UNDERSTANDING AND RESPONDING TO DEPARTMENT OF CHILDREN AND FAMILY SERVICES' ABUSE AND NEGLECT INVESTIGATIONS IN ILLINOIS

A Basic Guide for Illinois Parents and Other Caregivers

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PREFACE

The Purpose of this Guide. This guide is meant to provide general information about the child abuse and neglect system in Illinois and some guidance for parents and other caregivers when they are involved in such investigations. These investigations, which are also called child protection investigations, are conducted by the Illinois Department of Children and Family Services (DCFS).

This guide is written with the "wrongly accused" person in mind. The Family Defense Center focuses on helping family members navigate the DCFS investigation process and exonerate them from being labeled a child abuser or child neglector when they have not harmed a child. Unfortunately, people who are targets of DCFS investigations often assume that the system will protect their rights and that justice will be done. At the same time, they may worry about how best to keep their family intact and avoid being tagged with a terrible label of "child abuser" or "child neglector." Others may simply not know how to respond when they learn that DCFS is investigating a claim of abuse or neglect. Still others will want to use this guide to prepare for answering common questions that often come up during these investigations.

While this guide will not prevent mistakes from being made, we hope that it reduces the number of erroneous decisions by helping families and people who work with children respond to investigations.

DCFS has a legitimate interest in protecting children from abuse or neglect. But it has no interest in separating a child from loving and innocent parents, or in labeling an innocent person as guilty of an offense he or she never committed. Indeed, the Family Defense Center believes that the interests of innocent and loving parents and the interests of the

child are the same. We believe in our motto, “To protect children, defend families.”

Therefore, helping families to defend themselves from a mistaken allegation of abuse or neglect *does* help children. Children need their families. Parents are generally the best advocates for children, but sometimes parents have to defend themselves first, in order to be able to protect their children.

We want to caution our readers, however, about assuming the “worst case scenario” is what DCFS is likely to do in any specific case. Just because DCFS *sometimes* removes children from parents and just because DCFS *sometimes* makes mistaken findings of abuse or neglect against innocent caregivers does not mean that DCFS always does so, or that DCFS would do so if you proceeded without regard to the information contained in this guide. Horror stories about DCFS can make parents and caregivers overly worried about what they should say to DCFS, and can have a “chilling effect” on parents who have done nothing wrong. After all, in 60-75% of all investigations, DCFS does *not* find abuse or neglect occurred. While DCFS sometimes reaches incorrect conclusions, that does not mean that good parents should worry about saying exactly the “right” thing. Finding the balance between saying too much and saying too little can be tricky, as this guide shows, and this guide is thus meant to enlighten parents’ thinking about how to approach a DCFS investigation and should not make parents fret over providing the “best” or “right” answers.

While we realize this guide may not reach everyone who needs it exactly when they need it most, we hope this guide helps to raise general awareness of the nature of these critically important investigations. Increased awareness will also help improve the quality of legal representation and advocacy available to individuals who find themselves in the position of responding to DCFS investigations. Therefore, while this guide is written for parents, it is intended for their lawyers and legal advocates too. In addition, because this guide highlights some investigative practices that may not be lawful, we hope that future challenges to some questionable practices discussed in this guide will advance justice for the wrongly accused person and further our mission of helping children by defending their families.

Warning (Disclaimer). This guide is not intended to provide specific legal advice. Only

a lawyer can give you legal advice that fits your specific case. Nor is it intended to provide information about how to respond to an investigation in another state: each state's system, laws, policies, and practices are different. If, after reading this guide, you believe you need legal services to help you respond to a pending investigation and you reside within the direct service area for the Family Defense Center (Cook and collar counties), you may wish to proceed with

an application for services from the Family Defense Center, or seek other legal counsel. This guide is **not** a substitute for the direct legal representation a lawyer can potentially provide. The authors of this guide and the Family Defense Center expressly disclaim liability arising from the use of information contained herein. No attorney/client relationship is created as a result of this guide's posting and distribution.

Introduction to this Guide. Whether you are facing a child abuse or neglect investigation pending in the Illinois Department of Children and Family Services ("DCFS"), you are trying to help someone who is in the middle of such an investigation, or you are simply trying to understand how child abuse or neglect investigations operate in Illinois, this guide may be a useful starting point.

This guide is organized as follows: Section I discusses the basics of DCFS child protection investigations, including answering many questions that come up about the steps in these investigations. **Section II** walks through one specific investigation and discusses the specific questions that were asked by an investigator and the steps she took to interview other family members. This Section contains a long discussion of the appropriateness of some of the questions and discusses approaches to answering them. **Section III** discusses the particular rights that persons who work with children have during a DCFS investigation. **Section IV** addresses the process when DCFS removes children from their parents under its power to take protective custody. **Section V** addresses safety plans and directives affecting the care and custody of children during investigations. **Section VI** discusses specific issues that come up in investigations, including interviews of children, medical testing requests, and requests for assessments and services. **Section VII** discusses remedies when investigations have violated family members' rights or otherwise been handled in an unprofessional manner. At **Appendix A**

to this guide, you will find "Basic Tips for Responding to DCFS Investigations," which consolidates the recommendations of this guide into a quick reference tool. **Appendix B**, "Summary of Concerns about Safety Plans," outlines the most problematic features of DCFS "safety plans"; these issues are being actively discussed with DCFS and this section will be updated as we see improvements in policies and practices. **Appendices C-E** provide template documents that you may wish to use if they are applicable to your situation. Finally, we have also attached a collection of **Exhibits** comprised of common DCFS documents and notices applicable to the investigative process.

I. The Basics of DCFS Child Abuse and Neglect Investigations

Child abuse and neglect investigations are complex. There are a host of variables in how child protection investigations proceed based on individual facts and circumstances, though some common practices are described in this section of the guide.

A. How DCFS Child Abuse and Neglect Investigations Start: The Hotline, Interplay between Police and DCFS Investigations, Access to Information in Hotline Calls

Child abuse and neglect investigations all start in the same way: with a call to the child abuse and neglect Hotline (1-800-CHA-BUSE). Sometimes, a call will have been made first to the police and then referred by police to DCFS. Sometimes, DCFS also refers calls to the police when it receives Hotline calls that allege serious physical and sexual abuse that could lead to criminal charges being filed. DCFS and the police should coordinate their investigations, and sometimes both police and DCFS officials will be present at the same interviews. Police investigations focus on determining whether there is a basis for charging an individual with a crime and punishing them for a criminal act, while the child protection investigations discussed in this guide focus on whether the child needs protection and whether the person named in the Hotline call should be labeled responsible for abuse or neglect and possibly be restricted in his or her interaction with children. (*See Working with the Courts in Child Protection*, U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF CHILD ABUSE AND NEGLECT (2006),

http://www.childwelfare.gov/ pubPDFs/courts.pdf, for more discussion of the relationship between criminal/police investigations and child protection/DCFS investigations).

If police have contacted you and there is a possibility of criminal charges, you should speak to a criminal defense lawyer. This guide does not address police practice, criminal investigations, or the rights of an accused person in a criminal case.

***What is the Hotline*?** The child abuse Hotline, which is officially called the State Central Register, is actually a call center located in Springfield, Illinois. A state DCFS employee will answer the call and make a computerized register of the call. Its computer system is called "CANTS" (for Child Abuse and Neglect Tracking System), so a CANTS report and a Hotline call actually mean the same thing. When you see an "SCR" number on notices you get about your case, that is the specific number assigned to the Hotline call that is then subsequently investigated.

Sometimes the call center receives requests for child welfare services or referrals, but this guide does not discuss this type of call.

What information does the Hotline take from people who report abuse or neglect? The Hotline operator who answers a call regarding suspected abuse or neglect of a child will have to decide if the call alleges some form of harm, or risk of harm, to a child under the age of 18. The harm must be something that fits within the enumerated categories of allegations that are defined by Illinois rules and procedures. The Hotline operator completes a form and documents in a narrative the factual information the caller has provided, and then codes the investigation into the specific allegation category that is most applicable to the factual claims the caller has made. (The rules and procedures setting out the categories of the DCFS "Allegations of Harm" and their corresponding numbers are available online at http://www.illinois.gov/dcfs/aboutus/notices/ Pages/default.aspx).

Not every call made to the Hotline gets accepted for investigation. If, for example, the person called the Hotline alleging that you had refused to buy your child the princess

costume she wants, that is not child abuse or neglect; that call would be rejected by the Hotline. But deliberately burning your child's hand, causing second degree burns, *is* child abuse and a report of that call would almost certainly be accepted for investigation if there was enough information to identify the child and the accused person. The Hotline operator should get enough information from the caller to decide whether there is a possible case of abuse or neglect assuming the caller's claims are true. The Hotline operator will also ask for the child's name, birth date, residence, name(s) of the suspected perpetrator(s), names of the parents (if different from the suspected perpetrator), and the names and birth dates of any other children living in the home.

After completing the record of the call in a case that is accepted for investigation, the Hotline call record will be sent to a DCFS office in the county where the child resides to start an investigation.

Who calls the Hotline and what difference does that make? Anyone can call the Hotline and make a report of child abuse or neglect, and thousands of people do that every year. The callers include neighbors, ex-spouses, landlords, teachers, doctors, and even children themselves. The callers do not necessarily have to give their names; the Hotline will accept anonymous reports.

Most people who work with children are considered mandated child abuse reporters, which means they have a legal duty under the Illinois Abused and Neglected Child Reporting Act to call the Hotline when they have a reasonable basis to believe that a child with whom they are working is an abused or neglected child. A list of all mandated reporters by profession can be found at: http://www.illinois.gov/dcfs/safekids/reporting/Pages/index.aspx. DCFS is more likely to make findings of abuse or neglect if the investigation starts with a call to the Hotline by a professional mandated reporter. But many mandated reporter calls are also not found to be actual abuse or neglect after investigation. Sometimes mandated reporters call because they believe they have to do so and not because they actually believe there was abuse or neglect.

Can people who call the Hotline be sued for violating the rights of the person they

claim abused or neglected a child*?* People who call the Hotline have "good faith" immunity from suit—meaning that the only grounds for suing them is if the target of the Hotline call can show "bad faith" (e.g., malice, a personal and improper agenda) motivated the call and that there was no reasonable suspicion to support the call. It is very hard to show that a call was motivated by bad faith. It is not impossible, but the person suing the Hotline caller has to show much more than that the call was not correct. *See* Section VII of this Manual (Steps to Redress Violations of Family Rights in Investigations).

Am I entitled to know who called the Hotline against me*?* No. While you already may know the reporter's identity, the identity of the Hotline caller is protected by a strict confidentiality law. That means that even if you suspect you know who the Hotline caller is, you generally ARE NOT entitled to be told the identity of the person who called in the Hotline report. Even if you know who called the Hotline, DCFS is likely to strenuously object to giving out any information about the Hotline caller and is likely to refuse to either confirm or refute your suspicions as to the caller's identity. (There are a few exceptions but these exceptions are so rare and arise only in litigation, so this guide does not discuss them.).

What are the possible allegations and how can I find out which allegation is being investigated? DCFS's "Allegations of Harm" system divides all types of abuse and neglect into categories and gives each category a name and a number**.** Some allegations are categorized as only abuse (e.g., "#21 Sexual Molestation") or only neglect (e.g., "#74 Inadequate Supervision") while others either abuse or neglect (e.g., "#9 Bone Fractures by Abuse / #59 Bone Fractures by Neglect"). Allegation numbers below 30 are the "abuse" categories, while numbers over 30 are the "neglect" categories. So if you are accused of

only allegation 79, for example, you would know that that's a neglect allegation and not an abuse allegation. You can find a full listing of the enumerated categories at Exhibit 1 of this guide.

The allegations are all set out in the DCFS Rules and Procedures, at Rule and Procedures 300, Appendix B. *See* http://www.ilga.gov/commission/jcar/admincode/089/08900

300ZZ9996bR.html (Rule 300, Appendix B, containing the definition of each allegation), and http://www.illinois.gov/dcfs/aboutus/notices/Documents/Procedures_300_Appendix_B.pdf (Procedures 300, Appendix B, containing the specific procedure required for investigating each allegation). If you know generally what the accusation is, or you have already received a notice concerning the investigation, you can look up the allegation within DCFS Rules and Procedures 300, Appendix B, to see how DCFS defines this type of abuse or neglect.

B. The First Steps in an Open Investigation: Duties of the "Mandate" Worker in the Division of Child Protection (DCP); the Initial "Child Endangerment Risk Assessment Protocol" (CERAP)

What happens after a Hotline call is accepted for investigation? The Hotline will refer the call to a local DCFS field office for assignment to a "mandate worker" and then to a primary investigator for a fuller investigation. More than one investigator may be assigned to an investigation if the child resides in a different field office region than the person accused of abusing the child. Investigations with more than one assigned DCFS office are referred to as "parallel" investigations and the investigators assigned to investigation areas other than where the child lives are called "parallel workers."

What is a "mandate worker" and what are they expected to do? The "mandate worker" is expected to make a "good faith" attempt to see the child. Such an attempt is required to be made within 24 hours of the Hotline call. A "good faith attempt" need not result in a successful contact with the child as long as an effort is made. When a mandate worker makes an attempt to contact the child, the parent or caretaker does not have to permit the mandate worker to talk to the child or come into the home. The one exception is that facilities licensed by DCFS must allow mandate workers and other investigators into the facility or they may face consequences for their licenses. *See* DCFS Procedures 383, Licensing Enforcement (July 2010), http://www.illinois.gov/dcfs/aboutus/notices/Documents/procedures_383.pdf. Mandate workers and other DCFS investigators have special emergency powers, however, as discussed in Sections IV and V below, and

depending on what they discover when they come out to see the child, there may be other actions they are expected to take.

What are the typical first steps in the investigation after the mandate worker attempts to see the child? The assigned primary investigator (this could be the mandate worker or it could be new person who is expected to take over the investigation) will want to see the child, interview the child, talk to the parents and other witnesses as long as those people agree to be interviewed, and examine the place where the abuse or neglect occurred. DCFS investigators are expected to make written records of all of their contacts in investigations. These notes are supposed to be electronically entered into the investigation file within 48 hours, though the Family Defense Center rarely sees files that consistently meet that standard.

Each investigator has a supervisor who is responsible for developing a plan for the investigation. Most initial investigation plans the Family Defense Center sees are standard templates that include the following directions to the investigator: see the child, complete a domestic violence screen and a substance abuse screen, run a CANTS ("child abuse and neglect tracking system") check and LEADS ("law enforcement automated data system") check (i.e., check the State Central Register and do a criminal background check), conduct a scene investigation, consult Procedures 300 for the relevant allegation, contact the PCP (primary care physician), contact teachers, etc. Usually these instructions are quite generic and oftentimes even these steps laid out in an early supervision note are not necessarily completed fully.

What decisions does the investigator make when they see the child*?* The Investigator is required to conduct a "CERAP" (Child Endangerment Risk Assessment Protocol"). This is a list of potential "safety threats" and if the investigator checks any box indicating the presence of a potential safety threat, the CERAP is marked "unsafe" and the investigator and the supervisor must decide whether further actions are necessary, such as taking protective custody or implementing a "safety plan." DCFS policy currently provides that the mere presence of certain allegations automatically results in an "unsafe" CERAP determination and *requires* either a safety plan or removal of the child from the parents. (The Family Defense Center believes that this policy as written is illegal but DCFS continues to follow a policy of automatically requiring safety plans or removals in some cases. The Family Defense Center is pressing DCFS to change this policy and practice.) *See* Section IV on the legal standard for taking protective custody of children from their

parents and Section V on Safety Plans. *See also* Exhibit 2 to this guide (CERAP and Safety Plan forms).

DCFS investigators (that is, investigators who work in the DCFS Division of Child Protection) have the authority to remove children from their parents' custody without consent in emergency situations when the children are in immediate danger of abuse. Police and doctors also have this power. Other DCFS employees who are not investigators, and employees of private child welfare agencies, however, do not have this same power. The decision to take protective custody or demand a safety plan is considered a "critical decision." Under DCFS policy, that decision is supposed to be reviewed and approved by a DCFS supervisor. This power is also discussed in Sections IV and V of this guide.

Independent of the decisions about child safety, including whether there are grounds to take protective custody and thus to justify requiring a safety plan, DCFS investigators will make decisions about the course of the investigation pursuant to the investigative plan developed with their supervisor. The safety decision is based on CERAP, and the outcome of the investigation is determined by whether the evidence gathered in the full investigation meets the standards to register an indicated finding of child abuse or neglect under each specific allegation. See Section I.F. below.

The investigator may request that the person under investigation provide information or participate in specific assessments or services. *See* Section I.G. below for more information about issues that arise with regard to assessment and services requests during investigations.

