

Policy Clarification Number: 3490-21-05
POLICY CLARIFICATION REQUEST FORM

REGIONAL OR DIVISION USE ONLY

Regulation Title/Chapter: Title 55, PA C.S., Chapter 3490. Protective Services Title 23, PA C.S., Chapter 63. Child Protective Services (also known as the Child Protective Services Law, CPSL)	Date: June 24, 2019
	Request Prepared By: OCYF Northeast Regional Office

Issue:

Northeast Regional Office (NERO) is requesting policy clarification regarding successfully completing a Child Protective Services (CPS) investigation within the required 60-day time frame (in all cases), when law enforcement officials request a delay of notification pursuant to §§ 6368(l) (relating to notice of investigation) and (m) (relating to delay of notification) of the CPSL. Specifically, NERO is asking:

Question one: How is "reasonably delayed" defined?

Question two: What actions are still required of the county agency to fulfill the county responsibilities under the CPSL?

Question three: What documentation should a county agency request of law enforcement to support the request for a delayed notice to the subjects of a CPS report?

Question four: What consideration regarding delayed notification/interviews should be used, if a Pending Criminal Court (PCC) status is used by the county until the criminal investigation is resolved?

Bureau of Children and Families Services Director: Jennie Pettet

CENTRAL OFFICE OF CHILDREN & YOUTH PROGRAMS ONLY

Date: October 21, 2021	Response Prepared By: Erik Walters
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Clarification:

Question one: *How is "reasonably delayed" defined?*

Response: Prior to interviewing a subject of a report of suspected child abuse (except for the alleged victim), § 6368(l) (relating to notice of investigation) of the CPSL requires OCYF Regional Offices and county children and youth agencies (CCYAs) to orally notify the subject who is about to be interviewed, of the following information:

- (i) The existence of the report.
- (ii) The subject's rights under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights).
- (iii) The subject's rights pursuant to this chapter in regard to amendment or expungement.
- (iv) The subject's right to have an attorney present during the interview.

Additionally, the CCYA must give written notice to the subject within 72 hours following oral notification, unless delayed as provided in § 6368(m) (relating to delay of notification).

The term “**reasonably delayed**” is not defined under § 6303 (relating to definitions) of the CPSL, nor does the CPSL provide set conditions under which the required notifications for child protective services (CPS) investigations may be delayed by law enforcement. Section 6368(m) provides that notification to subjects may be delayed if the notification is likely to:

- threaten the safety of a victim, a subject of the report who is not a perpetrator or the investigating CCYA worker;
- cause the perpetrator to abscond; or
- significantly interfere with the conduct of a criminal investigation.

OCYF Regional Offices and CCYAs should always endeavor to conduct joint investigations with law enforcement as mandated by the CPSL under:

- § 6346(c) (relating to cooperation of county agency and law enforcement officials) which requires both CCYAs and law enforcement officials (LEOs) to cooperate and coordinate, to the fullest extent possible, their efforts to respond to and investigate CPS reports;
- § 6346(d) (relating to advice to county agency) which requires LEOs to as soon as possible, and without jeopardizing the criminal investigation or prosecution, advise CCYAs whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution; and
- § 6365 (relating to services for prevention, investigation and treatment of child abuse), subsection (c) (relating to multidisciplinary investigation team) which mandates use of a multidisciplinary investigative team to coordinate child abuse investigations between CCYAs and law enforcement. It also requires the CCYA and the district attorney to develop a protocol for the convening of multidisciplinary investigative teams for any case of child abuse by a perpetrator involving crimes against children under § 6340(a)(9) and (10) (relating to release of information in confidential reports).

Joint investigations also help to lessen trauma for child victims by gathering information in ways that do not trigger memories of past trauma.

When there is a potential criminal investigation into alleged child abuse, the OCYF Regional Office or CCYA and law enforcement should stay in **continuous** contact in order to protect the child, while also protecting the integrity of the investigation.

