is an Indian child.

D. PSD shall notify the appropriate tribal authority of any investigations involving Indian children.

[8.10.3.15 NMAC - Rp, 8.10.3.15 NMAC, 9/29/2015]

8.10.3.17 SEEKING OR ACCEPTING CUSTODY OF CHILDREN, INCLUDING INDIAN CHILDREN:

A. PSD shall make reasonable efforts to maintain the family unit and prevent the removal of a child from their home, as long as the child's safety is assured.

B. If temporary out-of-home placement is necessary to ensure the immediate safety of the child, PSD shall make reasonable efforts to effect the safe reunification of the child and family.

C. PSD shall seek custody of Indian children who are domiciled or residing off-reservation when continued custody of the child by the parent, guardian or custodian or Indian custodian is likely to result in serious emotional or physical harm to the child.

D. An Indian child who is domiciled on the reservation but temporarily located off the reservation may be removed by law enforcement from his parent, guardian or custodian in order to prevent imminent physical harm to the child. PSD shall notify the tribe as soon as possible and facilitates a transfer of the case to the tribe.

E. PSD shall notify the parent, guardian or custodian that their child is in custody within 24 hours of the child being taken into custody.

F. PSD shall make reasonable efforts to identify, locate and notify appropriate relatives or fictive kin for consideration of placement of a child in custody who requires out of home placement.

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G. When a law enforcement agency seeks to place a child in the custody of PSD, then the PSD worker shall obtain a statement of reasonable grounds for temporary protective services division custody from the law enforcement officer making the request.

H. When SCI receives a report that an infant has been left under the provisions of the Safe Haven for Infants Act, the children, youth and families department through its protective services division shall be deemed to have emergency custody of that infant. A law enforcement investigation and 72 -hour hold is not required.

[8.10.3.16 NMAC - Rp, 8.10.3.16 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.18 COMPLETION OF AN INVESTIGATION AND INVESTIGATION DECISION:

A. The PSD worker shall complete the investigation and decide whether the report's allegations of abuse or neglect are substantiated or unsubstantiated within 45 days of SCI accepting the report for investigation, unless an extension is approved by the supervisor. Extensions are not to exceed an additional 30 days after the original 45 days have passed. Completion of the investigation includes, but is not limited to making the investigation decision, determining the investigation disposition and completing, sending out the notice of results of the investigation letter to the parent or guardian and completing all documentation in FACTS.

(1) Substantiated report: an allegation of child abuse or neglect in which a parent, guardian, resource family, pre-adoptive parent or treatment foster care parent has been identified as the perpetrator or as failing to protect the child and credible evidence exists to support the investigation worker's conclusion that the child has been abused or neglected, as defined in the Children's Code. Credible evidence upon which to base a finding of substantiation may include, but is not limited to:

(a) admission by the parent, guardian or custodian;

(b) physical evidence;

(c) collateral or witness statements and observations;

(d) a child's disclosure; or

(e) the investigation worker's observations.

(2) Unsubstantiated report: an allegation of child abuse or neglect in which the information collected during the investigation does not support a finding that the child was abused or neglected, as defined in the Children's Code by a parent, guardian, resource family, pre-adoptive parent or treatment foster parent, or that such a person failed to protect the child from abuse or neglect as defined by the Children's Code.

B. When there is clear evidence that a child has been abused or neglected while in the custody of the parent, guardian or custodian, but there is unclear information about who was the perpetrator, then the PSD worker shall substantiate the investigation on an unknown perpetrator. In addition to substantiation on the unknown perpetrator, the PSD worker shall substantiate the investigation on the parent, guardian or custodian because of the failure to protect the child by the parent, guardian or custodian.

C. The PSD worker shall document the investigation decision and the supervisory review and approval of the decision in FACTS within 45 days of the date the report was accepted by SCI, or if an extension was granted, by the end of the extension period.

[8.10.3.17 NMAC - Rp, 8.10.3.17 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.19 FAMILIES WITH MORE THAN TWO INVESTIGATIONS: Any family that has been subject to a PSD abuse or neglect investigation, regardless of the decision to substantiate or un-substantiate, shall receive a higher level of case review upon the family's third instance of being investigated by PSD for alleged child abuse or neglect.

[8.10.3.18 NMAC - N, 9/29/2015]

8.10.3.20 INVESTIGATION DISPOSITION:

A. PSD shall make an investigation disposition within 45 days of SCI accepting the report in every investigation PSD conducts, unless an extension is approved by the supervisor. Extensions are not to exceed an additional 30 days after the original 45 days have passed.

B. PSD shall determine the disposition of the investigation based upon the safety decision and whether a safety plan is required, the family's willingness to participate in services, and the assessment of risk.

C. Disposition options may include, but are not limited to closing the case, referring the family to community providers, providing in-home services (IHS), or referring the case to PSD legal for possible legal action.

D. PSD shall document the investigation disposition in FACTS and include the investigation disposition in the notice of results of investigation letter sent to the parent guardian or custodian.