C. DCFS Notices in Investigations

What information should I receive if I am being investigated for child abuse or neglect*?* Any person who is investigated for child abuse or neglect should be given

written notice about the investigation upon first contact with the investigator. Rules also provide such notice is to be provided within 14 days of the Hotline call, but in practice there are often long delays before the required notice is provided. *See* Ill. Admin. Code, tit. 89, pt. 300.90, http://www.illinois.gov/dcfs/aboutus/notices/Documents/cants8.pdf. This notice is called a "CANTS 8" notice, and it includes the following essential information (*see* Exhibit 3 to this guide for a sample CANTS 8 notice):

a. The name of the child who is a suspected abuse or neglect victim;

b. The name of the allegation involved in the investigation (such as "#74 Inadequate Supervision" or "#61 Cuts, Bruises, Welts, Abrasions and Oral Injuries by Neglect"). Note that the notice will not necessarily tell you which type of injury within a broader category is alleged; c. A statement of the purpose of the investigation, which also notifies you that DCFS

has the power to take protective custody and initiate juvenile court action; d. A description of the investigation process, including citing the Abused and Neglected Child Reporting Act at 325 ILCS 5/1, stating that the investigation is to be concluded in 60 days except with good cause, stating that certain witnesses must be interviewed and that an interview with you, the target of the investigation, must be requested; e. Stating your right to refuse an interview, but that this refusal can be used against

you; f. Stating your right to give names of others who have direct knowledge of the incident

involved and to have at least two of these people contacted; g. Informing you that at the conclusion of the investigation the report will either be indicated or unfounded, describing what that means, and informing you that the decision will be in writing and that you can appeal an indicated finding; h. Describing the State Central Register and the potential length of registry, describing who can get access to the register, and mentioning the possible impact registry can have on employment with children; i. Detailing the rights of persons who are employed as "child care workers" including owners and operators of "facilities." *See* Section III below. Note that if you work with children, it is important that you let DCFS investigators know this (even if you think they should realize it) so that you receive special processes to protect your employment; j. Spelling out the special rights of persons who work with children; and

k. Providing a name, address, and phone number for the investigator.

Because it is difficult to respond to a DCFS investigation without receiving the CANTS 8 notice first, you should notify the investigator (if you have his or her contact information) that you need to receive the CANTS 8 immediately. You can make this request in writing via fax and U.S. Mail to both the DCFS investigator and the DCFS investigator's supervisor. Save the fax confirmation sheets for your records. If you need to confirm that there is a pending investigation and find out who the assigned investigator is, you may contact the State Central Register at 217-785-2509. You may be asked to provide a consent

form (which the person you speak to should send to you) or to prove you are the person involved in the allegation in order to have information released to you.

D. Time Frames and Next Steps in Investigations

***What is the time frame for investigations? What can I do if DCFS isn't taking steps to finish the investigation quickly*?** Child abuse and neglect investigations are supposed to be completed within 60 days. Most investigations are finished in time (though the Family Defense Center often sees cases that are completed just one or two days before the deadline, after a long lag time for much of the time the investigation was open). Investigation deadlines can be extended for "good cause," and extensions are easy for investigators to get. To get an extension, the investigator just has to request it and the supervisor has to approve it. Common reasons for extensions are: DCFS is awaiting a police report or has been instructed by police not to go ahead with its investigation until police say OK; DCFS is awaiting medical information; or DCFS is having difficulty reaching an essential witness. Unfortunately, the FDC has seen many cases in which DCFS delays in making its requests for information and allows weeks to go by without any action after the first flurry of activity at the beginning of the investigation.

If DCFS isn't wrapping up its investigation quickly, there is not much recourse to get DCFS to speed up its conclusions. If, however, you are living with intolerable restrictions

or have been affected in your career due to the DCFS investigation, legal advocacy may be necessary and sometimes can help to expedite the conclusion of an investigation. *See* Section VII regarding methods of recourse involving DCFS investigations. Calling the supervisor and Area Administrator and documenting the delays is appropriate, however, especially as deadlines for completion of required tasks approach. Investigators are evaluated on their completion of investigations by the 60-day deadline (which may explain why so much investigation contact occurs on days 58 and 59!). But there is no right to have the investigation declared to be over or "unfounded" just because the 60-day deadline has passed. Similarly, there is no right to stop investigators from securing repeated "good cause" continuations of the investigation even if the good cause claim is flimsy. In these circumstances, while being the subject of an investigation is certainly stressful, the best response is usually to be patient, while you make sure that you let the investigator and supervisor know that you are eager to hear the outcome.

E. The Rights of the Accused Person or the Parent of the Alleged Victim; Providing Information to DCFS during the Investigation; the Role of Counsel during an Investigation

What are my rights during the investigation? DCFS Rules state that you are entitled, as the target of a DCFS investigation, to be interviewed by DCFS within 7 days, subject to certain limited exceptions. *See* Ill. Admin. Code, tit. 89, pts. 300.90–110. In practice, however, DCFS may delay this interview. If you are aware of a pending investigation and have not received notice of the allegations, you should follow the suggestions above concerning requesting written notification of the pending investigation.

The child herself should be contacted within 24 hours and so should the reporter who made the call to the Hotline. But a "good faith" attempt to see the child or reach the reporter qualifies as sufficient to meet this "mandate."

If you work with children, you may have the right to special protections so that your job and career are not adversely affected by a DCFS indicated finding. *See* "If You Work

with Children, You May Be Entitled to Special '*Dupuy*' Protections" at Section III of this guide.

You are also entitled to refuse to have DCFS interview your children in your own home without a court order, though exercising this right can cause an escalating conflict with the investigator; if you decide to refuse an interview or insist that DCFS may not enter your home, counsel should be consulted in order to assert your constitutional rights in the event DCFS insists on entering your home or interviewing your child outside of your presence. Based on your own knowledge of your child and the circumstances of the investigation, you may wish to allow the interview. Whether or not to allow DCFS contact with your children is a subject as to which individualized legal advice is often necessary. However, if you do allow a child to be interviewed, your child has the right, under DCFS policy, to have someone else present when the investigator interviews them if it will make them feel more comfortable. *See* Procedures 300, Section 300.50(c)(4), *Reports of Child Abuse and Neglect*, DCFS (2010), http://www.illinois.gov/dcfs/aboutus/notices/Documents/ procedures_300.pdf.

While you are entitled to refuse to talk to DCFS investigators, unlike in a criminal investigation, you ARE NOT protected from being treated as "non-cooperative" and the fact you refused to cooperate *can* be used against you (though it cannot be the only basis for a finding against you).

You are not required to allow the DCFS investigator into your home. However, if DCFS has a genuine basis for requiring access, it can secure a warrant to enter the home. Additionally, if the investigator is not being allowed into the home to interview the children, DCFS may take steps to interview the children at a different location, such as school. *See* Section VI below for more information about DCFS investigators' interviews with children outside your home.

You are entitled to speak with an attorney before cooperating with a DCFS investigation in any way, including allowing them into your home, signing any paperwork, or giving any information via written or oral interview. In some cases, in fact, especially if criminal charges are pending or are likely to be pending, you should consult with criminal counsel

before speaking with the DCFS investigator since the statements you make to DCFS investigators could be used against you in parallel criminal cases.

You are entitled to provide the DCFS investigator with contact information for individuals you believe would be supportive to your case. These character witnesses are referred to as "collateral contacts" in DCFS parlance. The DCFS investigator is required by DCFS policies to speak to at least two of these individuals who you identify as character witnesses before making a decision in your case. This requirement of interviewing the collateral contacts that you provide to DCFS is in addition to *required* contacts DCFS investigators are expected to make in any investigation, which may include your child's doctor and teachers, depending on the specific allegation at issue. If anyone you know has direct knowledge or evidence about the incident DCFS is investigating, DCFS has a duty to gather their information and interview them as well.

You are entitled to provide the DCFS investigator with any information that supports your case. It is best not to assume that DCFS will gather all the information and evidence that you might want them to consider as the investigation moves forward. In far too many cases handled by the Family Defense Center, we see that only minimal evidence has been gathered and considered in a final indicated finding when the family had available evidence in their favor that wasn't requested, taken, or considered. So you should submit by fax, email, or mail any documents you think DCFS needs to have. DCFS has a constitutionally mandated duty to gather and consider all available evidence in your favor. To ensure DCFS meets this duty, you can provide any evidence you might have that may help to show you did not abuse or neglect a child.

For more information about what may be asked during a child protection investigation, see "What To Expect at A "Typical" DCFS Investigative Interview" (Section II of this guide).

What sort of evidence should I consider providing to DCFS during an investigation?
Depending on the specific nature of the allegation against you, you may wish to consider submitting the following evidence:

- Your children's medical records (primary care physician records and opinions can

also be used to show no history of abuse or neglect);

• Letters of support from individuals who know your family and parenting skills well (family, friends, teachers, therapists, community leaders, religious leaders);

• Timelines/documentation that can back up your version of the events that DCFS is investigating;

• Your own explanation showing what happened to your child;

• Statements of others who were present at the time of an alleged incident who can verify your explanation of what happened;

• Evidence that another person involved in the investigation is biased (but you should also provide supporting documentation to back up any claim of bias, such as showing the person who is complaining about you has made other unfounded complaints against others or has a clear motive against you);

• Information that proves that whatever did happen doesn't meet the standards from the definition of the specific allegation set forth in DCFS's own Rules and Procedures (*see* Section I.A above for more information on DCFS's categories of allegations and how to find the allegation definitions from Rule 300, Appendix B, and Procedures 300, Appendix B, found on DCFS's website http://www.illinois.gov/dcfs). Be sure to check Appendix B of both the Rule *and* the Procedure as the Rule sets out the definition of the specific allegation and the Procedure lists all the evidence and steps the investigator is expected to take as to the specific allegation.)

• Custody and visitation orders.

This guide cannot answer whether any one or all or none of these specific pieces of evidence would help or hurt you in a specific case. Sometimes providing less information is better, especially if statements made by different individuals conflict on critical facts. Therefore, consulting with an attorney as to what information should be submitted is recommended. At the same time, submitting nothing and assuming that DCFS will gather evidence that exonerates you is not recommended either! The best approach is to be careful when you submit information to DCFS and, when you are able to do so, contact a lawyer

who can advise you on the evidence you should be submitting. For example, you may

decide to provide background information that supports you—*e.g*. evidence of good care to the children, evidence showing that the persons accusing you are not reliable—while saving the specific details of what happened to the child for an interview with the investigator.

Sometimes a parent will say one thing and the DCFS investigator will either misunderstand or incorrectly document what was said. Investigative interviews are not recorded and the Center does not recommend that you insist on recording your interviews, as this will add to the conflict between you and the investigator. One strategy for preventing an investigator from later twisting or misrepresenting what you've said to them is to make sure that another trusted adult person is present whenever you communicate with DCFS. This guide also recommends that you put everything in writing, and then fax, email, or mail it to the investigator and the investigator's supervisor. Faxing and emailing are best because you can keep confirmation sheets/receipts for your records. It is also recommended that you keep your own notes as to all of your contacts with DCFS, including any and all unanswered phone calls you placed to the investigator or supervisor.

Do I have a right to lawyer to help me during a DCFS investigation or an appeal from an indicated decision? You have the right to hire your own attorney during an investigation. If you are poor and cannot afford a lawyer, however, you do not have a right to a free lawyer. The Family Defense Center may be able to assist you in some cases but you must proceed through the steps of the Center's intake process first.

Before you sign any papers, you have the right to have your lawyer review the papers DCFS has asked you to sign. You also have the right to have your lawyer present information to DCFS on your behalf, rather than doing it yourself. If DCFS investigators refuse to speak to your lawyer, or insist that you cannot consult with a lawyer, you have the right to complain about this behavior and should discuss this with your lawyer. *See* Section VII regarding avenues of complaint when your rights are violated.

F. The Conclusion of an Investigation and Rights to Appeal Decisions Against You

What decision is made at the conclusion of the investigation? There are three possible

outcomes to a child abuse investigation:

1. "Unfounded," which means that DCFS did not find "credible evidence" to support the allegation;

2. "Indicated," which means that DCFS found evidence that your child was abused or neglected and that you (or another parent or caretaker) are responsible for that abuse or neglect; or 3. "Indicated to an unknown perpetrator," which means that DCFS found the child was abused or neglected but the person who committed the abuse or neglect is not known.

Each specific allegation that was investigated should have a specific decision; some allegations might be indicated and others unfounded at the same time. And each person who is investigated for child abuse or neglect should have a decision about whether the allegation is indicated or unfounded as to them.

Exactly how much evidence DCFS needs in order to "indicate" has been hotly litigated in Illinois and remains a matter of contention. The federal court has required that DCFS consider not just the evidence tending support a finding of abuse or neglect, but that DCFS must also consider all available evidence weighing *against* a finding of abuse or neglect. As such, the federal court directed that the "credible evidence" standard of evidence is supposed to be "heightened" to include both inculpatory *and* exculpatory evidence. But the federal court refused to order DCFS to adopt a "preponderance of the evidence" standard (more likely than not) burden of proof. As a result of the lower level burden of proof to register an indicated report, there is an appeal right for all persons who are indicated and a very sharply expedited appeal right for child care workers who are classified as "*Dupuy"* class members.

The process for making the final decision is that the DCFS investigator makes a recommendation that is reviewed and approved by the investigator's supervisor. That recommendation becomes final and is promptly recorded in the State Central Register, except when the investigator is seeking to indicate a finding against a childcare worker, who will be entitled to special processes. For those workers, an Administrator's Conference must precede any final registration of a decision to indicate the childcare

worker for abuse or neglect. *See* Section III of this guide ("If You Work with Children, You May Be Entitled to Special "*Dupuy*" Protections").

How will I know the outcome of a DCFS investigation against me? You are entitled to be notified in writing of the final decision in any investigation against you. You will likely be informed of the investigation's outcome verbally first, and then you should receive written notice of that outcome within the next few weeks. The written notice will tell you

if the allegations are "indicated" or "unfounded," the retention period for the indicated findings, and what your rights are for challenging any indicated findings. (*See* Section VII below as to rights to appeal indicated findings and rights to designate unfounded findings as "false and harassing.")

Sometimes, before the end of the investigation, the DCFS investigator will tell you that she is setting up a "transitional visit" with you, herself, and an intact family services worker. This usually means you are being "indicated" as a perpetrator of abuse or neglect and DCFS now wants you to have services to remedy the causes of this abuse or neglect. DCFS typically does not refer individuals to intact services if it determines there is no merit to the allegations, so this notification about a "transitional visit" can be a "red flag" that DCFS intends to indicate the allegation or has already done so. *See* Section I.G. below for information about requests for assessments and for intact services during the course of an investigation.

If you do not receive a notification of the investigation's outcome (after waiting two to three weeks from the date on which you are told of an investigation ending), you can request notice from the DCFS Administrative Offices in Springfield: (217) 782-4000.

For information about how to appeal an indicated finding against you, see the Family Defense Center's Pro Se Manual, available on the Family Defense Center website at http://www.familydefensecenter.net/wp-content/uploads/2014/12/FDCProSeManual.pdf

G. Requests for Assessments and for Social Services or Intact Services During

Investigations

Under what circumstances might a DCFS investigator ask that I submit to certain service assessments? DCFS protocols call for investigators to conduct domestic violence and substance abuse screens when they first meet with you. Sometimes investigators will not tell you when they are completing these screens, but they may be making those assessments at an initial investigative interview with you. Generally speaking, these assessments consist of check boxes as to basic observations (do you have slurred speech or red eyes, for example) rather than an in-depth history. *See* Exhibits 4 and 5 to this guide for copies of these assessment forms used in investigations. If you tell DCFS you have a domestic violence issue or a past or current substance abuse problem, or if that has been alleged by the Hotline caller or other witness, you may find that a DCFS investigator makes a request that you go for a fuller assessment, go for urine drops to prove you are not using illegal

substances, or begin to engage in other social services. Similarly, if there is an allegation of a mental health concern, you may be asked to submit to a fuller psychological assessment. These requests can be very tricky to navigate, but in general it is risky to agree to assessments while an investigation is going on. *See* Section VI below for more specific recommendations about how to handle different types of assessment and service requests.

What are "intact services" and am I required to participate? If DCFS has already indicated a finding against you, the advisability of refusing to cooperate with DCFS's requests for an assessment changes. DCFS may decide to open an intact services case. In general, it is not recommended that intact services be refused outright at the beginning of the intact services referral—it is rarely advantageous to decline services while the investigation remains open and before meeting the intact services worker. Such refusal may cause DCFS to decide to initiate a juvenile court case instead of making a simple out-of- court services referral. Moreover, sometimes the services provided by intact services are beneficial. Certainly, families who are under stress (even if the stress is caused by DCFS!) may need supportive social services. Additionally, positive social services reports may be useful in fending off future DCFS involvement. An outright refusal of services and refusal to cooperate can cause a new Hotline call and negative

reports in the event there is a court case later on. Agreeing to cooperate with intact services therefore makes a lot of sense, especially initially. If you are appealing the indicated finding, you can inform the intact services worker that you are doing so and discuss the reasons you wish to wait on actually starting any services or undergoing certain assessments until after the appeal of the indicated finding is decided.

