

THE CREATION OF A REGISTRY OF CASES OF ABUSE AND NEGLECT OF INDIVIDUALS  
ENROLLED IN THE *BUILDING INDEPENDENCE, FAMILY AND INDIVIDUAL SUPPORTS AND  
COMMUNITY LIVING* MEDICAID HOME AND COMMUNITY-BASED  
SERVICES AND SUPPORTS WAIVERS

Joint Commission on Health Care  
October 17, 2017

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With contributions from Heather Saunders

## Study Mandate

- By letter of request from Delegates T. Scott Garrett, R. Steven Landes, John M. O'Bannon III and Chris P. Stolle, the JCHC was asked to identify costs of and necessary statutory, regulatory and policy changes to establish a registry of cases of complaints of abuse and neglect by service providers of individuals enrolled in the following Medicaid Home and Community-Based Services and Supports (HCBSS) waivers:
  - *Building Independence*
  - *Family and Individual Supports*
  - *Community Living*

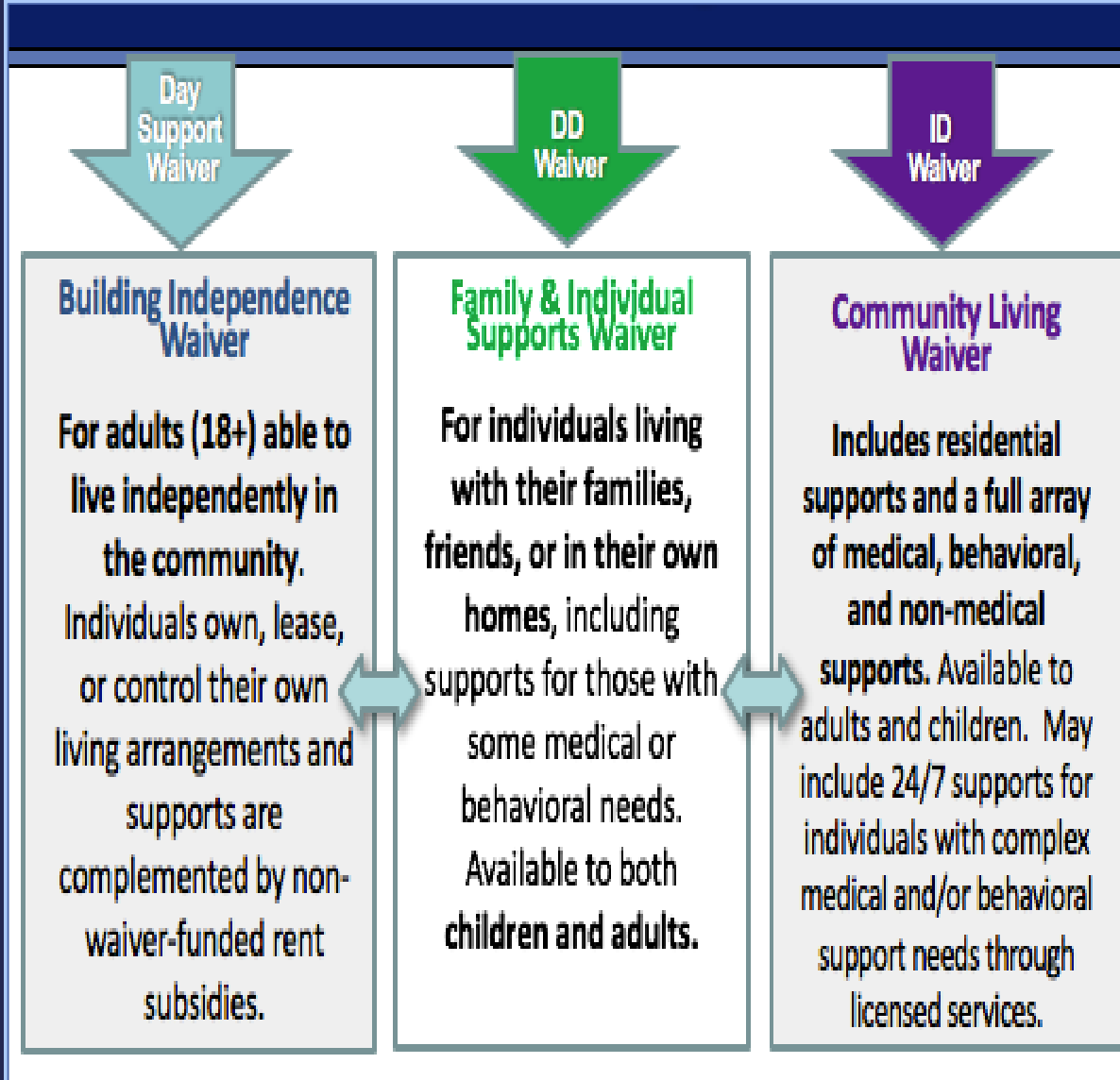


# The Problem

- Health care providers are legally mandated to report individuals suspected of adult or child abuse, neglect, and exploitation to various agencies including:
  - *DARS through the Local Departments of Social Services (local DSS)*
  - *The DBHDS Office of Human Rights (OHR)*
  - *The Department Health Professions (DHP)*
- There is concern that some instances of abuse, neglect, and exploitation go unreported, and offending providers may continue to work with vulnerable individuals
  - *For example, a personal assistant employed by an agency who is suspected of abuse, neglect, or exploitation may quit before they are reported*
  - *Could a registry be created to include complaints of abuse, neglect, and exploitation by individuals providing services to waiver enrollees outside of the formal avenues?*

# Virginia Developmental and Intellectual Disability Waivers

Administered through Department of Behavioral Health and Developmental Services (DBHDS) in conjunction with the Department of Medical Assistance Services (DMAS)



Enrollees include adults and children who have a diagnosis of a developmental or intellectual disability (DD/ID) and:

- Meet level of care criteria for placement in an Intermediate Care Facility for Individuals with a DD/ID
- Require waiver services within 30 days
- Waiver services enable them to delay or avoid placement in an ICF or promote exiting from either an ICF or other institutional placement
- Are eligible for Medicaid
- Have income up to 300% of the Social Security Income payment limit for one person

