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Assessment of Parental Incapacity, Absence or Failure to Provide Adequate Shelter

0070-536.10 | Revision Date: 07/01/14

Overview

This policy guide provides instructions on how to assess and respond to referrals involving parental incapacity, absence or failure to provide a child with adequate shelter as part of the emergency response investigation.

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Version Summary

This policy guide was updated from the 03/10/11 and 05/13/09 versions, as part of the Policy Redesign, in accordance with the DCFS Strategic Plan. This policy guide incorporates content from Procedural Guide 0070-524.00, Assessment of Parent’s Failure to Protect by Failing to Provide a Child with Adequate Shelter and 0070-538.10, Assessment of Parental Absence, thereby cancelling those policy guides. The title of this update policy guide has been changed to “Assessment of Parental Incapacity, Absence or Failure to Provide Adequate Shelter.”

POLICY

Assessment of Parental Incapacity

Parental Incapacity refers to the significantly limited ability of a child’s parent(s) to provide adequate care for the child. The assessment of parental incapacity involves two components:

- Assessment of the parent/legal guardian
- Assessment of the child

In the event a child has been or is at risk of neglect or abuse, the parents’ suspected incapacity must be addressed. The child’s maltreatment may be the result of the parent’s incapacity or inability to provide adequate care or access to appropriate resources.

Parental incapacity may be the result of a parental developmental disability, mental illness or substance abuse. It is imperative that CSWs [assess parents/caregivers for substance abuse](#), whether or not it is mentioned in the original allegation. Parental

incapacity may also take the form of a physical disability. The CSW must use caution in demonstrating harm or risk of harm to the child based on a parent's physical disability.

CSWs may be faced with a parent's failure to protect a child through his/her inability and/or unwillingness to obtain and seek adequate shelter. No child shall be found to have suffered serious neglect or harm solely due to the lack of an emergency shelter for the family.

To support the removal of a child and the filing of a petition, there must be a nexus between the lack of adequate shelter and the harm, or risk of harm, to the child. When a CSW has reasonable belief that this is occurring, a CSW must take all necessary steps to assure that a child is safe.

The Juvenile Court may assume jurisdiction of a child who has suffered, or who is at substantial risk of suffering, serious physical harm or illness as a result of the parent's willful or negligent failure to provide adequate food, clothing, shelter or medical treatment.

DCFS intervention may be unwarranted, no matter how severe the incapacity, if the child's safety is assured by immediate or extended family, friends, or by other community resources without court involvement.

The ultimate decision to take a child into custody should be based on safety factors present, not on the category of the allegations. This decision ultimately rests with the CSW in consultation with his/her SCSW.

In offices where the [Multidisciplinary Assessment Team \(MAT\)](#) has been implemented, and the child has been detained, the CSW should utilize the completed MAT assessment in the preparation of the Jurisdiction/Disposition Hearing Report. When applicable, CSWs may use an [Up-Front Assessment \(UFA\)](#) to obtain information on adults' parental/caretaker capacity.

It may not be possible to complete an assessment of parental incapacity prior to detaining the child. However, this assessment must be conducted prior to the Jurisdiction/Disposition Hearing.

If parental incapacity is a factor, it must be addressed in the Case Plan.

Verification of a parent's incapacity can be based on either medical reports or written statements from a physician, certified psychologist, or authorized staff member. The statements must include all of the following:

- The diagnosis of the parent's condition
- How the condition substantially reduces or eliminates the parent's ability to care for the child
- The duration of the condition

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Assessment of Parental Absence

Parental absence occurs under any of the following circumstances:

- A child has been left without any provision for support because the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child.
- The relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child.
- The whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

An assessment of parental absence involves assessing the appropriateness of the parent's plan for provision in his/her absence and the well-being of the child. There may also be cause for jurisdiction should the parent fail to adequately supervise or protect his/her child from the conduct of a custodian with whom the parent left his/her child. When the parent is unable to arrange for the care of the child or the plan is no longer appropriate, the child can be [taken into temporary custody](#).