Once the investigation closes and you have initially agreed to participate in intact services, however, it may sometimes be in your interest to make a decision that you no longer wish to submit to certain assessments or complete certain services. This decision will depend on how intrusive the services are that are being requested of you and what your relationship with the intact services worker is. Intact services are expressly supposed to be voluntary, so you will have the right to refuse to continue services even if you initially accept services. The law provides that refusal of voluntary services is not a ground for adjudicating abuse or neglect—rather, there must be other grounds that show that abuse or neglect occurred.

However, you should beware of the potential consequence of refusal if the services you are receiving are considered essential to the safety of the child. While you have the right to refuse services, DCFS intact services workers have the right to seek a court order requiring that you comply with services if it can show probable cause that you have abused or

neglected the child (with the indicated finding against you potentially supplying sufficient “probable cause” to get the case into court). If you have been cooperative with services and the monitoring visits to your home have proceeded smoothly, you may be at low risk of having a petition filed against you should you politely decline to continue services. But securing legal advice about the risk you may be running if you terminate services is recommended. Most cases in intact services do close, however, after 6 months without any court action being filed. Intact services workers do not have the authority to take protective custody of your child.

The Family Defense Center has raised claims in several lawsuits that any continued separation of children and parents during intact services cases is unlawful. If you have an intact services case and DCFS is insisting that there is a basis for separating you from

your child or restricting your contact with your child without a court order, you should seek legal advice and assistance if the intact services worker refuses to restore your access to the child to the same level it was prior to the Hotline call.

II. What to Expect at a "Typical" DCFS Investigative Interview

This section presents an account of an investigation where the client secured counsel from the Family Defense Center. The Center's Executive Director represented the father in the case described here (and the first-person report comes from the Center's Executive Director, who is also its legal director). We discuss below the steps taken to secure a favorable outcome in this particular case.

While families can benefit from having lawyers present when an investigator comes to interview family members, most people do not have the opportunity to have a lawyer present at these interviews. It may be costly to hire a lawyer for the interview, especially if the interview is at a distant location from the lawyer's office. Sometimes DCFS demands interviews on an immediate or unannounced schedule, so that the main interview of the accused parent or caregiver has occurred before lawyers could be consulted. Also, parents and caregivers may be afraid to hire attorneys at this stage because they think that the presence of legal counsel may suggest guilt or "something to hide." Our experience, however, is that if a member of our staff is able to attend an investigative interview on our client's behalf, there can be considerable benefit to the client, even if our presence is only by phone.

A. The Benefits of Having Counsel at an Investigative Interview

Having a lawyer present at the investigative interview of a person under investigation can be very beneficial to the client and can aid counsel in making a well-informed assessment of the parent's case, which can be very helpful if further action to defend the parent is necessary.

Before the interview, a lawyer can advise the parents about the potential outcomes of the investigation, and allay unreasonable fear. The lawyer can also caution against steps that may heighten the risk of an adverse decision. In addition to providing concrete information and advice, a lawyer can provide a sounding board for clients who may be very anxious about the interview they are asked to undergo. A lawyer can advise clients how to handle the investigator's likely questions, including those that are difficult, intrusive, or uncomfortable. Even talking about how to answer questions if they come up can help to make the interview with the DCFS investigator feel less confrontational, traumatic, and invasive.

At the interview, the lawyer can run interference when an intrusive question is one the parent does not wish to answer. The lawyer can ask questions that the parent may not

know to ask, or may be fearful to ask. Most importantly, having a lawyer present can ensure that the investigator is on her best behavior and follows the necessary steps in the investigation. While lawyers certainly can sometimes add to the conflict rather than minimize it (especially if the investigator is not respecting your rights), having a lawyer present can help the interview go better, as the parent is much less likely to appear defensive, argumentative, or anxious to the investigator, and these factors can help to secure a favorable outcome for a wrongly-accused client.

Finally, after the interview, the lawyer can interpret the investigator's questions and responses to the parent's answers, and discuss next steps in the investigation.

In the case discussed below, my client naturally was upset to be under investigation and somewhat angry to be put into a position of defending his parenting style, and so before the interview I counseled him to leave his anger about the investigation to the side, as it would do no good to show anger to the investigator. Having counsel there actually allowed the client to be more responsive to the questions the investigator needed to have answered and gave the client a way to express his emotional response (to me) rather than have that response complicate the DCFS task of getting the information needed to conclude the investigation favorably.

The Family Defense Center will only undertake representation of a client at the investigation stage or later if we do believe the client has potentially strong defenses to the allegations against him or her. But parents who are "guilty" of some form of abuse or neglect of the child also benefit from having counsel present if he or she decides to proceed with the interview (as is usually recommended except if there is a likelihood of criminal charges). But even if counsel cannot attend the interview, talking through some of the questions that the investigator is likely to ask has significant value. If there is merit to the allegations against the client, counsel can, of course, help to minimize the potential for statements being made that can make the client's situation worse. Counsel's awareness of the elements of the allegations under investigation can help to ensure that DCFS doesn't assume away critical points. For example, if the client is not an "eligible perpetrator" because he is not either an immediate family member or household member (under the applicable standard for eligible perpetrator treatment under each allegation definition), counsel can raise these issues and protect the client from an unfavorable outcome.

Counseling the client about accepting DCFS services can also be useful prior to, during, or after an investigative interview. See Section I.G. above.

In the interview I attended, my role was not primarily a defensive one, because the allegations against my client were not particularly credible (indeed, some reasons why the allegations were misplaced had already been shared with the investigator and she therefore came to the interview with some concerns of her own as to why the Hotline had been called). My purpose, therefore, was primarily advisory and precautionary rather than defensive. I also wanted to ensure that the investigator had all the positive evidence in my client's favor and that the investigation ended as quickly as possible (which meant that facilitating some of the contacts DCFS is required to make became part of my job). In other investigations, however, my role would have been different, and I would have stopped some questions from being asked or directed my client not to answer. While I asked some questions, my role primarily was to listen and advise the client after the interview was over.

B. What to Expect at the Interview

Even when counsel cannot be present, however, it is useful for clients to know what to expect at a DCFS investigative interview. This section discusses this question generally and then summarizes what a person might expect to be asked at a typical DCFS investigative interview. (**Disclaimer**: this article is not legal advice for any specific case. Each case and each allegation under investigation is different, requiring consideration of many factors. This discussion is meant to provide background information only and some of the factors to think about in order to prepare for an interview, including whether representation by counsel is necessary. To the extent many of the questions listed below are standard ones, however, anyone who is questioned by an investigator should not be surprised to be asked these things and should be ready with a response, even if it is a decision to decline to answer).

As soon as the interview starts, it is a good idea to make your own personal assessment of the investigator and try to understand how she sees her role. *Is she acting in a*

professional manner or not? In the specific interview discussed here, the investigator was an experienced DCFS employee and was simply there to do her job (i.e., to complete her investigation, report what she had learned to her supervisor, keep notes, and then participate in a final decision as to whether the case should be "indicated" or "unfounded"). I say this because not all investigators are so professional, and we have experienced many

investigators who are rude, dismissive of attorneys' involvement in any investigation, rushed, and seemingly uneducated about DCFS policies. Hopefully, you will have gotten a preliminary sense of the investigator you are dealing with when you arranged the initial interview. When you first set the interview date and time, it is recommended that you try to ask some questions about the nature of the interview, who the investigators intends to talk at the interview itself and what will happen after the interview is completed. One can quickly get a sense of what kind of investigator has been assigned to the case simply from their demeanor and personal style in answering your preliminary questions about the interview.

The investigator in this case let us know that the full set of interviews she needed would take about an hour (oftentimes these interviews appear to be done more quickly, though it is difficult to see how a thorough interview can be done in less than 20 minutes, and a more complex case would require 40 minutes or more with each adult).

Remember, the investigator is neither your friend nor your enemy. If the investigator acts as if she is there to help you, don't get sucked into spilling your life history and confiding with her about familial concerns that go beyond the scope of the allegations and her specific questions. If the investigator is rude or disrespectful, it may be harder to address the questions, but you have the right to get information about the investigation from the investigator, including the name and phone number of the investigator's supervisor. (Means of seeking redress against inappropriate investigators is beyond the scope of this article, but unprofessional conduct by investigators is not something you need to accept. See Section VII below regarding "Steps to Redress Violations of Family Rights in Investigations").

Try to take your own notes; keep notes after the interview if you can. You should be

keeping your own notes throughout the investigation—anytime you speak with the investigator or leave a message for the investigator, document it in chronological notes; this record can be very helpful later on. I took notes as to what the investigator asked in her 15-20 minute interviews with my client and his wife (who was not a target of the investigation). Some of the questions were ones that shouldn't have been asked at all, but are standard practice for DCFS investigators. Several of the questions the investigators ask are fraught with the potential for violating individuals' rights to privacy and the protection of their confidential records. Those specific questions are discussed below, with some thoughts on how best to approach these questions if answering them directly could complicate the investigation.

Try to keep be calm and respectful throughout the interview. Arguing with an investigator is not a good idea. The DCFS investigator is likely to be asking questions she has been trained to ask, and she is not likely to change those questions if you object to them. See below for recommendations as to how to handle questions that DCFS investigators really shouldn't be asking during investigations, or that you shouldn't necessarily answer if the response is going to hurt you.

C. Chronology of the Interview, Including a List of Questions Asked

The investigator started the interview by expressing understanding that "no one likes to be under investigation" and also expressed that she had a job to do to make sure children are safe. This was a good way to start, I thought; not all investigators acknowledge to parents that DCFS has put the parents in an unwelcome position by virtue of the Hotline call. Some investigators are much more gruff and hurried. This investigator, however, seemed to be willing to spend the time at the meeting that the case required. On occasion, she used words that I thought most clients would not understand. She used the word "agency" during her later interview with the children, for example, to describe where she worked, but she quickly corrected herself when she realized the children wouldn't know what an "agency" is. Because this investigator probably knew that I was an attorney who had frequently sued DCFS, it is certainly possible, indeed likely, that she was on her best behavior. Nevertheless, she conducted herself professionally and I had no specific

complaints about the manner in which she handled the interview; we were all relieved that it was concluded within slightly over an hour (including two adult interviews, two child interviews, and a contact with a babysitter whose phone number was secured for a future interview through "Language Line" for Spanish translation).

Any DCFS interview at which an attorney is present is, by definition, *not* a typical DCFS interview, despite the title of this section of the guide. Nevertheless, because this interview provided useful information about the questions to expect during a DCFS investigative interview, I am sharing these specific questions in a guide on how to respond to DCFS investigations. I wager that most of these questions are asked in at least 75% of DCFS investigative interviews, so this listing of the questions can help future targets of DCFS investigations know what they might expect to be asked during an investigative interview.

1. ***Do you know why DCFS was called or why I am here?*** This question turned out to be the trickiest of all the questions the investigator asked. My client really didn't know why DCFS had gotten a Hotline call or what the Hotline call alleged. He had a good idea of *who* had called the Hotline (many clients have similarly clear ideas as to who must have made the call, while others have no idea). What actually sparked the call was difficult to know, however. It was hard for my client to repeat the accusations against him without ridiculing the accusations (which wouldn't have helped his cause). Generally, it is not advisable to speculate what allegations were made in the Hotline call and, instead, try to answer this question in a way that invites the investigator to share more information about what allegations have been made. A simple way to answer would be to say "I know there was a Hotline call made that basically accused me of some sort of abuse or neglect. I'd like to know more specifics but that's essentially what I know so far." By the time this question got answered in our interview, this is effectively what my client did say, and we moved on.

2. ***Can you give me proof of who you are, your birthdate, and ID?*** I was a bit surprised to see how seriously the DCFS investigator took this part of the interview. She had been let in the door; she had sent up the appointment; she had talked to each person before the interview; and I was there too. Did she really think that someone else would

pretend to be one of the parents in this investigation at this address? Nonetheless, my client provided an ID. It's best not to argue with an investigator who is just looking for confirmation that she's talking to the right person.

3. ***What kind of work do you do?*** In the interview I attended, the investigator already knew what work my client did and we didn't dwell on this. All persons under investigation should be aware that if they work with children, it is beneficial, not harmful, to make sure the investigator knows that they do work with children. The investigator can be asked to mark the investigation as a "*Dupuy*" investigation (a technical label for cases involving people who work with children) so that special due process protections are provided. *See* Section III below for information on investigations involving persons who work with children and the rights to "expedited processes" for such professionals; more information about the lawsuit and federal court rulings that gave rise to these rights, *Dupuy v. Samuels*, can be found at the Family Defense Center website, http://www.familydefensecenter.net/fdc-cases/dupuy-v-samuels/.

4. ***Can you identify who lives with you?*** This question was easy in the case I was called in on. In some cases, this might be harder to clarify. Simple answers as to who you

live with right now are fine. When in doubt, though, it is best not to give more information than you are being asked for.

5. ***Do you take any medication?*** This is a potentially problematic question, which is discussed further below in Section II.D.

6. ***Do you have any mental health history?*** This was a very problematic question and is also discussed below in Section II.D. It wasn't a problem for this particular client, but for many clients it would be a problem and knowing how to answer it is very tricky.

7. ***Do you have any criminal record?*** This, too, could be a problematic question though it wasn't for this client. This question is discussed below in Section II.D.

8. ***Is there any domestic violence in the home?*** Again, this one could be tricky in some cases but wasn't a problem for this client. It, too, is discussed below.

9. ***Do you have any history of substance abuse?*** Same thing: not a problem for my client but it could be a problem in other cases. It is discussed below in Section II.D.

My client answered each of these questions (4-9), and his answers were fine: the answers were "no, no, no, no, and no." I did not stop the investigator from asking any of these questions or tell my client not to answer. I expected every answer to be a "no," and it was. But each of these questions is problematic. The fact that a State agent with police power (which is the type of authority DCFS investigators are legally empowered with) asks a person about medications or mental health conditions or seeks information that might potentially incriminate someone is problematic. Asking these questions is dicey, to say the least. The coercive power of the investigator to take legal action based on whether the parent reveals or does not reveal information in response to these intrusive questions makes handling these interview questions very challenging. Some ways to answer these questions in the event of concern about these consequences are suggested below, but if you anticipate being questioned by DCFS and the answers to these questions would be potentially harmful to you, direct legal representation may be necessary and a clear plan as to how you want to answer each question should be developed, preferably in advance of your being asked these questions.

These are exactly the questions that a lawyer should be answering for you if you decide to answer at all, and it would be best that a lawyer handle any refusal to answer on legal

grounds (rights to privacy, objections that the question is vague and you are unable to answer, that the question implicates the rights of others, etc.). If you refuse to answer these questions, DCFS may consider it a red flag for concern, while a lawyer answering for you may force DCFS to do a bit more homework to figure out if they really need to push for an answer or not. But if you answer falsely or answer in a way that raises a further concern for DCFS, then the answers could be even more harmful to your interests than not answering would be.

The DCFS investigator may tell you they need to ask you these questions in order to protect your child. This may be true, but that is does not mean you must answer questions that are going to be interpreted in a manner that is harmful to you and your family. If you are uncomfortable answering a question, you have a right to stop the interview and ask to reconvene later after you have had the opportunity to confer with a lawyer. Most parents will want to answer as fully as they can and that is why many parents have already answered questions, even when the answers are against their own self-interests, before they decide they should contact a lawyer.

See the extended discussion of these questions below, in Section II.D.

10. ***How do you discipline your children if they act up?*** With this question, the investigator was starting to address the real reasons she had come to the interview. Here, the biggest concern with how one answers this question is whether the discipline techniques are appropriate ones in the eyes of DCFS. A second major concern, however, was whether every member of the family, including the children, would answer with the same information. If one family member says they only use time outs, while another describes spankings, DCFS may use the statements of one family member against another. It can be challenging to address this concern in advance because talking to your own children about this subject will be potentially construed as interfering with the investigation or "coaching." If there is a concern as to what the children will say or if another family member is likely to answer this question differently than you do, knowing what you are going to say about this question is especially important. Some discrepancies between family members' accounts may be overlooked if there is a good explanation for why the accounts are slightly different. However, having a basically consistent account of the type of discipline used in the home is very important. (Having counsel can be especially helpful in advance of an interview to help identify areas in which different persons may be giving differing accounts and discussing ways of talking about discipline of children that can minimize the potential for conflict and confusion between family members' answers to the same question.)

It is lawful in Illinois for parents to use non-excessive corporal punishment, but if you do implement corporal punishment, it is important to be very careful about the words you use to describe it. If you use the word "spanking," you may need to clarify what, exactly, you mean by that. Since corporal punishment with a hand on the clothed buttocks of a child that does not leave any marks is lawful in Illinois, a parent who uses this form of discipline can do so without running afoul of child abuse charges. But some parents call the use of a belt or stick or extension cord a "spanking" too, and that form of spanking can be considered abusive, especially if it leaves any cuts, welts, bruises, or abrasions. Relatedly, if you use a word other than "spanking" to describe using a hand on a child's clothed buttocks (e.g., "whooping" or "popping"), the investigator may misconstrue the type of disciplinary action you are trying to describe and assume that you have implemented discipline far more severe in nature than what actually occurred.