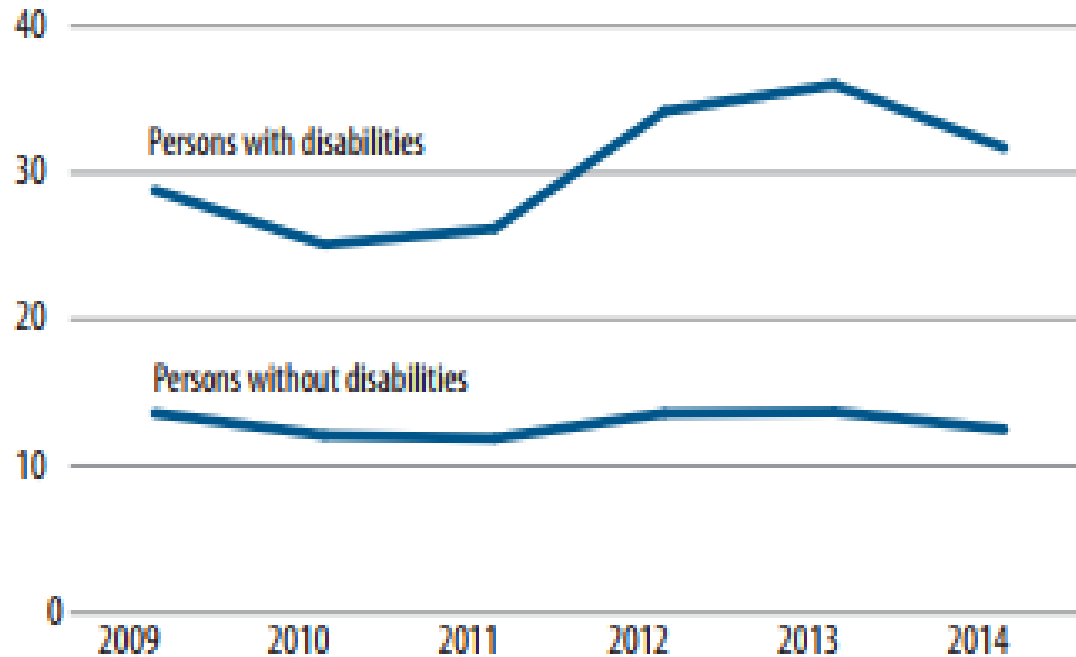
# Types of Abuse, Neglect, and Exploitation

- Regulations related to adults and children differ, for example exploitation only applies to adults
- **Physical Abuse:** Intentional bodily injury like slapping, choking, shoving, and poisoning
- **Sexual Abuse:** Non-consensual or unwanted sexual contact
- **Mental/Emotional Abuse:** Deliberately causing mental/emotional pain
- **Exploitation:** Resources or income of adults are illegally or improperly used for another person's gain
- **Neglect:** When a person, through action or inaction, deprives an individual of care necessary to maintain health
- **Self-neglect:** When adults fail to provide for themselves and jeopardize their health

## Individuals with a disability are victimized at higher rates than are individuals without a disability

### Rate of violent victimization, by disability status, 2009–2014

Rate per 1,000 persons age 12 or older



Note: Based on the noninstitutionalized U.S. residential population age 12 or older. Estimates were based on 2-year rolling averages. For each year, rates for persons without disabilities were adjusted using direct standardization with the population with disabilities as the standard population. Rates for persons with disabilities were unadjusted.

Source: Bureau of Justice Statistics, National Crime Victimization Survey, 2008–2014, and U.S. Census Bureau, American Community Survey, 2008–2014.

- From 2010 through 2014, persons with **cognitive disabilities** experienced the **highest rates** of violent crime (56.6 per 1,000), serious violent crime (24 per 1,000), and simple assault (32.6 per 1,000) among the disability types measured
- More than half (53%) of violence against persons with disabilities, and more than two-thirds (69%) of rapes or sexual assaults against persons with disabilities, were committed against those with **multiple disabilities**

# Mandated Reporters of Suspected Abuse, Neglect, and Exploitation

- Mandated and Voluntary Reporting of Adult Victimization (see Appendix 1)
  - *Adults are defined as persons age 60 and over and persons aged 18-59 who are incapacitated as defined in the Code of Virginia §63.2-1603*
  - *Mandated reporters of suspected abuse, neglect, and exploitation of adults include medical and other health service workers, home care workers, facility administrators, law enforcement officers and any paid provider who may be unlicensed, such as paid homemakers*
  - *Financial institution staff who suspect financial exploitation MAY report, but are not required to do so*
- Mandated reporters of Children Victimization (see Appendix 2)
  - *Include medical and other health care providers, employees of any public or private organization responsible for the care of children, teachers, athletic coaches and others*
- Mandated reporters may be charged up to \$1,000 civil penalties for failure to report suspected abuse, neglect or exploitation

# Investigation Dispositions

## ■ Unfounded/Unsubstantiated

- *Information gathered during the investigation did not support a founded/substantiated disposition*
- *This does not mean abuse did not occur; rather, the preponderance of the evidence did not support the claim*

## ■ Founded/Substantiated

- *Information gathered during the investigation has revealed a preponderance of evidence to support that abuse, neglect, or exploitation occurred*



## Abuse, Neglect, and Exploitation Oversight and Investigation

- **DARS § 51.5-145. Responsibility of the Department for adult services** - The Department (DARS) shall have responsibility for the planning and oversight of adult services in the Commonwealth...services shall be delivered by local departments of social services
  - *DARS has administrative oversight for cases of abuse, neglect, and exploitation of adults*
  - *Reporting and investigations are delegated to, and performed by, local DSS offices*
  - *Disclosure of information can be made when there is a legitimate interest to agencies, providers, guardians, attorneys, responsible family members, under a court order and others (22VAC30-100-50)*
  
- **Local DSS offices**
  - *Receive and evaluate reports of abuse against children and adults, investigate reports, make a disposition, and notify the reporter that the report has been investigated*
  - *House and operate the APS hotline (which is administered by DARS)*
  - *Refer cases specified in the Code of Virginia §63.2-1605 to local law enforcement agencies*
  
- **VDSS** maintains the DARS platforms for local DSS staff to enter APS cases (DARS controls permission to access the database for APS)
  
- **DHP** maintains a searchable database of licensed providers with findings of facts and conclusions of law

## Abuse, Neglect, and Exploitation Oversight and Investigation DBHDS Office of Human Rights (OHR)

- OHR conducts criminal background checks prior to the hiring of individuals working in licensed facilities (see Appendix 3)
- OHS administers the Comprehensive Human Rights Information System (CHRIS) in which allegations of abuse, neglect and exploitation are submitted
- CHRIS has a licensed provider search capacity that can be accessed by specified individuals with certain roles, including:
  - *OHR staff, advocates, CSBs, private providers, waiver staff and providers, Office of Licensing, Local Licensing Providers, Licensing Specialists*
- According to §37.2-400 of the Code of Virginia, CHRIS information and statistical data shall be made available to the public in a format from which **all information identifying a provider (perpetrator) or an individual receiving services has been removed**