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Accommodations for Parental Absence due to Arrest

When a parent is arrested, [law enforcement must inquire](#) whether the parent has minor dependents without appropriate supervision. Law enforcement will authorize additional telephone calls to a parent to arrange for the care of these children.

A parent may arrange for a relative or friend to care for his/her child without the court's involvement through a Caregiver's Authorization Affidavit or Power of Attorney when the parent is either arrested for a crime not indicative of child abuse or is institutionalized and there are no concerns with the parent resuming care of the child once released.

Law enforcement may take a child into [temporary custody](#) under the following circumstances:

- A parent is arrested or institutionalized and is unable to designate someone to care for the child.
- The officer feels the person with whom the parent wishes to leave the child is either not suitable or could pose a risk of harm to the child.
- The parent is arrested for a crime that poses a risk to the child's safety, such as drugs, a violent felony, child endangerment, domestic violence, sexual abuse or any other offense that may put a child's safety at risk.

Caregiver's Authorization Affidavit

The Caregiver's Authorization Affidavit is a two-page form to be completed and signed by a qualified relative who has agreed to care for the child. The affidavit, which is good for renewable one-year terms, allows relatives to enroll the child in school and to consent to school-related medical care on behalf of the child.

The Caregiver's Authorization Affidavit does not give the caregiver legal custody of the child nor does it make the caregiver automatically eligible for CalWORKs. The affidavit is for temporary situations and can be revoked at any time.

An example of a Caregivers Authorization Affidavit can be obtained at <http://www.courts.ca.gov/documents/caregiver.pdf>.

Power of Attorney

The Power of Attorney form authorizes either relatives or friends to act as a caregiver to the child and make decisions on behalf of the parent until the parent is released from jail/prison. An immediate relative may receive CalWORKs through Power of Attorney, however, distant relatives and friends cannot.

The Power of Attorney form can be obtained through a notary and must be signed by the parent and notarized. It is not a court order; nor will it serve as a legally binding custody agreement.

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Placing Children into Temporary Custody due to Parent's Arrest

The ER CSW may only get involved in the placement of a child whose parent(s) was arrested when both:

- The child protection hotline receives and generates a referral to investigate child abuse or neglect, and
- Law enforcement has taken the child into temporary custody for one of the reasons above. This type of [referral will be expedited.](#)

A referral must be generated before the CSWs can complete a [criminal history check](#) on relatives or non-relative extended family members identified as a temporary caregiver by the arrested parent(s). However, ER CSWs may search CWS/CMS for the child welfare history of a potential caregiver without a referral, as requested by law enforcement.

CSWs, including law enforcement co-located CSWs, must never assist with the placement of a child whose parent was arrested, unless a referral has been generated before or during the placement process.

If the CSW is responding without a referral and the parent is arrested during the response, the CSW must request that law enforcement call in the referral immediately. The CSW must obtain the 19 digit number that is generated by the child protection hotline referral number prior to leaving the location.

A referral may be closed when a parent is able to make an appropriate child care plan for the child and DCFS has confirmed that there are no concerns with the identified caregiver. If the identified caregiver is not appropriate or there are safety concerns for the child, the child may be taken into [temporary custody](#).

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PROCEDURE

Determining Parental Incapacity and its Impact on the Child

[ER CSW Responsibilities](#)

1. Interview the parent and obtain a complete social history, if possible. Ask questions regarding the family, medical, and the parent's psychiatric history.
 - Any statements by the parent or other source should be recorded verbatim for later use as evidence in court.
2. If the child has been injured, inquire as to whether the parent is aware of the injuries. If so:
 - Ask how the injury was incurred. Note any bizarre explanations such as extra-terrestrial or divine intervention.
 - If the parent acknowledges causing the injury, ask the reason for the parent's abusive behavior.