Another word that is especially problematic if used to describe a parent's interaction with a child is the word "shaking." The Center has represented several parents who had described what turned out to be rather innocuous movements—what we would say is "jostling" or "rocking"—as "shaking." In these cases, the choice of this word alone set off alarm bells for DCFS, even though the child involved was entirely uninjured. DCFS labeled these parents as abuse perpetrators. Knowing that DCFS treats certain actions as "red flags" for serious abuse and may interpret your description of your actions differently than you intend can help you to communicate more clearly with the investigator and prevent a wrongful indicated finding and potentially months of legal proceedings to clear your name.

The message is that the words parents use with investigators matter, and one of the great values of legal representation is that lawyers can counsel parents on how to talk to investigators in a way that will minimize the negative inferences and maximize the positive inferences that DCFS investigators may draw about them.

Fortunately, in the investigation I was assisting with, all the members of the family consistently described the discipline my client used as "time outs" and "removal of toys" (temporarily). There were no "red flags" to worry about. But if my client had used spankings of any sort, I would have wanted to counsel him about how to describe those spankings accurately so as to reassure the investigator that *excessive* corporal punishment

is not used in that family.

11. ***How do you respond to the specific allegations that have been reported to the Hotline?*** At this point, the investigator read off each of the statements that had been reported to DCFS during the Hotline call. It is important for persons who are accused of abuse or neglect to know the specifics of what is being alleged against them. It is also important that they be allowed to respond to the allegations with information that, if believed by DCFS, would exonerate them of the allegations. It is reasonable, in most interviews, to provide simple denials (if the allegations are untrue). Trying to come up with an explanation as to why an accusation was made, if it is untrue, is often counterproductive. You may be asked, "Why would the child say this if it wasn't true?" Unless you actually know why, it may be best to simply say "I don't know." If you have evidence that directly contradicts the allegation (e.g., the child said you used an instrument to hit her that you do not possess and could not have possibly used), providing that affirmative evidence can be helpful.

In the interview I attended, the father made a special point (after we had discussed this issue) of telling the investigator that there was no such object as the child had said he used in their home, and he had no idea why the child had reported he has used such an object since it couldn't possibly be true. Oftentimes there are key facts that show the allegations are not plausible. Don't worry, though, if you do not think of these facts at the moment of the interview—you can always supplement the interview with a subsequent call or letter to the investigator about this information that undermines the merits of the Hotline call.

If a physical injury to a child is serious or if sexual abuse is alleged, having counsel before an investigative or forensic interview is essential. (The Family Defense Center hopes to develop additional guidance for families undergoing investigations in sexual and serious physical abuse cases in the future, as these cases typically are the most challenging and frequently also involve criminal investigations.) The line between a serious physical injury and a more "run of the mill" injury may not be easy to discern, but the presence of police in the investigation is one indicator of the seriousness with which

DCFS itself views the allegation. In DCFS Priority 1 cases, police are routinely notified of the allegation and will do their own investigation. When in doubt, ask the investigator if the investigation involving you is a "Priority 1" investigation.

12. ***Can you give me two collaterals?*** "Collateral contacts" are essentially character witnesses—people who can tell the investigator what kind of parent you are. DCFS Procedures require the investigator to request the contact information for collateral contacts and to interview at least two such individuals.

The request for collateral contact names is actually a positive for you and something that the Family Defense Center has pressed DCFS to ask for. The requested collaterals are persons who should be contacted on the accused person's behalf, and are people who should be contacted before the close of an investigation, in addition to pediatricians, teachers, and others who might have first-hand information about the investigation. Asking for these references gives the accused person the chance to provide good character evidence that should be considered *before* DCFS labels a decent parent as a child abuser or child neglector. Our staff generally recommends that you provide such character references and character letters to DCFS on your own, even if not asked, as these references and letters will provide evidence to point to if the allegations end up being "indicated." Oftentimes, DCFS investigators fail to ask for these collateral contacts.

In the interview with my client, this question proved to be the second hardest one for the client to answer. Friends and colleagues, and even close relatives, were unaware of the pending DCFS investigation and most of them would have been dismayed to learn of it. The client did not want *anyone* to know about the DCFS investigation, and certainly didn't want DCFS to call anyone without an advance warning. Figuring out who could safely be called without adding to the disruption the investigation had already caused the family required some thought and consultation. Collateral contact names can be given to DCFS investigators later, of course, but in the interest of completing the investigation quickly, being prepared to give collateral references will be helpful.

13. ***Can I speak to your children? I need to see your children and speak to them***

outside your presence. This request is to be expected in any child abuse or neglect investigation and it is the most difficult request to advise a client about. Prior to this interview, I was uncertain as to whether the investigator would want to see the children and interview them on the spot, because a prior investigator had already talked to them. I almost *never* counsel parents to make their children immediately available to DCFS. If DCFS demands that you bring the children to the DCFS office, that can be a red flag that DCFS intends to take protective custody of the children from the parents. On the other hand, DCFS will always want to see the children and talk to them, at least briefly, so that they can verify information and insure the children are safe. If children are to be present, moreover, it is important to have another adult present too. It is simply too risky to be home alone with one's children at the time the DCFS investigator comes knocking, unless it is clear already that DCFS has decided it will *not* be taking the children into custody. Making this assessment may require legal counsel, and legal counsel may need to consider many

factors before deciding it is safe to have the DCFS investigator talk to the children. Conversely, if the interest of the person being investigated is to finish the investigation as soon as possible, it may be necessary to allow the child interview to proceed with a minimum of fuss. Given that most investigations are deemed unfounded, and most investigators are "just doing their jobs," presenting a conflict over whether to allow a child interview can be counterproductive, or it may be absolutely necessary to refuse it, depending on the specific circumstances of each case. Additionally, refusing to allow DCFS to see and interview the children could trigger the initiation of court proceedings as the refusal could provide grounds for DCFS to seek out a court order compelling the parents to make the children available to DCFS. In any event, any child who is interviewed by DCFS has the right to have an adult with whom they are comfortable be present for the interview, though that adult person cannot be someone who is a target of the ongoing DCFS investigation. Therefore, we often counsel our clients to arrange for another adult to present for any DCFS interviews with the children. *See* Section VI for much more information on how to consider whether and when to allow a DCFS investigator to interview your children.

In the case I was called in for, the investigator told the parents that she would need to interview the children in order to complete her investigation. It was necessary to get a

sense of how the investigator viewed the merits of the investigation before I could advise the parents to make the children available. Because the investigator was just doing her job, expressed no concerns about the immediate safety of the children, appeared to have no intention of making any demands for a safety plan or other intervention with the family, the family urgently wanted to be done with the investigation, and the family had no genuine concerns about the likelihood of further false report by either of their children, we made the decision to proceed to allow the children's interviews. The children were actually brought back to the home (they had been deliberately sent to a nearby babysitter's apartment during the parents' interview) and we proceeded to let the investigator talk to them briefly (5 minute interviews with each of the two children) in my presence.

As this interview of the children unfolded, the children did very well. The older child actually clarified the facts in a way that was favorable to the father. The description they gave as to how they were disciplined was completely consistent with the way the father and mother described their discipline techniques. When the interview of the children was over, it was a relief for the family (and my presence in the interview reassured them as to what the children had said).

Home Safety Checklist. At the close of the interview with the client's wife, the investigator went through a home safety checklist. I thought this checklist/review was rather helpful. It included a lot of common sense measures. For example, the investigator asked about smoke alarms, carbon monoxide detectors, mentioned checking the hot water temperature always before a bath, and told the parents not to leave their children alone in a car even for a few minutes. (While this may seem overly intrusive, DCFS and police in Illinois are very aggressive about charging parents who leave children in cars with neglect. Even though the Center would dispute that such actions constitute neglect in many such cases and even if some cases are eventually unfounded, it's better to be forewarned about the possibility of an investigation or charges.) All of this seemed like sensible advice to me, and it was presented in a matter-of-fact, non-accusatory way.

D. Continued Discussion: What To Do About the Problematic Questions (Nos. 5-9 Above)?

Each of the questions at 4-9 above is problematic when asked by a DCFS investigator who is trying to make an assessment of wrongdoing involving a child. If you are asked these questions and the answer would be "yes" to any of them, you may want to politely decline to answer. You can state that you understand you have the right not to answer any specific question being asked. Obviously, legal counsel may be necessary to determine which questions should be answered and how best to answer them, if at all.

While some of the questions may be fine to answer if the answer is "no," you should think twice before answering if the question is yes.

Do you take any medication? DCFS will have access to your child's medical records regarding any specific injury that is allegedly due to abuse. But DCFS has no right of access to your own medical records unless you give consent. (That doesn't mean DCFS might not ask for your records and get them, but it is unlawful for DCFS to do so or for a medical provider to provide such records absent your consent or a court order). Therefore, you should not release your own medication information unless you have good reason to do so, such as certainty that it will not include any information that DCFS may use to portray you in a negative light. Over the counter medication for the flu is not problematic to reveal, but telling a DCFS investigator that you take any medication for a mental health condition, such as antidepressants, anti-anxiety medication, or medication for bipolar disorder, is not necessarily helpful to your case and you should have a right not to answer. If you are prescribed medication by a doctor, you can tell the investigator that you are taking

medication but that you are maintaining your right of privacy as to the diagnosis and treatment.

Do you have any mental health history? Here you will have to decide how well known your history is to others that DCFS will be talking to. If you have been repeatedly hospitalized for a mental health condition, or if others that DCFS is talking to have told DCFS you have a mental health diagnosis, you may need to clarify these facts. If your condition is clearly in remission and a psychiatrist will confirm that you do not need

treatment beyond any measures you have already been taking to maintain your mental health, you may decide you are willing to reveal your history (though it would be best to confirm with the psychiatrist that your understanding is correct). Giving complete mental health history to DCFS or consenting to the release of your mental health records, especially without doing a careful review of the records first, is generally not recommended and can often be harmful to your interests.

This question is particularly hard to answer, and the decision to reveal or not reveal a mental health diagnosis and treatment is particularly challenging, because DCFS operates under the legally incorrect assumption that it has a right to access parents' mental health records without consent whenever it is investigating an allegation of child abuse or neglect. While DCFS may not proceed to get records for parents without consent, it believes— incorrectly, we assert—that its duty to investigate trumps the confidentiality protections over your own mental health records. If you have mental health treatment records that you do not want DCFS to access during an investigation, you should seek legal advice as to how to handle this matter. Sometimes giving investigators the names of your treating doctors is the best solution, and then asking your doctor to notify you before turning over your private records to DCFS. But because the legal issues involved in release of mental health information are complex, the best approach will vary depending on the specific allegations in each investigation and the specific mental health history the parent may have.

Do you have any criminal record? This is the only question of the five problematic questions that you should answer "yes" to *if* you have a criminal conviction. DCFS can easily find this information and if you don't answer it, you will look evasive and not credible. You do not need to answer about arrests; DCFS is not permitted to use arrest history against individuals. However, DCFS can also easily access arrest history so if you are asked about an arrest that DCFS knows about, you may want to give some basic information about what you were arrested for, while highlighting that you were not convicted.

Is there any domestic violence in the home? The question about domestic violence is tricky too, even if you are the victim and not the perpetrator. Historically, being a victim

of domestic violence often has been used against the victim. The Family Defense Center has been working with many domestic violence advocacy groups and DCFS itself to change the treatment of domestic violence victims. As a result of the Center's work, DCFS rules now clearly provide that a victim is presumed *not* to be neglectful, as long as reasonable precautionary measures to protect the children from domestic violence have been taken. Unless and until DCFS practices conform to this policy, however, revealing the extent of domestic violence can be counterproductive to the interests of the domestic violence victim. If there is domestic violence that is of current concern, it is most important to acknowledge and report to DCFS the steps you are actively taking to protect yourself and the children. Minimizing or denying obvious signs of domestic violence is likely to backfire on the victim. (Note: the Family Defense Center has a new "Toolkit" for domestic violence advocates that discusses in much more detail how to advocate with DCFS on behalf of victims.)

Do you have a history of substance abuse? If you are a person with a history of any form of substance abuse, unless you have been clean and sober for at least several years and can demonstrate your history of sobriety, this history is not something that DCFS is likely to consider favorably in the investigation. If you have gone through treatment programs and it is well known to the persons whom DCFS is talking to in the investigation, hiding your substance abuse history is probably not advisable either, however. If you use substances occasionally or if you are likely to test positive for an unlawful substance if given a drug test, telling a DCFS investigator about your use may or may not be in your own best interests.

The Family Defense Center has had many clients who have histories of substance use. We make a case-by-case assessment of the severity of the substance use. At times, being honest and forthright about substance use can be helpful to the outcome of the case; at the same time, we have seen many instances where occasional recreational drug use has been used as a basis to indicate an allegation that otherwise has little merit.

The investigator may proceed to refer you to a substance abuse program or for a drug test if you do not answer the question about a substance abuse history. However, if your answer to that question would have been "yes," you would almost certainly have the same outcome and you would have provided more information to DCFS that could be used in the current

investigation. You have no duty to share your use of substances with DCFS or to give an elaborate history of your use. On the other hand, if you can document recovery from addiction for a considerable period, ongoing sobriety, and completion of treatment, that may be beneficial to share and not providing this information could be harmful to your interests in the ongoing investigation.

Regarding the questions about mental health history, medication, domestic violence, and substance abuse, where there is some such history in your background, there are no clear-cut answers as to what to say or not say to a DCFS investigator. With these questions as with others, it is best to consult a lawyer before answering and if in doubt, you should limit your answers or politely decline to answer any question that could be used to build an abuse or neglect case against you. Of course, *how* you decline to answer is challenging too, which is a further reason why having a lawyer respond on your behalf is helpful when the questions do not put you in a good light.

If answering DCFS questions in an investigation is so tricky, why should I interview with DCFS at all? DCFS investigations are not the same as criminal investigations. If you refuse to answer DCFS questions, DCFS has the power to take children into State custody if they have evidence of immediate harm to the child and no time to get a court order. DCFS can also make findings against you that will be registered in the State Central Register for 5, 20, or 50 years (depending on the specific allegation involved) and which can be used against you in employment and family court matters. You do have the "right to remain silent," but unlike a criminal case, your decision not to cooperate with DCFS in an investigation can be "used against you." Moreover, DCFS is likely to keep investigations open if you do not submit to an interview or specifically decline one (with declining being viewed in a negative way). Since DCFS does "unfound" at least 2/3 of the investigations it conducts, in many cases it is in your interests to cooperate with the investigation and "get it over with." While declining to answer some questions might also be used against you, in some cases it may be best to answer the specific questions about the incidents under investigation while declining to answer questions about mental health, domestic violence, arrests, and substance abuse history particularly if those topics are not directly related to the allegations under investigation.

Can the Family Defense Center help me plan for an investigative interview*?* Possibly. To become a client of the Family Defense Center, see our legal services page on our web site at http://www.familydefensecenter.net/fdc-programs/legal-services. The Family Defense Center screens its cases for legal merit and makes decisions based on the

availability of resources to assist clients. The Center works on a sliding scale fee schedule. Advising clients in investigations is included in the work we do, but it is not work that we can refer to our pro bono network, so staff attorney resources must be available to assist the client in order for us to be able to give advice during a pending investigation. The Family Defense Center does not advise clients who are undergoing criminal investigations, but will work with criminal defense counsel on request in appropriate cases.

This guide will be recommended reading first for clients who have pending investigations. If you have read the guide and have a specific concern about how to respond to an investigation based on information in the guide, it will be helpful to the Center's consideration of your request for services if you can specifically identify the issue of concern when you speak to our intake staff.

E. Questions to Clarify the Status of the Investigation

Since I know the basic rules governing DCFS investigations, I asked several questions that would enable me to make a better assessment of the nature and status of the investigation. Asking these questions also helped establish that the client had a knowledgeable representative who was going to make sure that she followed the proper procedure. Even without a lawyer, asking these questions may also be helpful, as it is possible to look up some information, such as the definition of the allegation number under investigation, once the interview is over.

My questions were:

1. ***Do you have the CANTS 8 notice for this investigation? Can I see it? Can I review it with my client before you ask him questions*****?** The CANTS 8 notice is described above at Section I.C of this guide and a sample can be found at Exhibit 3. You are entitled to have the CANTS 8 notice and to read it and to have time to make sure you understand it. In fact, the CANTS 8 notice should have been given to this client long before my interview, but it is typical for the notice to be first given at the interview and sometimes only at the close of the interview, not the beginning. The rules anticipate it will be given on the first meeting or mailed within 14 days (but this rule is often ignored, as it was here). This notice tells you what you are being investigated for and lists your basic rights in the investigation. (The notice is the result of years of litigation in the *Dupuy* case, and I had a hand in writing it as part of our settlement.) The information there is important.