## DBHDS OHR Abuse Allegations and Substantiation SFY 2017<sup>1</sup>

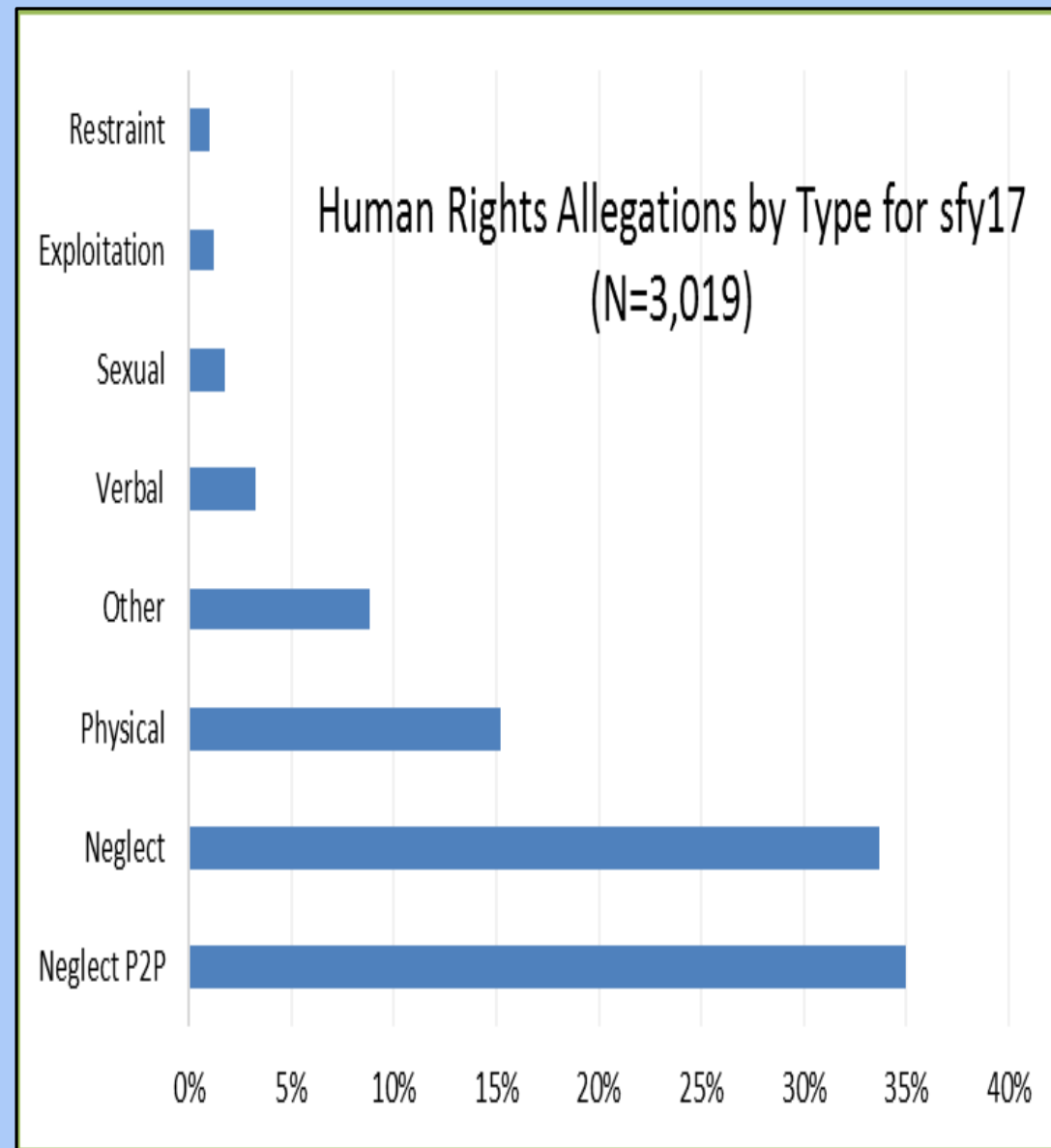
### Outcomes of Human Rights Allegations SFY 2017

Number of Allegations	Number Substantiated
3,019	718

One in every four reported allegations were founded/substantiated

Most (69%) allegations involved peer-to-peer (P2P) incidents of aggression that were investigated as potential neglect due to the provider's supervisory role

Examples of P2P incidents include an attack or assault by one resident on another, verbal threats, pushing and shoving, etc.



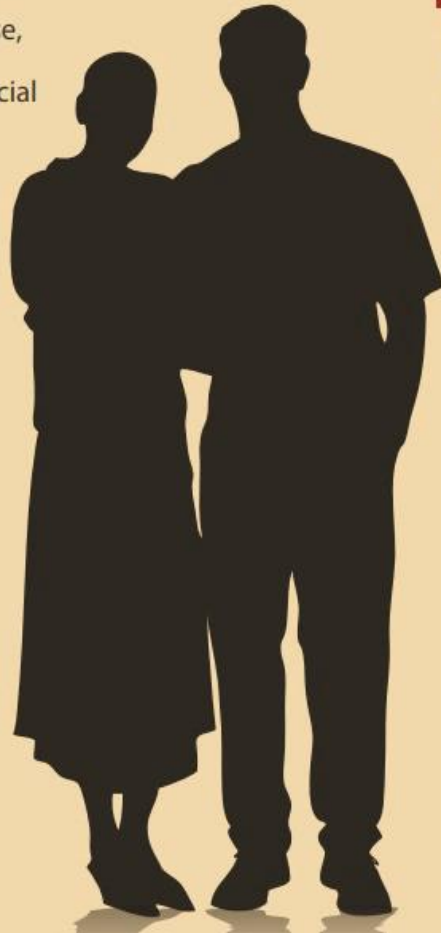
<sup>1</sup>For the purpose of this report, the term “abuse” includes neglect

# ADULT PROTECTIVE SERVICES

is a program of the Adult Protective Services Division at the Department for Aging and Rehabilitative Services

In state fiscal year 2016

**23,432** reports of adult abuse, neglect, and/or exploitation were received by local departments of social services. 55% of APS reports were substantiated.



## APS focuses on:

Adults age 60 and over and incapacitated persons ages 18 to 59 who have been abused, neglected or exploited, or are at risk of abuse, neglect, or exploitation, without regard to income or resources.