- Note any bizarre responses such as “God instructed” the parent and any responses which indicate that the parent lacks an understanding of reasonable and age-appropriate behavioral expectations.
3. If the child has been neglected, assess the parent’s understanding of the child’s day-to-day needs and the parent’s expectations of the child. Note any responses suggesting grossly inappropriate expectations.
 4. Observe and make note of the parent’s grooming and personal hygiene.
 5. Assess the parent for developmental disability.
 - Inquire as to the parent’s educational history, including an estimate of grades earned, years of schooling completed, and special class or special school enrollment.
 - i. If the parent was enrolled in special classes or attended special schools, obtain, if possible, the name or type of program(s) and the name and location of the school(s) attended.
 - ii. Ask the parent to sign a release of information for school records.
 - iii. Contact the parent’s school(s), and attempt to obtain the parent’s records. Specifically ask for copies of any psychological reports the school may have on file.
 - Inquire as to whether the parent has been, or is currently, a Regional Center client. If so, ask the parent to sign a release of information for Regional Center records.
 - Observe the content of the parent’s communications.
 - Ask simple questions and note whether the parent appears to comprehend and follow simple instructions.
 6. Assess the parent for mental illness:
 - Inquire as to the parent’s mental health history, including any psychiatric hospitalizations and/or mental health counseling.
 - If the parent acknowledges a history of psychiatric treatment, attempt to obtain the parent’s written consent for release of records and permission to talk with the treating mental health professional.
 - i. If successful, contact the treating professional and/or, if the parent was hospitalized, contact the hospital to obtain the records.

- If the parent is reluctant to acknowledge a history of psychiatric illness, ask if they've had a "nervous breakdown".
 - Observe the contents of the parent's communication. Note any bizarre or illogical content. If the parent appears to be attending to stimuli not observably present, ask if the parent is experiencing hallucinations.
 - i. If yes, inquire as to the content of the hallucinations.
 - ii. Note if the client perceives that "voices" are instructing him or her to injure the child.
 - iii. Observe the parent's speech patterns. Note if the he/she jumps from topic to topic, is difficult to follow, or speaks rapidly/in a pressured manner
 - Observe the parent's demeanor. Note any mood inappropriate to the circumstances (e.g. unreasonable fear).
7. Interview collateral contacts, including extended family members, neighbors, the child's teachers or any other person having significant contact with the child.
 - Ask for his/her observations of the parent. Attempt to elicit specific observations of any bizarre or inappropriate behavior or clear examples of incomprehension by the parent of the day-to-day needs of the child.
 - Ask the collateral whether he/she has seen contact between parent and child. If so, to describe his/her observations of said contacts.
 - If possible, record the contact's observations verbatim.
 8. If necessary, consult with the co-located Department of Mental Health staff to assist in the assessment of the parent. Collect any records or reports on the parent's history of mental illnesses and/or behavior patterns that interfere with effective parenting.
 9. Collect and review all available written reports (such as police reports medical evaluations) and file them in the case file. Record all relevant information from these reports in the Investigative Narrative.
 10. If domestic violence, substance abuse, and/or mental health issues present high risk to the family, determine, in consultation with your SCSW, whether an Up-Front Assessment (UFA) is appropriate.
 11. Discuss the situation with your SCSW.

- If a decision is made to remove the children, follow the procedures for taking children into temporary custody.
- If a decision is made not to detain and the child can remain in the home but further services are needed, follow up by giving the family appropriate community resources to meet their needs.
- Obtain consent for release of medical/educational information as needed.
- Consult with the Public Health Nurse (PHN) to assist in the assessment of young children.

12. Document in detail all observations made during all contacts with the parents, child, collateral contacts in the Contact Notebook.

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Presenting Information to the Court on a Parent's Incapacity

CSW Responsibilities

Describe in the Jurisdiction/Disposition Hearing Report all of the following information as applicable that suggests parental incapacity. If sufficient information is available, include this information in the Detention Report.