[8.10.3.19 NMAC - Rp, 8.10.3.18 NMAC, 9/29/2015; A, 5/25/2021]

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8.10.3.21 CHILD FATALITY INVESTIGATION WITH NO OTHER CHILDREN IN THE HOME: PSD shall conduct an investigation of alleged child abuse or neglect resulting in a child fatality when there are no other remaining children residing in the home.
[8.10.3.20 NMAC - Rp, 8.10.3.19 NMAC, 9/29/2015]

8.10.3.22 DOCUMENTATION:

A. PSD shall document investigation assignments and requirements, as described herein at 8.10.3.9, 8.10.3.10, 8.10.3.11, and 8.10.3.12 NMAC, and shall document the investigation decision, disposition and notice of results of the investigation letter in FACTS as described herein at 8.10.3.17 and 8.10.3.19 NMAC.

B. PSD shall document reasonable efforts made to prevent removal of a child from the home and efforts to reunify the child if removal was required during the investigation. Documentation shall be included in the case record and in the affidavit for custody.

C. All information obtained by PSD in an abuse and neglect investigation is confidential and may not be publicly released. (See Protective Services General Policies, Subsection A of 8.8.2.15 NMAC).
[8.10.3.21 NMAC - Rp, 8.10.3.20 NMAC, 9/29/2015]

8.10.3.23 NOTIFICATION OF THE INVESTIGATIVE DECISION AND RIGHT TO ADMINISTRATIVE REVIEW AND ADMINISTRATIVE HEARING:

A. The PSD worker shall provide parents, guardians, resource families, pre-adoptive parents and treatment foster parents who were the subject of the investigation the notice of results of the investigation letter. The PSD worker shall send the notice of the results of the investigation letter within the 45 day time frame, or with a possible 30 day extension. (See above at Subsection A of 8.10.3.17 NMAC).

B. The PSD worker shall notify parents, guardians, resource families, pre-adoptive parents and treatment foster parents who were the subject of a substantiated investigation, which is not the subject of a pending children's court case, in writing that the decision to substantiate the investigation may be reviewed through PSD's administrative review process. A client seeking an administrative review shall request the review in writing to PSD within 10 days of the action or notice of the proposed action.

C. If the investigation decision is upheld after being reviewed through PSD's administrative review process, then PSD shall send a formal letter to the parent, guardian, resource family, pre-adoptive parent or treatment foster parent, who was the subject of the investigation, notifying them of the decision to uphold the substantiation and that the upheld decision may be reviewed through CYFD's administrative hearing process. The parent, guardian, resource family, pre-adoptive parent or treatment foster parent shall request an administrative hearing in writing to the PSD director's office within 10 days of the action.
[8.10.3.22 NMAC - Rp; 8.10.3.21 NMAC, 9/29/2015; A, 5/25/2021]

8.10.3.24 CHILD PROTECTIVE SERVICES CHILDCARE DURING THE CPS INVESTIGATION: The PSD worker may offer child protective services childcare during an open investigation as part of an in home safety plan created for the child. Child protective services childcare may be provided during the investigation within the 45 day time frame, or with possibility of a 30-day extension, given to complete the investigation. (See above at Subsection A of 8.10.3.17 NMAC.)
[8.10.3.23 NMAC – Rp; 8.10.3.22 NMAC, 9/29/2015]

HISTORY OF 8.10.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives:
SSD Rule #410.0000, Protective Services to Children, filed 11/10/1981;
SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 8/22/1986;
SSD 4.0.0, Child Protective Services - Definition and Goal Statement, filed 3/28/1989;
SSD 4.1.0, Child Protective Services - General Provisions, filed 8/22/1986;
SSD 4.1.0, Child Protective Services - General Provisions, filed 1/29/1987;
SSD 4.1.0, Child Protective Services - General Provisions, filed 6/18/1987;
SSD 4.1.0, Child Protective Services - General Provisions, filed 3/28/1989;
SSD 4.1.0, Child Protective Services - General Provisions, filed 9/14/1989;
SSD 4.1.0, Child Protective Services - General Provisions, filed 9/18/1990;
SSD 4.2.0, Child Protective Services - General Guidelines, filed 8/22/1986;

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SSD 4.2.0, Child Protective Services - General Guidelines, filed 3/28/1989;
SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 8/22/1986;
SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 11/18/1987;
SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 6/13/1988;
SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3/28/1989;
SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 3/20/1990;
SSD 4.3.0, Child Protective Services - Department Responsibilities, filed 9/18/1990.

History of Repealed Material:
8 NMAC 10.3, Child Protective Services Investigation, filed 6/16/1997 - Repealed effective 2/14/2001.
8.10.3 NMAC, Child Protective Services Investigation, filed 2/1/2001 - Repealed effective 7/30/2004.
8.10.3 NMAC, Child Protective Services Investigation, filed 7/16/2004 - Repealed effective 11/15/2005.
8.10.3 NMAC, Child Protective Services Investigation, filed 11/1/2005 - Repealed effective 6/15/2006.
8.10.3 NMAC, Protective Services Investigation, filed 5/31/2006 - Repealed effective 3/31/2010.
8.10.3 NMAC, Protective Services Investigation, filed 3/31/2010 - Repealed effective 9/29/2015.

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