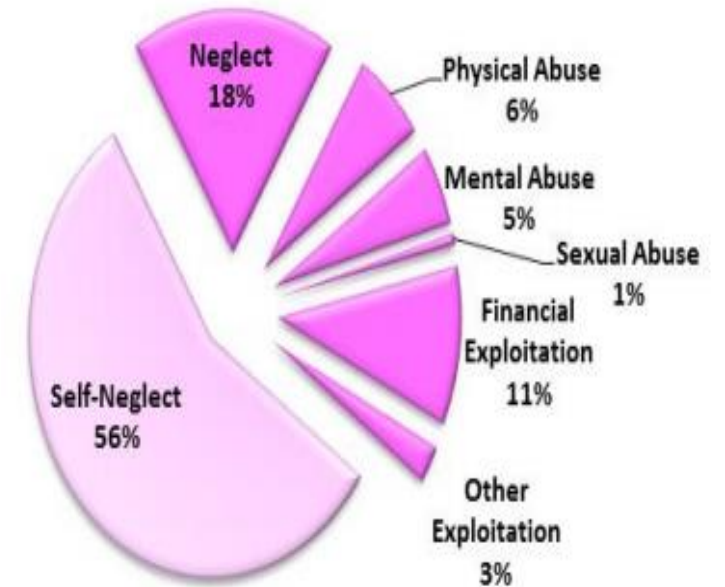
### Types of Abuse

2016 APS Reports	
self-neglect	6154
neglect	1964
financial exploitation	1158
physical abuse	698
mental abuse	584
other exploitation	279
sexual abuse	87

### Location of the Incident *(abuse, neglect or exploitation)*

2016 APS Reports	
own house or apartment	62%
nursing facility	9%
other's house or apartment	11%
other location	6%
assisted living facility	5%
Behavioral Health & Developmental Service facility or group home	4%

## Types of Abuse: SFY 2016 Substantiated Reports



## DARS Annual Report 2016 – Adult Protective Services

<b>THREE YEAR COMPARISON OF APS REPORTS</b>			
	<b>2014</b>	<b>2015</b>	<b>2016</b>
Total Reports Received	21,650	22,658	23,432
Reports Investigated <sup>9</sup>	17,319	17,625	17,764
Total Reports Substantiated <sup>10</sup>	9,140	9,224	9,755
Unfounded	8,179	8,401	8,009
Pending <sup>11</sup>	114	110	41
Invalid <sup>12</sup>	4,217	4,923	5,627
<i>Percent of Reports Substantiated</i>	<i>53%</i>	<i>52%</i>	<i>55%</i>
<b>DISPOSITIONS OF SUBSTANTIATED REPORTS</b>			
Needs and Accepts Services	4,066	4,171	4,416
Needs and Refuses Services	1,644	1,749	1,834
Need No Longer Exists	3,430	3,304	3,505

### Dispositions

<sup>9</sup> Investigated reports include substantiated and unfounded reports.

<sup>10</sup> A substantiated report is defined as a completed investigation with a disposition that the adult needs protective services.

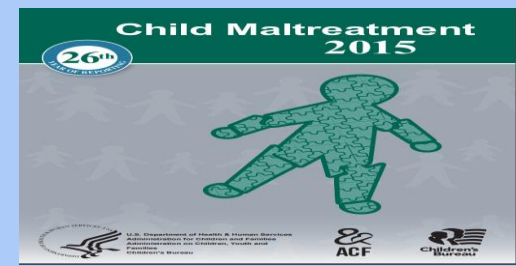
<sup>11</sup> Pending reports include reports undergoing investigation.

<sup>12</sup> Information on invalid reports was not available prior to the implementation of the ASAPS program. Invalid (reports not meeting validity criteria) includes reports that are invalidated at the time they are made as well as investigated reports that receive a disposition of "invalid."

- Total APS reports increased by **4.7%** from SFY 2014 to 2015 and by **3.4%** from 2015 to 2016
- Substantiated reports increased by **0.9%** from SFY 2014 to 2015 and by **5.6%** from 2015 to 2016
- Just over **half** of total reports from 2014 through 2016 were **substantiated**



## Child Protective Services (CPS)



- In 2015 **parents** were the most frequent perpetrators of child abuse
  - Mothers represented 40% and fathers 21% of perpetrators
  - **Unrelated partners of parents** were the most frequent non-parent perpetrators followed by other relatives
- 
- CPS operates under the VDSS which has the responsibility to respond to reports of suspected child abuse and neglect
  - Investigations must be completed in 45 – 60 days from the date of report
  - Local DSS offices are required to
    - *Act in response to valid reports of suspected child mistreatment*
    - *Evaluate child safety*
    - *Support and strengthen families, whenever possible*
    - *Facilitate services to families to help ensure child safety*
    - *Prevent future abuse or neglect*



## Rights of Subjects of a CPS Report<sup>1</sup>

- To be notified in writing
- To meet with the CPS worker assigned to the case
- To have a person or persons they choose, including an attorney at their own expense, present during any interview with CPS staff
- To electronically record the communications between themselves and the CPS worker, provided all parties are aware of the recording
- To appeal the investigation finding if named as the person who abused or neglected a child

<sup>1</sup> The subject is the alleged person suspected of committing abuse and neglect

## *Retention of Unfounded Reports of Child Abuse and Neglect*

- Reports of abuse and neglect of children that are **unfounded** are maintained separately from founded cases and are **only accessible to local DSS staff**
- Unfounded cases **are purged after one year** if there are no subsequent complaints or **after two years** if requested by the person alleged of committing abuse or neglect (see Appendix 4)
- Records must be retained for up to an additional two years if requested in writing by the person who is the subject (alleged perpetrator) of such complaint or report
- The subject of an unfounded report or complaint who believes that such report or complaint was made in bad faith or with malicious intent may petition the circuit court for the release to such person of the records of the investigation or family assessment



# Department of Health Professions' License Lookup Portal

Potential employers and consumers may check for founded complaints

## License Lookup

Current as of 07/13/2017 06:49

**Not For Commercial Use!** ([read more](#))

To Renew or Update Your License, Click [Here](#)

### License Verification

If you know the license number, you can search by license number.

License Number:

Search

You can also search by the last 4 digits of social security number and last name.

Last 4 Digits of SSN:

XXX - XX -

Last Name:

Search

Otherwise, you can search by occupation, name, state, zip, status, or any combination of these search criteria.

Occupation:

Any ...



Business Name or Person First Name:



Last Name:



State:

Any ...



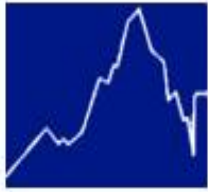
Zip Code:

Status:

Any ...