1. Describe in detail:
 - The parent's harm, or potential harm, to the child
 - The parent's incapacity
 - The effect the parent's incapacity has had on the child.
 - Behavior, mannerisms and speech content that point to incapacity, including signs of mental illness or developmental disability.
 - i. Do not use diagnostic labels. When possible, elicit expert opinion (such as that of the child's physician) to support the position that the child has suffered as a result of the parent's incapacity. If an expert is cited, provide the expert's name, address, phone and professional credentials.
2. Cite whether the parent is/has been a Regional Center client.
 - Attach all available Regional Center reports to the court report.
 - Provide the name, address, phone number and professional credential of the preparer of the report.

3. Provide information from the parent's treating mental health professional, including any applicable diagnosis. State the name, address and telephone number of the professional who provided the information, and attach it to the court report.
4. If the parent has provided consent for the CSW to obtain psychiatric hospital records, obtain the hospital admitting and discharge summaries, psychiatric or psychological reports, and discharge recommendations and attach them to the court report.
 - Note whether the parent complied with the discharge instructions, especially with respect to follow-up psychiatric care.
5. Provide the names, addresses, and phone numbers of collateral contacts and the descriptions they've provided that support whether the parent is incapacitated.
6. If a child has been taken into temporary custody, or a petition needs to be sustained, ensure the Detention Report and Jurisdictional/Disposition reports provide facts supporting the following:
 - The severity of the dangers and the harm or risk of harm to the child
 - That a parent willfully or negligently failed to protect a child
 - The parent's inability or unwillingness to supervise and protect the child from these dangers
 - The factors, including the environment, that constitutes a risk to the child's physical well-being
 - That the parent willfully or negligently failed to provide adequate shelter for his/her child and that this lack of adequate shelter resulted in the child suffering or be at substantial risk of suffering, serious physical harm or illness
 - That there is a nexus between the failure to protect through the lack of adequate shelter and such factors such as drug abuse, mental incapacity, etc.

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Responding to a Referral Regarding a Parent's Failure to Provide Adequate Shelter

CSW Responsibilities

To conduct an investigation in response to a referral regarding a parent's failure to provide adequate shelter, adhere to the following procedures:

1. Follow all procedures set forth in the [Disposition of Allegations and Closure of Emergency Response Referrals](#).
2. Determine the level of DCFS intervention necessary to ensure the safety and well-being of the child.

After conducting the [emergency response investigation](#):

3. Refer the family to [Community Response Services](#), if it is determined that:
 - The allegations are unfounded /inconclusive with no or low risk level; and
 - The family has not had any prior referrals; and
 - There is an identified unmet need (food, clothing, medical care, etc.) that community resources can fill
4. [Alternative Response Services](#) may be appropriate in situations where:
 - The allegations are deemed inconclusive and/or substantiated for child abuse and/or neglect and the SDM Safety Assessment of the household is safe.
 - There is a Risk Assessment score of low-to-moderate risk.
 - There is an identified need for preventive services.
 - There is a history of at least one prior child abuse/neglect referral involving the family

If the family voluntarily agrees to participate in Alternative Response services, and Alternative Response Services are in place prior to closing the referral, the case does not warrant continued monitoring by DCFS.

5. Utilize the [Child and Family Team \(CFT\) process](#) if it is determined that:
 - There are safety factors present that threaten the immediate safety of the child; and
 - There are only temporary or no mitigating safety interventions that can prevent the removal of the child from the home

6. Determine whether **Voluntary Family Maintenance (VFM) Services** or **Voluntary Family Reunification (VFR) Services** are appropriate, or taking temporary custody of the child is required.
7. If domestic violence, substance abuse, and/or mental health issues present high risk to the family, determine, in consultation with SCSW, if an **Up-Front Assessment (UFA)** is appropriate.
8. Document all contacts in the Contact Notebook.
9. If a child has been taken into temporary custody, or a petition needs to be sustained, ensure the Detention Report and Jurisdictional/Disposition reports provide facts supporting the following:
 - The severity of the dangers and the harm or risk of harm to the child
 - That a parent willfully or negligently failed to protect a child
 - The parent's inability or unwillingness to supervise and protect the child from these dangers
 - The factors, including the environment, that constitutes a risk to the child's physical well-being
 - That the parent willfully or negligently failed to provide adequate shelter for his/her child and that this lack of adequate shelter resulted in the child suffering or be at substantial risk of suffering, serious physical harm or illness
 - That there is a nexus between the failure to protect through the lack of adequate shelter and such factors such as drug abuse, mental incapacity, etc.