When OCYF Regional Offices or CCYAs receive child abuse reports with categorizations of, “engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000”, or when through the course of any involvement with children/families concerns arise regarding an alleged perpetrator engaging a child in a severe form of trafficking in persons or sex trafficking, **contact and collaboration with law enforcement (in addition to the CY-47 Form and CY-104 Form) should always occur prior to notification to subjects** (except for the victim child). This practice is both critical and necessary when considering the safety and lives of children who are being or were trafficked by potentially violent and unpredictable perpetrators. Additionally, following this guidance ensures the integrity of ongoing investigations, concerning severe forms of trafficking that are being conducted by the Federal Bureau of Investigation, Department of Homeland Security, or the Attorney General’s Office.

For additional information regarding Pennsylvania's approach in supporting collaborative and child-centered multidisciplinary child abuse investigations, please reference the Model Set of Standards for Pennsylvania's Multidisciplinary Investigative Teams.

Question two: *What actions are still required of the county agency to fulfill the county responsibilities under the CPSL?*

Response: If law enforcement requests a delay of notification provided by § 6368(m) of the CPSL, a written request should be provided by law enforcement to the appropriate OCYF Regional Office or CCYA describing what specific action(s) the OCYF Regional Office or CCYA should not complete. All other actions required by the CPSL must be met by the OCYF Regional Office or CCYA. With every case of alleged child abuse being uniquely different, the requests to delay notification made by law enforcement may also vary regarding what specific action may or may not be taken by an OCYF Regional Office or CCYA.

Question three: *What documentation should a county agency request of law enforcement to support the request for a delayed notice to the subjects of a CPS report?*

Response: The CPSL does not specify what documentation must be produced by law enforcement when they request delayed notice to the subjects of a CPS report. However, documentation provided by law enforcement must be able to fulfill the OCYF Regional Office or CCYA's requirement under § 6368(n) (relating to completion of investigation), describing the reasons for the delay in the CPS record and allowing for this information to be provided to OCYF upon request.

A signed written request from law enforcement should be made on official letterhead and include the name and the position/title of the individual making the request. An OCYF Regional Office or CCYA may also accept an email produced by law enforcement and sent from a law enforcement agency email account, provided the email includes an original scanned signature of the individual making the request for delay of notification.

The written request should include a time frame and an outline describing what specific action(s) the OCYF Regional Office or CCYA should refrain from doing, previously mentioned under the clarification for question two.

Throughout a joint investigation, an OCYF Regional Office or CCYA should periodically follow up with law enforcement (see recommendations provided under clarification for question four) regarding the request to delay notification. If a time frame established by law enforcement lapses, the OCYF or CCYA representative should request that law enforcement provide a written request for continued delay of notification (if warranted).

Question four: *What consideration regarding delayed notification/interviews should be used, if a Pending Criminal Court (PCC) status is used by the county until the criminal investigation is resolved?*

Response: OCYF strongly emphasizes that when facts support an indicated finding within the 30/60-day investigative time frame under § 6368(n), the case should always be assigned an indicated status and not be given a PCC status, even when court action is present.

However, in unique cases where an OCYF Regional Office or CCYA cannot complete the CPS investigation within the 30/60-day investigative time frame due to court action, an OCYF Regional Office or CCYA should assign the case a PCC status. OCYF emphasizes that before a PCC status can be assigned to a case, an OCYF Regional Office or CCYA shall have a written request from law enforcement to reasonably delay the child abuse investigation due to court action on or before the 60th day investigation time frame. PCC status may **only** be assigned to a case when the following court action exists:

- A criminal proceeding (arraignment, preliminary hearing, trial, etc) has occurred or is scheduled to occur;
- Criminal charges have been filed in connection to the suspect child abuse; or
- An **active** criminal investigation is occurring, including but not limited to interviews are taking place, evidence is being gathered, polygraph or voice stress tests have been ordered and/or conducted, although no criminal charges may have been filed.