Search



## License Look-up: Nurse Aide Case Decisions in last 90 days

License Number	[REDACTED]
Occupation	Nurse Aide
Locality	[REDACTED]
Notices and Orders	<a href="#">View</a>
Action	Reinstatement Granted
Action Date	7/20/2017
Action	Reprimand
Action Date	7/20/2017

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. [REDACTED] was issued Certificate No. [REDACTED] to practice as a nurse aide in the Commonwealth of Virginia on August 11, 2011. Said certificate expired on August 31, 2014. Ms. [REDACTED] submitted an application for reinstatement of her certificate to practice as a nurse aide on December [REDACTED], 2016.

2. [REDACTED] violated Virginia Code § 54.1-3007(4) in that on December 28, 2010, in the General District Court of Fairfax County, Virginia, she was convicted of misdemeanor embezzlement, a crime of moral turpitude.

3. [REDACTED] violated Virginia Code § 54.1-3007(1) and 18 VAC 90-25-100(1)(b) of the Regulations Governing Certified Nurse Aides in that on her original application for certification to practice as a nurse aide in Virginia, which she submitted to the Board on April 28, 2011, she falsely stated that she had never been convicted of a violation of any federal, state, or other law constituting a felony or a misdemeanor.

## Feedback from Virginia Agency Staff

- Concerns were expressed about cost, effectiveness, and liability issues regarding *due process*, associated with a registry of uninvestigated complaints, especially in light of the fact that nearly half of reported complaints are unsubstantiated
- Due to legacy issues, responsibility for investigating reports and report data are spread across several agencies, but staff from one agency does not have direct access to data from another agency
  - *DSS and DBHDS are in the process of establishing a Memorandum Of Understanding in order to share data*
- Cases with dispositions of founded/substantiated complaints are submitted to the OHR and are entered into CHRIS, but if DSS closed the case, data in the CHRIS report will only show that the case is closed
- Improving the functionality of existing databases may be a more fruitful activity than creating a new registry of uninvestigated complaints
- No state would create a registry of uninvestigated complaints as it violates *due process* rights



## ■ Virginia code

- *Delineates the type of information that may be revealed by a past employer to a prospective employer and protections from liability for those providing the information (Code of Virginia § 8.01-46.1 - see Appendix 5)*
- *The employer is immune from liability unless the employer disclosed information deliberately intending to mislead, knowing it was false, or not caring if it was true or false*
- *Prohibits employers from preventing a past employee from obtaining employment (Code of Virginia § 40.1-27 see Appendix 6)*



## Practices in Other States

- Most states require a registry search prior to hiring caregivers
- Some states require registry searches for home based services and facilities while others only require them for facilities
- Budget impacts of these registries are not easily accessible for analysis
- Some states have disability-specific registries (New Jersey and Ohio); others have registries that specifically include disability populations (mostly adult populations)
- Some registries are searchable online (Arizona, Delaware, Tennessee) while others are only available through a paper request (New Hampshire, New Jersey)
- Pennsylvania requires **letters of reference from two past** employers for direct care applicants
- One state requires that applicants **sign a consent** for prospective employers to talk to previous employers
- None of the states reviewed have registries or lists of uninvestigated or unfounded complaints<sup>1</sup>

<sup>1</sup>See Appendix 7 for details of other states

*Code of Virginia §15.2-1709 Employer immunity from liability; disclosure of information regarding former deputy sheriffs and law enforcement officers*

- **Code of Virginia Title 15.2. Counties, Cities and Towns Chapter 17. Police and Public Order**
  - *Any sheriff or chief of police, the director or chief executive of any agency or department employing deputy sheriffs or law-enforcement officers as defined § 9.1-101, or jail officers as defined in § 53.1-1, and the Director of the Department of Criminal Justice Services or his designee who **discloses information about a former deputy sheriff's or law-enforcement officer's or jail officer's job performance to a prospective law-enforcement or jail employer of the former appointee or employee is presumed to be acting in good faith** and, unless lack of good faith is shown by clear and convincing evidence, **is immune from civil liability for such disclosure or its consequences***

**Similar language could be used for licensed waiver providers**

## Summary

- Individuals with disabilities experience higher rates of abuse, neglect, and exploitation than the general population
  - A significant portion of reported cases is determined to be *unsubstituted/unfounded*
  - The majority of perpetrators of abuse, neglect and exploitation for both adults and children are family members
  - Founded cases of abuse are in existing Virginia databases, but searches are not able to be performed by disability status or waiver
- To create a registry that includes uninvestigated and unfounded/unsubstantiated complaints, changes could be made at *Code of Virginia §8.01-46.1* (Disclosure of employment-related information; presumptions; causes of action) *and Code of Virginia §40.1-27* (Preventing employment by others of former employee) that may protect the state and employers from liability, but it may not prevent legal challenges
  - Language similar to the *Code of Virginia §15.2-1709* which provides immunity from liability to Sherriff Departments for disclosing information on job performance may be a model for legislative language pertaining to licensed waiver providers

## Policy Options

	Policy Option
Option 1	Take no action
Option 2	By letter of the JCHC Chair, request that the Secretary of Health and Human Resources identify an appropriate agency to convene a work group to determine the needs, policies, statutory and regulatory language, costs (including staffing and ongoing operations), to identify the appropriate agency to develop and manage a registry of complaints of abuse, neglect and exploitation against individuals providing direct care services to individuals enrolled in the three waivers
Option 3	Introduce language amending the <i>Code of Virginia</i> §8.01-46.1 (Disclosure of employment-related information; presumptions; causes of action) and <i>Code of Virginia</i> §40.1-27 (Preventing employment by others of former employee) to strengthen protections from legal challenges for previous employers providing work history, performance and other reference information to potential new employers
Option 4	Introduce legislation to mandate that candidates seeking employment providing direct care to waiver enrollees submit letters from past employers describing certain aspects of their employment—for example, their work histories, pay rates, or reasons for their termination (and perhaps letters from instructors or others for individuals who are applying for a first job)



## Policy Options, Continued

	Policy Option
Option 5	Introduce legislation to mandate that candidates seeking employment as direct care providers to waiver enrollees sign a consent to allow prospective employers to contact previous employers
Option 6	Introduce legislative language to provide immunity from civil liability to licensed waiver providers related to disclosure of job performance of candidates seeking employment as direct care providers to waiver enrollees, similar to the language in §15.2-1709 of the <i>Code of Virginia</i>

Written public comments on the proposed options may be submitted to JCHC by close of business on Tuesday, November 7, 2017.

Comments may be submitted via:

- ❖ E-mail: [jchcpubliccomments@jchc.virginia.gov](mailto:jchcpubliccomments@jchc.virginia.gov)
- ❖ Fax: 804-786-5538
- ❖ Mail: Joint Commission on Health Care  
P.O. Box 1322  
Richmond, Virginia 23218

Full comments will be provided to Commission members and summarized during the JCHC's November 21<sup>st</sup> decision matrix meeting.