SCSW Responsibilities

1. Be available for consultation before and after the CSW responds to the referral.
2. Conduct a thorough review of the on-line/hard copy case file. When necessary, review the file in a case conference with the CSW.
3. Review and approve the closure of the emergency response referral.
- Instruct the CSW to make corrections as needed.

Responding to a Referral for Temporary Custody of a Child when a Parent is Absent

ER CSW Responsibilities

For referrals due to a parent's arrest:

1. Confirm with law enforcement why the parent(s) was arrested.
2. Ask the parent to identify caregiver(s) that can care for the child. If you are not able to ask the parent, ask the officer to do so. If the child is verbal, ask the child to identify family members on non-relative extended family members.
3. Contact the custodial parent, non-custodial parent, or prospective caregiver identified by the parent to confirm his/her willingness to care for the child during the parents' absence.

For referral is due to a parent's hospitalization or institutionalization:

4. Obtain all of the following information from the hospital:
 - Parent's mental health diagnosis and mental health history
 - Any concerns with parents ability to care for child once released
 - Discharge date for the parent
5. If either the parent's mental health symptoms put the child's safety at risk of child abuse/neglect, or there are safety concerns with the parent's ability to resume care for the child once released, provide reasonable efforts, explore VFM / VFR, and, if necessary, take the child into temporary custody.
6. If possible, ask the parent to identify a caregiver that can care for the child(ren). If the parent is able to identify caregivers, Contact the identified caregiver by the parent to confirm his/her willingness to care for the child during the parents' absence. If the parent is unable to identify a possible caregiver, ask the hospital if any family members are listed on the file.

If the identified caregiver is willing to care for the child:

7. Complete [criminal background checks](#) on the identified caregiver and all other adults living in the home of the prospective caregiver (CLETS, CACI, and CWS/CMS searches).
8. Complete a home assessment of the identified caregiver.
 - Confirm that the home is habitable and that the condition of the home does not put the child's safety at risk.
 - Use [SOC 815](#), Approval of Family Caregiver Home, as a guideline for assessing the caregiver's home. The home does not have to be ASFA approved.
9. Discuss the following with the identified caregiver to assess his/her ability to care for the child:
 - His/her ability to meet the basic needs of the child for the time period that the parent(s) will be incarcerated/hospitalized
 - The Department's inability to provide financial assistance to the caregiver without opening a case. If the identified caretaker is a relative, he/she may however qualify for AFDC.
 - Should the identified caregiver like financial assistance and support from DCFS, his/her home must be ASFA approved and a petition must be filed against the parent(s)
10. If the criminal background check and the condition of the home do not put the child's safety at risk and the identified caregiver is willing to care for the child during the parents' absence, consult with SCSW regarding the parent's arrangement.
11. If the child is to remain in the home of the identified caregiver without DCFS intervention, complete the following:
 - Provide the identified caregiver with [What Children Need When Their Parents Are Arrested](#).
 - If the identified caregiver is a blood relative, inform the caregiver that he/she can complete a [Caregiver's Authorization Affidavit](#).
 - If the identified caregiver is a relative or non-relative extended family member, inform him/her that he/she can have a [Power of Attorney](#) form completed. This form must be notarized and signed by the parent.
 - If the caregiver at any point is not able or willing to care for the child and the parent continues to be incarcerated, he/she is to contact the Child Protection Hotline, 1-800-540-4000.

12. Complete a safety assessment, consult with SCSW, and if necessary follow procedures for taking the child into temporary custody:
 - If the parent's arrest/hospitalization put the child's safety at risk for any of the above reasons
 - The identified individual is not an appropriate caregiver or is not willing/able to care for the child and
 - There is no other identified caregiver.