Once an OCYF Regional Office or CCYA receives a request for delay of notification from law enforcement on or before the 60th day investigation time frame and assigns a PCC status to a report, OCYF strongly recommends the following (at a minimum):

- Once a delay of notification by law enforcement, or a PCC status has been in place/assigned for a period of 30 days, the OCYF Regional Office or CCYA should conduct outreach to the appropriate law enforcement agency/officer to determine the status of the **active** investigation or court action. This includes determining whether the law enforcement investigation is still active and whether reasons for the delay of notification by law enforcement are valid or no longer valid. If the criminal investigation is no longer active or has concluded, the OCYF Regional Office or CCYA should determine if/what findings resulted from the criminal investigation/court action. Information obtained at the 30-day update should be recorded by the OCYF Regional Office or CCYA so it may be produced upon OCYF's request;
- If at the 30-day update an OCYF Regional Office or CCYA cannot resume their CPS investigation or update the PCC status, outreach to the appropriate law enforcement agency/officer should occur 60 days thereafter;
- **At 150 days from the date the delay of notification request was received or 180 days from the date the CPS referral was received, whichever occurs first, a compelling reason(s) should exist for an OCYF Regional Office or CCYA to not be able to resume the CPS investigation or update the PCC status.** During the period of time from when a criminal investigation concludes until the courts make a finding, a PCC status may continue if there is a compelling reason(s) that suggests additional information may be disclosed while the courts determine their finding(s). The compelling reason(s) should be recorded by the OCYF Regional Office or CCYA so that it may be produced upon OCYF's request. A compelling reason(s) for an OCYF Regional Office or CCYA to not resume a CPS investigation or update a PCC status may include but is not limited to:
 - Pending autopsy and toxicology reports;
 - Law enforcement planning a "wiretap" or other steps to advance their investigation;
 - Alleged perpetrator (AP) is hospitalized, due to mental health or a medical reason and cannot be interviewed; and
 - Subject child is receiving therapeutic services and it is believed that the subject child may soon disclose vital information regarding the case.
- IF A COMPELLING REASON(S) EXISTS:
 - Continue to conduct outreach to the appropriate law enforcement agency/officer at the following times frames: 30 days, 60 days, 90 days, 120 days, and 150 days **from the date law enforcement provided the compelling reason(s).**

- Information obtained from outreach should be recorded by the OCYF Regional Office or CCYA so it may be produced upon the Department's request.
- **WHEN A COMPELLING REASON(S) DOES NOT EXIST:**
 - The OCYF Regional Office or CCYA should resume the CPS investigation immediately and complete the CPS investigation/update the PCC status within 30 days.
- When law enforcement informs an OCYF Regional Office or CCYA that they may resume a CPS investigation and the 60-day time frame for completing CPS investigations under § 6368(n) has lapsed, the OCYF Regional Office or CCYA should complete the CPS investigation/update the PCC status within 30 days.
- **AT 180 DAYS FROM THE DATE LAW ENFORCEMENT PROVIDED THE COMPELLING REASON(S) OR ONE YEAR FROM THE DATE THE CPS REFERRAL WAS RECEIVED, THE OCYF REGIONAL OFFICE OR CCYA SHOULD RESUME THE CPS INVESTIGATION IMMEDIATELY AND COMPLETE THE CPS INVESTIGATION/UPDATE THE PCC STATUS WITHIN 30 DAYS.**

While § 6368(n) (relating to the completion of investigations) of the CPSL, prescribes that OCYF Regional Offices and CCYAs must make a determination of whether to accept the family for services and whether a CPS report is founded, indicated, or unfounded within 60 days in all cases, § 6337 (relating to disposition and expunction of unfounded reports and general protective services reports), (b) (relating to absence of other determination) of the CPSL prescribes the following:

“If an investigation of a report of suspected child abuse conducted by the appropriate county agency pursuant to this chapter does not determine within 60 days of the date of the initial report of the instance of suspected child abuse that the report is a founded report, an indicated report or an unfounded report, **or unless within that same 60-day period court action has been initiated and is responsible for the delay**, the report shall be considered to be an unfounded report, and all information identifying the subjects of the report shall be expunged no later than 120 days following the expiration of one year after the date the report was received by the department. The agency shall advise the department that court action or an arrest has been initiated so that the Statewide database is kept current regarding the status of all legal proceedings and expunction is delayed.”

When an OCYF Regional Office or CCYA completes a CPS investigation under § 6337(b), information gathered after the 60-day investigative time frame under § 6368(n) may be used to support a final determination of unfounded, indicated, or founded.

Attachment

Bureau Director: *Amanda Dorris*
Amanda Dorris

Date: October 21, 2021

c: Amanda Dorris
Jennie Pettet
Regional Children and Youth Directors
Division Directors

NEXT STEP: Regions disseminate copies of this clarification to affected agencies.