2. ***Which allegation are you investigating?*** As discussed earlier in Section I.A, DCFS divides all types of abuse and neglect into categories and gives each category a name and a number (*see* Exhibit 1 of this guide for a complete listing of the "Allegations of Harm"). Most people under investigation wouldn't ask this question, but you can ask the investigator to tell you the name and number of the allegation that DCFS is investigating. In fact, if you have done your homework and ask about specific allegation numbers, that can be "plus" for you because it shows the investigator that you understand something about the investigation process and will expect the DCFS investigator to do their job too. For example, if you know that the child allegedly has bruises, you can ask the investigator if she is investigating #11 or #61, which will tell you if she considers the allegations to be related to bruises by "abuse" (#11) or by neglect (#61). Or, if you have received a CANTS 8 Notice and it says you are being investigated for #10/#60, it is often helpful to clarify which is the correct allegation. This is because DCFS notices often erroneously combine the name of both Allegation #10 (Substantial Risk of Physical Injury (abuse)) and #60 (Environment Injurious to Health and Welfare (neglect)) into one line, which can be confusing. For example, the notice might say that the allegation being investigated is "#60 – Substantial Risk of Physical Injury/Environment Injurious to Health and Welfare," while in reality the only allegation is the neglect portion (Environment Injurious to Health and Welfare).

How you respond to the investigator's questions does depend on first knowing what you are accused of, and the more you know about the accusations, the easier it is to figure out a response. The more details you can get about what the accuser is saying, the better, too. Don't worry if you don't know the allegation numbers before the interview—most parents don't! I knew that the facts of this case made it likely to be some form of a "risk" allegation because the child involved had no reported injuries.

Any lawyer representing you will want to know what the allegation number is. *See* Section I.A above for more information on DCFS's categories of allegations and how to find the allegation definitions from Rule 300, Appendix B and Procedures 300, Appendix B found on DCFS's website http://www.illinois.gov/dcfs. Be sure to check Appendix B of both the Rule *and* the Procedure as the Rule sets out the definition of the specific allegation and the Procedure lists all the evidence and steps the investigator is expected to take as to the specific allegation.

3. ***Can you tell me, basically, what the Hotline call narrative says, since I really don't know what my client is accused of doing?*** I interjected this question early in the interview, because knowing the specific factual accusations helped me know how to answer some of the early questions. A lawyer may get away with jumping ahead to the heart of the interview, while a person without a lawyer might be rebuffed if she starts asking too many questions too soon.

At the same time, you have a right to know what you are being accused of before you answer a lot of questions. The investigator may want to do preliminary questions first, before answering, but by asking early on what the Hotline call against you stated, you are letting the investigator know that you know you are entitled to information and you will be more responsive to her questions if you know what is being said against you.

III. If You Work with Children, You May Be Entitled to Special "*Dupuy*" Protections

Special protections, also known as *Dupuy* processes, "expedited processes" or "child care worker" protections, named for the lawsuit *Dupuy v. Samuels* (also known as *Smith v. McDonald*, *Dupuy v. McDonald,* and *Dupuy v. McEwen*) are specific steps that Illinois DCFS must provide before making any "indicated" finding against someone who works with children. The term "child care worker" refers to professionals as well as non-professionals. It is not limited to day care workers or nannies: social workers,

pediatricians, dental hygienists, and gym teachers, for example, are all "child care workers" if their positions require them to work with children. Note: *Dupuy* rights are unique to Illinois' child welfare system and are the result of legal protections that were developed as the result of class action litigation that was filed in 1997 and concluded in 2007 (with a monitoring period that continued until 2011). The Family Defense Center's Executive Director was one of the lead counsel in *Dupuy* and the Family Defense Center assumed responsibility for enforcing the requirements of the final order in the case in 2007.

A. Purpose of the *Dupuy* "Child Care Worker" Protections

Because an indicated finding can be used by employers and licensing agencies, the specific procedural protections that were developed through the *Dupuy* litigation are intended to prevent indicated findings from causing harm to individuals' employment, employment- related licenses, or educational programs before they have a chance to challenge the finding in front of a neutral reviewer.

It may be counterintuitive to learn that it is beneficial to a child protection investigation or appeal if DCFS is aware that the target of the investigation works with children. This is unfortunate. Fear of the impact a DCFS investigation could have for one's employment accounts for artificially low numbers of persons who work with children receiving the special protections to which they are entitled. Many people are understandably reluctant to divulge this information, and this fear is sometimes encouraged by DCFS investigators themselves who may threaten individuals regarding their rights to work with children. But if DCFS investigators do become threatening or are oblivious to the impact of an indicated finding on your career, that makes it all the more important that you do take steps to ensure that DCFS treats your investigation as a "*Dupuy*" child care worker investigation. In our experience, there is only benefit to you in having the *Dupuy* protection; there is usually no downside to asking to be treated as entitled to the special *Dupuy* procedures, as these are

benefits to ensure a more careful investigation. You may wish to make the request in a formal manner (in writing) rather than simply orally telling an investigator about your work with children (since that oral telling may be incorrectly recorded or even turned

against you through inappropriate calls to your employer). The Family Defense Center routinely helps individuals file "*Dupuy* letters" to notify investigators of this status. *See* Appendix C for a *Dupuy*-designation sample letter. If you work with children and you are under investigation, you should use the attached letter to ensure that DCFS is aware of your status as a child care worker (*see* discussion below as to the benefits resulting from "child care worker" treatment and the definition of "child care worker" in the DCFS system).

All persons, regardless of whether they work with children or not, are entitled to have DCFS fairly consider the evidence against them. Under the *Dupuy* court orders, DCFS has a duty to gather and consider evidence for and against indicating an allegation of abuse or neglect. All persons are also entitled to have a timely appeal decision—*i.e.,* no later than 90 days from the date they file an administrative expungement appeal request.

B. Description of the Expedited Processes to which *Dupuy* "Child Care Workers" are Entitled

Persons who qualify as *Dupuy* "child care workers" are entitled to a set of special protections, which are collectively referred to as "expedited processes." These "expedited processes" include procedures designed to **prevent** the entry of wrongful indicated findings into the State Central Register and procedures designed to expeditiously **remove** wrongful indicated findings once they have been entered into the State Central Register.

What procedural protections exist prior to a final decision to "indicate" a finding? If at the end of an investigation, the investigator recommends "indicating" the allegation of abuse or neglect, child care workers are entitled to an **"Administrator's Conference"** with a high-level DCFS administrator who had no direct supervisory responsibilities in the investigation. This conference occurs through an up-to-one hour phone conference at which the child care worker can present documentary and oral reasons why the allegation should not be indicated **prior to** the finalization of a decision to indicate. This is a "pre-deprivation" process and is meant to prevent indicated findings where DCFS was unaware of important exculpatory evidence that should have been considered before indicating an allegation.

There are three possible outcomes of any Administrator's Conference: (1) a decision to unfound the allegation; (2) a decision to affirm the recommendation, which will make it a final finding, as to which there is a further right of appeal (but the indicated finding will be registered in the State Central Register while the appeal is pending); or (3) further investigation. If the last option is chosen, the Administrator's Conference should be reconvened if there is a continuing recommendation to indicate so that the child care worker has an opportunity to address any evidence or information that was obtained during the further investigation, but this further review does not always occur.

In practice, Administrator's Conferences do prevent some egregiously mistaken indicated findings from being issued. In the experience of the Family Defense Center, however, administrators conducting Administrator's Conferences have affirmed some plainly illegal recommendations to indicate findings. The fact that an individual has not prevailed at an Administrator's Conference is not a good predictor of whether the indicated finding will be sustained in a further appeal.

What procedural protections exist once an indicated finding has been entered against a child care worker? If an indicated finding is issued against a child care worker, the individual has the right to challenge that finding through an **expedited hearing process** by which DCFS must hold the hearing and issue its final decision within 35 days from the date on which the individual filed her appeal.

In the event DCFS indicates a child care worker without giving them an Administrator's Conference, that person must file an appeal of the indicated finding but will then have the right to request a "14-day review" of the basis for indicating them once the case is appealed. The 14-day review, which occurs only after the indicated report appeal is assigned to an administrative law judge and DCFS lawyer, is a very poor substitute for the Administrator's Conference, given it does not prevent the harm of an indicated finding before that harm may have occurred. Indeed, it is not any better than the review the DCFS lawyer should be making anyway as to the merits of the investigation underlying any case on their caseload. However, there may be reasons to request a

14-day review when you have appealed an indicated finding on an expedited bases as the 14-day review will (if properly handled by the Administrative Law Judge) simply toll the 35 day deadline for resolution of your appeal without thereby causing you to lose your right to an expedited appeal altogether.

C. Who Qualifies for Special Treatment as a "Child Care Worker"?

How do I know whether I qualify for the special* Dupuy *protections? The "expedited process" protections are only offered to individuals who are considered "child care workers" under DCFS policies. Because the issue of who should get these protections was litigated and then further negotiated after the federal court ruled, the definition of child care worker is a technical definition which may not be intuitive or obvious. That is especially true for teachers and foster parents.

As already noted, the term "child care worker" for purposes of DCFS investigations is not just a person who works in a child care center. The term includes many types of persons whose duties require frequent contact with children, if they meet a threshold amount of time (15 hours per week), are "career entrants" (meaning they are in an education or training program for a child contact career or are actively pursuing employment in a child- contact filed); or if they hold child serving licenses. There are a number of exceptions to the child care worker definition (for example, tenured teachers are not considered "child care workers" for purposes of qualifying for the *Dupuy* expedited processes), so simply working with children may not suffice to qualify some individuals for these special expedited process protections.

The following types of positions would qualify for *Dupuy* expedited processes protections:

- Persons who work in a position that requires direct care for children in a professional capacity (*e.g*., pediatric medical personnel, child therapists, day care providers, etc.).

• All non-tenured teachers in public schools, teaching assistants, school personnel (including administrative staff, custodial staff, etc.). Tenured teachers are not covered by the *Dupuy* expedited processes because they have job protections under the Illinois School Code.

• Persons with child care/professional licenses or who are pursuing such licenses or certification.

• Child care "career entrants," which includes persons enrolled in an educational program intended to lead to occupation as a child care worker as well as persons who have applied for child care worker positions within the preceding 180 days or who intend to apply for such positions in the ensuing 180 days.

• Nannies who work at least 15 hours per week.

DCFS has the right to request verification information to confirm an individual's child care worker status under the *Dupuy*-based policies.

Who is not a "child care worker" under the Dupuy definitions? The following persons are not included as "child care workers" entitled to expedited processes:

• Foster parents;

• Volunteers (*e.g.*, soccer coaches, scout leaders, etc.);

• Teachers who are tenured in the public schools. Note that being a member of a union is not a disqualification for treatment as a child care worker, but having tenure in a public school is disqualifying; and

• Persons who work in paid employment with children for fewer than 15 hours per week.

What if I meet the qualifications of a* Dupuy *"child care worker" but I am being investigated in my home life and not in my professional capacity? A person who is being investigated in their private capacity (*i.e.*, as to their own children) is still entitled to the *Dupuy* protections so long as they meet the requirements for qualifying as a "child care worker." However, it is not "automatic" that such individuals will be properly

afforded the *Dupuy* processes because DCFS may not be aware of the individual's work with children and people are understandably concerned about revealing work-related information. The Family Defense Center has long-standing concerns about the processes by which DCFS identifies child care workers. Because investigators are the people who are responsible for the child care worker identification and these same investigators may be poor note takers and delay in providing notices that are necessary to inform individuals about their *Dupuy* rights, hinging these important rights on the assumption that investigators will "get it right" is pretty risky. That is why we recommend sending in the notice at Appendix C of this guide, even if it is obvious that you work with children.

If it is obvious that you work with children, DCFS does have a duty to give you the expedited processes even if you haven't separately told the investigator about your work. And you are not required to use "magic words" in order to invoke your right to these special protections. Nevertheless, even when being investigated in a professional capacity (*i.e.*, due to an incident that arose in the workplace), it is still best to be sure that the DCFS investigator has documented that the person under investigation is entitled to the *Dupuy* protections. DCFS must code your case as one in which the Administrator's Conference and 35-day appeal hearing rights apply. The Family Defense Center recommends using the

notice found at Appendix C in order to ensure the investigators know that you are entitled to expedited protections.

Is DCFS implementing the* Dupuy *protections as required? The Family Defense Center continues to monitor DCFS's adherence to the requirement of the *Dupuy* court orders and agreements that were reached after the federal court case was resolved. The following concerns have been reported to us and are the subject of continuing discussions and potential litigation:

- Failure to identify persons as entitled to *Dupuy* protections, including where the person's employment is obvious;
- Overly-narrow criteria for who qualifies as a child care worker;
- Failure to afford individuals Administrator's Conferences to review the strength of

the evidence against them before they are indicated for child abuse or neglect;

• Continued use of the low, practically nominal "credible evidence" standard in practice;

• Denials of expedited 35-day appeals even when expressly requested;

• Directives that individuals cannot work with children during investigations, and long delays in investigations while individuals are out of work;

• Occasional threats that invoking "*Dupuy*" rights will be used against the individual (these threats are completely inappropriate and should be brought to the attention of the investigator's superiors); and

• Circumventing the time for final expedited or other administrative hearing decision by claiming the employee waived all rights to speedy adjudications.

If you believe your *Dupuy*-related rights were violated, you may seek the Center's assistance through its legal services program. *See* http://www.familydefensecenter.net/fdc-programs/legal-services for information about accessing legal representation for employment-related child protection matters.

IV. Emergency Removals of Children from their Parents' Custody

A. Legal Standards for Taking Protective Custody

In an emergency, DCFS investigators have the authority to take children from their parents without a court order or warrant. An emergency is where the child is in

immediate danger, and there is not enough time for the investigator to go to court and ask the judge for a warrant or a court order. Some obvious examples of emergency situations include:

- The investigator comes to the family's home, finds a two-year-old child alone, tries to call the mother but gets no answer, waits for 30 minutes but no adult shows up;
- While the investigator is at the family's home talking to the mother, the father suddenly appears, drunk and waving a gun and threatening to shoot everyone;
- While the investigator is at the family's home, the four-year-old child has a seizure and loses consciousness, and the mother refuses to call an ambulance or even to phone the family's pediatrician; or
- The mother, who is driving, stops the car in the middle of the street, gets out with the child, and walks down the street in the middle of traffic, claiming that someone is trying to follow her.

Under what circumstances will DCFS physically remove my children? What does it mean for DCFS to take protective custody? DCFS agrees with the Center that an emergency is required before a child can be taken from their parent, but may find emergencies are present in many circumstances where there is no actual immediate danger or where the Center would assert that there was plenty of time to get a court order. Furthermore, as the next chapter discusses in more detail, DCFS may threaten taking the child even when there is no emergency. The power that DCFS has to make decisions to remove children from their homes without sharing the information it relies upon to take these actions makes it very challenging to know how to respond to DCFS. Parents and their lawyers, when they do have lawyers, do not know what information DCFS is relying on at the time these emergency decisions are made or how the decisions are being made. But parents and their lawyers can sometimes intercede in ways that can prevent a protective custody decision from being made, or prevent those decisions from continuing to separate families who should not be separated.

Often, investigators will not tell parents in advance that they are planning to take legal custody of the children and sometimes, if the children have been with relatives under a "safety plan," DCFS may take legal custody without the parents even being aware. But

there may be clues given by what the investigators do or say. For example, if the child has been living with a relative during the investigation and the investigator tells the relative suddenly to take the child to the doctor, when the child has already been seen by a doctor recently, this is likely to be a reflection of a decision to take custody of the children and declare that DCFS has legal protective custody. DCFS has a practice of requiring children to see doctors as soon as protective custody has been taken. The parent may not be aware of the sudden change of legal status, and, as already noted, in this circumstance there probably is no emergency basis for taking the child from the parent. On the other hand, sometimes the investigators do not know in advance that they are going to take the children; rather, the investigators are responding quickly to an emergency situation that is developing.

How should I respond if a DCFS Investigator is taking protective custody of my children? If the DCFS worker is inside your home or with you and your child when she decides to remove your child from you, you should NOT try to stop her physically, such as by holding onto your child, by grabbing the investigator, or by trying to block the door. Touching the investigator or even the investigator's clothing is illegal, and you are likely to be arrested. Also, getting into a physical fight with an investigator may traumatize your children, who are already traumatized by being taken from you. Nor is threatening the investigator a wise idea either.

The best approach, if you can manage it, is either to prevent the investigator from having direct access to your children in the first place without a third party present who could provide care to the children in your place, or to try to slow the investigator down while you discuss the decision to remove the children. You can and should ask her to explain the decision and your options, ask to speak to her supervisor, ask for time to consult with others you are close to (including a lawyer if you have one!), and otherwise ask if you can reach some agreement as to an alternative plan that would be best for your child. Raising concerns about how your child's needs will be met if taken from you right now would also be appropriate. Obviously, this is easier to advise than to do!

The investigator may tell you that she is going to take your children from you and put them in foster care, in the home of a stranger, but that she will place them with your relatives or friends if you agree to sign a paper which DCFS calls a "safety plan." (For more information on "safety plans," *see* Section V of this Manual. Read it carefully

BEFORE you sign anything.) The investigator should not be demanding that you agree to separate from your child unless she first has decided your child is unsafe in your home. You are

entitled to know why the investigator considers the child unsafe and discuss alternatives based on that decision. Currently, unfortunately, there is no legal process to dispute the investigator's determination that your child is unsafe except if she actually takes the child from you and proceeds to court. But you are entitled to know why DCFS is making the decision that you cannot reside with your child during the investigation.