(All public comments are subject to FOIA release of records)

## Appendix 1: Mandated Reporters of Suspected Abuse, Neglect, and Exploitation of Adults

- § 63.2-1606 Mandated and Voluntary Reporting
  - *Any person licensed, certified, or registered by health regulatory boards*
  - *Any mental health services provider*
  - *Any emergency medical services provider*
  - *A guardian or conservator of an adult*
  - *Persons contracted with a public or private agency or facility working with adults in an administrative or direct care capacity*
  - *Any person providing care to an adult for compensation (companion, homemaker, personal care worker, etc.)*
  - *Any law enforcement officer*
- Financial institution staff who suspects financial exploitation MAY report, but are not required to do so

## Appendix 2: Mandated Reporters of Suspected Abuse and Neglect of Children

- Licensed medical practitioners
- Hospital residents and interns
- Persons employed in the nursing profession
- Local DSS eligibility workers
- Probation officers
- Teachers and employees of public or private schools, kindergarten and nursery schools
- Paid child care workers
- Mental health professionals
- Law enforcement officers
- Professional staff employed by a public or private hospital, institution or facility in which children are placed
- Persons 18 years or older associated with or employed by any public or private organization responsible for the care, custody and control of children
- Mediators certified to receive court referrals
- Volunteer court appointed special advocates

- Persons employed by public or private institutions of higher education
- Athletic coaches, directors or other persons 18 years of age or older employed by or volunteering with a private sports organization or team
- Administrators or employees 18 years or older, of public day camps, youth centers and youth recreation programs
- Any person 18 years of age or older, who has received training approved by the DSS for the purposes of recognizing and reporting child abuse and neglect
- This reporting requirement shall not apply to any regular minister, priest, rabbi, imam, or duly accredited practitioner of any religious organization or denomination usually referred to as a church as it relates to (i) information required by the doctrine of the religious organization or denomination to be kept in a confidential manner or (ii) information that would be subject to § 8.01-400 or 19.2-271.3 if offered as evidence in court

## Appendix 3: DBHDS: § 37.2-416. Background checks required

- B. Every provider licensed pursuant to this article shall require
  - (i) any applicant who accepts employment in any *direct care position*
  - (ii) any applicant for approval as a *sponsored residential service provider*
  - (iii) any adult living in the home of an applicant for approval as a *sponsored residential service provider*
  - (iv) any person employed by a *sponsored residential service provider* to provide services in the home, and
  - (v) any person who enters into a *shared living arrangement* with a person receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant

C. ...a provider may hire for compensated employment at *adult substance abuse or adult mental health treatment facilities* a person who was convicted of any violation of § [18.2-51.3](#); a misdemeanor violation of § [18.2-56](#) or [18.2-56.1](#) or subsection A of § [18.2-57](#); any violation of § [18.2-60](#), [18.2-92](#), or [18.2-94](#); any offense set forth in clause (iii) of the definition of barrier crime in § [19.2-392.02](#), except an offense pursuant to subsections H1 and H2 of § [18.2-248](#);... if the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse or mental illness and that the person has been successfully rehabilitated and is not a risk to individuals receiving services based on his criminal history background and his substance abuse or mental illness history

## Appendix 4: Code of Virginia Title 63.2. Welfare (Social Services) Chapter 15 Child Abuse and Neglect

- § 63.2-1514 Retention of records in all reports - procedures regarding unfounded reports alleged to be made in bad faith or with malicious intent
- B. The Department shall maintain a child abuse and neglect information system that includes a **central registry of founded complaints**, pursuant to § 63.2-1515
  - *The Department shall maintain all (i) unfounded investigations, (ii) family assessments, and (iii) reports or complaints determined to be not valid in a record which is separate from the central registry and accessible only to the Department and to local departments for child-protective services*
  - *In no event shall the mere existence of a prior complaint or report be used to determine that a subsequent complaint or report is founded*
  - *The subject of the complaint is the person who is alleged to have committed abuse or neglect and shall have access to their own record*
  - *The record of unfounded investigations and complaints and reports determined to be not valid shall be purged one year after the date of the complaint or report if there are no subsequent complaints...regarding the same child or the person who is the subject of the complaint or report in that one year*

## Appendix 5: Information that may be disclosed by past employers and protections

- *Code of Virginia § 8.01-46.1 Information that may be disclosed:*
  - *Job performance*
  - *Reasons for separation*
  - *Performance evaluation or opinion*
  - *Knowledge, qualifications, skills, or abilities*
  - *Job description and duties*
  - *Attendance, effort, and productivity*
  - *Awards, promotions, or demotions*
  - *Disciplinary actions*
  - *Professional conduct*
  
- *Who may request or receive information:*
  - *Prospective employers*
  
- *The employer is immune from liability unless*
  - *The employer disclosed information deliberately intending to mislead, knowing it was false, or not caring if it was true or false*

Appendix 6: Code of Virginia § 40.1-27. Preventing employment by others of former employee

- No person doing business in this Commonwealth, or any agent or attorney of such person **after having discharged any employee** from the service of such person or after any employee shall have **voluntarily left the service** of such person shall willfully and maliciously **prevent or attempt to prevent** .... such discharged employee or such employee who has voluntarily left **from obtaining employment** with any other person
- For violation of this section the offender shall be guilty of a misdemeanor and shall, on conviction thereof, be fined not less than \$100 nor more than \$500

- This section shall **not be construed as prohibiting any person from giving** on application for any other person **a truthful statement of the reason for such discharge, or a truthful statement concerning the character, industry and ability of such person** who has voluntarily left
- Despite the language about truthful statements, there is a potential for criminal liability or accusations of defamation or liability for lost income<sup>1</sup>

<sup>1</sup><http://virginiaworkplacelaw.com/2012/06/26/employers-who-have-nothing-nice-to-say-should-say-nothing-at-all/>



## Ohio Disability-Specific Registry

- Managed by the Ohio Department of Developmental Disabilities
- Developmental Disability Specific
- Publically Available Online
- Anyone listed on website is **unable to provide care** for those with developmental disabilities
- Employers are required to check registry prior to hire (unclear whether this applies to home hires)
- Information on the registry includes: Name, DOB, Surname, Type of Abuse, Registry Date, Criminal, Arbitration



Department of  
Developmental Disabilities

## Abuser Registry

Established in Ohio law, to track those who are prohibited from working with people with developmental disabilities

The Ohio Department of Developmental Disabilities ("Department") maintains an Abuser Registry which is a list of employees who the Department has determined have committed one of the Registry offenses listed below. If your name is placed on the Registry you are barred from employment as a Developmental Disabilities employee in the state of Ohio. Because other state agencies require employers to check the Abuser Registry, placement on the Registry also prohibits you from being employed (1) by a Medicaid agency, being an owner (5 percent or more) of an agency or having a Medicaid Provider Agreement as a non-agency provider; (2) in a position to provide Ombudsman services or direct care services to anyone enrolled in a program administered by the Ohio Department of Aging; and (3) by a home health agency in a direct care position and may prevent you from being hired in a nursing home or residential care facility in a direct care position.