13. Document the results of your investigation.

ER SCSW Responsibilities

1. Review and approve the closure of the emergency response referral.

2. Instruct the CSW to make corrections as needed.

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Responding to a Referral because an Absent Parent's Child Care Plan is No Longer Appropriate

ER CSW Responsibilities

1. Assess the child's safety in the current situation and the current caregiver's ability to care for the child.
 - If the child's safety is not at risk and the child can safely remain in the current caregiver's home, provide reasonable services to maintain the child in the home.
 - If the plan is no longer appropriate and/or the child's safety is at risk, ask if there are other family members that can care for the child.
 - If other family members are identified, follow the procedure for when a caregiver agrees to care for a child under Responding to a Referral for Temporary Custody when a Parent is Absent.

2. If the plan is no longer appropriate, the child's safety is at risk, and/or there are no family members available to care for the child, consult with SCSW. If necessary take the child into temporary custody.

3. Document the results of your investigation.

ER SCSW Responsibilities

1. Review and approve the closure of the emergency response referral.
2. Instruct the CSW to make corrections as needed.

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APPROVALS

SCSW Approval

- Up-Front Assessment Request
- Taking a child into temporary custody
- Disposition/Closing of a referral

HELPFUL LINKS

Attachments

[What Children Need When Their Parents are Arrested](#)

Forms

CWS/CMS

[Detention Report](#)

[Investigative Narrative](#)

[Jurisdiction/Disposition Hearing Report](#)

[Juvenile Court Petition](#)

[PHN Consultation Form](#)

LA Kids

[SOC 815, Approval of Family Caregiver Home](#)

Referenced Policy Guides

[0050-503.15, Response Times to Referrals](#)

[0070-521.10, Assessment of Drug/Alcohol Abuse](#)

[0070-548.00, Community Response Services, Alternative Response Services and Up-Front Assessments](#)

[0070-548.01, Child and Family Teams](#)
[0070-548.10, Disposition of Allegations and Closure of Emergency Response Referrals](#)
[0070-548.24, Structured Decision Making \(SDM\)](#)
[0070-548.25, Completing the Structured Decision Making \(SDM\) Safety Plan](#)
[0070-548.20, Taking Children into Temporary Custody](#)
[0070-559.10, Clearances](#)
[0070-560.05, Joint Response Referral: Consulting with PHN](#)
[0080-502.25, Family Maintenance Services for Court and Voluntary Cases](#)
[0100-520.10, Evaluating a Prospective Caregiver](#)
[0300-503.10, Writing the Jurisdiction/Disposition Report](#)
[0400-503.10, Contact Requirements and Exceptions](#)
[0600-500.05, Multidisciplinary Assessment Team \(MAT\) Assessments and Meetings](#)

Statutes

[Family Code 6550 & 6552 – Provides the provisions for the Caregiver’s Authorization Affidavit.](#)

[Penal Code \(PC\) Section 13517.7 – States, in part, guidelines and training used to address issues related to child safety when a caretaker parent or guardian is arrested.](#)

[Welfare and Institutions Code \(WIC\) Section 300\(b\) – States in pertinent part that the Juvenile Court may assume jurisdiction of a child who has suffered, or is at substantial risk of suffering, serious physical harm or illness, as a result of the parent’s willful or negligent failure to provide adequate food, clothing, shelter or medical treatment. Also states, in part, that no child shall be found to be a person described by WIC 300\(b\) solely due to the lack of an emergency shelter for the family.](#)

[WIC Section 305 \(a\) – States in pertinent that any peace officer may, without a warrant, take into temporary custody a minor : \(1\) when the officer has reasonable cause for believing that the minor is a person described in Section 300 and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety.](#)

[WIC Section 16504.5 – States, in part, the circumstances under which a child welfare agency may secure from an appropriate governmental criminal justice agency the state summary criminal history information of child, parent, or caregiver.](#)

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