B. Legal Processes that Follow the Taking of Protective Custody

What happens after DCFS takes protective custody? If a DCFS investigator takes a child from you, the investigator must start a court case within 48 hours. However, if the 48-hour period ends at night or on a weekend, the investigator can legally wait until the next business day. So, if the investigator removes your child on a Friday, the investigator has until the following Tuesday to get the case in front of a judge.

If DCFS takes your child, you must find out when you need to be in court. You have a right to written notice of the court date and time and you have the right to have a hearing commence within 48 hours of the taking of your child into the State's custody. If you cannot find a lawyer to represent you and cannot afford to pay a lawyer, you MUST go to court anyway. The judge will appoint a lawyer for you if you establish that you cannot afford an attorney. But if you do not go to court, the judge will not hear your side of the story, and will not appoint a lawyer, and will decide whether your child should return to you or stay in foster care without hearing from you. (Note: The Family Defense Center has limited resources to help persons who have emergency temporary custody hearings, especially if those persons are indigent and qualify for appointed counsel. If the Center already has been representing a family during the investigation, the Center may be able to help with the initial process to make sure the parent secures a lawyer through the Public Defender's office at the initial court date. The Center works with a network of public defenders and private attorneys who help parents defend against juvenile court petitions.)

DCFS does not always succeed in getting a petition filed to keep your child from you after your child has been removed from you through protective custody or a safety plan (discussed in the next section). In one recent Family Defense Center case, the investigator went to court to try to get a case filed three times, and told the mother to come to court each time, anticipating there would be a court hearing to decide whether the child had to remain out of the mother's care. The case was never filed, because the State's Attorney needs to approve the petition and review whether the State can make a case for abuse or

neglect. After we learned that the State had not filed a petition against the mother, we counseled her that she could safely take her child home.

If DCFS learns that it doesn't have a case for believing your child was abused or neglected by a parent during the 48 hours, DCFS is under a legal duty to release the child back to the parents. Similarly, if a case is not filed against you within 48 hours of the removal, you have the right to have your child returned to you immediately.

If a petition is filed in court, how do I prepare for the first court date? How to handle a juvenile court case is beyond the scope of this guide, except that some initial basic advice may be helpful. First, in most cases, you will have some information as to what DCFS claims is the reason the DCFS investigator took your children away. You should collect evidence to show the judge that the investigator has made a mistake. Most importantly, you should be prepared to show that there was no emergency reason to take your child from you, even if there is a claim of some form of abuse or neglect, and that your child will be safe if returned to your care. The focus of the first hearing is on your child's safety in your home, so showing you can keep your child safe is very important.

You should also collect evidence from people who know you well and can testify that you are a good parent and not a neglectful parent. Usually it is a good idea to bring as many friends and relatives as possible, because showing you have a strong network of supporters is helpful not just to you but in showing the people who have never met you before that you have people who are willing to stand up for you (and maybe play a role in

caring for the child if the judge decides to return the child to you). If you have completed social services that demonstrate you have addressed the reasons for the removal, you should bring that evidence to the attention of the court. One parent brought 15 friends and relatives to court. Although not all of the relatives were able to testify, the judge knew that they were willing to testify that the parents provided good, loving care to their children. The judge returned the children to the parents quickly. Of course, the severity of the allegations will have a lot of impact on whether there can be an immediate return of the child and bringing friends and relatives is not necessarily going to make a difference in the outcome in every case.

Bringing a relative to court who is able and willing to care for the children in the meantime while the case is prepared for a fuller trial is also a good idea, especially if you are not happy with the current placement DCFS has made for the child. Judges and other persons involved in the court case will be much more likely to order placement with a relative who

comes to court than one who is simply available and wants to be considered, but doesn't make it to court.

All of these recommendations are general guidelines, however. The approach in one case may not be best in another. If you have a lawyer or have one appointed to represent you on the first court date, it is very important to discuss the best approach with your lawyer and discuss placement alternatives for the child as well. The lawyer may recommend coming back to court shortly to present your case when you have more time to prepare. Or the lawyer may recommend waiting to present your case at a fuller trial. These may be reasonable alternatives and while it will be difficult to accept that your child may not come home that day, it is important to work with your lawyer on the best strategy that will enable you and your child to be reunited.

V. DCFS Safety Plans, Directives to Leave Your Home or Have Your Children Live Elsewhere, and Restrictions on Contact with Children During Investigations

The term “safety plan” is used in various ways in different legal settings. In the context of a DCFS investigation, a safety plan is a specific arrangement, often but not always put in writing, which imposes some restrictions on the living arrangements for the family. A domestic violence “safety plan” is not at all the same as a safety plan developed by the child welfare system during an investigation. In fact, the Family Defense Center would

prefer to refer to safety plans as "family restriction plans" because DCFS safety plans may have little or nothing to do with real safety concerns that are present in a family.

If a DCFS investigator tells you that you need to have a "safety plan" or directs you to leave your home, tells you that your child cannot live in your home, tells you that a relative or friend must supervise you with your child at all times, or tells you there is to be either no contact with your children or restricted contact, you may need a lawyer to navigate this treacherous and potentially illegal demand upon you and your family. The Family Defense Center staff have been litigating affirmative cases involving parents' rights under safety plans since 2000, starting with its Executive Director's *Dupuy* litigation (which she co-led with a team of other lawyers) in an effort to get some limitations on these sorts of family restrictions demanded under safety plans and directives issued by investigators. The Center has been working to create a legally-accessible means for parents and other caregivers to challenge these often-baseless demands and create fair standards for when such restrictions can be requested or demanded of families. Some changes in law and practice have resulted from the Center's advocacy, but this area remains one in which DCFS and the Center have had fundamental disagreements about the legality of the family separations and restrictions that these plans impose.

A. Overview of Safety Plans

What is a DCFS safety plan? DCFS safety plans range from innocuous requests (ensure "no unreasonable corporal punishment," for example), to effectively severing or suspending parental rights during investigations (and sometimes *after* investigations). Some plans are just a day or two long, which can still be an excruciatingly long separation for a parent and child. Others have lasted for indefinite periods until further notice by DCFS—in extreme cases, for over a year. Some safety plans demand that parents have no contact with their own children for an unspecified period—which is as severe a restriction

on family life as can be issued by a governmental agent. Most safety plans that the Family Defense Center sees involve either a removal of a child to live with a relative during the investigation, or a requirement that the child must be supervised at all times by

someone who is not under investigation but who comes into the family home to supervise contact between parents and the child. While some families can "live with" these restrictions for a few days, most families find these sorts of restrictions very stressful or intolerable if they last much more than a few days.

DCFS policy anticipates that safety plans should be in writing, be "short term" (lasting 7-10 days), and should be reviewed every 5 days to make them the least restrictive on the family as they can be. The Family Defense Center rarely sees such regular reviews occurring in practice and rarely sees safety plans that are ended after 7 or even 10 days without then being replaced by another highly restrictive safety plan. However, DCFS, at least in principle, agrees with the Family Defense Center that safety plans should be short in duration if they are used at all and the Family Defense Center is hopeful that some changes in DCFS practices may start to limit the actual duration and intrusiveness of safety plans.

Why would I "agree" to follow safety plan terms that restrict my contact with my own children? A central concern that the Family Defense Center has with safety plans is that DCFS investigators typically use threats in order to secure a parent's acceptance of the plan. Moreover, they make these threats without first deciding that they have grounds to take the child from the parent. While called "voluntary" by DCFS, these restrictions are not voluntary to the parents who feel threatened or coerced into signing a safety plan "agreement" and do not know the reasons why DCFS believes their child needs such a plan. In getting safety plan "agreements," parents are routinely told that if they do not "agree" to such a plan, they will have their child taken from them involuntarily. If DCFS has not actually decided it has grounds to take the child from the parent, then it is has no business threatening the parent with this action. Sometimes this threat is more implicit, though it is also stated in writing on the safety plan form that the parent is given after being told it is necessary to "agree" to the plan.

When told by DCFS investigators that there must be a safety plan, or there will be a removal of the child to foster care (or even that there "may" be such a removal), virtually all parents "agree" to follow the plan in order to protect their children from the trauma of being placed with strangers and into foster care. No reasonable parent says "sure, take my kid if you want to do so!" Most reasonable parents will do anything in their power to keep DCFS

from taking their child and putting the child with strangers. Therefore, the overwhelming majority of parents will "agree" to patently unreasonable and unwanted restrictions in safety plans in the interests of protecting their child from this horrible threat of an even more drastic separation and foster care. And once they "agree," the parents then find there is no means available to challenge the basis for DCFS making this demand upon them in the first place. Under DCFS policy and Illinois law, a parent has the right to terminate a safety plan at any time, but in practice, the Family Defense Center has found that a parent's request to terminate a safety plan is rarely granted, further calling into question the true "voluntariness" of safety plans.

Under what circumstances will DCFS implement a safety plan? Safety plan demands are made whenever DCFS does a standard Child Endangerment Risk Assessment Protocol (CERAP) assessment during an investigation and determines that a child is "unsafe." Indeed, current DCFS policy requires that when a CERAP is marked as "unsafe," DCFS must either take protective custody or have a safety plan. But the actual terms of the safety plan are not dictated by DCFS policy—DCFS investigators have broad discretion to create highly-restrictive safety plans whenever they have an "unsafe" CERAP. (CERAP assessments are supposed to be done within 48 hours of a Hotline call and regularly redone during the investigation.) A CERAP is marked as "unsafe" whenever one of the listed "safety factors" is checked "unsafe" and there is ongoing contact between the alleged perpetrator and the child. *See* Exhibit 2 to this guide to view a sample CERAP form listing the possible "safety factors." Because investigators are permitted to check the existence of a safety factor based on nothing more than an a*llegation* of sexual or physical abuse, safety plan demands are routine at the very beginning of investigations of sexual and physical abuse claims, and also occur in some neglect investigations, even when DCFS has not yet gathered any evidence of actual wrongdoing and has no evidence that there is any immediate threat to the safety of a child. While not all investigations include safety plan demands, most sexual abuse investigations **do** have such demands upon the alleged perpetrator if that person lives with the child, and many physical abuse cases will have safety plan demands, too, if the persons alleged to have abused the child live with the child. This may be so even though the evidence against the parent is weak to non-existent at the time the safety plan demand is made.

The Family Defense Center is hopeful that some improvements in safety plan practices are underway, however, including limitations on the use of safety plans altogether. Recently, DCFS has confirmed that these plans should be used only if DCFS possesses grounds to take protective custody of the child and chooses instead to make an alternative arrangement

with the parent (or both parents if the child lives with both parents) on a very short term basis. If DCFS *does* have a legal basis for taking a child into custody but instead implements an alternative plan that the parent accepted, such an arrangement might potentially be found to be lawful or "voluntary." However, this understanding is not yet incorporated in clear policies and practices. The Center will update this guide as DCFS changes its safety plan policies and procedures.

DCFS uses a safety plan form to record the "agreements" that safety plans create. *See* Exhibit 2 to this guide. Because these are viewed by DCFS as "voluntary" agreements, they *should* be modifiable at will of the parties. However, parents who wish to modify safety plans are often told they cannot do so, which demonstrates the fallacy of calling safety plans "voluntary." Moreover, as soon as a parent voices disagreement with a safety plan or a desire to change it, DCFS may issue another threat of removal of the child or other court action, even though DCFS may not have a legal basis in fact to justify making that threat. Parents may be justifiably fearful of "rocking the boat" once a safety plan has been established. For these reasons, parents who are under safety plan demands really do need qualified legal counsel who can assess the risks they are facing and negotiate workable agreements that might pass the test of "voluntariness" or who can challenge the restrictions placed upon the family.

See also Appendix B to this guide ("Summary of Concerns about Safety Plans") if you are subject to a safety plan that you believe may be unlawful and Section VII below (listing some safety plan and directive cases as ones that give rise to civil rights litigation). All of these concerns are ones that the Family Defense Center takes very seriously and is working to redress. The Center will update its client community and supporters with e-newsletters and newsletter articles as we achieve changes in policy and practice concerning safety plans.

B. Oral Directives Impacting Parents' Contact with Children

A directive is like a safety plan except that it is oral only and is not set forth in a written document. A directive is an order or instruction by an investigator to change a family's living arrangements or limit parents' contact with their child. DCFS investigators have no authority to make such directives. Illinois law requires that any safety plan must be in writing, signed by all participants, and spell out rights and responsibilities of the participants. If you have been told you cannot live with or see your child and there is no court order telling you so, and you have not signed a safety plan communicating an

"agreement" to abide by this directive, your constitutional rights may have been violated. While you may be at some risk if you defy the directive you have been given, you are entitled to bring this directive to the immediate attention of the investigator's superiors and demand that the directive be rescinded as unlawful. If you continue to be subject to such an order or instruction, you should seek legal advice and assistance.

C. Strategies for Responding to a Safety Plan Demand and/or Oral Directive

What steps can I take in the face of a safety plan or directive even if I don't have a lawyer? If a parent is facing a safety plan demand or directive, these are some steps the parent can take that will potentially help to shorten, modify, or end the safety plan or to document that the parent's agreement to follow the safety plan is not truly voluntary. Answers to the questions set out below may provide essential information that will help the parent and his or her counsel to evaluate what would be the best response to a safety plan or directive. Since safety plans and directives are issued routinely without DCFS having gathered sufficient evidence to support the taking of protective custody, the first thing a parent needs to find out is what basis DCFS has for making the threat of taking the child from the parent. Parents have the right to know why DCFS considers their child "unsafe" without a safety plan and what evidence DCFS has to support that determination. If DCFS refuses to tell a parent this, then it cannot claim the parent is making a "voluntary" decision about his or her rights to live with the child or see the

child.

The following are good questions to ask the investigator if a safety plan demand is made:

1. What is the safety factor DCFS has checked as unsafe in making the decision that there needs to be a safety plan?

2. What evidence does DCFS have to support the conclusion that the checked safety factor applies in this case?

3. Is everyone in the household considered unsafe? Who is it that DCFS believes needs to be restricted in their contact with the child?

4. Is there another arrangement that can be worked out that will be the least disruptive to the child? Can the agreement be in place for just the next 24 to 48 hours and will the plan end then? What steps will be taken in the next 48 hours to make that

possible? Is there any information that DCFS needs from family members that will make it possible to end the safety plan quickly, assuming it were agreed to now?

5. If DCFS does not agree to any living arrangement that is truly short term, what is the outside date on which this demand will be lifted?

6. Is it possible to agree that a child will stay in the home with the parents and allow the parents to assure his/her safety in other ways? (For example, parents may propose

alternatives to find out what is acceptable, including both parents supervising each other if that is more manageable than having the child or parent leave the home. If DCFS says no to alternatives that parents propose, parents should ask why.)

7. What policies of DCFS are requiring this safety plan?

8. What will happen if we don't agree to the restrictions DCFS is insisting on?

If the investigator does not present a written safety plan form but, instead, issues an oral directive, the following statement can be made to DCFS before asking the questions above:

> I know that I am entitled under Illinois law to have a copy of a safety plan. A directive to leave my home [or have my child live elsewhere] is not lawful. May I speak to your supervisor about this? Who is your supervisor? If you are demanding that we have a safety plan, can you please give me the terms in writing and let me review them in order to determine whether to agree or not?

In all interactions with DCFS investigators, parents should be polite in seeking information and offering to negotiate terms that DCFS will find acceptable.

Parents should also consider alternative safety plan arrangements that help them live with safety plan demands to the extent feasible. The form at Appendix D to this guide can be used to create an alternative safety plan that parents propose to DCFS. Some examples of less intrusive safety plans that DCFS may be willing to agree to (because they assure the safety of the child) include the following possibilities (Note that even though DCFS may not accept these alternatives in any given case, it is worth making suggestions that do not necessarily challenge DCFS's assumption that there needs to be some sort of safety plan;

it is often easier to get a "better" safety plan than to convince DCFS that there should be no safety plan at all.):

- Allow both parents to supervise each other (this can work in cases in which DCFS

does not suspect both parents abused the child together);

• Set up a plan for an outside trusted monitor to come into the home and report on how the children are doing each day;

• Agree that a relative will remain with the children at all times;

• Extend the list of people who can supervise contact with the child (DCFS should not withhold consent to additional supervisors);

• Agree that if a service provider submits a positive report by a certain date, the safety plan will end;

• Agree to certain services if DCFS agrees that as soon as enrollment is confirmed, the safety plan will end or change;

• Agree to seek a custody order or domestic violence order of protection, if there are grounds to do so (the denial by a court of any request for such an order cannot be grounds to prolong the safety plan); or

• Agree to refrain from alcohol use, substance use, corporal punishment (some safety plans simply include such agreements).