After 1 year, the person may petition the Department for removal of their name from the Registry. If the petition is denied, the name remains on the Registry.

The name of any "Developmental Disabilities (DD) employee" may be placed on the Registry. DD employee includes any Department employee, any employee of a county board of DD, an independent provider under Ohio Revised Code section 5123.16, and any employee providing specialized services to an individual with developmental disabilities. A specialized service is a program or service designed to primarily serve individuals with developmental disabilities including services by an entity licensed or certified by the Department.

## Adult Protective Services Protocol 2013

County Departments of Job and Family Services provide Adult Protective Services to the elderly who are in danger of harm, unable to protect themselves, and/or have no one else to assist them. County Departments of Job and Family Services are mandated to investigate and evaluate all reports of suspected abuse, neglect, and exploitation of vulnerable adults age 60 and over.

Investigations of reports alleging abuse, neglect and exploitation are mandated to be initiated within 24 hours, if any emergency exists, or within 3 working days after the report is received by the County Department of Job and Family Services. Upon completion of the investigation, the County Departments of Job and Family Services determine whether or not the adult, who is the subject of the investigation, is in need of protective services.

### Core Program Requirements

**ALL MUST** be fully implemented by July 1, 2016.

○ **Screening:** The capacity to accept and screen reports of suspected abuse, neglect, and/or exploitation:

- Accept reports 24 hours/day, 7 days/week
- Retain report information
- Use a standardized decision-making protocol for reports
- Document screening decisions
- Identify cases as emergency or non-emergency

### Report Investigation

According to the Ohio Administrative Code:

“The CDJFS is responsible for investigating all reports of abuse, neglect, and exploitation for adults age 60 and older and evaluate the need for protective services. The law allows the CDJFS to designate another agency to perform duties under this section. Reports are prioritized into two categories:

1. “Emergency Reports-all abuse, neglect, and exploitation reports are deemed emergency if an adult is allegedly living in conditions which present substantial risk of immediate physical harm or death. The risk can be the result of the adult’s own actions or inflicted on the adult by another person. This type of report requires an investigation to be initiated within twenty-four hours.
2. “Non Emergency Reports- all other abuse, neglect or exploitation reports that are accepted by the agency that have not been deemed an emergency. These reports require an investigation to be initiated within three working days.”

## Tennessee Abuse Registry

Minors and disabled are included

- Maintained by the Department of Intellectual & Developmental Disabilities
- Publically Accessible/Searchable Online
- Information included in the registry
  - *Name*
  - *City*
  - *Profession*
  - *Type of Abuse*
  - *Reporting Department*
  - *Date placed on registry*

The Tennessee Department of Health is required by state law and federal regulations to maintain a registry of persons who have abused, neglected, or misappropriated personal property of a vulnerable person who is under eighteen (18) years of age, or who, by reason of advanced age or other physical or mental condition is vulnerable to abuse, neglect or misappropriation of property and who was, at the time of such determination, in the care of:

(A) A state agency;

(B) An entity which is licensed or regulated by a state agency; or,

(C) An entity under the provisions of a contract between that entity and a state agency.

Allegations of abuse, neglect, or misappropriation of personal property against individuals are investigated thoroughly. Due process is afforded to all accused persons before placement is made.



- Administered by the Bureau of Elderly and Adult Services
- Not disability specific
- Contains information of founded reports of abuse/neglect of incapacitated adults by a paid or volunteer worker
- Not publically available
  - *Consent form must be filled out and submitted to state agency*

- A central adult protective services (APS) unit in the BEAS Central Office receives and investigates reports involving incapacitated adults who live in or are participating in homes/programs administered by or affiliated with the DHHS Bureaus of Behavioral Health and Developmental Services
- The central APS unit is also responsible to receive and investigate reports involving incapacitated adults who are suspected to have been abused, neglected or exploited in their own homes by individuals paid to provide care, or while receiving care in a community, general or specialized hospital, rehabilitation center or other treatment center

## Appendix 7: Review of Practices in Other States, Continued

### Delaware Registry

- Substantiated cases of abuse/neglect/mistreatment of adults not disability specific
- Maintained through the Division of Long Term Care
- State law requires long term facilities check the registry before hire
- Publically available online: Name, Professional License, placed on registry, date to be removed, and description
- Delaware also created a comprehensive background check which checks 9 sources:
  - *Adult Abuse Registry*
  - *Certified Nursing Assistant Registry*
  - *Sex Offender Registry*
  - *Office of the Inspector General Registry*
  - *Child Protection Registry*
  - *Division of Professional Regulation Registry*
  - *State and Federal Criminal background Check*
  - *Drug Screening*
  - *Service Letters from prior employers*

### Arizona Registry

- Maintained through Adult Protective Services
- List of substantiated perpetrators of vulnerable adult mistreatment
- Not disability specific
- Updated weekly
- Publically accessible; PDF document available for download online
- Contains the following information:  
Name, DOB, paragraph description of incident of abuse/neglect

## New Jersey Disability Registry

- Central Registry managed by Department of Health Services
- Confidential List of caregivers funded by DHS who have been **determined to have abused or neglected** an individual with developmental disabilities
- Names that appear on the list will no longer be employable with disability population
- Employers are required to check central registry prior to hire

## Kentucky Nurse Aide Registry

- The Kentucky Nurse Aide Registry lists the status of State Registered Nurse Aides and the names of home health aides who, as determined by the Office of the Inspector General of the Commonwealth of Kentucky, **have a final finding of abuse**
- This website will NOT provide information on criminal background, child abuse, sex offenders, or professional licenses (other than KBN nursing licensure status).
- The Kentucky Nurse Aide Registry began in October 1990 after the Omnibus Budget Reconciliation Act (OBRA) became law. The Nurse Aide Registry has two main functions:
  - To maintain a list of qualified nurse aides
  - To maintain a list of aides who have abused residents in facilities
- All long term care facilities must check the registry and abuse status of individuals before hiring them
- In July 1999, the Kentucky Board of Nursing began maintaining the registry's database records