While discussing alternatives may be easier than asking an investigator to end the safety plan altogether, these understandable difficulties of negotiating with a person who is simultaneously investigating you for alleged child abuse is a further reason to get a lawyer as soon as a parent finds out he or she has been the subject of a safety plan or directive demand. If retaining a lawyer is not a feasible option, the parent should make sure to only have conversations with DCFS about safety plans in the presence of another adult person whom the parent trusts.

If a parent finds himself in an escalating argument in which DCFS becomes increasingly threatening, the Family Defense Center does routinely counsel parents to sign agreements that are demanded of them but to write the words “under duress” underneath or next to the signature on the plan when they sign. DCFS might not accept such “under duress” plans, but that only serves to reinforce that the plan is not in fact a “voluntary” one.

When is it advisable to consult with a lawyer? The Center urges parents under these plans to discuss with their lawyer what to do in this situation, including as soon as possible after the fact if the lawyer was not present or contacted when the safety plan or

oral directive was made. (This is usually the case, as the Family Defense Center itself has rarely been on

the phone or at the home of a parent subject to an initial safety plan demand. On the occasions when the Center staff has been on the phone, sometimes the abusive threats to our clients have continued and counsel's requests to change the safety plan have been ignored; at other times, the safety plan demands have been reasonably modified.) If the only choice a parent has is to sign a plan without the words "under duress" on the plan, because otherwise DCFS will be taking protective custody of the child then and there, then the Family Defense Center does not advise continuing to press and when confronted with no choice, you may decide to sign the safety plan form "as-is" and consult with counsel as soon as you can afterwards.

If parents have lawyers, the Center is aware that some lawyers may press their clients to sign safety plans under any circumstance or may wrongly believe that DCFS safety plans are legal documents or the equivalent of a court order. In fact, the only legal basis for any safety plan is the parent's agreement to it. If a parent *did* genuinely have reasons to agree to the terms of the safety plan—for example, because the parent believes the child would be genuinely safer with another person, or if DCFS had sufficient evidence to take protective custody of the child and petition the court for custody—then it is possible that the safety plan would be considered "voluntary." And if DCFS does have the legal grounds to take custody from the parent but chooses to implement a safety plan as an alternative to protective custody, then the temporary agreement to the safety plan could be considered voluntary and therefore legal. But oftentimes, safety plans are not voluntary and they have no legal basis. (This is why the Family Defense Center has brought a number of lawsuits to challenge safety plan policies and practices.) The decision to agree to a safety plan should be discussed in detail with your lawyer so that you understand your legal options and the basis DCFS has for making the safety plan demand. A lawyer may be in a better position than the parent to ask the questions suggested here given the genuinely stressful circumstances parents are under during an investigation. However, a lawyer who directs parents to agree to safety plans and directives without understanding the potential lack of lawful basis for the DCFS demand for a safety plan may be doing a disservice to their clients.

In short, parents who find themselves in this perilous legal situation will want to get as much information as possible and make as informed a decision as possible. And if threats are made in the course of making these demands, this is a challenging position for any parent to face, especially without a lawyer. There are no simple "right answers" as to how to address these demands that apply to every case.

Can a safety plan continue after the investigation has come to an end? If another agency (including another child welfare agency) other than DCFS is demanding that a safety plan must continue (by, for example, workers overseeing an intact services case), a lawyer should also be consulted. It is the position of the Family Defense Center that safety plans can *only* be lawful if done by investigators who have genuine grounds to take protective custody, and since other persons besides investigators do not have the legal authority to take protective custody, they should not be doing safety plans at all. If non-investigative agency workers believe there is a need to have a change in custody during the services case, they should get court orders to that effect.

What happens when a safety plan ends? DCFS should end safety plans as quickly as possible, should do a written termination form as soon as the safety plan is over, and provide the plan participants with a copy. Parents often ask the Center if they should allow the investigator to come out to do a safety plan termination form and the answer is generally "yes," unless there is a genuine reason to fear that the investigator is misrepresenting the intent to end the safety plan, in which case counsel should be consulted.

VI. Special Considerations: Issues arising as to DCFS Interviews of Children and other Demands Made by DCFS During the Investigation

In this section, we discuss some special questions that come up in some interviews. We have previously mentioned the first issue—interviews with children—but we discuss this issue in more depth here. The additional issues discussed in this section are demands for assessments, treatment, and services that might be made in investigations.

A. Interviewing Children: General Considerations

The DCFS investigator will want to interview your child. You have the right to decide

whether the investigator speaks to your child. If you agree to let the DCFS investigator question your child, you have the right to choose an adult who will be present during the questioning – any adult but yourself. Whether the investigator interviews your child may be a difficult decision, but it is YOUR decision to make. This guide cannot tell you whether or not you should let the investigator question your child, because that decision depends on a lot of factors which are specific to you, your family, and your case. This guide can only give you some guidelines.

The majority of parents do allow DCFS investigators to interview their children. Therefore, if you refuse to let the DCFS investigator speak to your children, the investigator will think that your behavior is out of the ordinary, and might even conclude that you have something to hide. That's why it is a good idea to consider alternative ways for the investigator to talk to the child, including with a trusted but neutral person present.

If the investigator has a good reason to think that there is an immediate risk to the health or safety of the children, the investigator has the right to take your children away from you immediately, without a warrant or court order. *See* Section IV above. Your failure to allow the investigator to speak to your children may be a factor that the investigator takes into account in deciding to take your children away from you. Short of taking protective custody of your children, the investigator could also seek a court order compelling you to allow DCFS to interview your children. If talking to your children will reassure the investigator that the children are safe with you, you might decide to let the investigator question your children in the presence of another adult that your children trust. In general, going along with the request is going to be easier than opposing it, so if you want to oppose the interview for your children, it is recommended that you seek legal counsel to help navigate the demand to see and talk to your child.

If your child is very young, has emotional problems, has neurological problems such as autism or mental retardation, or has been traumatized, you must decide whether talking to a DCFS investigator will cause additional harm to your child. If, for example, the investigator is investigating an allegation that a child's brother sexually assaulted her, the mother may decide that it will be more harmful to the child to speak about the incident

with the investigator than not to speak with the investigator. In that case, the mother may decide to refuse to let the investigator question the child, but may propose an alternative whereby the investigator is present while a skilled clinician interviews the child. Alternatively, the parent may believe it would be therapeutically good for the child to talk to the investigator about the incident, even though the incident was horrible. You, as the parent, are in the best position to decide whether it will be helpful or harmful to your child to speak with the DCFS investigator, though you may want to seek advice from others who also know your child. The purpose of a DCFS investigation is to decide whether a child needs to be protected from harm, not to cause additional harm to the child.

It may be very traumatic for you to be accused of abusing or neglecting your child. These types of allegations are humiliating and offensive to many parents, so humiliating that some parents do not even tell their closest friends and relatives about the allegations, and consequently are deprived of the support and allies whom they need to get through the ordeal of a child abuse investigation. But reaching out for advice about how to handle the interview, including the interview of your child, is something that you can do to be proactive on your own behalf and on behalf of your children.

B. Settings and Timing of Interviews of Your Child

If there is an allegation that someone sexually abused or molested your child, or an allegation that someone inflicted serious physical abuse on your child, there are professionals who are specially trained to interview children at a Children's Advocacy Center ("CAC") through what's called a "victim sensitive interview" ("VSI"). *See* Section C below. If a VSI is being scheduled, the DCFS investigator will not usually question the child in much detail during the first contact with the child but will prefer to let the CAC interviewer do the main interview with the child. This avoids the problem of multiple interviews, which can add inconsistencies and make prosecution of child abuse more difficult for the State.

If the DCFS investigator calls you before coming to your home, you can schedule a meeting at a time that is good for your family. You do not have to agree to let the investigator come at the time the investigator suggests if that time is not good for you. The DCFS investigator may come to your home without calling first, and may catch you by surprise at an inconvenient time. Your family may be eating dinner, or the children may be doing their homework. If the time is not good for you, you can tell the investigator to return on another day and time that works better for you. Before leaving, the investigator may want to see your children, so that the investigator will know that the children are alive and not badly battered. So, even if the investigator does not speak to your children, you may decide it is a good idea for the investigator to look at the children, at least briefly.

If you are upset and humiliated by the false accusations, there is a good chance that your child will be less upset than you. Usually, the child is not going to be upset by answering a few questions from the DCFS investigator, though some investigators have been known to be rude to children and parents alike (if you sense the investigator is someone who cannot be professional, you do not have to let that particular investigator talk to your child; you can insist on someone else doing the interview). Usually, your child may simply think that the DCFS investigator is a friendly person who wants to have a friendly conversation, and there will be no trauma to the child from letting the child be questioned at home. This is especially true if the allegations are completely untrue, and the child has no idea that someone made ridiculous accusations. In a case like that, it may be very helpful for the investigator to speak with your child and to hear directly from the child that you are a good parent, who takes good care of the child. Obviously, though, your comfort with letting the investigator talk to the child depends on the child's age, ability to recall information, and language level, among other factors.

C. Interviewing Children when Parents Object

At home. When a DCFS investigator comes to your home and asks to talk to your child, you can refuse to let the investigator talk to your child. Or, you can allow the investigator to talk to your child with another adult present. You cannot insist that the investigator talk to your child when you are present. However, in Illinois, your child does have the right to have a neutral person sit in with then during a DCFS interview and you can insist

on this, consistent with DCFS's own policies.

If you decide to tell the investigator that she cannot speak to your child at all, the investigator will probably try to find another way to talk to your child. The investigator

will probably ask you repeatedly to allow her to see the child and talk to her. If you say "no," the investigator can go to court and ask the judge for a court order that you must permit DCFS to interview your child. If a judge issues such an order, you must obey the order or risk being sent to jail for contempt of court. If a DCFS investigator comes to your house, and you do not allow the investigator to talk to your child, you should assume that the investigator might try to interview your child at school, especially if the child attends public school.

The Family Defense Center is very concerned that DCFS may actually be engaging in illegal seizures of children when investigators interrogate children at school without their parents' permission, using the school effectively as a satellite DCFS office and a way to get around parental rights. Whether questioning children at school amounts to an illegal seizure is a legal question you may want to discuss with a lawyer, especially if your child has been traumatized by the questions she is asked. You also should request from your children's school information about their policies of notifying parents of interview requests by third parties.

If you know the investigator is going to try to talk to your child, you may want to alert the school administration to notify you if and when a DCFS investigator comes to the school asking to speak to your child. Whether you can insist on such notice may depend on whether your child attends private school or public school.

It is important to make your own assessment of whether your child is likely to make reliable statements to the investigator or if the child will be prone to confusion or fabrication. This may be hard to know, but children who have mental health issues, speech delays, intellectual deficits, or other issues may need to be interviewed, if at all, in the presence of someone who is aware of the child's needs. It is not unreasonable to tell the investigator that the child can be interviewed, but only if a therapist or teacher who

knows the child can be present due to these special concerns.

In private schools. If your child goes to a private school that is not a DCFS-licensed facility, the school administrators can refuse to let the investigator talk to your child. The school administrators can even tell the investigator to leave the building immediately. Private schools are private property, and government investigators, including DCFS investigators, can go onto private property only if they have the owner's permission. If a DCFS investigator is already inside the school building, the investigator must leave the building as soon as the school administrator tells the investigator to leave.

You should probably call your child's school as soon as you are aware of a DCFS investigation and tell the principal, headmaster, or dean that you do not want the school to let any DCFS investigators talk to your child at the school. Remember that the school, and not you, makes the final decision about whether or not the DCFS investigator will speak to your child at school. However, the administrators at many private schools will do what the parents ask.

In public schools. Public schools are, generally speaking, the property of the government, and government investigators, including DCFS investigators, generally are trained to believe that they have the right to go to public schools and speak with children in the school building or outside the school without the parents' permission and outside the presence of the parents. Some public school principals will make sure a school employee (such as a teacher, guidance counselor, or school nurse) is present when DCFS investigators interview pupils at the school building. Other public school principals allow DCFS investigators to interview children at school with no other adult present.

While local school boards have some rules that limit persons from outside the school from coming into the school, most schools liberally allow DCFS investigators to talk to children in both public schools and private schools. There have been a number of lawsuits in various states in which parents have gone to court, trying to get judges to order investigators not to interview children in school without the parents' permission or seeking damages after the fact if children are interviewed without permission. One of those cases went all the way to the United States Supreme Court. The Supreme Court

refused to decide whether parents can prohibit investigators from talking to children at school about whether the parents have abused or neglected the children.

If you want to try to stop a DCFS investigator from talking to your child in school, you should get a lawyer immediately.

Children may be traumatized if they are interviewed at school about their home life. You may want to have your child talk to a neutral person about their experiences shortly after they are questioned at school without your permission. Of course, you may also want to discuss the legality of the interrogation with a lawyer.

D. "Victim Sensitive Interviews" at a Children's Advocacy Center

When DCFS investigates allegations of sexual abuse or physical abuse, the investigators may ask the parents to permit their children to be examined at a Children's Advocacy Center ("CAC"). You have the right to refuse to have your child examined at a CAC, but refusal may have consequences for the outcome of the investigation, for decisions as to requiring a "safety plan" (*see* Section V above), or for decisions that may be made to start a court case or make an indicated finding against you. (DCFS is allowed to consider refusal to cooperate with demands for child interviews as a factor against you in the investigation.) If you want to resist a demand for a CAC interview for your child, you should get a lawyer immediately if DCFS is pressing you for the interview and you need advice as to the consequences in your own case of your decision as to your own child.

If you agree to the CAC interview, you must bring your child to the CAC except that if you are the suspected perpetrator you will likely need to arrange for a different person to bring your child for the interview as most CACs have policies prohibiting the person suspected of committing the alleged abuse from entering the premises. Oftentimes, DCFS will instruct the "non-offending" parent (*e.g.*, in a case where a father has been accused of committing sexual abuse, the mother would be designated as the "non-offending"

parent) to bring the child for the CAC interview at a pre-determined time. A doctor who works at the CAC may do a medical examination of your child. A social worker or other trained child interviewer who works at the CAC will question your child. A detective from the police department is likely to be present at the CAC as well as a State's Attorney and the DCFS investigator or supervisor, but these persons will not be questioning your child; they will watch the interview behind a one-way mirror.

A medical exam of your child may be done at the CAC. You have the right to consent or refuse consent to any medical exam. Parents should also be allowed to be in the examining room with their child or insist that another trusted adult be present with the doctor. However, CAC staff may not permit you to be present when the doctor examines your child or when the social worker questions your child, so you will need to consider how you want to handle any demand that you cannot be with your child. Lawsuits have been successfully brought where gynecological exams of girls have been done without parents being present and without their consent, where the parent is not accused of wrongdoing. As mentioned above, persons accused of being abuse perpetrators, including accused parents, are not allowed to come to CAC premises at all. But custodial parents who are not themselves

under suspicion are asked to come to the CAC and might be allowed to watch the interviews and stay with their child during a medical exam.

The DCFS investigator and detective at the CAC are also likely to question the parent or caregiver who brings the child to the CAC. Your child will not be present when the investigator and detective question you. You have the right to refuse to be questioned. If you allow the investigator and detective to question you, you have the right to answer some of their questions and to refuse to answer other questions. See discussion of what to expect in an investigation (Section I above).

After the CAC interview, the DCFS investigator, police detective and State's Attorney typically meet and discuss the next steps for them, including whether a criminal complaint will be filed. Additional steps in the child protection investigation are usually discussed. Sometimes, the CAC interview will lead to the prompt release of the child

back to a parent and an "unfounded" decision and at other times, the CAC interview is a preliminary step in a longer investigation.

E. Parental Questioning of Children and Allegations of "Coaching"

Parents whose children are being interviewed by DCFS are understandably anxious about what the child will say. But the parent who is accused of abuse or neglect should not be questioning the child about the allegations. Even if you are innocent of any wrongdoing, it is not recommended that you question your child about the statements she has made to others or is asked about by the investigator. If your child spontaneously gives you information, it is reasonable to make note of it, but parents can taint the outcome of investigations and find that even children's statements that would help them establish their innocence of wrongdoing can be used against them if DCFS has evidence that you tried to influence the child's answers.

It is acceptable to tell the child that someone will be asking them questions and tell the child to tell the truth. Beyond that simple information, parents who are under investigation themselves should not discuss the allegations with their children while the investigation is occurring.

If you believe another parent or person involved in the investigation is influencing the child to make false statements, try to find evidence that this is so before you suggest coaching by someone else. If you don't have this evidence, then trying to discredit the child in this

way can sometimes backfire. At the same time, if a parent does coach a child to make allegations of abuse, this is information that the investigator should know, especially if you have some evidence to back up the claim. It is not a ground to remove a child from their parent if the investigator believes the child has been coached, but it may be a factor in deciding the outcome of the investigation.

F. Medical Treatment and Tests for Injuries that are Under

Investigation

The law requires parents to provide medical treatment for their children. Parents who do not provide necessary medical treatment for their children are guilty of medical neglect. But parents who choose not to provide optional medical treatment are not neglectful.