## Maine

- **Established.** The Maine Registry of Certified Nursing Assistants and Direct Care Workers is established in compliance with federal and state requirements
  - **Registry listing.** All active certified nursing assistants employed in the State must be listed on the registry. The registry must contain a **listing of certified nursing assistants and direct care workers that are ineligible for employment based on notations for disqualifying offenses**
  - **Registry notations.** The registry must include for a certified nursing assistant and direct care worker listed on the registry a notation of:
    - *A. Disqualifying criminal **convictions**; [2015, c. 196, §9 (NEW).]*
    - *B. Non-disqualifying criminal convictions, except that a notation is not required on the registry for Class D and Class E criminal convictions over 10 years old that did not involve as a victim of the act a patient, client or resident;[2015, c. 196, §9 (NEW).]*
    - *C. **Substantiated findings**, including but not limited to the following information: (See next column)*
- Documentation of an investigation of a certified nursing assistant or a direct care worker, including the nature of the allegation and evidence supporting a determination that substantiates the allegation of abuse, neglect or misappropriation of property of a client, patient or resident
  - Documentation of substantiated findings of abuse, neglect or misappropriation of property of a client, patient or resident
  - If the certified nursing assistant or direct care worker appealed the substantiated finding, the date of the hearing; and
  - The statement of the certified nursing assistant or direct care worker disputing the allegation of abuse, neglect or misappropriation of property of a client, patient or resident if the certified nursing assistant or direct care worker submitted such a statement

## Pennsylvania

### § 611.51. Hiring or rostering of direct care workers.

- *Hiring or rostering prerequisites.* Prior to hiring or rostering a direct care worker, the home care agency or home care registry shall:
  - Conduct a face-to-face interview with the individual
  - Obtain at least **two satisfactory references** for the individual
    - *A satisfactory reference is a positive, verifiable reference, either verbal or written, from a former employer or other person not related to the individual that affirms the ability of the individual to provide home care services*
  - Require the individual to submit a criminal history report, in accordance with § 611.52 (relating to criminal background checks), and a ChildLine verification, if applicable, in accordance with the requirements of § 611.53 (relating to child abuse clearance)
  - *Direct care worker files.* Files for direct care workers employed or rostered must **include documentation of the date of the face-to-face interview with the individual and of references obtained**

## Appendix 8: National Child Abuse Data



State	Number			Percent		Rate per 1,000 Children
	Screened-In Referrals	Screened-Out Referrals	Total Referrals	Screened-In Referrals	Screened-Out Referrals	Total Referrals
Alabama	20,599	302	20,901	98.6	1.4	18.6
Alaska	7,048	9,940	16,988	41.5	58.5	90.8
Arizona	34,815	22,431	57,246	60.8	39.2	35.3
Arkansas	35,346	14,122	49,468	71.5	28.5	69.6
California	231,940	123,982	355,922	65.2	34.8	38.5
Colorado	31,066	43,171	74,237	41.8	58.2	60.3
Connecticut	24,646	18,133	42,779	57.6	42.4	53.9
Delaware	7,673	9,048	16,721	45.9	54.1	81.5
DC	6,647	845	7,492	88.7	11.3	68.4
Florida	167,742	60,032	227,774	73.6	26.4	56.9
Georgia	52,876	17,636	70,512	75.0	25.0	28.3
Illinois	68,625	0	68,625	100.0	0.0	22.4
Indiana	73,007	48,062	121,069	60.3	39.7	76.1

<https://www.acf.hhs.gov/cb/resource/child-maltreatment-2012-data-tables>

## Appendix 8: National Child Abuse Data, Continued

State	Screened-In Referrals	Screened-Out Referrals	Total Referrals	Screened-In Referrals	Screened-Out Referrals	Total Referrals
Kansas	22,096	14,299	36,395	60.7	39.3	50.2
Kentucky	51,296	18,749	70,045	73.2	26.8	68.8
Louisiana	24,650	21,565	46,215	53.3	46.7	41.3
Maine	7,782	9,772	17,554	44.3	55.7	66.0
Maryland	26,148	29,627	55,775	46.9	53.1	41.5
Massachusetts	37,678	37,761	75,439	49.9	50.1	53.8
Michigan	91,274	43,619	134,893	67.7	32.3	59.5
Minnesota	18,721	45,870	64,591	29.0	71.0	50.6
Mississippi	24,064	6,427	30,491	78.9	21.1	40.9
Missouri	62,880	16,857	79,737	78.9	21.1	56.8
Montana	7,593	5,577	13,170	57.7	42.3	59.3
Nebraska	12,730	17,960	30,690	41.5	58.5	66.2
Nevada	12,873	11,543	24,416	52.7	47.3	36.8
New Hampshire	9,089	4,954	14,043	64.7	35.3	51.1
New Jersey	60,615	0	60,615	100.0	0.0	29.9
New Mexico	16,279	16,236	32,515	50.1	49.9	63.2

## Appendix 8: National Child Abuse Data, Continued

State	Screened-In Referrals	Screened-Out Referrals	Total Referrals	Screened-In Referrals	Screened-Out Referrals	Total Referrals
North Dakota	3,778	0	3,778	100.0	0.0	24.4
Ohio	81,036	79,257	160,293	50.6	49.4	60.2
Oklahoma	31,571	34,619	66,190	47.7	52.3	70.6
Oregon	23,972	37,930	61,902	38.7	61.3	71.9
Rhode Island	6,771	5,509	12,280	55.1	44.9	56.7
South Carolina	20,569	7,217	27,786	74.0	26.0	25.7
South Dakota	3,550	12,471	16,021	22.2	77.8	78.5
Tennessee	62,759	42,206	104,965	59.8	40.2	70.3
Texas	168,443	35,132	203,575	82.7	17.3	29.1
Utah	18,979	17,374	36,353	52.2	47.8	40.9
Vermont	3,508	11,106	14,614	24.0	76.0	117.9
<b>Virginia</b>	<b>33,343</b>	<b>34,289</b>	<b>67,632</b>	<b>49.3</b>	<b>50.7</b>	<b>36.4</b>
Washington	37,422	41,578	79,000	47.4	52.6	49.8
West Virginia	18,572	17,341	35,913	51.7	48.3	93.5
Wisconsin	27,122	43,868	70,990	38.2	61.8	53.9
Wyoming	3,239	3,239	6,478	50.0	50.0	47.8
Total	1,820,892	1,116,160	2,937,052			
Percent				62.0	38.0	
Rate						46.1
States Reporting	46	46	46			