If a DCFS investigator insists that a child needs to be seen by a doctor for an injury that is under investigation, you have the right to get that opinion from the child's own doctor and not simply go to the doctor DCFS wants you to see; parents with general rights of custody as to their children have the right to choose their children's health care providers. A medical evaluation of the child's injuries from a trusted doctor can make the difference between a finding of abuse or no finding, and sometimes can make the difference in your success in getting children home if a court case actually is filed.

When a child has an unexplained injury, such as when a bone fracture is discovered and the parents do not have direct or definitive knowledge as to how it occurred, some doctors are often quick (too quick in our view) to think that the parents are likely to have abused the child and lied about it. The doctors and DCFS will all be looking at whether the parents' explanation is medically consistent with the fracture. Some doctors and investigators accept that parents may not know how an injury occurred, but some may find that minor differences between the way one parent reports what happened and the way the other parent reports it makes the account unbelievable. In any event, in young children who normally do not have the sort of injury that is seen by the doctor without some external force being applied to the child (*e.g.*, a non-ambulatory infant with a leg fracture), the doctors or other hospital staff will report the unexplained fractures to the Hotline.

When DCFS investigators and doctors ask about unexplained injuries, if the parent does not know the cause, it is important not to guess. For example, if baby has a fracture of the femur (the large bone in the upper leg), and the parent tells the investigator, "maybe she fell off the couch," the investigator will hear "she fell off the couch" as the explanation, rather than as a guess. Then, if it turns out that the child's injuries do not match the "fall

off the couch" explanation you provided, you are more likely, not less likely, to be

viewed as responsible for the injury. If the investigator and doctors believe that the way the fall is described is unlikely to have caused the injuries, the investigator may decide that the parent is lying in order to conceal the fact that the parent caused the fracture by abusing the child. This is why it is often better to say very little about the possible causes of injuries when you don't know.

When DCFS investigates cases of injuries that are suspicious for child abuse, investigators and doctors on child abuse teams will often demand more tests, such as x-rays of all the bones in the child's body, known as a "full-body x-ray" or "skeletal survey." Usually, the child abuse doctors and investigator are looking for more abuse evidence. They may even ask the parents to bring all of the children in the family to the hospital for full-body x-rays of all the children, even the children with no signs or symptoms of fractures. The purpose of that type of x-ray is NOT for medical treatment. It is part of a child abuse investigation, which could lead to criminal charges against the parents and child abuse cases in the juvenile court.

Parents may agree to have all the children x-rayed, thinking that, when the x-rays show that none of the children have any other fractures, DCFS will realize that the one injury they have been investigating was an accident, rather than child abuse. But there are drawbacks to this procedure. If you are asked to consent to full-body x-rays on any of your children, TALK TO A DOCTOR FIRST, preferably your child's own pediatrician. X-rays are diagnostic tools which subject your child's body to radiation, and that can be harmful to your child's health. Before you agree to subject your child to that amount of radiation, you need to get your pediatrician's approval. Moreover, if there isn't any medical reason to do these tests, merely agreeing so that you can help DCFS complete its investigation is not something you are required to do nor are you necessarily doing the "right" thing for your child just because a DCFS investigator or child abuse doctor wants to look for other signs of abuse. You may want to ask your pediatrician to help you advocate for safe medical care for your children, and not unnecessary exposure to radiation.

On rare occasions, all doctors (including your own pediatrician) will decide that x-rays of healthy children are medically necessary. In that case, your refusal to consent to the x-rays might be considered medical neglect. You should contact a lawyer immediately if you want to refuse x-rays that DCFS or child abuse doctors are insisting you need to

submit your child to without a strong medical justification.

G. Services and Assessment Demands During Investigations

DCFS investigators may insist that parents participate in assessments or "services," and even threaten to take the children if the parents do not participate. While the case is in an investigation posture, these assessments can turn into what lawyers call a "fishing expedition"—*i.e.*, a search for reasons to justify the investigation in the first place. Substance abuse, psychological, and sexual offender assessments, when requested during investigations, can often hurt parents and rarely appear to help them. This is because the purpose of most assessments is to uncover problems and focus on deficits, not strengths, so that these issues can be worked on in a later treatment program. On the other hand, in cases in which there are genuine issues that will need to be addressed and the outcome of the investigation is clearly going against you, it may be advantageous to begin the assessment and service process quickly. Additionally, where the issue in the investigation may involve a child's needs and whether the parent has met those needs, starting the assessment process could be viewed as a positive sign of parenting. But very often, assessments find some issues to be present that could sway the investigator on the merits of the allegations against you. This is especially true with sexual offender assessments: these assessments can be especially prejudicial to a person who may be innocent of the particular alleged sexual offense. Therefore, it is often not in your interest to agree to any further assessment of substance abuse, domestic violence (a type of assessment that actually doesn't exist but may be requested nevertheless!), mental health, or sexual offending during the time the investigation is pending.

On occasion, it may be a good idea to submit to an assessment or to provide an assessment you have received to DCFS during the investigation. Assessments can sometimes be helpful if you have a trusted service provider who can provide a very positive report about you during the investigation. After all, if the purpose of the investigation is to see if you have a problem that affects your ability to care for your child, giving DCFS an assessment that refutes this concern and shows you are pro-actively addressing your own and your child's needs can be a powerful piece of

evidence in your favor.

You do have the right to refuse the request for further assessments during investigations, however. Assessments and services during investigations are voluntary, under all three statutes that govern DCFS (i.e., the "Abused and Neglected Child Reporting Act," the "Children and Family Services Act" (which is the statutory framework that actually creates DCFS), and the "Juvenile Court Act"). If DCFS tell you that you need to start to engage in "services" during the investigation, you need to consider this request carefully. While

the term "services" sounds like a benefit that DCFS will give to the parents, the services that DCFS investigators talk about are normally not benefits. The "services" that DCFS refers to are tasks that DCFS wants you, the parent, to perform in order to keep custody of your children. The most common "services" that DCFS demands are parenting skills programs, drug or alcohol treatment programs, anger management programs, and psychotherapy or counseling. All of these programs are voluntary; DCFS CANNOT force you to participate. Only a judge can order you to participate in any "services." You should be aware, however, that although refusal to participate in services is not a permissible basis to "indicate" an allegation under investigation, it can be grounds for DCFS to seek court intervention and request an order compelling you to participate in services if DCFS has evidence that services are required to ensure the safety of the children.

Before agreeing to any services DCFS is requesting of you, you should decide whether participating in the programs that DCFS demands of you will work for you and your family and will actually help you. Here are some considerations as to each of the types of services that DCFS might ask you to start during an investigation. Please note that the timing of your agreement to services matters: if you agree while an investigation is still open, information from the service providers can be given to the investigator. If you wait until the investigation is closed, the service providers' reports will not affect the outcome of the investigation.

DCFS investigators will not hold up their decisions in investigations while you decide whether to start certain services. Often, services are requested by other caseworkers after

the investigation is complete. But if DCFS investigators ask you if you are willing to engage in services, the answer should almost always be "yes." You do not have to immediately start those services, but expressing a willingness to do them (or at least a willingness to consider the offered referral options) is a positive factor. Even though it is inconsistent with DCFS rules and procedures to base a decision to "indicate" on a refusal to participate in services, a refusal can cause unnecessary tension with the investigator and, in some situations, could even be grounds for initiating a case in court.

Parenting skills programs or parenting skills classes. Parenting skills classes are supposed to teach parents how to care for their children. Some parents find some parenting skills classes useful in helping them to care for their children better. Other parenting skills classes are a waste of time and don't teach parents anything, adding stress to a busy parent's life. However, parenting skills classes are almost never harmful. If the investigator tells you that DCFS will take your children away if you refuse to attend parenting classes but

will allow the children to stay with you if you agree to attend, remember that if DCFS takes the children, they must start a case against you within two days, and then a judge will decide whether the children will return to you. Therefore, you have two choices. You can either sign up for parenting classes or you can refuse, understanding that DCFS might start a court case against you and might even take your children. If you sign up for parenting skills classes, DCFS expects that you will attend all of the classes (usually 6, 7, or 8 classes) and will get a certificate showing that you have completed the program. (You will not have to take an examination at the end of the program.) If you drop out of the parenting skills program without completing it, DCFS may decide that you did not "cooperate with services," and start a court case against you.

Psychological assessments, sex offender assessments, psychotherapy, or counseling. DCFS investigators are not psychiatrists or psychologists. Despite their lack of credentials, they may insist that you get therapy, and claim that the therapy is a "service." Or they may start by demanding an assessment. BEWARE. It is almost never a good idea to agree to a psychological assessment or a sex offender assessment or a domestic violence assessment (note: there is really no such thing as a domestic violence assessment! If you believe you are a domestic violence victim, in the domestic violence

world, that is all the assessment you need!). The reason assessments should not be agreed to during investigations is that they usually find problems that need to be addressed and rarely give individuals a clean bill of health. For this reason, they are used to bolster the decision to find abuse or neglect, and rarely used to decide that the allegations against a parent are unfounded.

On the other hand, if you are already receiving services, there may be good reason to tell DCFS about those services as they can potentially provide reasons why DCFS does not need to be involved in your family, because you are already addressing your needs. In some cases, the parent has already been evaluated by a psychiatrist or psychologist, and the doctor has recommended therapy, so the DCFS investigator is simply repeating the recommendation of the doctor. In other cases, DCFS is basing its recommendation on the non-professional opinion of the investigator. If DCFS tells you to get psychotherapy or counseling and you are not yet engaged in these services, you must make the decision: do you think that psychotherapy or counseling is a good idea for you? If you do not think that you will benefit from therapy, it is unlikely that a therapist will agree to provide therapy to you and moreover, if you go to a therapist unwillingly, the results are likely to be negative. Even if you think that you might benefit from therapy, the therapist may want to do a thorough evaluation before providing you with therapy. There is a risk, too, that the DCFS investigator, or the judge, may see the evaluation and misinterpret it. While DCFS is

investigating your family, you can keep the investigator from reading a psychiatric evaluation, or any other medical record, by refusing to sign a consent form. However, if DCFS starts a court case against you, the judge can order any of your doctors to turn over all of their records—there is generally no protection for the confidentiality of doctor-patient communications if an abuse or neglect petition is filed against you in the juvenile court.

Drug or alcohol treatment programs. Sometimes, DCFS investigators demand drug drops during the investigation and then also demand that parents enroll in drug or alcohol treatment programs in order to keep custody of their children. This type of demand can be tricky. Refusing a drug drop can look like you are both uncooperative and using substances. DCFS can hold this refusal against you. But refusing a drop may be a better

choice than submitting to one if you have recently used drugs—or even if your use is not very recent but could be detected by a drop. Allowing yourself to participate in a full substance abuse assessment also depends on the likelihood that this assessment will show you have a serious substance abuse issue. If the parent does not have a drug or alcohol problem, it will be difficult to find a drug or alcohol treatment program that will accept the parent. Sometimes assessment providers demand intrusive programs (for example, 30-day inpatient programs) that the parent cannot possibly enroll in, and then the refusal to do this program is used as a basis for treating the parent as "uncooperative." Therefore, you should think carefully before agreeing to a substance abuse assessment while the investigation is open, even if you are willing to engage in treatment later.

None of this discussion should be read as encouraging you to use any substances. Substance abuse is a major concern in child protection cases; your ability to keep custody of your child and avoid being labeled a child abuser or child neglector depends in significant part on your staying clean and sober. Even if the allegations against you do not concern substance abuse or misuse directly, your substance use will be a factor against you in many types of allegations. Moreover, while use of some substances in moderation may not be harmful to you, substance abuse or misuse is not good for children! So if you are aware that there is a child protection investigation pending against you, getting clean and staying clean is important to your ability to get through the investigation with a minimum of impact on your family life.

VII. Steps to Redress Violations of Family Rights in Investigations

The Family Defense Center is frequently asked about what parents and other family members can do if their rights have been violated during the investigation, including if they have been subject to a wrongful allegation or finding or have had their children taken from them without probable cause or exigent circumstances. Because the Family

Defense Center limits its civil rights violation lawsuits to cases it believes have clear merit and where it has the resources to litigate the case over a period of several years, "filing a lawsuit" is not the right answer for most people who ask about steps they can take to redress what they believe are violations of their rights. When filing a lawsuit is the right answer, the Family Defense Center or other lawyer that you consult will advise you extensively about what that lawsuit involves and what remedies you can hope to secure by filing the suit. This section discusses some of the ways you can complain about mistreatment during investigations, including the types of complaints that might result in a possible lawsuit or other ways to correct any mistreatment you experienced during the DCFS investigation.

A. Protect Yourself by Pursuing the Administrative Remedies Within the Time Frame to Appeal

If DCFS has wrongly indicated a person as a perpetrator of child abuse or neglect at the close of an investigation, the usual first step to respond to this decision is to file an administrative appeal within 60 days of the notice of indicated finding. *See* Section III as to the special rights for persons who work with children (expedited appeals should still be filed within 60 days but DCFS must then issue its final decision within 35 days of the appeal being filed). In general, it will be difficult to file a lawsuit against DCFS for violating your rights during an investigation if the decision to indicate you, once reviewed by a neutral judge (assuming all of your appeals are exhausted), has been determined to be correct on the merits. That is, if the courts determine that the decision that you abused or neglected a child is correct, holding DCFS responsible for violating its rules and procedures in the investigation will be difficult, even if those violations resulted in a violation of your due process rights.

This guide does not discuss how to appeal an indicated finding but there is a separate complete Pro Se Manual that can assist you in handling your own administrative appeal. *See* http://www.familydefensecenter.net/wp-content/uploads/2014/12/FDCProSeManual.pdf. That manual should answer many of your questions about the appeal process if you believe you have been wrongly labeled a perpetrator of abuse or neglect.

B. Many Violations of Procedures and Unprofessional Conduct Do Not Give Rise to a "Right to Sue"

Many issues involving unprofessional conduct during an investigation do not amount to a violation of law for which a lawsuit could provide a remedy. Investigators' missed deadlines to talk to persons in the investigation, for example, and failure to respond to phone calls, may be facts that show a general lack of attention to the merits of the case, but by themselves are not likely to give grounds for lawsuits seeking monetary compensation. Similarly, extended deadlines for the completion of the investigation itself does not give rise to a lawsuit for money damages. Only if a well-established right was violated—such as the fundamental right to live with and direct the upbringing of one's child—would there be a potential claim for compensatory or punitive damages.

Moreover, suing DCFS for money damages is challenging and very time consuming in the best of cases. The main challenge arises because DCFS employees have what is known as "qualified immunity" in suits for money damages. "Qualified immunity" requires that the right that was violated by DCFS employee be clearly established by law, and the reasonable investigator, in the shoes of the person being sued, would know that their conduct was unlawful. In practice, this requires that there must be a decided case that demonstrates the illegality of the investigator's conduct or that the conduct is so outrageous that any reasonable investigator would know it was illegal. Because DCFS will often assert qualified immunity when its investigators are sued for damages, and otherwise will oppose efforts to seek monetary compensation even when its investigators have clearly violated well-established rights, this form of litigation requires a significant resource commitment by the Family Defense Center or other lawyers who bring this type of suit as well as patience, as the resolution of such cases typically takes one to three years and sometimes even longer.

C. The Types of Civil Rights Damages Cases the Family Defense Center Might Consider

Affirmative suits against DCFS employees are challenging but they can be done successfully if brought by knowledgeable and conscientious counsel. But civil rights suits are not for a novice lawyer who does not have the resources to write a well-pled

complaint, handle motion practice on preliminary issues, write briefs, and take depositions, as well as take a case to a full trial and appeal if necessary.

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The following sorts of violations of rights by investigators have given rise to some successful civil rights suits in the family rights/child protection area and have been settled for monetary compensation:

1. Changing custody of the child to a suspected abuse perpetrator without a court order.

2. Indicating a person who works with children without providing an Administrator's Conference and based on the unconfirmed vague statements of a young child where the person secured exoneration on further review.

3. Issuing a safety plan demand after a petition for adjudication of wardship was not filed in the Circuit Court due to lack of probable cause.

4. Coercing a parent to agree to separate from their child or be restricted in access to a child under a safety plan or directive.

5. Threats against persons who are not reasonably suspected of abuse or neglect.

Suits for orders to stop illegal practices have also been brought by the Center, including in the *Dupuy* case and through state court challenges to allegations in the allegation system that do not have a legal basis in the Abused and Neglected Child Reporting Act.

The Family Defense Center maintains a small docket of civil rights cases. These cases challenge the seizure of children (under safety plans, directives, taking of protective custody without probable cause, and other involuntary and unauthorized transfers of custody) and challenge wrongful indications against persons who work with children or have other serious impairments of their liberty interests due to the violation of their rights

not to be listed in the child abuse register as a perpetrator of abuse or neglect. While this docket is small, it is highly resource intensive and generally requires the commitment of a major law firm to assist in the briefing and factual development of the cases. Injuries to children in foster care can give rise to civil rights and other damages cases as well, but the Family Defense Center would refer such cases to other counsel.

As a general rule, the Family Defense Center and most other civil rights lawyers will not consider a lawsuit while there are pending state court matters concerning the same issues that have not been resolved favorably to the client. This rule has exceptions, however, and